

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-002557-24

Plaintiff/Appellant,

SAMIH KIROLOS

vs.

Defendants/Respondents.

STEVEN GORCEY, M.D., ALLIED
DIGESTIVE HEALTH LLC, JOHN
DOES 1-100 AND ABC CORPS 1-100

On Appeal from an Order Entered in
the Superior Court, Law Division,
Monmouth County

Sat Below:

Honorable Kathleen A. Sheedy, J.S.C.
Monmouth County Superior Court
Docket No. MON-L-2228-21

BRIEF ON BEHALF OF PLAINTIFF/APPELLANT, SAMIH KIROLOS

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Date submitted: July 2, 2025

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PRELIMINARY STATEMENT

This matter before the court involves whether or not the plaintiff's expert has provided sufficient evidence to create an issue of fact to defeat a summary judgment motion on the issue of causation.

The plaintiff was diagnosed with cancer during the course of this treatment and the allegation is had he been diagnosed at an appropriate time given the diagnostic studies as to whether or not the defendants deviated from the accepted standards of care. There is no issue with regard to summary judgment as to whether the defendant deviated from the accepted standards of care insofar as in the context of the summary judgment motion but the trial judge determined that the plaintiff supplied insufficient evidence to establish a question of fact for the jury to decide on the causation and granted summary judgment.

PROCEDURAL HISTORY

Suit was filed in Monmouth County Superior Court on June 25, 2021. (Pa1-Pa13) On January 11, 2022, an amended complaint was filed. (Pa36-Pa63) On February 22, 2022, an Answer to the first amended complaint on behalf of the defendant Gorcey was filed. (Pa44-Pa52) Summary judgment was granted as to the defendants on April 14, 2025. (Pa67)¹

¹ 1T is the April 11, 2025 Transcript of Motion.

STATEMENT OF FACTS

The plaintiff first became a patient of the defendant, Dr. Gorcey, “I was recommended by my primary because I was over 50 and had some stomach pain. And my primary recommend I go for a colonoscopy. And I did a search and I found Gorcey and I scheduled – went for colonoscopy.” (PCa2 [18-5 to 9]). The plaintiff initially came under the care of the defendant on February 8, 2016. (PCa3 [19-9 to 11]). The plaintiff understood the defendant Dr. Gorcey was a gastroenterologist when he had his first visit with him. (PCa4 [21-10 to 13]). Eventually in 2016, the plaintiff underwent a procedure where he had two polyps removed, this occurred on March 9, 2016, and then he had an additional procedure to remove two other polyps on March 17, 2016. (PCa5 [39-3 to 18]). The defendant told the plaintiff in March 2016, that “he removed two polyps. And he say there’s two another and that have to be tested before he remove it. That’s why he scheduled me after one week in hospital”. (PCa6 [40-16 to 20]). The defendant mentioned regarding the polyps “we have to test it before we remove it. Nothing else.” Q. Did he mention the words biopsy or pathology? A. “Yeah. He said, we send the biopsy to the lab and we have to wait for result before we remove it” (PCa7-PCa8 [45-20 to 46-1]). The doctor informed him that “the results came back. Everything fine. And we’re going schedule you to go to the hospital to remove the other two.” (PCa8 [46-6 to 9]). Plaintiff

underwent an additional procedure with Dr. Gorcey in February 2019 and the last interaction or communication with the defendant's office was during that timeframe. (PCa9 [71-1 to 9]). The plaintiff did return to the doctor's office three or four months later after he found out that he had cancer of the liver. (PCa9 [71-10 to 16]).

Dr. Nandi, the plaintiff's expert, testified in her deposition that (PCa28 [26 -24 to 27-19]).

“So he removed a polyp, a rectal polyp. The pathology came back as carcinoid. His colonoscopy report states that the polyp was about 12 millimeters in size, which is more than ten millimeters or one centimeter, I think the pathology also mentioned submucosal invasion. So we've got two clear criteria that came back to him; one is more than a centimeter in size upper rectal carcinoid, and the other is submucosal invasion. The moment you get that, I agree that he brought him back and he also talked about all the additional advanced endoscopy that he likes to do. So someone who does that, I still don't understand why he just brings him back and does another sigmoidoscopy or a colonoscopy and biopsies the area. What was it that doesn't make him do an endoscopic ultrasound of that site and go and check if he has lymph nodes or if the tumor has further invasion? What was it that made him not consider a pelvic MRI or a pelvic CT to look for lymph nodes or local invasion? That was the main breach. That was major negligence. That was the first thing that got my attention.”

