

Conetta v Katsa

2026 NY Slip Op 32028(U)

May 11, 2026

Supreme Court, Kings County

Docket Number: Index No. 527447/2021

Judge: Consuelo Mallafré Melendez

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**At an IAS Term, Part 63 of the
Supreme Court of the State of NY,
held in and for the County of Kings,
at the Courthouse, at 360 Adams
Street, Brooklyn, New York, on the
11th day of May 2026.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
JOSEPH CONETTA and GALE CONETTA,

Plaintiffs,

-against-

IOANNA KATSA, ALVARO DOMINGUEZ, SPYROS P.
KOKOLIS, EDRIS Z. ALDERWISH, NIRAV C. PATEL,
CARDIOLOGY CONSULTANTS OF BAY RIDGE, P.C.,
COMPLETE CARDIOVASCULAR CARE, P.C.,
NORTHWELL HEALTH PHYSICIAN PARTNERS, INC.,
LENOX HILL HOSPITAL, and NORTHWELL HEALTH,
INC.,

Defendants.

-----X
HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

DECISION & ORDER

Index No. 527447/2021
Mo. Seq. 1, 2, 3 & 4

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

- NYSCEF #s: Seq 1: 73–91
- Seq 2: 92–109, 146–149, 159
- Seq 3: 113–117, 150–153, 158
- Seq 4: 119–143, 154–157, 160

Defendants Spyros P. Kokolis, M.D., and Complete Cardiovascular Care, P.C. move for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiffs’ Complaint as against them (Seq. No. 1).

Defendant Edris Z. Alderwish, M.D., separately moves for an Order, pursuant to CPLR 3212, granting summary judgment in his favor, dismissing Plaintiffs’ Complaint against him with prejudice, and removing him from the caption of this action (Seq. No. 2).

Defendants Alvaro Dominguez, M.D., and Cardiology Consultants of Bay Ridge, P.C. (“Cardiology Consultants”) separately move for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiffs’ Complaint against them with prejudice, and granting partial summary judgment and dismissing any and all causes of actions, parties, or theories that ought to be dismissed as a matter of law (Seq. No. 3).

Defendants Ioanna Katsa, M.D., Nirav C. Patel, M.D., Northwell Health Physician Partners, Inc., Lenox Hill Hospital (“LHH”), and Northwell Health, Inc. move (Seq. No. 4) for an Order, pursuant to CPLR 3212, granting summary judgment in their favor and dismissing Plaintiffs’ Complaint against them (Seq. No. 4).

Plaintiffs do not oppose the motion of Dr. Kokolis and Complete Cardiovascular Care. To the extent that claims against Complete Cardiovascular Care are against Dr. Kokolis, these claims are dismissed. Accordingly, the summary judgment motion on behalf of Dr. Kokolis and Complete Cardiovascular Care (Seq. No. 1) is **granted** without opposition, and this action is dismissed against Dr. Kokolis and Complete Cardiovascular Care.

As Plaintiffs do not oppose Dr. Katsa’s motion (Seq. No. 4), and the expert submissions support dismissal, the motion as to Dr. Katsa is **granted**.

Plaintiffs allege that Defendants deviated from the standard of care in recommending and performing an unnecessary coronary artery bypass graft (“CABG”) procedure on the patient, Joseph Conetta (“the patient”), proximately causing his injuries, including Guillain-Barré Syndrome (“GBS”), Ogilvie’s Syndrome, irreversible paralysis, and permanent colostomy. Plaintiffs further allege failures in informed consent.

The 75-year-old patient presented to cardiologist Dr. Kokolis on August 17, 2020, having been referred by his primary care physician after an abnormal heartbeat finding. On August 20, 2020, an echocardiogram revealed Stage IA diastolic dysfunction. On August 21, 2020, a stress echocardiogram administered by Dr. Kokolis and interventional cardiologist Dr. Alderwish was terminated early due to dyspnea. A diagnostic cardiac catheterization was thereafter recommended.

On August 27, 2020, a left heart catheterization and coronary angiography were performed by Dr. Alderwish and Dr. Dominguez at LHH. The angiogram findings included 80% proximal and mid left anterior descending artery stenosis, 80% D1 ostial stenosis, 85% proximal RCA stenosis, and 30% distal left main (“LM”) stenosis. The patient subsequently underwent a minimally invasive direct coronary artery bypass (“MIDCAB”), a robotic-assisted procedure, performed by Dr. Patel on August 31, 2020. A subsequent planned RCA atherectomy was cancelled due to post-operative fever and leukocytosis, and the patient was discharged on September 4, 2020. On September 12, 2020, the patient developed bilateral lower extremity numbness and paresthesia along with respiratory distress and was transported to LHH, where he was ultimately diagnosed with GBS. His hospitalization through November 16, 2020, involved multiple additional procedures, including a colectomy, hematoma evacuation, and IVC filter placement.

In evaluating a summary judgment motion in a medical malpractice action, the court considers the “essential elements” of medical malpractice: “(1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury” (*Miller-Albert v EmblemHealth*, 231 AD3d 1147, 1148 [2d Dept 2024] [internal quotation marks and citations omitted]). “Thus, a defendant moving for summary judgment must

make a prima facie showing either that there was no departure from accepted medical practice, or that any departure was not a proximate cause of the patient's injuries. To meet that burden, a defendant must submit in admissible form factual proof, generally consisting of affidavits, deposition testimony and medical records, to rebut the claim of malpractice" (*Id.*). "If the defendant makes such a showing, the burden shifts to the plaintiff to raise a triable issue of fact as to those elements on which the defendant met its prima facie burden of proof" (*Delia v Wieder*, 236 AD3d 857, 858 [2d Dept 2025]). "Generally, summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions" (*Garcia v Hollander*, 241 AD3d 651, 653 [2d Dept 2025] [internal quotation marks and citations omitted].) However, "expert opinions that are conclusory, speculative, or unsupported by the record are insufficient to raise triable issues of fact" (*Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 898-899 [2d Dept 2023]).

In support of the motion on behalf of Dr. Alderwish (Seq. No. 2), the movant submits an expert affirmation from Mark Greenberg, M.D., a licensed physician board certified in internal medicine, interventional cardiology, and cardiovascular disease.

With respect to the standard of care, Dr. Greenberg opines that all treatment provided by Dr. Alderwish comported with good and accepted medical practice at all relevant times. Dr. Greenberg characterizes Dr. Alderwish's role as narrowly limited to performing or assisting in the diagnostic catheterization alongside Dr. Dominguez. Dr. Greenberg opines that the reading of angiography reports is somewhat subjective, and that Dr. Alderwish's interpretation noting 80% stenosis rather than 70% as Plaintiffs assert is a "judgment call allowed under the standard of care." Dr. Greenberg opines that the catheterization was fully indicated, which reflected high risk for proximal left anterior descending artery disease, combined with CCS Anginal Class IV

symptoms and multiple cardiovascular risk factors. Further, the expert opines that it is within the standard of care for the heart surgeon, not the cardiologist conducting the catheterization, to determine whether heart surgery is appropriate. Dr. Greenberg opines that Dr. Alderwish, as the interventional cardiologist, comported with the standard of care by allowing Dr. Patel, the surgeon, to recommend the bypass surgery.

Regarding proximate cause, Dr. Greenberg additionally opines that even if Dr. Alderwish had characterized the left anterior descending artery stenosis as 70% rather than 80%, this would not have altered the patient's treatment course, as both percentages indicate severe disease requiring intervention. Dr. Greenberg opines that Dr. Patel independently reviewed the catheterization films and the patient's history before deciding on surgery, such that Dr. Alderwish's evaluation did not control the treatment decision. Based on the record, Dr. Greenberg opines that Dr. Alderwish did not participate in, recommend, or decide upon the bypass surgery. Dr. Greenberg ultimately opines that there was no link between Dr. Alderwish's acts or omissions and the patient's claimed injuries, including GBS.

Regarding informed consent, Dr. Greenberg opines that Dr. Alderwish bore no responsibility for obtaining informed consent for the bypass surgery itself, as that rested with Dr. Patel as the cardiothoracic surgeon performing the procedure.

