SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **IAS MOTION 56EFM**

Justice

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CHARLES BOOTH,

Plaintiff,

- v -

GILBERT LEDERMAN, M.D., and RADIOSURGERY NEW YORK, LLC,

Defendants.

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INDEX NO. 805296/2020

MOTION DATE 10/16/2025

MOTION SEQ. NO. 001

DECISION AND ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 ,48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for SUMMARY JUDGMENT.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice and lack of informed consent, the defendants move pursuant to CPLR 3212 for summary judgment dismissing the complaint. The plaintiff does not oppose the motion. The motion is granted, the defendants are awarded summary judgment dismissing the complaint, and the complaint is dismissed.

The crux of the plaintiff's claim is that, between June 2, 2015 and August 31, 2019, the defendant radiation oncologist Gilbert Lederman, M.D., while working for the defendant Radiosurgery New York, LLC, departed from good and accepted medical practice in the manner in which he treated the plaintiff for prostate cancer, and failed fully to inform the plaintiff of the risks and benefits of, and alternatives to, radiation treatment. As a consequence of this alleged wrongdoing, the plaintiff alleged that he sustained pain and burning sensations.

In his bills of particulars, the plaintiff asserted that the defendants committed malpractice by negligently failing to treat his prostate cancer in a proper fashion. More specifically, he alleged that the defendants negligently ordered, performed, and utilized radiation treatments for his cancer, administered over-aggressive treatment therapy, types, and techniques,

overemployed radiation therapy despite his stage of cancer, the likelihood of metastasis, and his signs and symptoms. In this respect, the plaintiff alleged that the defendants were liable for

> "negligently failing to treat, acknowledge and consider signs and symptoms exhibited and expressed by Plaintiff, failing to appropriately and properly consider, care for, and treat the Plaintiff's prostate cancer in accordance with the cancer type, stage, condition, and likelihood of metastasis of Plaintiff's cancer, negligently failing to appropriately and properly consider, treat, diagnose [and] failing to recognize that the plaintiff's signs symptoms were related to cancer treatment; failing to appropriately consider Plaintiff's signs and symptoms, and overall health during the treatment, failing to perform differential diagnosis, in failing to discuss, discover, formulate, plan, implement a different treatment plan, in failing to discuss, discover, formulate, plan, implement a different radiation treatment plan, in failing to discuss, discover, formulate, plan, implement a different treatment course) failing to consult with a radiologic oncologist; failing to consult with an oncologist, failing to consult appropriate specialists, failing to timely perform diagnostic testing as a result of Plaintiff's repeated signs, symptoms and complaints, [and] in failing to timely perform or refer for proper diagnostic testing including an MRI or CT scan to further evaluate the plaintiff's signs and symptoms."

In addition, the plaintiff faulted the defendants for allowing and permitting the signs, symptoms, complaints, and manifestations of his cancer and his cancer treatments to remain undetected, undiagnosed, and untreated for an unreasonably long period of time, thus permitting his symptoms to worsen, progress, and become permanent. Furthermore, the plaintiff averred that the defendants failed promptly, properly, timely, and adequately to order or perform other treatments, including appropriate alternative radiation treatments, at a time when his cancer was readily treatable and/or manageable.

Additionally, the plaintiff claimed that the defendants negligently failed to refer him for appropriate alternative treatment, including surgery, chemotherapy, and/or alternative radiation measures, at a time when his cancer was readily treatable, identifiable, stageable, and/or manageable. He asserted that they failed properly and appropriately to recognize, inform, and discuss his cancer and emergent diagnosis and condition, and that they were negligent in performing and ordering examinations, evaluations, consultations, care, treatments, studies, tests, procedures, and services. The plaintiff further faulted the defendants for failing to observe, record, follow, and monitor him, or to provide standard or accepted measures and

precautions that were necessary to avoid or prevent the injuries or conditions complained of. He alleged that they failed to recognize, diagnose, or consider diagnoses of, a malignant tumor.