Dr. Nandi, in relation to causation, testified in her deposition as follows: (PCa31 [39-13 to 40-14])

“I believe I removed one-centimeter or actually less than one-centimeter rectal carcinoids. I removed two adrenal carcinoids. And there is one thing that I can tell you. When someone says someone had this, it's a slow growing tumor so the only thing we

can take into consideration and no matter what our specialty, as long as we're gastroenterologists or oncologists we can take into consideration and no matter what our specialty, as long as we're gastroenterologists or oncologists, we take into situation, yes, we have a few factors that we try to put together, but all we can do is conjecture. Everybody can speculate and they're all allowed to do that. What I believe happened here was a missed opportunity to detect local spread and, of course, further spread. If we had only taken into consideration – if Dr. Gorcey had taken into consideration that he measured it as a 12-millimeter tumor, he removed it, he's the guy who does advanced endoscopies, if he had only taken that pathology report and brought him back, he did all the colonoscopy fine, but he never, ever considered looking for local spread or distant spread, which I'm not saying needs to be done right away, but a local spread evaluation must have been done in order to avoid all that we're doing going back and forth back and forth. If he had only done this, we wouldn't be here going over and over and over this anymore, and I don't understand still to this date why it wasn't done.”

Additionally, Dr. Nandi goes on to testify: (PCa31 [41-5 to 10])

“I believe he might have found lymph nodes in the pelvic area and that would have alerted him to then send this person for a CAT scan. And if the CAT scan had showed the metastatic disease at the time he did his first colonoscopy, we wouldn't be sitting here dealing with this today.”

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THERE WASN'T AN ISSUE OF FACT CAUSATION IN THIS MEDICAL MALPRACTICE ACTION AND SHOULD HAVE DENIED THE MOTION FOR SUMMARY JUDGMENT (Pa106-Pa112)

Jersey Central Power and Light Co. v. Melcar Utility Company, 212 N.J. 576, 594 (2013), does set forth in the context of a medical malpractice action that the plaintiff must demonstrate 1. A duty of care; 2. A breach of duty; 3. Actual and proximate causation and damages. The plaintiff also bears the burden of demonstrating that the applicable standard of care owed by a physician to a patient, a deviation from that standard of care and that the deviation proximately caused the injuries. See Verdicchio v. Ricca, 179 N.J. 1, 23 (2004). This is a fact sensitive analysis, and the question is whether or not the plaintiff's expert testified sufficiently regarding causation that there remained a jury question regarding proximate cause.

The implication behind Dr. Nandi's testimony was that there was an extended delay in diagnosing the liver cancer from 2016 to 2019 and that had the defendant doctor diagnosed it in a timely manner that the likelihood that the liver cancer would not have metastasized and would have been able to be managed and treated more effectively. Dr. Nandi testified that "what I believe

happened here was a missed opportunity to detect local spread, and, of course further spread.” There is a clear implication involved in that statement that the cancer had spread beyond the local area and that this certainly required significant further treatment and put the plaintiff in a far worse position that he would have been had the cancer been diagnosed in a timely manner. (PCa31 [39-23 to 25]).

CONCLUSION

For all the foregoing reasons, it is respectfully requested that the Court grant Plaintiff's Appeal.

Respectfully submitted,

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By: *Richard A. Amdur, Jr. /s/*
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Dated: July 2, 2025

SAMIH KIROLOS,
Plaintiff,

vs.

**STEVEN GORCEY, M.D., ALLIED
DIGESTIVE HEALTH LLC, JOHN
DOES 1-100 AND ABC CORPS. 1-100,**
Defendants.

**SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION**

DOCKET NO.: A-002557-24T1

CIVIL ACTION

**On Appeal from the Superior
Court of New Jersey, Law
Division, Monmouth County**

DOCKET NO.: MON-L-2228-21

**SAT BELOW: Hon. Kathleen A.
Sheedy, J.S.C.**

**BRIEF ON BEHALF DEFENDANT/RESPONDENT, STEVEN
GORCEY, M.D., IN OPPOSITION TO PLAINTIFF'S APPEAL OF
THE TRIAL COURT'S ORDER DATED APRIL 14, 2025, GRANTING
SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

Defendant/Respondent, Steven Gorcey, M.D. (hereinafter “Dr. Gorcey” or “Defendant”) submits this memorandum of law in opposition to Plaintiff’s Appeal of the Trial Court’s April 14, 2025 Order granting summary judgment based on the Plaintiff’s failure to establish causation, a requisite element of a medical negligence claim asserted in the underlying action.

