

**Royzman v Levin**

2024 NY Slip Op 34462(U)

December 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 503225/2021

Judge: Ellen M. Spodek

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At an IAS Term, Part 63 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 18 day of December 2024

**P R E S E N T:**

HON. ELLEN M. SPODEK, Justice

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BORIS ROYZMAN, as the Administrator of the Estate of Ella Royzman, deceased and BORIS ROYZMAN, individually,

Plaintiffs,

-against-

MARGARET LEVIN, PA, REYHAN H. SULEYMANI, D.O., MATIN SHARAFATKHAH, M.D., FEEL GOOD MEDICAL, PC, and INTERMED CARE PC,

Defendants.

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**DECISION AND ORDER**

Index No. 503225/2021

MS # 2-4

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Defendants MATIN SHARAFATKHAH, M.D. (“Dr. Sharafatkah”) and INTERMED CARE PC, (“Intermed”) move pursuant to CPLR §3212 for summary judgment, dismissing the complaint against them. Defendants REYHAN H. SULEYMANI, D.O., (“Dr. Suleymani”) and FEEL GOOD MEDICAL, P.C., (“Feel Good Med.”) move pursuant to CPLR §3212 for summary judgment, dismissing the complaint against them. Defendant MARGARET LEVIN, PA, (“PA Levin”) moves pursuant to CPLR §3212 for summary judgment, dismissing the complaint against her. Plaintiffs BORIS ROYZMAN,

as the Administrator of the Estate of Ella Royzman, deceased and BORIS ROYZMAN, individually, oppose the motions.

In 2015, Ella Royzman, a 73 year old female, began to see endocrinologist defendant Dr. Sharafatkah. Ms. Royzman brought her previous blood test results and a thyroid sonogram, which showed a right lobe nodule at mid-pole measuring 1.5 cm and a left lobe nodule at mid-pole measuring 0.8 cm. Dr. Sharafatkah performed a physical exam which showed palpable thyroid nodules measuring 1.5 cm on the right and less than 1.0 cm on the left. He recommended that Ms. Royzman undergo a biopsy of the right thyroid nodule but she refused. He prescribed her Metformin 500 mg twice daily for pre-diabetes, ordered differential and fasting blood tests, DEXA Scan (bone density testing) for possible osteoporosis, and discussed diet and exercise with Ms. Royzman.

Ms. Royzman continued to see Dr. Sharafatkah over the next several years. He reviewed her cytology and biopsy reports from her prior endocrinologists from 2010, 2011, 2012, and 2014, which revealed adenomatous nodule/goiter with cystic changes and no malignant cells, and PET/bone scan from 2014 which ruled out bony metastatic disease. Dr. Sharafatkah ordered repeat thyroid ultrasounds approximately every six months, which revealed no significant change in the size of the thyroid nodules.

At her visit on May 30, 2019, Dr. Sharafatkah noted that her latest thyroid ultrasound was unchanged. The blood tests ordered by defendant PA Levin on April 30, 2019, showed an increase in her Alkaline Phosphatase ("ALP") of 108 (range should be 34-104). Her previous test result showed a value of 100.

Ms. Royzman returned to see Dr. Sharafatkah on August 20, 2019. Blood tests from August 14 revealed an ALP level of 161. Dr. Sharafatkah reviewed the results with

Ms. Royzman and noted the high ALP result. Dr. Sharafatkah told her to follow up with her internist, oncologist, and/or gastroenterologist due to the elevated ALP levels. Ms. Royzman responded that she would give a copy of the blood test results to PA Levin and discuss the elevated ALP levels with PA Levin.

Ms. Royzman had been seeing PA Levin since June 28, 2018 at Feel Good Med. At this visit, she was examined by PA Levin. She complained of lower back pain which radiated to both legs with accompanying muscle cramps, which she stated she had for years on and off. PA Levin ordered blood tests and the results showed an ALP of 123. On August 3, 2018, she saw PA Levin with complaints of periodic heartburn, constipation and continuing joint pain.

