[* 1]

SHORT FORM ORDER

INDEX No. 09-44842
CAL. No. 10-02687 MM

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 43 - SUFFOLK COUNTY

PRESENT:

Hon. ARTHUR G. PITTS
Justice of the Supreme Court

MOTION DATE 10-27-11 (007)
MOTION DATE 11-9-11 (008)
ADJ. DATE 12-1-11
Mot. Seq. # 007 - MG
Mot. Seq. # 008 - MG

----------X

ELAINE R. MEYBURG, as Executrix of the Estate of BENT R. THOMSEN, Deceased,

Plaintiff,

- against -

ERNEST VOMERO, M.D., ROBERT McCALLION, ANP, MARCO PAPALEO, M.D., BERNARDINI, VOMERO, ANSELMI & ANWAR, M.D., P.C., and THE HUNTINGTON HEART CENTER,

Defendants.

----------X

BAUMAN & KUNKIS, P.C.
Attorney for Plaintiff
225 West 34th Street
New York, New York 10122

KRAL CLERKIN REDMOND RYAN, et al.
Attorney for Defendants Ernest Vomero, Anselmi & Anwar, M.D., P.C. & Bernardini Vomero
538 Broad Hollow Road
Melville, New York 11747

ALBANESE & ALBANESE, LLP
Attorney for Defendants Marco Papaleo, M.D. & The Huntington Heart Center
1050 Franklin Avenue
Garden City, New York 11530

CATALANO GALLARDO & PETROPOULOS
Attorney for Defendant Robert McCallion, M.D.
100 Jericho Quadrangle, Suite 214
Jericho, New York 11753

Upon the following papers numbered 1 to 21 read on this motions to RRRR; Notice of Motion/ Order to Show Cause and supporting papers (007) 1 - 10 ; Notice of Cross Motion and supporting papers (008) 11-16 ; Answering Affidavits and supporting papers 17-19; Replying Affidavits and supporting papers 20-21 ; Other __; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that motion (007) by the defendants, Bernardini, Vomero, Anselmi & Anwar, M.D., P.C. and Ernest Vomero, M..D., for an order granting renewal of motion (006), which sought summary judgment dismissing the complaint as asserted against them, and which motion was denied without prejudice to renewal upon submission of proper papers within thirty days of the date of the order, is granted as to renewal, and upon renewal, summary judgment is granted and the complaint is dismissed as asserted against them; and it is further

ORDERED that motion (008) by the defendant, Robert McCallion, ANP, for an order pursuant to CPLR 2221(e) granting renewal of motion (005), which sought summary judgment dismissing the complaint as asserted against him, and which was denied without prejudice to renewal upon submission of proper papers within thirty days of the date of the order, is granted as to renewal, and upon renewal, summary judgment is granted and the complaint is dismissed as asserted against him.

This is a medical malpractice action brought by plaintiff, Elaine Meyburg, the daughter of the decedent, Bent R. Thomsen, as executrix of the decedent's estate. Causes of action for negligence and failure to provide informed consent to the decedent, Bent. R. Thomsen, have been pleaded. It is claimed that the defendants negligently departed from good and accepted standards of care, and failed to properly inform the decedent of the risks and alternatives associated with the care and treatment provided to him, including, among other things, the use of the drug Plavix. The plaintiff further alleges that the defendants caused the decedent to undergo a second angioplasty and coronary stent placement in the right coronary artery. The claimed negligent departures are stated to have commenced on or about November 28, 2007, and continuing until the decedent's death on February 21, 2009.

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. To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (***Friends of Animals v Associated Fur Mfrs.,*** 46 NY2d 1065, 416 NYS2d 790 [1979]; ***Sillman v Twentieth Century-Fox Film Corporation***, 3 NY2d 395, 165 NYS2d 498 [1957]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v N.Y.U. Medical Center***, 64 NY2d 851, 487 NYS2d 316 [1985]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v N.Y.U. Medical Center***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party, who, in order to defeat the motion for summary judgment, must proffer evidence in admissible form...and must "show facts sufficient to require a trial of any issue of fact" (CPLR 3212[b]; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]). The opposing party must assemble, lay bare and reveal his proof in order to establish that the matters set forth in his pleadings are real and capable of being established (***Castro v Liberty Bus Co.,*** 79 AD2d 1014, 435 NYS2d 340 [2d Dept 1981]).

