

**Ingrassia v Saitta**

2025 NY Slip Op 34818(U)

December 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 519972/2021

Judge: Consuelo Mallafre Melendez

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of December 2025.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
MARIA INGRASSIA,

Plaintiff,

-against-

**DECISION & ORDER**

Index No. 519972/2021  
Mo. Seq. 5 & 6

PETER SAITTA, D.O., RONALD R. BRANCACCIO, M.D.,  
AND PETER SAITTA, D.O., P.C., OLUREMI OGUNSAYA,  
D.D.S., JACK M. HIRSCH, D.D.S., RALPH AVENUE  
DENTAL CARE and KINGS HIGHWAY ORAL &  
MAXILLOFACIAL SURGERY, P.C.,

Defendants.

-----X  
**HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.**

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s: Seq. 5: 184 – 185, 186 – 193, 223 – 225, 232  
Seq. 6: 195 – 197, 198 – 219, 226 – 227, 228 – 230

Defendants Oluremi Ogunsaya, D.D.S. (“Dr. Ogunsaya”) and Kings Highway Oral & Maxillofacial Surgery, P.C. (“KHOMS”) move for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiff’s Complaint against them (Seq. No. 5).

Defendant Jack M. Hirsch, D.D.S. (“Dr. Hirsch”) separately moves for an Order, pursuant to CPLR 3212, granting summary judgment in his favor and dismissing Plaintiff’s Complaint against him (Seq. No. 6).

Plaintiff opposes the motion of Dr. Ogunsaya and KHOMS, only.

Plaintiff does not oppose Dr. Hirsch’s motion. Accordingly, his motion for summary judgment (Seq. No. 6) is **granted** without opposition, and all claims against Dr. Hirsch are dismissed.

Plaintiff commenced this action on August 9, 2021, asserting claims against Dr. Ogunsaya and others for medical malpractice arising from a failure to diagnose and treat a malignant tongue lesion.

Plaintiff visited oral and maxillofacial surgeon Dr. Ogunsaya at KHOMS on two occasions, May 21, 2019 and June 4, 2019. She was 59 years old with a history of skin cancer. Plaintiff was referred to Dr. Ogunsaya by her dentist Dr. Hirsch to evaluate a lesion under her tongue. According to his chart, she reported “periods of flare-ups” and changes in appearance of the lesion, which “improve but never completely resolve.”

On the May 21 visit, Dr. Ogunsaya performed an extraoral and intraoral examination. He recorded a “3mm, ill-defined, lacelike leukoplakia of the ventral tongue with mild TTP [tenderness to palpation].” She had no swelling of the lymph nodes on examination. He assessed her with a likely “infectious/inflammatory (autoimmune) process,” prescribed prednisone and Peridex rinse, and scheduled a follow-up visit in two weeks. According to the chart, he “discussed possibility for carcinoma and benefits of biopsy,” and informed her that a “if the lesion [does] not improve biopsy will be needed.”

On the June 4 follow-up visit, the lesion had decreased in size but was still present as a “faint, ill-defined, non-tender 1-2mm leukoplakia of ventral tongue.” He noted that Plaintiff “reports improvement but the lesion is still present,” and added that he “discussed benefits of biopsy vs continued monitoring of lesion for worsening or persistence. Pt opted to observe at this time.” He testified that “I offered her a biopsy and she opted for observation. I gave her both options.” Plaintiff testified that Dr. Ogunsaya told her he didn’t believe it was cancer, that the lesion was likely autoimmune and stress-induced, and that a biopsy was not necessary. No follow-up was scheduled, and Plaintiff did not return to Dr. Ogunsaya after that date.

In December 2019, Plaintiff developed a large cervical lymph node. Her primary care doctor referred her to non-party Dr. Lagmay, who performed biopsies of the tongue lesion and cervical node. She was diagnosed with metastatic stage III squamous cell carcinoma. She underwent a partial glossectomy (tongue removal) and neck dissection surgery in February 2020.

Plaintiff alleges that Dr. Ogunsaya departed from the standard of care by failing to recommend and perform a biopsy of the tongue lesion on June 4, 2019. Plaintiff further alleges that this departure led to a delay in diagnosis of treatment of her squamous cell carcinoma, worsening her prognosis and allowing the cancer to spread to her lymph nodes. Plaintiff's claims against KHOMS arise from their vicarious liability for Dr. Ogunsaya.

