

**Manwelyan v Sahani**

2026 NY Slip Op 31207(U)

March 25, 2026

Supreme Court, New York County

Docket Number: Index No. 805377/2020

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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Margarita Manwelyan as parent and natural guardian of M. M., an infant, Margarita Manwelyan individually, and Roberto Macareno Torres,

Plaintiffs,

**INDEX NO. 805377/2020**

**MOTION DATE 02/07/2024**

**MOTION SEQ. NO. 001**

- v -

Parita Sahani D.O., Henry James Behar M.D., Ilana Denise Lustig M.D., NYU Langone Health System, Tisch Hospital, NYU School of Medicine, and NYU Langone Cityscape Ob/Gyn,

Defendants.

**DECISION + ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, and oral arguments having been heard, Defendants, Parita Sahani D.O., (“Dr. Sahani”), Henry James Behar M.D., (“Dr. Behar”), Ilana Denise Lustig M.D., (“Dr. Lustig”), NYU Langone Health System, Tisch Hospital, and NYU Grossman School Of Medicine, A Division Of New York University s/h/a NYU School Of Medicine (“NYU School of Medicine”) (collectively “moving Defendants”), move for summary judgment, pursuant to CPLR 3212, dismissing the Plaintiffs’ complaints in their entirety or, in the alternative, granting partial summary judgment dismissing any and all causes of action, parties, or theories, for which Plaintiffs have failed to raise a triable issue of fact or have otherwise abandoned in their opposition.

Plaintiffs oppose the motion.<sup>1</sup>

<sup>1</sup> Plaintiff does not oppose the branch of Defendants’ motion seeking summary judgment and dismissal of all claims against Ilana Denise Lustig, M.D., NYU Langone Health System, and any claims predicated on a lack of informed consent.

### **BACKGROUND**

This action arises from medical care provided to Plaintiff Margarita Manwelyan (“Plaintiff”) and her newborn infant, M.M. (“infant” or “infant-plaintiff”), at NYU Langone Medical Center. Plaintiff underwent a Cesarean section (“C-section”) at NYU. During the procedure, adhesions were lysed, and her premature infant was delivered. Post-operatively, Plaintiff developed urinary issues and abdominal pain, which led to the discovery and repair of a bladder dome hole. The infant, also premature, experienced unrelated complications during his Neonatal Intensive Care Unit (“NICU”) stay.

Plaintiffs commenced this lawsuit by filing a summons and complaint on November 18, 2020. Plaintiffs’ complaint asserts causes of action for medical malpractice, lack of informed consent, vicarious liability, and negligent hiring, supervision, and retention. Additionally, Plaintiff’s spouse, Roberto Macareno Torres, asserts a derivative claim for loss of consortium. In their Verified Bill of Particulars, Plaintiffs further alleges that during the course of a C-section performed by Dr. Sahani with assistance of Dr. Behar Defendants perforated Plaintiff’s bladder, lacerated her bowel, and lacerated M.M.’s left cheek and left forearm during the delivery. Both Drs. Sahani and Dr. Behar are employees of Defendant, NYU School of Medicine. It is further alleged that the Defendants failed to recognize and repair the bladder perforation during the C-section. Instead, the bladder perforation was diagnosed three days later (March 9, 2020) which necessitated an exploratory laparotomy and repair. As it pertains to the infant-plaintiff, M.M. has permanent scars across her forearm and cheek due to the negligently performed C-section.

Defendants joined issue by service of an Answer on January 15, 2021, and now move for summary judgment, arguing that Plaintiffs’ complaint, or alternatively, Plaintiffs’ claims, should be dismissed, since there are no disputed material facts.

## DISCUSSION

### SUMMARY JUDGMENT AS TO MEDICAL MALPRACTICE

A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice, or by establishing that the plaintiff was not injured by such treatment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept 2009]; *McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; *see generally 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 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]).

In support of their motion, Defendants submit the expert affirmations of Joseph Chappelle, M.D. ("Dr. Chappelle"), a board-certified Obstetrician and Gynecologist, and Jonathan M. Vapnek, M.D. ("Dr. Vapnek"), a board-certified Urologist with knowledge and experience in General Surgery, Neurology, and Reconstructive Urology, both of which concur that the care provided to both the Plaintiff and her infant was at all times within the accepted standard of care, and that the treatment was not a proximate cause of Plaintiffs' alleged injuries.