The requisite elements of proof in a medical malpractice action are (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of injury or damage (***Holton v Sprain Brook Manor Nursing Home***, 253 AD2d 852, 678 NYS2d 503 [2d Dept 1998], *app denied* 92 NY2d 818, 685 NYS2d 420). To prove a prima facie case of medical malpractice, a plaintiff must establish that defendant's negligence was a substantial factor in producing the alleged injury (*see* ***Derdiarian v Felix Contracting Corp.***, 51 NY2d 308, 434 NYS2d 166 [1980]; ***Prete v Rafla-Demetrious,*** 221 AD2d 674, 638 NYS2d 700 2d Dept 1996]). Except as to matters within the ordinary experience and knowledge of laymen, expert medical opinion is necessary to prove a deviation or departure from accepted standards of medical care and that such departure was a proximate cause of the plaintiff's injury (*see* ***Fiore v Galang***, 64 NY2d 999, 489 NYS2d 47 [1985]; ***Lyons v McCauley,*** 252 AD2d 516, 517, 675 NYS2d 375 [2d Dept 1998], *app denied* 92 NY2d 814, 681 NYS2d 475; ***Bloom v City of New York,*** 202 AD2d 465, 465, 609 NYS2d 45 [2d Dept 1994]).

To rebut a prima facie showing of entitlement to an order granting summary judgment by the defendant, the plaintiff must demonstrate the existence of a triable issue of fact by submitting an expert's affidavit of merit attesting to a deviation or departure from accepted practice, and containing an opinion that the defendant's acts or omissions were a competent-producing cause of the injuries of the plaintiff (*see* ***Lifshitz v Beth Israel Med. Ctr-Kings Highway Div.***, 7 AD3d 759, 776 NYS2d 907 [2d Dept 2004]; ***Domaradzki v Glen Cove OB/GYN Assocs.***, 242 AD2d 282, 660 NYS2d 739 [2d Dept 1997]). "Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. Such credibility issues can only be resolved by a jury" (***Bengston v Wang,*** 41 AD3d 625, 839 NYS2d 159 [2d Dept 2007]).

In motion (007), Bernardini, Vomero, Anselmi & Anwar, M.D.,P.C. and Ernest Vomero, M.D. seek renewal of their prior motion (006) for summary judgment dismissing the complaint on the bases that they did not depart from the standards of ordinary and reasonable care and did not proximately cause the decedent's claimed injuries. In support of this application, the moving defendants have submitted, inter alia, an attorney's affirmation; copies of the summons and complaint, defendants' answer, and plaintiff's verified bill of particulars; several pages of the transcript of the examination before trial of the plaintiff, with the signed correction sheet; signed copies of the examinations before trial of Ernest Vomero, M.D dated September 8, 2010, and Robert Paul McCallion dated September 16, 2010; an unsigned copy of the transcript of the examination before trial of Marco Papaleo, M.D.; copies of the plaintiff's medical records maintained by the moving defendants; and the affirmation of Andrew Goldfarb, M.D., and the affidavit of Melvin Holden, M.D.; and copies of the opposing papers previously submitted. Motion (006) was denied without prejudice to renewal upon submission of proper papers within thirty days of the date of this order in that the attestations of their experts, Andrew Goldfarb, M.D. and Melvin Holden, M.D., were not in admissible form.

In motion (008), Robert McCallion, ANP seeks renewal of his prior motion (005) for summary judgment dismissing the complaint on the bases that he did not make the decision to stop and/or discontinue Plavix from Mr. Thomsen's medication regime, that there is nothing to show that had the Plavix been continued that Mr. Thomsen would not have needed the further stent replacement in September 2008, and that Mr. Thomsen's subsequent deterioration was the result of the natural progression of his underlying atherosclerotic disease, and not as a result of discontinuing the Plavix. This application is supported with, inter alia, an attorney's affirmation; copies of the pleadings; copy of the defendants' office records; the unsigned and uncertified copies of the transcripts of the examination before trial of Elaine R. Meyburg, dated July 29, 2010, and Robert Paul McCallion, ANP dated September 16, 2010; and the duly notarized affidavit of Melvin Holden, M.D. The previous 'attestation" of Melvin Holden, M.D. was not in admissible form pursuant to CPLR 3212, thus leave to renew was granted upon submission of an expert opinion in proper form.