Based on these submissions, Dr. Alderwish has established prima facie entitlement as to summary judgment as to medical malpractice and informed consent through expert opinion that his care and treatment comported with good and accepted medical practice, and that his alleged acts or omissions were not a proximate cause of the patient's injuries. The burden therefore shifts to Plaintiffs to raise a triable issue of fact.

In opposition, Plaintiffs submit an expert affirmation from a licensed physician [name of expert redacted], board certified in interventional cardiology. Plaintiffs presented a signed, unredacted copy of the affirmation to the Court for *in camera* inspection.

Plaintiffs' expert opines that Dr. Alderwish departed from accepted medical practice in multiple respects. Plaintiffs' expert opines that the standard of care for recommending a CABG procedure is: stenosis of 50% or greater in the left main coronary artery; severe three-vessel coronary artery disease; severe left ventricular dysfunction; and diabetes mellitus. Plaintiffs' expert further opines that the patient's left main distal stenosis was only 30%, well below the requisite threshold. Plaintiffs' expert further opines, based upon review of the catheterization films, that the left anterior descending artery stenosis was at most 50-60%, not 80% as Defendants claimed, reflecting a misinterpretation of the results that served as a main consideration to proceed with the surgery. In addition, Plaintiffs' expert notes that the patient had normal left ventricular function and no diabetes. Even Dr. Dominguez, Plaintiffs' expert states, conceded at deposition that the patient did not meet any of these criteria of the standard of care.

Plaintiffs' expert states that Dr. Alderwish also departed from the standard of care because the surgery was recommended despite the patient feeling completely asymptomatic prior to the catheterization. In support, Plaintiffs' expert points to the patient's PCP's records from August 14, 2020, reflecting that the patient reported feeling well with no chest pain, pressure, or palpitations; the patient's own deposition testimony and affidavit denying any angina symptoms; and that the patient allegedly swam 30 laps the day before the catheterization without any cardiac symptoms. Plaintiffs' expert opines that this history, had it been requested, would have been significant in evaluating the appropriateness of surgical intervention.

Plaintiffs' expert opines that these departures, misreading the catheterization, failing to elicit and document an adequate patient history, and failing to convene or advocate for a multidisciplinary heart team meeting before a CABG recommendation was made, constitute departures from the standard of care.

With respect to proximate cause, Plaintiffs' expert opines that Dr. Alderwish's alleged misinterpretation of the angiogram contributed to a recommendation for the surgical bypass. Plaintiffs' expert further opines that Dr. Alderwish's placement of a referral call to Dr. Patel one minute after completing the angiogram while the patient was still in the recovery room demonstrates that Dr. Alderwish played an active role in directing the patient towards surgical intervention, which he states was a cause of the patient's injuries. Plaintiffs' expert also opines that by recommending or facilitating an unnecessary surgery, Dr. Alderwish exposed the patient to precisely the risks that materialized and thus a cause of the patient's injuries.

As to the lack of informed consent claim, Plaintiffs' expert opines that the informed consent obtained for the bypass surgery was inadequate. The expert states that none of the treating physicians, including Dr. Alderwish, informed the patient of conservative, non-surgical management alternatives, and that the patient stated in his affidavit and at deposition that had such alternatives been offered, he would have elected conservative treatment.

Upon consideration of the submissions, the Court notes that the parties' expert opinions based on the medical records are in direct conflict in several respects (*McHale v Sweet*, 217 AD3d 666, 668 [2023]). The parties offer directly competing opinions on whether the angiogram was properly interpreted and whether differing results would have led to a different treatment recommendation. Dr. Greenberg opines that even with a lower degree of stenosis, the patient's results were significant enough to proceed with surgery. However, Plaintiffs' expert opines that

this alleged misinterpretation of the results was the catalyst for unnecessary surgery. These discrepancies demonstrate issues of fact regarding the degree of stenosis, what the standard of care was for the patient's actual degree of stenosis, and whether there were any appropriate alternatives to the bypass surgery.

The parties are also in conflict about whether recommending surgery was a joint decision. Plaintiffs argue that Dr. Patel stated in his deposition that the surgical decision was a joint one, and that the hospital records indicate that Dr. Alderwish called Dr. Patel one minute after completing the catheterization and before the patient had left the recovery room. In contrast, Dr. Greenberg argues that Dr. Patel performed his own review of the angiogram results and that Dr. Alderwish's involvement with the patient ended with the angiogram but does not address the deposition testimony or the almost contemporaneous communication between these defendants.

Regarding any prior symptoms the patient experienced, Plaintiff's expert opines that the physicians did not adequately question the patient to discover that he had not suffered any symptoms, as demonstrated by notes from his PCP appointment and that he allegedly swam 30 laps the previous night. Dr. Alderwish's expert, in contrast, opines that the patient had experienced coronary symptoms. Resolution by a jury of these questions of fact is required to determine whether the movants comported with the standard of care.

Regarding proximate cause, a plaintiff in a medical malpractice action must ultimately "present sufficient medical evidence from which a reasonable person might conclude that it was more probable than not that the defendant's departure was a substantial factor in causing the plaintiff's injury" (*Starre v Dean*, 229 AD3d 728 [2d Dept 2024]). Here, the experts' opinions conflict as to causation. Their opinions differ as to whether the alleged departures from the standard of care: the interpretation of the catheterization results, the decision to proceed with a

bypass operation, and the alleged failure to properly consider the patient's symptoms proximately contributed to proceeding with bypass surgery and caused the injuries claimed, including GBS, Ogilvie's Syndrome, irreversible paralysis, and irreversible bowel dysfunction.

As to the lack of informed consent claim, a physician has no duty to obtain a patient's informed consent for a surgery he or she is not involved with (*Macancela v Wyckoff Hgts. Med. Ctr.*, 176 AD3d 795, 798 [2d Dept 2024]). Here, Dr. Alderwish did not perform the bypass surgery, and Plaintiffs' expert does not raise an issue of fact regarding Dr. Alderwish performing the surgery. Therefore, the informed consent claim is dismissed as to Dr. Alderwish.

In sum, Plaintiffs' expert opinion raises issues of fact regarding the alleged departures from the standard of care and proximate cause. Accordingly, Dr. Alderwish's motion (Seq. No. 2) for summary judgment is **granted only to the extent** of dismissing the lack of informed consent claim.

Next, in support of Dr. Dominguez and Cardiology Consultants of Bay Ridge's motion for summary judgment (Seq. No. 3), the movants submit an expert affirmation from Louai Razzouk, M.D., a licensed physician board certified in interventional cardiology, vascular interpretation, cardiovascular disease, nuclear cardiology, echocardiography, and internal medicine.

With respect to the standard of care, Dr. Razzouk opines that the care and treatment by Dr. Dominguez was within the standard of care at all times. Dr. Razzouk states Dr. Dominguez's role as limited to performing the catheterization and that the decision to proceed with the MIDCAB and percutaneous coronary intervention ("PCI") hybrid approach was made by Dr.

Patel as the cardiothoracic surgeon.¹ Dr. Razzouk opines that the August 27, 2020, catheterization was properly indicated. Dr. Razzouk independently reviewed the catheterization imaging and affirmed Dr. Dominguez's findings, including 80% proximal and mid left anterior descending artery stenosis, 80% stenosis in the first diagonal artery, 85% proximal RCA stenosis, and 30% distal left main coronary artery stenosis. Further, Dr. Razzouk opines that the patient's medical history, including the abnormal stress test, chest pain and pressure, history of bigeminy, and obesity, properly indicated an evaluation for CAD. Dr. Razzouk additionally opines that even if Dr. Dominguez had contributed to the decision to proceed with the surgery, which he did not, the patient's hybrid procedure as performed was within the standard of care.

With respect to proximate cause, Dr. Razzouk opines that even if the left anterior descending artery stenosis were assessed at 70% rather than 80%, a cardiothoracic surgery consultation was still required given the substantial risk of myocardial infarction, stroke, blood clots, death, and the heightened risk of stent thrombosis and restenosis. Further, Dr. Razzouk opines that it was appropriate for Dr. Dominguez to refer the patient to Dr. Patel for a consultation, but ultimately Dr. Dominguez was not responsible for deciding whether the patient would undergo surgery. Dr. Razzouk cites Dr. Dominguez's testimony in stating that Dr. Patel decided to perform the surgery.

Regarding informed consent, Dr. Razzouk opines that the surgeon performing the MIDCAB would be responsible for obtaining the informed consent for the procedure, which in this case was Dr. Patel.

¹ PCI is a minimally invasive procedure, such as stenting, to open blocked or narrowed coronary arteries.

Based on these submissions, Dr. Dominguez and Cardiology Consultants of Bay Ridge have established prima facie entitlement as to summary judgment as to medical malpractice and informed consent. The burden shifts to Plaintiffs to demonstrate a genuine issue of fact.

In opposition, Plaintiffs submit the same affirmation from the redacted expert in Dr. Alderwish's motion sequence. Plaintiffs' expert directs a substantially similar analysis to the departures alleged against Dr. Dominguez as to those alleged against Dr. Alderwish.

With respect to the standard of care, Plaintiffs' expert opines that Dr. Dominguez departed from accepted practice by recommending surgery when none of the criteria for surgical revascularization were met, by ignoring the absence of documented angina symptoms, by failing to independently elicit and document the patient's symptom history before the catheterization, by failing to advocate for a multidisciplinary heart team meeting before a CABG recommendation was made, and by failing to offer or discuss conservative alternatives with the patient.

Plaintiffs' expert opines that the catheterization results were misinterpreted, that the left anterior descending artery stenosis was at most 50-60% and that the RCA had only an intermediate lesion warranting further investigation, not surgery, and that this misreading formed the factual basis on which the CABG recommendation was constructed. In addition, Plaintiffs' expert notes that Dr. Dominguez himself testified at deposition that the patient had no severe three-vessel CAD, no severe LV dysfunction, and no diabetes, and that the 30% left main coronary artery stenosis was not severe, effectively conceding that none of the four criteria were satisfied.

Plaintiffs' expert notes that Dr. Dominguez's own pre-procedure notes and procedure report did not reflect that he inquired about the patient's angina symptoms or shortness of breath,

and that Dr. Dominguez testified at deposition that failure to do so would constitute a departure from the standard of care. Plaintiffs' expert opines Dr. Dominguez similarly failed to document the patient's swim the day before the procedure, a fact that Dr. Dominguez himself acknowledged at deposition would have been significant and should have been recorded.

With respect to proximate cause, Plaintiffs' expert opines that by participating in the recommendation that directed the patient toward an unnecessary CABG, Dr. Dominguez substantially contributed to the patient's exposure to GBS, Ogilvie's Syndrome, and other ailments. Plaintiffs' expert opines that the phone call placed by Dr. Alderwish to Dr. Patel immediately after the completion of the angiogram supports the conclusion that the decision to proceed with surgery reflected a joint determination among the interventional cardiology team, including Dr. Dominguez, and not a fully independent judgment by Dr. Patel.

In addition, Plaintiffs' expert opines that the informed consent for the catheterization was inadequate. The expert refers to the patient's affidavit where he stated that had conservative alternatives been offered, he would have chosen them without hesitation, and Plaintiffs' expert opines that a reasonable patient in the patient's position would have elected conservative management.

Similar to the discussion in reference to Dr. Alderwish's motion, parties' experts offer opposing opinions of the core questions, including whether the interpretation of the catheterization results were correct and whether different results would have resulted in a different treatment outcome. Further, the experts dispute whether Dr. Dominguez's role was truly limited to the catheterization or extended to recommend the surgery. Defendants argue that as the surgeon, Dr. Patel independently reviewed the catheterization results and made an independent judgment regarding the surgery and that Dr. Dominguez merely recommended a consultation.

However, Plaintiffs' expert opines that the CABG decision was a joint one that included Dr. Dominguez. The experts further dispute whether the physicians properly investigated whether the patient had suffered any symptoms prior to making the surgical recommendation. These opposing views based on the submissions in evidence illustrate that factual questions remain as to the proper interpretation of the catheterization results, how the results impacted the decision to proceed with surgery, and whether Dr. Dominguez was involved with the decision to proceed with the bypass surgery.

