

Allakhverdiyeva v Tomasula

2026 NY Slip Op 30472(U)

February 2, 2026

Supreme Court, New York County

Docket Number: Index No. 805240/2019

Judge: Kathy J. King

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

PRESENT: HON. KATHY J. KING **PART** **06**

Justice

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TARGUL ALLAKHVERDIYEVA,

Plaintiff,

INDEX NO. 805240/2019

MOTION DATE 02/20/2025

MOTION SEQ. NO. 003 004

- v -

JOHN TOMASULA, SOUTH NASSAU COMMUNITIES'
HOSPITAL, DANIEL SACOLICK, M.D., MOUNT SINAI
HEALTH SYSTEM, INC., and FRESENIUS KIDNEY CARE,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 112, 113, 117, 119, 120, 122, 123, 124, 125, 126, 127, 128, 129, 139, 141, 143, 145, 148

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 114, 116, 118, 121, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 142, 144, 146, 147, 149

were read on this motion to/for DISMISS.

Upon the foregoing documents, and oral arguments having been heard, Defendant Daniel Sacolick, M.D. ("Dr. Sacolick"), seeks an order, pursuant to CPLR 3212, granting summary judgment in his favor, and dismissing the within action with prejudice (Mot. Seq. 003).

New York Dialysis Services, Inc. d/b/a Fresenius Kidney Care Hempstead s/h/a "Fresenius Kidney Care" ("FKC") also seek an order, pursuant to CPLR 3212, granting summary judgment and dismissal of all claims in Plaintiff's complaint (Mot. Seq. 004).

Plaintiff Targul Allakhverdiyeva ("Plaintiff") opposes both motions, which have been consolidated for purposes of disposition.

BACKGROUND

Plaintiff first consulted with Dr. Sacolick, her primary care physician (“PCP”), on October 2, 2017. Upon physical examination, Dr. Sacolick’s notes indicate that Plaintiff was referred to a non-party Nephrologist based on 2+ clubbing and ankle edema. Thereafter, Plaintiff was referred to South Nassau Communities Hospital (“SNCH”) for IV hydration and hemodialysis (HD) preparation. At SNCH, Plaintiff underwent two vascular procedures by Dr. Tomasula, a vascular surgeon, including the insertion of a tunneled catheter into her right internal jugular vein for temporary dialysis access on April 3, 2018, and thereafter, on April 5, 2018, the construction of a left radiocephalic arteriovenous fistula (“AVF”) in her left arm for administration of HD. On April 6, 2018, Plaintiff was discharged with instructions to begin her HD at FKC.

Plaintiff began outpatient dialysis at FKC on April 10, 2018. Upon presentation, a nurse documented 6/10 burning pain in her left thumb and index finger. Plaintiff alleges that despite repeated complaints to FKC’s medical staff of left arm pain, numbness, weakness, and limited motion extending to her hand and fingers, only pain medication was recommended.

On April 16, 2018, Plaintiff followed up with Dr. Sacolick. Dr. Sacolick documented a “shunt [in her] left arm” and “pain as a result” at the surgical site, however, Plaintiff alleges that Dr. Sacolick was told of the radiating pain, numbness, and weakness and simply recommended painkillers.

On April 24, 2018, Plaintiff saw Dr. Tomasula for a routine post-operative visit, reporting constant left arm pain and limited motion since the AVF creation. Dr. Tomasula testified he had not been informed of these complaints by FKC’s staff. Following angiography confirming diminished radial artery flow, Dr. Tomasula ligated the AVF, believing it was causing ischemia of the distal circulation.

The core of Plaintiff's claim against the Moving Defendants is the negligent delay in the diagnosis and treatment of Plaintiff's related distal ischemia between March 29, 2018, through April 24, 2018. Plaintiff alleges that Dr. Sacolick failed to: appreciate her complaints, perform appropriate physical examinations and testing, properly formulate a differential diagnosis to rule out ischemia, and refer Plaintiff to a specialist. Plaintiff alleges FKC and its staff failed to: appreciate and act upon signs and symptoms (pain, numbness, weakness) and timely and properly communicate with treating providers, and improperly delayed the AVF ligation.

Plaintiff claims that based on the alleged malpractice of the Moving Defendants, she sustained severe injuries, including severe left upper extremity pain; numbness; burning and stabbing pain in her left hand and fingers; inability to make a fist with her left hand; ischemic nerve damage in her distal left upper extremity; and impaired ability to perform her activities of daily living.