Robert McCallion testified to the effect that he has been a licensed registered nurse since 1986, and a nurse practitioner since 1997. On March 15, 1999, he was hired by Dr. Bernardini and Dr. Vomero to work as a nurse practitioner. He has a collaborative agreement with Dr. Vomero who monitors him and his ability to collaborate on patient care. He recalled Mr. Thomsen and his various medical problems and treatment. His first encounter with Mr. Thomsen was on May 30, 2002. He stated Mr. Thomsen had been placed on Plavix after a stent procedure on March 13, 2003 for the purpose of preventing stent thrombosis.

He described Plavix as an antiplatelet medication which limits platelet aggregation, or the sticking of platelets together. The Plavix was stopped on October 15, 2004 by the patient.

McCallion testified that Mr. Thomsen had been admitted to Huntington Hospital in August, 2007, and underwent a cardiac catheterization which revealed, among other things, a 90 % stenosis in the ostial portion of the right coronary artery. He was transferred to North Shore Hospital for further intervention by Dr. Ong for placement of bare metal stents (not drug-eluting) in the right coronary artery. Thereafter, he was placed on Aspirin (enteric coated 325 mg, daily), Plavix 75 mg, daily, and Coumadin. On about September 16, 2007, Mr. Thomsen experienced frank bleeding in his urine, and on October 9, 2007, he began to experience nose bleeds. The Coumadin dosage was adjusted and he was continued on Plavix and Aspirin. Although Mr. Thomsen was instructed to take Coumadin 5 mg per day, he was keeping himself on 3 mg per day and did not want to increase it.

McCallion testified that on October 16, 2007, Dr. Vomero saw Mr. Thomsen who indicated the Aspirin had been decreased to 81 mg. McCallion did not know who decreased the Aspirin dose, or when it was decreased. He testified that the office note of November 28, 2007 indicates that Dr. Papaleo, the cardiologist, recommended that the decedent discontinue Plavix, but that he continue Aspirin and Coumadin. McCallion did not know what date that recommendation was made. He spoke to Dr. Vomero about it and noted that there was a telephone conversation with Dr. Papaleo on November 28, 2007. McCallion did not think it was unusual that the Plavix was discontinued because Mr. Thomsen had bare metal stents placed. He was aware that there were different risks if Plavix was discontinued prematurely, based upon the type of stent. He was aware that premature discontinuance of Plavix could lead to stent occlusion with medicated stents. He testified that Plavix is indicated for one month after placement of bare metal stents.

Ernest Vomero M.D. testified to the extent that he has been licensed to practice medicine in New York State since 1985. He has been in private practice since 1989 in Huntington, New York, limiting his practice to internal medicine, pulmonary disease, and critical care. He was previously board certified in internal medicine and pulmonary medicine. His certification in critical care lapsed in 2007. He has been in practice with Dr. Bernardini since 1995. At first they practiced as Bernardini & Vomero. In about 2006 or 2007, they began practicing as Bernardini, Vomero, Anselmi & Anwar, M.D.,P.C.

Dr. Vomero testified that the plaintiff's decedent, Bent Thomsen, became his patient in 1993 when he saw him on pulmonary consult in the emergency room at Huntington Hospital, where he was treated for presumed pneumonia. He had a good recollection of his treatment, including his pulmonary status, which was very fragile due to advanced emphysema. Dr. Vomero stated that the decedent's problems arose because of his protracted history of cigarette smoking of greater than two packs per day for sixty years. He continued that the decedent had vascular disease consisting of significant atherosclerosis throughout many of the vessels in his body, mesenteric ischemia or intestinal angina, which required stenting in the 1990's. He also developed cardiac issues.