The plaintiff alleged, in his bills of particulars, that, as a consequence of the defendants' malpractice, he sustained a burning sensation in his right and left groin, and pain and a burning sensation in his right and left legs, as well as painful and burning urination. He further asserted that he suffered from the incomplete emptying of his bladder, exhaustion, fatigue, headaches, dizziness, psychological and emotional distress, anxiety, nausea, loss of enjoyment of life, and difficulties with his activities of daily living, and that he would require future treatment.

It is well settled that the movant on a summary judgment motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (*see* CPLR 3212). The facts must be viewed in the light most favorable to the non-moving party (*see Flanders v Goodfellow,* 44 NY3d 57, 62-63 [2025]; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In other words, "[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]; *see Haymon v Pettit*, 9 NY3d 324, 327 n [2007]). Once the movant meets that burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (*see Vega v Restani Constr. Corp.*, 18 NY3d at 503). A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see id.; Medina v Fischer Mills Condo Assn.*, 181 AD3d 448, 449 [1st Dept 2020]).

"The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the

issue is even 'arguable'" (*De Paris v Women's Natl. Republican Club, Inc.,* 148 AD3d 401, 403-404 [1st Dept 2017]; *see Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). Thus, a moving defendant does not meet the burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case, but must affirmatively demonstrate the merit of his or her defense (*see Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 462 [1st Dept 2016]).

"To sustain a cause of action for medical malpractice, a plaintiff must prove two essential elements: (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury" (*Frye v Montefiore Med. Ctr.*, 70 AD3d 15, 24 [1st Dept 2009]; *see Foster-Sturrup v Long,* 95 AD3d 726, 727 [1st Dept 2012]; *Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Elias v Bash*, 54 AD3d 354, 357 [2d Dept 2008]; *DeFilippo v New York Downtown Hosp.*, 10 AD3d 521, 522 [1st Dept 2004]).

To make a prima facie showing of entitlement to judgment as a matter of law, a defendant physician moving for summary judgment must establish the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Barry v Lee*, 180 AD3d 103, 107 [1st Dept 2019]; *Frye v Montefiore Med. Ctr.*, 70 AD3d at 24) or establish that the plaintiff was not injured by such treatment (*see Pullman v Silverman,* 28 NY3d 1060, 1063 [2016]; *see generally Kristie M. v. Mercy Hosp. of Buffalo,* 240 AD3d 1228 [4th Dept 2025]; *Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]). To satisfy this burden, a defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific, and factual in nature (*see Roques v Noble*, 73 AD3d at 206; *Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2d Dept 2008]; *Jones v Ricciardelli*, 40 AD3d 935, 935 [2d Dept 2007]). If the expert's opinion is not based on facts in the record, the facts must be personally known to the expert and, in any event, the opinion of a defendant's

expert should specify “in what way" the patient's treatment was proper and “elucidate the standard of care” (*Ocasio-Gary v Lawrence Hospital,* 69 AD3d 403, 404 [1st Dept 2010]). Stated another way, the defendant's expert’s opinion must "explain ‘what defendant did and why’" (*id*., quoting *Wasserman v Carella*, 307 AD2d 225, 226 [1st Dept 2003]). Moreover, as noted, to satisfy the burden on a summary judgment motion, a defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see Wall v Flushing Hosp. Med. Ctr*., 78 AD3d 1043, 1045 [2d Dept 2010]; *Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874, 874 [2d Dept 2008]; *Terranova v Finklea*, 45 AD3d 572, 572 [2d Dept 2007]).

Once satisfied by the defendant, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact by submitting an expert's affidavit or affirmation attesting to a departure from accepted medical practice and/or opining that the defendant’s acts or omissions were a competent producing cause of the plaintiff's injuries (*see Roques v Noble*, 73 AD3d at 207; *Luu v Paskowski*, 57 AD3d 856, 857 [2d Dept 2008]). Thus, to defeat a defendant’s prima facie showing of entitlement to judgment as a matter of law, a plaintiff must produce expert testimony regarding specific acts of malpractice, and not just testimony that contains “[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice” (*Alvarez v Prospect Hosp.,* 68 NY2d at 325; *see also Pancila v Romanzi,* 140 AD3d 516, 516 [1st Dept 2016]; *Callistro ex rel. Rivera v Bebbington*, 94 AD3d 408, 410 [1st Dept 2012], *affd sub nom. Callistro v Bebbington*, 20 NY3d 945 [2012]; *Frye v Montefiore Med. Ctr.*, 70 AD3d at 24). In most instances, the opinion of a qualified expert that the plaintiff's injuries resulted from a deviation from relevant industry or medical standards is sufficient to preclude an award of summary judgment in a defendant’s favor (*see Murphy v Conner*, 84 NY2d 969, 972 [1994]; *Frye v Montefiore Med. Ctr*., 70 AD3d at 24).

