NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 34

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SHERRY PICCHIONI as Administratrix of the Estate of RODERICK PICCHIONI, Deceased, and SHERRY PICCHIONI, Individually,

Plaintiffs,

- against -

RUMANA SABUR, MAHIRE OZCAN, NEJAT KIYICI, PRAKASHCHANDRA RAO, JUDHA FIERSTEIN, MICHAEL ADER, MONTEFIORE MEDICAL CENTER, MONTEFIORE WAKEFIELD CAMPUS, and JACK D. WEILER HOSPITAL,

Defendants.

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Index №. 21790/2014E

Hon. MICHAEL A. FRISHMAN
Acting Justice of the Supreme Court

The following papers numbered were read on these Motions for Summary Judgment **(Seq. Nos. 007, 008, 009 and 010)**.[1]

Sequence No. 007	NYSCEF Doc. Nos.
Notice of Motion, Statement of Material Facts, Affirmation in Support – Exhibits and Affidavits Annexed	164-183
Affirmation in Opposition, Response to Statement of Material Facts - Exhibits and Affidavits Annexed	275-281
Reply Affirmation	319

Sequence No. 008	NYSCEF Doc. Nos.
Notice of Motion, Statement of Material Facts, Affirmation in Support – Exhibits and Affidavits Annexed	209-244
Affirmation in Opposition, Response to Statement of Material Facts - Exhibits and Affidavits Annexed	283-289
Reply Affirmation, Exhibits Annexed	314-318

Sequence No. 009	NYSCEF Doc. Nos.
Notice of Motion, Statement of Material Facts, Affirmation in Support – Exhibits and Affidavits Annexed	184-208

[1] These motions will be discussed together as they stem from the same surrounding circumstances and involve similar issues of law and fact.

Affirmation in Opposition, Response to Statement of Material Facts - Exhibits and Affidavits Annexed	291-297
Reply Affirmation	314

Sequence No. 010	NYSCEF Doc. Nos.
Notice of Motion, Statement of Material Facts, Affirmation in Support – Exhibits and Affidavits Annexed	245-263
Affirmation in Opposition, Response to Statement of Material Facts - Exhibits and Affidavits Annexed	299-305
Reply Affirmation	313

The motion of defendant PRAKASHCHANDRA RAO[2] (Seq. No. 007) seeking summary judgment dismissing the Complaint against him is granted, in part.

The motion of defendants RUMANA SABUR, MAHIRE OZCAN, JUDHA FIERSTEIN and MONTEFIORE MEDICAL CENTER, MONTEFIORE WAKEFIELD CAMPUS, and JACK D. WEILER HOSPITAL[3] (Seq. No. 008) seeking summary judgment dismissing the Complaint against them as to decedent's initial admission is granted, in part.

The motion of defendant MICHAEL ADER[4] (Seq. No. 009) seeking summary judgment dismissing the Complaint against him is granted, in part.

The motion of defendant NEJAT KIYICI[5] (Seq. No. 010) seeking summary judgment dismissing the Complaint against him is granted, in part.

Plaintiffs commenced this malpractice and wrongful death action alleging, generally, that defendants deviated from good and accepted medical practice when they failed to timely and properly diagnose and treat plaintiff decedent's ("decedent") mesenteric ischemia during his first admission to MMC on October 29, 2011 through November 4, 2011 ("initial admission") and negligently discharged him resulting in his return to the emergency department and second admission to MMC from November 6, 2011 through December 6, 2011 with a necrotic and gangrenous bowel, performance of two surgeries removing several feet of his bowel, development of sepsis, and ultimately resulting in his death. Plaintiffs further assert causes of action for lack of informed consent and loss of consortium.

Defendants seek summary judgment dismissing the Complaint against them arguing, collectively and generally, *inter alia*, that they did not depart from accepted medical practice, and that nothing they did or failed to do proximately caused decedent's injuries or death.

