

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

Burns v. Sobieraj

2026 NY Slip Op 02537 (N.Y. Ct. App. 2026) · No. CA 24-01898 · Decided April 24, 2026

SUMMARY

The New York Appellate Division, Fourth Department, reversed a judgment dismissing a medical malpractice complaint after a jury verdict for defendants. The court held that Supreme Court improperly gave an error-in-judgment jury charge because there was no evidence that the physician chose among medically acceptable alternatives. The court reinstated the complaint and granted plaintiffs a new trial.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Curran, J.P.; Montour, J.; Smith, J.; Ogden, J.; DelConte, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	April 24, 2026
DOCKET	CA 24-01898
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment dismissing their medical malpractice complaint after a jury found that defendant physician was not negligent.
STANDARD OF REVIEW	The court reviewed the propriety of the jury instruction and whether the instructional error was harmless.
PRECEDENTIAL VALUE	Published
PARTIES	Eric C. Burns, Heather S. Burns v. Voytek W. Sobieraj, M.D., Associated Radiologists of the Finger Lakes, P.C.

TOPICS

- medical malpractice
- jury instructions
- standard of care
- harmless error
- appellate procedure

PRACTICE AREAS

medical malpractice

appellate procedure

jury instructions

standard of care

harmless error

QUESTIONS PRESENTED

1. Whether Supreme Court improperly gave an error-in-judgment charge in a medical malpractice action where the evidence did not show that the physician chose among several medically acceptable treatment alternatives.
2. Whether giving the erroneous error-in-judgment charge was harmless.

HOLDINGS

1. An error-in-judgment charge is proper only in the narrow category of medical malpractice cases in which evidence shows that the physician considered and chose among several medically acceptable treatment alternatives. The charge is not warranted when the alleged malpractice consists solely of a failure to use due care in assessing or diagnosing the patient's condition and there is no evidence of a choice among medically acceptable alternatives.
2. Giving the erroneous error-in-judgment charge was not harmless because it created a risk that the jury would find no liability merely because the physician exercised his best judgment despite failing to adhere to generally accepted standards of care.

KEY QUOTATIONS

"[A]n error [in] judgment charge is appropriate in a case where a doctor is confronted with several alternatives and, in determining appropriate treatment to be rendered, exercises [their] judgment by following one course of action in lieu of another" ([*1])

"However, such a charge should be given "only in a narrow category of medical malpractice cases in which there is evidence that [the] defendant physician considered and chose among several medically acceptable treatment alternatives" ([*1])

"Inasmuch as the error in judgment charge here "create[d] a risk that [the] jury w[ould] find that, because [Sobieraj] exercised his . . . best judgment, there can be no liability despite a failure to adhere to generally accepted standards of care,"" ([*2])

FACTUAL BACKGROUND

Eric C. Burns sought damages for injuries allegedly resulting from Dr. Voytek W. Sobieraj's medical malpractice. At trial, plaintiffs' expert testified that Sobieraj departed from medically acceptable treatment standards by failing to identify an abnormality as potentially cancerous while reviewing a series of lung X-rays. The jury found that Sobieraj was not negligent.

PROCEDURAL HISTORY

Plaintiffs sued for injuries allegedly caused by Dr. Sobieraj's failure to identify a potentially cancerous abnormality on lung X-rays. After a jury verdict finding no negligence, Supreme Court, Steuben County, entered

judgment dismissing the complaint on October 16, 2024. The Appellate Division reversed, reinstated the complaint, and ordered a new trial because Supreme Court improperly gave an error-in-judgment jury charge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The judgment is reversed, the complaint is reinstated against defendants, and a new trial is granted.

CASES CITED

- Anderson v House of Good Samaritan Hosp., 44 AD3d 135, 139-141 [4th Dept 2007]
- Spadaccini v Dolan, 63 AD2d 110, 120 [1st Dept 1978]
- Mancuso v Kaleida Health, 172 AD3d 1931, 1935 [4th Dept 2019], affd 34 NY3d 1020 [2019]
- Nestorowich v Ricotta, 97 NY2d 393, 399 [2002]
- Martin v Lattimore Road Surgicenter, Inc., 281 AD2d 866, 866 [4th Dept 2001]
- Vanderpool v Adirondack Neurosurgical Specialists, P.C., 45 AD3d 1477, 1478 [4th Dept 2007]
- Lacqua v Silich, 141 AD3d 690, 692 [2d Dept 2016]
- Rospierski v Harr, 59 AD3d 1048, 1049-1050 [4th Dept 2009]

OPINION

PER CURIAM.

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Present: Curran, J.P., Montour, Smith, Ogden, And Delconte, JJ.

