Doe v Goldweber
2011 NY Slip Op 32819(U)
October 19, 2011
Supreme Court, New York County
Docket Number: 101585/08
Judge: Joan B. Lobis
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SCANNED ON 10/20/2011

[* 1]

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOBIS Justice PART 6

JANE DOE

-v-

BRIAN GOLDWASSER, MD

INDEX NO. 101585/08

MOTION DATE 7/1/11

MOTION SEQ. NO. 002

MOTION CAL. NO.

The following papers, numbered 1 to 24+ opp on mot. seq.* 001 were read on this motion to/for Summary Judgment

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-24
Answering Affidavits — Exhibits	See motion seq. 001
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED

OCT 20 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 10/19/11

JOAN B. LOBIS J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

----------X

JANE DOE and JOHN DOE, names being fictitious to protect plaintiffs' identities,

Plaintiffs,

-against-

BRIAN A. GOLDWEBER, M.D., BRIAN A. GOLDWEBER, M.D., LLC, NORMAN SOHN, M.D., SOMERSET SURGICAL ASSOCIATES, P.C., ABBE J. CARNI, M.D., and ABBE J. CARNI, M.D., P.C.,

Defendant.

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Index No. 101585/08

Decision and Order

FILED

OCT 20 2011

NEW YORK
COUNTY CLERK'S OFFICE

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

In Motion Sequence Number 001, defendants[1] Norman Sohn, M.D., and Somerset Surgical Associates, P.C. ("Somerset P.C.") (collectively the "Somerset Defendants") move by order to show cause, pursuant to C.P.L.R. § 214-a and Rules 3211(a)(5) and 3212, for an order dismissing plaintiffs' action as against them on the grounds that it is time-barred; for an order pursuant to C.P.L.R. Rule 3212 granting them summary judgment on the grounds that plaintiffs cannot make out a prima facie case that a negligent act caused them injury; or for an order of partial summary judgment pursuant to C.P.L.R. Rule 3212 dismissing plaintiffs' claims for punitive damages. In Motion Sequence Number 002, Abbe Carni, M.D., and Abbe Carni, P.C., ("Carni P.C.") (collectively the "Carni Defendants") move by order to show cause, pursuant to C.P.L.R. § 214-a and Rules 3211(a)(5) and 3212, for an order dismissing the complaint as against them. Plaintiffs oppose both motions, which are hereby consolidated for disposition.

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[1] Defendants Brian Goldweber, M.D., and Brian Goldweber, M.D., P.C., have been discharged in bankruptcy and have not appeared in this action.

This case is one of many involving patients who allegedly contracted hepatitis C due to the acts of named co-defendant Brian A. Goldweber, M.D., an anesthesiologist. In 2007, Dr. Goldweber became the focus of a New York City Department of Health ("NYCDOH") investigation after a number of his patients were discovered to have contracted hepatitis B and C after their treatment with him. These patients all underwent anesthesia in August 2006. NYCDOH eventually determined that the manner in which Dr. Goldweber administered anesthesia caused a hepatitis outbreak among these patients.

Plaintiff Jane Doe a/k/a "L.E." did not treat with Dr. Goldweber in August 2006. She treated with him and co-defendant Dr. Sohn on May 13, 2005. That day, Dr. Sohn performed a colonoscopy at his office while Dr. Goldweber administered anesthesia. Dr. Sohn diagnosed L.E. with hemorrhoids and an anal fissure. L.E. had one follow-up at Somerset P.C. on July 15, 2005, and did not return to Dr. Sohn thereafter. After NYSDOH advised Dr. Goldweber's patients from 2003 through 2007 to be tested for hepatitis B and C and human immunodeficiency virus, L.E. tested positive for hepatitis C. On February 8, 2010, L.E. underwent a liver biopsy that was positive for "chronic hepatitis, grade 0 to 1, stage 1."

Dr. Goldweber worked for Carni P.C., of which Dr. Carni is the president and sole shareholder. According to Dr. Carni's examination before trial ("EBT") testimony, sometime in the fall of 2003, Dr. Carni interviewed Dr. Goldweber for a position at Carni P.C. Dr. Carni reviewed Dr. Goldweber's curriculum vitae ("C.V.") and had "a very positive impression of" Dr. Goldweber after the two spoke. He also reviewed recommendation letters submitted on Dr. Goldweber's behalf. Dr. Carni did not contact Dr. Goldweber's prior places of employment nor staff at the hospitals with

which Dr. Goldweber was affiliated. He did not contact the New York State Department of Health State Office of Professional Medical Conduct ("OPMC") nor conduct any other independent checks on Dr. Goldweber.

