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Short Form Order

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

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

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AMY INFANTE, as Mother and Natural Guardian of K.I., and AMY INFANTE, Individually,

Plaintiff,

-against-

GOOD SAMARITAN HOSPITAL MEDICAL CENTER, SUSAN C. EGNER-WHALEN, P.A., DAVID LEVY, D.O., DELIA ROGU, M.D. and CHARLOTTE RHEE, M.D.,

Defendants.

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INDEX NO.: 28162/2008
CALENDAR NO.: 201700813/MM
MOTION DATE: 2/1/18
MOTION SEQ. NO.: 007 MD
NO.: 008 MG

PLAINTIFFS' ATTORNEYS:
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Upon the following papers numbered 1 to 141 read on these motions for summary judgment ; Notice of Motion and supporting papers 1- 69; 82-133 ; Answering Affidavits and supporting papers 70-74; 75-77; 134-138 ; Replying Affidavits and supporting papers 78-79; 80-81; 139-140 ; Other ___; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the following motions are consolidated for the purpose of this determination; and it is further

ORDERED that the motion (motion sequence no. 007) of defendant Good Samaritan Hospital Medical Center for summary judgment dismissing the complaint against it is denied; and it is further

ORDERED that the motion (motion sequence no. 008) of Charlotte Rhee, M.D., for summary judgment dismissing the complaint against her is granted.

This medical malpractice action was commenced by plaintiff Amy Infante, individually and on behalf of her daughter K.I., to recover damages for injuries allegedly sustained as a result of negligent medical care and treatment rendered by defendants in the emergency department of defendant Good Samaritan Hospital Medical Center on January 1, 2008. The complaint as amplified by the bill of particulars alleges that defendants were negligent in discharging the infant without reassessing her and retaking her vital signs, in allowing her to leave the hospital without being assisted, and in failing to recognize that her condition was unstable. Plaintiffs further allege that Good Samaritan Hospital Medical Center is vicariously liable for the conduct of defendants Dr. David Levy and Dr. Delia Rogu, alleging that they negligently supervised the physician assistant Susan Egner-Whelan, P.A. By stipulation dated April 20, 2012, the action was discontinued with prejudice as against defendant Dr. Levy and P.A. Egner-Whelan.

Good Samaritan Hospital Medical Center ("Hospital") now moves for summary judgment in its favor on the grounds that its staff did not depart from accepted medical practice and that its actions were not a proximate cause of the infant plaintiff's injuries. The hospital argues further that defendant Charlotte Rhee, M.D. is not its employee and therefore it cannot be vicariously liable for her actions. In support of the motion, the hospital submits copies of the pleadings, the bill of particulars, an expert affirmation, plaintiff's hospital records, the parties' deposition transcripts, and the deposition transcripts of nonparties Matthew Infante, Thomas Nolan, Karen Burke, and Dr. Adhi Sharma.

Amy Infante testified that her daughter was eight years old when the alleged malpractice occurred. She testified that on January 1, 2008, K.I. was bitten by a dog and suffered a small laceration on her right cheek. She testified that she and plaintiff's father, Matthew Infante, drove K.I. to the emergency department of the hospital where she was triaged and examined by a nurse. She testified that her daughter was very scared and was crying, and that she has a fear of doctors. Ms. Infante testified that her daughter was diagnosed with hypotonia when she was 21 months of age, and that she told the nurse that her daughter is a child with special needs who gets overly excited. She testified that after they saw the nurse, they waited in the "fast track" of the emergency department for a plastic surgeon.

Matthew Infante testified that on the date of the incident, he had driven K.I. to her friend's house where she was injured by her friend's dog. He testified that K.I. had hugged the dog, and the dog nipped her cheek causing a small laceration. He testified that he took K.I. home, and that he and the plaintiffs drove to the emergency department of the hospital. He testified that he and his wife typically inform health care providers that K.I. is developmentally disabled, and that he told the triage nurse that she is a special needs child. Matthew Infante testified that the nurse examined K.I.'s wound, took her vital signs, and told them to wait for the doctor. He testified that a physician's assistant came in and examined K.I., and that subsequently a physician came in and told them that K.I. needed stitches. He testified that they waited over an hour for the plastic surgeon to arrive, and that while they were waiting they passed the time by talking to another couple whose daughter also sustained an injury from a dog bite.

