SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37
Justice

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INDEX NO. 451031/2023

DRAGO CHAMOVSKI,

Plaintiff,

MOTION DATE 04/25/2025, 04/25/2025

- v -

MOTION SEQ. NO. 002 003

THE NEW YORK AND PRESBYTERIAN HOSPITAL, NYC HEALTH AND HOSPITALS/HENRY J. CARTER SPECIALTY HOSPITAL AND NURSING FACILITY, HENRY J. CARTER SPECIALTY HOSPITAL AND NURSING FACILITY, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 81, 83, 85, 87, 88, 89, 90, 96, 97, 98, 99, 100, 101,

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 84, 86, 91, 92, 93, 94, 95, 102,

were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons hereinbelow and stated at virtual oral argument on December 2, 2025, defendants' respective motions for summary judgment are granted.

Background

The instant action arises out of treatment that defendants New York and Presbyterian Hospital ("NYPH"), and NYC Health & Hospitals/ Henry J. Carter Specialty Hospital and Nursing Facility ("NYCHH"), rendered to decedent, Donka Dimitrova Ivanova, in 2021. NYSCEF Doc. No. 1. Decedent's medical history included, inter alia, "hypertension, congestive heart failure, dementia, and prior MCA stroke." NYSCEF Doc. No. 48. Plaintiff, Drago Chamovski, the grandson of the decedent, is the administrator of her estate. NYSCEF Doc. No. 1. Plaintiff alleges that defendants' negligent treatment of decedent resulted in personal injuries, "including the development and progression of pressure ulcers[.]" Id.

The NYPH Admission

On February 23, 2021, the decedent, then 86-years-old, was found by non-party Ms. Jordan, her daughter and caretaker, to be "unresponsive, disoriented, unable to speak, and unable to feed herself." NYSCEF Doc. No. 48. EMS transported decedent to NYPH with the chief complaint of a stroke. Id. From February 23, 2021, through March 17, 2021, decedent was in NYPH's care. NYSCEF Doc. No. 1.

Upon decedent's admission to NYPH, she was placed in the Neurology ICU and underwent emergent surgery for bilateral burr hole drainage of subdural hematomas. NYSCEF Doc. No. 48. In addition, decedent received care, inter alia, for malnutrition, ventilation management, and wound care. Id.

The NYCHH Admission

On March 17, 2021, decedent was transferred to NYCHH for "long-term acute care." NYSCEF Doc. No. 48. Decedent was admitted to NYCHH's Long-Term Care Unit "for continuation of care and management of respiratory failure and weaning from ventilator. Decedent was admitted with an NG tube and tracheostomy in place." Id. Decedent was under was under the professional care of NYCHH through October 18, 2021. NYSCEF Doc. No. 1.

On March 17, 2021, NYCHH conducted a physical exam of decedent and then initiated care plans for decedent's conditions, which included, inter alia, "respiratory failure, stroke, dementia, a-fib, hypertension, dysphagia, diabetes, right thyroid nodule, leukocytosis, GI prophylaxis, DVT prophylaxis, and skin abrasions and [deep tissue injuries]." NYSCEF Doc. No. 48. Decedent also received consistent wound care. Id.

On September 28, 2021, a palliative care meeting was held in which the consulting doctor explained to decedent's family that decedent was not able to be weaned off a ventilator (after three unsuccessful trials) and recommended comfort care options. Id. Records note that the "[f]amily disagreed with the team's decision to continue her on ventilator support." NYSCEF Doc. No. 52, at 1325.

On October 18, 2021, decedent was discharged, in stable condition, from NYCHH to nursing home Isabella Geriatric Center. NYSCEF Doc. No. 48. Decedent passed away the following day. "The immediate cause was noted as acute chronic subdural hematoma, as a consequent of blunt impact injury of the head." Id. Another significant condition contributing to her death was arteriosclerotic cardiovascular disease. Id.