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[2] Unless otherwise stated, hereinafter "Dr. Rao."
[3] Unless otherwise stated, hereinafter "Dr. Sabur," "Dr. Ozcan," "Dr. Fierstein" and all Montefiore defendants collectively as "MMC."
[4] Unless otherwise stated, hereinafter "Dr. Ader."
[5] Unless otherwise stated, hereinafter "Dr. Kiyici."

Dr. Rao's motion is supported, among other things, by the affirmation of Dr. Greico who is Board Certified by the American Board of Surgery and American Board of Colon and Rectal Surgeons.

Dr. Sabur, Dr. Ozcan, Dr. Fierstein, and MMC's motion is supported, among other things, by the affirmations of Dr. Grendell, who is Board Certified in Internal Medicine and Gastroenterology, and Dr. Machnicki, who is Board Certified in Radiology.

Dr. Ader's motion is supported, among other things, by the affirmations of Dr. Nagula, who is Board Certified in Internal Medicine and Gastroenterology, and Dr. Schwartz, who is Board Certified in Diagnostic Radiology.

Dr. Kiyici's motion is supported, among other things, by the affirmation of Dr. Chait, who is Board Certified in Internal Medicine and Gastroenterology.

In opposition to each of defendants' motions for summary judgment, plaintiffs generally argue that defendants have failed to meet their *prima facie* burden regarding plaintiffs' claims surrounding their allegations that defendants and other medical personnel failed to timely diagnose and treat decedent's mesenteric ischemia, leading to and ultimately causing decedent's death. Alternatively, plaintiffs argue that even if the Court finds that defendant(s) have met their burden, plaintiffs' experts raise triable issues of fact based on contrary opinions and thus defendants' motions must be denied. In addition, plaintiffs argue that defendant MMC failed to contest vicarious liability as to Dr. Sabur and Dr. Ozcan's status as employees, and that defendants have failed to offer proof as to the employment status of Dr. Rao, Dr. Ader, and Dr. Kiyici and thus no claims as to vicarious liability on the part of MMC should be dismissed.

As an initial matter, it should be noted that this matter has been previously discontinued via So Ordered stipulations as to many defendants, and specifically to the remaining defendants, allegations as to decedent's second admission from November 6, 2011 through December 6, 2011 have also been discontinued via So Ordered stipulation upon motion as to RUMANA SABUR, MAHIRE OZCAN, JUDAH FIERSTEIN, and MONTEFIORE MEDICAL CENTER (*See* NYSCEF Doc. No. 325 Motion Seq. No. 006). Consequently, any allegations as to their roles or lack thereof during decedent's second admission are rendered moot and will not be discussed herein. In addition, plaintiffs do not oppose dismissal of Dr. Fierstein from this action as it appears undisputed that he only saw decedent as the attending emergency department doctor during decedent's re-presenting to MMC.

A defendant in a medical malpractice action establishes *prima facie* entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries (*Anyie B. v Bronx Lebanon Hosp.*, 128 AD3d 1, 2 [1st Dept 2015]). If a defendant in a medical malpractice action establishes *prima facie* entitlement to summary judgment, by a showing either that he or she did not depart from good and accepted medical practice or that any departure did not proximately cause the plaintiff's injuries, plaintiff is required to rebut defendant's prima facie showing "with medical evidence that defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged" (*Pullman v Silverman*, 125 AD3d 562, 562 [1st Dept 2015], *aff'd* 28 N.3d 1060 [2016]).

"A plaintiff's expert opinion must demonstrate 'the requisite nexus between the malpractice allegedly committed' and the harm suffered" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 307 [1st Dept 2007] [internal citation omitted]). If "the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment" (*Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *Giampa v Marvin L. Shelton, M.D., P.C.*, 67 AD3d 439 [1st Dept 2009]). Further, the plaintiff's expert must address the specific assertions of the defendant's expert with respect to negligence and causation (*see Foster-Sturrup v Long*, 95 AD3d 726, 728-729 [1st Dept 2012]).

