

Kakushadze v Skin Cancer & Aesthetic Surgery, P.C.

2026 NY Slip Op 31695(U)

April 14, 2026

Supreme Court, Kings County

Docket Number: Index No. 523468/22

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 14 day of April, 2026.

P R E S E N T:

HON. ELLEN M. SPODEK,
Justice.
-----X

ZURAB KAKUSHADZE,
Plaintiff,

-against-

SKIN CANCER & AESTHETIC SURGERY, P.C.,
RN-NP/FH HELEN CHERNOVETS-VERGILIS,
AND MARIYA FUZAYLOVA

Defendants.
-----X

DECISION AND ORDER

Index No. 523468/22

MS # 30-32

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion, Affirmation, and Exhibits Annexed	1324-1359
Affirmation in Opposition and Exhibits Annexed	1360-1402
Reply Affirmation	1403-1408

Defendants MARIYA FUZAYLOVA, SKIN CANCER & AESTHETIC SURGERY P.C., and HELEN CHERNOVETS-VERGILIS each individually moved pursuant to CPLR 3212 for summary judgment, dismissing the action against them. Plaintiff ZURAB KAKUSHADZE opposed.

Plaintiff was treated at Defendant Skin Care & Aesthetic Surgery P.C. (“SCAS”) between a total of ten times between July 9, 2020 and September 23, 2021, and alleged that medical malpractice was committed during five of those visits (June 24, 2021, July 3, 2021, July 10, 2021, August 12, 2021, and September 23, 2021).

In relation to the June 24, 2021 visit, Kakushadze alleges that NP Fuzaylova failed to inform him of the side effects of the anti-fungal medication clotrimazole/betamethasone, which

she prescribed to treat a rash on his left abdomen/rib cage area. Kakushadze claims that the medication caused a “secondary rash” in the same area of the primary rash. With respect to the July 3, 2021 visit, Kakushadze alleges that NP Chernovets misdiagnosed the aforementioned “secondary rash” as being caused by an allergic reaction rather than having been caused by the medication prescribed by NP Fuzaylova nine days prior.

Kakushadze further alleged a claim of malpractice by way of misdiagnosis against NP Chernovets by assessing a skin lesion on his left ring finger as a wart. Kakushadze’s specific claim is that she should not have made the diagnoses considering the pathology of prior skin lesions showed they were not warts, and that is evidence that she must have either not reviewed his prior medical records or she ignored them entirely. He claims that she should have first performed a diagnostic workup, including a shave biopsy and obtaining pathology on the sample prior to making the wart diagnosis and performing a curettage and electrodesiccation procedure. Kakushadze claims that as a result of NP Chernovets’ misdiagnosis and subsequent “highly invasive” procedure, he suffered permanent keloid scarring. He claims that such scarring was not identified as a risk of the procedure that he should have been warned about as his chart contains documentation of a keloid scar on his shoulder that formed after a shave biopsy.

Kakushadze’s complaint then turns to a visit with NP Chernovets on July 10, 2021 which he alleges that she “falsely claimed” his left ring finger was healing well when it did not appear to be healing well and ultimately developed into a keloid. Kakushadze also makes a claim against her recommendation that he see an immunologist or rheumatologist opposed to confirming his belief that the rash was the result of the previously prescribed

clotrimazole/betamethasone. He contends that the rash healed when he ceased using the medication.

Kakushadze's allegations in regards to the August 12, 2021 visit pertain to NP Fuzaylova's prescription of a topical steroid, clobetasol propionate. He contends that she failed to advise him of the side effects of the medication, that she represented that its use would "get rid of" the keloid, and she failed to inform him of the option to treat it with a steroid injection.

Kakushadze alleged further malpractice by NP Fuzaylova took place during his September 23, 2021 visit. There, he claims that she falsely denied that the clobetasol propionate was causing the thinning skin, spider veins, skin dryness, and skin wrinkling on his finger, and she offered him no treatment for the same. His allegation states that these symptoms lasted for nine to fifteen months.

Expert Affirmations in Support

Each Defendant submitted an Expert Affirmation to accompany their motion for summary judgment. The Court has reviewed each and found each affirmant to be an expert qualified to provide such an affirmation. As both NP Fuzaylova and NP Chernovets are employed by SCAS and the affirmation supplied by SCAS discusses the care and treatment rendered by each of them, for the purpose of brevity this Court will rely on the Expert Affirmation provided by SCAS in Motion Sequence 30. This affirmation was written by Dr. Jacob Levitt, who has been Board Certified in Dermatology since 2004 and has assessed thousands of dermatology patients like Kakushadze who present with various non-malignant skin conditions.

