

Corkery v Lenox Hill Veterinarians

2026 NY Slip Op 30049(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 151239/2024

Judge: Paul A. Goetz

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

-----X

KATHRYN N. CORKERY,

Plaintiff,

- v -

LENOX HILL VETERINARIANS, LAWRENCE ALLEN
PUTTER, MANUEL RODOLFO SANCHEZ

Defendants.

-----X

INDEX NO. 151239/2024

MOTION DATE 09/04/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for JUDGMENT - SUMMARY.

In this veterinary malpractice action, defendants Lenox Hill Veterinarians (“Lenox Hill”), Lawrence Allen Putter D.V.M., and Manuel Rodolfo Sanchez D.V.M., move pursuant to CPLR § 3212 for summary judgment, dismissing the complaint. Plaintiff asserts three causes of action against defendants for: (1) Veterinary Malpractice; (2) Lack of Informed Consent; and (3) Negligence.¹

BACKGROUND

Defendants Lawrence Allen Putter and Manuel Rodolfo Sanchez are veterinarian doctors who practiced at co-defendant, Lenox Hill Veterinarians located at 1504 2nd Avenue, New York, New York 10075 (NYSCEF Doc No 1 ¶ 2 – 5). According to plaintiff’s complaint defendants performed three oral surgical procedures to remove teeth from her dog Oliver, between August 2022 and May 2023 (*id.* at ¶ 7). Plaintiff alleges that defendants failed to minimize the risk of

¹ Plaintiff had asserted five causes of action in her complaint, however by decision and order dated July 8, 2024, the court dismissed plaintiff’s causes of action for Intentional Infliction of Emotional Distress and Negligent Infliction of Emotional Distress (NYSCEF Doc No 15).

extracting three of Oliver’s teeth by performing the three extractions on three separate occasions rather than during one procedure to reduce the potential for negative side effects caused by the anesthesia and for a bacterial infection (*id.* at ¶ 8). Plaintiff also alleges that defendants failed to perform a pre-surgical examination which would have revealed that Oliver was at risk for kidney failure resulting from surgery (*id.* at ¶ 9 – 10). On July 16, 2023 Oliver died from kidney failure, which plaintiff alleges could have been avoided had defendants taken the proper precautions prior to surgery (*id.* at ¶ 11).

DISCUSSION

Summary Judgment Standard

It is well settled that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). “Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action” (*Cabrera v Rodriguez*, 72 AD3d 553, 553-54 [1st Dept 2010]).

“The court’s function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility” (*Meridian Mgt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-11 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza*

Co. LLC, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Veterinary Malpractice

“In order to establish a prima facie case of veterinary malpractice, a plaintiff is required to show a deviation or departure from accepted veterinary practice, and that such departure was a proximate cause of the injury” (*Solomon v Ctr. for Specialized Veterinary Care*, 47 Misc 3d 131(A) [App Term 2015]). “Ordinarily, in a malpractice action, expert testimony is necessary to establish the applicable standard of care, as well as a deviation from such standard, which resulted in injury, unless the matter is one within the experience and observation of the average layperson” (*id.*). In an expert malpractice action, defendants establish “their prima facie entitlement to judgment as a matter of law by submitting expert affirmations indicating that the treatment and care [performed] by the defendants did not deviate from accepted community standards of practice” (*Frazier v Shteynberg*, 208 AD3d 458, 459 [2d Dept 2022]; *see also Filoteo v Assisi Veterinary Hosp.*, 67 Misc 3d 130(A) [App Term 2020] [applying standard to a veterinary malpractice action]).

“To rebut the defendant's prima facie showing, a plaintiff must submit an expert opinion that specifically addresses the defense expert's allegation” (*Kunwar v Northwell Health*, 229 AD3d 528, 532 [2d Dept 2024]). “General and conclusory allegations of [veterinary] malpractice, however, unsupported by competent evidence tending to establish the essential

elements of [veterinary] malpractice, are insufficient to defeat a defendant summary judgment motion” (*id.*).

Here, defendants failed to submit an affirmation or affidavit of an expert averring that the defendants did not deviate from accepted community standards of veterinary practice. Instead defendants rely solely on an attorney affirmation, and the defendants’ own interrogatory responses (NYSCEF Doc Nos 60 & 61). However, “[b]are conclusory assertions that a defendant did not deviate from good and accepted medical practice, with no factual relationship to the alleged injury, do not establish that the cause of action has no merit so as to entitle a defendant to summary judgment” (*Neumann v Silverstein*, 227 AD3d 914, 916 [2d Dept 2024]). Furthermore, since the medical records submitted in support of this motion were only attached to the attorney affirmation, they are not in admissible form as they are not certified or authenticated (*Blackwell v Mikevin Mgt. III, LLC*, 88 AD3d 836 [2d Dept 2011]). Therefore, defendants have failed to meet their *prima facie* burden.

Accordingly, plaintiff’s veterinary malpractice cause of action (1st) will not be dismissed.

Lack of Informed Consent

To establish a cause of action for malpractice based on lack of informed consent, a plaintiff must show:

- (1) that the person providing the professional treatment failed to inform the patient of reasonably foreseeable risks and benefits associated with the treatment, and the alternatives thereto, that a reasonable medical practitioner would have disclosed under similar 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

(*Xiao Yan Ye v Lam*, 191 AD3d 827 [2d Dept 2021]).

Defendants argue that this cause of action should be dismissed as duplicative of the first cause of action for veterinary malpractice, however, “lack of informed consent is a distinct cause of action requiring proof of facts not contemplated by an action based merely on allegations of negligence” (*Xiao Yan Ye v Lam*, 191 AD3d 827 [2d Dept 2021]). While defendants submit a Dental Release signed by plaintiff, specifically stating that blood work may not be performed on the day of the surgery (NYSCEF Doc No 64 at p 3, 8, 12), as stated above, these records have not been authenticated. Therefore, defendants have failed to meet their *prima facie* burden.

Accordingly, plaintiff’s lack of informed consent cause of action (2nd) will not be dismissed.

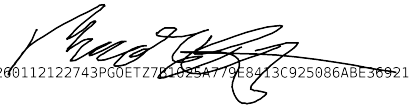
Negligence

As for the negligence cause of action, all of plaintiff’s assertions alleging negligence arise from the same alleged conduct regarding the malpractice causes of action.

Accordingly, plaintiff’s negligence cause of action (3rd) will be dismissed as duplicative.

Based on the forgoing, it is,

ORDERED that defendants’ summary judgment motion is granted to the extent that plaintiff’s negligence cause of action (3rd) is dismissed and the motion is otherwise denied.


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<u>1/12/2026</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE

