At an IAS Term, Part 36 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of March, 2022.

P R E S E N T:

HON. BERNARD J. GRAHAM,
Justice.

----------X

MARIELLA LOPEZ,

Plaintiff,

- against -

Index No. 501844/16

WYCKOFF HEIGHTS MEDICAL CENTER,
ONYEMACHI G. AJAH, M.D.,
STEVEN SWANCOAT, D.O.,
DIANE E. TARR, M.D.,
DALI MARDACH, M.D.,
CLYDE GREGOIRE, M.D.,
ERICA DICKSON, D.O.,
DR. BLUETREICH,
EAV LIM, D.O., and
TERESITA FIGUEROA, M.D.,

Defendants.

----------X

The following e-filed papers read herein:	NYSCEF Doc. No.:
Notice of Motion/Cross Motion, Affidavits (Affirmations), and Exhibits Annexed	242-257, 259-260, 261-282
Opposing Affirmations and Exhibits Annexed	286-298
Reply Affirmations (Affidavits)	299-302

In this action to recover damages for medical malpractice premised upon an alleged failure to timely diagnose and treat an ectopic pregnancy, and a lack of informed consent, defendants Clyde Gregoire, M.D. ("Dr. Gregoire"), Salomon Blutreich, M.D., incorrectly sued herein as Dr. Bluetreich ("Dr. Blutreich"), and Wyckoff Heights Medical Center ("Wyckoff"), each move (or cross-move, as the case may be) for summary judgment

dismissing the amended complaint of plaintiff Mariella Lopez ("plaintiff") as against them (Seq. No. 12, 14, and 13, respectively).

Background

Plaintiff's Visits to Wyckoff Between February 21, 2015 and March 2, 2015

On Saturday, February 21, 2015,[1] plaintiff, age 27, presented to Wyckoff's Emergency Department ("ED") complaining of congestion and a cough. At that time, a urine pregnancy test was performed, which was positive and plaintiff was found to be pregnant.

On Monday, February 23rd, plaintiff returned to the ED with the complaints of lower abdominal pain and vaginal spotting of one day's duration. At that visit, plaintiff was examined by a consultant from the obstetrical/gynecological ("OB/GYN") service. Blood was drawn, and a bedside sonogram was performed. Plaintiff's beta human chorionic gonadotropin level ("beta hCG") was 364.1, which was consistent with a 4-5 week pregnancy. Plaintiff was discharged from the ED with a diagnosis of a "threatened abortion" (NYSCEF Doc. No. 256 at 6).

Four days later on Friday, February 27th, plaintiff returned to the ED with the complaints of left-sided abdominal pain and bleeding for the preceding four days. During that visit, plaintiff was examined by Dali Mardach, M.D. ("Dr. Mardach"), who ordered, among other things, a beta hCG and a pelvic sonogram. Plaintiff's beta hCG on that day

[1] All references are to year 2015, unless otherwise indicated.

(February 27th) was reported at 1191, which was more than three times of her beta hCG on February 23rd.

At 1:30 p.m., plaintiff underwent a series of the ultrasound studies (collectively, the "Feb. 27th sonogram") which, upon completion, were uploaded by the performing technician to Wyckoff's Picture Archiving and Communication System ("PACS"). At 2:43 p.m., Dr. Gregoire, a radiologist then on duty, reviewed the Feb. 27th sonogram (which, as noted, had already been uploaded to PACS) and prepared his report interpreting them ("Dr. Gregoire's report"). As was the case with the Feb. 27th sonogram, Dr. Gregoire's report, upon completion, was immediately uploaded to PACS. Both the Feb. 27th sonogram and Dr. Gregoire's report were available for review by any Wyckoff health-care provider with access privileges to PACS.

Dr. Gregoire's report – and particularly his warning therein about the possibility of an ectopic pregnancy – ultimately proved prescient. In that regard, Dr. Gregoire's report stated:

> "*Possible* leaking or ruptured *ectopic pregnancy on the right side*. Differential consideration is a ruptured hemorrhagic cyst. . . . Recommend OB/GYN consultation

(NYSCEF Doc. No. 256 at 26 [emphasis added]).