Ms. Royzman saw PA Levin on October 5, 2018, where she complained of dizziness, joint pain and muscle pain. PA Levin recommended she begin a low carb diet and continue her current medication regime as her blood glucose level was normal at the time of the visit. The blood test results from this visit showed an ALP of 96. She followed up on November 16, 2018, still complaining of periodic constipation and heartburn. Her physical exam was normal and she was told to follow-up in four weeks. She returned to see PA Levin on December 28, 2018. Her physical exam was normal, but she was diagnosed with irritable bowel syndrome with constipation. At her next visit on January 18, 2019, she was reporting continued heartburn. Her blood test results showed an ALP of 100. She continued to follow up with PA Levin in February and March where her physical exams were normal. At her April visit, her blood test results showed normal thyroid uptake of 41.8 and ALP of 108. She returned to see PA Levin on May 31, 2019, where her physical exam was again noted as normal, with abnormal blood test results for

her white blood count, cholesterol, Hemoglobin and LDL levels.

At her visit with PA Levin on July 14, 2019, her blood test results showed an ALP of 132. PA Levin determined that this was a laboratory error and ordered a retest. She returned to see PA Levin on August 8, 2019 with complaints of a headache. She was referred to a neurologist for her headaches and PA Levin noted abnormal hemoglobin, Vitamin D, cholesterol, and LDL lab results. On September 17, 2019, she returned to see PA Levin, complaining of back pain for three days and joint pain. PA Levin prescribed Voltaren gel for her back pain.

On October 7, 2019 she returned for a follow up visit with PA Levin. Her physical exam was normal. A laboratory result of October 8, 2019, indicated an ALP level of 281. She returned to see PA Levin twice in November 2019, with a fever and cough. She was diagnosed with acute bronchitis and prescribed Augmentin and Tessalon Perles. She continued to follow up with PA Levin in December 2019 and February 2020, with her physical exams normal at each visit.

On December 26, 2019, she saw Dr. Sharafatkah, who documented that her ALP increased to 306. He ordered a gastroenterology consult. Dr. Sharafatkah discussed the elevated ALP with Ms. Royzman. She denied having bony pain and Dr. Sharafatkah told her to discuss the elevated ALP with her PCP, gastroenterologist, and/or oncologist. Ms. Royzman responded that she would speak with PA Levin about the elevated ALP level.

Ms. Royzman's next visit to Dr. Sharafatkah was on February 20, 2020. He documented her ALP of 326 based on the February 13 blood tests order by PA Levin. The blood testing included alkaline phosphatase fractionation (APF) results which

revealed intestine isoenzyme of 29% (normal range of 1-24), bone isoenzyme of 34% (normal range 28-66), and liver isoenzyme of 37% (normal range 25-69). Dr. Sharafatkahh documented that Ms. Royzman continued to deny any bone pain. He recommended a thyroid biopsy which Ms. Royzman still refused to undergo.

On April 29, 2020, Ms. Royzman had a telehealth visit with PA Levin, where she complained of heartburn, periodic lower back pain, headaches and occasional constipation. Her last visit with PA Levin at Feel Good Med was on June 25, 2020, where her physical exam was normal but her blood test results showed an ALP of 754. PA Levin called Ms. Royzman to inform her of the elevated value. Ms. Royzman continued to see PA Levin at Brighton Medical Care starting in July 2020.

After each visit with PA Levin at Feel Good Med, Dr. Suleymani reviewed PA Levin's notes and signed off on them. She testified that she never treated Ms. Royzman and she did not review Ms. Royzman's lab results.

Ms. Royzman returned to see Dr. Sharafatkahh on July 13, 2020. Ms. Royzman's husband, plaintiff Boris Royzman, accompanied her on this visit. He asked Dr. Sharafatkahh why he had not ordered or performed a thyroid biopsy. Dr. Sharafatkahh told them that he had offered Ms. Royzman thyroid biopsies multiple times over the past five years, but she had declined each time. Dr. Sharafatkahh further told the Royzmans that he did not believe that the elevated ALP level was thyroid or endocrine related. He ordered repeat blood work with APF and thyroid ultrasound, and told her to return in two weeks. He also again told Ms. Royzman to obtain a gastroenterology consult.

