Sanchez v Weiss
2012 NY Slip Op 30272(U)
February 2, 2012
Supreme Court, New York County
Docket Number: 116693/2009
Judge: Joan B. Lobis
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[* 1]
SCANNED ON 2/6/2012

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 116693/2009
SANCHEZ, BETANIA M.
vs.
WEISS, HALLIE
SEQUENCE NUMBER : 002
SUMMARY JUDGMENT

PART 4

INDEX NO. ______
MOTION DATE 10/31/11
MOTION SEQ. NO. 002

The following papers, numbered 1 to ___, were read on this motion to/for ______

Notice of Motion/Order to Show Cause — Affidavits — Exhibits	No(s). 15-16
Answering Affidavits — Exhibits	No(s). X-mot 17-25; 26-27
Replying Affidavits	No(s). 28-30

Upon the foregoing papers, it is ordered that this motion is

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED

FEB 03 2012

NEW YORK COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE ______ FOR THE FOLLOWING REASON(S): ______

Dated: 2/2/12

______, J.S.C.
JOAN B. LOBIS

1. CHECK ONE: .... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ....MOTION IS: ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: .... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6
---X
BETANIA M. SANCHEZ,

Plaintiff,

Index No. 116693/09

-against-

Decision and Order

HALLIE WEISS, M.D., NORTH AMERICAN PARTNERS IN ANESTHESIA, L.L.P., SANDIP PARIKH, M.D., QUEENS-LONG ISLAND MEDICAL GROUP, P.C. and NICHOLAS VOGIATZIS, M.D.,

Defendants.
---X

FILED
FEB 03 2012
NEW YORK
COUNTY CLERK'S OFFICE

JOAN B. LOBIS, J.S.C.:

Motion Sequence Numbers 002 and 003 are hereby consolidated for disposition. Defendants Hallie Weiss, M.D., and North American Partners in Anesthesia, L.L.P. ("NAPA") move (Motion Sequence Number 002) for an order, pursuant to C.P.L.R. Rule 3212, granting them summary judgment, dismissing the complaint against them, and severing them from the action. Defendants Nicholas Vogiatzis, M.D., and Sandip Parikh, M.D., cross-move and move (Motion Sequence Number 003), respectively, for similar relief. Additionally, Queens-Long Island Medical Group, P.C. ("QLIMG") submits an attorney's affirmation arguing that, if summary judgment is granted to Dr. Vogiatzis and/or Dr. Parikh, the claims against QLIMG sounding in vicarious liability for these two physicians must be dismissed. Plaintiff Betania Sanchez opposes defendants' motions for summary judgment, arguing both that defendants failed to make a prima facie case for summary judgment and that the court should search the record and grant summary judgment in favor of plaintiff on the theory of res ipsa loquitur.

This case sounding in medical malpractice and lack of informed consent involves a highly unexpected outcome from a colonoscopy performed on April 16, 2009. Plaintiff, born on

October 27, 1968, is a mother of two children and was previously employed full-time as a laboratory technician. Though she had a history of osteoarthritis, she maintained an active lifestyle including jujitsu four times per week, dancing, exercising, and walking. Plaintiff had been seeing Dr. Vogiatzis as her primary care physician for over one year when she presented to him on March 18, 2009, for a routine physical. The medical records from QLIMG reflect that she had quit smoking in December 2008 and that her father had recently died. She also had chronic, lower back pain radiating down to her left leg, and reported that she had trouble laying down flat without flexing her knees. She reported that she observed bright red blood in her stools when straining or constipated. She also had a family history of cancer. Due to these factors, Dr. Vogiatzis referred plaintiff for a colonoscopy.