Dr. Carni did not know that Rochester General Hospital, one of Dr. Goldweber's previous employers, had limited Dr. Goldweber's privileges by not allowing him to administer anesthesia for major vascular and cerebral vascular treatment, or for treatment involving children under five years old. Dr. Carni was also unaware that in 1999, OPMC had charged Dr. Goldweber with several acts of misconduct, including altering a medical record; failing to monitor a patient; administering anesthesia to a patient that was contraindicated by the patient's medical history; administering a long acting anesthesia without securing a patient's airway; and failing to stay with a patient until she became medically stable. In April 1999, Dr. Goldweber admitted guilt to the charges insofar as they implicated him in negligence, and OPMC suspended his license for three years. The suspension was stayed as long as Dr. Goldweber complied with a number of terms, including that his practice be supervised for one year and randomly supervised thereafter; that he complete a training program; and that he pass a competency evaluation. On or about February 4, 2002, OPMC charged Dr. Goldweber with misrepresenting the status of his license and Rochester General Hospital's limitation on his privileges on two job applications. Dr. Goldweber admitted to the professional misconduct and was fined $20,000.

In October 2003, as part of a pre-hiring performance evaluation, Dr. Carni supervised Dr. Goldweber as he administered anesthesia to patients at Dr. Sohn's office. Dr. Carni felt that Dr. Goldweber "performed excellently." Dr. Carni observed that Dr. Goldweber administered propofol

from one 50 milliliter vial to multiple patients, even though Dr. Carni acknowledged that the Physician's Desk Reference ("PDR") proscribes this practice. As per Carni P.C.'s and Dr. Goldweber's standard practice for administering anesthesia, the propofol was withdrawn from the vial into a syringe. The syringe was then attached to a "connecting tubing" that administers the anesthesia from the syringe and into the patient intravenously. Dr. Carni testified that there is almost no risk of the transmission of hepatitis C when administering anesthesia in a sterile manner.

Based on Dr. Goldweber's performance in October 2003, Dr. Carni hired Dr. Goldweber to work for Carni P.C. Upon hiring, Dr. Goldweber supplied Dr. Carni with copies of his medical license, his Drug Enforcement Administration certificate, and his medical malpractice insurance. Dr. Goldweber also showed Dr. Carni his infection control certificate, which was set to expire in May 2006.

Dr. Sohn testified at his EBT that he relied on Dr. Carni to investigate the anesthesiologists working for Carni P.C., and that he did no independent investigations. Dr. Sohn assumed that all of Dr. Carni's anesthesiologists were board certified, but set forth that it would not be unacceptable if they were not. Dr. Sohn later testified that had he known that Dr. Goldweber was not board certified, he "would have discussed it with Dr. Carni and seen what his judgment was on that." Dr. Sohn set forth that he never saw Dr. Goldweber use the same syringe to redose propofol nor did he see him use the same syringe on more than one patient. On many occasions, Dr. Sohn observed Dr. Goldweber use one multidose propofol vial on one or more patients. According to Dr. Sohn's EBT testimony, no other patients on the day or the day prior to the day that L.E. received

treatment were positive for hepatitis C. Dr. Sohn maintained that the contraction of hepatitis C is not a risk of a colonoscopy under general anesthesia.

During the course of NYCDOH's investigation, Dr. Goldweber reported that "it was possible that he would give a second dose of medication to the same patient with the same syringe used to give the first dose." NYCDOH concluded that hepatitis was likely spread when Dr. Goldweber reused a syringe to obtain a second dose of propofol for a source patient (i.e., a patient already infected with hepatitis B or C), because microscopic amounts of blood can flow from the source patient's blood stream through the connectors and into the syringe, thereby contaminating the syringe. The blood from the syringe then likely flowed into the vial, contaminating the vial. Once the propofol was withdrawn from the contaminated vial for a different patient, that patient was at risk for infection. NYCDOH identified three days of unsanitary practices: June 3, 2005, and August 14-15, 2006. NYCDOH also determined that it was inappropriate to use a single vial on multiple patients, because "using medication vials in [this] manner has been shown in many previous articles to be a risk factor for transmission of bloodborne pathogens."