On July 17, 2020, Ms. Royzman underwent a thyroid ultrasound. The results showed a 1.5 cm non-enlarged right nodule and 0.6 cm left nodule, which were nearly

identical to the previous thyroid ultrasounds.

Ms. Royzman saw Dr. Sharafatkah for her final appointment on July 22, 2020. Her blood test results showed ALP of 738 with intestinal isoenzyme percentage of 33 (normal range 1-24%), bone enzymes of 24 (normal range 28-66), and liver enzymes of 43 (normal range 25-69). Ms. Royzman initially had no complaints, then stated that she had some abdominal discomfort, but no bone pain. Dr. Sharafatkah again recommended she have a gastroenterology consult. Ms. Royzman testified that Dr. Sharafatkah told her that she likely had bone cancer. Ms. Royzman testified that Dr. Sharafatkah would review the blood test results with her at every visit and he would give her a copy of the blood test results.

On August 4, 2020, Ms. Royzman saw gastroenterologist Dr. Jane Vlody-Levitt. Dr. Vlody ordered an MRI of the liver. On August 11, 2020, Ms. Royzman underwent an MRI of the abdomen/MRCP with and without contrast. The MRIs showed multiple bony metastatic lesions. Ms. Royzman then went to Memorial Sloan Kettering Cancer Center (MSK) for treatment. After initially considering the thyroid as the primary source of Ms. Royzman's metastatic disease, a thyroid biopsy and genetic testing ruled out primary thyroid cancer, and the lung was determined to be the primary source. Ms. Royzman testified that she was diagnosed with lung cancer that metastasized to her bones. She further testified that it was determined that she did not have thyroid cancer. Ms. Royzman also testified that Ms. Royzman was diagnosed with metastatic lung cancer and not thyroid cancer. The cancer eventually spread to her brain and she passed away on September 1, 2022.

Defendants Dr. Sharafatkah and Intermed submitted the affirmation of Elise Michele Brett, M.D., in support of their motion for summary judgment. She is a board certified doctor in internal medicine and endocrinology. She opined that "to a reasonable degree of medical certainty...Dr. Sharafatkah did not fail to diagnose or cause a delay in the diagnosis of thyroid cancer because Ms. Royzman never had thyroid cancer." Def. Exh. B, pg. 2, ¶ 6. She also asserted that the increased ALP levels were not related to Ms. Royzman's thyroid nodules or presumed hypothyroidism, as ALP "is largely produced by three organs systems – the bones, the liver, and the intestines." Id. at §7. Dr. Brett opined that since Ms. Royzman did not have thyroid cancer, the elevated ALP could not be due to bony metastatic thyroid cancer. She affirmed that it was proper for Dr. Sharafatkah to refer Ms. Royzman for a gastroenterology consult as he believed that the increased ALP levels were due to either a liver or abdominal cause, not an endocrine cause. Dr. Brett asserts that it was proper for Dr. Sharafatkah to continue to ask Ms. Rozyman if she had any bone pain as he believed that the increased levels were due to bony metastasizes. Dr. Brett opined that it was within the standard of care to refer Ms. Royzman to discuss the elevated issues with PA Levin, her gastroenterologist and/or her oncologist and to order a repeat thyroid biopsy. She also asserted that it was within the standard of care for Dr. Sharafatkah to review all of Ms. Royzman's blood test results with her, including the blood test results from her other doctors, and to provide Ms. Royzman with the results, as well as PA Levin. Dr. Brett opined that at all times Dr. Sharafatkah and Intermed did not depart from the standards of care and none of their acts or omissions caused any injury to Ms. Royzman.