At issue in the underlying matter was the care and treatment provided to Plaintiff/Appellant, Samih Kirolos (hereinafter “Plaintiff”) by Dr. Gorcey, a gastroenterologist. Plaintiff alleges that Dr. Gorcey failed to order the appropriate imaging for Mr. Kirolos, leading to Mr. Kirolos’s rectal cancer becoming more advanced. By way of background, on March 9, 2016, Dr. Gorcey performed an upper endoscopy as well as a colonoscopy and resected a tumor. The pathology showed that the tumor was a rectal carcinoid without clean margins. Accordingly, on March 17, 2016, Dr. Gorcey took the patient back for a sigmoidoscopy with further resection. The patient was asked to return in four to six weeks but did not return for 18 months, until November 2, 2017. The patient was diagnosed with liver cancer in or around June of 2019.

It is beyond dispute that Dr. Gorcey is a medical professional and that the claims arise out of the medical treatment he administered. Without the requisite expert testimony, Plaintiff’s medical malpractice claim as to Dr. Gorcey cannot

survive. As will be developed below, the relevant and controlling authorities confirm that the Trial Court appropriately granted summary judgment after finding that the expert opinions and testimony of Dr. Nandi were insufficient to establish that the Plaintiff's outcome was causally connected to any alleged negligence by Dr. Gorcey. Plaintiff did not address the lack of a necessary causation opinion in either the Opposition to the underlying Motion or the instant appeal. It is simply incontrovertible that Plaintiff's sole expert, Dr. Nandi, did not advance an opinion in either her reports or her testimony that any deviation from the standard of care by Dr. Gorcey increased Plaintiff's risk of harm or diminished his chance of survival, and that such increased risk was a substantial factor in the Plaintiffs outcome. Therefore, as a matter of law and equity, Plaintiff's appeal must be denied in full.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

1. This is a complex medical malpractice action in which Plaintiff has named Steven Gorcey, M.D. (hereinafter "Defendant" or "Dr. Gorcey") and other defendants. 36a.

2. Plaintiff alleges that as a result of the negligence of Dr. Gorcey, there

¹ In reviewing the underlying facts and the procedural history, it was determined that the two are intrinsically intertwined. It is respectfully submitted that to separate the Statement of Facts from the Procedural History would have been difficult and would have likely led to a lengthier brief. Thus, the Statement of Facts and Procedural History are combined for ease of reading and brevity.

was a delay in diagnosis of his liver cancer. 38a.

3. Santa Nandi, M.D. (hereinafter “Dr. Nandi”) was the only expert designated by the Plaintiff in this matter. 72a.

4. Plaintiff served a report of Dr. Nandi dated November 1, 2023. 12Ca.

5. Plaintiff’s counsel served a supplemental report of Dr. Nandi dated June 17, 2024. 16Ca

6. Dr. Nandi’s reports, cumulatively, contain opinions on a deviation from the standard of care by Dr. Gorcey but lack any causation opinion linking the alleged deviation from the standard of care by Dr. Gorcey to the Plaintiff’s alleged injuries. 12Ca-19Ca.

7. At her deposition, Dr. Nandi did not express any opinions on causation. 20Ca-68Ca.

8. Dr. Nandi opined that Dr. Gorcey deviated from the standard of care by failing “to order any imaging studies at the time of the initial diagnosis of a rectal carcinoid. An EUS (endoscopic ultrasound) of the rectum and a PET CT. . . were indicated at the time of the initial diagnosis [in 2016].” 13Ca.

9. Dr. Nandi further opines that “[a]n endoscopic ultrasound of the rectum and a PET CT scan for neuroendocrine tumors were indicated in 2017 as well, and were never considered.” 13Ca.

10. Dr. Nandi testified that had Dr. Gorcey performed the local or distant

examination by ordering imaging, that examination “might have found lymph nodes in the pelvic area.” 31Ca (41:1-6).

11. Dr. Nandi did not have an opinion on when the carcinoid became metastatic. 30Ca (35:15-19; 36:5-13).

12. Dr. Nandi did not opine on whether the carcinoid became metastatic before diagnosis, after diagnosis, or at some point in between. 30Ca (36:5-13).

13. Dr. Nandi testified as follows: “Q: Do you have an opinion as to whether the CAT scan would have shown liver disease at the time of the initial diagnosis if-- A: It would be – no, no, no one can. It’s all speculation.” 31Ca (41:11-15).

14. Dr. Nandi testified as follows: “Q: [I]f the patient had both local and distal spread at the time of the initial [carcinoid] excision, would his treatment have been any different? A: No.” 31Ca (41:16-20).

15. During her deposition, Dr. Nandi testified as follows: Q: Do you agree that the metastasis, the distant metastasis that was shown in 2017, whether he knew about it in ’17 or ’19, the treatment would have been the same? A: His own treatment, yes.” 33Ca (48:10-14).