On October 3, 2008, OPMC charged Dr. Goldweber with misconduct related to NYCDOH's investigation. During a hearing on the charges, Dr. Goldweber set forth that he would only reuse the syringe in cases of emergencies.[2] Dr. Goldweber also expressed surprise that blood and hepatitis could flow back through the connectors and into the syringe. OPMC also uncovered evidence that Dr. Goldweber stored used propofol vials overnight for later use. On March 20, 2009,

[2] During his EBT, Dr. Goldweber denied ever reusing syringes.

OPMC sustained charges of gross negligence; gross incompetence; negligence on more than one occasion; incompetence on more than one occasion; and failure to comply with provisions governing the practice of medicine. OPMC revoked Dr. Goldweber's license to practice medicine.

Plaintiffs commenced this action by the filing of a summons and complaint on January 25, 2008,[3] alleging that L.E. had been negligently exposed to hepatitis C during Dr. Goldweber's administration of anesthesia on May 13, 2005. Plaintiffs further allege that the moving defendants negligently supervised and negligently hired Dr. Goldweber. Plaintiffs also allege causes of action sounding in lack of informed consent; loss of services; failure to promulgate proper rules and regulations; and vicarious liability. Plaintiffs seek punitive damages as well. Now, the moving defendants move for summary judgment dismissal of all of these claims.

Turning first to the moving defendants' contention that plaintiffs' claims are untimely, a plaintiff must commence a medical malpractice action within two and one-half years from "the act, omission or failure complained of[.]" C.P.L.R. § 214-a. An action sounding in general negligence must be commenced within three years. C.P.L.R. § 214(5). The courts have determined that

> a claim sounds in medical malpractice when the challenged conduct "constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician" . . . [but] when "the gravamen of the complaint is not negligence in furnishing medical treatment to a patient, but the . . . failure in fulfilling a different duty," the claim sounds in negligence.

Weiner v. Lenox Hill Hosp., 88 N.Y.2d 784, 788 (1996) (internal citations omitted).

[3] A supplemental summons and amended complaint was filed on February 26, 2008.

The moving defendants contend that plaintiffs claims sound in medical malpractice, so they had two and one-half years from May 13, 2005 (the date of L.E.'s colonosocpy) to file their complaint, thereby rendering the January 25, 2008 filing untimely. They further argue that plaintiffs cannot benefit from any of the exceptions to the statutes of limitations, so their complaint must be dismissed. In opposition, plaintiffs assert that their claims sound in general negligence, not medical malpractice, so they had three years (or until May 13, 2008) to file their complaint, thereby rendering the January 25, 2008 filing timely. Plaintiffs further assert that even if the two and one-half-year statute of limitations applies, they are entitled to an extension of that time under the theory of equitable estoppel, based on their allegation that the moving defendants fraudulently concealed the fact that Dr. Goldweber was not board certified. Plaintiffs assert that had L.E. known that Dr. Goldweber was not board certified, she would not have undergone the procedure.

As the Somerset Defendants concede in their reply, the "negligent hiring of an employee who *subsequently* commits acts of malpractice does not constitute a breach of an integral part of rendering medical treatment, but rather derives from [a] failure to fulfill a different, more general duty to the patient." De Leon v. Hosp. of Albert Einstein, 164 A.D.2d 743, 749-50 (1st Dep't 1991) (citations omitted) (emphasis in original); see also Bates v. New York City Health & Hosps. Corp., 194 A.D.2d 422, 423 (1st Dep't 1993). Therefore, the three year statute of limitations for negligence actions applies to the causes of action for negligent hiring (De Leon,164 A.D.2d at 747; see also Bleiler v. Bodnar, 65 N.Y.2d 65, 73 [1985]), rendering the negligent hiring and supervision claims timely. Similarly, a failure to promulgate rules and regulations to ensure sterile and sanitary equipment "does not implicate questions of medical competence or judgment linked to the treatment of [L.E.]", but rather centers on the moving defendants' "independent duties" as

providers of medical care. Weiner v. Lenox Hill Hosp., 88 N.Y.2d 784, 788 (1996). Thus, the three year statute of limitations for negligence actions applies to the claim that the moving defendants failed to promulgate rules and regulations to ensure sterile and sanitary equipment, rendering that claim timely.