Matthew Infante further testified that when the plastic surgeon arrived, she tried to talk to K.I. and explain what she would be doing, but his daughter became defiant. He testified that she was thrashing her head, moving her face and arms, and that she would not stay still, so the doctor had to use a papoose restraint to perform the procedure. He testified that a papoose restraint was used by their dentist to keep infant plaintiff still on a previous occasion.

Both parents testified that after the procedure was performed, Dr. Rhee instructed them on caring for the wound and told them to visit her in two days. They testified that a nurse subsequently came in and gave them discharge instructions, and that they sat on a gurney for several minutes before getting up. They testified that they assisted K.I. down from the gurney, helped her put her coat on and proceeded to the exit door. Amy Infante testified that as K.I. was walking behind her and Matthew Infante was following behind, she turned her head to look at her daughter. She testified she observed K.I. become limp and fall to the floor. Mr. Infante testified that he observed K.I. turn towards him and then suddenly fall to the ground, face first. Both parents testified that K.I. did not trip or slip on anything, and that she passed out. They testified further that K.I. seemed fine before she fell. Matthew Infante testified that he called out for help and a nurse responded, and that K.I. broke her jaw due to the fall.

K.I.'s testimony comports with her parents' testimony. At her deposition, she was asked whether she felt funny before she fell. Plaintiff responded that she did not feel funny before the incident, and that she fell because she was tired.

P.A. Enger-Whelan testified that she was working in the emergency department on January 1, 2008, and that she examined the infant plaintiff in the fast track area after she was triaged. She testified that she obtained the infant plaintiff's medical history, reviewed her vital signs, which were taken by the triage nurse, and performed a physical examination of infant. She testified that K.I.'s vital signs were normal, that she had a laceration on her face that was one centimeter long and linear, that it was clean and gaping with smooth edges. P.A. Enger-Whelan testified that plaintiff's skin appeared normal, there was no swelling or edema and she was well hydrated. She testified that she called Dr. Rhee, the on-call plastic surgeon, at 4:23 p.m. and that she did not treat infant plaintiff after she contacted Dr. Rhee.

Dr. Levy testified that he was the physician assigned to the emergency department's fast track unit on the date of the subject treatment, and that the fast track unit is for patients with a "lower acuity of care need." He testified that he saw the infant plaintiff at 4:28 p.m., after she had been examined by P.A. Enger-Whelan, and testified from his notes that he entered into the computer a few hours later, as he does not recall the infant plaintiff or the subject incident. According to his entries, he testified that he evaluated the infant, obtained her medical history, and documented a superficial laceration to her right cheek from a dog bite. He testified that the infant had no other complaints or injuries and that her parents requested a plastic surgeon to suture the wound. He testified that P.A. Enger-Whelan contacted Dr. Charlotte Rhee, and that he did not see the infant until after he was informed that she fell as a result of a syncopal episode. Both Dr. Levy and P.A. Enger-Whelan testified that vital signs are not rechecked when a patient is discharged unless the results were abnormal upon presentation. He testified that the infant plaintiff's blood pressure, respiration and temperature were all normal, and that her pulse was mildly elevated, but he attributed it to her anxiety and fear. He testified that the decision to discharge a patient is made by the consulting physician, and that Dr. Rhee recommended that the infant plaintiff be discharged. He testified that P.A. Enger-Whelan entered the discharge instructions into the computer, and that Nurse Burke presented the discharge instructions to the plaintiff.

Both P.A. Enger-Whelan and Dr. Levy testified that once the consultant completes his or her treatment of a patient, they have the option of ordering a patient to stay in the emergency department for observation, or to order tests, arrange for admission, or discharge the patient.

Dr. Charlotte Rhee testified that she is a board certified plastic surgeon and was the on-call plastic surgeon for the hospital on January 1, 2008. She testified that she was contacted by a staff member who requested a consultation for a dog-bite injury to a child. She testified that it is her custom and practice to present to the hospital, meet with the staff member who contacted her, and visit the patient. Dr. Rhee, who stated that she does not recall the day in question nor does she remember the infant plaintiff or her parents, testified from the report she created the following day and from her regular custom and practice. She testified that she relies on the nurses and other staff of the emergency department to take a patient's vital signs, and unless there was an abnormality, she does not record a patient's vital signs. Dr. Rhee testified that she administered a local anesthetic and gave infant plaintiff between one and two cubic centimeters of Xylocaine with epinephrine before suturing the laceration, and that it is her custom and practice to instruct a patient on wound care, give him or her a business card and tell the patient to call her with any questions and to schedule a follow-up appointment.

Dr. Rhee testified that as a consulting plastic surgeon, she performs surgery only and typically does not take a patient's vital signs or order them to be taken by a hospital staff member before the patient is discharged. She testified further that orders regarding a patient's discharge are given by members of the emergency department whose evaluation she relies upon, and that her only duty after surgery is to ensure that the "repair is in good condition... and that there is no active bleeding." However, she testified that if a patient appeared ill or she had any clinical concerns, her custom and practice is to alert the medical staff at the hospital, a concern not presented in the instant case.

Thomas Nolan testified that he is a registered nurse and was employed by the hospital as the Director of Nursing from 2008 through 2012, and that his duties included administrative responsibilities for various areas including the emergency department of the hospital. He testified that he was responsible for promulgating protocols for the emergency department, but he does not recall protocols in place at the time of the subject incident. He testified that he does not recall meeting with infant plaintiff or her parents, and that he does not recall the discharge procedures in effect in 2008. Asked several questions regarding who determines whether a patient can be discharged, Nolan testified that "anyone" can make such a determination, and that a nurse typically presents a copy of the discharge instructions to the patient. When questioned further about the emergency department's discharge policy, Nolan responded that a patient needed to be seen by a physician, physician assistant or nurse practitioner before being discharged.

Karen Burke testified that she is a licensed practical nurse and was employed by the hospital in 2008. She testified that she was working in the emergency department on the subject date and that she arrived at 5:00 p.m., after the infant plaintiff had been triaged. She testified that she remembers the infant plaintiff and her parents, and that she recalls the events that occurred on the subject date. Burke testified that after the infant plaintiff was sutured by Dr. Rhee, PA Enger-Whelan gave her a copy of the discharge instructions to give to plaintiff. She testified that she presented to the cubicle in the fast track unit where the infant plaintiff and her parents were waiting, and that the infant plaintiff was sitting on a gurney. Burke testified that she handed K.I.'s parents the discharge instructions and explained how to care for the wound. She testified that she also handed them a written prescription for antibiotics given by Dr. Levy, and that they did not have any questions. Burke was asked whether it is customary to take a patient's vital signs before they are discharged, and she testified that it depends on the circumstances. As an example, she testified that if a patient presents with high blood pressure, their blood pressure would be re-checked. She testified that the infant plaintiff appeared fine, she was happy that she was going home, and that there was nothing unusual about her.

Burke testified that after K.I.'s parents signed the form containing the discharge instructions, she walked over to her computer, and the infant plaintiff and her parents left the cubicle and walked into the hallway. She testified that she observed them through her peripheral vision while she was at her computer station, and that she could see them as they stopped to talk to another couple in the hospital. She testified that infant plaintiff had her coat and hat on, and that they were standing in the hallway talking for 15 to 20 minutes. Burke testified that she heard plaintiff yell for help, and that she responded and observed the infant plaintiff lying on the floor.

Dr. Adhi Sharma testified that he is a licensed physician, board certified in emergency medicine, and that he was working at the hospital from 2007 until 2012. He testified that he was chairman of the emergency department, and that his duties entail regulatory compliance, staffing, and creating policy and protocol. A portion of a written policy of the emergency department was read to Dr. Sharma, and he agreed that "before patients are discharged from the emergency department, they are required to be seen by a physician, physician's assistant or a nurse practitioner to discuss the diagnosis, recommend treatment, discuss possible complications and inform them of any follow up visits." Dr. Sharma testified that before patients in the emergency department get discharged, "someone needs to see them."

It is well settled that a party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986];

Friends of Animals v Associated Fur Mfrs., 46 NY2d 1065, 1067, 416 NYS2d 790 [1979]). The failure of the moving party to make a *prima facie* showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see, Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]). The burden then shifts to the party opposing the motion which must produce evidentiary proof in admissible form sufficient to require a trial of the material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]. The court's function is to determine whether issues of fact exist, not to resolve issues of fact or to determine matters of credibility. Therefore, in determining the motion for summary judgment, the facts alleged by the opposing party and all inferences that may be drawn are to be accepted as true (*see, Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]).