On January 11, 2023, plaintiff commenced the instant action, asserting the following causes of action against NYPH and NYCHH: (1) negligence (2) medical malpractice; and (3) wrongful death. NYSCEF Doc. No. 1. Plaintiff also asserts a claim for violation of New York Public Health Law against NYCHH only, seeking damages under § 2801-D and § 2803-C and 10 New York Codes, Rules and Regulations (NYCCR) § 415.12. Id. In plaintiff's verified complaint, plaintiff alleges, inter alia, that as a result of the foregoing, decedent "was rendered sick and disabled; suffered severe injuries both internal and external; was caused to be confined to her bed for a lengthy period of time; [and] suffered from severe pain and mental anguish." Id.

On October 18, 2023, plaintiff served verified Bills of Particulars on NYCHH (NYSCEF Doc. No. 56) and to NYPH (NYSCEF Doc. No. 67). On February 22, 2023, NYCHH filed a verified answer with a general denial and 34 affirmative defenses. NYSCEF Doc. No. 6. On February 24, 2023, NYPH filed a verified answer with a general denial and seven affirmative defenses. NYSCEF Doc. No. 13.

Motion 3

On April 25, 2025, defendant NYPH moved, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint with prejudice as to NYPH. NYSCEF Doc. No. 62.

Motion 2

On April 25, 2025, defendant NYCHH moved, pursuant to CPLR 3212, for summary judgment dismissing plaintiff's complaint with prejudice as to NYCHH. NYSCEF Doc. No. 47.

Plaintiff opposes both summary judgment motions.

Discussion

As a preliminary matter, as NYPH and NYCHH have both noted, plaintiff has withdrawn the claim of wrongful death and does not oppose defendants' assertions that each defendant did not cause or contribute to decedent's death. Therefore, the wrongful death cause of action should be dismissed as against both defendants.

General Principles

"Where a defendant makes a prima facie case of entitlement to summary judgment dismissing a medical malpractice action by submitting an affirmation from a medical expert establishing that the treatment provided to the injured plaintiff comported with good and accepted practice, the burden shifts to the plaintiff to present evidence in admissible form that demonstrates the existence of a triable issue of fact." Bartolacci-Meir v Sassoon, 149 AD3d 567, 570 (1st Dept. 2017). "While it is true that a medical expert need not be a specialist in a particular field in order to testify regarding accepted practices in that field ... the witness nonetheless should be possessed of the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable" Behar v Coren, 21 AD3d 1045, 1046-47 (2d Dept. 2005) (internal quotation marks and citations omitted).

"Generally, the opinion of a qualified expert that a plaintiff's injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants. To defeat summary judgment, the expert's opinion must demonstrate the requisite nexus between the malpractice allegedly committed and the harm suffered." Anyie B. v Bronx Lebanon Hosp., 128 AD3d 1, 3 (1st Dept. 2015) (internal citations and quotation marks omitted). "General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant physician's summary judgment motion." Alvarez v Prospect Hosp., 68 NY2d 320, 325 (1986).

Wound Care

"A failure to document each element of the skin care protocol does not equate to a failure to perform each element or to a cause of the ulcer itself. "Braunstein v Maimonides Med. Ctr., 161 AD3d 675, 675 (1st Dept. 2018) (internal citations omitted).

Public Health Law

Pursuant to plaintiff's complaint:

> "[t]he statutory cause of action recites that it is brought pursuant to Public Health Law § 2801–d, which confers a private right of action on a patient in a nursing home for injuries sustained as the result of the deprivation of specified rights (§ 2801–d[1]). Relief is predicated on Public Health Law § 2803–c(3)(e), specifically deprivation of "the right to receive adequate and appropriate medical care," and alleges that defendants violated 10 NYCRR 415.12(c)(1) by failing to prevent the development of pressure sores and 10 NYCRR 415.12(l)(2) by failing to maintain adequate nutrition."

Zeides v Hebrew Home for the Aged at Riverdale, Inc., 300 AD2d 178, 179 (1st Dept. 2002). "[A] defendant moving for summary judgment dismissing a cause of action alleging deprivation of rights pursuant to Public Health Law § 2801–d meets its prima facie burden by submitting evidence that the plaintiff's injuries did not arise through any action or negligence of its employees." Russell v Riv. Manor Corp., 216 AD3d 827, 829 (2d Dept. 2023).

