Dlugunovych v Chapin Acquisition I, LLC
2025 NY Slip Op 35454(U)
March 14, 2025
Supreme Court, Queens County
Docket Number: Index No. 702327/2022
Judge: Tracy Catapano-Fox
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Short Form Order
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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SUSAN DLUGUNOVYCH as Administratrix of the Estate of MARGARET ALFANO, and SUSAN DLUGUNOVYCH Individually,

Plaintiff,

-against-

CHAPIN ACQUISITION I, LLC d/b/a MARGARET TIETZ NURSING AND REHABILITATION CENTER and MARGARET TIETZ NURSING AND REHABILITATION CENTER,

Defendants.

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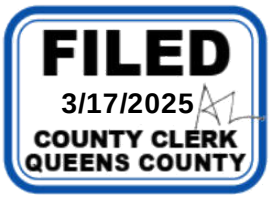
Index No. 702327/2022

Part MDP
Motion Date: March 5, 2025

Calendar No. 8
Sequence No. 1



The following papers numbered EF-23 through EF-80 read on this motion by defendant CHAPIN ACQUISITION I, LLC d/b/a MARGARET TIETZ NURSING AND REHABILITATION CENTER and MARGARET TIETZ NURSING AND REHABILITATION CENTER for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits	EF23-EF40
Affirmation in Opposition, Exhibits	EF66-EF68
Reply Affirmation, Exhibits	EF76-EF80

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants Chapin Acquisition I, LLC d/b/a Margaret Tietz Nursing and Rehabilitation Center and Margaret Tietz Nursing and Rehabilitation Center's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. Plaintiff commenced this action for negligence, medical malpractice and Public Health Law violations while plaintiff decedent Margaret Alfano was a resident at defendants' facility. Plaintiff filed a Summons and Complaint on February 1, 2022, and issue was joined on April 29, 2022. It is noted plaintiff decedent passed away on February 2, 2020.

Defendants argue summary judgment is warranted because they provided all reasonably necessary care to decedent, and none of their acts or omissions caused decedent's injuries and death. Defendant presents the pleadings, plaintiff's deposition testimony, medical records, and the expert affirmation of Cameron R. Hernandez, M.D. in support of their motion. Defendants argue the care and treatment rendered to decedent over a four year period conformed to the standard of care, and decedent's superficial skin breakdown and death were due to her chronic comorbidities and not any act or omission by defendants. They further argue plaintiff's claim of violations of Public Health Law §2801-d and §2803-c and 10 NYCRR Part 415 are conclusory and vague and should be dismissed. Defendants also argue there is no evidence to support a claim for negligent hiring, training or retention claim. They further argue plaintiff's claim for gross negligence and punitive damages must be dismissed, as there is no evidence of wanton or reckless actions by defendants that would sustain this claim.

Defendants present the expert affirmation of Dr. Cameron R. Hernandez in support of their motion. Dr. Hernandez affirmed he is a licensed physician in New York, who is board certified in Internal Medicine and Geriatric Medicine. He reviewed the pleadings, deposition testimony and medical records in formulating his opinions to a reasonable degree of medical certainty, and is fully familiar with the applicable standard of care based upon his training and experience in geriatrics. Dr. Hernandez opined with a reasonable degree of medical certainty that at all times defendants rendered care and treatment to decedent that was in accordance with the standard of care and no act or omission proximately caused decedent's injuries and death.