Dr. Gregoire did more than merely memorialize in his report his differential diagnoses of either an ectopic pregnancy or a ruptured cyst. According to his pretrial testimony which is not challenged by plaintiff or her expert, Dr. Gregoire relayed, by

telephone, his differential diagnoses to the ED staff. Although he was unable to reach Dr. Mardach (the physician then in charge of plaintiff's care in the ED) because she was then unavailable, he relayed his differential diagnoses (as well his recommendation for an OB/GYN consultation) to the individual who answered his phone call at the ED. At 3:40 p.m., Dr. Mardach requested an OB/GYN consultation.

At approximately 5 p.m., attending OB/GYN Eav Lim, D.O. ("Dr. Lim"), with the assistance of fourth-year OB/GYN resident Erica Dickson, D.O. ("Dr. Dickson"), evaluated plaintiff at bedside. An OB/GYN note timed at 5:28 p.m., written by Dr. Lim and cosigned by Dr. Dickson, states that the Feb. 27th sonogram was read in person by attending radiologist co-defendant, Dr. Blutreich, who (unlike Dr. Gregoire) concluded, based on the presence of a gestational sac and fetal pole (without fetal heart rate), and further based on the presence of the right-sided adnexal heterogeneous mass/cyst, that plaintiff was suffering from "a missed abortion" (NYSCEF Doc. No. 256). In that regard, Dr. Lim testified (at page 31, lines 10-12 of his pretrial depo) that he contacted Dr. Blutreich because Dr. Gregoire's report was unavailable to him (NYSCEF Doc. No. 253). Equally important, Drs. Lim and Dickson, in communicating with plaintiff, were vague as to the type of pregnancy she was experiencing and, what's more concerning, effectively shifted to her the entire responsibility for continuing what appeared to them to have been a high-risk pregnancy. To that end, Drs. Lim and Dickson's joint note, timed at 5:25 p.m., stated:

> "1. *Patient education and counseling given and understood regarding irregular appearing gestational sac which has higher chance of miscarriage and uncertainty of the location of the pregnancy*, cannot rule out ectopic pregnancy. Patient knows the chance of miscarriage and understands possibility of ruptured ectopic leading to emergency surgery, loss of fallopian tube/ovary, and possible death. Patient strongly desires to keep this pregnancy and desires to follow this pregnancy with repeat beta hcg. . . .
>
> 2. *Repeat beta hcg on Monday, March 2, 2015.*
>
> 3. Return to ER if pelvic pain, severe bleeding, fever > 100.4.

(NYSCEF Doc. Nos. 269 and 290) (emphasis added).

A follow-up OB/GYN note by Dr. Dickson, timed at 5:51 p.m. (and co-signed by Dr. Lim at 10:04 p.m.), reinforced the vagueness of their conclusions as to the state of plaintiff's pregnancy and their apparent shift of all responsibility to plaintiff for continuing her high-risk pregnancy:

> "Patient seen and evaluated with resident at specified date and time. Patient's history, labs, and sonogram findings were reviewed. Radiologist's opinion also noted. Physical exam is unremarkable. No guarding, no rebound, no vaginal bleeding, no CMT [cervical motion tenderness]. No palpable mass. *Irregular sac with suspicion of missed abortion, but cannot rule out ectopic pregnancy, risks and complications concerning both process discussed including but not limited to rupture ectopic, bleeding, removal of fallopian tube and decrease[d] fertility. Danger signs and*

> *symptoms provided.* Patient states she strongly desires pregnancy and wants as conservative management as possible. I informed patient about the rise and drop in beta HCG level and ways in which we can diagnose normal and abnormal pregnancy. *Patient asked all questions, verbalizes understanding.* Patient desires to wait. Follow up instruction provided. Patient states she will comply with instructions"

(NYSCEF Doc. Nos. 269 and 290) (emphasis added).