A hospital owes a duty of reasonable care to its patients in hiring and supervising its employees and generally complies with such duty where there is evidence that it conformed to the acceptable standard of care customarily used by general hospitals (*see, Salvia v St. Catherine of Sienna Med. Ctr.*, 84 AD3d 1053, 923 NYS2d 856 [2d Dept 2011]). The elements of medical malpractice are a deviation or departure from accepted medical practice and evidence that such departure was the proximate cause of injury (*see, Ortiz v Wyckoff Hgts. Med. Ctr.* 149 AD3d 1093, 53 NYS3d 189 [2d Dept 2017]; *Paone v Lattarulo*, 123 AD3d 683, 683, 997 NYS2d 694 [2d Dept 2014]).

Hospitals are vicariously liable for the acts of their employees and may be vicariously liable for the malpractice of a physician, nurse, or other health care professional that it employs under the doctrine of *respondeat superior* (*see, Hill v St. Clare's Hosp.*, 67 NY2d 72, 499 NYS2d 904 [1986]; *Bing v Thunig*, 2 NY2d 656, 163 NYS2d 3 [1957]; *Cynamon v Mount Sinai Hosp.*, 163 AD3d 923, 2018 NY Slip Op 05448 [2d Dept 2018]; *Seiden v Sonstein*, 127 AD3d 1158, 7 NYS3d 565 [2d Dept 2015]). Generally, a hospital is not vicariously liable for the malpractice of a physician who is not employed by the hospital. Liability may also be imposed upon a hospital for its own negligence in failing to properly review an independent physician's qualifications before according him or her use of the hospital's facilities (*Boone v North Shore Univ. Hosp. at Forest Hills*, 12 AD3d 338, 784 NYS2d 151 [2d Dept 2004]; *Megrelishvili v Our Lady of Mercy Med. Ctr.*, 291 AD2d 18, 739 NYS2d 2 [1st Dept 2002]; *Sledziewski v Cioffi*, 137 AD2d 186, 528 NYS2d 913 [3d Dept 1988]).

To establish a *prima facie* showing of entitlement to summary judgment, a defendant hospital must establish through medical records and competent expert affidavits that the defendant did not deviate or depart from accepted medical practice in the defendant's treatment of the patient or that any departure was not a proximate cause of plaintiff's injuries (*Tsitrin v New York Community Hosp.*, 154 AD3d 994, 62 NYS3d 506 [2d Dept 2017]; *Lau v Wan,* 93 AD3d 763, 940 NYS2d 662 [2d Dept 2012]; *Stukas v Streiter,* 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]; *Castro v New York City Health & Hosps. Corp.*, 74 AD3d 1005, 903 NYS2d 152 [2d Dept 2002]).

Here, the hospital submits an affirmation by Dr. Andrew Sama, who states that he is board certified in emergency medicine. He states that he has reviewed plaintiff's medical records, the bill of particulars, the deposition transcripts, and the hospital's Emergency Department Administration Policy. Dr. Sama opines, with a reasonable degree of medical certainty, that the hospital's treatment and care of the infant plaintiff did not depart from accepted medical practice. Dr. Samas states that the infant plaintiff presented to the hospital at 3:01 p.m. and was assessed by a triage nurse at 3:14 p.m., who recorded her pulse as 120, her respiratory rate as 18, and her blood pressure as 160/74. He states that P.A. Enger-Whelan evaluated infant plaintiff at 4:05 p.m. and contacted the on-call plastic surgeon, Dr. Rhee, at the parents' request. Dr. Sama states that he reviewed Dr. Rhee's operative report which states that she performed closure of the wound, excision and debridement, and that she gave detailed instructions to the parents regarding wound care, informed them of a slight risk of infection, and discharged the infant plaintiff with a prescription of antibiotics and a follow-up request. Dr. Sama states that Dr. Rhee was the discharging physician, and that she did not instruct the emergency room staff to take plaintiff's vital signs; therefore, the hospital did not formulate the discharge plan but merely followed Dr. Rhee's discharge plan. No information has been provided regarding the role of consulting physicians and the applicable standard of care in the instant situation.