Regarding Plaintiff's labor and delivery, Dr. Chappelle opines that Defendants, particularly Dr. Sahani, demonstrated a full appreciation of the Plaintiff's complete medical history, including her prior pregnancy complications, thereby warranting dismissal of claims alleging a failure to consider her history. He further asserts that prenatal testing, obstetrical imaging, and ultrasounds were appropriately performed and interpreted, with no alleged injuries identifiable through these methods. Dr. Chappelle states that throughout labor, both Plaintiff and the infant were properly monitored, and the labor and delivery were managed within the standard of medical care. The decision to allow Plaintiff to progress in labor was appropriate given their stable condition, allowing sufficient time for betamethasone to take effect. Furthermore, Dr. Chappelle asserts there was no delay in ordering the emergent C-section, considering the delivery's complicated nature, the infant's prematurity, the rapid labor progression, and the ultimate cord prolapse with a high infant position and decelerating heart rate. He credits Dr. Sahani, assisted by Dr. Behar, with saving the infant's life through the timely C-section, affirming Dr. Sahani's surgical technique was proper. Both Dr. Chappelle and Dr. Vapnek further agree that no observable injury was present during the C-section, negating any indication for additional testing or care, and that if a large laceration had been present, it would have been immediately apparent through visible bleeding or urine leakage.

Dr. Chappelle and Dr. Vapnek highlight that post-operative abdominal distention and discomfort, which fluctuated and improved with flatus passage, was consistent with common occurrences after a C-section and likely due to gas. Daily lab tests, including a mildly elevated creatinine level that trended down before bladder repair (indicating it was not indicative of a bladder injury) and a raised white blood cell count (expected after surgery and steroid use), were appropriately ordered and evaluated. Both experts state that the Defendants properly performed a

workup, appreciated Plaintiff's post-operative signs and symptoms, and did not fail to rule out or diagnose a bladder injury.

Further supporting their view, both experts note that the Plaintiff's large volume of voids upon catheterization made a bladder injury less likely at the time, as low urine output is commonly expected. They agree that catheter removal was necessary to assess independent urination, and while her symptoms had more common explanations, there was no reason to suspect a bladder injury. They also concur that allowing the bladder to rest was appropriate, as trouble urinating is common post-C-section, and the intermittent nature of the Plaintiff's bloody urine (only briefly present upon catheter re-insertion) was not typical of a bladder injury. Both experts maintain that before midday on March 9<sup>th</sup>, there was insufficient evidence to indicate a bladder injury, and the Plaintiff's temporary bloody urine, abdominal discomfort, and bloating were properly monitored and treated. They conclude that all necessary and appropriate radiology studies, including timely cystograms and CT scans, were conducted after midday on March 9<sup>th</sup>, with no additional radiological studies required.

As a result, both experts concur that the claimed bladder injury was not a result of the C-section and was not present during the surgery, as a 6cm defect would have been immediately visible. Both Dr. Chappelle and Dr. Vapnek attribute the bladder injury to a post-operative breakdown of the Plaintiff's bladder tissue, agreeing that this was unpredictable and unavoidable. This breakdown stemmed from tissue weakened by prior surgeries and devascularized after necessary adhesion lysis, exacerbated by urine retention. Both experts further emphasize this injury was not caused by any negligence on the Defendants' part, and the surgical repair of the bladder was timely and performed within the applicable standard of care. Dr. Vapnek adds that the

Kenalog injection during the C-section likely helped prevent further wound complications without negatively impacting her condition or prognosis.

Regarding the infant, Dr. Chappelle concludes that the infant received attentive treatment across various specialties, which was well within the standard of care. The claimed “lacerations” were deemed unavoidable and were timely diagnosed and treated by NICU staff with ointment and steri-strips and healed within the infant’s first nine days of life. He clarifies that the two small lacerations were not due to negligence but were a direct result of necessary actions to save the premature infant during a difficult delivery at only 25 weeks gestation, where fetal visualization is challenging, and such small lacerations are unavoidable. Dr. Chappelle asserts that an earlier diagnosis would not have altered the outcome, and there was no need to inspect the infant at delivery or investigate the cause of a minor superficial laceration. He concludes that all proper consultations for the infant were timely and appropriately provided, with no additional consultations required.

Based on the expert affirmations of Dr. Chappelle and Dr. Vapnek, the Court finds that the moving Defendants have satisfied their prima facie burden of showing that the care and treatment rendered was within the standard of care and did not proximately cause any of the injuries alleged by Plaintiff.

Once the defendant establishes prima facie entitlement to judgment as a matter of law, 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 that such departures were a competent producing cause of the plaintiff’s injuries (*see Roques*, 73 AD3d at 207; *Landry v Jakubowitz*, 68 AD3d 728 [2d Dept 2009]; *Luu v Paskowski*, 57 AD3d 856 [2d Dept 2008]).

In opposition, the Plaintiffs submit the expert affirmation of a board-certified Obstetrician and Gynecologist, with experience and knowledge in Gynecologic Surgery.<sup>2</sup> Expert A opines, with a reasonable degree of medical certainty, that Dr. Sahani deviated from accepted standards of medical care during and after the subject C-section. Regarding the surgery itself, Expert A asserts that the standard of care required the surgeons to isolate and protect the fetus by utilizing specific techniques—such as blunt uterine entry or elevating the incision—and that the failure to do so resulted in direct, avoidable scalpel trauma to the infant’s cheek and forearm. Expert A details several critical errors, including the failure to identify multiple lacerations on the infant and the disregard of clear, objective signs and symptoms of a bladder injury that were evident almost immediately after the procedure.

Expert A further opines that a mere visual inspection was insufficient to evaluate the bladder for injury before closing the C-section, especially given the dense adhesions Dr. Sahani observed and had to dissect during the surgery. This oversight, according to Expert A, directly led to Dr. Sahani’s failure to observe and repair a bladder perforation during the C-section. Expert A maintains that the standard of care obligated Dr. Sahani to “backfill” the bladder with indigo carmine, methylene blue dye, or sterile milk to ensure its integrity before closing the surgical site. Expert A concludes that as a direct result of this negligent failure to timely recognize and repair the bladder perforation, Plaintiff continued to spill urine into her peritoneal cavity, necessitating a subsequent exploratory laparotomy and bladder repair. Expert A also contends that Dr. Sahani negligently caused a bowel laceration during the C-section, which also went unrecognized at the time, which resulted in permanent facial and forearm scarring to the infant-plaintiff.

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<sup>2</sup> Plaintiff has redacted the name of their expert pursuant to CPLR 3101(d), who shall hereinafter be referred to as “Expert A.”

The Court finds that the affirmation of Expert A raises triable issues of fact as to whether Defendant Dr. Sahani departed from accepted standards of medical practice and whether such departures were a proximate cause of the alleged injuries; thus, dismissal of Plaintiff's complaint is denied (*see Johnson v St. Barnabas Hosp.*, 52 AD3d 286 [1st Dept 2008], appeal denied 11 NY3d 705 [2008]; *Landau v Rappaport*, 306 AD2d 446 [2d Dept 2003]; *Nabozny v Cappelletti*, 267 AD2d 623 [3d Dept 1999]; *Johnson v Jacobowitz*, 65 AD3d 610 [2d Dept 2009]. It is well-established that "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]).

Since there are triable issues of fact as to Dr. Sahani, an employee of NYU School of Medicine, dismissal of Plaintiff's complaint is precluded as against NYU School of Medicine under the doctrine of respondeat superior (*see Sessa v Peconic Bay Medical Center*, 200 AD3d 1085 [2d Dept 2021]; *Klippel v Rubinstein*, 300 AD2d 448 [2d Dept 2002]; *Rivera v County of Suffolk*, 290 AD2d 430 [2d Dept 2002]).

Conversely, Defendant Tisch Hospital cannot be held vicariously liable for the alleged negligence of physicians who are not in its employ, since Dr. Sahani was employed by NYU School of Medicine (*Hill v St. Claire's Hosp.*, 67 NY2d 72 [1986]; *Argenziano v Romita*, 250 AD2d 384 [1st Dept 1998]).

The Court notes that Expert A's affirmation does not address the specific departures as against Dr. Behar, and therefore, does not raise triable issues of fact as to whether his assistance

in the C-section was properly performed by Dr. Behar. Thus, dismissal of Plaintiff's complaint is dismissed as against Dr. Behar (*see Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Wineerad v New York University Medical Center*, 64 NY2d 851 [1985]; *Burt v Lenox Hill Hospital*, 141 AD2d 378 [1st Dept 1988]). It is well settled that "general allegations of medical malpractice, merely conclusory in nature and unsupported by competent evidence tending to establish the essential elements of the claim, are insufficient to defeat a defendant physician's entitlement to summary judgment" (*see Holbrook v. United Hosp. Medical Ctr.*, 248 AD2d 358 [2d Dept 1998]).

Furthermore, the branch of the motion seeking summary judgment is granted as to Defendants Dr. Lustig and NYU Langone Health System since the record demonstrates their entitlement to judgment as a matter of law, and Plaintiffs do not oppose dismissal against these parties.

As to Plaintiffs' cause of action for loss of consortium, dismissal is precluded since it is derivative of the injured spouse's right to recover damages for any injuries sustained as a result of the Defendants' alleged malpractice (*see Liff v Schildkrout*, 49 NY2d 622 [1980]).

#### **SUMMARY JUDGMENT AS TO LACK OF INFORMED CONSENT**

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]). To establish a claim for lack of informed consent, it is well settled that a Plaintiff requires a showing that a "reasonably prudent person in the patient's position" would not have undergone the procedure had he been fully informed of the risks (*see Public Health Law §2805-d; see also*

*Briggins v Chynn*, 204 AD2d 158 [1st Dept 1994]; *Orphan v Pilnik*, 15 NY3d 907 [2010]; *Thompson v Orner*, 36 AD3d 791 [2d Dept 2007]).

Here, Dr. Chappelle opines that Dr. Sahani properly advised Plaintiff there was a risk of injury to the bladder and surrounding organs, resulting from the C-section. The record shows that notwithstanding the stated risks, Plaintiff testified that she would have accepted such risk of this surgery to save the life of her child. As to the infant Plaintiff, Dr. Chappelle contends that Dr. Sahani was not obligated to advise of the risk of laceration to the infant, since it is uncommon to have this injury. Notably, Dr. Chappelle opined that while it was not necessary to counsel on this risk, no reasonable person would have refused surgery, even if informed of the risk, since this was an emergency procedure. Contrary to Plaintiff's contentions that she was not advised of more conservative options for treatment, Dr. Chappelle opines that there was no "more conservative option" to a C-section or subsequent repair, and no reasonable person would have accepted the risk of fetal demise and/or a permeant hole in the bladder to be managed conservatively.

Furthermore, the lack of informed consent claims against Dr. Behar and the Defendants, Tisch Hospital and NYU School of Medicine, are dismissed as a matter of law. It is well-established that the "person providing the professional treatment or diagnosis" is the one under a duty to obtain informed consent (*see Spano v Bertocci*, 299 AD2d 335, 337 [2d Dept 2002]). The record shows that Dr. Behar was not the person responsible for obtaining informed consent since he was merely assisting Dr. Sahani during the C-section and not the physician ordering or performing it (*id.*; *see also Cirella v Central Gen. Hosp.*, 217 AD2d 644 [2d Dept 1995]).

The Court finds that the moving Defendants have met their burden regarding the claim of lack of informed consent, which Plaintiffs, in opposition, have failed to rebut. Accordingly, Plaintiffs' lack of informed consent claim is hereby dismissed.

**SUMMARY JUDGMENT AS TO NEGLIGENT HIRING,  
SUPERVISION, AND RETENTION**

With regard to the branch of the Defendants' motion regarding negligent hiring and supervision, generally, where an employee is acting within the scope of his or her employment, the employer is liable under the theory of vicarious liability, and the plaintiff may not proceed with a claim to recover damages for negligent hiring, retention, supervision, or training (*see Saretto v Panos*, 120 AD3d 786 (2d Dept 2014); *Quiroz v Zottola*, 96 AD3d 1035 (2d Dept 2012)). A claim for negligent hiring and supervision may only be made simultaneously with claims of vicarious liability when the Plaintiff pleads gross negligence and punitive damages (*Talavera v Arbit*, 18 AD3d 738 [2d Dept 2005]). Here, no such exception applies, as the Plaintiffs' complaint neither pleads gross negligence nor seeks to recover punitive damages, thus, this branch of the moving Defendants' motion is granted.

Accordingly, it is hereby

**ORDERED** that Defendants' motion is granted to the extent of dismissing Plaintiff's lack of informed consent claim and negligent hiring, supervision, and retention causes of actions, and dismissing the complaint as against Defendants Henry Hames Behar, M.D., Ilana Denise Lustig M.D., NYU Langone Health System, Tisch Hospital, and NYU Grossman School Of Medicine, A Division Of New York University s/h/a NYU School Of Medicine; and it is further

**ORDERED** that the Defendants' motion is denied in all other respects; and it is further

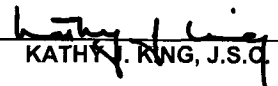
**ORDERED** that the complaint is hereby severed and dismissed as against Defendants Henry Hames Behar, M.D., Ilana Denise Lustig M.D., NYU Langone Health System, and NYU Grossman School of Medicine, A Division Of New York University s/h/a NYU School Of Medicine; and it is further

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

**ORDERED** that the Defendants are to serve a copy of this order upon the Plaintiffs with notice of entry within twenty (20) days of entry of this order; and it is further

**ORDERED** that the parties shall appear for a virtual settlement/pre-trial conference on November 18, 2026, at 11:00am, 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 correspondence by the Court.

This constitutes the Decision and Order of the Court.

<u>3/25/2026</u> DATE					 KATHY J. KING, J.S.C.	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	REFERENCE
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