Defendant Rao's expert, Dr. Greico, is an expert in the field of surgery and has affirmed his experience with diagnosing and managing patients who have presented with symptoms and medical issues at topic here, to wit, splenic infarcts and mesenteric ischemia. He opines, to a reasonable degree of medical certainty that Dr. Rao acted in accord with good and accepted medical practice in the care and treatment of decedent during his involvement in both decedent's initial admission and second admission. He further opines that Dr. Rao did not delay decedent's surgery and performed all surgery correctly during the second admission and that decedent's death was not caused or contributed to by any negligence on Dr. Rao's part.

Dr. Grendell, an expert internist and gastroenterologist, on behalf of defendants Dr. Sabur, Dr. Ozcan, Dr. Fierstein, and MMC opines that the medical care and treatment rendered to decedent by these defendants during his initial admission was appropriate and comported with acceptable standards of care. He further opines that the medical treatment rendered to decedent by these defendants did not cause or contribute to his alleged injuries. Furthermore, although as previously mentioned, the matter has been discontinued upon motion against Dr. Fierstein as to the second admission, Dr. Grendell opines that this doctor did not treat decedent during his initial admission.[6]

Dr. Machnicki, an expert radiologist, on behalf of defendants Dr. Sabur, Dr. Ozcan, Dr. Fierstein, and MMC opines, generally, that the medical care and treatment rendered to decedent by these defendants during the initial admission was appropriate and comported with acceptable standards of radiological care. The doctor also opines that the medical treatment provided by these aforementioned defendants did not cause or contribute to decedent's alleged injuries.

Dr. Nagula, an expert internist and gastroenterologist, on behalf of defendant Dr. Ader, opines that all care and treatment rendered to decedent by Dr. Ader in his limited involvement on October 30, 2011 during decedent's initial admission, was at all times in accordance with good and accepted medical practice. Dr. Nagula further opines that nothing Dr. Ader did or did not do caused or contributed to decedent's alleged injuries or eventual death.

Dr. Schwartz, an expert radiologist on behalf of Dr. Ader, opines that there was no radiological evidence of mesenteric or other intra-abdominal ischemia, sepsis, bowel obstruction, deep vein thrombosis, or the presence of emboli in the mesenteric arteries of the celiac trunk during decedent's initial admission and all imaging studies performed during this time were of sufficient quality to make an interpretation thereby rendering any further imaging unnecessary. Additionally, he opines, that no radiological evidence of clots in the arterial or venous systems were present during decedent's initial admission and thus, decedent must have experienced an embolic event at home after discharge. Therefore, he opines, the only reasonable conclusion that can be drawn is decedent's bowel

[6] Plaintiffs do not oppose dismissal of Dr. Fierstein from this action. Therefore, all claims as to both admissions against Dr. Fierstein are dismissed without opposition.

obstruction and intra-abdominal ischemia developed after consultation or the ultrasound that was ordered by Dr. Ader on October 30, 2011. Dr. Schwartz further opines that such an occurrence, based on his limited involvement, could not have been foreseen by Dr. Ader and there is no medical basis to conclude that Dr. Ader contributed to decedent's decline or demise.

Dr. Chait, an expert internist and gastroenterologist, on behalf of defendant Dr. Kiyici, opines that the care and treatment of decedent by Dr. Kiyici at MMC was appropriate and timely and did not depart from the acceptable standards of reasonable medical care. Additionally, Dr. Chait opines, that the care that was rendered to decedent by Dr, Kiyici was not the cause of and did not contribute to or exacerbate decedent's injuries or result in his death. Furthermore, as to decedent's subsequent admission, Dr. Chait opines that Dr. Kiyici appropriately interpreted decedent's labs and scan results as well as properly performed an EGD and colonoscopy, which confirmed gangrenous bowel, and properly discussed with decedent's managing medical team but that he did not follow or manage decedent's care.