Motion 3

In support of its motion for summary judgment, NYPH contends that the admissible proof it has submitted establishes, inter alia, that: "the patient's comorbidities made the development of skin injury

unavoidable despite the standard of care having been met by NYPH"; "the NYPH staff timely and appropriately assessed the patient's risk for the development of pressure ulcers, created and implemented appropriate treatment plans based upon the patient's assessed risk, and altered the treatment plans based upon changes in the patient's skin assessments during each admission at issue[.]" NYSCEF Doc. No. 63.

NYPH submits the expert affirmation of Marvin Heyboer, M.D., a wound care expert who is board-certified in Hyperbaric Medicine, Emergency Medicine, and Wound Medicine and Surgery (NYSCEF Doc. No. 64). Dr. Heyboer asserts, inter alia, that the following is beyond legitimate and medical dispute:

> no pressure injuries developed during the NYPH admission; Nevertheless, to the extent pressure injuries developed following her discharge from NYPH[,] the patient's comorbidities made the development of skin injury unavoidable despite the standard of care having been met by NYPH, and that any development of skin injuries was not a result of negligence or omissions in care by NYPH.

NYSCEF Doc. No. 64. Dr. Heyboer also opines that NYPH implemented the appropriate pressure ulcer prevention and treatment plans based upon the patient's assessed risk in accordance with the standard of care. Id.

In assessing decedent's medical history, Dr. Heyboer opines that decedent "was a frail, 86-year-old woman with a history of diabetes, stroke, hypertension, who had recently suffered a fall, currently suffering altered mental status and bilateral subdural hematomas requiring multiple surgeries, including burr holes" and that "[t]his is a significant life event, one from which she was unlikely to recover due to the fact that she was on a ventilator and failed multiple wean attempts, ultimately requiring a trach placement. Additionally, the patient was immobile and bowel and bladder incontinent." Id.

Dr. Heyboer explains that "[d]espite all reasonable efforts to prevent skin breakdown, these comorbidities contribute to the unavoidability of skin breakdown despite being provided treatment in line with the standard of care." Id. Dr. Heyboer notes that "while admitted at NYPH, the patient was regularly evaluated for skin changes and risk of development of pressure ulcers" and that her Braden Scores ranged from 11- 14 throughout her admission, placing "her in the moderate to high-risk category for developing pressure ulcers." Id. Dr. Heyboer also notes that care and treatment plans are established based on the patient's Braden Scale score, and that here, "the [hospital] records reflect that if and when skin injuries or concern therefore existed, the nursing staff documented it in the chart and notified the physicians involved or requested that orders for treatment be entered." Id.

Further, Dr. Heyboer opines that due to decedent's comorbidities and her age, "the skin changes she experienced were what is known as Skin Changes at Life's End (SCALE) and are unavoidable." Id. Dr. Heyboer notes that generally, "these changes are seen approximately 6 months prior to the patient's death." Id.

In response to plaintiff's allegation of inadequate turning and positioning of the patient, Dr. Heyboer opines that "to a reasonable degree of medical certainty, that this allegation has no merit." Dr. Heyboer explains that when a patient is bedbound and unable to turn and position themselves, such as here, "the standard of care requires the nursing staff to turn and position the patient at two-hour intervals throughout the day to offload pressure on areas that are susceptible to pressure injury." Id. Dr. Heyboer asserts that a comprehensive review of the chart (the clinical notes, flowsheets, orders, and various care team consultations) evidence that NYPH nursing staff, who were navigating COVID at the time, satisfactorily documented "a care and treatment plan of turning and positioning every day of the admission" including "entries each day that the patient was turned and positioned every 2 hours each day." Id.

Dr. Heyboer concludes: (1) "to a reasonable degree of medical certainty that the patient's skin breakdown was an unavoidable consequence of her poor state of health and co-morbidities and could not have been prevented by NYPH staff"; and (2) that "to a reasonable degree of medical certainty[,] the NYPH staff's care and treatment of the patient was within the accepted standards of care and was not a substantial factor in causing any injury or harm to her." Id.