As previously discussed in Dr. Alderwish's sequence, the experts here have opposing opinions regarding whether the alleged departures from the standard of care proximately caused the patient's injuries. The experts contest that the interpretation of the angiogram, the decision to move forward with the surgery, and the alleged failure of Dr. Dominguez to properly consider the patient's symptom history caused the patient to undergo the bypass surgery and caused his claimed injuries. These disputes raise genuine issues of fact regarding proximate causation.

With respect to informed consent, Plaintiffs' expert does not raise an issue of fact as to whether Dr. Dominguez performed the bypass surgery. Since Dr. Dominguez did not perform the surgery, the informed consent claim is dismissed as to Dr. Dominguez (*Macancela*, 176 AD3d at 798).

Plaintiffs' expert opinion illustrates that there are issues of fact regarding the alleged departures from the standard of care and proximate cause. Accordingly, the motion for summary judgment as to Dr. Dominguez is **granted only to the extent** of dismissing the claim for lack of informed consent.

Plaintiffs additionally assert that Cardiology Consultants of Bay Ridge, P.C. is vicariously liable for Dr. Dominguez's acts and omissions as an employee rendering treatment on its behalf. "A claim of vicarious liability cannot stand when 'there is no primary liability upon which such a claim of vicarious liability might rest'" (*Wijesinghe v Buena Vida Corp.*, 210 AD3d 824, 826 [2022], quoting *Karaduman v Newsday, Inc.*, 51 NY2d 531 [1980]). As summary judgment is denied as to Dr. Dominguez except for dismissing lack of informed consent, the motion is likewise **denied** as to Cardiology Consultants of Bay Ridge, P.C. (Seq. No. 3).

In support of their motion on behalf of Dr. Katsa, Dr. Patel, Lenox Hill Hospital ("LHH"), Northwell Health Physician Partners, Inc. and Northwell Health, Inc. ("Northwell") (Seq. No. 4), the movants submit an expert affirmation from Eugene Grossi, M.D., a licensed physician board certified in cardiothoracic surgery.

As to Dr. Patel, Dr. Grossi opines that his care comported with the standard of care at all times. With respect to the standard of care, Dr. Grossi opines that the cardiac catheterization was appropriately indicated given the patient's abnormal stress echocardiogram and symptom history, and that the left anterior descending artery stenosis of 80% constituted a clinically significant finding requiring revascularization regardless of whether it is characterized as 70% or 80%. Dr. Grossi opines that CABG is indicated in asymptomatic patients with a high ischemic burden confirmed by objective testing and that symptom presence or absence is not alone determinative of the appropriateness of surgical intervention.

Dr. Grossi further opines that the MIDCAB approach was the preferred option over full sternotomy, offering a smaller incision, avoidance of the heart-lung machine, reduced infection risk, and faster recovery. Dr. Grossi opines that stenting the left anterior descending artery would have posed an unacceptably elevated risk of restenosis and thrombosis given the complex

bifurcated anatomy, making CABG the appropriate treatment for the left coronary system while PCI remained appropriate for the single-vessel RCA disease.

With respect to proximate cause, Dr. Grossi opines that the causal link between the MIDCAB and the patient's GBS is tenuous given the rarity of GBS, its unclear cause, and the existence of multiple alternative causes including infection and vaccination. Dr. Grossi further opines that the patient's later medical issues, such as Ogilvie's Syndrome, bowel perforation, ostomy, and tracheostomy, are connected to GBS and not from any act caused by Defendants.

In reference to a claim for lack of informed consent, "(a) defendant can establish entitlement to summary judgment by demonstrating that the plaintiff signed a detailed consent form after being apprised of alternatives and foreseeable risks" (*Pirri-Logan v Pearl*, 192 AD3d 1149 [2d Dept 2021] [internal citations omitted]). Dr. Grossi opines that informed consent for the MIDCAB was properly obtained: the patient signed the consent form, confirmed his signature at deposition, and Dr. Patel discussed risks including death, stroke, bleeding, and infection. Dr. Grossi also opines that Dr. Patel explained the benefits and alternatives to surgery, such as stent placement and medical management. Dr. Grossi opines that GBS is an extremely rare post-surgical issue and so uncommon that the standard of care does not require surgeons to specifically identify it in pre-operative consent discussions.

Based on these submissions, Dr. Patel has established prima facie entitlement as to summary judgment as to medical malpractice and informed consent through expert opinion that his care comported with good and accepted medical practice, and that his alleged acts or omissions were not a proximate cause of the patient's injuries. The burden shifts to Plaintiffs to raise a triable issue of fact.

In opposition, Plaintiffs submit the same interventional cardiologist expert opinion as was submitted for Dr. Alderwish and Dr. Dominguez's sequences. With respect to the standard of care, Plaintiffs' expert takes issue with the Dr. Grossi's characterization of the left anterior descending artery lesion as a "widow maker" requiring immediate surgical intervention, noting that even an 80% left anterior descending artery stenosis in an asymptomatic patient with normal LV function and no multi-vessel disease meeting guideline criteria does not, without more, mandate CABG over conservative management or PCI. Plaintiffs' expert opines that PCI represented a clinically viable and guideline-supported alternative to CABG that was never presented to the patient.

Further, Plaintiffs' expert opines that Dr. Patel departed from accepted practice by performing the MIDCAB on a patient who was asymptomatic and who met none of the four criteria for CABG. Plaintiffs' expert formulates the same opinion to Dr. Patel as to Dr. Alderwish and Dr. Dominguez: that the patient's left main coronary artery stenosis was only 30%, well below the guideline threshold; that the left anterior descending artery stenosis was overstated; that the patient had normal LV function and no diabetes; and that the patient was entirely asymptomatic, having swum 30 laps the day before the procedure without cardiac symptoms. Plaintiffs' expert opines that Dr. Patel, like his co-defendants, failed to independently document an adequate patient history, failed to hold or require a multidisciplinary heart team meeting before recommending surgery, and failed to present the patient with conservative alternatives, including medical therapy and PCI. Plaintiffs' expert opines that the decision to perform CABG was a joint determination among Dr. Alderwish, Dr. Dominguez, and Dr. Patel, and that no one physician can fully disclaim responsibility for the collective outcome.

With respect to proximate cause, Plaintiffs' expert opines that surgical procedures significantly increase the risk of GBS, and that Dr. Patel himself conceded at deposition that GBS and Ogilvie's Syndrome are known risks of CABG surgery. Plaintiffs' expert opines that by performing an unnecessary surgery, Dr. Patel subjected the patient to risks he should never have faced, and that the patient's development of GBS, Ogilvie's Syndrome, and his permanent medical issues stemmed from that unnecessary intervention.

With respect to informed consent, Plaintiffs' expert opines that the signed consent form is insufficient to establish that adequate informed consent was obtained. Plaintiffs' expert refers to the patient's affidavit and deposition to opine that no physician discussed conservative alternatives with the patient and that he would have chosen medical management had it been offered. Plaintiffs' expert opines that a reasonable patient in the patient's position would have elected conservative treatment over surgical intervention.

Upon consideration of the competing submissions, the Court finds that Plaintiffs have raised triable issues of fact as to Dr. Patel as to the medical malpractice claims and informed consent. Dr. Patel's direct involvement in the surgical decision and the procedure itself is undisputed. The central dispute is whether that surgery was clinically indicated and whether the consent obtained for it was adequate. Similar to the discussion pertaining to the other movants, the experts contest whether the patient's catheterization results indicated whether surgery was an appropriate option, whether the criteria for surgery under the standard of care were met, and whether the patient presented with any symptoms, raising a genuine issue of material fact.

With respect to proximate cause, Dr. Patel argues that any causal connection between the MIDCAB and the patient's GBS is inherently speculative given the rarity of GBS following cardiac surgery and the existence of other potential causes. Here, Plaintiffs' expert opines and

cites the concessions of Dr. Patel stating that GBS and Ogilvie's Syndrome are recognized complications of CABG. The competing theory that GBS more likely arose from infection or another unrelated cause is for the jury to evaluate.

The experts also raise conflicting opinions regarding informed consent. As the physician who performed the bypass surgery, Dr. Patel was responsible for obtaining the patient's informed consent (*Macancela*, 176 AD3d at 798). Dr. Grossi states that the record reflects Dr. Patel discussed the benefits, risks, and alternatives to the surgery and obtained the patient's signature. In contrast, Plaintiffs' expert opines that the patient was not informed of any alternatives to the surgery. Further, "the actual procedure performed for which there was no informed consent must have been a proximate cause of the injury" (*Figueroa-Burgos v Bieniewicz*, at 811-812, quoting *Trabal v Queens Surgi-Ctr.*, 8 AD3d 555 [2d Dept 2004] [emphasis added]). Despite the movant's position that GBS is a known risk of a CABG procedure, there remains an issue of fact as to whether the performance of the procedure itself was a proximate cause of the patient's GBS, as discussed above in relation to the medical malpractice claim.

Accordingly, the motion for summary judgment on behalf of Dr. Patel as to the medical malpractice claims and informed consent is **denied**.

Turning to the institutional defendants, Defendants moved for dismissal of the vicarious liability claims against LHH and Northwell on the ground that, if summary judgment is granted as to the individual physician defendants, no basis for institutional liability would remain. As the Court has denied summary judgment as to Dr. Patel, and these movants do not dispute that Dr. Patel was an employee or agent of LHH and Northwell, the vicarious liability claim against LHH and Northwell remains. Therefore, the motion for summary judgment as to LHH and Northwell Health is **denied**.

Accordingly, the motion for summary judgment on behalf of Dr. Katsa, Dr. Patel, Northwell Health Physician Partners, Inc., LHH, and Northwell Health, Inc. (Seq. No. 4) is **granted to the extent** that the action is dismissed as against Dr. Katsa, and is **denied** as to all remaining moving defendants.

It is noted that Plaintiffs' expert opines that a "heart team" discussion is necessary under the standard of care for cardiac specialists to comprehensively review the patient's condition and recommend the best treatment strategy. In reply, Dr. Patel opposes this because Plaintiffs' assertion that there was no "heart team" meeting contradicts the claim that all Defendants were collectively involved in the decision to proceed with surgery. Dr. Dominguez argues that this claim was first raised in opposition. For these reasons and as none of the movants include this claim in setting forth prima facie burden, the Court will not entertain this claim. It is reserved for argument and decision at the time of trial should the issue be raised.

Plaintiff has raised issues of fact on the alleged medical malpractice. This alleged malpractice also underlies Plaintiff's derivative claim for loss of services (*Nafije Buzeska, et al., v Crystal Run Healthcare Physicians, LLP, et al.*, 234 AD3d 656 [2d Dept 2024]) and remain viable consistent with the decisions herein.

Accordingly, it is hereby:

ORDERED that the motion (Seq. No. 1) seeking summary judgment on behalf of Dr. Kokolis and Complete Cardiovascular Care is **Granted**; and it is further

ORDERED that the part of the motion (Seq. No. 4) seeking summary judgment on behalf of Dr. Katsa is **Granted**; and it is further

ORDERED that the part of the motion (Seq. No. 2) seeking summary judgment on behalf of Dr. Alderwish is **Granted to the extent** of dismissing the claim of lack of informed consent, and the motion is otherwise **Denied**; and it is further

ORDERED that the part of the motion (Seq. No. 3) seeking summary judgment on behalf of Dr. Dominguez and Cardiology Consultants of Bay Ridge is **Granted to the extent** of dismissing the claim of lack of informed consent, and the motion is otherwise **Denied**; and it is further

ORDERED that the part of the motion (Seq. No. 4) seeking summary judgment on behalf of Dr. Patel, LHH, and Northwell is **Denied**.

The caption is amended as follows:

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JOSEPH CONETTA and GALE CONETTA,

Plaintiffs,

-against-

ALVARO DOMINGUEZ, EDRIS Z. ALDERWISH, NIRAV C. PATEL, CARDIOLOGY CONSULTANTS OF BAY RIDGE, P.C., NORTHWELL HEALTH PHYSICIAN PARTNERS, INC., LENOX HILL HOSPITAL, and NORTHWELL HEALTH, INC.,

Defendants.
-----X

This constitutes the decision and order of the Court.

ENTER.



**Hon. Consuelo Mallafre Melendez
J.S.C.**