Collectively, the affirmations of defendants' experts meet their *prima facie* burden as to decedent's initial admission from October 29, 2011 through November 4, 2011 generally stating that all proper consultations and testing was done to diagnose decedent's symptoms including, *inter alia*, a CT scan/CTA scan with contrast which did not show signs of mesenteric ischemia, and that decedent improved and was properly discharged. However, plaintiffs' experts raise triable issues of fact sufficient to rebut defendants' *prima facie* showings which require denial of defendants' motions as to this initial admission.

Specifically, although based on decedent's presenting symptoms, a potential diagnosis of mesenteric ischemia was noted three separate times in the medical records of this initial admission, both plaintiffs' undisclosed expert surgeon and expert internist, state that defendants departed from good and accepted medical practice by failing to order the required and proper testing to conclusively rule out this potential diagnosis, to wit, a magnetic resonance angiography ("MRA") or other imaging modality that specifically examines the mesenteric vessels and arteries.[7]

Plaintiffs' expert surgeon, who has co-managed thousands of patients jointly with gastroenterologists over forty (40) years of clinical practice including cases involving intestinal ischemia, further states that although the "gold standard" for testing, investigating, and diagnosing mesenteric ischemia is a mesenteric arteriogram, an MRA, is a less invasive diagnostic test which is vastly superior in evaluating the mesenteric vessels and arteries than is a regular CT scan or MRI at its early stages. While recognizing that decedent received investigatory diagnostic testing during his initial admission, plaintiffs' expert states that a CT scan with contrast of the chest, abdomen and pelvis does not image the mesenteric vessels, and the revealing of splenic infarcts therefrom, along with the subsequent TEE findings of a patent foramen ovale ("PFO"), and decedent's pain disproportionate to physical examination, a classic symptom of mesenteric ischemia, should have alerted defendants to the high likelihood of paradoxical emboli and of clots in the gut arteries as well. Thus, plaintiffs' expert surgeon opines, good and accepted medical practice required an MRA during this initial admission because it would have shown a clot in the superior mesenteric artery, allowing timely clearance of such clot by endovascular thrombolysis with TPA. Further, administration of blood thinners would have prevented the second shower of clots which ultimately led to bowel necrosis and death. In sum, plaintiffs' expert surgeon opines, these departures resulted in this delay in diagnosis

[7] It is undisputed that an MRA was not conducted during decedent's initial admission.

and treatment which was a proximate cause and/or substantial contributing factor to the progression and development of decedent's mesenteric ischemia which occluded his bowel and lead to gangrene, severe sepsis, and death.

Plaintiffs' undisclosed expert internist, who affirms familiarity and experience with the accepted practices for the diagnosis and treatment of mesenteric ischemia, opines that the classic clinical description for potential mesenteric ischemia is abdominal pain out of proportion to physical examination as the medical records demonstrate decedent was experiencing during his initial admission. Plaintiffs' expert internist further opines that pain secondary to mesenteric ischemia is most often non-continuous, and a definitive diagnosis cannot be ruled out based on any such waxing and waning. In addition, plaintiffs' internist opines, mesenteric ischemia as a potential diagnosis was posited three times in decedent's chart but was never definitively ruled out by the diagnostic testing ordered. Rather, an MRA or other imaging modality that specifically examines the mesenteric vessels and arteries was required since the CTA done with contrast can obscure the mesenteric vessels and arteries and does not specifically examine the vessels and arteries of the mesentery. This expert internist further states that the presence of splenic infarcts should have resulted in a complete investigation into decedent's splanchnic circulation, requiring an MRA, or at the very least a CT without contrast, to definitively rule out mesenteric ischemia.[8] Lastly, the expert states, that extensive necrosis resulting in several feet of gangrenous bowel removal could not have formulated in the days between decedent's discharge and re-presentation as it takes ongoing occlusion or loss of blood flow that therefore had to be present during decedent's initial admission.