In opposition, plaintiff submits an expert affirmation from a licensed physician certified in internal medicine and geriatric medicine (NYSCEF Doc. No. 93). While plaintiff's expert's name was redacted in his affirmation, plaintiff confirmed during oral argument that the expert is Dr. Perry Starer, M.D. Plaintiff contends that Dr. Starer's affirmation "clearly establishes within a reasonable degree of medical certainty that the severe injuries sustained by the Plaintiff's decedent occurred as a result of the negligence and medical malpractice of [NYPH]." NYSCEF Doc. No. 91.

Dr. Starer opines, inter alia, that the "lack of care" given by NYPH to decedent "deviated from good and accepted medical and nursing care" resulting in decedent's "sacral pressure ulcer, left buttock pressure ulcer, right buttock pressure ulcer, left heel pressure ulcer, right heel pressure ulcer, deep tissue injury, anemia, infection, dehydration, malnutrition, emotional trauma, pain and suffering, and exacerbation of prior soft and deep tissue injuries." NYSCEF Doc. No. 93.

Dr. Starer contends that Dr. Heyboer failed to "reveal what the standard of care is at the time of the underlying claims." Id. For pressure ulcers, Dr. Starer opines that "the standard of care is to accurately document a patient's medical course and care provided." Id. Dr. Starer also asserts that here, decedent's skin breakdown at NYPH "was not properly documented, or not documented at all, within Plaintiff's decedent's medical records." Id.

Further, Dr. Starer disputes Dr. Heyboer's assessment, opining that "pressure injuries did develop during Plaintiff's decedent's admission to [NYPH]." Id. Dr. Starer also states that "there is no documentation indicating that any turning and positioning took place between March 13, 2021, until the Plaintiff's decedent's discharge on March 17, 2021." Id.

In reply, NYPH argues, inter alia, that Dr. Starer fails: to create a triable question of fact as he "ignore[s] facts in the medical records"; to "specifically address the injuries that flowed from their alleged deviations from the standard of care"; and to meaningfully address and oppose NYPH's expert's opinion. NYSCEF Doc. No. 102. NYPH asserts that Dr Starer's claim that Dr. Heyboer failed to state a standard of care "is untrue on its face." NYSCEF Doc. No. 102. NYPH notes that "Dr. Heyboer clearly stated the standard of care by explaining the roles of the nursing staff with respect to prevention and treatment of skin injuries and specifically discussed the condition of the decedent and the appropriate care that was provided by NYPH." Id.

Additionally, NYPH contends that Dr. Starer's "most egregious" omission is failing to discuss "the location where the decedent's pressure injuries developed, when they developed, and how the development and progression of the pressure injuries would have been different had standard of care treatment been provided." Id. NYPH argues that Dr. Heyboer carefully explains "how NYPH appropriately and consistently altered their care plans in response to changes in the decedent's condition or Braden score which included appropriate turning and positioning." Id. NYPH asserts that Dr. Starer "further ignores Dr. Heyboer's explanation as to why the development of pressure ulcers in this patient was unavoidable given her comorbidities and simply conclusory opines that comorbid conditions do not cause pressure ulcers" or to "explain how the care plans that Dr. Heyboer described were insufficient, what additional measures could have been taken to prevent development and progression of the decedent's skin injuries, and how the development and progression of the decedent's skin injuries would have been different had such unidentified care plans been put into place." Id.

NYPH contends that Dr. Starer "fails to address Dr. Heyboer's opinion that NYPH regularly turned and positioned the patient every two hours except for time when the patent was under the care of radiology, surgery, physical or occupational therapy, neurology, or nutrition teams which can be seen in the flowsheets, nursing notes, or nursing orders." Id. NYPH also argues that Dr. Starer's, and plaintiff's counsel's, claim that there was no documentation indicating that any turning and positioning took place from March 13, 2021, until the decedent's discharge on March 17. 2021 is factually inaccurate. Id.