Dr. Suleymani and Feel Good Med submitted the affirmation of Preston L. Winters, M.D. in support of their motion for summary judgment. Dr. Winters is a board certified internist and a full time staff physician in internal medicine at Columbia Doctors Medical Group with privileges at New York Presbyterian Hospital and White Plains Hospital. Dr. Winters opined that Dr. Suleymani did not depart from the standards of care as a supervising physician for PA Levin. He states that New York law does not require that a supervising physician of a PA be on site or even co-sign the notes of the PA, but only to “be available for consultation if the PA has questions or concerns about the patient’s presentation, and the course of treatment.” Def. Mot. Exh. A, pg. 12, ¶ 41. He opined that Dr. Suleymani did not depart from the standard of care by not reading the lab results ordered by PA Levin and that she could rely on the notes of PA Levin for any abnormal results. Dr. Winters asserted that it was within the standard of care for Dr. Suleymani to make herself available for consultation with PA Levin about the treatment of Ms. Royzman, which did not occur in this case. According to Dr. Winters, any injuries suffered by Ms. Royzman were not proximately caused by anything done or not done by Dr. Suleymani and Feel Good Med and did not deprive Ms. Royzman of a chance at a better outcome.

PA Levin submitted the affirmation of Richard M. Lee, M.D., a board certified doctor in Medical Oncology and Hematology, and the Chief of the Division of Hematology and Medical Oncology at Mt. Sinai South Nassau Hospital. Dr. Lee opines “that nothing PA Levin did, or failed to do, resulted in the development of metastatic cancer and ultimate demise of [Ms.] Royzman.” Def. Mot. Exh. Q, pg. 3, ¶ 7. Dr. Lee affirms that by October 8, 2019, when Ms. Royzman had an elevated ALP of 281, her metastatic cancer of

unknown origin was in her bones already and was Stage IV and incurable. He asserts that the treatment for Stage IV cancer of unknown primary metastatic to the bone would have been the same if PA Levin had referred Ms. Royzman in October 2019 as when she was ultimately diagnosed in August 2020, and that a ten month delay did not make a significant difference in the treatment or outcome for Ms. Royzman.

Plaintiffs submitted the affirmation of a board certified doctor in internal medicine and oncology. Plaintiffs' expert opines that the defendants deviated from the standards of care in not recognizing the significance of the rising ALP levels, with no investigation, diagnosis, workup, referral or treatment being made until July 31, 2020, at which point Ms. Royzman was irreversibly injured and damaged. Plaintiff's expert asserts that while the cancer may have been incurable at the time she was diagnosed, this type of cancer "is amenable to life prolonging treatment that was available to Ella Royzman at the time that she developed the first signs of the metastatic bone cancer, however only if the treatment is commenced early in the process. In this case there was a prolonged delay and that made a significant difference in the outcome..." Plt. Aff. In Opp., Exh. A, pg. 2, ¶ 5. Plaintiff's expert states that Ms. Royzman lost the opportunity to receive life prolonging treatment, as the type of cancer she was diagnosed with, "C Met + (positive)", "is particularly amenable to treatment that would have slowed, or even completely reversed, the progression of the disease and would have prolonged [Ms. Royzman's] life." Id. at ¶ 7. Plaintiffs' expert opines "that this delay caused [Ms.] Royzman to lose that opportunity for a significantly different outcome and the prolongation of her life by at least 1-2 years, or more." Id. at pg. 10-11, ¶ 28. Plaintiffs' expert also affirms that while PA Levin was not an accredited doctor in the United States, and was licensed as a physician's assistant,

she was referred to as a doctor by Mr. and Mrs. Royzman, and the medical records refer to PA Levin as a doctor. In regard to Dr. Suleymani, Plaintiffs' expert opines "that once Dr. Suleymani cosigned the notes she took on the obligation of being responsible for the notes contents and that includes being aware and cognizant of the tests being ordered by [PA] Levin.... thereby obligating Dr. Suleymani to follow up and being aware of the blood test results of a patient being seen in her office. This certainly includes the results of the ALP levels." Id. at pg. 6, ¶ 10. As to Dr. Sharafatkhai, plaintiffs' expert asserts that he contributed to the delay in diagnosis of Ms. Royzman's cancer by failing to appreciate the rising ALP levels as indicative of an increasing tumor load in Ms. Royzman's bones due to metastatic disease.