On the other hand, the allegation that Dr. Goldweber failed to use sterile technique in administering intravenous anesthesia to individual patients bears a substantial relationship to medical treatment by him, so the two and one-half year statute of limitations for medical malpractice claims applies (see Glasgow v. Chou, 33 A.D.3d 959, 961 [2d Dep't 2006]), rendering the claims sounding in defendants' vicarious liability for Dr. Goldweber's alleged malpractice and lack of informed consent untimely. See Hazel v. Montefiore Med. Ctr., 243 A.D.2d 344 (1st Dep't 1997). Contrary to plaintiffs' argument, the facts of this case do not support precluding defendants from relying on the defense of statute of limitations based on equitable estoppel. For equitable estoppel to apply, there must be a showing that after the malpractice, the defendant's specific, affirmative act kept the plaintiff from filing a timely lawsuit (Putter v. North Shore Univ. Hosp., 7 N.Y.3d 548 [2006]); this simply has not been shown here. Accordingly, the informed consent and vicarious liability claims must be dismissed.

Turning to plaintiffs' timely claims, "to establish a cause of action based on negligent hiring, negligent retention, or negligent supervision, it must be shown that the employer knew or should have known of the employee's propensity for the conduct which caused the injury." Shor v. Touch-N-Go Farms, Inc., 83 A.D.3d 927, 928 (2d Dep't 2011). This rule applies to independent contractors as well. See Chuchuca v. Chuchuca, 67 A.D.3d 948 (2d Dep't 2009). A defendant

moving for summary judgment on such claims must demonstrate with sufficient evidence that the defendant neither knew nor should have known of the contractor's propensity to engage in the conduct that caused the injury. State Farm Ins. Co. v. Cent. Parking Sys., Inc., 18 A.D.3d 859, 860 (2d Dep't 2005). If the defendant meets this burden, in order to raise an issue of fact, the plaintiff must offer evidence showing that the employer-defendant was aware of an independent contractor's prior conduct that was either identical to the conduct that ultimately caused the plaintiff injury or of a slightly different nature that nevertheless made the plaintiff's ultimate injury foreseeable. See T.W. v. City of New York, 286 A.D.2d 243, 245-46 (1st Dep't 2001) (jury could reasonably conclude that it is foreseeable that an employee with convictions for assault would commit a sexual assault when working with children); see also Colon v. Jarvis, 292 A.D.2d 559, 559-61 (2d Dep't 2002) (in case in which school employee had an improper sexual relationship with a student, summary judgment denied where there was evidence that school district was aware of employee's prior romantic overtures to students); cf. Rochlin v. Alamo, 209 A.D.2d 499, 500 (2d Dep't 1994) (plaintiff whose vehicle was struck in the rear by a vehicle driven and stolen by defendant's employee could not make a negligent hiring claim without proof that defendant was aware of employee's propensity to steal).

The Carni Defendants argue that they had no reason to know that Dr. Goldweber "would break sterile technique."[4] They maintain that they properly relied on Dr. Goldweber's letters of recommendation; the qualifications on his C.V.; and Dr. Carni's own observations of Dr. Goldweber to conclude that Dr. Goldweber would perform his duties safely. The Carni Defendants

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[4] The Somerset Defendants did not argue that they were entitled to summary judgment on this issue until their reply. As such, the court will not consider this request for relief. See Dannasch v. Bifulco, 184 A.D.2d 415 (1st Dep't 1992); Ritt v. Lenox Hill Hosp., 182 A.D.2d 560 (1st Dep't 1992).

assert that Dr. Goldweber's prior disciplinary record was unknown to them; that the disciplinary record did not involve unsanitary practices; and that Dr. Goldweber never admitted to "any particular act of negligence." The Carni Defendants further assert that it would be unreasonable and contrary to public policy for the court to allow this issue to go to a jury, because a verdict in favor of these plaintiffs would make medical facilities reluctant to hire any doctor who admits to misconduct.