Dr. Vomero testified that in February 2007, the decedent was relatively stable from a medical standpoint, and that he did not have specific problems according to his subjective findings. Upon examination, his impression was advanced COPD; persistent nicotine abuse; restrictive lung disease secondary to elevated hemidiaphragm; left ventricular hypertrophy; history of prostate cancer-status post

suprapubic prostatectomy in July 1998, with recurrence in the prostate bed in September 2002, treated with external beam radiation therapy; colonic polyps; atelectasis of the left lower lobe of the lung; progressive hypoxemia; and hypertension. A permanent pacemaker was placed in September 2007.

On November 27, 2007, Mr. Thomsen advised the nurse practitioner in his office, Robert McCallion, that he had an episode of rectal bleeding and epistaxis, so he did not take his Saturday dose of Coumadin 5mg. McCallion advised him to contact his cardiologist. The following day, McCallion wrote a note in the office record indicating that the patient called his cardiologist, Dr. Papaleo, who recommended discontinuing the Plavix. Dr. Vomero testified that the purpose of the Plavix was to prevent the occlusion of the stent that had been placed in September 2007 at North Shore University Hospital. He continued that he had conversation with Dr. Papaleo about Mr. Thomsen having had a bare metal stent, and that he had been on dual anticoagulation therapy for three months. Plavix administration is recommended for a minimum of one month, unless the patient is having complications such as bleeding from a site that is not easily controllable. He stated that Mr. Thomsen had been taking the Plavix for three months and it was Dr. Papaleo's feeling that the medication could be stopped. While a drug-eluting stent requires a year therapy, that was not done as they knew the patient. Dr. Vomero stated that the discontinuance of Plavix could have severe consequences, such as a possible in-stent re-stenosis, but this consequence did not occur with Mr. Thomsen. Instead, almost exactly a year later in September 2008, Mr. Thomsen had a lesion distal to where the first stent was placed, and that he did not have an in-stent re-stenosis.

Dr. Vomero testified that on September 2, 2008, Dr. Patcha attempted a cardiac catheterization but was unable to access the iliac vessels. Subsequently a catheterization was conducted which revealed a 70% stenosis of the proximal right coronary artery, 90% stenosis of the mid portion of the right coronary artery, and an 80 % occlusion of the distal right coronary artery. Dr. Vomero stated that these percentages revealed a severe problem potentially in three different areas. Mr. Thomsen was then transferred from Huntington Hospital to North Shore University Hospital where Dr. Ong placed two stents in the iliac vessels on September 3, 2008,. A coronary angiogram was done on September 4, 2008, after which a subsequent bare-metal stent was placed distal to his original stent in the right coronary artery. Mr. Thomsen was again placed on Plavix.

Andrew Goldfarb, M.D. defendants' expert, affirms that he is a physician licensed to practice medicine in New York State and is board certified in cardiovascular medicine. He set forth the materials he reviewed, including the parties' deposition transcripts and medical records. He states that the plaintiff alleges that Dr. Vomero was negligent from November 28, 2007 through February 21, 2009. Based upon his review, Dr. Goldfarb opines with a reasonable degree of medical certainty that the care and treatment rendered by Ernest Vomero, M.D. and Bernardini, Vomero, Anselmi & Anwar, M.D., P.C. to Bent R. Thomsen was proper and within the standards of good and accepted practice.

Dr. Goldfarb continued that Mr. Thomsen was a 77 year old male whose medical history included severe obstructive pulmonary disease, recurrent prostate cancer, severe progressive vascular disease, coronary artery disease, alcoholism, hypertension and elevated cholesterol levels. He stated that following a Persantine nuclear stress test on August 28, 2007, Dr. Patcha performed cardiac catheterization on August 29, 2007 for severe inducible ischemia of the mid to apical segments of the interior wall of the heart. Findings revealed a severe ostial right coronary artery stenosis and diffuse irregularity of the circumflex and

left anterior descending arteries causing severe narrowing of one of the major blood vessels to the heart. Mr. Thomsen was then transferred to North S hore University Hospital at Manhasset for coronary intervention where Dr. Ong performed a rotablator atherectomy wherein a rotating blade was used to shave down calcified plaque inside the blood vessel. Thereafter, two bare metal stents were placed. Following that procedure, Mr. Thomsen was placed on Cardizem for his atrial fibrillation; Plavix 75 mg; Aspirin 325 mg; and Coumadin. Zocor was prescribed for the high cholesterol.