On April 16, 2009, plaintiff appeared for her colonoscopy. When it was time to perform the colonoscopy, plaintiff was instructed to lay on her left side with her head on a pillow and her knees slightly bent. Dr. Weiss, the anesthesiologist, then sedated plaintiff with intravenous propofol. Both physicians testified that after she was on her side, neither physician moved plaintiff. The records from the procedure indicate that Dr. Parikh, the gastroenterologist, performed the colonoscopy without complication. However, in the recovery room, the nurse at plaintiff's bedside noted that she was not appropriately waking up from the anesthesia, and though her vital signs were normal, she was still mostly unresponsive and unable to move or talk an hour after the procedure. Plaintiff was drawing deep long breaths and her daughter testified at an examination before trial ("EBT") that plaintiff's feet were cold and blue. Plaintiff was emergently transferred to New York Hospital of Queens ("NYHQ") with aphasia and quadriplegia. Upon arrival, her blood gas levels indicated that she had metabolic acidosis. She was given an extensive work-up and she remained

at NYHQ for treatment and for intensive rehabilitation for approximately one month. Upon her discharge to Silvercrest Center for Nursing and Rehabilitation ("Silvercrest") on May 14, 2009, she was able to move her arms and legs and walk three steps with assistance. She remained at Silvercrest until July 2, 2009, at which point she was discharged home with a wheelchair.

Plaintiff reported at her EBT that she still continues to experience issues related to the quadriplegia or quadriparesis today, such as weakness, numbness, pain, trouble with daily activities, difficulty walking, and double incontinence. A live-in home health aide attends to her. When plaintiff appeared for a physical examination before neurologist Lawrence Shields, M.D., at the request of her attorneys, Dr. Shields diagnosed her with, inter alia, post periprocedural ischemic rhombencephalopathy and myelopathy; ischemic myelopathy with conus and cauda equina features; neuropathic pain syndrome; and cervical and lumbar spondylopathy. Dr. Shields' report indicates that he attributes the ischemic insult to her rhombencephalon and spinal cord to the events that occurred during the colonoscopy on April 16, 2009.

Essentially, plaintiff alleges that defendants Dr. Weiss and Dr. Parikh were negligent in improperly administering the anesthesia and improperly positioning her body during the colonoscopy, thereby causing her posterior circulation and vertebral vascular system to become compromised. She alleges that Dr. Weiss negligently administered the anesthesia, administered an overdose of propofol, and failed to properly monitor her during and after the colonoscopy. She alleges that Dr. Parikh performed a contraindicated procedure, improperly positioned her during the colonoscopy, and failed to properly monitor her during and after the colonoscopy. She alleges that both physicians failed to consider her medical and family history in treating her. As to Dr. Vogiatzis,

plaintiff alleges that he was negligent in referring her for a contraindicated colonoscopy and in failing to adequately examine her prior to referring her for a colonoscopy.

Presently, all parties are seeking summary judgment. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case." Winegrad v. N.Y. Univ. Med. Ctr., 64 N.Y.2d 851, 853 (1985) (citations omitted). When relying on expert opinion evidence to support the prima facie showing, as is required in a medical malpractice case, that opinion "must be based on facts in the record or personally known to the witness, and . . . an expert cannot reach a conclusion by assuming material facts not supported by record evidence." Roques v. Nobel, 73 A.D.3d 204, 206 (1st Dep't 2010). Failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the papers in opposition. Winegrad, 64 N.Y.2d at 853. If the movant makes a prima facie showing, the burden shifts to the party opposing the motion "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Alvarez v. Prospect Hosp., 68 N.Y.2d 320, at 324 (1986) (citation omitted). In medical malpractice actions, expert medical testimony is essential for demonstrating either the absence or presence of material issues of fact pertaining to departure from accepted medical practice or proximate cause.

Initially, it must be pointed out that plaintiff does not oppose Dr. Vogiatzis' cross motion for summary judgment. Dr. Vogiatzis submits an expert affirmation from Robert Fuentes, M.D., a physician licensed in New York and board certified in internal medicine, who states that Dr. Vogiatzis' treatment of plaintiff did not depart from the standard of care. Dr. Fuentes opines, within

a reasonable degree of medical certainty, that Dr. Vogiatzis properly considered and documented plaintiff's family history, medical history, and recent complaints; that he appropriately evaluated and referred plaintiff for a colonoscopy; and that nothing that he did or did not do caused plaintiff's injuries or worsened her injuries. As Dr. Vogiatzis' submissions sufficiently establish his prima facie entitlement to summary judgment, and there is no opposition, his cross motion is granted.

Dr. Weiss and NAPA submit an expert affidavit from Stephen Slavin, M.D., in which he states that he is a physician duly licensed to practice medicine in New York, board certified in anesthesiology, and familiar with the administration of anesthesiology for a colonoscopy with propofol. Dr. Slavin states that he reviewed the QLIMG records; the records from NYHQ; the deposition transcripts of Drs. Weiss and Parikh; the report of Lawrence Shields, M.D.; and plaintiff's bills of particulars. He states that prior to the colonoscopy, plaintiff had no major medical issues, which Dr. Weiss confirmed by taking a complete history and physically examining plaintiff. He states that Dr. Weiss appropriately asked plaintiff to position herself on her side, which is done so that the patient is in the most comfortable position for herself. Once that occurs, Dr. Slavin sets forth, the anesthesiologist is no longer involved in the positioning of the patient's body. He opines that the doses of propofol—initial dose of 150 milligrams, and two subsequent doses of 50 milligrams over twenty-five (25) minutes—were within the standard of care for a female of plaintiff's height and weight; that plaintiff's blood pressure readings were all within the normal range for a patient sedated with propofol undergoing a colonoscopy; that plaintiff's pulse was normal throughout the procedure; and that plaintiff was breathing well. He states that Dr. Weiss' care post-operatively was appropriate, given the fact that plaintiff's vital signs were within normal limits and the fact that some patients take longer than expected to wake up after deep sedation. He states that

plaintiff was being monitored, and there was no need for an anesthesiologist to evaluate her immediately. Further, he asserts that it is not the responsibility of the anesthesiologist to monitor or maintain a patient's body and position while in the recovery room. When Dr. Weiss did evaluate plaintiff, Dr. Slavin sets forth, she found plaintiff unresponsive and breathing atypically but with no need to assist her ventilation. He opines that Dr. Weiss appropriately checked plaintiff's glucose levels, which were low, and provided dextrose, which normalized the glucose levels. Then, once plaintiff did not improve, Dr. Slavin opines that Dr. Weiss appropriately had an ambulance called to transport plaintiff to the nearest hospital. Dr. Slavin opines that from all of the evidence he reviewed, "there is simply nothing to suggest that Dr. Weiss departed from the standard of care . . . notwithstanding [plaintiff's] bizarre reaction when she emerged from anesthesia." He states that if plaintiff's injuries are as Dr. Shields says they are, then he has never heard of such complications being caused by a colonoscopy or the administration of propofol in the absence of an abnormality in vital signs or oxygenation, which he states was not documented. He states that there is no evidence that plaintiff's brain or spinal cord were deprived of oxygen at any time. In conclusion, Dr. Slavin sets forth that he suspects that plaintiff's injuries are psychologically caused, though he cannot say, with a reasonable degree of medical certainty, what caused plaintiff's complications. However, he sets forth that Dr. Weiss did not depart from good an accepted medical practice, and that there were no departures by Dr. Weiss that caused plaintiff's injuries.

Dr. Parikh submits an expert affidavit from Perry C. Gould, M.D., in which he states that he is a physician duly licensed to practice medicine in New York and board certified in gastroenterology. Dr. Gould states that he reviewed the QLIMG records, the records from NYHQ, the bills of particulars as to Dr. Parikh, and the deposition testimony of plaintiff and Dr. Parikh. He

opines, to a reasonable degree of medical certainty, that Dr. Parikh acted within the standard of care in treating plaintiff. He opines that Dr. Parikh appropriately considered plaintiff's medical history and that it was within the standard of care to perform the colonoscopy. He further opines that plaintiff's complaints of back pain or arthritis had no impact on plaintiff's positioning during the procedure, and that her positioning was appropriate. Dr. Gould states that the standard of care is to have patients position themselves in the most comfortable position on their side during a colonoscopy, and that it is not the standard of care to use any additional support devices under the head beyond a pillow. He opines that Dr. Parikh appropriately monitored plaintiff during the procedure and that it was appropriate for Dr. Parikh to leave the room after the colonoscopy was complete without waiting for plaintiff to recover from the anesthesia. Once Dr. Parikh was notified that plaintiff was not responding in the recovery room, Dr. Gould opines that he properly monitored plaintiff and attempted to elicit a response from her. Dr. Gould opines that Dr. Parikh's actions did not in any way cause or contribute to any of plaintiff's injuries.

Both Drs. Parikh and Weiss made out prima facie cases as to entitlement to summary judgment on the issue of whether either, respectively, departed from the standard of care. They provided sufficient expert affidavits detailing their respective conduct during the colonoscopy and opining that such conduct conformed to the standard of care. As to proximate cause, however, neither of defendants' respective experts provides an opinion as to what caused plaintiff's injuries, but both conclude that nothing that Drs. Weiss or Parikh did caused her injuries. The fact is that plaintiff was ambulatory prior to the colonoscopy and she emerged from the colonoscopy a quadriplegic. It is undisputed that quadriplegia is not a risk of a colonoscopy under propofol. Without a viable explanation as to how plaintiff was rendered a quadriplegic after the colonocopy,

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it is simply conclusory for the experts to opine that nothing that defendants did caused plaintiff her injuries. The theory given by Dr. Weiss' expert Dr. Slavin—that plaintiff possibly suffers from a conversion disorder—is too speculative to support the absence of a material issue of as to proximate cause.

In opposition to defendants' motions, plaintiff reiterates her position that she suffered an ischemic injury to her hind brain and spinal cord due to an overdose of propofol anesthesia administered by Dr. Weiss; Drs. Weiss' and Parikh's failure to maintain her neck in proper alignment with her body during the colonoscopy procedure; and their failure to timely recognize and treat her condition. She argues that the doctrine of res ipsa loquitur should apply to both defeat defendants' motion for summary judgment and entitle her to summary judgment, though she does not move separately for this relief but only asks the court to search the record and grant her summary judgment. Plaintiff argues that her injuries could not have occurred in the absence of negligence.

In support of her position, plaintiff offers expert opinions from three different physicians. Hazem Elzriny, M.D., states that he is a physician licensed to practice medicine in a number of states (not including New York) and board certified by the American Board of Surgery. He states that he reviewed the QLIMG records; the records from NYHQ; the records from Silvercrest; "records of other various medical treatment providers" including Dr. Shellds, Dr. Zafar Khan (urologist), Dr. Reejsinghani (neurologist), North Shore University Hospital, and physicians from the Dominican Republic (where plaintiff currently resides); the reports of Drs. Slavin and Gould; the deposition testimony of the parties, Nurse Thao Nguyen, and plaintiff's daughter; and records exchanged regarding the brand of propofol used during plaintiff's colonoscopy. Dr. Elzriny

opines that there is no plausible explanation for plaintiff's injuries in the absence of a medical provider deviating from the standards of good and accepted medical care. He opines that plaintiff, who was sedated, could not have caused her own injuries, nor were there any forces outside of the procedure that could have caused her injuries. He states that events known to occur during anesthesia and colonoscopy include an overdose of propofol, failure to maintain the head and neck in proper alignment, and vasovagal responses with bradycardia and hypotension. Dr. Elzriny sets forth that these events can be prevented by slower administration of propofol, careful and continuous attention to neck and body alignment, recognition of vagal responses, or even termination of the procedure in a timely manner. He opines that Drs. Weiss and Parikh failed to prevent, recognize, document, and mitigate the aforementioned events, as evidenced by the fact that plaintiff had acidosis upon her admission to NYHQ, which means that during the colonoscopy she was hypoxic. In Dr. Elzriny's opinion, after the colonoscopy, plaintiff's inability to move, her bizarre breathing pattern, and her cold bluish feet were all indications that she was experiencing severe metabolic acidosis. He opines that though Dr. Weiss maintained that she administered the initial dose of propofol slowly, it is rare that propofol administered slowly will cause hypotension, so Dr. Weiss must have administered the propofol too quickly, thereby causing an overdose and, in turn, causing the hypotension. In Dr. Elzriny's opinion, defendants then failed to appreciate the signs and symptoms of hypotension and hypoxemia, and never administered oxygen in the recovery room, which is a departure from the standard of care. He opines that the hypotension and hypoxemia during the colonoscopy caused a lack of adequate blood flow (and oxygen) to the central nervous system ("CNS").

Dr. Elzriny sets forth that it is both the anesthesiologist's and the gastroenterologist's responsibility to maintain proper positioning during a colonoscopy. He believes that Drs. Parikh and Weiss allowed plaintiff's neck to hyperextend or flex during the procedure, further restricting the blood and oxygen flow to the vertebral vessels. Even though both physicians testified that they did not move plaintiff during the procedure, Dr. Elzriny sets forth that she may have been moved inadvertently or positioned incorrectly from the start. He opines that failure to prevent hyperextension or flexion of the neck is a departure from the standard of care. He opines that the lack of oxygen through the vertebral vessels caused the ischemic rhombencephalopathy and myelopathy, and consequential paralysis and pain. He opines that the injury to the hind brain and spinal cord is evident because plaintiff was able to blink but was unable to move any of her extremities, which would be controlled by the CNS, the area of plaintiff's injury.

Plaintiff's two other experts, Dr. Shields and Peter Ernst, M.D., an anesthesiologist, submit opinions that largely echo Dr. Elzriny's opinion, i.e., they opine that plaintiff suffered an ischemic injury to her hind brain and spinal cord due to ischemic hypoxia caused by propofol-induced hypotension from Dr. Weiss' improper administration of propofol, Dr. Weiss' failure to maintain plaintiff's head and neck in proper alignment during the colonoscopy, and Drs. Weiss and Parikh's failure to timely recognize and treat plaintiff's hypotension. Dr. Shields also opines that there is no evidence that plaintiff is suffering from a conversion (psychiatric) disorder. Dr. Shields and Dr. Ernst aver that Dr. Slavin's opinion that an injury like plaintiff's could not have occurred in the absence of an abnormality in vital signs or oxygenation should be discounted because the records from NYHQ show that plaintiff did have an abnormality in oxygenation.

In reply, the moving defendants argue that plaintiff did not rebut their prima facie entitlement to summary judgment. Additionally, counsel for Dr. Weiss and NAPA argues that plaintiff's experts' opinions should be discounted because the moving papers did not contain the records that the experts relied on. It is unclear whether counsel is referring to her own moving papers, which do not contain a number of the records mentioned by plaintiff's experts, or plaintiff's opposition papers, which contain all of the records mentioned by her experts that were not annexed to the moving papers except for the treatment records from plaintiff's physicians in the Dominican Republic, though none of plaintiff's experts appear to provide any opinions based on the records from plaintiff's physicians in the Dominican Republic. This argument that the court must preclude plaintiff's experts' opinions on this basis is rejected. Dr. Weiss and NAPA further argue that they were "surprised" by plaintiff's addition of a new theory of liability in opposition to their motion for summary judgment. The new theory, as Dr. Weiss and NAPA assert, is that Dr. Weiss administered the propofol too quickly, thereby causing a drop in blood pressure, which led to loss of oxygen and inadequate circulation, as shown by plaintiff's metabolic acidosis upon presentation to NYHQ. These defendants assert that they never knew that metabolic acidosis was at issue in this case. While plaintiffs are not permitted to assert new theories of liability not previously pled in opposition to a motion for summary judgment (see Ostrov v. Rozbruch, ___ A.D.3d ___, 2012 Slip Op. 22, *14 [1st Dep't 2012]), the issue of metabolic acidosis is not a new theory; rather, it is plaintiff's experts' attempts to point to proof in the medical records in support of their position that Dr. Weiss administered an overdose of propofol. Since the theory that plaintiff was overdosed with propofol has been properly pled, the court declines to disregard plaintiff's opposition on these ground.

Res ipsa loquitur is "an evidentiary rule allowing the jury to infer negligence from circumstances when the event would not ordinarily occur in the absence of negligence." Nesbit v. New York City Transit Auth., 170 A.D.2d 92, 99 (1st Dep't 1991) (citation omitted). If, at trial, plaintiff establishes that the event does not ordinarily occur in the absence of someone else's negligence, that it was "caused by an agency or instrumentality within the exclusive control of the defendant," and that it could not have been caused by plaintiff's "voluntary action or contribution," then "a prima facie case of negligence exists and plaintiff is entitled to have res ipsa loquitur charged to the jury." Kambat v. St. Francis Hosp., 89 N.Y.2d 489, 494 (1997). In the context of medical malpractice cases,

> the doctrine may be applicable where an inference exonerating the physician is improbable as a matter of fact. Thus, where an unexplained injury occurred in an area remote from the operative site while the patient was anesthetized, the doctrine of res ipsa loquitur has been applied. Additionally, where a foreign object is left in the body of a patient after an operative procedure is completed, a charge with respect to res ipsa loquitur would be warranted.

Abbott v. New Rochelle Hosp. Med. Ctr., 141 A.D.2d 589, 590 (2d Dep't 1988) (internal quotations and citations omitted).

There is no dispute that plaintiff, while unconscious, was under the exclusive control of Drs. Parikh and Weiss during the colonoscopy, and that plaintiff did not have quadriplegia prior to the colonoscopy but did upon recovering from the colonoscopy. Plaintiff's experts have opined that quadriplegia is not a risk of a colonoscopy and that quadriplegia could not have happened in the absence of negligence during the colonoscopy, and have provided their own theories as to which departures could have occurred that would have caused plaintiff's injuries. Plaintiff has sufficiently

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rebutted the moving defendants' prima facie showing with competent evidence, establishing that competing theories of liability exist and warranting denial of summary judgment at this juncture. However, plaintiff's request that the court grant her summary judgment is denied for failure to make out a prima facie showing of entitlement to judgment as a matter of law. "[O]nly in the rarest of res ipsa loquitur cases may a plaintiff win summary judgment or a directed verdict. That would happen only when the plaintiff's circumstantial proof is so convincing and the defendant's response so weak that the inference of defendant's negligence is inescapable." Morejon v. Rais Constr. Co., 7 N.Y.3d 203, 209 (2006). Plaintiff's submissions fail to meet the high burden for summary judgment on a res ipsa loquitur theory.

As to the cause of action sounding in lack of informed consent, plaintiff simply cannot maintain this cause of action. Lack of informed consent is

> the failure of the person providing the professional treatment or diagnosis to disclose to the patient such alternatives thereto and the reasonably foreseeable risks and benefits involved as a reasonable medical, dental or podiatric practitioner under similar circumstances would have disclosed, in a manner permitting the patient to make a knowledgeable evaluation.

Public Health Law § 2805-d(1). A defendant will be entitled to summary judgment on a lack of informed consent claim if he or she demonstrates that the plaintiff was informed of the alternatives to and the reasonably foreseeable risks and benefits of the treatment, and "that a reasonably prudent patient would not have declined to undergo the [treatment] if he or she had been informed of the potential complications[.]" Koi Hou Chan v. Yeung, 66 A.D.3d 642, 643 (2d Dep't 2009); see also Public Health Law § 2805-d(1). Defendants maintain that they disclosed the reasonably foreseeable

risks and provided copies of the informed consent forms that plaintiff signed prior to the procedure. Plaintiff merely denies that defendants ever had discussions with her regarding the risks of the procedures. More importantly, however, is the fact that plaintiff has never alleged that her injuries are reasonably foreseeable risks to a colonoscopy under sedation by propofol. Indeed, it has been vigorously maintained by both sides that plaintiff's injuries are not risks of a colonoscopy under sedation by propofol. Essentially, plaintiff has failed to even allege the facts required to plead a cause of action sounding in lack of informed consent. Thus, defendants are entitled to summary judgment on the causes of action sounding in lack of informed consent.

Accordingly, it is hereby

ORDERED that defendant Nicholas Vogiatzis, M.D.'s cross motion for summary judgment is granted and the complaint is dismissed against him, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that those branches of the motions of Hallie Weiss, M.D., North American Partners in Anesthesia, L.L.P., and Sandip Parikh, M.D., seeking summary judgment on the cause of action sounding in lack of informed consent are granted and the cause of action sounding in lack of informed consent is hereby dismissed against Hallie Weiss, M.D., North American Partners in Anesthesia, L.L.P., and Sandip Parikh, M.D., and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that those branches of the motions of Hallie Weiss, M.D., North American Partners in Anesthesia, L.L.P., and Sandip Parikh, M.D., seeking summary judgment on the cause of action sounding in medical malpractice are denied; and it is further

ORDERED that, to the extent that plaintiff sought summary judgment in her opposition papers, plaintiff's request for summary judgment is denied; and it is further

ORDERED that the remaining parties shall appear for a pre-trial conference on February 21, 2012, at 9:30 a.m., in Part 6.

FILED

FEB 03 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: February 2 , 2012

ENTER:

JOAN B. LOBIS, J.S.C.