On July 30, 2019, Plaintiff commenced the instant action by the filing of a Summons and Complaint, asserting causes of action for medical malpractice, lack of informed consent and negligent granting and renewing of privileges. Issue was joined upon the filing of Verified Answers by Defendant Daniel Sacolick, M.D. and Defendant FKC on August 30, 2019, and on August 15, 2019, respectively.

Dr. Sacolick and FKC now move for summary judgment and an Order dismissing the claims in Plaintiff's complaint.

Plaintiff opposes both motions.¹

¹ While Plaintiff submitted sur-replies for Motions seq. 003 and 004, such papers shall not be considered absent express permission from the Court (22 NYCRR § 202.8-c).

LEGAL STANDARD

A proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by submitting admissible evidence that demonstrates the absence of material issues of fact that would require a trial (*see Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). In a medical malpractice action, a movant must provide evidentiary proof in the form of expert opinions and factual evidence establishing that the defendant complied with accepted standards of medical care and practice, and/or the defendant's conduct was not a proximate cause of plaintiff's alleged injuries (*see Alvarez v Prospect Hospital*, 68 NY2d 325). 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 204, 206 [1st Dept 2010]; *Joyner-Pack v Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]). Furthermore, to satisfy his or her burden on a motion for summary judgment, 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 [2d Dept 2010]; *Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874 [2d Dept 2008]; *Terranova v Finklea*, 45 AD3d 572 [2d Dept 2007]).

Once the proponent makes a prima facie showing, the burden shifts to the Plaintiff to demonstrate, by admissible evidence, the existence of a material issue of fact that requires resolution at trial (*see Zuckerman v City of New York*, 49 NY2d 557, 558-59 [1980]). "[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim; mere

conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*id.* at 562).

“Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury” (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; see *Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

DISCUSSION

In support of his motion, Defendant Dr. Sacolick submits the expert affirmation of Charles L. Bardes, M.D., (“Dr. Bardes”), board-certified in internal medicine, who opines, within a reasonable degree of medical certainty, that Defendant Dr. Sacolick did not depart from the good and accepted standards of medical care applicable to internal medicine physicians in 2018, and that his actions were not a proximate cause of the Plaintiff’s injury.

Specifically, Dr. Bardes opines that Dr. Sacolick met the standard of medical care by performing a thorough physical examination of Plaintiff during the singular office visit at issue, which included an adequate assessment of her recently constructed AVF surgical site and extremities. Dr. Bardes further asserts that pain at the surgical site was entirely expected just eleven days post-procedure, and in the absence of any signs or symptoms of infection or surgical complication, there was no duty for Dr. Sacolick to take additional action. Notably, Dr. Bardes indicates that Plaintiff was being followed by Dr. Tomasula, a vascular surgeon, and that it was appropriate for Dr. Sacolick to defer to the expertise of Dr. Tomasula for management of any post-surgical complaints related to the Plaintiff’s AV fistula procedure consistent with the standard of care, which permits a primary care physician to rely on a specialist’s expertise for the management

of specific conditions. Therefore, Dr. Bardes opines that there is no evidence within the medical records to support the contention that Dr. Sacolick had a duty to assess the course of treatment set and monitored by Dr. Tomasula.

Based on the expert affirmation of Dr. Bardes, the Court finds that Defendant Dr. Sacolick has established his prima facie entitlement to summary judgment as a matter of law (*see Steinberg v Lenox Hill Hosp.*, 148 AD3d 612 [1st Dept 2017]; *Camacho v Pintauro*, 210 AD3d 578 [1st Dept 2022]).

In opposition, the Plaintiff submits an expert affirmation of a physician board-certified in internal medicine and sub-certified in nephrology², who opines, to a reasonable degree of medical certainty, that Dr. Sacolick departed from acceptable medical practice and caused the Plaintiff's injuries.

Specifically, Expert A opines that the 2018 standard of care required a PCP to document patient complaints related to their AVF and/or distal extremity, determine whether those complaints are consistent with possible AVF-related distal ischemia, and if ischemia is suspected, immediately refer the patient to a vascular surgeon who created the AVF, an interventional nephrologist, or the Emergency Department ("ED") for assessment of distal blood flow and treatment that same day.

