

MFM/lt

00778-089453

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X

SANGAY DIOP,

Plaintiff,

-against-

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and BELLEVUE HOSPITAL CENTER,

Defendants.

-----X

VERIFIED ANSWER

Index No.: 818850/2023E

Defendant NEW YORK CITY HEALTH & HOSPITALS CORPORATION s/h/a NEW YORK CITY HEALTH & HOSPITALS CORPORATION and BELLEVUE HOSPITAL CENTER, by its attorneys, MARTIN CLEARWATER & BELL LLP, answers the plaintiff's complaint as follows, upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "1", "2", "4", "5" and "6" except admits that a purported Notice of Claim was presented to the New York City Health and Hospitals Corporation and that more than 30 days has elapsed since such presentation and that no adjustment thereof has been made; and that a hearing was held pursuant to §50-H of the General Municipal Law and otherwise begs leave to refer all questions of law to this Honorable Court and all questions of fact to the trier thereof.

2. Denies each and every allegation contained in the paragraphs of the complaint designated "3" and "22".

3. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "7" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “8”, “9” and “12” except admits that the answering defendant is a public benefit corporation established under the laws of the State of New York and operates a hospital facility known as NYC Health + Hospital/Bellevue in accordance with the applicable standards of care and employs healthcare providers pursuant to Section 50-K of the General Municipal Law and otherwise begs leave to refer all questions of law to this Honorable Court and all questions of fact to the trier thereof.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “10” and “11” admits that the answering defendant is a public benefit corporation duly organized under the laws of the State of New York and operates a hospital facility known as NYC Health + Hospital/Bellevue in accordance with the applicable standards of care and otherwise denies knowledge or information and begs leave to refer all questions of law to this Honorable Court and all questions of fact to the trier thereof.

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “13” and “21” except admits that at certain times not specifically set forth in the Complaint the answering defendant provided certain professional services to and for the benefit of plaintiff SANGAYE DIOP in accordance with the applicable standards of care and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

7. Denies each and every allegation contained in the paragraph of the complaint designated “14” admits that at certain times not specifically set forth in the Complaint the answering defendant provided certain professional services to and for the benefit of plaintiff SANGAYE DIOP in accordance with the applicable standards of care and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

8. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “15” and “16” in the form

alleged but admits that at certain times not set forth in the Complaint ALEXANDER HRYCKO, M.D., was a physician duly licensed to practice medicine in the State of New York or practiced under the hospital's license who had a certain professional relationship with the answering defendant and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

9. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "17" and "18" in the form alleged but admits that at certain times not set forth in the Complaint EMILY CRANE, M.D., was a physician duly licensed to practice medicine in the State of New York or practiced medicine under the hospital's license who had a certain professional relationship with the answering defendant and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "19" and "20" in the form alleged but admits that at certain times not set forth in the Complaint MATHEW B. KLADNEY, M.D., was a physician duly licensed to practice medicine in the State of New York or practiced medicine under the hospital's license who had a certain professional relationship with the answer defendant and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

AS TO THE FIRST CAUSE OF ACTION FOR NEGLIGENCE

11. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "23".

12. Denies each and every allegation contained in the paragraph of the complaint designated "24" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

13. Denies each and every allegation contained in the paragraphs of the complaint designated "25", "26", "27", "28", "30", "31", "32" and "33".

14. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the complaint designated "29" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

AS TO THE SECOND CAUSE OF ACTION FOR MEDICAL MALPRACTICE

15. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "34".

16. Denies each and every allegation contained in the paragraph of the complaint designated "35" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

17. Denies each and every allegation contained in the paragraphs of the complaint designated "36", "37", "38", "40", "41", "43" and "44".

18. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "39" and "42" except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

AS TO THE THIRD CAUSE OF ACTION FOR LACK OF INFORMED CONSENT

19. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "45".

20. Denies each and every allegation contained in the paragraph of the complaint designated "46", "47", "48", "49" and "50".

AS TO THE STATEMENT REGARDING EXCEPTIONS IN CPLR § 1602

21. Denies each and every allegation contained in the paragraph of the complaint designated "51".

AS TO THE WHEREFORE

22. Denies each and every allegation contained in the paragraph of the complaint designated "WHEREFORE".

AS A FIRST AFFIRMATIVE DEFENSE

23. Defendant NEW YORK CITY HEALTH & HOSPITALS CORPORATION s/h/a NEW YORK CITY HEALTH & HOSPITALS CORPORATION and BELLEVUE HOSPITAL CENTER denies liability, but if liability is found against this defendant and the liability is found to be 50% or less of the total liability assigned to all persons liable, then this defendant invokes the limits on liability for noneconomic loss set forth in CPLR §1601.

AS A SECOND AFFIRMATIVE DEFENSE

24. That defendant asserts the terms, provisions, limitations and rights contained in §4545 of the CPLR.

AS A THIRD AFFIRMATIVE DEFENSE

25. Upon information and belief, that the alleged cause or causes of action, if any, stated in the complaint, on behalf of the plaintiff are barred by the applicable statute of limitations.

AS A FOURTH AFFIRMATIVE DEFENSE

26. That as to all Causes of Action, the complaint fails to state a cause or causes of action upon which relief can be granted against defendant NEW YORK CITY HEALTH & HOSPITALS CORPORATION s/h/a NEW YORK CITY HEALTH AND HOSPITALS CORPORATION and BELLEVUE HOSPITAL.

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