[* 1]

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

PRESENT: JOAN B. LOBIS Justice PART 6

Barbara Bradshaw

- v -

Lenox Hill Hosp.

INDEX NO. 114078/05

MOTION DATE 2/26/13

MOTION SEQ. NO. 0015

MOTION CAL. NO. ____

The following papers, numbered 1 to ____ were read on this motion to/for Summary judgment

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-23
Answering Affidavits — Exhibits	24-54
Replying Affidavits	55

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. ORDER + JUDGMENT

FILED

APR 18 2013

NEW YORK COUNTY CLERK'S OFFICE

Dated: 4/17/13

JOAN B. LOBIS J.S.C.

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

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

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

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

----------X

BARBARA BRADSHAW,

Plaintiff,

Index No. 114078/05

-against-

Decision, Order and Judgment

LENOX HILL HOSPITAL, JEFFREY MOSES, M.D., VERONICA DAANTJE, RCVT,

Defendants.

----------X

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

This medical malpractice case arises out of a cardiac catheterization performed on Barbara Bradshaw. Bradshaw sues, alleging medical negligence and lack of informed consent against Defendants Lenox Hill Hospital, Jeffrey Moses, M.D., and Veronica Danntje, RCVT. Defendants move for summary judgment pursuant to Rule 3212 of the Civil Practice Law and Rules. For the following reasons that motion is granted in part for Plaintiff's claim of lack of informed consent against Veronica Daantje, and denied in all other respects.

In March 2003, Plaintiff, Barbara Bradshaw, met with Dr. Jeffrey Moses at his office for a cardiac consultation to determine whether she needed a diagnostic cardiac catheterization. The Plaintiff, who was 5' 2" and weighed 234 pounds, had risk factors for coronary artery disease and cardiac symptoms, including an abnormal cardiac stress test. She had recently been diagnosed with endometrial carcinoma and was scheduled to undergo a hysterectomy and bilateral salpingo-oophorectomy at the end of May. Dr. Moses determined that Ms. Bradshaw should undergo the catheterization, which was scheduled for April 7, 2003.

Ms. Bradshaw's procedure was performed at Lenox Hill Hospital in its Lenox Hill Hospital Heart and Vascular Institute, which was run by Lenox Hill Interventional Cardiology, P.C. (LHIC). Defendant Dr. Jeffrey Moses was the principal shareholder and President of LHIC. At the time of the events in this case, LHIC had an exclusive contract with the Hospital to provide interventional cardiology and peripheral vascular disease services. The services were provided within the Hospital's Department of Medicine. Dr. Moses directed provision of the services and reports and was accountable in the performance of his duties to the Director of the Department of Medicine. The physicians under Dr. Moses were LHIC employees or independent contractors. Veronica Daantje was a nurse employed by the Hospital.

Ms. Bradshaw's procedure was conducted midday on April 7, 2003. Nurse Daantje provided access to Ms. Bradshaw's vessel. She punctured Bradshaw's femoral artery on the inside thigh of Ms. Bradshaw's right leg. After access was obtained, Dr. Moses arrived to conduct the catheterization procedure. As he conducted the procedure, he took images and measurements, which showed that Ms. Bradshaw needed a stent in her left anterior descending artery due to a blockage there. After Dr. Moses placed the stent, and the procedure was completed, the puncture was closed by use of an Angio-seal. Ms. Bradshaw claims that she felt pain immediately following the procedure. Her medical records show that Dr. Jaff, a vascular internist who consulted on her post-operative care, noted this complaint in the progress notes that he made on April 9, 2003.

Following her procedure, Ms. Bradshaw was moved to the recovery room and then transferred to the Hospital's Progressive Care Unit. Although virtually all the medical records in this case are stamped in the upper left showing Defendant Moses' name as attending physician

responsible for patient Bradshaw, the record shows that Dr. Moses did not visit Ms. Bradshaw after he performed her angioplasty. Rather, he testified that he tasked his employee, Dr. Lynne Glasser, to follow the patient post-operatively.

The next morning Ms. Bradshaw awoke complaining of tenderness in her right groin. Dr. Glasser, who does not independently recall the events of this case, has notes first appearing in Ms. Bradshaw's chart at this time, recording the complaint and ordering a groin scan. In her deposition, Dr. Glasser testified that the scan was to rule out any hematoma or clot. But the ultrasound of the right groin confirmed the presence of both. Ms. Bradshaw, who had no prior history of clots, had developed deep vein thrombosis in the right common femoral vein (the DVT). She also had two right groin hematomas.