Dr. Levitt opined that acute rashes caused by clotrimazole/betamethasone are extremely uncommon, “so much so that it would be unreasonable for a physician to counsel a patient concerning that particular risk when prescribing it.” He continued that it is indeed possible for the drugs to cause a rash, it is typically in conjunction with significant symptoms of itching, burning, tingling, and/or other irritation of the area, which were not reported to be endured by the Kakushadze. In the Kakushadze’s testimony, he claimed he could not recall any such associated symptoms and guess that if he had suffered any, they were mild. Dr. Levitt concluded that based on that testimony, it is unlikely the prescription of the medication caused his rash. *In arguendo*, even if the medication prescribed by NP Fuzaylova caused the Kakushadze’s rash, Dr. Levitt asserted that it could not have been predicted or expected, and he experience minimal, if any, discomfort from it and it certainly caused no lasting harm.

Continuing to the malpractice claim against NP Chernovets alleging misdiagnosis of the secondary rash, Dr. Levitt provided that there is no evidence to suggest that such a misdiagnosis or deviation from the standard of care took place by assessing the rash to be an allergic reaction. It is Dr. Levitt’s assessment that Kakushadze’s presentation was atypical of the type of rash that would be caused by a medicinal side effect.

When considering Kakushadze’s claim against NP Chernovets pertaining to the wart diagnosis and treatment, Dr. Levitt provided that she acted well within the standard of care by using her medical judgment to make her assessment and perform a curettage and electrodesiccation. Dr. Levitt continued by explaining that NP Chernovets did not treat Kakushadze during his prior presentations and she did not see the subject lesions firsthand. The photograph of his left ring finger from July 3, 2021 shows a lesion that was at least larger and

different in morphology than the photographs of his previously treat lesions from July 9, 2020 and June 24, 2021. Dr. Levitt explains that, given the differences between the July 3, 2021 lesion and the prior lesions, NP Chernovets did not deviate from the standard of care by diagnosing and treating it differently than his prior lesions based on her medical judgment at that time.

Further opining on NP Chernovets' method of treatment following her wart diagnosis, Dr. Levitt refutes Kakushadze's claims that a curettage and electrodesiccation procedure is "highly invasive and irreversible" and only performed as a "last resort" when the diagnosis of a wart is "certain" and the wart is persistent. First, Dr. Levitt provided that there is no medical basis to describe the procedure as irreversible as there is no reversible comparison. Additionally, he argues that the procedure is not highly invasive, it is a common treatment for warts and other dermatological lesions, it is not considered a last resort treatment, and can be utilized even where a wart has not been diagnosed by pathology and is "persistent." In Dr. Levitt's opinion, claims alleging the need for a full diagnostic work up including a shave biopsy is unfounded. NP Chernovets indeed performed a diagnostic workup by physically examining Kakushadze, and performing a shave biopsy and obtaining pathology prior to performing a curettage and electrodesiccation is not the standard of care. Dr. Levitt explained further that performing such a procedure instead of utilizing salicylic acid or cryotherapy is not a deviation from the standard of care.

When discussing the alleged injury endured as a result of the curettage and electrodesiccation and the claim that he was not advised of the risks of the "highly invasive" procedure, Dr. Levitt in his professional opinion again finds these claims to be unfounded. Setting aside his prior assessment that the procedure was not "highly invasive," he points to a

July 3, 2021 visit note that when proper written consent for the procedure was attained, risk of scarring was identified and Kakushadze consented. Addressing the allegation even further, Dr. Levitt reasoned that Kakushadze previously developed a keloid scar after his prior shoulder shave biopsy, which is also not considered to be “highly invasive.” Nonetheless, he surmises that Kakushadze argues he should have received shave biopsy, effectively consenting to the possibility of the scar regardless of how it was caused.

Dr. Levitt briefly addressed the claims related to the July 10, 2021 visit. In his assessment, he viewed the claims as misplaced. “Whether a wound is healing well and whether a scar eventually forms are not necessarily related. A wound can heal well and a scar can also form.” He also refutes the claim that NP Chernovets misguided him by recommending he visit an immunologist or rheumatologist. As previously discussed, Kakushadze’s lack of symptoms indicate that the rash was not caused by the prescribed anti-fungal medication but instead pointed to different source, for which NP Chernovets advised he discuss with a different specialist. Additionally, Dr. Levitt points out that the claim that the secondary rash healed after he stopped using the anti-fungal medication is not supported by any objective proof aside from Kakushadze’s word.

When examining Kakushadze’s claims stemming from the August 12, 2021 visit, Dr. Levitt once again refutes the allegations of malpractice. First, he asserts that clobetasol propionate is an appropriate medication to prescribe for keloid scar treatment and that NP Fuzaylova prescribed it at an appropriate dosage (0.05% cream, applied twice a day). Further, offering a patient a steroid injection to treat a keloid scar is not required under the standard of

care. As such, Dr. Levitt concludes that NP Fuzaylova did not deviate from the standard of care in her treatment on August 12, 2021.