16. Dr. Nandi does not opine that any deviation from the standard of care by Dr. Gorcey increased Plaintiff’s risk of harm or diminished his chance of survival and does not opine that such increased risk was a substantial factor in the

Plaintiffs outcome.²

17. Dr. Nandi does not opine that any deviation from the standard of care by Dr. Gorcey caused or contributed to the Plaintiff's outcome.³

18. The Plaintiff's deadline to serve expert reports, which had been extended significantly on multiple occasions during the course of discovery, had long expired at the time of the Defendant's filing of the underlying Motion for Summary Judgment. 72a at ¶11; 77a.

19. Plaintiff's underlying Opposition did not address the lacking causation opinion.⁴

20. At Oral Argument, Plaintiff's counsel did not address the lacking causation opinion.⁵

21. Plaintiff's appeal does not address the lacking causation opinion.⁶

22. Defendant's Motion for Summary Judgment based upon the Plaintiff's failure to establish a prima facie case of medical negligence (specifically, failure to establish causation) was granted by the Hon. Kathleen A. Sheedy, J.S.C. on April 14, 2025 after entertaining oral argument. 104a.

² Since this fact is uncontroverted, there is no citation to the record.

³ Since this fact is uncontroverted, there is no citation to the record.

⁴ Since this fact is uncontroverted, there is no citation to the record.

⁵ Since this fact is uncontroverted, there is no citation to the record.

⁶ Since this fact is uncontroverted, there is no citation to the record.

STANDARD OF REVIEW

When a party appeals from a trial court order granting or denying a summary judgment motion, the Appellate Division employs “the same standard [of review] that governs the trial court.” Henry v. N.J. Dep’t of Human Servs., 204 N.J. 320, 330 (2010) (quoting Busciglio v. DellaFave, 366 N.J. Super. 135, 139 (App. Div. 2004)). The summary judgment procedure provides a prompt, businesslike and inexpensive means to dispose of a case where examination of the pleadings, admissions, depositions and affidavits shows that there is no genuine issue of material fact requiring disposition at trial, and the moving parties are entitled to judgment as a matter of law. See Judson v. People’s Bank and Trust Co. of Westfield, 17 N.J. 57, 74 (1954); R. 4:46-2.

The New Jersey Supreme Court has repeatedly made clear that summary judgment should be granted when the pleadings and evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995); Judson, *supra*, 17 N.J. at 74. “Once a moving party has met [its] burden, summary judgment is warranted and, indeed, desirable as a matter of judicial economy.” Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985).

Moreover, the Brill Court explained:

[A] non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in

dispute . . . In other words, where the party opposing summary judgment points only to disputed issues of fact that are “of an insubstantial nature,” the proper disposition is summary judgment.

[Brill, supra, 142 N.J. at 529.]

While the court still must grant all favorable inference to the non-moving party, it may pick and choose inferences from the evidence to the extent that “a miscarriage of justice under the law” is not created. Id. at 536. Under this standard, whether there exists a “genuine issue” of material fact precluding summary judgment requires the motion judge to consider whether the competent evidential material presented, viewed in the light most favorable to the non-moving party, is sufficient to permit a rational fact finder to resolve the alleged dispute issue in favor of the non-moving party. Id. at 540.

Quoting an Arizona Supreme Court decision, the Brill Court noted that the standard articulated in Celotex Corp. v. Catrett, 477 U.S. 317 (1986) and Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), has been adopted by the majority of courts in other jurisdictions:

We live in what is widely perceived as a time of great increase of litigation and one in which many meritless cases are filed, vastly increasing the dockets before our trial judges. As a result, the courts of this country have been urged to liberalize the standards so as to permit summary judgment in a larger number of cases.

[Brill, supra, 142 N.J. at 538-539 (internal quotations omitted).]

Accordingly, Brill serves to encourage trial courts to grant summary judgment when proper circumstances are presented. As will be demonstrated herein, the Trial Court has properly determined that undisputed and materials facts of this matter mandate entry of summary judgment in favor of Dr. Gorcey. While Brill recognized the importance of not precluding trial for a deserving litigant, it stressed it is just as important that the court not “allow harassment of an equally deserving suitor for immediate relief by a long and worthless trial.” Id. at 540-41. To send a cause to trial, knowing that a rational jury can reach but one conclusion, would be “worthless” and “will serve no useful purpose.” Id. at 541.

Even when viewing this matter in a light most favorable to the Plaintiff, the facts establish that as a matter of law, Plaintiff’s claims cannot survive, since the essential element in a medical malpractice case, causation, is absent from the record. In the absence of any competent expert testimony to satisfy this essential requirement, as a matter of law and facts, there are no genuine issues of material fact, and summary judgment was appropriately entered. To allow Plaintiff to proceed to trial based on claims that fail to advance a *prima facie* case of medical malpractice would be “worthless” and “serve no useful purpose.” Therefore, the Trial Court’s April 14, 2025 Order must be affirmed.

LEGAL ARGUMENT

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT AS PLAINTIFF FAILED TO SUPPLY EXPERT TESTIMONY ON CAUSATION TO ESTABLISH A PRIMA FACIE CASE OF MEDICAL NEGLIGENCE. (104a.)

The Defendant’s underlying dispositive motion, the outcome of which Plaintiff is appealing, was based upon the Plaintiff’s failure to support the claim for medical negligence with the appropriate causation opinion. Quite simply, Plaintiff could not advance expert testimony as to how Dr. Gorcey’s alleged deviation from the standard of care contributed to Plaintiff’s alleged injuries, resulting in the Trial Court’s entering summary judgment in favor of the Defendant on April 14, 2025. 104a.

“To prove medical malpractice[,] . . . ‘a plaintiff must present expert testimony establishing (1) the applicable standard of care; (2) a deviation from that standard of care; and (3) that the deviation proximately caused the injury.’” Haviland v. Lourdes Med. Ctr. of Burlington Cnty., Inc., 250 N.J. 368, 384 (2022) (quoting Nicholas v. Mynster, 213 N.J. 463, 478 (2013)). “As a general rule, it is the causation element that is the most complex.” Verdicchio v. Ricca, 179 N.J. 1, 23 (2004). In a medical malpractice negligence action, there is an affirmative obligation upon the plaintiff that includes a showing that the departure from a standard was causally connected with the injury. Parker v. Goldstein, 78 N.J. Super. 472, 480 (1963), certif. den., 40 N.J. 225 (1963).; Germann v. Matriss, 55

N.J. 193 (1970); Pelose v. Green, 222 N.J. Super. 545 (App. Div. 1988); Gardner v. Pawliw, 150 N.J. 359, 375 (1997). The theory of proximate causation has been defined as:

[a]ny cause which in the natural and continuous sequence, unbroken by an efficient intervening cause produces the result complained of and without which the result would not have occurred... Stated differently, the plaintiff must prove that defendant's conduct constituted a cause in fact of his injuries and loss. An act or omission is not regarded as a cause of an event if the event would have occurred without it.

[Skripek v. Bergmamo, 200 N.J. Super. 620, 634 (App. Div. 1985).]

Simply put, in New Jersey,

A plaintiff who charges a deviation from such standard of skill or care must assume the burden of establishing facts showing not only the deviation but also a fact equally essential to the recovery of damages, *i.e.*, that the deviation was the reasonably probable cause of the injurious condition arising thereafter.

[Germann, supra, 55 N.J. at 208 (emphasis added).]

The case of Pelose v. Green, 222 N.J. Super. 545 (App. Div. 1988), is instructive insofar as the Appellate Division held that a plaintiff's complaint was properly dismissed as a matter of law when an expert could not link the alleged negligence to the damages in the case. "This link between [a] particular defendant, particular act or omission, and a plaintiff's injury is 'ordinarily an indispensable ingredient of a prima facie case.'" Deitch v. Dearborn, 2010 WL4135673 (App.

Div. 2010) at *3 (citing Shackil v. Lederle Laboratories, 116 N.J. 155 (1989)). 79a.

Because the traditional “but for” causation standard “has its limitations in situations where two or more forces operate to bring about a certain result,” New Jersey courts have adopted the “substantial factor” causation standard in such circumstances. Verdicchio, supra, 179 N.J. at 24. This standard examines “whether the defendant’s deviation from standard medical practice increased a patient’s risk of harm or diminished a patient’s chance of survival and whether such increased risk was a substantial factor in producing the ultimate harm.” Ibid. (quoting Gardner, supra, 150 N.J. at 376; see also Scafidi v. Seiler, 119 N.J. 93, 108 (1990) (“Evidence demonstrating within a reasonable degree of medical probability that negligent treatment increased the risk of harm posed by a preexistent condition raises a jury question whether the increased risk was a substantial factor in producing the ultimate result.”)).

New Jersey Courts, when presented with the concept of causation for failure to act, look to whether the negligent conduct may be considered a substantial factor contributing to the loss. See Brown v. United States Stove Co., 98 N.J. 155, 171 (1984) (“With respect to concurrent proximate causation, a tortfeasor will be held answerable if its ‘negligent conduct was a substantial factor in bringing about the injuries,’ even where there are ‘other intervening causes which were foreseeable or were normal incidents of the risk created.’”). Importantly, an act or omission is

not regarded as a cause of an event if the event would have occurred without it. See Skripek, supra, 200 N.J. Super. at 634.