In opposition, plaintiffs assert that it was insufficient for Dr. Carni to rely on Dr. Goldweber's C.V., because a C.V. is "nothing more than a self-serving advertisement of a physician's alleged accomplishments." Plaintiffs further argue that Dr. Goldweber had a documented history of negligently administering anesthesia. They further assert that Dr. Carni was aware of Dr. Goldweber's improper use of propofol. In a separate affirmation, plaintiffs' expert (named redacted), who is board certified in anesthesiology, sets forth that it was a deviation from the standard of care to reuse vials of propofol on multiple patients, across multiple days, "because of the substantial risk of contamination of the medication through the backflow of blood."

The Carni Defendants have met their prima facie burden for summary judgment on the negligent hiring, retention, and supervision claims by setting forth that they were unaware of Dr. Goldweber's previous misconduct; appropriately relied on letters of recommendations; and never observed Dr. Goldweber administer anesthesia in an unsanitary manner. The burden thus shifts to plaintiffs to raise a triable material issue of fact. The misconduct committed by Dr. Goldweber prior to his employment with Carni P.C., as found by OPMC, would not put the Carni Defendants on notice of the specific conduct herein: his unsanitary practices. See Coffey v. City of New York, 49 A.D.3d 449, 450 (1st Dep't 2008); Rochlin v. Alamo, 209 A.D.2d 499, 500 (2d Dep't 1994).

However, plaintiffs have raised an issue of fact as to the negligent hiring and supervision claim by setting forth that the Carni Defendants were aware of Dr. Goldweber's standard practice to use one propofol vial on more than one patient, and by showing that administering anesthesia in such a manner made transmission of a virus, like hepatitis, foreseeable. The foreseeability of such is supported by the medical literature referenced in NYCDOH's report and plaintiffs' expert's opinion.

Turning to the next aspect of the summary judgment motion, the moving defendants argue that plaintiffs will not be able to establish that Dr. Goldweber committed malpractice or proximately caused L.E. to contract hepatitis. On a motion for summary judgment, a defendant in a medical malpractice action bears the initial burden of demonstrating that there was either no departure from the standard of care, or that any such departure did not proximately cause plaintiff's alleged injury or damage. King v. St. Barnabas Hosp., 87 A.D.3d 238, 2011 N.Y. Slip Op. 5641 (1st Dep't 2011). Once this burden is met, the non-moving party must present "evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Alvarez, 68 N.Y.2d at 324 (1986).

The moving defendants argue that there is no evidence in the record that Dr. Goldweber acted in an unsanitary and/or unsafe manner when he administered anesthesia to L.E. The moving defendants set forth that the NYCDOH and OPMC reports are bereft of any mention of anesthesia administered on May 13, 2005 and that there is no evidence that a hepatitis outbreak occurred on that day. The moving defendants also assert that there is no evidence that L.E. did not have hepatitis prior to her colonoscopy nor is there evidence that she became infected with the virus immediately thereafter. In support of their motion, the moving defendants rely on the affirmation

of H. Alan Schnall, M.D., who is duly licensed to practice medicine in New York and board certified in internal medicine. Dr. Schnall, in his review of the records, sets forth that the mere fact that L.E. was diagnosed with hepatitis subsequent to her colonoscopy does not mean that she was not infected with the virus before. Dr. Schnall maintains that hepatitis C can be asymptomatic and go "many years" without being diagnosed.

In opposition, plaintiffs argue that they can establish that Dr. Goldweber acted in a unsafe and unsanitary manner when he administered anesthesia to L.E. by relying on habit evidence. Plaintiffs argue that NYCDOH's and OPMC's findings establish that it was Dr. Goldweber's custom and habit to administer anesthesia in an unsafe manner. Plaintiffs further argue that the doctrine of res ipsa loquitor should apply to this case in that patients do not ordinarily contract hepatitis C during colonoscopies; that the anesthesia was administered under the exclusive control of Dr. Goldweber; and that L.E. did not contribute to her injury. In support of their motion, plaintiffs' expert concludes that Dr. Goldweber reused syringes to redose propofol and that such practice was a deviation from the standard of care. The expert maintains that L.E. lacks "other risks factors" for contracting hepatitis C; that there is no evidence that L.E. had any abnormal liver tests prior to the colonoscopy; that there is no evidence that L.E. could have contracted the virus somewhere else; and that both L.E.'s husband and son are negative for hepatitis C. L.E. offers her own affidavit in opposition. She sets forth that she was not diagnosed with hepatitis C prior to June 29, 2007, nor did she undergo or participate in any activities that ostensibly would put her at risk for transmission prior to June 29, 2007, like blood transfusions or scope procedures.