Dr. Sama's affidavit is insufficient to establish a *prima facie* case of entitlement to summary judgment in favor of the hospital as the expert merely recites in conclusory terms that the hospital did not depart from accepted emergency room practice (*see, Garcia-DeSoto v Velpula,*___ AD3d___, 77 NYS3d 887 [2d Dept 2018]). Dr. Sama's conclusion that the emergency department staff did not depart from accepted medical practice is not supported by the record (*Lau v Wan*, 93 AD 3d 763; *Micciola v Sacchi*, 36 AD3d 869, 828 NYS 2d 572 [2d Dept 2007]). He does not specifically discuss the results of infant plaintiff's vital signs and explain what "normal" is for an eight year old child, or anyone else for that matter. Dr. Sama states that the infant plaintiff's blood pressure was 160/74 when she presented and the testimony of Nurse Burke was that vital signs would be rechecked by the emergency department if they were abnormal upon presentation. Nurse Burke even used an example of high blood pressure results. Dr. Levy and Dr. Rhee also testified that vital signs are typically not rechecked before a patient is discharged unless there is reason for concern. It is undisputed that the infant plaintiff fainted before she fell, but Dr. Sama does not provide an explanation as to whether plaintiff's blood pressure and other vital signs, significantly her elevated heart rate at presentation, could have caused her to faint or whether it had no effect on the syncopal event. Absent such explanation, triable issues of fact have not been eliminated regarding the hospital's conduct under the circumstances. "Bare conclusory assertions by a defendant that he or she did not deviate from good and accepted medical practice, with no factual detail with respect to the alleged injury, do not establish that the cause of action has no merit so as to entitle a defendant to summary judgment" (*Garcia-DeSoto v Velpula*, at 888). Accordingly, the motion of Good Samaritan Hospital Medical Center for summary judgment dismissing the complaint against it is denied.

The motion of Dr. Rhee for summary judgment in her favor is granted. In support of her motion, Dr. Rhee submits copies of the pleadings, the bill of particulars, two expert affidavits, plaintiff's hospital records, and a document entitled "Discharge Planning from the Emergency Department." She also submits the transcripts of the parties' deposition testimony, and the transcripts of the deposition testimony of Matthew Infante, Thomas Nolan, Karen Burke, and Dr. Adhi Sharma. The bill of particulars alleges, among other things, that Dr. Rhee was negligent in failing to re-assess and re-examine infant plaintiff, in failing to retake infant plaintiff's vital signs after she sutured the wound, in failing to escort and assist infant plaintiff out of the emergency department, and in failing to recognize the effects of lidocaine. Dr. Rhee argues that she did not have a duty to perform the above acts alleged as she was a consulting specialist and her treatment and care of infant plaintiff was not the cause of her injuries.

The expert affidavits of Dr. Kenneth Sable and Dr. Robert Grant are submitted. Dr. Sable states that he is a licensed physician in the State of New York and in the State of New Jersey, and he enumerates various positions held regarding emergency medicine and emergency department protocols. He affirms that he is fully familiar with the standard of care and treatment of patients in an emergency department of a hospital. Dr. Grant states that he is a board certified plastic surgeon and, among other things, is the plastic surgeon in chief at New York Presbyterian Hospital. He affirms that he is fully familiar with the standards of practice and care applicable to a plastic surgeon who is called as a consultant to evaluate and treat a patient — both adults and pediatric patients.

Dr. Grant opines, with a reasonable degree of medical certainty, that the care and treatment rendered by Dr. Rhee did not depart from accepted medical practice, and was not a cause of infant plaintiff's injuries. He states that Dr. Rhee was called to the hospital to suture a laceration and to "provide limited surgical discharge instructions." He opines that Dr. Rhee properly sutured the infant plaintiff and appropriately utilized a restraint papoose when repairing the infant plaintiff's wound. He states that Dr. Rhee's limited duty was to instruct plaintiff on caring for the wound and to advise her to schedule a follow-up visit. Dr. Grant avers that it is the duty of the emergency department to assess a patient and determine if the patient should be discharged from the emergency department, and it is their responsibility to prepare the written discharge orders and instructions. Dr. Grant refers to the hospital's policy, "Discharge Planning from the Emergency Department Administrative Policy," which states that patients are required to be seen by a physician, a physician's assistant or a nurse practitioner to discuss the diagnosis, recommend treatment, discuss possible complications and inform them of any follow up visits before discharged from the emergency department. He opines that the term "physician," as used in the hospital's written policy, refers to the attending physician in the emergency department and not to a consulting physician. He states that Dr. Rhee's operative report, which states that "patient was discharged home on oral antibiotics," only means that the infant plaintiff was discharged from surgical care and was to receive antibiotics, not that she was discharged from the emergency department.

Dr. Grant opines that it is the standard of practice in emergency room care that when the consulting plastic surgeon completes his or her procedure, the patient is given "surgical discharge instructions" by the consultant and advises the nurse or physician's assistant that his or her care has concluded. The emergency department then formally assesses and discharges the patient. He states that he has performed several emergency room consultations for pediatric patients, and that he has never had the responsibility to check a patient's vital signs or perform a discharge assessment after he completes his procedure.

Dr. Sable's affidavit similarly expresses the opinion that it is the emergency department that is responsible for discharging a patient, and that a consulting physician's discharge is limited to a "surgical discharge." He states that he is currently a hospital administrator and has participated in promulgating similar protocols for emergency departments. Additionally, he states that he was an attending physician in emergency departments of hospitals and is familiar with the discharge procedure. He opines that the hospital's written policy, entitled "Discharge Planning from the Emergency Department Administrative Policy," which references "physicians or physicians assistants," refers to emergency department personnel and not to consulting physicians. Dr. Sable refers to the testimony of the infant plaintiff's parents, wherein they testified that they waited several minutes for the nurse to return with the discharge instructions, and that the infant plaintiff did not stand up for several minutes. Further, both parents testified that the infant plaintiff seemed fine, and that there was nothing about her that appeared abnormal or unusual.

Dr. Sable addresses various portions of the testimony of Dr. Levy, P.A. Enger-Whelan, and Nurse Burke, and provides pages of detailed facts establishing his opinion that Dr. Rhee's treatment and care of plaintiff did not depart from accepted medical practice and was not a cause of infant plaintiff's injuries. He opines further, that the decision to discharge a patient from the emergency department lies with the emergency room personnel, and that Dr. Rhee's treatment and care of the infant plaintiff did not depart from accepted medical practice.

Here, Dr. Rhee established, *prima facie*, her entitlement to summary judgment dismissing the complaint against her by proffering, among other things, the opinions of Dr. Grant and Dr. Sable which demonstrate that Dr. Rhee's treatment of infant plaintiff was in accord with medically accepted standards of practice, that such treatment did not constitute a departure from same, and the treatment rendered to the infant plaintiff by Dr. Rhee was not a proximate cause of the infant plaintiff's injury (*see, Reustle v Petraco*, 155 AD3d 658, 63 NYS3d 111[2d Dept 2017]). The burden, therefore, shifted to plaintiff to raise a triable issue of fact (*see, Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Dixon v Chang*, ___,163 AD3d 525, __ NYS3d __ [2d Dept 2018]; *Bongiovanni v Cavagnuolo*, 138 AD3d 12, 24 NYS3d 689 [2d Dept 2016]; *Stukas v Streiter*, 83 AD3d 18, 918 NYS2d 176 [2d Dept 2011]).

In opposition to the motion, plaintiffs failed to submit evidence raising a triable issue as to whether Dr. Rhee breached a duty of care owed to the infant plaintiff. The unsigned, redacted affirmation of plaintiff's expert included with the opposition papers is insufficient to defeat summary judgment (*Pagano v Cohen*, ___ AD3d ___, 2018 NY Slip Op 05599 [2d Dept 2018]; *France v Packy*, 121 AD3d 836, 994 NYS2d 364 [2d Dept 2014]). To satisfy their burden, plaintiffs are required to submit an unredacted original affirmation of their expert to the court for *in camera* inspection or explain the failure to identify such expert by name (*Colletti v Deutsch*, 150 AD3d 1196, 54 NYS3d 657 [2d Dept 2017]; *Capobianco v Marchese*, 125 AD3d 914, 4 NYS3d 127 [2d Dept 2015]; *Derrick v North Star Orthopedics, PLLC*, 121 AD3d 741, 994 NYS2d 159 [2d Dept 2014]). Accordingly, the motion by defendant Dr. Charlotte Rhee for summary judgment dismissing the complaint against her is granted.

Dated: December 20, 2018

HON. PAUL J. BAISLEY, JR.
J.S.C.