“‘Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause’” (*McAlwee v Westchester Health Assoc., PLLC*, 163

AD3d 549, 551 [2d Dept 2018], quoting *Burns v Goyal*, 145 AD3d 952, 954 [2d Dept 2016]). Thus, where a moving defendant in a medical malpractice action makes a prima facie showing that he or she did not depart from good and accepted practice, or that the treatment rendered to the plaintiff did not cause or contribute to the plaintiff's injuries, the plaintiff, to defeat summary judgment, must submit an expert affirmation or affidavit in opposition; a plaintiff's failure to submit such an expert affirmation or affidavit under such circumstances requires the court to award summary judgment to the moving defendant (*see Benedetto v Tannenbaum*, 186 AD3d 1596, 1598 [2d Dept 2020]; *Bethune v Monhian*, 168 AD3d 902, 903 [2d Dept 2019]; *Koster v Davenport*, 142 AD3d 966, 969 [2d Dept 2016]; *Whitnum v Plastic & Reconstructive Surgery, P.C.*, 142 AD3d 495, 497 [2d Dept 2016]; *Roques v Noble*, 73 AD3d at 207; *Bailey v Owens*, 17 AD3d 222, 223 [1st Dept 2005]; *cf. Williams v Sahay*, 12 AD3d 366, 368 [2d Dept 2004] [unsworn affidavit of unnamed expert that was not affirmed under the penalties for perjury is insufficient to raise triable issue of fact as to defendants' alleged malpractice]).

The elements of a cause of action to recover for lack of informed consent are

> "(1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury"

(*Spano v Bertocci*, 299 AD2d 335, 337-338 [2d Dept 2002]; *see Zapata v Buitriago*, 107 AD3d 977, 979 [2d Dept. 2013]). For a statutory claim of lack of informed consent to be actionable, a defendant must have engaged in a "non-emergency treatment, procedure or surgery" or "a diagnostic procedure which involved invasion or disruption of the integrity of the body" (Public Health Law § 2805-d[2]). "'[T]his showing of qualitative insufficiency of the consent [is] required to be supported by expert medical testimony'" (*King v Jordan*, 265 AD2d at 260, quoting *Hylick v Halweil*, 112 AD2d 400, 401 [2d Dept 1985]; *see* CPLR 4401-a; *Gardner v Wider*, 32 AD3d 728, 730 [1st Dept 2006]). Hence, where a defendant establishes his or her prima facie entitlement

to judgment as a matter of law in connection with a lack of informed consent cause of action by submitting an expert affirmation from a physician, a plaintiff can only raise a triable issue of fact by submitting "an expert affirmation stating with certainty that the information defendant[ ] allegedly provided to plaintiff before the [medical] procedures at issue departed from what a reasonable practitioner would have disclosed" (*Leighton v Lowenberg*, 103 AD3d 530, 530 [1st Dept 2013]). Expert testimony, however, is not necessary with respect to the issue of whether a reasonably prudent person, fully informed, would not have consented to the treatment (*see Gray v Williams*, 108 AD3d 1085, 1086-1087 [4th Dept 2013]; *Hugh v Ofodile*, 87 AD3d 508, 509 [1st Dept 2011]; *Andersen v Delaney*, 269 AD2d 193, 193 [1st Dept 2000]; *Hardt v LaTrenta*, 251 AD2d 174, 174 [1st Dept 1998]; *Osorio v Brauner*, 242 AD2d 511, 511-512 [1st Dept 1997]).

