

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

Valitutto v. Staten Island University Hospital

2026 NY Slip Op 03020 · No. 2022-00601 · Decided May 13, 2026

SUMMARY

The Appellate Division, Second Department reversed an order granting Staten Island University Hospital and Rosemary Pitkin summary judgment in a medical malpractice action. The court held that the plaintiffs' expert affirmation raised triable issues concerning departures from the standard of care and proximate causation, and that the hospital had not established prima facie that it was free from vicarious liability for emergency-department treatment. The defendants' motion for summary judgment was denied.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; William G. Ford, J.; Lourdes M. Ventura, J.; Susan Quirk, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 13, 2026
DOCKET	2022-00601
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiffs appealed from an order granting Staten Island University Hospital and Rosemary Pitkin summary judgment dismissing the medical-malpractice complaint against them.
STANDARD OF REVIEW	The appellate court reviewed the propriety of summary judgment as a matter of law. A medical-malpractice defendant must establish prima facie that there was no departure from the accepted standard of care or that any departure was not a proximate cause of injury; if that burden is met, the plaintiff must raise a triable issue of fact as to the elements addressed by the defendant's showing.
PRECEDENTIAL VALUE	published

PARTIES

Elena Valitutto, etc., et al. v. Staten Island University Hospital, et al.,
Rosemary Pitkin

TOPICS

medical malpractice

summary judgment

vicarious liability

standard of care

appellate procedure

PRACTICE AREAS

medical malpractice

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civil procedure

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QUESTIONS PRESENTED

1. Whether the defendants were entitled to summary judgment on the medical-malpractice claims after submitting expert opinions that they did not depart from accepted medical practice and did not proximately cause the injuries.
2. Whether the plaintiffs' expert affirmation raised triable issues of fact despite the expert's lack of board certification in emergency medicine.
3. Whether Staten Island University Hospital established prima facie that it was not vicariously liable for care provided in its emergency department by a private attending physician.

HOLDINGS

1. Although the defendants established prima facie entitlement to summary judgment through their experts' opinions, the plaintiffs' expert affirmation raised triable issues of fact concerning departures from the standard of care and proximate causation. Summary judgment was therefore improper.
2. The plaintiffs' expert was qualified to offer an opinion despite not being board certified in emergency medicine because the expert's clinical experience and familiarity with the applicable standards of care provided a sufficient foundation.
3. The hospital failed to demonstrate prima facie that it was free from vicarious liability for Valitutto's care and treatment in its emergency department.

KEY QUOTATIONS

“The elements of a medical malpractice cause of action are a deviation or departure from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries” ([*1])

“Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions” ([*1])

“A physician need not be a specialist in a particular field to qualify as a medical expert and any alleged lack of knowledge . . . [or] expertise goes to the weight and not the admissibility of the testimony” ([*1])

“However, an exception to the rule that a hospital may not be held vicariously liable for the treatment provided by an independent physician applies where a patient comes to the emergency room seeking treatment

*from the hospital and not from a particular physician of the patient's choosing, or a nonemployee physician otherwise acted as an agent of the hospital or the hospital exercised control over the physician” ([*1])*

FACTUAL BACKGROUND

On November 25, 2016, Eric Valitutto presented to Staten Island University Hospital's emergency department with right-sided numbness and weakness, back pain, loss of sensation in his left leg, and an abnormal gait. The emergency physician ordered a head CT, ruled out emergent brain and other life-threatening conditions, and admitted him under the care of his private physician. Subsequent testing revealed a C5-C6 herniated disc compressing the spinal cord, followed by decompression surgery; approximately a year later, Valitutto was diagnosed with avascular necrosis in his shoulders and hips.

PROCEDURAL HISTORY

Eric Valitutto commenced the action in April 2017. The Supreme Court, Richmond County, later substituted his parents and co-guardians as plaintiffs. The Supreme Court granted the defendants' motion for summary judgment on January 19, 2022, and the plaintiffs appealed. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting summary judgment was reversed, and the defendants' motion for summary judgment dismissing the complaint against them was denied.

CASES CITED

- Elbagdadi v. Silverman, 237 AD3d 904, 905
- Stukas v. Streiter, 83 AD3d 18, 23
- Weintroub v. Maimonides Med. Ctr., 222 AD3d 915, 915-916
- Attia v. Klebanov, 192 AD3d 650, 651
- Wijesinghe v. Buena Vida Corp., 210 AD3d 824, 825
- Wiater v. Lewis, 197 AD3d 782, 783
- Alvarez v. Prospect Hosp., 68 NY2d 320, 324
- Feinberg v. Feit, 23 AD3d 517, 519
- Swiatocha v. Koenigsdorf, 241 AD3d 1595
- Autieri v. Rosen, 241 AD3d 1228, 1229
- Tsitrin v. New York Community Hosp., 154 AD3d 994, 996
- Maestri v. Pasha, 198 AD3d 632, 634-635
- Moon Ok Kwon v. Martin, 19 AD3d 664, 664
- Lyons v. Tsadyk, 225 AD3d 681, 683

- Kiernan v. Arevalo-Valencia, 184 AD3d 727, 729
- Chillious v. Edouard, 234 AD3d 737, 741
- Ivey v. Mbaidjol, 202 AD3d 1070, 1072
- Doria v. Benisch, 130 AD3d 777, 777
- Schultz v. Shreedhar, 66 AD3d 666, 666
- Vargas v. Lee, 207 AD3d 684, 685
- Danziger v. Mayer, 236 AD3d 755, 760

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