

Angieri v Procaccino

2019 NY Slip Op 35082(U)

July 22, 2019

Supreme Court, Queens County

Docket Number: Index No. 702055/17

Judge: Peter J. O'Donoghue

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Summary Judgment-Multiple Motions-

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD
Justice

Giovanni Angieri and Barbara Angieri Index No: 702055/17

Plaintiffs,

-against- Motion Date: 03/06/19

Angelo John Procaccino, M.D., et. al. Motion Seq. No.: 2, 3 and 4

Defendants.

Motions bearing sequence numbers 2, 3 and 4 of 03/06/19 are hereby consolidated for disposition. The following papers numbered as set forth below and read on these motions by the defendants for an Order pursuant to CPLR 3212 granting summary judgment in their favor and dismissing the Complaint in its entirety as asserted against each defendant.

	<u>PAPERS NUMBERED</u>
<u>Seq. No. 2</u>	
N.M.-Affidavits-Exhibits.....	50-68
Answering Papers-Affidavits-Exhibits.....	109-131
Reply Affirmation-Exhibits.....	145-147
 <u>Seq. No. 3</u>	
N.M.-Affidavits-Exhibits.....	69-87
Answering Papers-Affidavits-Exhibits.....	132-144
Reply Affirmation-Exhibits.....	149
 <u>Seq. No. 4</u>	
N.M.-Affidavits-Exhibits.....	88-108
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Upon the foregoing papers it is ordered that these motions by the defendants for an Order granting summary judgment in their favor and dismissing the complaint are decided as follows:

The motion by defendant Shimon Frankel, M.D. (Seq. 2), an anesthesiologist, is granted. Dr. Frankel established his *prima facie* entitlement to summary judgment through the submission of the expert affirmation of Lawrence K. Primis, M.D., Board Certified in Anesthesiology. Dr. Primis opined that Dr. Frankel met the standard of care with respect to the pre-anesthesia evaluation and the history and physical contained in the note; the administering of general anesthesia; the written orders for plaintiff's PACU course; that it was outside the domain of the anesthesiologist to assure that all pre-operative medications taken by the plaintiff were ordered for the plaintiff post-operatively; and the dosage of PCA Dilaudid ordered by Dr. Frankel. In opposition, plaintiffs' expert was required to opine as to any departures in the care and treatment rendered by Dr. Frankel. Since plaintiffs' expert failed to opine as to any departures, the Court need not consider the causation element. "Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause." (Novick v South Nassau Communities Hosp., 136 AD3d 999, 1001 [2d Dept. 2016].) Consequently, plaintiff's expert failed to raise a question of fact sufficient to defeat this motion with respect to Dr. Frankel.

The motion by defendant Angelo John Procaccino, M.D. (Seq. 4), the surgeon, is granted. Dr. Procaccino established his *prima facie* entitlement to summary judgment through the submission of the expert affirmation of Peter Shamamian, M.D., Board Certified in General Surgery. Dr. Shamamian opined that Dr. Procaccino met the standard of care by examining plaintiff post-operatively and monitoring his vital signs including his respiratory functions. In opposition, plaintiffs' expert was required to opine as to any departures in the care and treatment rendered by Dr. Procaccino. Since plaintiffs' expert failed to opine as to any departures, the Court need not consider the causation element. "Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause." (Novick v South Nassau Communities Hosp., 136 AD3d 999, 1001 [2d Dept. 2016].) Consequently, plaintiff's expert failed to raise a question of fact sufficient to defeat this motion with respect to Dr. Procaccino.

The motion by defendant Maria Musso, D.O. (Seq. 3), plaintiff's primary care physician, is denied. Movant failed to establish her *prima facie* entitlement to summary judgment. Dr.

Musso relied upon the expert affirmation of Dr. Lawrence Primis, an anesthesiologist, in an attempt to establish a lack of causation between the failure to administer COPD medications post-operatively and the medical arrest plaintiff experienced. However, Dr. Primis failed to render an opinion with respect to the critical issue of whether the arrest was caused by the failure to administer COPD medications post-operatively. Rather, he only opined "with a reasonable degree of medical certainty, that this was not a respiratory event cause by PCA Dilaudid".

The motion by defendant Northwell Health-North Shore University Hospital ("Hospital") (Seq. 4) is denied. Movant established its *prima facie* entitlement to summary judgment through the submission of the expert affidavit of Richard Matthay, M.D. and expert affirmation of Peter Shamamian, M.D.. In opposition, plaintiff submitted the expert affirmation of a physician Board Certified in Internal Medicine. These conflicting opinions create question(s) of fact, including but not limited to, whether defendant Hospital departed from the accepted standard of care by failing to provide to plaintiff the COPD medications post-operatively when his family complained of his breathing problems; and if so, whether such departure was a proximate cause of plaintiff's injuries which may require resolution at trial.

The amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

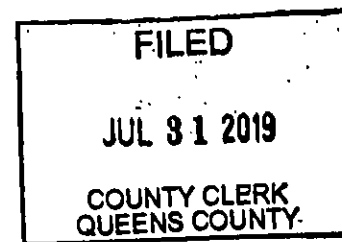
Giovanni Angieri and Barbara Angieri

Plaintiffs,

-against-

Maria Musso, D.O. and Northwell Health-
North Shore University Hospital

Defendants.



Dated: July 22, 2019

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Peter J. O'Donoghue, J.S.C.