Dr. Goldfarb stated that the Plavix is an antiplatelet drug that prevents clot formation in arteries or in the stented portions of arteries. He continued that Aspirin is an antiplatelet drug also. He added that Coumadin is an anticoagulant drug, used to prevent intra-cardiac clot formation secondary to atrial fibrillation, and it has no therapeutic value with respect to keeping the stent patent. Upon discharge, Mr. Thomsen was advised to follow up with the cardiologist, Dr. Papaleo, and to continue the Aspirin and Plavix to keep the stents open. Dr Goldfarb continued that Mr. Thomsen was seen by Dr. Vomero on September 6, 2007, and was instructed to continue the Coumadin, Plavix, and Aspirin, among other medications, and to follow up with his cardiologist, Dr. Papaleo, whom he saw on September 7, 2007.

On September 19, 2007, Mr. Thomsen had a permanent pacemaker implanted for tachy-brady syndrome. On October 4, 2007, he experienced a nose bleed and was discharged with instructions to hold the aspirin and Plavix for one day. He saw Dr. Vomero the following day, and on October 11, he presented to the Huntington Heart Center where he was seen by Dr. Singh for intermittent rectal bleeding. His Aspirin dose was decreased to 81 mg. Mr. Thomsen saw Dr. Vomero on October 16, 2007 and was instructed to follow up in four months. Dr. Vomero was awaiting a follow-up echocardiogram and carotid duplex studies from Dr. Papaleo's office, where Mr. Thomsen was seen on October 25, 2007. A nuclear stress test was conducted on November 1, 2007 to ascertain that the stent was still patent. Dr. Goldfarb state that Mr. McCallion indicated on the November 28, 2007 note, that Dr. Papaleo discontinued the Plavix, which Dr. Goldfarb stated was the proper decision at the time due to the risk of bleeding or hemorrhage, regardless of who made the decision to do so.

Dr. Goldfarb continued that on February 25, 2007 , Dr. Vomero found Mr. Thomsen to be relatively stable with no further rectal bleeding. On April 1, 2008, Mr. McCallion saw Mr. Vomero for right upper quadrant abdominal pain for which multiple laboratory studies were obtained. On August 27, 2008, Mr. Thomsen was seen by Eileen Walsh, RN, ANP and Dr. Anwar for shortness of breath with exertion and upon lying down at night, and a heavy squeezing sensation to the mid-chest/epigastrium, and was admitted to Huntington Hospital to be seen by Dr. Papaleo. Dr. Patcha performed a cardiac catheterization on September 2, 2008. The angiogram revealed a 90% stenosis of the distal portion of the right coronary artery. He was transferred to North Shore University Hospital for intervention by Dr. Ong, who performed a right external iliac artery stent via the left femoral artery sheath. On September 3, 2008, rotational atherectomy was performed for the 90% occluded right coronary artery for distal stenosis. Four bare metal stents were placed which spanned from the mid to the distal portions of the artery. Discharge medications included Aspirin 81 mg and Plavix 75 mg.

Dr. Goldfarb set forth the follow up care with Dr. Vomero and Mr. McCallion, and noted that on November 8, 2008, Mr. Thomsen was again hospitalized. It was decided to re-assess his coronary artery disease. A cardiac catheterization performed on November 13, 2009 by Dr. Patcha revealed moderate diffuse

stenosis of the ostium of the right coronary artery, which was felt not to be of hemodynamic significance. There was also ostrial right posterior descending stenosis secondary to stent jailing. He was discharged on November 17, 2008, and readmitted on November 24, 2008, at which time his blood cultures revealed Strep Bovis. He was treated for a presumed endocarditis possibly caused by pacemaker wires, and was prescribed a six week course of antibiotics. The antibiotics were administered while he was a patient at the Carillon Nursing Home for rehabilitation. Mr. Thomsen was subsequently transferred to St Johnland Nursing Home with a plan to continue his medication regime, to undergo a vascular re-evaluation by Dr. Gennaro, and to return to Dr. Vomero in February 2009.