Thus, plaintiffs' experts sufficiently raise an issue of fact whether defendants collectively failed to timely diagnose decedent's condition depriving him of a substantial chance of a better medical outcome and allowing progression leading to occlusion of decedent's superior mesenteric artery thereby causing development of gangrenous bowel and severe sepsis and, ultimately, resulting in decedent's death.

In addition, although defendants' experts generally and collectively state that decedent's splenic infarcts did not require prophylactic anti-coagulation medication, decedent nevertheless received daily prophylactic anti-platelet medication which would prevent the forming of clots, in the form of ASA81 (aspirin 81 mg) as well as instructions to continue the medication at discharge. In contrast, plaintiffs' expert internist opines that a diagnosis of splenic infarcts indicates an embolic state requiring anti-coagulation to prevent any propagation. This further supports that plaintiffs have sufficiently raised triable issues of fact requiring denial of defendants' motions as to decedent's initial admission.

However, plaintiffs have failed to rebut defendant Rao's *prima facie* showing concerning the two surgeries performed by Dr. Rao during decedent's second admission from November 6, 2011 through December 6, 2011, to wit, that the first surgery was not negligently delayed or either of the surgeries negligently performed. As such, claims as to Dr. Rao during this admission must be dismissed. Similarly, although Dr. Kiyici was called to consult on November 6, 2011, plaintiffs have failed to rebut defendant Kiyici's *prima facie* showing that he appropriately interpreted decedent's new labs and new CT findings as demonstrating ischemic bowel and, recognizing the emergent

[8] Although defendant expert Dr. Machnicki (Seq. No. 008) states that a CTA was conducted during decedent's initial admission definitively ruling out the presence of mesenteric ischemia, plaintiffs' expert internist opines that because contrast dye was used, the mesenteric vessels and arteries can be obscured and, additionally, that a CTA does not specifically examine the vessels and arteries of the mesentery.

situation, ordered an emergency surgical evaluation as there was no role as a GI at that time; that he appropriately examined decedent sporadically and as a consultant, and did not follow or manage patient's care during this subsequent admission. Consequently, plaintiffs have failed to raise any issues of fact of any negligence on the part of Dr. Kiyici during decedent's subsequent admission and all claims against him involving this subsequent admission must be dismissed.[9] Similarly, the records support that Dr. Ader's only contact with decedent was on October 30, 2011 as consulting GI to review a fellow's recommendations and examine the patient[10] during the initial admission and therefore all claims against Dr. Ader involving this subsequent admission must be dismissed.

Likewise, defendants Dr. Sabur, Dr. Ozcan and MMC have shown their entitlement to summary judgment on several claims which are uncontroverted by plaintiffs. The records show that decedent was diagnosed with sepsis upon his re-presentation and therefore claims that there was a failure to diagnose sepsis including failure to order the appropriate studies required to diagnose sepsis and the etiology of the sepsis must be dismissed. Failure to diagnose an abscess has also not been addressed by plaintiffs nor has any evidence established that there was a failure to control decedent's diabetes, failure to heed decedent's medical history or his medical records and therefore these claims must be dismissed. Plaintiffs have also failed to support any claims involving a failure to obtain a hematology consult or a cardiology consult as well as claims of a delay with specialist in hematology and cardiology. Rather, the record supports that consultations were made with surgery during the initial admission as well as consults with gastroenterology and cardiology resulting in additional testing, to wit, a TEE revealing decedent's PFO and a lower extremity duplex ultrasound. Plaintiffs' experts do not address any failure to assess for an abdominal bruit and therefore that must be dismissed. Plaintiffs' experts also fail to point to anything in the record indicating that there was a failure to properly conduct pre-operative care or that any post-operative procedures were performed negligently and consequently these must also be dismissed.

Similarly, plaintiffs' claims that MMC failed to hire and adequately train competent personnel are unsupported by the record and must be dismissed.

The Court finds the remaining claims defendants Dr. Sabur, Dr. Ozcan and MMC aver as not having been rebutted by plaintiffs to be without merit as they were properly controverted, and a question of fact remains. The remaining claims asserted by these defendants as having not been rebutted by plaintiffs' experts arguably center around the very heart at issue, whether defendants failed to timely diagnose and treat decedent's mesenteric ischemia, including prophylactic anti-coagulation based on his confirmed diagnoses, during the initial admission, and therefore they must remain.[11]

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[9] The Court recognizes that plaintiffs' Bill of Particulars with respect to Dr. Kiyici only state the claims as relating to the subsequent admission of November 6, 2011 through December 6, 201. However, plaintiffs' Supplemental Bill of Particulars with respect to Dr. Kiyici attached as an exhibit (NYSCEF Doc. No. 252), state two claims relating to decedent's initial admission. Consequently, claims as to this doctor regarding the initial admission must remain.

[10] Per Dr. Ader's deposition testimony, he stated it would have been his "practice to hear the facts of the case…near the patient's room, and then…" would have examined the patient.

[11] These as listed in their reply papers are failing to communicate; misleading decedent as to the true nature of his medical condition; providing negligent discharge instructions; failing to perform cultures; failing to consult with specialists; failing to heed the significance of testing which indicated severe abnormalities in decedent's intestine and organs; abandoning decedent; and failing to properly supervise and monitor decedent's condition.

Additionally, plaintiffs submitted no evidence that defendants failed to obtain informed consent for any of decedent's treatment during either admission. As such, any claims for lack of informed consent are heretofore dismissed as to all defendants.

Furthermore, plaintiffs submitted no evidence as to any defendant upon which a theory of *res ipsa loquitur* can be based and, as such, the claims sounding in *res ipsa loquitur* are heretofore dismissed as to all defendants.

With respect to defendants' arguments made regarding a defective counterstatement of material facts pursuant to Uniform Rules 202.8-g, the Court finds them unavailing.

With respect to renewal of defendant Dr. Ozcan's 2014 motion to dismiss the wrongful death cause of action as not having been timely served in the 2013 action ("Action No. 1"), and Dr. Ozcan's opposition to plaintiffs' cross-motion requesting, *inter alia*, an Order deeming plaintiffs' cause of action for wrongful death against Dr. Ozcan as timely, or in the alternative, either extending the time for plaintiffs to serve Dr. Ozcan with a copy of the pleadings in Action No. 1, or in allowing plaintiffs to re-commence an action against defendant Dr. Ozcan asserting a cause of action for wrongful death, the Court grants defendant Dr. Ozcan's motion to dismiss the wrongful death cause of action as against him and denies plaintiffs' cross- motion.[12]

"Pursuant to EPTL 5-4.1, the personal representative of an estate has two years, measured from the date of death, in which to commence an action for damages for the wrongful death of the decedent on behalf of the decedent's distributees" (*see Baker v Bronx Lebanon Hosp. Center*, 53 AD3d 21 [1st Dept 2008]).

Decedent's death was December 6, 2011. Action No. 1 was timely commenced as to all causes of action on December 3, 2013. Defendants were required to be served no later than April 4, 2014. Although Dr. Ozcan was named in Action No. 1, plaintiffs concede that this defendant was inadvertently never served within the requisite 120-day period under CPLR § 306-b and that this oversight was not realized until after expiration of that period. Seemingly without leave of court, plaintiffs concededly re-commenced an action against Dr. Ozcan, as well as two other defendants, on April 23, 2014 ("Action No. 2"), in which Dr. Ozcan was timely served with process. However, at that time, the statute of limitations for plaintiffs' wrongful death claim had since expired. Although MMC was timely served in Action No. 1, it is unclear whether Dr. Ozcan was notified of the commencement of Action No. 1. Plaintiffs argue that, given their "unity in interest," Dr. Ozcan is charged with notice of the action through service on MMC. However, the Court finds this argument unavailing as it is undisputed that Dr. Ozcan was never timely served as to the wrongful death cause of action within the requisite statute of limitations period. Plaintiffs' remaining arguments are without merit. Consequently, this cause of action as to Dr. Ozcan must be dismissed.

We have considered the parties' remaining arguments and find them to be without merit.

Accordingly, it is hereby,

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[12] The Court recognizes that several of plaintiffs' requests in their Cross-Motion dated December 29, 2014 have become moot and Action No. 1 was consolidated with plaintiffs' 2014 action against Dr. Ozcan, Dr. Fierstein, and Dr. Madajewicz under Index No. 21790/2014E, per Justice McKeon's Order dated March 15, 2015 attached as an Exhibit. Essentially, Justice McKeon's consolidating these actions under the 2014 Index No. indicates a denial of plaintiffs' request to consolidate them under the 2013 Index No.

ORDERED that the portion of defendant's motion seeking summary judgment as to plaintiffs' claims against defendant, PRAKASHCHANDRA RAO, related to the November 6, 2011 through December 6, 2011 admission only, is granted; And it is further

ORDERED that the portion of defendants' motion seeking summary judgment as to plaintiffs' claims against defendant, RUMANA SABUR, MAHIRE OZCAN and MONTEFIORE MEDICAL CENTER, MONTEFIORE WAKEFIELD CAMPUS, and JACK D. WEILER HOSPITAL, related to the initial admission, is granted, in part; And it is further

ORDERED that the portion of defendants' motion seeking summary judgment is granted to the extent that any and all claims in the Complaint and Bills of Particulars as against defendant JUDHA FIERSTEIN are dismissed in their entirety; And it is further

ORDERED that the portion of defendant's motion seeking summary judgment as to plaintiffs' claims against defendant, MICHAEL ADER, related to the November 6, 2011 through December 6, 2011 admission only, is granted; And it is further

ORDERED that the portion of defendant's motion seeking summary judgment as to plaintiffs' claims against defendant, NEJAT KIYICI, related to the November 6, 2011 through December 6, 2011 admission only, is granted; And it is further

ORDERED that the portion seeking renewal of the motion to dismiss the wrongful death cause of action by defendant MAHIRE OZCAN is granted, and that the wrongful death cause of action as against MAHIRE OZCAN is dismissed with prejudice, and plaintiffs' cross-motion seeking an Order deeming plaintiffs' wrongful death cause of action against MAHIRE OZCAN as timely, is denied; And it is further

ORDERED that the motions are otherwise denied; And it is further

ORDERED that the Clerk of the Court, Bronx County, is directed to enter judgment in favor of JUDHA FIERSTEIN; And it is further

[this portion of the decision is intentionally left blank]

ORDERED that the Clerk of the Court, Bronx County, is directed to amend the caption in this action to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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SHERRY PICCHIONI as Administratrix of the Estate of RODERICK PICCHIONI, Deceased, and SHERRY PICCHIONI, Individually,

Index №. 21790/2014E

Plaintiffs,

- against -

RUMANA SABUR, MAHIRE OZCAN, NEJAT KIYICI, PRAKASHCHANDRA RAO, MICHAEL ADER, MONTEFIORE MEDICAL CENTER, MONTEFIORE WAKEFIELD CAMPUS, and JACK D. WEILER HOSPITAL,

Defendants.

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ORDERED that counsel for defendants shall serve a copy of this Order with Notice of Entry on all parties within thirty (30) days of the entry of this Order.

This constitutes the Decision and Order of the Court.

Dated: 4/11/2023

Hon. Michael A. Frishman, A.J.S.C.

1. CHECK ONE.....	☐ CASE DISPOSED IN ITS ENTIRETY	X CASE STILL ACTIVE
2. MOTION IS.....	☐ GRANTED ☐ DENIED	X GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE.....	☐ SETTLE ORDER	☐ SUBMIT ORDER