Dr. Hernandez noted decedent first presented to defendants' facility on September 19, 2016, for subacute rehabilitation status post cerebral infarction, and had two falls prior to admission. He noted that at admission, decedent was sixty-six years old, and had comorbidities, including dementia, type I diabetes, chronic kidney disease, major depressive-like episodes, heart disease, and was wheelchair bound. Dr. Hernandez noted at admission, decedent's skin was intact and was assessed to have a Braden score of 18 indicating a mild risk for skin breakdown. Dr. Hernandez opined defendants formulated and implemented a care plan to monitor skin changes and provided pressure reducing devices. On March 24, 2018, decedent was transferred to Queens Hospital Center for shortness of breath, wheezing, chest pain, and bilateral lower extremity swelling, but did not have any pressure ulcers. On April 24, 2018, decedent was readmitted to defendants' facility with a diagnosis of acute chronic heart failure and severe aortic stenosis. During admission, decedent was assessed and had bluish discoloration to the right antecubital, right elbow, right hand palm and back, as well as areas of redness on decedent's coccyx and a dried blister on her right buttocks. Dr. Hernandez opined defendants implemented pressure ulcer protocols, including turning and positioning, continued care plan, and treatment Periguard ordered applied every shift and as needed. He noted when decedent was reassessed on May 1, 2018, the stage I pressure ulcer present on readmission had resolved and decedent's skin was intact with

blanchable redness. Dr. Hernandez noted decedent's buttocks' skin remained intact in July 2018, and there were no open wounds to the sacral area from August 2018 through May 2019 while admitted to defendants' facility.

Dr. Hernandez noted on August 9, 2018, decedent had a wound consult with Dr. Shpitalnik for buttock blanchable erythema and follow up protocols were put in place for signs of infection, as well as constipation, repositioning and ambulation. He noted sacral redness continued to be documented in the plan of care in 2018 and into 2019, when decedent was transferred to Queens Hospital Center on May 25, 2019 to rule out sepsis and congestive heart failure due to hypothermia. On May 29, 2019, decedent was readmitted to defendants' facility with a diagnosis of hypothermia, sepsis, and acute kidney injury on congestive heart failure. Dr. Hernandez noted decedent was reassessed and the care plan implemented to address blanchable erythema on both heels, mild redness on her sacrum, and redness and moisture on both breasts but no pressure ulcers as of May 30, 2019. On June 23, 2019, decedent was transferred to NYPQ after a fall, and was readmitted to defendants' facility on July 1, 2019 with a primary diagnosis of sepsis due to new onset of congestive heart failure, difficulty in walking, heart failure, and acute kidney disease. Dr. Hernandez noted the medical records show decedent was on pressure ulcer prophylaxis as the sacral area was open. On August 27, 2019, decedent was transferred to NYPQ for chest pain and arm swelling, and it was noted the sacral ulcer healed prior to transfer.

Dr. Hernandez noted on September 3, 2019, decedent was readmitted to defendants' facility with a diagnosis of chronic obstructive pulmonary disease, congestive heart failure and extreme edema. He noted decedent was assessed and pressure ulcer protocols continued, though her bilateral buttock and sacrum were intact with no redness through December 2019. On January 11, 2020, decedent was transferred to NYPQ for altered mental status, and an assessment demonstrated a Stage I ulcer was present, though it was documented as Stage II. Dr. Hernandez noted decedent was readmitted to defendants' facility on January 17, 2020, and upon assessment her skin was intact. On January 20, 2020, decedent was noted to have minor skin impairment in the sacral areas and interventions were implemented, including turning and positioning every two hours. On February 2, 2020, decedent passed away and the death certificate stated the cause of death is cardiovascular insufficiency due to coronary artery disease.

Dr. Hernandez opined within a reasonable degree of medical certainty that defendants did not violate any standard of care nor did they cause decedent's injuries or violate the Public Health Law. He opined throughout decedent's admission, defendants appropriately assessed her to be at risk for the development of pressure ulcers, and defendants implemented an appropriate care plan with appropriate interventions for skin care. He opined decedent's treatment was carried out and modified by defendants as necessary pursuant to physician orders depending on decedent's skin condition. Dr. Hernandez opined defendants implemented appropriate pressure reduction devices and appropriate efforts to promote healing were effective to resolve decedent's skin issues.