NYPH notes that the "records have an entry on each day that the patient was turned every two hours except for the day she was discharged" and suggests that Dr. Starer misapprehended the records. Id. NYPH states that Dr. Starer "seemingly expects that there be a note every two hours, every day, documenting the turn and repositioning" but notes that "New York Courts have rejected such speculative assertions about turning and positioning[,]" citing Morchik v The New York Community Hospital of Brooklyn, Inc., Index No. 500335/2021 (Sup Court, Kings County 2023), as a recent example.

In addition, NYPH points out that plaintiff has failed to oppose the following of defendant's contentions: (1) decedent was appropriately assessed for risk of skin injury; (2) decedent was provided with proper hygiene care; (3) the Braden scales performed at NYPH during the admission were within standards of care; (4) despite the appropriate measures taken by NYPH to cleanse the patient, the moisture associated with the patient's incontinence inevitably and unavoidably contributed to her skin breakdown; (5) decedent was experiencing SCALE; (6) the patient was regularly evaluated by the nutritionist who prepared potential intubation plans above the standard of care; (7) triad paste which was applied on March 22, 2021 is a barrier cream used to treat moisture associated skin damage opposed to deep tissue injury or pressure injury; (8) no pressure ulcers existed during the NPYH admission; and (9) NYPH did not cause or contribute to the patient's death. Id.

Analysis

Here, NYPH has made a prima facie showing of entitlement to summary judgment against plaintiff's claims of negligence and medical malpractice by submitting, inter alia: an affirmation from Dr. Marvin Heyboer (NYSCEF Doc. No. 64), establishing that the treatment defendant provided to decedent comported with good and accepted practice.

NYPH filed the hospital records on NYSCEF as Doc. No. 54, which, contrary to Dr. Starer's statements, reflect in the flowsheets that the decedent was repositioned every two hours from March 13, 2021, through March 16, 2021. NYSCEF Doc. No. 54 at 1380-1386. As for March 17, 2021, decedent was transferred to NYCHH on that day.

Further, Dr. Heyboer sufficiently demonstrates that: NYPH had the appropriate preventions for pressure ulcers in place, and that, as a result, no pressure injuries developed during decedent's admission, as evidenced in the hospital records; to the extent pressure injuries developed following decedent's discharge from NYPH, the patient's comorbidities made the development of skin injury unavoidable despite the standard of care having been met by NYPH; and that any development of skin injuries was not a result of negligence or omissions in care by NYPH.

Plaintiff fails to raise a triable issue of fact regarding the standard of care sufficient to defeat NYPH's motion. Furthermore, Dr. Starer's affirmation (NYSCEF Doc. No. 93) fails to show how the results would have been different had other actions been taken.

The Court has considered plaintiff's remaining arguments and finds them to be unavailing and/or non-dipositive. Therefore, the Court must grant summary judgment in favor of NYPH.

Motion 2

In support of its motion, NYCHH notes, that decedent was admitted to NYCHH

> in a severely compromised state with long standing co-morbidities, including diabetes mellitus, cerebrovascular accident (CVA) due to occlusion of right middle cerebral artery (2018), intracerebellar and posterior fossa hemorrhage (2018), myopia of both eyes, incontinence of bladder and bowel requiring diapers, a history of falls, hypertension, congestive heart failure, dementia, and a prior MCA stroke.

NYSCEF Doc. No. 49. NYCHH also notes that decedent was admitted to NYCHH "for long-term acute care and to wean her off of the ventilator" and that "despite appropriate interventions, Ms. Ivanova's health continued to decline. Id. NYCHH argues that despite proper care, decedent "deteriorated due to her many comorbidities" and that NYCHH did not proximately cause or contribute towards her alleged injuries. Id.

NYCHH submits the expert affirmations of Cameron Hernandez, M.D., a Board-Certified Internal Medicine and Geriatric Medicine Physician (NYSCEF Doc. No. 50), and Anthony Manasia, M.D., FCCP, a Board-Certified Internal Medicine and Critical Care Physician (NYSCEF Doc. No. 51). Both of NYCHH's experts opine, inter alia, that NYCHH did not deviate from the standard of care in their care and treatment of the decedent during the period of alleged negligence.

Dr. Hernandez points out that NYCHH performed daily Braden Scale assessments, hourly visual checks, frequent skin assessments, daily weight monitoring, regular nutritional assessments, repeated sepsis screenings, and COVID-19 testing on the decedent. NYSCEF Doc. No. 50. Dr. Hernandez also notes that NYCHH changed the decedent's diet and supplements as necessary, based on nutritional assessments. Id. Dr. Hernandez opines that NYCHH "appropriately identified decedent's pre-existing wounds and risk for developing pressure ulcers, implemented proper care plans and interventions to address that risk, and provided proper treatment of any ulcers that were pre-existing and/or developed[,]" and that despite this, "Ms. Ivanova's skin breakdown and pressure ulcers were exacerbated by her advanced age and long-standing comorbidities." Id.

Dr. Hernandez also opines that "within a reasonable degree of medical certainty," decedent's nutritional care "was appropriate and conformed to the standard of care" and that thus, there "is no merit to Plaintiff's claims that NYCHH failed to provide proper nutrition and hydration to Ms. Ivanova." Id.

Additionally, Dr. Hernandez asserts that decedent's comorbidities, both individually and together, "increased her risk factors of the development of pressure ulcers and her overall ability to heal." Id. Dr. Hernandez states that "within a reasonable degree of medical certainty, the treatment at NYCHH could not have done anything to avoid these risk factors, and no intervention could have been performed to cause a different outcome." Id. Further, Dr. Hernandez opines that from the objective medical evidence, "there is simply no basis to allege [...] that there was any violation of a standard of care, whether based on the State and Federal Regulations or the standard of care in the field of nursing home care and short-term rehabilitation." Id. Dr. Hernandez concludes that NYCHC's care "was at all times reasonable and conformed to the standard of care, warranting dismissal of claims sounding in negligence, medical malpractice, and wrongful death." Id.

Dr. Manasia opines, inter alia, that in contrast of plaintiff's claims, the records "demonstrate that Ms. Ivanova's providers at NYCHH were timely informing her family of her condition, including any significant changes." NYSCEF Doc. No. 51. Dr. Manasia points to the agreement for decedent to participate in a third weaning trial as an example "of the many instances demonstrating Ms. Ivanova's treating physicians at NYCHH were properly communicating, meeting, and informing not only each other

of Ms. Ivanova's condition, but with her family as well." Id. Dr. Manasia also asserts that the records demonstrate "all of Ms. Ivanova's providers at NYCHH were kept well-informed of her current status and were timely notified of any changes to her condition." Id. Dr. Manasia states that "that there is no support for Plaintiff's claims that NYCHH failed to timely notify Ms. Ivanova's treating physicians of injuries and significant changes in her condition." Id.

Additionally, Dr. Manasia opines that decedent's "declining state was exacerbated by her co-morbidities, and there was no deviation from the standard of care by NYCHH, as there was nothing NYCHH could have done to change the outcome." Id. Dr. Manasia notes that despite her continued neurological decline, "Ms. Ivanova's overall skin condition continued to improve, and her sacral pressure ulcer was healing well" during her treatment at NYCHH. Id. Dr. Manasia also notes that an October 14, 2021, nutritional re-assessment stated that she was not malnourished and was accepted to Isabella Geriatric Center for discharge. Id.

In opposition, plaintiff argues, inter alia, that Dr. Starer's expert affirmation (NYSCEF Doc. No. 89) "clearly establishes within a reasonable degree of medical certainty that the severe injuries sustained by the Plaintiff's decedent occurred as a result of the negligence, medical malpractice, and New York Public Health Law violations of Defendant." NYSCEF Doc. No. 87. Dr. Starer states that "notably, no wound care consultations were documented in the record for the months of August and September. NYSCEF Doc. No. 89.