In reply, the Carni Defendants assert that the findings of OPMC and NYCDOH are not admissible under Public Health Law § 10(2), because these investigations did not involve L.E. or the day on which her treatment occurred. The Carni Defendants further argue that plaintiffs cannot establish that Dr. Goldweber had a habit of reusing syringes, because he testified that the administration of propofol varied from patient to patient.

The moving defendants have met their prima facie burden for summary judgment by setting forth that there is no proof that Dr. Goldweber committed malpractice nor proof that L.E. contracted hepatitis on the exact day of May 22, 2005. Nevertheless, both Dr. Carni and Dr. Sohn admitted in their depositions that contraction of hepatitis C is not a normal risk of undergoing a colonoscopy; there is no dispute that plaintiff, while unconscious, was under the exclusive control of Dr. Sohn and Dr. Goldweber during the colonoscopy; and L.E. and her expert set forth that she was neither diagnosed with nor showed signs of hepatitis C prior to the colonoscopy, nor had she engaged in any behavior that would have put her at risk for contracting the disease. Plaintiffs have sufficiently 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. The issues of the applicability of the doctrine of res ipsa loquitur and the admissibility of the proposed habit evidence are best left to the trial court.

Turning to that branch of the motion seeking to dismiss the punitive damages claims, punitive damages are not intended to compensate a plaintiff, but instead serve to punish the wrongdoer and deter that individual and those in a similar situation from engaging in the same behavior in the future. Ross v. Louise Wise Servs., Inc., 8 N.Y.3d 478, 489 (2007). More than mere

negligence or carelessness is required to permit a punitive damages claim. Rey v. Park View Nursing Home, Inc., 262 A.D.2d 624, 627 (2d Dep't 1999); Gruber v. Craig, 208 A.D.2d 900, 901 (2d Dep't 1994). It must be shown that the defendant acted in a manner that was "wantonly dishonest, grossly indifferent to patient care, or malicious and/or reckless." Schiffer v. Speaker, 36 A.D.3d 520, 521 (1st Dep't 2007).

The moving defendants assert that there is no evidence of evil motive on their part nor evidence of willful or intentional misconduct. They further assert that Dr. Goldweber has already been punished for his negligence so there would be no deterrent effect for the punitive damages. The moving defendants contend that there is no proof that they participated in or consented to Dr. Goldweber's malpractice. In opposition, plaintiffs concede that the moving defendants did not participate in or consent to Dr. Goldweber's unsanitary practices. In opposition, plaintiffs assert that the moving defendants showed "utter indifference" to Dr. Goldweber's past misconduct and his use of one vial of propofol on more than one patient, which they argue is enough to allow the issue of punitive damages to survive summary judgment.

There is no evidence that the moving defendants acted recklessly with regard to the supervision and hiring of Dr. Goldweber. At worst, they acted negligently in hiring him with the knowledge that he was administering anesthesia in an inappropriate way, but there is no evidence that they had any knowledge or should have known that he was reusing syringes. Therefore, those branches of the moving defendants' motions seeking dismissal of the claims for punitive damages are granted. Accordingly, it is hereby

ORDERED that the motion of defendants Norman Sohn, M.D., and Somerset Surgical Associates, P.C., for summary judgment (Motion Sequence Number 001) is granted to the extent that all claims sounding in vicarious liability, lacked of informed consent, and punitive damages are severed and dismissed; and it is further

ORDERED that the remainder of Motion Sequence Number 001 is denied; and it is further

ORDERED that the motion of Abbe Carni, M.D., and Abbe Carni, P.C., for summary judgment (Motion Sequence Number 002) is granted to the extent that all claims sounding in vicarious liability, lacked of informed consent, and punitive damages are severed and dismissed; and it is further

ORDERED that the remainder of Motion Sequence Number 002 is denied; and it is further

ORDERED that the parties shall appear for a pre-trial conference on December 13, 2011, at 9:30 a.m.

Dated: October 19, 2011

FILED

OCT 20 2011

NEW YORK
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JOAN B. LOBIS, J.S.C.