Dr. Hernandez opined decedent's ability to heal was negatively impacted by her extensive health conditions, including congestive heart failure, a condition significant for fluid shifting that would make decedent prone to skin breakdown and impact healing. He further noted decedent had chronic obstructive pulmonary disease that contributes to risk for skin integrity due to reduced oxygen in the blood. He noted medical records show decedent had a mild risk of skin breakdown that never progressed beyond stage I, and defendants implemented numerous pressure ulcer protocols to address and resolve decedent's skin integrity.

Dr. Hernandez opined within a reasonable degree of medical certainty that decedent's alleged pressure injuries were unavoidable and defendants met the standard of care in providing pressure injury care and prevention treatment. He opined decedent had very few instances of skin breakdown, and the lack of ulcer progression, despite decedent's poor health, is a significant indication that defendants provided appropriate care. Dr. Hernandez opined within a reasonable degree of medical certainty that no alleged departure, statutory violation, act or omission proximately caused the development or worsening of decedent's ulcers. He opined that the wound noted in the NYPQ records from decedent's transfer on January 11, 2020 was most likely a Stage I ulcer, not Stage II as noted. Dr. Hernandez opined patients in decedent's medical condition with significant comorbidities who are transferred to the hospital by EMS and wait in the emergency room can develop a Stage I pressure ulcer in less than one hour. Dr. Hernandez also opined there was no evidence decedent's skin impairments were infected or showed signs of infection during her residency with defendants. He opined there was no departure or deviation by defendants that caused or contributed to the worsening of decedent's skin breakdown during her admission at defendants' facility. Dr. Hernandez also noted plaintiff testified she never observed any pressure ulcers during decedent's admission at defendants' facility.

Dr. Hernandez opined within a reasonable degree of certainty that defendants implemented appropriate pressure ulcer measures upon her readmission on January 20, 2020 when she returned to defendants' facility with minor skin impairment in decedent's sacral area. He opined there is no evidence decedent experienced malnutrition while admitted to defendants' facility, as she was placed on a special diet on August 14, 2018 and there was no evidence of reduced food intake through January 10, 2018. Dr. Hernandez opined defendants met the applicable standard of care for nutrition during decedent's admission at defendants' facility, including access to fluids and monitoring for dehydration. He further opined defendants appropriately provided decedent a dosage of Coumadin within the standard of care, decedent's INR was appropriately monitored, and medications were appropriately adjusted.

Dr. Hernandez opined decedent's INR of 8 was high but there was no indication of bleeding and defendants appropriately ordered labs to retest and adjust decedent's Coumadin dosage. He opined there was no deviation from the standard of care, as defendants' care plan was adequately administered and any pain decedent experienced was appropriately managed and treated. Dr.

Hernandez opined the standard of care did not require decedent to be transferred to the hospital for a low grade, transient fever, though he noted best practices would have been to draw labs and take urine following decedent's second episode of shaking. He further opined the failure to draw labs is not a deviation from the standard of care because decedent's fever had subsided. Dr. Hernandez opined within a reasonable degree of medical certainty that plaintiff's claim for wrongful death is baseless, as decedent's death was not the result of any act or omission by defendants, but a natural death for someone with an abundance of extensive health conditions. Dr. Hernandez opined defendants acted within the standard of care in providing care and treatment to decedent, and they did not violate any statute or regulation. He further opined the development of decedent's pressure ulcers and death were not proximately caused by any failures of defendants, but caused by her persistent health issues and comorbidities. Based upon the above, defendants argue summary judgment is warranted.

Plaintiff opposed defendants' motion, arguing there are issues of fact with regard to plaintiff's causes of action for negligence, medical malpractice and violations of the Public Health Law. She presents the affirmation in opposition, expert affirmation, and medical records in support of her opposition. Plaintiff argues that defendants' expert failed to present a prima facie entitlement to summary judgment, and plaintiff's expert raises issues conflicting opinions that warrant denial of the motion. Plaintiff further argues defendants' deviations and violations of the Public Health Law warrant punitive damages because defendants acted willfully and recklessly in depriving decedent of certain rights and benefits under the statute.