In evaluating a summary judgment motion in a medical malpractice action, the Court applies the burden shifting process summarized by the Second Department: “[A] defendant must make a prima facie showing either that there was no departure from good and accepted medical practice, or that the plaintiff was not injured by any such departure” (*Rosenzweig v Hadpawat*, 229 AD3d 650, 652 [2d Dept 2024]). “In order to sustain this prima facie burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff’s complaint and bill of particulars” (*Martinez v Orange Regional Med. Ctr.*, 203 AD3d 910, 912 [2d Dept 2022]). “Once a defendant physician has made such a showing, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact, but only as to the elements on which the defendant met the prima facie burden. Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” (*Rosenzweig* at 652 [2d Dept 2024] [internal quotation marks and citations omitted].) However, “expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact” (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023]). “In order not to be considered speculative or

conclusory, expert opinions in opposition should address specific assertions made by the movant's experts, setting forth an explanation of the reasoning and relying on specifically cited evidence in the record" (*i.d.* at 899).

In support of their motion, Dr. Ogunsaya submits an expert affirmation from Michael D. Turner, D.D.S. ("Dr. Turner"), a licensed physician board certified in oral and maxillofacial surgery.

Dr. Turner opines that Dr. Ogunsaya complied with the standard of care at all times in treating Plaintiff. He opines that on May 19, 2021, Dr. Ogunsaya conducted an examination of the lesion and "properly suspected an infectious/inflammatory (autoimmune) process" based on the clinical findings and her reported history of flare-ups. The movant's expert opines that Dr. Ogunsaya prescribed appropriate medication and follow-up. Although the possibility of biopsy was discussed, the expert opines that conservative treatment and observation of the lesion was reasonable at that time "as opposed to a biopsy, which consists of cutting into the tongue and could be painful."

Dr. Turner opines that on June 4, Dr. Ogunsaya observed that the lesion was "resolving with improvement in size and symptoms" in response to the medications. Due to this positive response, the expert opines that Dr. Ogunsaya acted within the standard of care by determining the lesion was likely "inflammatory in nature." He opines that Dr. Ogunsaya appropriately informed Plaintiff that lesion should be monitored and biopsied "if the condition persisted or worsened." However, he opines that it was within the standard of care and reasonable for Plaintiff to forego a biopsy at that time "since it was improving and responding to medication."

Dr. Turner opines that although “it is unfortunate that this lesion became cancerous,” Dr. Ogunsaya did not deviate from the standard of care in his evaluation and allowing the patient to decide on “continued observation” rather than biopsy.

The Court notes that there are some factual discrepancies in the record as to the “discussion” or recommendation of biopsy between Dr. Ogunsaya and the patient, as Plaintiff testified “he seemed to be against it, he wasn’t pushing for it” and “he felt that putting me through a biopsy wasn’t necessary. I believe he said something like I don’t feel I need to cut your mouth apart.” The movant’s expert premises his opinion on the assumption that Dr. Ogunsaya properly discussed the benefits of a biopsy and left the decision to the patient. Based on this presumption, which is controverted, the expert opines that it was an appropriate course of action to offer the choice of a biopsy or conservative observation. However, the content of their conversation is disputed, and Plaintiff contends that he advised her against a biopsy.

Based on these submissions, the movant has not established prima facie entitlement to summary judgment as to Dr. Ogunsaya’s alleged departures from the standard of care. The expert’s opinion is not supported by the record, as it is grounded in alleged facts which are controverted. Additionally, Dr. Ogunsaya’s expert does not address the issue of proximate causation with respect to Plaintiff’s claimed injuries and delay in diagnosis. Therefore, the movant has not eliminated issues of fact and established entitlement to summary judgment as a matter of law, regardless of the sufficiency of the opposing papers.

Notwithstanding the above, Plaintiff submits an expert affirmation in opposition from a licensed physician (name of expert redacted). A signed, unredacted copy of the affirmation was presented to the Court for *in camera* inspection. Plaintiff’s expert affirms that they are board certified in otolaryngology (ear, nose, and throat medicine), and that they are affiliated with a major metropolitan hospital as a head and neck surgical oncologist.

As an initial matter, the Court finds Plaintiff's expert has sufficiently laid a foundation to opine on the issues of this case. The expert states that "the detection and diagnosis of oral cancers and pre-cancerous lesions span different specialties in medicine," including oral surgeons and otolaryngologists. The expert further states that other specialists such as dentists are "trained to recognize suspicious lesions and refer to an *oral surgeon or otolaryngologist* for evaluation and treatment," and that "oral surgeons, dermatologists, and otolaryngologists are all trained to be able to biopsy suspicious oral lesions." The expert states that the standard of care as it relates to the detection of oral cancer "is consistent across the country" for oral surgeons and otolaryngologists. Additionally, the expert sets forth that "oral surgeons and head and neck surgeons are the specialties that treat oral cancer," and they are a practicing head and neck surgical oncologist. Thus, although Plaintiff's expert is board certified in a different field than Dr. Ogunsaya and his expert, they have laid a proper foundation to opine on the standard of care as it relates to recommending and performing a biopsy on a potentially cancerous oral lesion, as well as rendering an opinion on proximate causation.