"'The mere fact that the plaintiff signed a consent form does not establish the defendants' prima facie entitlement to judgment as a matter of law'" (*Huichun Feng v. Accord Physicians*, 194 AD3d 795, 797 [2d Dept 2021], quoting *Schussheim v Barazani*, 136 AD3d 787, 789 [2d Dept 2016]). Nonetheless, a defendant may satisfy the burden of demonstrating a prima facie entitlement to judgment as a matter of law in connection with such a cause of action where a patient signs a detailed consent form, and there is also evidence that the necessity of the procedure, along with known risks and dangers, were discussed prior to the surgery (*see Bamberg-Taylor v Strauch*, 192 AD3d 401, 401-402 [1st Dept 2021]).

In support of their motion, the defendants submitted the pleadings, the plaintiff's bills of particulars, transcripts of the parties' deposition testimony, relevant medical records, the note of issue, a statement of allegedly undisputed material facts, an attorney's affirmation, and the expert affirmation of therapeutic radiologist Jay L. Bosworth, M.D., who opined that the defendants did not depart from good and accepted practice, that they obtained the plaintiff's fully informed consent to the treatment that they rendered, and that nothing that they did nor did not do caused or contributed to the plaintiff's claimed injuries.

Dr. Bosworth explained that the plaintiff's medical history was significant for diabetes mellitus, low back pain, herniated disc, lumbar radiculopathy, hyperlipidemia, hypertension, nocturia, obesity, smoking, erectile dysfunction, pelvic pain, spinal surgeries, and benign prostatic hyperplasia. He asserted that, at least between 2008 and 2015, the plaintiff had been treating with internist Adegboyega Adebayo, M.D., who referred him to urologist Robert Gluck, M.D., in 2008 because of the plaintiff's history of benign prostatic hyperplasia. He further stated that, on February 20, 2015, when a prostate biopsy revealed the presence of an adenocarcinoma of the plaintiff's prostate, and the plaintiff had a combined Gleason grade of 6, Dr. Gluck referred the plaintiff to Lederman for evaluation and treatment. As Dr. Bosworth explained it, on June 2, 2015, the plaintiff, who was then 60 years old, initially met Lederman at the offices of the defendant Radiosurgery New York, LLC, at which time his Gleason score was a 6 on a scale of 10, reflecting a slow-growing, low-grade cancer, and his prostate specific antigen (PSA) level was 5.0 nanograms (ng) per liter (L) of blood, which was above the reference range of 0.0 to 4.0 ng/L. According to Dr. Bosworth's interpretation of Lederman's chart and deposition testimony, Lederman discussed all treatment options with the plaintiff at that time, including local therapies, as well as systemic therapies and combination therapies. Lederman wrote in his chart that the plaintiff understood that he was at high risk for complications because of his diabetes, spinal surgery, smoking, weight, and lifestyle, and that the plaintiff was offered further evaluation of his progressive pelvic pain via a pelvic magnetic resonance imaging (MRI) scan with contrast and a colonoscopy. Lederman further wrote that, at that visit, he suggested that the plaintiff also be evaluated by a neurologist, endocrinologist, oncologist, urologist, and surgeon, but that the plaintiff declined further evaluation, and was most interested in proceeding with radiation. According to Dr. Bosworth's reading of Lederman's records, the plaintiff was made to understand that radiation is a powerful modality and can cause serious and grave complications, even death. The records reflect that the Lederman gave the plaintiff an appointment to return for a follow-up evaluation.

As Dr. Bosworth recounted it, on June 9, 2015, Lederman attempted to leave a message on the plaintiff's telephone, but it was unable to do so. On February 14, 2019, more than 3½ years later, the plaintiff finally returned to see Lederman, and presented him with the results of a new biopsy that reflected a Gleason score of 7 on a scale of 10, with 6 of 12 cores positive for cancer, and a PSA level of 10 ng/L. Lederman reportedly instructed the plaintiff to obtain an MRI scan, and then return to the office. A March 8, 2019 MRI scan revealed the presence of a lesion in the plaintiff's prostate that was characterized as "PI-RADS Category 4: High," which, according to Dr. Bosworth, meant that clinically significant cancer was likely to be present. On March 18, 2019, the plaintiff returned to see Lederman to begin his therapy. According to Dr. Bosworth, Lederman wrote in the chart that the plaintiff understood that he was at higher risk for recurrence of the cancer because of his "higher" prostate cancer features, including stage, Gleason score, and PSA level, and that the plaintiff already was evincing multiple symptoms, including dysuria, diabetes, elevated blood pressure, and erectile dysfunction.

