Petrillo v Su
2026 NY Slip Op 30304(U)
January 26, 2026
Supreme Court, New York County
Docket Number: Index No. 805284/2022
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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STEPHEN PETRILLO,

Plaintiff,

- v -

EDWIN P. SU, M.D., and HOSPITAL FOR SPECIAL SURGERY,

Defendants.

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INDEX NO. 805284/2022

MOTION DATE 01/26/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87

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

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. Despite several adjournments of the return date of the motion, both at the request of the plaintiff's attorney, and on the court's own initiative, the plaintiff has not submitted any timely opposition to the motion. The motion is granted, and the complaint is dismissed.

The crux of the plaintiff's claims is that, between November 18, 2019 and May 3, 2021, the defendant orthopedic surgeon Edwin P. Su, M.D., in the course of his employment with the defendant Hospital For Special Surgery (HSS) negligently rendered treatment to him. More specifically, he alleged that, on March 6, 2020, Su departed from the applicable standard of care by employing cobalt prosthetic hardware in connection with a hip resurfacing procedure, despite the frequency of failure of that type of hardware. He asserted that the prosthetic implant failed, thus causing him to experience a serious infection and the necessity of a total hip replacement revision procedure in May 2021.

In his complaint, the plaintiff alleged that, from November 18, 2019 until May 3, 2021, the defendants negligently and unskillfully rendered orthopedic surgical, medical, diagnostic, and other care and treatment to him, as well as negligent and unskillful follow-up care and treatment, advice, management, and treatment. More particularly, he alleged that the defendants departed from good and accepted standards of orthopedic surgical, medical, diagnostic, and other care and treatment, as well as from accepted standards of follow-up care and treatment. The plaintiff further alleged that the defendants failed properly to diagnose his condition, and that they rendered improper and harmful emergent, diagnostic, radiological, internal medicine, surgical, medical, follow-up, and other care and treatment. He additionally contended that the defendants failed properly to supervise "medical actors" participating in his care.[1] The plaintiff additionally asserted that these departures from accepted standards of care caused him to suffer physical injuries, sickness, disfigurement, permanent disability, and other sequellae, as well as physical and mental trauma, emotional and social stigma, pain, and suffering. He further averred that the defendants never advised him, either orally or in writing, of the possible risks and dangers of the procedures that Su performed upon him, including the possibility of severe personal injuries and permanent damage, and that a reasonable person in his situation would not have consented to the subject procedure.

In his bills of particulars, the plaintiff asserted that Su negligently performed a hip resurfacing procedure upon him on March 6, 2020. As he described it, by 2020, the use of

[1] Allegations of negligent hiring, training, supervision, and retention of personnel constitute a cause of action independent of a medical malpractice cause of action (*see Calamari v Panos*, 131 AD3d 1088, 1090 [2d Dept 2015] [negligent hiring cause of action against medical practice is subject to three-year limitations period, and allegations of medical malpractice and lack of informed consent did not, in and of themselves, place defendants on notice of negligent hiring cause of action]). The court notes that the plaintiff did not separately plead a such cause of action. Nonetheless, the court deems the allegation of negligent supervision to have been properly asserted by the plaintiff as if it had been separately pleaded (*see Burgos v Lau*, 2025 NY Slip Op 33250[U], *2 n 2, 2025 NY Misc LEXIS 7290, *2 n 2 [Sup Ct, N.Y. County, Aug. 28, 2025] [Kelley, J.]; *Estate of Gebert v Huntington Hills Ctr. for Health*, 2024 NY Misc LEXIS 51911, *16 [Sup Ct, Suffolk County, Sep. 5, 2024]; *see also Taylor v Methodist Hosp.*, 6 Misc 3d 1008[A], 2004 NY Slip Op 51750[U], *4, 2004 NY Misc LEXIS 2898, *9 [Sup Ct, Kings County, Nov. 1, 2004 [deeming allegation of "negligent credentialing" to be an independent cause of action]).

cobalt prosthetic hardware was not in accord with accepted practice, in part due to the accumulated experience and data of prosthetic failure rate, approaching 10% of patients in connection with some devices, with such failures requiring surgical replacement. He asserted that, at a minimum, the use of hardware containing cobalt, especially in connection with a metal-on-metal application, required a patient's specific consent, but only after a practitioner determined that it would be of specific utility in that patient's case. The plaintiff additionally asserted that, inasmuch as he had undergon prior successful implants that employed other metals, it was a departure for the defendants to disregard that experience when determining the composition of the implant to employ in the resurfacing procedure. The plaintiff additionally contended that, after the procedure, the defendants "persistently" misdiagnosed his condition, thus delaying necessary intervention. He asserted that this delay caused