Turning to the allegations made pertaining to the September 23, 2021 visit, Dr. Levitt once again denies their veracity. Stating it simply, Dr. Levitt adduces that “there is no evidence to suggest that clobetasol propionate prescribed by NP Fuzaylova caused the claimed symptoms. He also notes that Kakushadze claims the symptoms persisted for nine to fifteen months, however a photograph taken of the subject finger on September 30, 2021, shows no thinning or dry skin, skin wrinkling, or spider veins. Additionally, while such symptoms may be side effects of long-term topical steroid use, they do not resolve within the time frame of a year as claimed by Kakushadze, rather “they are often permanent or only slightly improve and generally occur when the topical steroid is used for a significantly longer period of time than the approximate six weeks that [Kakushadze] used the medication.

Finally, Dr. Levitt addresses the claim that NP Chernovets “fraudulently fabricated” entries in her July 3 and July 10, 2021 visit notes to “cover up her medical malpractice” on the earlier date. Dr. Levitt reconfirmed that it is his professional opinion that she acted within the standard of care during her treatment, and any claim by Kakushadze that his chart documents that a condition persisted for longer than it actually was is irrelevant to his claims of medical malpractice. “Other than duration, [Kakushadze] has made no other claim that his symptoms in relation to his allegations of medical malpractice were not properly documented in his chart.” Ultimately, Dr. Levitt concludes that neither NP Fuzaylova nor NP Chernovets deviated from the standard of care throughout their treatment of Kakushadze.

Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2005]; see also *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). However, a motion for summary judgment will be granted if, upon all the papers and proof submitted, the cause of action or defense is established sufficiently to warrant directing judgment in favor of any party as a matter of law (CPLR 3212 [b]; *Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), and the party opposing the motion for summary judgment fails to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Zuckerman*, 49 NY2d at 562).

“The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2010], quoting *Alvarez*, 68 NY2d at 324; see also *Zuckerman*, 49 NY2d at 562; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [1989]).

The court must evaluate whether the issues of fact alleged by the opposing party are genuine or unsubstantiated (*Gervasio v Di Napoli*, 134 AD2d 235, 236 [1987]; *Assing v United Rubber Supply Co.*, 126 AD2d 590 [1987]; *Columbus Trust Co. v Campolo*, 110 AD2d 616 [1985], *affd* 66 NY2d 701 [1985]). Mere conclusory statements, expressions of hope, or unsubstantiated allegations are insufficient to defeat a motion for summary judgment (*Gilbert Frank Corp. v Federal Ins. Co.*, 70 NY2d 966, 967 [1988]; *Spodek v Park Prop. Dev. Assoc.*, 263 AD2d 478 [1999]). “[A]verments merely stating conclusions, of fact or of law, are insufficient to defeat summary judgment” (*Banco Popular N. Am. v Victory Taxi Mgt.*, 1 NY3d 381, 383-384 [2004], quoting *Mallad Constr. Corp. v County Fed. Sav. & Loan Assn.*, 32 NY2d 285, 290 [1973]). If there is no genuine issue of fact, the case should be summarily determined (*Andre*, 35 NY2d at 364).

Here, the Court finds that Defendants met their burden in making a prima facie showing of an entitlement to judgment. The burden shifts to the Plaintiff to successfully produce evidence in an admissible form establishing that material issues of fact exist. Here, Plaintiff merely provided a self-penned affirmation refuting the conclusions drawn by Defendants’ expert affirmants. In a medical malpractice action, a self-serving affirmation produced by a professionally unqualified party simply does not meet the requisite standard for evidence in admissible form. As Plaintiff has not provided admissible evidence in opposition to Defendants’ prima facie showing of an entitlement to judgment, this Court must grant each motion for summary judgment.

Accordingly, it is

ORDERED that in Motion Sequences 30, 31, and 32, Defendants' motions for summary judgment are granted in their entirety; and it is further

ORDERED that this action is dismissed with prejudice against each named defendant; and it is further

ORDERED that the clerk is directed to enter judgment in favor of defendants and against plaintiff; and it is further

ORDERED that counsels for each defendant is directed to electronically serve a copy of this Decision, Order, and Judgment with notice of entry on Plaintiff's counsel and to electronically file an affidavit of said service with the Kings County Clerk.

This Constitutes a decision and order of the court.

ENTER,



Hon. Ellen M. Spodek

HON. ELLEN M. SPODEK

KINGS COUNTY CLERK
FILED
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