Dr. Goldfarb continued that Mr. Thomsen was admitted to Huntington Hospital on January 8, 2009 with left foot ulcers with gangrenous changes, which was unsuccessfully managed with conservative treatment. Dr. Gennaro performed a lower extremity arteriogram which revealed severe distal disease in the left leg. A left femoropopliteal artery bypass was performed, as were some toe amputations, after an unsuccessful attempt to pass a wire through the occluded artery. He was transferred for rehabilitation on January 30, 2009. On February 13, 2009, Mr. Thomsen signed himself out of rehabilitation, although he still required 24 hour nursing care. Mr. McCallion wrote a note on February 19 reflecting a conversation with Mr. Thomsen's daughter, noting that his status was very poor and that Hospice care had been arranged. Mr. Thomsen died on February 21, 2009.

Dr. Goldfarb opined that it was reasonable for Dr. Papaleo to discontinue the Plavix in this case as Mr. Thomsen was on a dual antiplatelet regime of Aspirin and Plavix for the appropriate amount of time for a patient with bare metal stents. Mr. Thomsen had already developed bleeding from multiple sites, a contraindication to keeping him on Plavix along with the Aspirin and Coumadin. Dr. Goldfarb continued that stopping the Plavix did not cause Mr. Thomsen to require another cardiac catheterization with placement of four bare metal stents at North Shore University Hospital on September 3, 2008. Dr. Goldfarb made reference to the graphic representation, or study diagram from the North Shore Hospital record of the procedure performed by Dr. Ong, and continued that the portion of the blood vessel treated on September 3, 2008 by Dr. Ong was not the same area that was stented the previous year.

Dr. Goldfarb opined that dual antiplatelet therapy with Plavix and Aspirin is used after coronary stents are inserted to prevent subacute (less than one month) and late (greater than one month) stent thrombosis which can cause a complete thrombotic occlusion of the stent, resulting in acute myocardial infarction and frequently death. He continued that it is the metal of the stent exposed to platelets, and clotting factors circulating in the blood, that promote the thrombosis which antiplatelet agents are beneficial in preventing. This, he stated, is a separate phenomenon from the stent restenosis in which fibrous tissue forms that can gradually occlude the stent lumen. It is also a separate process from the natural progression of atherosclerosis, which neither Plavix nor Aspirin can prevent. The amount of time that a patient with a stent is at risk for developing subacute and late stent thrombosis varies depending on how long it takes the stented portion to endothelialize. Dr. Goldfarb stated that for bare metal stents (as opposed to other types that take longer to endothelialize), the recommended duration of antiplatelet (Plavix/Aspirin) therapy after stent placement is a minimum of one month of full dose Aspirin 325 mg and Plavix 75 mg. He continued that in no way do antiplatelet agents influence or impede the development or progression of atherosclerosis.

Dr. Goldfarb opined that Mr. Thomsen did not develop restenosis of the two stents placed in 2007, nor did he suffer a myocardial infarction. Mr. Thomsen had progression of his atherosclerotic disease, and the discontinuance of Plavix in or about November 2007 did not lead to the need for the right external iliac artery stent on September 2, 2008 or the distal right coronary stent on September 3, 2008. He stated that there is no evidence of stent or vascular thrombosis in Mr. Thomsen, the conditions which Plavix is intended to prevent. The atherosclerotic disease was destined to progress as it did, with or without Plavix and Aspirin, which are only intended to prevent clots, which Mr. Thomsen never had.

Melvin Holden, M.D. has set forth in his duly notarized expert affidavit that he is licensed to practice medicine in New York State and is board certified in internal medicine and pulmonary diseases. He indicated the records and materials which he reviewed, and set forth that the plaintiff claims the decedent sustained injuries, including blockage of the coronary arteries thus necessitating additional hospitalization and interventions, including angioplasty and stent placement, due to the improper discontinuance of the drug Plavix. Dr. Holden stated that he is in complete agreement with the medical findings and opinions set forth by Dr. Goldfarb. It is Dr. Holden's opinion with a reasonable degree of medical certainty that the care and treatment rendered by Robert McCallion, ANP to the plaintiff, was in accordance with the accepted standards of medical practice, and was not the cause of the plaintiff's claimed injuries herein. Dr. Holden also stated that he is in complete agreement with Dr. Goldfarb's opinions concerning Dr. Marco Papaleo's decision to stop the Plavix in the fall of 2007 in that it was appropriate in all respects. He further adds that the discontinuance of the Plavix had nothing to do with the subsequent deterioration of Mr. Thomsen's coronary artery status, which was the result of his pre-existing underlying atherosclerotic heart disease.

Dr. Holden opined that when Mr. Thomsen underwent insertion of bare metal stents in early September 2007, that the discontinuance of Plavix in mid-late October 2007 would have been appropriate in all respects. He continued that it is desirous to take patients off Plavix in a number of weeks following a stent procedure utilizing bare metal stents in order to maintain the patient on the least amount of medication required in a given case. As such, it would have been advisable to have discontinued Plavix when it was discontinued as Mr. Thomsen was being maintained on a trio of blood thinning medications, including Coumadin/Aspirin/Plavix. Mr. Thomsen demonstrated a history of bleeding, including GI tract, urinary tract, and epistaxis, while on that trio regime.

Dr. Holden stated that the decision to start or stop Plavix is typically up to the discretion of the patient's treating cardiologist, with the internist/pulmonologist typically deferring to the cardiologists's judgment with respect thereto. He continued that ANP McCallion was justified in relying upon Mr. Thomsen's representation at the time of the office visit of November 28, 2007 that Dr. Papaleo had taken him off such medication. He added that McCallion did not have any involvement in the decision to discontinue the Plavix. He additionally opined that although it cannot be determined which medical provider directed the discontinuance of the Plavix, that the issue is beside the point, as the discontinuance of Plavix in the fall of 2007 was appropriate in all respects.

Dr. Holden indicated that Mr. Thomsen was being treated and seen primarily by the Bernardini-Vomero pulmonary group due to advanced chronic obstructive pulmonary disease. Dr. Holden opined that ANP McCallion obtained proper medical history, conducted appropriate physical examinations, appropriately assessed/diagnosed the decedent's condition, and ordered appropriate follow up care and

treatment at the time, and that there was no need for him to have conducted any further care, including any diagnostic test studies. Thus, he opined, ANP McCallion's care and treatment was appropriate at all times and he did not depart from accepted standards of medical care and treatment

Dr. Holden concluded that the continued use of Plavix as of the Fall 2007, would not have stopped or prevented the deterioration of Mr. Thomsen's coronary artery/vascular system, as his ultimate demise was the result of the build up of plaque in his arteries due to his underlying atherosclerotic heart disease coupled with the fact that he was a noted vasculopath. He added that the plaintiff's claim that the 90% stenosis of the decedent's right coronary artery was a result of the improper stoppage of Plavix is medically incorrect, as Mr. Thomsen's downhill medical course in the late Fall 2008 and early Winter 2009, was chiefly the result of the pre-existing underlying medical problems, including atherosclerotic heart disease, peripheral vascular disease, and chronic obstructive pulmonary disease, as opposed to his having been taken off any medications, including Plavix.

Based upon the foregoing, it is determined that Bernardini, Vomero, Anselmi & Anwar, M.D., P.C. and Ernest Vomero, M.D., and Robert McCallion, ANP, have demonstrated prima facie entitlement to summary judgment dismissing the complaint as asserted against them. The moving defendants have established prima facie that the discontinuance of Plavix did not proximately cause the decedent's claimed injuries in that Mr. Thomsen's demise was a result of his pre-existing medical conditions and progression of his atherosclerotic heart disease, peripheral vascular disease, and chronic obstructive pulmonary disease, which neither Plavix nor Aspirin can prevent because these antiplatelet agents do not influence or impede the development or progression of atherosclerosis. It has additionally been established prima facie that the site of the placement of the stent on September 4, 2008 was distal to the site of the stent placed the year prior, and thus the discontinuance of the Plavix did not cause re-stenosis of the previously placed stent, as such occlusion was at a different location within the right coronary artery.