In the recent case, the Appellate Division held that in a medical negligence case, it is crucial for the plaintiff's expert to link a specific deviation to the injury by rendering the requisite substantial factor opinion. Donnelly v. Our Lady of Lourdes Medical Center, A-3878-22 (App. Div. Dec. 2, 2024). 84a. Donnelly involved an alleged delay to order a CT scan and perform a surgery. The Appellate Division affirmed entry of summary judgment as to one of the defendants, a surgeon Dr. Salem, even though Plaintiff's experts did opine that Dr. Salem deviated from the standard of care and that the surgeons collectively caused the patient's death. Id. at *25. The Appellate Division held that this expert opinion was insufficient because no expert opined that Dr. Salem's deviation increased a risk of harm and was a substantial factor in the patient's death. Id. at *24. As to some other defendants, the Appellate Division reversed the trial court's entry of summary judgment because there was expert testimony that "[the plaintiff's expert] sufficiently alleged Drs. Shivaprasad and Berberian treatment of decedent deviated from the accepted standard of care for gastroenterologists, which allegedly was a substantial factor in contributing to her death." Id. at *28. Likewise, as to the other two surgeons involved in the case, the Appellate Division reversed the trial court's entry of summary judgment because "Drs. Stephens and

Reed [plaintiff's experts] each concluded the deviations from the standard of care were a substantial factor in decedent's death." Id. at *23.

Similarly to Donnelly, supra, the alleged deviation from the standard of care in the instant matter is the failure to order imaging, allegedly resulting in a delay of treatment. The "failure to act" cases trigger the "substantial factor" analysis to establish causation. See Brown, supra, 98 N.J. at 171. The carcinoid was present in the Plaintiff, thus the regular "but for" causation standard would not be adequate. Ibid. In this case, however, Plaintiff has failed to advance reliable expert opinion that the alleged deviation(s) from the standard of care by Dr. Gorcey increased the risk of harm to the patient and that that increased risk was a substantial factor in the Plaintiff's alleged injuries. Even applying the simpler "but for" test (which Defendant again submits is inappropriate in this case), Plaintiff has still failed to advance an expert opinion that Dr. Gorcey's allegedly negligent actions or inactions were the proximate cause of any injury to the Plaintiff. A thorough, line-by-line review of Dr. Nandi's two expert reports will reveal the glaring lack of **any** opinions on causation. 12Ca-19Ca. During her deposition, Dr. Nandi conceded that the patient would have required the same treatment with an earlier diagnosis. 33Ca (48:10-15). As with Dr. Salem in Donnelly, Dr. Gorcey in the matter at bar is entitled to summary judgment because Plaintiff has failed to establish a causal connection between the alleged deviation(s) from the standard of care by Dr.

Gorcey and the patient's outcome. Therefore, Plaintiff could not establish a prima facie case of medical negligence, even if considering all evidence in the light most favorable to the Plaintiff, which was recognized by the Trial Court when rendering the April 14, 2024 ruling.

Although Dr. Nandi is critical of Dr. Gorcey for failing to order imaging in 2016 and 2017, she does not have an opinion when the cancer metastasized and opines that the treatment would have been the same regardless. 33Ca (48:10- 15), 30Ca (36:5-9). She testified that even if Dr. Gorcey recommended the imaging she is critical of not having been completed, "no one knows" whether the imaging would have shown liver disease. 30Ca (36:5-9). **There is a glaring lack of an opinion, in either Dr. Nandi's reports or her testimony, that any deviation from the standard of care by Dr. Gorcey increased Plaintiff's risk of harm or diminished his chance of survival, and that such increased risk was a substantial factor in the Plaintiffs outcome.** Plaintiff's counsel has not addressed this lack of the requisite causation opinion at all, either in the underlying Opposition to Motion for Summary Judgment, the oral argument that was entertained on that Motion, or in the Appellate Brief at bar. 1T(10:13- 21). Without the causation element, the Plaintiff cannot establish a prima facie case of medical negligence. Recognizing this fatal defect in Plaintiff's claim, summary judgment was appropriately granted by the Trial Court, and that decision should be affirmed.

CONCLUSION

For the reasons set forth herein, the Appellate Division should affirm the April 14, 2025 Order of the Trial Court granting summary judgment to Defendant/Respondent, Steven Gorcey, M.D., based on the Plaintiff's failure to establish the causation element of his medical negligence claim.

**MACNEILL, O'NEILL & RIVELES,
LLC**

Attorneys for Defendant/Respondent,
Steven Gorcey, M.D.

Dated: October 9, 2025

By: Anelia Dikovytska Brown
Anelia Dikovytska Brown

SAMIH KIROLOS,	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
	:	DOCKET NO. A-002557-24T1
Plaintiff/Appellant,	:	
	:	
vs.	:	CIVIL ACTION
	:	
STEVEN GORCEY, M.D., ALLIED	:	On Appeal from the Superior
DIGESTIVE HEALTH, JOHN DOES:	:	Court of New Jersey, Law
1-100 and ABC CORPS. 1-100.	:	Division, Monmouth County
	:	
Defendants/Respondents	:	DOCKET NO.: MON-L-2228-21
	:	
	:	SAT BELOW: Hon. Kathleen A.
	:	Sheedy, J.S.C.