Plaintiff presents the expert affirmation in support of her opposition. The expert affirmed to be a licensed physician in New York who is board certified in Internal Medicine and Geriatric Medicine. The expert affirmed to being fully familiar with the applicable standard of care based upon the expert's training and experience. The expert reviewed the pleadings, medical records, deposition transcripts and defendants' moving papers in rendering opinions. Plaintiff's expert opined within a reasonable degree of medical certainty that defendants' care and treatment was not in accordance with good and accepted medical practice, and they departed and deviated from the standard of care. Plaintiff's expert further opined defendants' departures were the proximate cause of decedent's injuries, including sacral pressure ulcer, pain and suffering, and ultimate death.

Plaintiff's expert disagreed with defendants' expert, arguing Dr. Hernandez failed to articulate the standard of care during decedent's care and treatment, and merely stated defendants did not violate any statute or standard of care. Plaintiff's expert disagreed with Dr. Hernandez blaming decedent for her medical conditions, and opined decedent was dependent upon defendants to provide her with the proper care and treatment for her underlying conditions. The expert further disagreed with Dr. Hernandez's claim that decedent's skin breakdown was unavoidable, and opined the medical records show decedent's skin was capable of healing despite her comorbidities. Plaintiff's expert further opined defendants had an obligation to investigate any issues that were

interfering with their ability to properly and appropriately treat decedent in accordance with the standard of care, and their failure to do so was the proximate cause of decedent's injuries.

Plaintiff's expert opined defendants deviated from the standard of care in improperly assessing decedent to be at a mild risk for skin breakdown. The expert further opined there was no reason to contest NYPQ's records indicating the pressure ulcer was Stage II. Plaintiff's expert opined decedent should have been turned and positioned at a minimum every two hours upon initial admission, and not turning and positioning was a deviation from the standard of care. The expert further opined defendants' failure to properly turn and position decedent and failure to promote healing were substantial departures from the standard of care, violations of decedent's rights under the Public Health Law, and a proximate cause of decedent's injuries.

Plaintiff's expert opined defendants violated the Public Health Law by not timely obtaining medical evaluation for decedent when she began displaying altered mental status, and not timely transferring her to the hospital, and these inactions demonstrate defendants' failure to promote and protect decedent's rights. The expert opined defendants violated the Public Health Law by leaving decedent to die without implementing proper interventions when she developed fevers and began shivering. Plaintiff's expert opined defendants failed to provide decedent with basic medical care after she exhibited signs of an infection and did nothing to investigate the cause of her symptoms or treat them. Plaintiff's expert opined these failures deprived decedent of her dignity in violation of the Public Health Law. The expert further opined defendants failed to properly evaluate and treat decedent, failed to make differential diagnosis and create a care plan, and did not investigate her symptoms and functional decline, and these failures were a deviation from the standard of care.

Plaintiff's expert opined defendants violated decedent's rights under the Public Health Law, and were willful and reckless in doing so. The expert opined defendants failed to take all reasonable steps to prevent and limit the deterioration of decedent's pressure ulcers, causing her pain and suffering and an untimely death. Based upon the above, plaintiff argues there are issues of fact in dispute, and summary judgment is not warranted.

Pursuant to CPLR §3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New Yor*k, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause of action." (*Id*.). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them.

(*Vega v. Restani Constr. Corp*., 18 N.Y.3d 499, 505 [2012].) Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff's claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].)

In an action to recover damages for wrongful death, the decedent's personal representative must establish that the defendant's wrong fact, neglect or default caused the decedent's death. (*Eberts v. Makarczuk*, 52 A.D.3d 772, 772-773 [2d Dept. 2008].) Public Health Law contemplates liability when a patient is injured due to a deprivation of a right conferred by contract, statute, regulation, code or rule, subject to the defense that the 'facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient. (*Public Health Law §2801-d*; *Gold v. Park Ave. Extended Care Ctr. Corp.*, 90 A.D.3d 833, 834 [2d Dept. 2011].)

Defendants established a prima facie entitlement to summary judgment based upon the pleadings, deposition testimony, expert affirmation of Dr. Hernandez, and medical records. (*See Cummings v. Brooklyn Hosp. Ctr.*, 147 A.D.3d 902 [2d Dept. 2017].) Defendants established entitlement to summary judgment for medical malpractice, in that they provided good and appropriate care to decedent during her four-year admission at their facility, did not depart from the standard of care, and none of their actions or inactions proximately caused decedent's injuries. Defendants' expert Dr. Hernandez demonstrated defendants formulated and implemented an appropriate care plan for decedent, particularized for her needs, and adapted based upon her comorbidities and skin condition throughout her admissions. Defendants further demonstrated entitlement to summary judgment as to plaintiff's wrongful death claim, as Dr. Hernandez demonstrated decedent's cause of death was cardiac in nature, and not causally related to defendants' care and treatment. Defendants' expert further demonstrated decedent did not sustain a pressure ulcer during her initial stay at their facility, but was readmitted with a skin breakdown which improved and resolved under defendants' care. They demonstrated a pressure ulcer was unavoidable based upon decedent's underlying medical conditions, and defendant provided proper and appropriate care within the federal and state standards. (*See Pichardo v. St. Barnabas Nursing Home, Inc.*, 134 A.D.3d 421 [1st Dept. 2015].) Defendants further demonstrated prima facie that

they did not violate the Public Health Law in providing medical care to decedent, nor did it act with willful or reckless disregard for decedent's health to warrant gross negligence or punitive damages. (*See Anzolone v. Long Is. Care Ctr., Inc.*, 26 A.D.3d 449 [2d Dept. 2006].)

Plaintiff failed to raise a triable issue of fact as to the claim for medical malpractice, as she failed to present competent, admissible evidence that defendants departed from the applicable standard of care, and that any alleged departures proximately caused decedent's injuries and death. Plaintiff's expert presented vague and conclusory opinions that are unsupported by the medical record or deposition testimony. While plaintiff's expert disagreed with defendants' expert opinions, plaintiff's expert failed to articulate the standard of care and how defendants violated it. Plaintiff also failed to raise a triable issue of fact as to the wrongful death claim, as plaintiff's expert presented no specific opinions based upon the medical evidence to demonstrate defendants' actions or inactions proximately caused decedent's death. (*See Novick v. South Nassau Communities Hosp.*, 136 A.D.3d 999 [2d Dept. 2016].) While plaintiff's expert opined as to multiple alleged departures, plaintiff's expert failed to articulate the standard of care or what actions defendants should have taken in providing appropriate care and treatment to decedent. The expert opines in conclusory fashion that defendants' departures resulted in decedent's death, which is insufficient to raise a triable issue of fact. Therefore, summary judgment is warranted as to plaintiff's claim of wrongful death.

Plaintiff failed to raise a triable issue of fact in dispute with regard to punitive damages, as there is no evidence that defendants' actions were willful or reckless, nor any evidence that defendant's actions were grossly negligent in treating decedent. Plaintiff's expert stated in conclusory fashion that defendants deprived decedent of her rights and benefits under the Public Health Law, but presented no specific evidence supported by the medical record or deposition testimony to support this claim. Plaintiff also failed to raise a triable issue of fact as to negligent hiring, training or supervision, as she presented no competent, admissible evidence to support these claims.

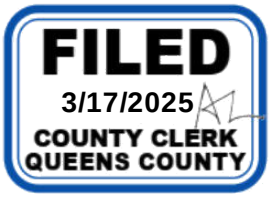
Accordingly, defendant Chapin Acquisition I, LLC d/b/a Margaret Tietz Nursing and Rehabilitation Center and Margaret Tietz Nursing and Rehabilitation Center's motion for summary judgment pursuant to CPLR §3212, is granted, and plaintiff's Complaint is dismissed.

This constitutes the decision and Order of the Court.

Dated: March 14, 2025

Tracy Catapano-Fox

Hon. Tracy Catapano-Fox, J.S.C.



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