As Dr. Bosworth interpreted the chart, Lederman wrote after the March 18, 2019 appointment that the plaintiff was most concerned about his progressive cancer and progressive symptoms, and, thus, wished to proceed with the planned therapy, consisting of 25 administrations of intensity-modulated radiation in the stereotactic frame, immediately followed by prostate brachytherapy, that is, the implantation of radioactive "seeds" or pellets. Dr. Bosworth opined that Lederman answered all questions regarding that treatment on that date, including alternatives to the proposed treatment, as well as the benefits and risks of the treatment. The plaintiff signed an informed consent form referable to external beam radiation therapy, consisting of 25 treatments, staggered at 5 treatments per week, on weekdays only, for a period of 5 weeks, more specifically, for intensity-modulated radiation therapy in stereotactic frame, immediately followed by prostate brachytherapy.

Dr. Bosworth explained that doses of ionizing radiation are cumulative. He further suggested that the plaintiff's treatment commenced on March 21, 2019, since the note referable

to March 27, 2019 indicated that the fifth dosage of radiation was administered to the plaintiff's prostate and seminal vesicles on that date, with a radiation dosage of 9 Grays (Gy) of radiation, which is equal to 900 rads. On April 3, 2019, which was treatment day 10, Lederman administered 18 Gy of radiation, while on April 10, 2019, which was treatment day 15, he administered 27 Gy of radiation. According to Lederman's note, the plaintiff was doing well on the latter date, was pleased with the treatment, and all questions had been answered to the plaintiff's satisfaction. On April 17, 2019, which was treatment day 20, Lederman administered 36 Gy of radiation. On April 24, 2019, Lederman wrote a "completion note," asserting that the plaintiff had completed 25 radiation therapy treatments, "with total dose in the stereotactic frame on linear accelerator of 45 Gy."

According to Dr. Bosworth, the plaintiff had been scheduled for prostate brachytherapy for April 29, 2019, but cancelled it, as he did with respect to the rescheduled date of May 10, 2019. According to Lederman's notes and deposition testimony, such a delay in treatment diminished the chance of success, and the plaintiff understood the importance of timeliness and undergoing treatment in a timely fashion. On May 23, 2019, the plaintiff finally returned to see Lederman for prostate brachytherapy treatment. On that date, the plaintiff signed an informed consent form, which Dr. Bosworth opined fully informed the plaintiff of all risks and benefits of, and alternatives to, brachytherapy. Lederman then inserted 79 radioactive seeds into the plaintiff's prostate, with a total dosage of 10,800 centigrays (cGYs). The chart reported that the plaintiff tolerated the procedure well, and that he was discharged to his home, with instructions to return to see Lederman in one week, and to be seen by all of his other treating physicians. On June 25, 2019, the plaintiff returned to see Lederman for a follow-up evaluation, and also to obtain a computed tomography (CT) scan for the purpose of dosimetry. Lederman wrote in the plaintiff's chart that the plaintiff was feeling well and was pleased with his response to the treatment. Lederman formulated a plan for the plaintiff to return in one month for PSA testing.

On July 25, 2019, the plaintiff returned to see Lederman for another follow-up evaluation, after which Lederman wrote in the plaintiff's chart that the plaintiff was clinically doing well. Lederman ordered urine, PSA, and A1C tests for that day, and directed the plaintiff to return to see him in November 2019. On July 29, 2019, Lederman called the plaintiff to tell him that his blood sugar and A1C levels were elevated, while his PSA levels had decreased from 8.22 ng/L on April 22, 2019 to 2.61 ng/L on July 25, 2019, which Lederman characterized as a favorable response to treatment. In addition, Lederman's urinalysis tests reflected the presence of 2 to 5 red blood cells in the plaintiff's urine. The plaintiff, however, did not answer Lederman's call, but instead waited until August 20, 2019 to call Lederman's office, at which time Lederman informed the plaintiff about the results. During that call, Lederman reportedly reiterated his suggestion that the plaintiff be seen by other physicians for his diabetes, which Lederman described as "out of control," and for his "elevated" A1C levels.