In the late afternoon of Friday, February 27th, the patient was seen by Dr. Mardach in anticipation of her discharge from the ED. Dr. Mardach's note, timed at 5:53 p.m., summarized the course of the day's events to that point in time. Among other things, Dr. Mardach's note stated that: (1) she had reviewed all available diagnostic tests and results; (2) an OB/GYN consult was obtained; (3) the Feb. 27th sonogram was reviewed with Dr. Blutreich; and (4) most significantly, an intrauterine pregnancy was found on the Feb. 27th sonogram. In that regard, an audit trail of PACS' access to plaintiff's medical records indicates that both the Feb. 27th sonogram and Dr. Gregoire's report were available for access and, in fact, were accessed by various health-care providers, including by Dr. Mardach and Dr. Blutreich, after his report had been uploaded to PACS at 2:43 p.m. but before plaintiff was discharged from the ED later that evening.

On Monday, March 3rd, plaintiff presented to Wyckoff's Clinic for a repeat beta hCG test. A physical examination by attending on duty Diane Tarr, M.D. ("Dr. Tarr") found no adnexal or cervical masses or tenderness. Dr. Tarr's assessment of plaintiff's pregnancy was an incomplete spontaneous abortion of an intrauterine pregnancy based on,

among other things, the fact that plaintiff's beta hCG level at the time was 340, having gone down from 1191 on February 27th (NYSCEF Doc. No. 273).

Plaintiff's Subsequent Course of Treatment

On Tuesday, March 4th, plaintiff presented to nonparty Long Island Jewish Medical Center (LIJ) with complaints of mild cramping and mild, intermittent, vaginal bleeding with occasional spotting and brown discharge. Her physical examination revealed cervical bleeding and a tender right adnexa. Plaintiff's beta hCG level was 375.1 on that visit. On admission to LIJ, an ultrasound study showed a suspected ruptured ectopic pregnancy. On Wednesday, March 5th, plaintiff underwent surgery for suspected ruptured ectopic pregnancy. During surgery, her right fallopian tube was removed.

Plaintiff's Action Against Dr. Gregoire, Dr. Blutreich, and Wyckoff (Among Others)

In February 2016, plaintiff commenced this action as against Dr. Gregoire, Dr. Blutreich, and Wyckoff (among others), alleging claims sounding in medical malpractice and lack of informed consent. Specifically, plaintiff alleges that each of Dr. Gregoire and Dr. Blutreich failed to properly interpret the February 27th sonogram, which resulted in her being advised that she had a normal uterine pregnancy and that, in turn, caused a delay in the diagnosis of her ectopic pregnancy. She asserts that this caused her to be discharged from Wyckoff without proper treatment and resulted in the rupture and surgical removal of her right fallopian tube. With regard to Wyckoff, plaintiff's allegations are based upon its vicarious liability for the actions of all the individually named physicians that treated her throughout her visits to the ED and Wyckoff's Clinic. After

issue was joined, the parties engaged in discovery, with plaintiff filing a note of issue and certificate of readiness on January 17, 2019. Thereafter, the moving defendants timely served their respective papers.

Standard of Review

"To prevail on a motion for summary judgment in a medical malpractice action, a defendant must make a prima facie showing either that there was no departure from the accepted community standards of medical care, or that his or her acts were not a proximate cause of the plaintiff's injuries" (*Pinnock v Mercy Med. Ctr.*, 180 AD3d 1088, 1090 [2d Dept 2020] [internal citations omitted]; *see Rosario v Our Lady of Consolation Nursing & Rehabilitation Care Ctr.*, 186 AD3d 1426, 1430 [2d Dept 2020]). "[T]o sustain this burden, the defendant is only required to address and rebut the specific allegations of malpractice set forth in the plaintiff's complaint and bill of particulars" (*Schuck v Stony Brook Surgical Assoc.*, 140 AD3d 725, 726 [2d Dept 2016]; *Bhim v Dourmashkin*, 123 AD3d 862, 865 [2d Dept 2014]; *Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043, 1045 [2d Dept 2010]). A defendant asserting that the complained-of treatment did not depart from accepted standards, must provide an expert opinion that is detailed, specific, and factual in nature (*see Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2d Dept 2008]; *see also Daniele v Pain Mgt. Ctr. of Long Is.*, 168 AD3d 672, 674 [2d Dept 2019]). The expert opinion must be based on facts which are contained in the record or which are known to the expert (*see* ain *Roques v Noble*, 73 AD3d 204, 207 [1st Dept 2010]).