PORTER LAW GROUP, SYRACUSE (MICHAEL S. PORTER OF COUNSEL), FOR PLAINTIFFS-APPELLANTS.

O'CONNOR, O'CONNOR, BRESEE & FIRST, P.C., BINGHAMTON (RACHEL E. MILLER OF COUNSEL), FOR DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Steuben County (Jason L. Cook, J.), entered October 16, 2024, in a medical malpractice action.

The judgment dismissed the complaint upon a jury verdict.

[*1]

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the complaint is reinstated against defendants, and a new trial is granted.

Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Eric C. Burns (plaintiff) as the result of the alleged malpractice of defendant Voytek W. Sobieraj, M.D.

At trial, plaintiffs' expert testified that Sobieraj deviated from medically acceptable treatment standards when reviewing a series of X-rays taken of plaintiff's lungs by failing to identify an abnormality as potentially cancerous.

The jury returned a verdict finding that Sobieraj was not negligent. We agree with plaintiffs that reversal is required because Supreme Court improperly gave an error in judgment charge (*see* PJI 2:150).

"[A]n error [in] judgment charge is appropriate in a case where a doctor is confronted with several alternatives and, in determining appropriate treatment to be rendered, exercises [their] judgment by following one course of action in lieu of another" (*Anderson v House of Good Samaritan Hosp*., 44 AD3d 135, 139 [4th Dept 2007] [internal quotation marks omitted]; *see Spadaccini v Dolan*, 63 AD2d 110, 120 [1st Dept 1978]).

However, such a charge should be given "only in a narrow category of medical malpractice cases in which there is evidence that [the] defendant physician considered and chose among several medically acceptable treatment alternatives" (*Mancuso v Kaleida Health*, 172 AD3d 1931, 1935 [4th Dept 2019], *affd* 34 NY3d 1020 [2019] [internal quotation marks omitted]; *see* *Nestorowich v Ricotta*, 97 NY2d 393, 399 [2002]; *Martin v Lattimore Road Surgicenter, Inc.*, 281 AD2d 866, 866 [4th Dept 2001]).

An error in judgment charge is not warranted where, as here, there was no evidence introduced at trial that the defendant physician "made a choice between or among medically acceptable alternatives" (*Anderson*, 44 AD3d and 140), and the "plaintiffs' [sole] theory of [the] defendant's alleged malpractice arose from [the] defendant's alleged lack of due care in assessing [the] plaintiff's condition," inasmuch as "the [sole] issue before the jury was [then] whether [the] defendant's failure to diagnose [the] plaintiff's [condition] constituted a deviation from medically accepted standards of care" (*Vanderpool v Adirondack Neurosurgical Specialists, P.C.*, 45 AD3d 1477, 1478 [4th Dept 2007]; *see Lacqua v Silich*, 141 AD3d 690, 692 [2d Dept 2016]).

Inasmuch as the error in judgment charge here "create[d] a risk that [the] jury w[ould] find that, because [Sobieraj] exercised his... best judgment, there can be no liability despite a failure to adhere to generally accepted standards of care," we conclude that the court's error in *2 giving the charge cannot be deemed harmless (*Anderson*, 44 AD3d at 141; *see Rospierski v Harr*, 59 AD3d 1048, 1049-1050 [4th Dept 2009]; *Vanderpool*, 45 AD3d at 1478), and plaintiffs are thus entitled to a new trial.

Entered: April 24, 2026

Ann Dillon Flynn

Clerk of the Court

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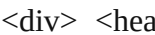
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PER CURIAM.

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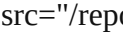
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Appellate Division, Fourth Department

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The judgment dismissed the complaint upon a jury verdict. </p> <p></p>[*1] <p>It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs, the complaint is reinstated against defendants, and a new trial is granted.</p> <p>Memorandum: Plaintiffs commenced this action seeking damages for injuries sustained by Eric C. Burns (plaintiff) as the result of the alleged malpractice of defendant Voytek W. Sobieraj, M.D.

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The jury returned a verdict finding that Sobieraj was not negligent. We agree with plaintiffs that reversal is required because Supreme Court improperly gave an error in judgment charge (<i>see</i> PJI 2:150).</p> <p>"[A]n error [in] judgment charge is appropriate in a case where a doctor is confronted with several alternatives and, in determining appropriate treatment to be rendered, exercises [their] judgment by following one course of action in lieu of another" (<i>Anderson v House of Good Samaritan Hosp</i>., 44 AD3d 135, 139 [4th Dept 2007] [internal quotation marks omitted]; <i>see Spadaccini v Dolan</i>, 63 AD2d 110, 120 [1st Dept 1978]).

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