Dr. Starer also asserts that: "despite the Plaintiff's decedent's co-morbidities and clinical medical conditions, the etiology of pressure ulcers is pressure, and was most certainly the cause of skin breakdown in this case"; "the various co-morbidities that the Plaintiff's decedent suffered from were consistent throughout the time of her admission, and Defendant fails to recognize that even if Plaintiff's decedent presented to its facility with medical risk factors, the very reason patients seek treatment is because they lack the ability to properly care for themselves in a certain way." Id. Dr. Starer opines that NYCHH "should have more timely, appropriately, and on an ongoing basis evaluated Plaintiff's decedent's risk for pressure ulcers, continuously tailored the care plan to the Plaintiff's decedent's individualized needs, evaluated and implemented the frequency and strict compliance with repositioning, and evaluated all pressure ulcer interventions" and that these failures "led to the development and/or deterioration of Plaintiff's decedent's injuries." Id.

Additionally, Dr. Starer states that NYCHH failed to: "properly and adequately turn and position decedent every two hours"; "limit pressure to her bony prominences"; and "prevent pressure ulcers from developing and deteriorating[,]" which are "substantial departures from the standard of care, violations of Plaintiff's decedent's rights under the New York Public Health Law, and accordingly, a proximate cause of Plaintiff's decedent's injuries." Id.

In reply, NYCHH argues that Dr. Starer's affirmation is "conclusory and factually inaccurate." NYSCEF Doc. No. 96. NYCHH asserts that "multiple courts have found that Plaintiff's Expert renders opinions that were unacceptably conclusory, failed to address pivotal facts, and failed to demonstrate an issue of fact regarding the unavoidable nature of the decedent's ulcers," submitting a case exemplifying this on NYSCEF as Doc. No. 98: Unique Ruffin v New York City Health and Hosp. Corp. D/B/A NYC Health and Hosp., Index No. 804335/2022E (Sup Court, Bronx County 2025).

NYCHH further argues that Dr. Starer fails to consider decedent's condition, pertinent care provided to decedent prior to her admission to NYCHH, or her significant co-morbidities, which greatly impacted her ability to heal. NYSCEF Doc. No. 96. Additionally, NYCHH contends that Dr. Starer's affirmation is "filled with contradictory statements." Id. NYCHH notes that Dr. Starer's assertion that it should have paid greater attention to decedent's care and treatment because she presented to NYCHH with "medical

risk factors" for the development of pressure ulcers (NYSCEF Doc. No. 89 at ¶ 62), contradicts his conclusion that those risk factors did not cause decedent's skin breakdown and/or deterioration (NYSCEF Doc. No. 89 ¶ 60). Id. NYCHH also points out that Dr. Starer affirms that decedent was admitted to NYCHH with pre-existing skin injuries, yet "fails to explain how these conditions impacted Decedent's outcome." Id.

NYCHH also points to Dr. Starer's assertion that it failed properly to document decedent's skin breakdown. (NYSCEF Doc. No. 89 ¶ 56), which it argues is contradicted in the "in the very same paragraph[,]" which lists the various skin injuries that were documented on admission to NYCHH, including: left and right buttock DTIs, redness to the right and left heels, and a healed surgical scar to the left scalp. (NYSCEF Doc. No. 89 ¶ 56). Id. NYCHH states that the records "fully document each wound, abrasion, and pressure injury on decedent's skin, which clearly demonstrate Decedent's wounds and wound care was documented consistently throughout Decedent's admission to NYCHH" and that Dr. Starer misapprehends the record and ignores critical facts. Id.

NYCHH notes the "copious documentation concerning Decedent's Braden Assessments, turning and positioning orders, offloading devices, treatments, evidence of repositioning, heel elevation, and a specialty mattress[,]" and contends that Dr. Starer "failed to define what specific further measures should have been implemented, fails to define the standard of care in any detail; and does not address what additional interventions or timeline of care, would have been appropriate for Decedent's circumstances, other than asserting *more* of what was already being done." Id.

Additionally, NYCHH states that plaintiff "fails to acknowledge that government entities are not subject to punitive damages and fails to make a showing of any violation of State or Federal Regulations." Id. NYCHH argues that merely stating that the documentation for turning and positioning records was "incomplete" does not mean it was not performed, and that as to the public health law claims, "this is insufficient to provide a showing of violations of these statutes and regulations." Id.