Following the scan, Ms. Bradshaw was administered blood thinners and narcotic pain medication. Her discharge summary sheet dated April 8, 2003, which was certified by the signature of the attending physician, listed among others "retroperotoneal [sic] bleed."

But Ms. Bradshaw was not discharged on April 8th. Dr. Jaff, the vascular internist, opined that Ms. Bradshaw should first undergo implantation of an inferior vena cava (IVC) filter. Because Ms. Bradshaw was scheduled for major abdominal surgery the following month, the usual regimen of blood thinners to treat her DVT was contraindicated. The IVC filter would be needed to prevent any embolisms from getting to her lungs pending surgery.

Pending insertion of the IVC filter, Ms. Bradshaw continued to receive blood

thinners. Dr. Glasser testified that, in consultation with Dr. Moses, Ms. Bradshaw was given blood thinners to prevent subacute thrombotic closure of the stent. By the next day, April 9th, Ms. Bradshaw had developed multiple sites of bleeding, including a right rectus muscle hematoma, which Dr. Jaff testified resulted from the catheterization puncture as well as the blood thinners. Ms. Bradshaw also had right groin ecchymosis, which Dr. Jeffrey Stein, the cardiac surgeon who was scheduled to insert the IVC filter, testified in his deposition followed from blood leaking out during the catheterization.

By the next day, April 10th, Ms. Bradshaw's levels of hemoglobin and hematocrit in her blood were reducing to borderline and abnormal ranges. That evening she had a Hep Lock IV inserted in her right forearm.

On the morning of April 11th, Ms. Bradshaw underwent the procedure to insert the IVC filter. Her right arm was in a board for the procedure. Dr. Stein used the same site as used by Dr. Moses in performing the angioplasty.

By 8:15 pm that evening, Ms. Bradshaw was complaining of abdominal plan. A CAT scan of the abdomen and pelvis was performed. The radiology report noted a subacute hematoma enveloping Ms. Bradshaw's right rectus muscle. A progress note for 11:00 pm that day by physician's assistant K. Mortella stated, "No Retroperitoneal Bleed."

The next day, April 12th, the administration of blood thinners Lovenox and Coumadin were stopped. Blood results continued to show declining levels of hemoglobin and

hematocrit. On the evening of April 13th, Ms. Bradshaw's groin hematoma was noted as "grossly ecchymatic," and her groin and abdomen were "very tender." She was complaining about the medical care and staff.

The following morning, on April 14th, it was documented that Ms. Bradshaw had been complaining for the past couple of days about "pain right forearm with intravenous." An ultrasound was ordered, which ruled out any deep vein thrombosis at that site but noted a small thrombus present "in a superficial vein at the radial aspect of the right forearm." Dr. Glasser also considered a blood transfusion for Ms. Bradshaw's declining levels of hemoglobin and hematocrit. Notwithstanding, Dr. Moses overruled Dr. Glasser's plan to discontinue aspirin, which he indicated was necessary for her catheterization post-operative care. That afternoon Dr. Jaff met with Ms. Bradshaw and her family members indicating in her chart "No retroperitoneal hematoma." He also noted her right forearm phlebitis.

On April 15, 2003, Bradshaw's right groin was "questionably fuller, with ecchymosis." Dr. Glasser ordered another groin scan, which showed that the hematoma had increased, and the small left rectus hematoma had new stranding. In addition, Dr. Jaff recommended a blood transfusion due to the bleeding shown by the laboratory and scan results.

That same day Ms. Bradshaw was also seen by the staff neurologist, Dr. Gerald Smallberg, who diagnosed femoral neuropathy "most likely secondary to stent." His notes of the patient's history referred to Ms. Bradshaw's "increasing pain in the right groin" and "numbness in the right thigh into medial right calf." The pain was described as "ten out of ten in intensity, worse

with elevation of the right leg and movement. No prior history . . . of any leg pain." Ms. Bradshaw was started on Neurontin. She was also receiving morphine and other narcotics.

During the next two days, Wednesday, April 16th and Thursday, April 17th, Ms. Bradshaw was treated by Dr. Bruce Charash, who was the Chief of the Hospital's Cardiac Care Unit. Dr. Charash testified in his deposition that at the time that he was treating Ms. Bradshaw he was being paid by LHIC. There is no written documentation in the record supporting that oral testimony.