"In opposition, a plaintiff then must submit material or evidentiary facts to rebut the defendant's prima facie showing that he or she was not negligent in treating the plaintiff" (*Dolan v Halpern*, 73 AD3d 1117, 1118-1119 [2d Dept 2010] [internal quotation marks omitted]). "[P]laintiff need only raise a triable issue of fact regarding 'the element or elements on which the defendant has made its prima facie showing'" (*McCarthy*, 139 AD3d at 826, quoting *Mitchell v Grace Plaza of Great Neck, Inc.*, 115 AD3d 819, 819 [2d Dept 2014]; *see Wagner v Parker,* 172 AD3d 954, 954 [2d Dept 2019]). However, a plaintiff's expert's affidavit that is conclusory or speculative is insufficient to raise a triable issue of fact in opposition to a defendant's prima facie showing where the expert fails to set forth any basis for his or her opinion and fails to address the specific assertions made by defendant's expert (*see Choida v Schirripa*, 188 AD3d 978, 980 [2d Dept 2020]; *Schwartz v Partridge*, 179 AD3d 963, 964 [2d Dept 2020]; *Rivers v Birnbaum*, 102 AD3d 26, 45-46 [2d Dept 2012]). Summary judgment may not be awarded in a medical malpractice action where the parties offer conflicting expert opinions, which present a credibility question requiring a jury's resolution (*see Lefkowitz v Kelly,* 170 AD3d 1148,1150 [2d Dept 2019]; *Loaiza v Lam*, 107 AD3d 951, 953 [2d Dept 2013]; *Dandrea v Hertz*, 23 AD3d 332, 333 [2d Dept 2005]).

Finally, in a medical malpractice action, where causation is often a difficult issue, a plaintiff seeking to establish proximate cause, "must demonstrate sufficient evidence from which a reasonable person might conclude that it was more probable than not that the defendant's deviation was a substantial factor in causing the injury" (*Daniele,* 168 AD3d

at 675 [internal quotation marks omitted]; *Johnson v Jamaica Hosp. Med. Ctr.*, 21 AD3d 881, 883[2d Dept 2005]). "[T]he plaintiff's evidence may be deemed legally sufficient even if its expert cannot quantify the extent to which the defendant's act or omission decreased the plaintiff's chance of a better outcome or increased his injury, as long as evidence is presented from which the jury may infer that the defendant's conduct diminished the plaintiff's chance of a better outcome or increased his [or her] injury" (*Daniele*, 168 AD3d at 675, quoting *Flaherty*, 46 AD3d at 745; *see D.Y. v Catskill Regional Med. Ctr.*, 156 AD3d 1003, 1005 [3d Dept 2017]; *Neyman v Doshi Diagnostic Imaging Servs., P.C.*, 153 AD3d 538, 545 [2d Dept 2017]; *Alicea v Ligouri*, 54 AD3d 784, 786 [2d Dept 2008]).

Discussion

Dr. Gregoire

As noted, Dr. Gregoire moves for summary judgment dismissing plaintiff's complaint which alleges that he failed to: (1) properly review and interpret plaintiff's Feb. 27th sonogram, (2) diagnose an ectopic pregnancy, and (3) obtain informed consent. In support of his motion, Dr. Gregoire submits the expert affirmation of Ivy A. Engel, M.D. ("Dr. Engel"), a New York State-licensed physician with board certification in the field of radiology. Dr. Engel affirms that she reviewed all of the relevant documents, records, and films related to this matter. She opines, within a reasonable degree of medical certainty, that the care and treatment provided to plaintiff by Dr. Gregoire was within good and accepted medical practice. Dr. Engel further opines that the care and treatment rendered

by Dr. Gregoire was not a proximate cause or factor contributing to any injuries alleged by plaintiff. Specifically, Dr. Engel opines that Dr. Gregoire timely and properly reviewed and interpreted the Feb. 27th sonogram. She further avers that, upon her own independent review of the Feb. 27th sonogram, she concurs with Dr. Gregoire's assessment that there was no evidence of an intrauterine pregnancy, but, rather, that a leaking or ruptured ectopic pregnancy or a hemorrhagic cyst needed to be considered. Dr. Engel opines that Dr. Gregoire timely and appropriately informed the ED of his differential diagnoses and of his recommendation for an OB/GYN consult. Dr. Engel further opines that nothing that Dr. Gregoire did, or failed to do, proximately caused any of plaintiff's injuries. In this regard, Dr. Engel points out that the medical records and an audit trail show that both the Feb. 27th sonogram and Dr. Gregoire's report were available to (and, in fact, were accessed by) various healthcare providers before plaintiff's discharge from the ED in the late afternoon of February 27th.

In addition, Dr. Gregoire contends that plaintiff's lack of informed consent should be dismissed as asserted against him because this cause of action can be maintained only in cases involving a "non-emergency treatment, procedure, or surgery" or "a diagnostic procedure which involved invasion or disruption of the integrity of the body" (Public Health Law § 2805-d). Dr. Gregoire points out that he merely interpreted a sonogram and was not engaged in either of the covered treatments.

Based on the foregoing, the Court finds that Dr. Gregoire has made a prima facie showing of entitlement to summary judgment on the medical malpractice cause of action

as against him (*see Stiso v Berlin,* 176 AD3d 888, 890 [2d Dept 2019]; *Aliosha v Ostad*, 153 AD3d 591, 593 [2d Dept 2017]; *Senatore v Epstein*, 128 AD3d 794, 796 [2d Dept 2015]; *see also Dockery v Sprecher*, 68 AD3d 1043, 1045-1046 [2d Dept 2009] [holding that a physician's duty to their patient may be limited to those medical functions undertaken by the physician and relied on by the patient, and where a radiologist was not the treating physician, his role was to interpret the MRI film and document his findings. The radiologist did not assume a general duty of care to independently diagnose the patient's medical condition]). Further, the Court finds that Dr. Gregoire has made a prima facie showing of entitlement to summary judgment on the lack of informed consent claim (*see Reid v Soults*, 138 AD3d 1087, 1090 [2d Dept 2016]).

In opposition, plaintiff has failed to raise a triable issue of fact as to Dr. Gregoire. The opinions of plaintiff's expert, Joan Fleischman, M.D. ("Dr. Fleischman"), insofar as they relate to Dr. Gregoire, are hampered by her explicit (and factually necessary) assumption of the truth of his pretrial testimony regarding his involvement in plaintiff's case. As noted, Dr. Gregoire testified at his pretrial deposition that he promptly called the ED and conveyed his findings (as well as his recommendation for an OB/GYN consult) to the individual who answered the phone, and that he signed and completed his report which, thereupon, was made part of plaintiff's chart. Accordingly, Dr. Gregoire's motion is granted as more fully set forth in the decretal paragraphs below (*see Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *Duvidovich v George*, 122 AD3d 666, 667 [2d Dept 2014]; *Barrocales v New York Methodist Hosp.*, 122 AD3d 648, 649-650 [2d

Dept 2014]; *Callistro v Bebbington*, 94 AD3d 408, 410-411 [1st Dept 2012], *affd* 20 NY3d 945 [2012]).

Dr. Blutreich

As stated, Dr. Blutreich cross-moves for summary judgment dismissing the complaint, or, in the alternative, for summary judgment in his favor and a limitation of the triable issues, pursuant to CPLR 3212 (e).[2] The allegations asserted against Dr. Blutreich include his failure to properly interpret the Feb. 27th sonogram and to diagnose an ectopic pregnancy. In support of his cross motion, Dr. Blutreich relies on his own affidavit, as well as on the pleadings, bills of particulars, deposition testimony, and Wyckoff's records, including the Feb. 27th sonogram, Dr. Gregoire's report, the audit trail, and the discharge instructions and patient summary for February 27th. In addition, he reviewed the records from plaintiff's LIJ admission. Based on the foregoing, Dr. Blutreich maintains that his alleged misinterpretation of the Feb. 27th sonogram could not have been a proximate cause of plaintiff's injuries because Dr. Mardach and other treating physicians knew (or were on notice of) the "official" findings of on-call radiologist Dr. Gregoire (which findings showed an ectopic pregnancy) before plaintiff's discharge from the ED. In the alternative, Dr. Blutreich contends that he is entitled to partial summary judgment on plaintiff's claim that he caused her to lose her right fallopian tube, since it had been ruptured and was unsalvageable before her February 27th visit to the ED.

[2] Dr. Blutreich does not address plaintiff's informed consent claim in his cross motion.

Dr. Blutreich admits in his moving papers that there is an issue of fact as to whether he rendered a bedside interpretation of the Feb. 27th sonogram as set forth in Wyckoff's records, which indicates that he reviewed the Feb. 27th sonogram and interpreted it as showing an intrauterine pregnancy, no fetal heartbeat, and a right adnexal mass or cyst (Dr. Blutreich's Aff. at 2) (NYSCEF Doc. No. 282). Nonetheless, Dr. Blutreich contends, based, in effect, on his self-serving pretrial testimony and his post-deposition affidavit, that no liability can be imposed on him because his bedside, and never-reduced-to-writing, interpretation of the Feb. 27th sonogram was trumped by Dr. Gregoire's written, PACS-accessible report alerting every healthcare provider working on plaintiff's case to the possibility of an ectopic pregnancy. Thus, Dr. Blutreich argues that even if he did misinterpret the Feb. 27th sonogram as indicated in Drs. Dickson and Lim's joint consultation note, the actual findings as reflected in Dr. Gregoire's report should have been known by those physicians, as well as by Dr. Mardach. In that regard, Dr. Blutreich relies on PACS' audit trail showing that: (1) Dr. Dickson reviewed the Feb. 27th sonogram at 4:18 p.m. and again 5:23 p.m.; and (2) Dr. Mardach reviewed Dr. Gregoire's report at 5:53 p.m. (or shortly before plaintiff's discharge from the ED), as well as included Dr. Gregoire's findings in plaintiff's discharge papers.

Next, Dr. Blutreich opines that "the sagittal endometrium, LUS (lower uterine segment), and right adnexal images" on LIJ's March 4th sonogram " show the same findings as the ultrasound performed at Wyckoff . . . on February 27, 2015 in terms of the size of the right adnexal mass (now known to be due to an ectopic pregnancy) and the amount of

blood in the pelvis (now known in all probability to be the result of a ruptured ectopic pregnancy)" (Dr. Blutreich's Aff. at 4). He further opines that "[t]here was no significant change in either the amount of blood or the size of the ectopic pregnancy" (*id.*). Dr. Blutreich contends that plaintiff's beta hCG level was not significantly different between February 27th when it was 364 at Wyckoff and March 4th when it was 375 at LIJ (*id.*).[3] Thus, he opines that there was no significant change or growth in the ectopic pregnancy between those dates (*id.*). Accordingly, Dr. Blutreich opines "with a reasonable degree of medical certainty that the patient's right fallopian tube was ruptured on February 27, 2015. It was, therefore, not salvageable at the time" (Dr. Blutreich's Aff. at 4).

The Court finds that Dr. Blutreich has failed to make a prima facie showing of entitlement to summary judgment on plaintiff's medical malpractice claim as against him. Although Dr. Blutreich (like Dr. Gregoire) is a radiologist, his role in plaintiff's care and treatment markedly differed from that of Dr. Gregoire. The record, when viewed (as it must be at this stage of litigation) in a light most favor to plaintiff as the nonmovant, reflects that Dr. Blutreich was consulted by (and actively participated with) the OB/GYN team in the diagnosis and treatment of plaintiff's pregnancy on February 27th. Dr. Blutreich may not shield his own allegedly incorrect interpretation of the Feb. 27th sonogram with the aegis of immunity on account of Dr. Gregoire's prior (and correct) interpretation of the

[3] In reply, Dr. Blutreich submits an affidavit to correct his misstatement regarding the progression of plaintiff's beta hCG levels. In this regard, he notes that her beta hCGs were: 364.1 on February 24, 2015; 1191 on February 27, 2015; 346.7 on March 2, 2015; and 375.1 on March 4, 2015 at LIJ.

Feb. 27th sonogram. In fact, PACS' audit trail indicates that Dr. Blutreich himself accessed Dr. Gregoire's report at 4:29 p.m. In addition, the court finds that Dr. Blutreich has failed to establish his entitlement to partial summary judgment on plaintiff's claim that he caused her to lose (or contributed to her loss of) the right fallopian tube, inasmuch as he has failed to demonstrate, as a matter of law, that it had ruptured and had been unsalvageable prior to her February 27th visit to the ED.[4] Accordingly, Dr. Blutreich's cross motion for summary judgment is denied, regardless of the sufficiency of plaintiff's opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Valerio v Liberty Behavioral Mgt. Corp.*, 188 AD3d 948, 950 [2d Dept 2020])

Inasmuch as Dr. Gregoire's motion is granted as more fully set forth below, the branch of Wyckoff's motion for summary judgment as to any acts or omissions attributable to him is likewise granted. The remainder of Wyckoff's motion is denied, as more fully set forth in the decretal paragraphs below.

To the extent not specifically addressed herein, the parties' remaining contentions were considered and found to be without merit and/or academic.

[4] The Court has not considered Dr. Blutreich's Additional Affidavit which he submitted with his reply papers (NYSCEF Doc. No. 301).

Conclusion

Accordingly, it is

ORDERED that Dr. Gregoire's motion (in Seq. No. 12) is *granted in its entirety*, and plaintiff's complaint is dismissed as against him without costs and disbursements; and it is further

ORDERED that the action is severed and continued as against the remaining defendants; and it is further

ORDERED that Dr. Blutreich's cross motion (in Seq. No. 14) is *denied in its entirety*; and it is further

ORDERED that Wyckoff's motion (in Seq. No. 13) is *granted to the extent* that all of plaintiff's claims as against it, insofar as such claims are predicated on Dr. Gregoire's alleged acts and omissions, are dismissed; and the remainder of its motion is denied; and it is further

ORDERED that to reflect the dismissal of Dr. Gregoire from this action, as well as the prior stipulated discontinuation of this action as against defendants Steven Swancoat, D.O., and Teresita Figueroa, M.D., and further to reflect the correct spelling of Dr. Blutreich's name (as well as to include his first name), the caption of this action is amended to read in its entirety, as follows:

----------X

MARIELLA LOPEZ,

Plaintiff,

- against - Index No. 501844/16

WYCKOFF HEIGHTS MEDICAL CENTER,
ONYEMACHI G. AJAH, M.D.,
DIANE E. TARR, M.D.,
DALI MARDACH, M.D.,
ERICA DICKSON, D.O.,
SALOMON BLUTREICH, M.D., and
EAV LIM, D.O.,

Defendants.

----------X

; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this decision and order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the court.

ENTER,

Bernard J. Graham

J. S. C. HON. BERNARD J. GRAHAM