Plaintiff's expert opines that Dr. Ogunsaya departed from the standard of care by failing to biopsy the oral lesion. Specifically, the expert states that on June 4, Dr. Ogunsaya did not take into account that Plaintiff had a known history of flare-ups of the lesion which "never full resolved," and the fact the lesion showed some improvement since the last visit did not rule out oral cancer. The expert opines that Dr. Ogunsaya reached an "incorrect medical conclusion" by determining the lesion was likely inflammatory and not malignant, since cancerous lesions can also have an "inflammatory component related to the body's immune response" and there may be "fluctuation in size and appearance." The expert opines that the standard of care "required a biopsy," and Dr. Ogunsaya should have recommended and performed one.

The expert counters the statements of the movant's expert that Dr. Ogunsaya adequately informed Plaintiff of the benefits of a biopsy and that she decided against it. According to Plaintiff's testimony, she felt reassured by Dr. Ogunsaya that it was not cancer, and he did not strongly recommend or "push" for a biopsy. Plaintiff's expert notes that Plaintiff "had undergone more than 20 biopsies in the past of various portions of her body and was already a cancer survivor," and she would not have refused a biopsy if he had properly conveyed to her that it was necessary to rule out cancer. The expert opines that Dr. Ogunsaya "had the obligation to properly inform the patient" that there was "a significant level of concern for malignant potential," and that by delaying a biopsy she would be "deprived of the benefits of early diagnosis and early treatment."

Plaintiff's expert further opines that the failure to perform a biopsy in June 2019 proximately caused a delay in diagnosis and treatment. The expert states that Plaintiff's cancer was ultimately diagnosed in stage III, which reduced her overall survival prognosis by 50%. The expert notes that at the time of her visit to Dr. Ogunsaya, she had no lymph node abnormalities. The expert opines that if the lesion was resected in June 2019, the primary tumor would never have spread to her lymph nodes, and she would not have sustained related injuries including the need for "extensive nodal dissection."

Although the Court finds that Dr. Ogunsaya did not meet his initial burden, Plaintiff's expert has also raised clear issues of fact as to whether the physician should have recommended and performed a biopsy on the June 4, 2019 visit, countering the opinion of the movant's expert that his discussion of biopsy was adequate and that it was within the standard of care to allow the patient to opt for conservative treatment and monitoring.

The movant's expert did not render an opinion on the prognosis or spread of Plaintiff's cancer, and therefore the burden did not shift to Plaintiff to raise an issue of fact on proximate causation. Notwithstanding, Plaintiff's expert addressed and raised the issue of whether Dr. Ogunsaya's alleged departures led to a worse outcome for Plaintiff due to the delayed diagnosis of her cancer six months later.

Therefore, even if the movant had met their prima facie burden, Plaintiff raises issues of fact in opposition which preclude summary judgment. "When experts offer conflicting opinions, a credibility question is presented requiring a jury's resolution" (*Stewart v. North Shore University Hospital at Syosset*, 204 AD3d 858, 860 [2d Dept. 2022], citing *Russell v. Garafalo*, 189 A.D.3d 1100, 1102 [2d Dept. 2020]). For this reason, the motion for summary judgment on behalf of Dr. Ogunsaya is **denied**.

Plaintiff's claims against KHOMS are grounded in vicarious liability for Dr. Ogunsaya. As there remain issues of fact as to Dr. Ogunsaya's primary liability, the part of the motion seeking summary judgment in favor of KHOMS must also be **denied**.

Accordingly, it is hereby:

**ORDERED** that Dr. Ogunsaya and KHOMS's motion (Seq. No. 5) for summary judgment is **denied**; and it is further

**ORDERED** that Dr. Hirsch's motion (Seq. No. 6) for summary judgment is **granted** without opposition; and it is further

**ORDERED** that the caption is amended to read:

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF  
KINGS

-----X  
MARIA INGRASSIA,

Plaintiff,

-against-

PETER SAITTA, D.O., RONALD R. BRANCACCIO, M.D., AND  
PETER SAITTA, D.O., P.C., OLUREMI OGUNSAYA, D.D.S.,  
RALPH AVENUE DENTAL CARE and KINGS HIGHWAY ORAL  
& MAXILLOFACIAL SURGERY, P.C.,

Defendants.

-----X

The Clerk shall enter judgment in favor of JACK M. HIRSCH, D.D.S.

This constitutes the decision and order of this Court.

**ENTER.**



\_\_\_\_\_  
**Hon. Consuelo Mallafre Melendez  
J.S.C.**