Under Dr. Charash's recommendation, Ms. Bradshaw was given 2 units of packed red blood cells. And she was also seen for the first time by a pain management doctor for "severe abdominal and right lower extremity pain." According to that doctor, Dr. Donna Kesselman, Ms. Bradshaw's pain registered "zero to eight out of ten at rest. And ten at ten with movement or ambulation." The right lower extremity neuropathic pain was described as "hot, seering." Ms. Bradshaw was placed on a PCA pump with morphine and given a duragesic for the pain, which Dr. Kesselman associated with the hematoma.

On April 18, 2003, Ms. Bradshaw complained of abdominal wall pain and right leg pain exacerbated with motion. An ultrasound revealed that the DVT had extended into Ms. Bradshaw's tibia. She complained of increased pain in the right groin into the right thigh, which Dr. Jaff noted was slightly more swollen.

Ms. Bradshaw remained hospitalized. On April 21, 2003, Dr. Jaff addressed with Ms. Bradshaw that she would have significant right leg edema due to the DVT. He was concerned about

the DVT extending down or up the leg. He opined that medications to dissolve the DVT or a procedure to remove it would be unsafe. All would require anticoagulation with the risk of a rebleed. He recommended instead right lower extremity elevation and ACE wrap while walking. That same day, Dr. Smallberg noted Ms. Bradshaw's "increased swelling" of her right thigh and "tenderness over the femoral nerve." He increased her dosage of Neurontin.

By the next day, however, Ms. Bradshaw was complaining that her medications made her feel as if she were in a "drunken stupor." Dr. Smallberg noted that Ms. Bradshaw's pain was still "10 out of 10" with exertion and motion. He adjusted the Neurontin, however, to deal with the sedatory side effect.

By April 24, 2003, Ms. Bradshaw's edema was better, and her right leg strength had improved. She did complain of a breast mass, which was diagnosed as "likely hematomas - traumatic in nature." She was released with medications and referred to her New Jersey cardiologist, Dr. Thomas Schwartzer, for follow-up.

In early June of 2003, Ms. Bradshaw successfully underwent endometrial cancer surgery at St. Peter's University Hospital. In July 2004 she had surgery for repair of her rectus sheath muscle at Pennsylvania Hospital, and revision surgery of that repair at Paoli Hospital, the following July. She filed this cause of action in early October 2005 alleging medical malpractice arising out of the catheterization procedure and lack of informed consent. She has been on Social Security Disability since January 2006 and has not worked since her catheterization procedure. In 2006 she was diagnosed with Complex Regional Pain Syndrome for which she has been receiving

treatment at Sloan Kettering.

In 2008, Plaintiff sued her prior counsel in this action for legal malpractice. That case was settled in 2012. Following disclosure and the filing of a note of issue, the Defendants now move for summary judgment on both counts and to dismiss the complaint on the grounds that there are no genuine issues of material fact.

In moving for summary judgment, Defendants offer the expert opinion of Dr. John Fox, who is a New York-licensed physician and Director of the Cardiac Catheterization Laboratory at Beth Israel Medical Center. Dr. Fox bases his opinion on his medical training and experience, and his review of the records in this case. Dr. Fox opines that "to a reasonable degree of medical certainty" the "cardiac catheterization procedure performed" was appropriate and performed correctly. He opines that Daantje "is well qualified and possesses the requisite background to be able to access the femoral artery without supervision" and that she accessed the artery correctly and appropriately sealed it at the procedure's conclusion. He opines that Nurse Daantje accessed the vessel "at or about the femoral head." In discussing Nurse Daantje's qualifications he notes that she worked at the Hospital "from 2002-2004" and from 2004-2007, at New York Presbyterian Hospital, "two of the top hospitals in metropolitan New York."

Dr. Fox opines that Ms. Bradshaw was more than likely hyper-coagulable due to her endometrial cancer and the medicine she was taking, Provera, which he states "specifically contains warnings that people can develop DVTs." He further relies on Ms. Bradshaw's developing the clot

on her right forearm to support his opinion that she was in a hyper-coagulable state. He opines that the anticoagulants prescribed following the diagnosis of the DVT were warranted, notwithstanding the bleeding that they caused and the need for a blood transfusion.