DEFENDANT/RESPONDENT ALLIED DIGESTIVE HEALTH LLC'S BRIEF

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STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

1. This is a medical malpractice action wherein plaintiff brings suit against his treating gastroenterologist, Steven Gorcey, M.D. and the group practice/entity that employed him, Allied Digestive Health, LLC. 36a.

2. Plaintiff claims that due to the negligence of defendant Gorcey, plaintiff developed metastatic liver cancer. 38a.

3. Plaintiff served the report of Santa Nandi, M.D. dated November 1, 2023. 12Ca-14Ca.

4. Plaintiff served a supplemental report authored by Dr. Nandi dated June 17 2024. 16Ca-19Ca.

5. Dr. Nandi is the only expert identified by plaintiff in support of his medical negligence claim. 72a.

6. Dr. Nandi's reports set forth her opinions regarding deviation from the standard of care on the part of Dr. Gorcey. Neither report, however, sets forth an opinion that said deviation was a proximate cause of the injuries that plaintiff claims to have sustained. 12Ca-19Ca. Insofar as the claim against Allied Digestive Health, LLC is concerned, plaintiff's counsel acknowledged in a letter dated

¹We have elected to combine the Statement of Facts and Procedural History. A review of the record will show that the facts and procedural history are inseparably intertwined. We respectfully submit that preparation of a separate Statement of Facts and a separate Procedural History would have unnecessarily lengthened our Letter Brief. For the foregoing reasons, we have combined our Procedural History and Statement of Facts in order to facilitate and streamline our presentation to the Court.

September 24, 2024 that there is no claim of direct liability against Allied Digestive Health, “only vicarious liability”. Da13. Thus, the only claim asserted against defendant Allied Digestive Health, LLC is one of vicarious liability premised upon the concept of *Respondeat Superior*.

7. Dr. Nandi was deposed at length in this matter. During the course of that deposition, Dr. Nandi failed to express any opinion on the issue of causation. 20Ca-68Ca.

8. Dr. Nandi offered the opinion that defendant Gorcey departed from the standard of care by virtue of his failing “to order any imaging studies at the time of the initial diagnosis of a rectal carcinoid. According to Nandi, an EUS (endoscopic ultrasound) of the rectum and a PET CT... “were indicated at the time of the initial diagnosis [in 2016].” 13Ca.

9. Dr. Nandi further opined that [a]n “endoscopic ultrasound of the rectum and a PET CT scan for neuroendocrine tumors were indicated in 2017 as well, and were never considered.” 13Ca.

10. At deposition, Dr. Nandi testified that had Dr. Gorcey conducted an evaluation for local or distant spread by ordering the indicated imaging studies, that evaluation “**might have found** lymph nodes in the pelvic area....” 31Ca (41:1-10).

11. Dr. Nandi testified that she had no opinion concerning when plaintiff's carcinoid became metastatic. "No one has an opinion on that and I don't either." 30Ca (36:5-13).

12. Dr. Nandi acknowledged that she had no opinion as to whether the patient's carcinoid had become metastatic before it was diagnosed, after it was diagnosed or at some point in between. In response to that inquiry, Nandi's answer was "no one knows." 30Ca (36:10-13).

13. Dr. Nandi was asked whether she had an opinion as to whether a CT scan would have revealed liver disease at the time of the initial diagnosis. Her response was "it would be-no, no, no one can. It's all speculation." 31Ca. (41:11-15).

14. Dr. Nandi acknowledged that plaintiff's treatment would have been no different if he had both local and distant spread when his carcinoid was initially excised. 31Ca (41:16-20).

15. Dr. Nandi does not advance any opinion suggesting that any deviation from accepted standards of care on the part of Dr. Gorcey increased the risk of harm posed by his underlying condition (colon cancer). Similarly, she offered no opinion that any such deviation diminished plaintiff's chances of survival. She offers no opinion that any theoretical increased risk was a substantial factor in

worsening the patient's prognosis or in impacting the course of his condition or in effecting the management of that condition.²

16. Dr. Nandi offers no opinion that any deviation from the standard of care on Dr. Gorcey's part caused or contributed to plaintiff's outcome.³

17. The course of this case was closely managed by Judge Sheedy below who frequently granted generous extensions of the deadline for plaintiff to serve expert reports during the course of discovery. The final deadline for submission of expert reports had expired long before the filing of the underlying Motion and Cross Motion for Summary Judgment. 72a at ¶11; 77a.