> "needless suffering and disability when hardware failure and/or metallurgical reaction and related inflammatory reaction were of the highest index of suspicion for the patient with post-operative complaints extending to over 1 year. The Defendant(s') failure in this regard was a further departure from good and accepted orthopedic surgical practice,"

particularly because of the "known high risk" of failure involving the implantation of cobalt-containing prosthetics.

The plaintiff, in his bills of particulars, further faulted the defendants for failing to obtain a thorough medical history from him, failing to perform indicated physical examinations, and failing to make appropriate referrals, all of which delayed proper diagnosis and treatment, which he contended ultimately required the revision surgery and complete removal and replacement of the subject hardware. In this respect, the plaintiff more particularly stated that the defendants thus failed to undertake timely, proper, and repeat diagnostic and clinical evaluation of his "evolving complaints," which deprived him of an opportunity for a better outcome. He also asserted that the defendants mismanaged his postoperative care, failed properly to review his chart, failed to retrieve and review salient medical records, failed to gather medical information and relevant prior medical history from other providers, failed to follow up and examine him, and

failed adequately to familiarize themselves with a working knowledge and understanding of his medical history. The plaintiff additionally contended that the defendants failed appropriately to monitor his signs, symptoms, and complaints, and failed appropriately to manage, maintain, and monitor his condition and course of treatment, while also failing accurately to chart his signs, symptoms, and pertinent clinical events. In addition, the plaintiff reiterated, in his bills of particulars, that the defendants failed fully to inform him of the risks and benefits of the hip-resurfacing procedure, or the alternatives thereto, and that, consequently, they did not obtain his fully informed consent to the procedure. He also recapitulated his claim that a reasonable person in his situation would not have consented to the procedure had he known of those risks.

The plaintiff alleged that, as a consequence of such alleged wrongdoing, he was caused to contract persistent methicillin-resistant staphylococcus aureus (MRSA) infection, specifically, staphylococcus lugdunensis, which required the placement of a peripherally inserted central catheter for the administration of intravenous antibiotics for a period of six weeks, and that he was compelled to undergo additional long-term antibiotic therapy for more than six months. He also asserted that the entirety of the prosthetic hardware that Su had placed had to be removed in a revision surgery on May 3, 2021, and that an entire new prosthesis had to be installed.

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 satisfy his or her 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]). Such a cause of action may be premised upon a claim that those departures allowed a patient's condition to worsen, and thus deprived him or her of an opportunity for a cure or a better outcome (*see Mortensen v Memorial Hosp.*, 105 AD2d 151, 156, 159 [1st Dept 1984]; *Kallenberg v Beth Israel Hosp.*, 45 AD2d 177, 178 [1st Dept 1974], *affd no op.* 37 NY2d 719 [1975]). Moreover, where a physician fails properly to diagnose a patient's condition, thus providing less than optimal

treatment or delaying appropriate treatment, and the insufficiency of or delay in treatment proximately causes injury, he or she will be deemed to have departed from good and accepted medical practice (*see Perez v Fitzgerald,* 115 AD3d 177, 178 [1st Dept 2014]; *Perlin v King*, 36 AD3d 495, 495 [1st Dept 2007]; *see generally Zabary v North Shore Hosp. in Plainview,* 190 AD3d 790, 795 [2d Dept 2021]; *Lewis v Rutkovsky*, 153 AD3d 450, 451 [1st Dept 2017]; *Monzon v Chiaramonte*, 140 AD3d 1126, 1128 [2d Dept 2016] ["(c)ases . . . which allege medical malpractice for failure to diagnose a condition . . . pertain to the level or standard of care expected of a physician in the community"]; *O'Sullivan v Presbyterian Hosp. at Columbia Presbyterian Med. Ctr.*, 217 AD2d 98, 101 [1st Dept 1995]).