Dr. Fox also opines that Defendants did not proximately cause "the Plaintiff's allegations." He opines that the "complications, that occurred well after her cardiac catheterization, were-multifactorial related to her underlying malignancy, medications, development of an extensive DVT, need for a second procedure" to place an IVC filter and development bleeding from the anticoagulation therapy. He claims Dr. Moses and Nurse Daantje had "no active participation in the post-catheterization management of these complications." The affirmation is under seven pages in length; the "Opinions" section follows a recitation of facts as the affirmant sees them, and contains 7 paragraphs that are set forth in under three pages of the entire text.

Although Defendants' expert does not address informed consent in his opinion, Defendants dispute that cause of action as well. They claim that Plaintiff failed to properly plead that claim. But even if she had, Dr. Moses did obtain consent after discussing the risks, benefits, and alternatives. They offer the consent form, which Plaintiff signed for the procedure.

In moving for summary judgment, Dr. Moses further points out that he was not there during the puncture. In fact, he arrived 10 minutes later. He disagrees that Nurse Daantje required supervision. And he never saw Bradshaw after the procedure. Rather, his employee, Dr. Glasser, had that assignment.

Lenox Hill Hospital concedes that Daantje was its employee during the events in this case and that it is vicariously liable for any negligence of Danntje. But it claims that Dr. Moses was not its employee.

Plaintiff argues that Defendants' expert opinion relies on disputed facts, is vague and conclusory. She disputes the Hospital's claim that it has made a prima facie showing that the treating physicians in this case were not agents of the Hospital. She contends that the Hospital is liable not just for Defendant Daantje, its employee, but also for Defendant Dr. Moses and for non-party actors under the theory of agency by estoppel, based on significant control over Dr. Moses and other indicia of agency including badges and business cards, as well as the relationship of the catheterization lab with the Hospital.

Plaintiff submits four expert opinions with her opposition. Dr. David Gitlitz is a New York-licensed, board-certified vascular surgeon. He disputes Dr. Fox's conclusion and opines that Plaintiff's injuries were caused by the puncture and that had Ms. Bradshaw received timely vascular surgery, including evacuation of the hematomas and repair of the puncture, Ms. Bradshaw would not have suffered compression and the adverse neurological consequences. He further opines that the failure to document the puncture site was a factor in the Defendants' failure to provide timely intervention. Plaintiff's second expert, Dr. Morton Finkel, is a New York-licensed, board-certified neurologist. He opines that the catheterization procedure caused Plaintiff's hematoma, which compressed her nerve and causes her pain. Plaintiff's third expert, Dr. John Baker, is an interventional cardiologist who directs the Cardiac Catheterization Labs at Anaheim Regional Medical Center in California. Dr. Baker disputes the propriety of the location of the access point and

opines that the Defendants departed in failing to document that access point. He also challenges the propriety of Plaintiff's post-operative care. Plaintiff's fourth expert, Dr. Richard Shoenfeld, is an interventional radiologist, who is licensed in New York. He has performed more than 10,000 cardiac catheterization procedures. Dr. Shoenfeld disputes Defendants' expert's claim regarding the location of the puncture and the appropriateness of accessing the vessel from the thigh rather than the wrist, given Plaintiff's weight at the time of the procedure.

Plaintiff disputes Defendants' claims that there was informed consent in this case. She cites to her complaint language and offers the expert opinions of Dr. Baker and Shoenfeld that informed consent was deficient in this case. She references her deposition testimony, among others, that she had been told that due to her weight the procedure was to have been performed through her wrist, not her thigh.

In reply, Defendants dispute any apparent or ostensible agency by estoppel. They underscore Dr. Fox's opinion that the puncture was done at the proper location and contend that Plaintiff's experts' opinions are conclusory.

In considering a motion for summary judgment this Court reviews the record in the light most favorable to the non-moving party. E.g., Dallas-Stephenson v. Waisman, 39 A.D.3d 303, 308 (1st Dep't 2007). The movant must support the motion by affidavit, a copy of the pleadings, and other available proof, including depositions and admissions. C.P.L.R. Rule 3212(b). The affidavit must recite all material facts and show, where defendant is the movant, that the cause of action has

no merit. Id. This Court may grant the motion if, upon all the papers and proof submitted, it is established that the Court is warranted as a matter of law in directing judgment. Id. It must be denied where facts are shown "sufficient to require a trial of any issue of fact." Id.