The plaintiff has opposed these motions with an attorney's affirmation and an expert affirmation by a physician licensed to practice medicine in New York who is board certified in internal medicine with a subspecialty in cardiovascular medicine. Although the plaintiff's expert has indicated that he reviewed the various medical/office records of Mark Gennaro, M.D., Marco Papaleo, M.D., Huntington Hospital records for admissions on August 27, 2008 through September 2, 2008, October 1, 2008 through October 6, 2008, November 8, 2008 through November 18, 2008, November 24, 2008 through December 5, 2008 and January 8, 2009 through January 30, 2009, and the admission record for North Shore University Hospital, the same have not been submitted in support of the plaintiff's expert's opinion.

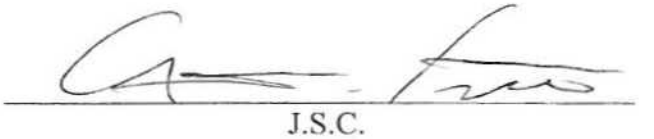
The plaintiff's expert sets forth that on August 29, 2007, balloon angioplasty was performed and bare metal stents were placed in the proximal right coronary artery after the nuclear stress test as cardiac catheterization revealed 85% stenosis in the proximal right coronary artery, with no evidence of any other significant lesions seen in the right coronary artery. A permanent pacemaker was placed on September 16, 2007 at Huntington Hospital. On September 2, 2008, Mr. Thomsen underwent cardiac catheterization which revealed 70% stenosis of the proximal right coronary artery, 99% stenosis of the mid portion of the right coronary artery, and 80% occlusion of the distal right coronary artery. He was transferred to North Shore for rotational atherectomy and bare metal stent placements. However, the plaintiff's expert does not indicate where these stents were placed.

The plaintiff's expert opined with a reasonable degree of medical certainty that once the stent has been placed, it is necessary to maintain the patient on anti-platelet agents, such as Aspirin and Plavix to minimize the incidence of stent thrombosis, myocardial infarction, and death. It is the plaintiff's expert opinion that patients who have undergone coronary stent placement should be kept on dual antiplatelet therapy for up to twelve months. However, the plaintiff's expert does not opine that this is the standard of care, and under what circumstances treatment is continued up to twelve months, and for which type of stent the treatment is advised. Nor does he set forth the minimum period for Plavix administration. He continued that after placement of a bare metal stent, drugs such as Plavix or Ticlid, in combination with aspirin therapy, dramatically reduce the incidence of early major adverse cardiac events after stent placement, when compared with aspirin alone, or in combination with Warfarin. The plaintiff's expert states that stent thrombosis is the leading adverse event associated with early antiplatelet discontinuance. Again, plaintiff's expert does not set parameters for "early discontinuance" and has not established that there was stent thrombosis.

The plaintiff's expert set forth that despite the repeated episodes of bleeding experienced by Mr. Thomsen, the bleeding stopped. Therefore, the decision to stop Plavix was an unreasonable intervention. The plaintiff's expert does not opine, however, that this is a departure from the standard of care and treatment. The plaintiff's expert continued that it is his opinion with a reasonable degree of medical certainty that discontinuation of the Plavix allowed the thrombosis of the right coronary artery to rapidly progress, which led to a re-stenosis of the coronary artery and the need for a second stent placement. The plaintiff's expert does not opine, however, that the discontinuance of Plavix led to the development of stent thrombosis, which is what he opined, with a reasonable degree of medical certainty, was the reason to maintain Plavix, that is, to minimize the incidence of stent thrombosis. Most notably, no evidentiary proof that the decedent suffered from a stent thrombosis has been submitted by the plaintiff. Accordingly, the plaintiff's expert's ambiguous and conclusory opinions have failed to raise a factual issue to preclude summary judgment being granted to the moving defendants.

Accordingly, summary judgment dismissing the complaint is granted as to motions (007) and (008) and the complaint is dismissed with prejudice as asserted against the moving defendants.

Dated: February 28, 2012



J.S.C.

____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION