

**Matter of Young v New York City Health & Hosps.
Corp.**

2018 NY Slip Op 33511(U)

May 3, 2018

Supreme Court, Bronx County

Docket Number: 22173/2018E

Judge: Lewis J. Lubell

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX - PART IA-19A

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In the Matter of the Application of EVA YOUNG,

Petitioner,

- against -

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NEW YORK CITY HEALTH & HOSPITALS CORP.,
AND LINCOLN MEDICAL AND MENTAL HEALTH
CENTER,

DECISION/ORDER

Respondent.

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HON. LEWIS J. LUBELL

Petitioner seeks leave by Order to Show Cause pursuant to GML 50-
e (5) and Unconsolidated Law 7401-(2) to serve a late Notice of Claim.

The instant complaint sounds in medical malpractice, and arises out
of petitioner's claim that she was negligently treated during surgery performed at
Lincoln Hospital. Plaintiff alleges that a foreign object was inadvertently left in her
abdomen after surgery, which was discovered approximately four months later
during a subsequent surgery.

Petitioner was admitted to Lincoln Hospital on September 19, 2016
for surgical management of an enlarged fibroid uterus. During the surgery she
was found to have a retroperitoneal mass. The doctors determined not to remove

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the mass, rather, the treatment was limited to a hernia repair. Post operatively the patient was referred to Mount Sinai Hospital for treatment.

On January 23, 2017 petitioner was admitted to Mount Sinai for an exploratory laparotomy, abdominal hysterectomy and resection of the mass. During the procedure the surgeon discovered a large intra-abdominal mass with green purulent fluid. The fluid was evacuated from the abscess cavity revealing a blue surgical towel noted to be from the prior surgery at Lincoln Hospital. Petitioner was discharged on January 27, 2017.

On February 13, 2017, the petitioner returned to Lincoln Hospital complaining of swelling and pain in her legs. She was seen by Dr. Anstill, the surgeon who performed the initial surgery. During this visit the doctor noted the she "spoke to the surgeon at Mount Sinai about the fact that they found a blue towel and abscess during the hysterectomy" and that "Lincoln will be conducting its own review to better assess how that occurred and how to prevent future similar occurrences."

In support of the relief requested, petitioner submits an affirmation from her expert, Michael Risman, M.D., Board Certified in Internal Medicine, who opines that the medical records and available evidence establish that the negligence of HHC and Lincoln is readily apparent on the face of the records.

Respondents, in partial opposition, take no position on the substantive relief requested with respect to allegations regarding discovery of a

foreign object, and oppose the relief sought only to the extent of opposing any claims of medical malpractice related to the surgery performed September 16, 2016, except as relate to the foreign object, as time barred.

In deciding whether a Notice of Claim should be deemed timely served under the General Municipal Law 50-e (5), the Court must consider whether the movant has demonstrated a reasonable excuse for failing to serve the Notice of Claim within the statutory time frame, whether the municipality has acquired actual notice of the essential facts of the claim within 90 days or a reasonable time thereafter, and whether the delay will substantially prejudice the municipality in its defense. Further, it is well established that an application for an extension may be made before or after the commencement of the action but no more than one year and 90 days after the cause of action accrued, unless the statute has been tolled. (*Pierson v. City of New York*, 56 N.Y.2d 950 [1982]).

The court finds that the records provide actual notice of the essential facts of the claim. Notably, respondent takes no position on the substantive relief requested with respect to the allegations regarding discovery of a foreign body. However, to the extent that petitioner seeks to file and serve a late Notice of Claim with respect to general allegations of medical malpractice related to the surgery performed on September 19, 2016, this application is denied as untimely because the instant motion was made after the expiration of the statute of limitations as to those claims.

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Accordingly, it is

ORDERED that the petition is granted, and petitioner is directed to serve a proposed Notice of Claim on respondent NYCHHC within 30 days of the entry hereof. Limited to claims relating to a foreign object.

Dated: 5/3/2018



Lewis J. Lubell, J.S.C.