In a medical malpractice case, to establish entitlement to summary judgment, a physician must demonstrate that he did not depart from accepted standards of practice or that, even if he did, he did not proximately cause injury to the patient. Roques v. Noble, 73 A.D.3d 204, 206 (1st Dep't 2010). In claiming treatment did not depart from accepted standards, the movant must provide an expert opinion that is detailed, specific and factual in nature. E.g., Joyner-Pack v. Sykes, 54 A.D.3d 727, 729 (2d Dep't 2008). Expert opinion must be based on the facts in the record or those personally known to the expert. Roques, 73 A.D.3d at 195. The expert cannot make conclusions by assuming material facts not supported by record evidence. Id. Defense expert opinion should specify "in what way" a patient's treatment was proper and "elucidate the standard of care." Ocasio-Gary v. Lawrence Hosp., 69 A.D.3d 403, 404 (1st Dep't 2010). A defendant's expert opinion must "explain 'what defendant did and why.'" Id. (quoting Wasserman v. Carella, 307 A.D.2d 225, 226 (1st Dep't 2003)). Conclusory medical affirmations fail to establish prima facie entitlement to summary judgment. 73 A.D.3d at 195. Expert opinion that fails to address a plaintiff's essential factual allegations fails to establish prima facie entitlement to summary judgment as a matter of law. Id.

Claims of lack of informed consent are statutorily defined. Pub. Health § 2805-d. The law requires persons providing professional treatment or diagnosis to disclose alternatives and

reasonably foreseeable risks and benefits involved to the patient to permit the patient to make a knowing evaluation. Id. § 2805-d(1). Causes of action for lack of informed consent are limited to non-emergency procedures or other treatment and include diagnostic procedures that involve invasion or disruption to bodily integrity. Id. § 2805-d(2). To establish lack of informed consent, a claimant must show that a reasonably prudent person in the patient's position would not have undergone the treatment or diagnosis had the patient been fully informed, and the claimant must show that the lack of informed consent is a proximate cause of the injury or condition for which recovery is sought. Id. § 2805-d(3).

As an initial matter this Court finds that the parties do not dispute that Nurse Daantje was not responsible for obtaining informed consent in this case. In opposing Defendants' motion on this issue, Plaintiff only claims that "Lenox Hill and Moses have not established a legal basis in their motion to avoid as a matter of law" Plaintiff's cause of action for lack of informed consent. Accordingly, summary judgment is appropriate on the claim of lack of informed consent against Nurse Daantje.

This Court is not persuaded that Defendants have established a prima facie case of entitlement to summary judgment on the remaining claims, however. On Plaintiff's first cause of action, the claim for medical malpractice, this Court finds that the defense expert affirmation submitted in this case is conclusory. Dr. Fox's claim that Daantje operated within proper standards of care in accessing and sealing the vessel and that Dr. Moses properly performed the catheterization lacks detail. Dr. Fox does not support how or why those Defendants' conduct was appropriate.

In addition, part of Dr. Fox's opinion relies on post-hoc rationalization. He refers to Nurse Daantje's subsequent work experience at a different New York hospital to support his claim that she, using the present tense, "is well qualified and possesses the requisite background to be able to access the femoral artery without supervision . . . ." Any experience that Defendant Daantje gained subsequent to Plaintiff's 2003 procedure is irrelevant to her qualifications at the time of the events in this case. E.g., L&M Bus Corp. v. N.Y. City Dep't of Educ., 71 A.D.3d 127, 135 (1st Dep't 2009), aff'd as modified by, 17 N.Y.3d 149 (2011).

Nor does this Court find defense expert's opinion regarding causation to be sufficient. His statement that Plaintiff's DVT was likely caused by her cancer or the medicine Provera is unsupported with any detail. He fails to reconcile the deposition testimony attached in support of Defendants' motion that attributes the clot that formed in Plaintiff's right arm to Plaintiff's Hep Lock IV in claiming that the clot in her forearm further supports his hypothesis that Plaintiff was hyper-coagulable. Dr. Fox also ignores the data in the record provided in support of the motion for summary judgment that Plaintiff related that she felt pain immediately following the procedure, rather than 17 hours later as he states. For Dr. Fox to simply state that Dr. Moses and Nurse Daantje had "no active participation" following the procedure begs the question of any liability for the acts they did commit, not to mention any liability arising from alleged nonfeasance by Dr. Moses, as Ms. Bradshaw's attending physician. E.g., Voulo v. Bozza, 294 A.D.2d 494 (2d Dep't 2002). Dr. Glasser's deposition testimony indicates that Dr. Moses was the attending physician for Plaintiff throughout Ms. Bradshaw's hospitalization. Dr. Fox's characterization that

the causes of Plaintiff's complications are multi-factorial begs the question whether the Defendants' actions in this case were substantial factors in the cause of those complications.