On January 28, 2020, the plaintiff presented to Lederman for his last visit. Lederman reported that the plaintiff complained some pelvic pain, and was taking the urinary tract analgesic Pyridium. Lederman further reported that the plaintiff's pain was occasional and not intense, and that the plaintiff had complete control of his urination, and was not leaking urine. Lederman further reported that the plaintiff was very happy about the decrease in his PSA level, and wrote that he encouraged the plaintiff to see all of his physicians, including Dr. Adebayo, whom he had indeed seen, and to repeat his blood tests. According to Dr. Bosworth, Lederman asked the plaintiff for documentation from his other treating physicians, but the plaintiff was unable to provide it. Lederman reputedly directed the plaintiff to undergo repeat blood tests and physical examinations because of the importance of follow-up evaluations, particularly because the "plaintiff understood he was a high-risk candidate for recurrence and for that reason diligent follow-up was necessary."

As Dr. Bosworth explained it, when Lederman first saw the plaintiff on June 2, 2015, the plaintiff's cancer was mildly aggressive, small, and localized to its origin, as it had not spread to

nearby lymph nodes or distant parts of the body. Hence, Dr. Bosworth concluded that the plaintiff then had early-stage prostate cancer, which is usually "easily treatable." He further opined that Lederman appropriately discussed, with the plaintiff, all of the treatment options, including local therapies, as well as systemic therapies and combination therapies, and properly informed the plaintiff that he was at high risk for complications because of his diabetes, spinal surgery, smoking, obesity, and lifestyle. Dr. Bosworth further concluded that Lederman properly advised the plaintiff of all of the risks and grave complications associated with radiation therapy, and that there were no guarantees with regard to that treatment. In this respect, Dr. Bosworth adverted to Lederman's deposition testimony, in which the latter averred that he had had detailed conversations with the plaintiff regarding radiation therapy and its risks.

Dr. Bosworth further opined that Lederman, in accordance with good and accepted medical practice, appropriately attempted to leave a message on the plaintiff's voicemail after not hearing back from him after the initial consultation.

Dr. Bosworth explained that, when the plaintiff returned to see Lederman on February 14, 2019, almost 3½ years later, with a high Gleason score and PSA level, as well as stage T3 tumor, which, by definition, has extended through the capsule into the surrounding tissue, Lederman properly and appropriately determined to order and administer aggressive treatment and higher amounts of radiation than would have been required had the plaintiff undergone treatment earlier. Dr. Bosworth thus opined that

> "the plaintiff was non-compliant in his responsibilities as a patient and did not follow with Dr. Lederman as directed, and did not respond to calls, despite Dr. Lederman's recommended course of treatment and follow up. Any complaints, deficits, impairments and injuries which plaintiff complains in the Bill of Particulars are not objectively attributable to any deviations from standards of care by Dr. Lederman."

He further concluded that, when the plaintiff next saw Lederman on March 8, 2019, with a lesion in the prostate, he had returned with more cancer, which involved more of the prostate gland, and, thus, needed to be treated aggressively with higher amounts of radiation. Dr. Bosworth

additionally opined that Lederman's decision to obtain an MRI of the prostate was reasonable and appropriate, as an MRI of the prostate enabled the detection and localization of the tumor, an estimation of the tumor's volume, and an assessment of how far it had spread.

Dr. Bosworth further concluded that Lederman fully and properly discussed the risks and benefits of, and alternatives to, the proposed radiation treatment. In this regard, he asserted that Lederman appropriately explained that radiation can cause local and regional irritation, and even severe side effects or death, and that his explanations were important in light of the plaintiff's ongoing symptoms and conditions.

Dr. Bosworth further asserted that Lederman's decision to perform a combination of external beam therapy and implant therapy was properly based on the plaintiff's Gleason score, tumor stage, and PSA levels, and was an acceptable form of treatment to make sure that the prostate received an adequate dose of radiation therapy, while also treating the tissues that contained cancer cells outside of the prostate. In this respect, he explained that external beam radiation was necessary because the tumor was outside of and extended beyond the prostate, while Lederman appropriately utilized the internal radiation therapy to kill cancer cells in the prostate. Dr. Bosworth concluded that the plaintiff clearly was a proper candidate for radiosurgery, inasmuch as radiation is a totally acceptable form of therapy for locally advanced prostate cancer. He also stated that the dosage for the individual administrations of radiation during each visit, as well as the total dosage that Lederman administered to the plaintiff, were within accepted standards of care because, with the external beam radiation treatment, Lederman was treating the prostate and the surrounding areas, and then giving additional radiation via prostate brachytherapy to the prostate itself, where the tumor had originated and was most concentrated.

Dr. Bosworth explicitly rejected the plaintiff's contention that the treatment that Lederman administered to the plaintiff was over-aggressive. He also rejected the contention that Lederman failed to obtain the plaintiff's fully informed consent to the procedure, since the

consent form revealed that, as a consequence of even successful treatment, a patient might experience damage to structures surrounding the prostate, fatigue, nausea, emesis, anemia, neutropenia, thrombocytopenia, skin hyperpigmentation, skin desquamation, skin ulceration, air loss, edema, radiation necrosis, myelopathy, neuropathy, renal damage, liver damage, splenic damage, sterility, edema, bowel perforation, secondary malignancies, proctitis, hematuria, hematochezia, dysuria, infection, vascular damage, incontinence, urethral stricture, and erectile dysfunction. Moreover, he noted that Lederman himself testified that he directly discussed these possible risks and side effects with the plaintiff.

In addition, Dr. Bosworth opined that the 10,800 cGy dose of radiation used in the plaintiff's prostate brachytherapy was within the standard of care, and was necessary to kill those cancer cells that the external radiation therapy did not address.

Moreover, Dr. Bosworth expressly opined that "the nature of the alleged injuries for which plaintiff seeks to recover are not related to any acts or omissions attributable to Dr. Lederman but were the results of this patient's underlying condition and its progression," and that "[a]ny act or omission attributable to the defendants was not a substantial factor in causing the injuries alleged by plaintiff." Specifically, he asserted that a burning sensation during urination, painful urination, exhaustion, fatigue, headaches, dizziness, nausea, and anxiety are normal and expected complications following radiation treatment, and are known and accepted risks, since, even if radiation treatment is administered "100% correctly, radiation has an incidence of causing side effects." Thus, he explained that, if a patient has any underlying problems that effect, for example, the blood supply, such as diabetes, which the plaintiff had here, such a patient may have more intense side effects that will last. Dr. Bosworth further asserted that, inasmuch as the plaintiff already had been experiencing diabetes with urinary symptoms and prostatitis when he first met with Lederman, and was already on Flomax and antidiabetic medications, nothing that Lederman did or did not do caused or contributed to the plaintiff's diabetes or any conditions that were related to that condition.

The court concludes that the defendants established their prima facie entitlement to judgment as a matter of law in connection with both the medical malpractice and lack of informed consent causes of action with their submissions, including Dr. Bosworth's expert affirmation. Since the plaintiff did not oppose the motion with an expert affidavit or affirmation, and, in fact, did not oppose the motion at all, he has failed to raise a triable issue of fact in response to the defendants' showing, and summary judgment dismissing the complaint must thus be awarded to the defendants.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment is granted, they are awarded summary judgment dismissing the complaint, and the complaint is dismissed in its entirety insofar as asserted against both defendants; and it is further,

ORDERED that the Clerk of the court is directed to enter judgment dismissing the complaint against the defendants Gilbert Lederman, M.D., and Radiosurgery New York, LLC.

This constitutes the Decision and Order of the court.

12/29/2025
DATE

JOHN J. KELLEY, 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**