On a motion for summary judgment dismissing a medical malpractice cause of action, a defendant has the prima facie burden of establishing that there was no departure from good and accepted medical practice, or, if there was a departure, the departure was not the proximate cause of the alleged injuries. *Brinkley v. Nassau Health Care Corp.*, 120 A.D.3d 1287 (2d Dept. 2014); *Stukas v Streiter*, 83 AD3d 18, 24-26 (2d Dept. 2011). Once the defendant has made such a showing, the burden shifts to the plaintiff to submit evidentiary facts or materials to rebut the prima facie showing made by the defendant, so as to demonstrate the existence of a triable issue of fact. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986); *Brinkley v. Nassau Health Care Corp.*, supra; *Fritz v. Burman*, 107 A.D.3d 936, 940 (2d Dept. 2013); *Lingfei Sun v. City of New York*, 99 AD3d 673, 675 (2d Dept. 2012); *Bezerman v. Balline*, 95 AD3d 1153, 1154 (2d Dept. 2012); *Stukas v. Streiter*, at 24. A plaintiff will succeed in a medical malpractice action by showing that a defendant deviated from accepted standards of medical practice and that this deviation

proximately caused the plaintiff's injury. *Contreras v Adeyemi*, 102 AD3d 720, 721 (2d Dept. 2013); *Gillespie v New York Hosp. Queens*, 96 A.D.3d 901, 902 (2d Dept. 2012); *Semel v Guzman*, 84 AD3d 1054, 1055-56 (2d Dept. 2011). The plaintiff opposing a defendant physician's motion for summary judgment must only submit evidentiary facts or materials to rebut the defendant's prima facie showing. *Stukas*, at 24. "When a defendant in a medical malpractice action demonstrates the absence of any material issues of fact with respect to at least one of those elements, summary judgment dismissing the action should eventuate unless the plaintiff raises a triable issue of fact in opposition" *Schwartz v Partridge*, 179 AD3d 963, 964 (2d Dept 2020) (internal citations omitted).

#### **Dr. Sharafatkah and Intermed's Motion**

After oral argument and a review of the papers, the Court finds that the defendants have sustained their burden of showing that they did not depart from good and accepted medical standards. The burden then shifted to plaintiffs to provide evidence to the court that the defendants did in fact deviate from the accepted standards of medical care, raising a triable issue of fact. The Court finds that plaintiffs have not sustained their burden. "Physicians offering opinions in medical, dental, podiatric, chiropractic, or other specialty malpractice actions must establish their credentials in order for their expert opinions to be considered by the court." *Bongiovanni v. Cavagnuolo*, 138 AD 3d 12, 18 (2d Dept. 2016). "Thus, when a physician offers an expert opinion outside of his or her specialization, a foundation must be laid tending to support the reliability of the opinion tendered." *Id.*

In order for plaintiffs' expert opinion to be considered in opposition to defendants' motion for summary judgment, they needed to lay a proper foundation to show that plaintiffs' expert has the proper credentials to opine in the area of endocrinology, as Dr. Sharafatkah is an endocrinologist. Plaintiffs' expert is board certified in internal medicine and medical oncology. The expert does not state that they have any board certification in endocrinology, only that they have board certification in internal medicine and oncology. The expert does not mention any knowledge of endocrinology or the standards of care in endocrinology. They opine about the delayed diagnosis of Ms. Royzman's cancer and the relation to the elevated ALP levels. The opinion cannot be considered reliable for any discussions on the topics regarding the standards of care of an endocrinologist. The Court finds that the plaintiffs' expert did not lay a proper foundation to show the reliability of their opinion rendered about the care provided to Ms. Royzman by Dr. Sharafatkah, and therefore the Court will not consider the affirmation. Without an expert's opinion, plaintiffs have failed to sustain their burden to show that there is a question of fact that the defendants departed from good and accepted medical practice in the treatment of Ms. Royzman.