Analysis

Here, NYCHH has made a prima facie showing of entitlement to summary judgment against plaintiff's claims of negligence, medical malpractice, and violations of Public Health Law § 2801–d and § 2803-c, by submitting, inter alia: expert affirmations from Dr. Cameron Hernandez (NYSCEF Doc. No. 50) and Dr. Anthony Manasia (NYSCEF Doc. No. 51), which both establish that the treatment provided to decedent comported with good and accepted practice, and that decedent's injuries did not arise through any action or negligence of NYCHH.

Dr. Hernandez's affirmation illustrates that NYCHH provided adequate care in preventing the development of bed sores and in maintaining nutrition. Dr. Hernandez also noted that decedent's comorbidities, both individually and together, "increased her risk factors of the development of pressure ulcers and her overall ability to heal." NYSCEF Doc. No. 50. Further, Dr. Hernandez opined that "within a reasonable degree of medical certainty, the treatment at NYCHH could not have done anything to avoid these risk factors, and no intervention could have been performed to cause a different outcome." Id.

Dr. Manasia's affirmation demonstrated frequent communication between decedent's family and NYCHH medical staff. NYSCEF Doc. No. 51. Additionally, Dr. Manasia asserted that decedent's "declining state was exacerbated by her co-morbidities, and there was no deviation from the standard of care by NYCHH." Id.

Plaintiff fails to raise a triable issue of fact regarding the standard of care sufficient to defeat NYCHH's motion. Dr. Starer's affirmation (NYSCEF Doc. No. 89) fails to demonstrate an issue of fact regarding the unavoidable nature of the decedent's ulcers and contains contradictory and conclusory statements.

The Court has considered plaintiff's remaining arguments and finds them to be unavailing and/or non-dipositive. Therefore, this Court must grant summary judgment.

In the Final Analysis – This Court notes in Passing and in Dicta
When Justice William Rehnquist wrote, in Delaware v Van Arsdall, 475 US 673, 681 (1986), that "the Constitution entitles a criminal defendant to a fair trial, not a perfect one," he was summarizing long-standing legal and constitutional principles.

Are hospitals different from trials? Must they be "perfect"? That is not how the issues in medical malpractice cases, deviation and causation, are normally addressed. But a holistic view of the long-term care of a patient in acute distress may have some merit. However, such legal-philosophical ruminations are more appropriate in a different case.

Here, decedent presented to defendants' hospitals on death's doorstep. That the hospitals managed to keep her alive as long as they did appears to be nothing short of miraculous. Indeed, the day after she left the second hospital, she expired. After scrutinizing the record, this Court concludes that there is no evidence of malpractice.

The gist of plaintiff's claim is that an alleged failure to reposition the decedent every two hours caused pressure ulcers (a/ka/ "bed sores") and resulting pain and suffering. As best this Court can determine, defendants have not produced records separately indicating a repositioning every two hours. But they have come very close. And they have produced case law concluding that they need not do so. And they have produced expert opinions that decedent's "co-morbidities" made her much more susceptible to skin breakdowns. And they have explained that decedent may have been at any one of several other units in the hospital at any given time; thus, any claim that the decedent was not repositioned every two hours is speculative.

Also, if an immobile patient is repositioned ten times in a 24-hour period instead of twelve times, will that proximately cause pressure sores?

This case should never have been brought, and the time has come to end it.

Conclusion
Thus, the motion for summary judgment by defendant, New York and Presbyterian Hospital, is granted in its entirety and the motion for summary judgment by defendant, NYC Health & Hospitals/ Henry J. Carter Specialty Hospital and Nursing Facility, is also granted in its entirety. The Clerk is hereby directed to enter judgment accordingly.

12/2/2025
DATE

HON. ARTHUR F. ENGORON
ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	X	CASE DISPOSED			☐	NON-FINAL DISPOSITION	
	X	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE

451031/2023 CHAMOVSKI, DRAGO vs. THE NEW YORK AND PRESBYTERIAN HOSPITAL ET AL
Motion No. 002 003