Because Defendants have not established a prima facie case on the medical malpractice claims against Dr. Moses and Nurse Daantje, it follows that the Hospital is not entitled to summary judgment on Plaintiff's claim that it is not liable for medical malpractice. Additionally there are genuine issues of material fact in the available proof submitted with Defendants' motion surrounding Dr. Moses' employment status and the agency of physicians not sued in this action. Trivedi v. Golub, 46 A.D.3d 542, 543 (2d Dep't 2007) (negligent actor is not necessary party for vicarious liability claim). None of the deponents specifically recalled addressing their employment relationship at the time they treated Plaintiff. Doctor Moses for example testified that "Everybody who's cathed at Lenox Hill was a member of the P.C. and Everybody who had privileges had to be a member of the P.C." Dr. Glass's business card in this record reads Lenox Hill Hospital, not LHIC. Dr. Jaff also testified that he did not customarily inform patients that he was a private attending physician. Dr. Charash, who saw Ms. Bradshaw on a Wednesday and Thursday, days when he is normally working as Chief of the Cardiac Care Unit at the Hospital, nevertheless claims without more that he was moonlighting for LHIC based on an oral agreement at the time that he treated Ms. Bradshaw. These issues presented in Defendants' motion show numerous genuine issues of material fact for the factfinder to determine regarding vicarious liability for Plaintiff's medical malpractice claim. E.g., Malcolm v. The Mount Vernon Hosp., 309 A.D.2d 704, 705-06 (1st Dep't 2003). Defendants have not established entitlement to summary judgment as a matter of law.

This Court next considers Defendants' contention that they are entitled to summary judgment on Plaintiff's second cause of action, the claim of lack of informed consent. Even should a jury find Dr. Moses is not an employee of the Hospital, a hospital may be liable for lack of informed consent where it knew or should have known that the private physician using its facilities was acting or would act without the patient's informed consent. Salandy v. Bryk, 55 A.D.3d 147, 152 (2d Dep't 2008). Defendants' expert, Dr. Fox, is silent on the issue of informed consent. In claiming Plaintiff has not properly alleged that cause of action, Defendants fail to even set forth any purported deficient language from Plaintiff's pleadings to support that claim. This Court's review of the pleadings independently confirms, moreover, that the claim is unwarranted.

The available proof attached to Defendants' motion raises genuine issues of material fact whether Plaintiff gave informed consent. Defendants' papers include the form purportedly showing informed consent for the catheterization procedure, which Plaintiff did sign. The form is blank for the name of the doctor performing the procedure. Dr. Moses testified that the omission is unusual. Nurse Daantje also testified that she reviewed consent forms prior to accessing a vessel, and the doctor's name is normally stated on the form. In this case, there is no physician's signature acknowledging the consent for the catheterization, nor is there any signature certifying that informed consent, including an explanation of alternatives, was provided for the catheterization. In his deposition Dr. Moses testified that he has no independent recollection of this case. And although he testified that he delineated the risks and benefits of the catheterization to Ms. Bradshaw, he makes no mention of having reviewed alternatives. In contrast to the incomplete consent form relating to Ms. Bradshaw's catheterization, the record contains a fully executed consent form for the IVC filter

procedure performed by Dr. Stein. Under these circumstances Defendants have failed to establish a prima facie case that there are no genuine issues of material fact and they are entitled to summary judgment as a matter of law on Plaintiff's lack of informed consent claim. Accordingly, it is

ORDERED that Defendants' motion for summary judgment is granted to the extent of granting summary judgment to Defendant Veronica Daantje on Plaintiff's claim against her for lack of informed consent; and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the action shall continue as to all Defendants on all remaining claims; and it is further

ORDERED that the parties appear for a pretrial conference on May 7, 2013, at 9:30 am.

Dated: April 17, 2013

ENTER:

JOAN B. LOBIS, J.S.C.