#### **Dr. Suleymani and Feel Good Med's Motion**

After oral argument and a review of the papers, the Court finds that there exists issues of fact regarding Ms. Royzman's care at Feel Good Med and Dr. Suleymani's supervision of PA Levin. "Summary judgment may not be awarded in a medical malpractice action where the parties adduce conflicting opinions of medical experts." *McKenzie v. Clarke*, 77 A.D.3d 637, 638 (2d Dept. 2010); see *Adjetey v. New York City Health & Hosps. Corp.*, 63 A.D.3d 865 (2d Dept. 2009). There are conflicting expert

opinions in this case regarding Ms. Royzman's care at Feel Good Med and whether there was a departure from the standards of care. While Dr. Suleymani did not actively treat Ms. Royzman, she was in charge of supervising PA Levin while at Feel Good Med. Dr. Suleymani signed off on all the notes of PA Levin, but there is an issue of fact regarding whether or not Dr. Suleymani should have done more in regards to the blood test results and the elevated ALP levels. As PA Levin was only a licensed physician's assistant, not a doctor, there is also an issue as to whether Dr. Suleymani was required to provide more supervision for PA Levin and should have done more with the blood test results than just sign off on PA Levin's notes. As PA Levin was an employee of Feel Good Med, and Dr. Suleymani was an owner of Feel Good Med, the Court finds that Feel Good Med is vicariously liable for any liability by Dr. Suleymani and PA Levin. Therefore their motion for summary judgment must be denied.

#### **PA Levin's Motion**

After oral argument and a review of the papers, the Court finds that there exists issues of fact regarding PA Levin's treatment of Ms. Royzman. PA Levin failed to sustain her burden to show that she did not depart from the standards of care and that any departures were not a proximate cause of any injury to Ms. Royzman. PA Levin's expert affidavit of Dr. Lee makes no mention of PA Levin meeting the standards of care in this case, or even what the standard of care is. He only mentions that her treatment would have been the same if Ms. Royzman had been referred to a specialist in October 2019 as when she was ultimately diagnosed in August 2020, and that a ten month delay did not make a significant difference in the treatment or outcome for Ms. Royzman. "Where the expert's ultimate assertions are speculative or unsupported by any evidentiary

foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment.” Diaz v. New York Downtown Hosp., 99 NY2d 542 (2002). Dr. Lee’s opinion is completely speculative, as he does not mention anything about the time period from when Ms. Royzman first began seeing PA Levin at Feel Good Med in 2018. There is no mention of what PA Levin should have done with the elevated ALP levels and whether what she did eventually do met the standard of care. Dr. Lee only states that the ten month delay did not make a significant difference in the treatment or outcome of Ms. Royzman. But that is conclusory, as any chance to prolong her life is a difference in outcome that the delay by PA Levin caused Ms. Royzman to lose. Therefore PA Levin’s motion must be denied.

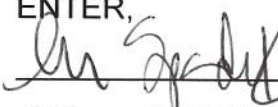

In conclusion, defendants’ Dr. Suleymani and Feel Good Med’s motion is denied, defendant PA Levin’s motion is denied and Dr. Sharafatkah and Intermed’s motion is granted, and the complaint as against them is dismissed. The caption shall be amended as follows:

BORIS ROYZMAN, as the Administrator of the Estate of Ella Royzman, deceased and BORIS ROYZMAN, individually,

-against-

MARGARET LEVIN, PA, REYHAN H. SULEYMANI, D.O., and FEEL GOOD MEDICAL, P.C.

This constitutes the decision and order of the Court.

ENTER,  
  
 JSC HON. ELLEN  SPODEK

2024 DEC 20 A 10  
 KINGS COUNTY CLERK  
 FILED