18. Plaintiff's opposition to the Motion failed to address the key issue, i.e., that his expert had not put forth the foundational opinion that the alleged deviation was a proximate cause of any injury or harm that plaintiff claims to have sustained. Da29-Da33.

19. At oral argument of the Motion, plaintiff's counsel failed to directly address or speak to the key issue advanced by the Motions, i.e., that his expert had not supplied the necessary causation opinion. 1T10-13 to 10-20.

20. Both the Motion and Cross Motion for Summary Judgment based upon plaintiff's failure to establish a *prima facie* case of medical negligence (more

² Because this fact is uncontroverted, no citation to the record is needed.

³ Once again, because this fact is uncontroverted, no citation to the record is provided.

specifically, the failure to establish the necessary element of causation) was granted by the Honorable Kathleen A. Sheedy, J.S.C. on April 14, 2025 after entertaining oral argument. 104a.

21. Relative to defendant Allied Digestive Health, LLC, the Court recognized that plaintiff's claims against Allied Digestive Health, LLC were premised solely upon vicarious liability. Plaintiff's counsel expressly acknowledged this fact in his letter of September 24, 2024, providing a more specific response to Supplemental Interrogatory #3. Da13. Because there was no expert opinion establishing causation as to Dr. Gorcey, the Court concluded that it followed that there was no basis for vicarious liability on the part of Allied Digestive Health, LLC insofar as defendant Gorcey was concerned. As Dr. Gorcey's employer, the Court found that defendant Allied Digestive Health, LLC was entitled to Summary Judgment as well. 104a-112a.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT TO DEFENDANT ALLIED DIGESTIVE HEALTH, LLC.

The claim against Allied Digestive Health, LLC was premised upon the concept of vicarious liability. Plaintiff had no direct, independent claims against Allied Digestive Health, LLC. Thus, Allied stood in the same position, both legally and factually, as Dr. Gorcey. Because the claim against Dr. Gorcey was not supported by the appropriate and necessary expert opinion on causation, Summary Judgment was the appropriate remedy.

It has been well established that where the claim against a defendant is premised solely upon the employer/employee relationship, i.e., vicarious liability based on *Respondeat Superior*, a dismissal of the claim against the employee on the merits must result in a dismissal of the claim against the employer.

“The decided weight of authority is that where employer and employee are joined as parties defendant in an action for injuries allegedly occasioned solely by the negligence or misfeasance of the employee, a verdict which exonerates the employee from liability requires also the exoneration of the employer [citations omitted]...The rule is founded upon considerations of fundamental fairness that, if the employee is not to be held responsible for his wrongdoing, the employer whose liability is asserted solely upon the basis of imputed responsibility for his employee’s wrong cannot in fairness and justice be required to respond in damages for it.

Kelley v. Curtiss, 16 NJ 265, 270-271 (1954).

In his Brief, counsel for plaintiff argues that

“The implication behind Dr. Nandi’s testimony was that there was an extended delay in diagnosing the liver cancer from 2016 to 2019 and that had the defendant doctor diagnosed it in a timely manner that the likelihood that the liver cancer would not have metastasized and would have been able to be managed and treated more effectively.” Pb6. (Emphasis mine.)

Plaintiff’s argument is hard to follow let alone understand. Counsel seems to be arguing that an inference (“implication”) can be drawn from Dr. Nandi’s deposition testimony that she is saying there is a causal connection between the alleged negligence and whatever injury/damage plaintiff is alleging to have sustained. Respectfully, no reasonable jury would be able to draw such an inference/implication from this expert’s practically incoherent testimony. In any event, plaintiff’s burden of proof is not satisfied by proffering testimony from which some inference or implication needs to be drawn. It is the plaintiff’s burden to establish a deviation from the standard of care and that such deviation was a proximate cause of the damages/injuries plaintiff claims to have sustained. Such an opinion must be expressed clearly and unambiguously. Plaintiff’s burden is not satisfied by Dr. Nandi’s cryptic testimony. Quite frankly, it is not at all clear that the “implication” (and or inference) that counsel alludes to can actually be drawn from this expert’s convoluted testimony.

Because our client, Allied Digestive Health, LLC, stands in the same position as defendant Gorcey insofar as the plaintiff's failure to establish a *prima facie* case is concerned, we also place reliance upon the factual recitations and legal arguments put forth by Dr. Gorcey in his Brief, and would ask the Court to consider same as though it were advanced on behalf of defendant Allied Digestive Health, LLC.

CONCLUSION

For the reasons set forth above, the trial court's Order granting the Motion and Cross Motion for Summary Judgment and dismissing plaintiff's Complaint with prejudice should be affirmed.

DATED: October 20, 2025

Respectfully submitted,

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BY: 

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