Even where an adverse outcome is a known risk of a surgical procedure, a plaintiff may raise a triable issue of fact as to whether a physician committed malpractice by showing that the outcome was caused by improper surgical or medical technique, rather than by an unexplained or incidental event (*see Matney v Boyle,* 237 AD3d 1382, 1384-1385 [3d Dept 2025]; *Bengston v Wang*, 41 AD3d 625, 626 [2d Dept 2007]; *see also Hoffman v Taubel*, 2021 NY Slip Op 31523[U], *4-5, 2021 NY Misc LEXIS 2379, *8-9 [Sup Ct, N.Y. County, Apr. 30, 2021] [Kelley, J.], *affd* 208 AD3d 1099 [1st Dept 2022] [merely because the transection of a ureter is a known risk of a hysterectomy, it does not follow that a surgeon or a surgeon's assistant is excused from properly performing the procedure]; *Mathias v Capuano*, 2015 NY Slip Op 32160[U], *5-6, 2015 NY Misc LEXIS 4141, *12-14 [Sup Ct, Suffolk County, Nov. 5, 2015]; *cf. Henry v Duncan*, 169 AD3d 421, 421 [1st Dept 2019] [plaintiff failed to raise triable issue of fact in opposition to physician's showing that injury was a "known risk that may occur despite competent surgical care having been provided"]).

The law does not require a health-care provider to guarantee a good result (*see Saliaris v D'Amelia*, 143 AD2d 996, 996 [2d Dept 1988]), and, although an outcome or result may truly be unfortunate, "'a bad result does not, ipso facto, support a claim for medical malpractice'" (*id.* at 996-997; quoting *Schoch v Dougherty*, 122 AD2d 467, 468 [3d Dept 1988]; *see Nestorowich*

v Ricotta, 281 AD2d 870, 871 [4th Dept 2001], *affd* 97 NY2d 393 [2002]; *Bobek v Crystal*, 291 AD2d 521, 523 [2d Dept 2002]; *Nabozny v Cappelletti*, 267 AD2d 623, 628 [3d Dept 1999]; *Zito v Friedman*, 77 AD2d 514, 515 [1st Dept 1980] [jury must be instructed that a bad result by itself is not proof of malpractice]).

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]; *see also Kristal R. v Nichter,* 115 AD3d 409, 411-412 [1st Dept 2014]; *Bacani v Rosenberg*, 74 AD3d 500, 501-502 [1st Dept 2010]). 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 619, 620 [3d Dept 1999], 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, photographs, a statement of allegedly undisputed material facts, a memorandum of law, an attorney's affirmation, and the expert affirmation of board-certified orthopedic surgeon Atul Kamath, 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. Kamath first opined that the March 6, 2020 hip resurfacing procedure was "entirely" indicated. In connection with that opinion, he recounted the plaintiff's course of examinations with Su, noting that the plaintiff had first met with Su on August 29, 2018, complaining of right hip pain over the previous eight months that had adversely affected his activities of daily living. According to Dr. Kamath, on that date, Su took a "detailed history" of the plaintiff's complaints, as well as his medical and surgical history. He explained that, based on this history, a "proper" examination, and an x-ray of the pelvis, Su formed the impression that the plaintiff was suffering

from arthritis. Su's chart reflected that Su recommended that the plaintiff undergo a metal-on-metal joint resurfacing procedure, pending the results of a magnetic resonance imaging (MRI) scan of the plaintiff's right hip. Dr. Kamath concluded that both Su's impression and recommendation were entirely appropriate. As he explained it, when the plaintiff returned to meet with Su in September 2018, the plaintiff expressed an interest in conservative treatment and that, consequently, surgical treatment was deferred at that time.

Dr. Kamath asserted that Su's chart indicated that the plaintiff next saw Su on November 18, 2019, more than one year after his prior visit, and that, after the September 2018 visit, the plaintiff had undergone a "multitude" of conservative options, including gel shots, cortisone injections, and physical therapy, all without success. He further noted that, at the November 18, 2019 visit, the plaintiff complained of daily pain that affected his ability to walk and climb upon stairs, and that the plaintiff expressed his belief that he had developed tendinitis in his right knee as a consequence of compensating for right-hip pain. According to Dr. Kamath, Su conducted an appropriate and thorough physical examination, observing the manner in which the plaintiff walked, and assessing the lower extremity range of motion and strength. He further concluded that Su appropriately obtained and reviewed x-rays, which confirmed the presence of severe right-hip osteoarthritis, and that, since the plaintiff had exhausted conservative treatment options, and "arthroplasty was the next logical step," Su properly recommended hip arthroplasty.

Dr. Kamath expressly concluded that it was entirely appropriate for Su to have recommend hip resurfacing as the manner of surgical correction to be employed for the March 6, 2020 procedure. As he explained it, a total hip replacement involves removing both the femoral head, that is, the head of the thighbone, and the acetabulum, that is, the hip socket, and replacing them with metal, ceramic, or plastic components. He noted that, by way of contrast, the femoral head is not removed in a hip-resurfacing procedure but, instead, the bone is trimmed down, and a smooth metal covering is placed over it. Additionally, Dr. Kamath asserted that, in the course of hip resurfacing, the damaged cartilage within the acetabulum is

removed, and replaced with a metal shell. He asserted that, while a total hip replacement does not always employ metal-on-metal bearings, as of 2020, when hip resurfacing was indicated, as it was in the plaintiff's case, the latter procedure was performed utilizing only metal-on-metal bearings. Dr. Kamath opined that hip resurfacing presents a decreased risk of hip dislocation compared to total hip replacement, and hip resurfacing "often results in a more normal walking pattern post-operatively than a total hip replacement, making it a preferred surgical option to middle-aged patients who are moderately active when appropriate."

As Dr. Kamath described it, a typical and appropriate candidate for hip resurfacing is a middle-aged patient, most often a male, who engages in a moderate level of activity, and who presents with good bone quality, conditions that the plaintiff satisfied when Su recommended hip resurfacing. He specifically noted that the plaintiff was 56 years old when the procedure was performed, and that, as such, he was of an appropriate age for hip resurfacing. Moreover, Dr. Kamath noted that, during 2018 and 2019, the plaintiff had been engaging in mildly strenuous athletic activity, although that activity had to be curtailed due to the increasing pain and that, consequently, hip resurfacing was the appropriate mode of addressing the plaintiff's condition. In addition, Dr. Kamath explained that the August 29, 2018 and November 18, 2019 x-rays of the plaintiff's pelvis confirmed that the plaintiff's bone quality was sufficient for a hip resurfacing procedure.

In connection with the plaintiff's primary claim, which was that Su should not have employed a prosthetic device containing cobalt, Dr. Kamath explicitly opined that it was "entirely appropriate for Dr. Su to use the cobalt-chrome alloy Birmingham Hip Resurfacing System during the March 6, 2020 hip resurfacing." As he explained it, this system, which was manufactured by Smith and Nephew, had undergone years of testing prior to the March 6, 2020 surgery, and had been approved by the United States Food and Drug Administration as of that date. Dr. Kamath asserted that Su routinely employed this system, which was composed of a cobalt-chrome alloy, and that Su's determination to recommend and employ this system

constituted an exercise of "excellent" surgical judgment that satisfied the applicable standard of care. In this respect, Dr. Kamath averred that, had Su recommended against using that system, he would instead have recommended a total hip replacement rather than resurfacing.

Dr. Kamath opined that the standard of care at the time of the subject surgery did not require a surgeon to order or obtain preoperative metal ion blood work, patch testing, or metal-level testing in anticipation of hip resurfacing. Rather, he concluded that it was entirely appropriate for Su to confirm with the plaintiff that the latter did not suffer from allergies to metal, a confirmation that Su obtained at the November 18, 2019 visit. He also asserted that it was appropriate for Su to rely on the March 2, 2020 preoperative clearance provided by rheumatologist Arthur Yee, M.D. Dr. Kamath further concluded that the standard of care did not require any other preoperative referrals or testing prior to the March 6, 2020 procedure. In this respect, Dr. Kamath noted that Su was aware the plaintiff's history of a titanium rod placement during surgery for a left tibia fracture in 1996, and concluded that this history did not constitute a contraindication to a hip resurfacing procedure. Specifically, Dr. Kamath opined that the fact that one type of metallic prosthesis had been implanted into a patient during a prior surgery does not dictate the type of metal that must be utilized in all future prostheses placed in that patient, and that, absent a known metal allergy, there was no indication that the plaintiff would experience a reaction to the metallurgy used during the hip resurfacing procedure. He thus concluded that there was no merit to any claims that Su deviated from the standard of care in failing to appreciate the significance of the prior metal implant.

Dr. Kamath expressly opined that the surgical technique that Su employed intraoperatively during the March 6, 2020 procedure was entirely appropriate, and satisfied the applicable standards of care. He referred to Su's operative report, in which Su specifically documented that the femoral head and neck were well exposed, with osteophytes removed, and "restoration of the anterior head neck offset." Dr. Kamath explained that the plaintiff's labrum and tissues from the acetabular fossa were removed, after which reaming was performed until

good, acetabular bony contact was obtained. He noted that Su had reported in the plaintiff's chart that the fit of the implant was excellent, that the alignment was checked several times, and that care was taken to protect the femoral neck. Dr. Kamath further concluded that Su appropriately applied cement intraoperatively to adhere the implants to the bone, and properly removed excess cement. He opined that Su appropriately relocated the plaintiff's femoral head into the acetabulum after ensuring that there no debris or soft tissue had been "interposed." Dr. Kamath averred that Su then appropriately closed the surgical field.

In connection with Su's postoperative treatment of the plaintiff, Dr. Kamath similarly concluded that it was entirely appropriate, and that, contrary to the plaintiff's contentions, there was no delay in diagnosing the plaintiff's metallurgic reaction. According to Dr. Kamath, the plaintiff underwent postoperative assessments at appropriate intervals on March 26, 2020, April 8, 2020, August 31, 2020, and April 7, 2021. He noted in this respect that Su had instructed the plaintiff to return for a follow-up visit on or about the first week of July 2020, but that the plaintiff did not return until the end of August 2020, and thereafter waited seven months before again returning to see Su, despite instructions to return within three months after that visit. Crucially, according to Dr. Kamath, the plaintiff's postoperative complaints and objective clinical findings prior to the April 7, 2021 visit "did not raise any suspicion of an underlying reaction or condition," but that, rather, the plaintiff's complaints and clinical presentations were "consistent with a typical post-operative course after hip resurfacing." Consequently, Dr. Kamath concluded that no additional physical examinations or referrals were indicated prior to that visit. Moreover, inasmuch as the subject procedure was performed on March 6, 2020, only 11 days before the COVID-19 pandemic caused New York to go into lockdown, Dr. Kamath opined that it was appropriate for Su to have assessed the plaintiff via a telehealth consultation on March 26, 2020. He asserted that HSS's physician's assistant, Jesse Krulwich, noted in the plaintiff's chart that, as of that date, the plaintiff's postoperative pain had been improving, that the plaintiff had discontinued taking narcotics to treat pain because he achieved "good pain control" with

Tylenol, and that the plaintiff by then could walk over a mile, use his stationary bike, and ambulate stairs. Although Dr. Kamath asserted that the plaintiff had experienced start-up stiffness, and had difficulty putting on shoes and socks, these limitations were "expected" and "entirely normal" at this point in course of the plaintiff's postoperative recovery. Dr. Kamath thus concluded that, as of March 26, 2020, there was no clinical indication of an underlying reaction to the prosthesis.

Dr. Kamath similarly concluded that it was appropriate for Su and HSS staff again to have assessed the plaintiff via a telehealth meeting on April 8, 2020, that the plaintiff reported at that conference that he had been experiencing no significant pain or limitations with daily activities, was able to walk independently for two miles, and presented with an improved range of motion. Su's chart further reflected that the plaintiff then reported that he had engaged in physical therapy and bicycling between the first and second postoperative conferences. According to Dr. Kamath, the plaintiff presented no signs of infection, fever, chills, night sweats, or incisional issues at the second postoperative conference, while Su examined the plaintiff's gait and incision at this visit, and characterized them as "well healed." Dr. Kamath further asserted that Su also reviewed postoperative x-rays taken on April 3, 2020, and had concluded that the imaging did not depict any complications. Dr. Kamath thus determined that there were indeed no complications, that all of the plaintiff's reported discomfort at the April 8, 2020 visit was "consistent with the typical post-operative course," and that it therefore was appropriate for Su to instruct the plaintiff to return for a follow-up conference or visit in three months, or sooner if the plaintiff experienced any new or concerning symptoms.

Dr. Kamath further concluded that there was no indication that the plaintiff had experienced a metallurgic reaction at any time between the April 8, 2020 postoperative conference and the August 31, 2020 postoperative visit. According to Dr. Kamath, at this later visit, the plaintiff reported an ability to walk unlimited distances and ride a bicycle. He asserted that Su conducted an appropriate physical examination at that time, and that Su wrote in the

plaintiff's chart that the incision was well healed and no presence of tenderness over the greater trochanter, and that the plaintiff manifested appropriate postoperative range of motion, full strength, and stability in the joint. Although Dr. Kamath conceded that, at the August 31, 2020 visit, the plaintiff had reported some pain in the hip flexor region, as well as aches and groin pain that had been exacerbated by leg lifts and stiffness, x-rays taken on August 25, 2020 did not depict any postoperative complications. He thus concluded that the plaintiff's complaints "continued to be consistent with a normal post-operative course."

Nonetheless, Dr. Kamath concluded that, when the plaintiff finally returned to see Su on April 7, 2021, the plaintiff's clinical picture in fact "was different from his prior presentations." According to Dr. Kamath's reading of Su's chart, stretching no longer alleviated the plaintiff's pain, and the plaintiff manifested decreased range of motion on his right side. Inasmuch as Dr. Kamath asserted that it takes patients approximately one year to heal from orthopedic surgery, including hip resurfacing, he conceded that the plaintiff's continued complaints of pain 13 months after the subject procedure were no longer consistent with the expected healing process. Consequently, he concluded that it was entirely appropriate at this visit for Su to begin a workup to rule out any underlying condition, and that it was entirely appropriate that Su had not commenced such a work up at an earlier time. In this respect, Dr. Kamath noted that the plaintiff's wife first reported a change in her husband's symptomology in February 2021, at which time he evinced a newly developed cough, low iron levels, night sweats, worsening pain, and swelling. He opined that the timing of the onset of symptoms "further supports the notion that there was a significant change in Mr. Petrillo's presentation long after his August 31, 2020 office visit," which was only several weeks before his April 7, 2021 visit.

Dr. Kamath explained that the laboratory blood analysis that Su ordered on April 7, 2021 ruled out elevated metal levels, and concluded that Su "quickly and appropriately then ordered an MRI to rule out an adductor tear and hernia." According to Dr. Kamath, an April 22, 2021 MRI depicted the presence of "rice bodies," a finding that he opined was indicative of an

inflammatory reaction. The plaintiff's chart indicated that Su explained the MRI results to the plaintiff that same day, which Dr. Kamath concluded was "more than appropriate." Dr. Kamath expressly agreed with Su's contemporaneous impression that the plaintiff's suspected allergic reaction was "unusual," and could not have been predicted prior to the March 6, 2020 surgery. Nonetheless, he concluded that, once the inflammation in the joint was timely and appropriately detected, Su timely and appropriately recommended revision surgery, consisting of a total hip replacement, based on the plaintiff's reported postoperative complaints, relevant clinical findings, and the results of the MRI imaging. According to Dr. Kamath, on April 30, 2021, internist Jennie Yu, M.D., performed a preoperative surgical clearance examination of the plaintiff, and cleared the latter for surgery. He concluded that the applicable standard of care did not require any additional medical clearances prior to the total hip replacement procedure that Su performed on May 3, 2021.

Dr. Kamath opined that Su timely and appropriately performed the May 3, 2021 total hip replacement procedure, concluding that the surgical technique that Su employed was entirely within the standard of care. He explained that operative report referable to this procedure recited that Su had noted a possible infection intraoperatively, that intraoperative cultures confirmed the presence of infection, and that Su ordered a postoperative infectious disease consultation to determine the best antibiotic regimen. In connection with the course of treatment that Su rendered to the plaintiff, Dr. Kamath explained that, 13 months after the hip resurfacing procedure, Su appropriately assessed the plaintiff for complications, correctly diagnosed the plaintiff with an "unforeseeable" reaction to the hip resurfacing implant metal, and properly referred the plaintiff for surgery, which the plaintiff underwent a mere two weeks later.

Dr. Kamath concluded that there was no indication that the medical records maintained by Su or HSS were in any way inaccurate, as the plaintiff's complaints and medical histories were consistently documented. Moreover, he concluded that Su and HSS staff conducted, performed, and made proper physical examinations, assessments, and recommendations.

In connection with the plaintiff's medical malpractice cause of action, Dr. Kamath ultimately concluded that infection, the presence of metal debris, metal hypersensitivity, and the need for further surgery occur in the absence of negligence, and that there was no evidence of any negligence on the part of the defendants in their treatment of the plaintiff.

With respect to the plaintiff's cause of action alleging that the defendants failed to obtain his fully informed consent to the hip resurfacing procedure, Dr. Kamath concluded that Su appropriately discussed the risks of the March 6, 2020 hip resurfacing with the plaintiff prior to performing the procedure. He asserted that Su first made the plaintiff aware of the risks and benefits of surgery at his initial visit on August 29, 2018, but that the plaintiff opted to exhaust conservative treatment options at that time. Dr. Kamath averred that, when the plaintiff returned to see Su on November 18, 2019, his complaints persisted despite having tried various conservative treatments. When Su then again recommended hip resurfacing, Dr. Kamath conclude that Su discussed the risks and benefits of the procedure, and had explained that the procedure would involve metal-on-metal parts. According to Dr. Kamath, Su thus explained the risks of metal debris production and reaction to the metal material with the plaintiff, as well as issues involving metal wear, the increased potential for elevated metal ion levels after metal-on-metal hip resurfacing procedures, and metal hypersensitivity reactions that could potentially cause the need for further surgery. Dr. Kamath explained that the applicable standard of care did not require a separate consent form for the employment of prosthetic devices containing cobalt in metal-on-metal hip arthroplasty. He asserted that, in addition, Su also discussed the general risks of any orthopedic surgery, including, but not limited to, infection, blood clot, implant failure, femoral neck fracture, nerve palsy, and dislocation, and that, at the time of this discussion, Su and his staff answered all of the plaintiff's questions. Moreover, Dr. Kamath stated that, on the morning of the hip resurfacing procedure, the risks of the surgery were once again discussed, including infection, bleeding, damage to neurovascular structures and the potential for continued pain, continued weakness, worsening pain and weakness, stiffness,

weakened stability, limb length discrepancy, fracture, infection requiring the resection arthroplasty, the need for revision surgery and deep-vein thrombosis prophylaxis in the future, the risks of anesthetic and pulmonary complications, and death. He asserted that the plaintiff, after being apprised on August 28, 2018, November 18, 2019, and March 6, 2020 of these potential risks, agreed to proceed with the surgery on March 6, 2020, noting that the plaintiff signed a consent form for a right hip resurfacing that included language describing the potential for a total hip replacement.

With respect to alternatives to the hip resurfacing procedure employing a cobalt-chrome alloy prosthetic, Dr. Kamath opined that the standard of care did not require an orthopedic surgeon to discuss, prior to surgery, the alternative implant models available on the market. Hence, he concluded that there was no merit any claims that Su deviated from the standard of care in failing to discuss the use of cobalt hardware as opposed to another metal alloy, describing the choice of metal as a matter of the surgeon's personal preference. In addition, Dr. Kamath opined that Su obtained the plaintiff's fully informed consent to the May 3, 2021 total hip replacement procedure, as Dr. Yu, in clearing the plaintiff for the procedure, informed him of the risks of the procedure, including infection, deep vein thrombosis, fluid overload, and coronary ischemia, while, on the morning of surgery, Su himself also discussed the possibility of infection with the plaintiff, as well as the need to perform a one-stage removal/implantation in the event that an infection was observed intraoperatively. Dr. Kamath additionally noted that the plaintiff executed a consent form in connection with the replacement surgery, thus memorializing the plaintiff's understanding of the reasonable risks of, and alternatives to, replacement surgery.

Dr. Kamath rejected the plaintiff's contention that HSS negligently hired, trained, supervised, retained, or credentialed its medical staff, including Su. In this respect, he explained that Su was and is clearly a well-trained, well-credentialed, and well-experienced orthopedic surgeon during that time that Su treated the plaintiff from 2018 to 2022, noting that Su has been licensed to practice medicine in New York since 1998, and has been board

certified in orthopedic surgery since 2006, while his medical license has never been suspended or revoked. Dr. Kamath further asserted that "the records are clear that defendants appropriately supervised the physician's assistants and other medical staff members" while treating the plaintiff.

Dr. Kamath further concluded that the plaintiff's claimed injuries were not the result of any acts or omissions on the part of Su or HSS, reiterating that there was no credible evidence in the medical records, or otherwise, that the plaintiff's reaction to the metal used during the hip resurfacing, the associated sequelae of the reaction, and the need for a total hip replacement were the result of any deviations from the standard of care. He opined that metal debris production, reaction to metal material, metal wear, increased risk of elevated metal ion levels, metal hypersensitivity, and the need for further surgery are all known risks of metal-on-metal hip arthroplasty that can occur in the absence of any negligence, as was the case here. Dr. Kamath additionally asserted that the limited complaints that the plaintiff made at the March 26, 2020, April 8, 2020, and August 31, 2020 postoperative visits were entirely consistent with typical postoperative pain, and were not caused by anything that Su did or did not do. Moreover, he concluded that the defendants did not cause or contribute to the plaintiff's postoperative infection and the need for antibiotic therapy subsequent to the May 3, 2021 total hip replacement procedure, since infection is a known risk of surgery that can occur in the absence of any negligence, and that Su did not cause or contribute to the plaintiff's pain, loss of range of motion, or loss of ambulatory capacity. In this respect, he noted that, six weeks after the May 3, 2021 total hip replacement procedure, the plaintiff advised Su that he felt much better than he did prior to that surgery, and that he was able to walk two miles independently, while, on physical examination, the plaintiff's range of motion was good, the joint was stable, and he manifested full leg strength. Dr. Kamath further asserted that, by November 17, 2021, the plaintiff was without pain, was walking unlimited distances, was bicycling, and was playing golf, with excellent range of motion and the absence tenderness over the greater trochanter.

The court notes that the defendants initially noticed this motion to be submitted on September 17, 2024. In a stipulation dated September 16, 2024, the defendants agreed to adjourn the return date of the motion until November 8, 2024. Pursuant to a stipulation dated October 25, 2024, and so-ordered November 7, 2024, the return date of the motion was adjourned until January 10, 2025. Pursuant to a stipulation dated and so-ordered January 10, 2025, the return date of the motion was adjourned until February 28, 2025. In an interim order dated March 3, 2025, this court granted the plaintiff's letter application to adjourn the return date of the motion until May 14, 2025. In an affirmation dated May 7, 2025, the plaintiff's attorney attested that he was "actually engaged" on trial up until the deadline for submission of opposition to the motion, and indicated that he would be making a formal application to adjourn the return date of the motion until June 6, 2025. He never submitted such a formal application. On October 16, 2025, the plaintiff's counsel uploaded to the New York State Court Electronic Filing system a further request to adjourn the return date of the motion, this time until November 13, 2025, but he never informed the court, per the court's Part Rules, that he had uploaded the request. Nonetheless, on or about January 5, 2026, this court administratively adjourned the return date of the motion until January 30, 2026, which would have required the plaintiff to submit opposition papers no later than January 23, 2026. The plaintiff did not submit papers by that. Hence, this motion remains unopposed, despite having been adjourned for more than 15 months, and the court sees no reason to delay the determination thereof.

The court concludes that the defendants, with their submissions, established their prima facie entitlement to judgment as a matter of law in connection with all of the plaintiff's claims and causes of action. In other words, they established, prima facie, that the defendants did not depart from good and accepted medical and surgical practice either preoperatively, intraoperatively, or postoperatively in connection with either the hip resurfacing or hip replacement procedures, and that nothing that they did or did not do caused or contributed to the plaintiff's claimed injuries. They further made a prima facie showing that they obtained the

plaintiff's fully informed consent to both the hip resurfacing and hip replacement procedures. Moreover, they demonstrated their prima facie entitlement to judgment as a matter of law in connection with the plaintiff's negligent hiring, training, supervision, retention, and credentialing claim. Since the plaintiff did not oppose the motion, he failed to raise a triable issue of fact in opposition to the defendants' showings, and summary judgment must be awarded to the defendants dismissing the complaint.

Accordingly, it is,

ORDERED that the motion of the defendants Edwin P. Su, M.D., and Hospital For Special Surgery for summary judgment dismissing the complaint is granted, without opposition, and the complaint is dismissed; and it is further,

ORDERED that the Clerk of the court shall enter judgment in favor of the defendants Edwin P. Su, M.D., and Hospital For Special Surgery, and against the plaintiff, dismissing the complaint insofar as asserted against both the defendants Edwin P. Su, M.D., and Hospital For Special Surgery.

This constitutes the Decision and Order of the court.

1/26/2026
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**