Plaintiff's expert opines that Dr. Sacolick departed from the 2018 standard of care by failing to: document the specific location/extent of the AVF-related pain or the complaints of distal numbness or motor dysfunction, determine that the Plaintiff's complaints were consistent with possible AVF-related distal ischemia, include that condition within his differential diagnosis, and immediately refer the Plaintiff to Dr. Tomasula, an Interventional Nephrologist, or the ED for

² Plaintiff has redacted the expert's name pursuant to CPLR 3101(d); the expert shall be referred to as Expert A.

assessment and treatment that same day. Expert A opines that Dr. Sacolick's failure to document, appreciate the significance of, and act upon the distal ischemia-related complaints delayed the diagnosis and treatment of the AVF-related distal ischemia by 8 days, from the April 16th visit until the April 24th ligation. According to Expert A, time is critical in diagnosing and treating severe AVF-related distal ischemia. As a result, Expert A opines that had Plaintiff been immediately referred for assessment and treatment that same day, she would not have suffered permanent injury from her prolonged AVF-related distal ischemia. Accordingly, Expert A concludes that Dr. Sacolick's departures were a substantial factor in delaying the diagnosis and treatment, and subsequently, a substantial factor in causing her claimed permanent injuries.

Based on the foregoing, the Court finds that Plaintiff has raised triable issues of fact based on Expert A's affirmation, thus, Dr. Sacolick's motion for summary judgment as to medical malpractice is denied.

In support of the motion of Defendant FKC, it submits the expert affirmation of Alan M. Weinstein, M.D. ("Dr. Weinstein"), a board-certified Internist and Nephrologist, who opines, within a reasonable degree of medical certainty, that all of the medical care provided to Plaintiff by FKC was in accordance with good and accepted standards of medical care and practice. FKC Dr. Weinstein opines that the staff at FKC, specifically Nurse Suarez, properly performed an initial assessment on Plaintiff when she began treatment on April 10, 2018. During that assessment, Dr. Weinstein opines that the complaints made by Plaintiff were not consistent with steal syndrome and, thus, did not require that the staff at FKC escalate care to a hospital or specialist at that time. Dr. Weinstein also opines that there was no indication during dialysis sessions between April 10 through April 21, 2018, that Plaintiff made any complaints that warranted escalation to a hospital or Nephrologist. Dr. Weinstein asserts that the left AVF was never used for hemodialysis at FKC

as it was still maturing; rather, dialysis was conducted safely via the PermaCath. As a result, it is Dr. Weinstein's opinion that FKC's staff did not have to conduct an independent assessment of the left AV fistula. Moreover, records show the PermaCath was in good condition, and, therefore, the AVF was not the focus of the dialysis staff.

Dr. Weinstein opines that FKC's staff did not have to refer Plaintiff to a specialist, like a Vascular Surgeon, as Plaintiff was already followed by a Vascular Surgeon, Dr. Tomasula. Dr. Weinstein further opines that the record show that the staff at FKC recommended Plaintiff to follow-up with Dr. Tomasula.

Regarding causation, Dr. Weinstein opines that nerve damage and/or steal syndrome can occur even in the absence of negligence, as there are inherent risks with AVF placement. Consequently, Dr. Weinstein opines that the acts or omissions of the staff at FKC did not cause and were not a substantial factor in causing Plaintiff's claimed injuries.

Based on the expert affirmation of Dr. Weinstein, the Court finds that Defendant FKC has demonstrated their prima facie entitlement to summary judgment as a matter of law

In opposition, Plaintiff submits the affirmation of Expert A, a board-certified Internist and Nephrologist. Specifically, Expert A opines that FKC's dialysis technicians and nurses failed to properly document and communicate the Plaintiff's severe symptoms during her treatment dates from April 10 to April 21, 2018. Expert A opines that the 2018 standard of care required dialysis staff to document all patient complaints related to their AVF and/or distal extremity, regardless of whether the AVF was being used for dialysis treatment and immediately report those complaints to the Plaintiff Nephrologist. Expert A opines that the initial documented complaint by RN Suarez at FKC on April 10, 2018, of 6/10 burning pain in the left thumb and index finger was a significant sign of distal ischemia, and the nurse's failure

to immediately report this to the Nephrologist was a departure from the standard of care. Expert A further opines that the persistent failure of FKC's staff to document and immediately report her repeated complaints of radiating pain, numbness, and motor weakness on subsequent presentations also constituted departures from the standard of care. Expert A opines that FKC's staff's inaction prevented timely referral to a vascular specialist or the emergency department (ED).

Regarding causation, Expert A opines that FKC's departures were a substantial factor in delaying the diagnosis and treatment of the AVF-related distal ischemia. Expert A asserts that time is critical in treating severe AVF-related ischemia to avoid permanent injury, and that the 14-day delay subjected the Plaintiff's hand and fingers to prolonged ischemia, increasing her risk for permanent damage. Expert A further opines that the Plaintiff's 2018 and 2021 EMG study findings of denervation in her left distal upper extremity, her persistent neurological complaints in her left distal upper extremity, and the resultant limitations on her activities of daily living are all consistent with her having suffered a permanent injury from her prolonged AVF-related distal ischemia.

Based on the foregoing, the Court finds that Plaintiff has raised triable issues of fact based on Expert A's affirmation as to whether FKC departed from the applicable standard of care and proximately caused Plaintiff's injuries through the negligent acts of its employees. The case law is well settled that as a hospital furnishing doctors, staff and facilities for emergency treatment, FKC was under a duty to perform such services and is liable for the negligent performance of those services by the doctors and staff it hired and furnished (*see Klippel v Rubinstein*, 300 AD2d 448 [2d Dept. 2002]; *Rivera v County of Suffolk*, 290 AD2d 430 [2d Dept 2002]; *Mduba v Benedictine Hosp.*, 52 AD2d 450 [3d Dept 1976]).

Given that triable issues of fact exist as to the care and treatment provided by FKC's staff, and whether such treatment proximately caused Plaintiff's alleged injuries, summary judgment dismissing the Plaintiff's claims as to FKC is not warranted. Accordingly, FKC's motion for summary judgment as to the medical malpractice cause of action is denied.

Additionally, as to the branch of Defendant FKC's motion³ seeking to dismiss Plaintiff's claim for lack of informed consent, it is well settled that a defendant moving for summary judgment on a lack of informed consent claim must demonstrate that the Plaintiff was informed of the alternatives to and the reasonably foreseeable risks and benefits of the treatment (*Henry v Bezalel Rehabilitation & Nursing Ctr.*, 2020 NY Slip Op30369(U) [Sup Ct, NY County 2020]; *Koi Hou Chan v Yeung*, 66 AD3d 642, 643 [2d Dept 2009]; *see also Smith v Cattani*, 2 AD3d 259, 260 [1st Dept 2003].

In support of its motion, FKC submits the expert affirmation of Dr. Weinstein, who opines that FKC's record details a discussion with Plaintiff with respect to beginning dialysis treatment, as well as what dialysis would entail. Plaintiff, in opposition, fails to rebut FKC's prima facie showing as to the lack of informed consent, therefore, summary judgment dismissing Plaintiff's lack of informed consent claim is warranted.

The Court dismissal is also warranted as to Plaintiff's cause of action for negligent granting and renewing of privileges. A claim for negligent hiring and supervision may only be made simultaneously with vicarious liability claims when the plaintiff seeks punitive damages from the employer based on alleged gross negligence in the hiring or retention of the employee (*Talavera v*

³ The Court notes that dismissal of Plaintiff's lack of informed consent cause of action as to Dr. Sacolick is warranted as a matter of law. "The right of action to recover for medical, dental or podiatric malpractice based on a lack of informed consent is limited to those cases involving either (a) nonemergency treatment, procedure or surgery, or (b) a diagnostic procedure which involved invasion or disruption of the integrity of the body" (Public Health Law §2805-d; *see Caruso v Wertz*, 2018 NY Slip Op 30524[U] [Sup Ct, NY County 2018].

Arbit, 18 AD3d 738 [2d Dept 2005]). Here, Plaintiff has failed to make a showing of gross negligence on the part of FKC, as to its claim arising from vicarious liability.

Based on the foregoing, it is hereby

ORDERED that Defendant Dr. Sacolick's motion for summary judgment is granted only to the extent of dismissing Plaintiff's lack of informed consent claim as against Daniel Sacolick, M.D., and in all other respects, the motion is denied (Mot. Seq. 003); and it is further

ORDERED that Defendant FKC's motion for summary judgment is granted only to the extent of dismissing Plaintiff's lack of informed consent claim and negligent granting and renewing of privileges claim against New York Dialysis Services, Inc. d/b/a Fresenius Kidney Care Hempstead s/h/a "Fresenius Kidney Care", and in all other respects, the motion is denied (Mot. Seq. 004); and it is further

ORDERED that Defendant FKC shall serve a copy of this order upon Plaintiff, with notice of entry within twenty (20) days of entry of this order; and it is further

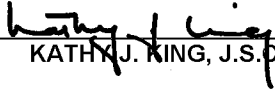
ORDERED that within twenty (20) days of the date of this Order, Defendant FKC shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk's Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the "E-Filing" page on the court's website; and it is further

ORDERED that the Clerk is directed to enter judgment in accordance with this Order; and it is further

ORDERED that the remaining parties shall appear for a virtual settlement/pre-trial conference on October 21, 2026, at 10:00am, after consultation with the Court's Alternative

Dispute Resolution (ADR) department. The ADR Order and specific date, time, and appearance link for the virtual conference shall be set forth in subsequent correspondences by the Court.

This constitutes the Decision and Order of the Court.

2/2/2026		
DATE		KATHY J. KING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE