



Clerk of the Court  
Received 06/30/2025 04:50 PM  
Filed 06/30/2025 04:50 PM

---

*In the*  
**District of Columbia**  
**Court of Appeals**

---

SYLVIA PEARSON, PR, Estate of BARRY MICHAEL PEARSON  
and Individually,

*Plaintiffs-Appellants,*

v.

MEDSTAR WASHINGTON HOSPITAL CENTER, *et. al.*,

*Defendants-Appellees.*

*On Appeal from the Superior Court of the District of Columbia Civil  
Division in Case 2022 CA 001213 M and 2022 CA 001311 M  
(Honorable Maurice A. Ross, Judge)*

---

**BRIEF FOR PLAINTIFFS-APPELLANTS**

---

GEORGE L. GARROW, JR., ESQ.  
BAR #393213  
THE GARROW LAW FIRM, PLLC  
300 New Jersey Avenue, NW, Suite 300  
Washington, DC 20001  
(202) 469-3411  
ggarrow@me.com

*Attorney for Plaintiffs-Appellants*

June 30, 2025

# TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii
STATEMENT OF ISSUES .....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF RELEVANT FACTS .....	2
Mr. Pearson’s Hospital-Acquired Pressure Injury was Stage IV – The Worst and Most Life-Threatening Pressure Injury .....	3
The Funeral Director Shares with the Pearson Family a Horrible Photo of the Pressure Injury that Caused Mr. Pearson’s Death.....	4
SUMMARY OF ARGUMENT .....	5
ARGUMENT .....	6
I.    The Trial Court Erred in Determining That the <i>Res Ipsa</i> <i>Loquitur</i> Doctrine is Inapplicable .....	6
A.    A fatal Stage IV hospital-acquired pressure injury does not ordinarily occur in the absence of negligence .....	9
B.    Defendants exercised exclusive joint control of Mr. Pearson’s medical care.....	15
C.    It is beyond dispute that Mr. Pearson did not voluntarily contribute to the development and fatal progression of the injury .....	17
II.    The Trial Court Erred by Failing to Impose Liability on all Defendants Under the Theory of Apparent or Ostensible Agency.....	20
III.   The Trial Court Abused Its Discretion by Excluding the Testimony of Plaintiffs’ Experts at the Summary Judgment Stage.....	24
A.    Dr. Guerrero’s expert testimony meets the standard of reliability .....	27

B.	Dr. Rodriguez’s expert testimony meets the standard of reliability.....	30
IV.	The Trial Court Erred by Dismissing Plaintiffs -Appellants’ Lack of Informed Consent Claim.....	32
	CONCLUSION.....	36

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases:</b>	
<i>Barrett v. Covington &amp; Burling, LLP</i> , 979 A.2d 1239 (D.C. 2009) .....	7
<i>Bell v. Taplin</i> , 2019 D.C. Super. LEXIS 204 (June 6, 2019) .....	18
<i>Benn v. United States</i> , 978 A.2d 1257 (D.C. 2009) .....	24, 25
<i>Bishop v. Capitol Medical Center</i> , No. 09-CA-5930-M (04/07/2020) .....	21
<i>Bruno v. W. Union Fin. Servs.</i> , 973 A.2d 713 (D.C. 2009) .....	6
<i>Dickerson v. District of Columbia</i> , 182 A.3d 721 (D.C. 2018) .....	24, 25
<i>*District of Columbia v. Wilson</i> , 721 A.2d 591 (D.C. 1998) .....	26
<i>Doolin v. Environmental Power Ltd.</i> , 360 A.2d 493 (D.C. 1976) .....	6
<i>Fowler v. Seaton</i> , 394 P.2d 697 (Cal. 1964) .....	17
<i>Fitzgerald v. The Anderson Clinic, et. al.</i> , 2017 CA 007721 M (D.C. S. Ct. Pasichow, June 2021) .....	21
<i>Fry v. Diamond Construction, Inc.</i> , 659 A.2d 241 (D.C. 1995) .....	7
<i>Girardot v. United States</i> , 92 A.3d 1107 (D.C. 2014) .....	24-25
<i>Greet v. Otis Elevator Co.</i> , 187 A.2d 896 (1963) .....	20
<i>*Gubbins v. Hurson</i> , 885 A.2d 269 (2005) .....	7

<i>*Hailey v. Otis Elevator Co.</i> , 636 A.2d 426 (1994).....	7, 19
<i>Hawes v. Chua</i> , 769 A.2d 797 (D.C. 2001) .....	25
<i>Hill v. Medlantic Health Care Grp.</i> , 933 A.2d 314 (D.C. 2007) .....	32, 33
<i>Hunt v. District of Columbia</i> , 66 A.3d 987 (D.C. 2013) .....	7
<i>Ibn–Tamas v. United States</i> , 407 A.2d 626 (D.C. 1979) .....	25
<i>In re Krame</i> , 284 A.3d 745 (D.C. 2022) .....	20
<i>In re Melton</i> , 597 A.2d 892 (D.C. 1991) .....	26, 28, 30
<i>*Krebs v. Corrigan</i> , 321 A.2d 558 (1974).....	15
<i>Lewis v. United States</i> , 263 A.3d 1049 (D.C. 2021) .....	25
<i>Maryland Casualty Co. v.</i> <i>Pennsylvania National Mutual Casualty Insurance Co.</i> , 260 N.W.2d 380 (Wis. 1977).....	17
<i>*McCoy v. Quadrangle Dev. Corp.</i> , 470 A.2d 1256 (D.C. 1983) .....	7, 8, 9
<i>McGuire v. Cold Spring Hills</i> , 2020 N.Y. Misc. LEXIS 2908 (Queens County, May 21, 2020) .....	13, 14
<i>*Meda v. Brown</i> , 318 Md. 418 (1990) .....	16
<i>*Mehlman v. Powell</i> , 281 Md. 269 (1977) .....	21
<i>*Motorola, Inc. v Murray</i> , 147 A.3d 751 (D.C. 2016) .....	25

<i>Phelan v. City of Mt. Rainier</i> , 805 A.2d 930 (D.C. 2002) .....	6
<i>Pope v. Romac Int'l</i> , 829 A.2d 945 (D.C. 2003) .....	35
* <i>Quin v. George Washington University</i> , 407 A.2d 580 (1979) .....	7, 8, 15
<i>Reeves v. Wash. Metro. Area Transit Auth.</i> , 135 A.3d 807 (D.C. 2016) .....	6, 32
<i>Rigney v. North Shore Univ. Hosp.</i> , 2013 N.Y. Misc. LEXIS 2130 (Suffolk County, May 14, 2013) .....	14
<i>Rivera v. Jewish Home Life Care</i> , 2024 N.Y. Misc. LEXIS 13868 (New York County, October 30, 2024) .....	13
<i>Sponaugle v. Pre-Term, Inc.</i> , 411 A.2d 366 (D.C.1980) .....	25
<i>Washington v. Washington Hosp. Center</i> , 579 A.2d 177 (D.C. 1990) .....	25
<b>Statutes and Other Authorities:</b>	
DC Code § 16-2802 .....	2
DC Code § 16-2803 .....	2
Fed. R. Evid. 702 .....	25
Restatement (Second) of Agency § 267 .....	21
Restatement 3d of Torts: Liability for Physical and Emotional Harm § 17 .....	20
Super. Ct. Civ. R. 56(c).....	6

This appeal is from a final order or judgment that disposes of all parties' claims and therefore is ripe for appellant review.

### **STATEMENT OF ISSUES**

- I. Whether the trial court erred in determining that the *res ipsa loquitur* doctrine is inapplicable in a medical malpractice case involving multiple healthcare providers and a hospital-acquired pressure injury?
- II. Whether the trial court erred by failing to impose liability on all Defendants under the theory of apparent or ostensible agency?
- III. Whether the trial court abused its discretion by excluding the testimony of Plaintiffs' experts?
- IV. Whether the trial court erred in dismissing Plaintiffs' claim for lack of informed consent in a hospital-acquired pressure injury case?

### **STATEMENT OF THE CASE**

Plaintiffs Sylvia Pearson, personal representative of the estate of her late husband Barry Michael Pearson, and individually, filed suit against Medstar Washington Hospital Center (MWHC); Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group. P.C. (Kaiser/MAPMG); and Birju Ringwala, DO, for medical malpractice resulting in injuries and the death of Mr. Pearson. Plaintiffs allege that the Defendants caused Mr. Pearson to develop a significant and life-threatening stage IV sacral decubitus

ulcer that he did not have upon admission. The infection from the hospital-acquired stage IV pressure injury ultimately caused septic shock, fungemia, and death to Mr. Pearson.

Ms. Pearson timely filed suit in 2 separate legal actions, case no. 2022-CA-001213-M and case no. 2022-CA-001213-M to comply with the statutory notice requirements under DC Code §§ 16-2802 and 2803 for multiple defendants served at different times. The cases were consolidated under case no. 2022-CA-001213-M. Plaintiffs' complaint was amended to dismiss without prejudice Dr. Ringwala and, by Defendants' motion, the Pearson's adult daughters Akilah and Zakiya Pearson as named Plaintiffs.

Pertinent and controlling for this action is Ms. Pearson's second amended complaint. A718.

### **STATEMENT OF RELEVANT FACTS**

Mr. Barry Michael Pearson was admitted to Defendant Medstar Washington Hospital Center (MWHC) on September 19, 2019, with chest pains. He was mobile upon his admission to the hospital. A656 at 121. Mr. Pearson recently had been working as a part-time driver for Uber and was active. A631 at 22. His treatment was provided both by MWHC and Kaiser/MAPMG. His medical history included kidney disease for which he had recently begun dialysis. A635 at 37. He also had a prior history of congestive heart and breathing difficulties. A1021.

It was determined that Mr. Pearson had a partially blocked artery requiring left heart catheterization that occurred on September 23, 2019. The family did not expect a long recuperation and expected him to come home after a brief hospital stay. A1037 at 17-18. Unfortunately, Mr. Pearson's hospital stay spanned 3 entire months, and his spouse Ms. Sylvia Pearson and family contend that Defendants MWHC and Kaiser/MAPMG, through their doctors and nursing staff, provided care so poor and inadequate, that it caused a life-threatening pressure injury that he did not have upon admission. A759 at 102-103.

Mr. Pearson's Hospital-Acquired Pressure Injury was Stage IV –  
The Worst and Most Life-Threatening Pressure Injury

This serious pressure injury --- this “[L]arge deep sacral ulcer” --- was a significant hole in the backside of Mr. Pearson measuring 15 x 14 x 2.3 cm at the time of his death. A786. It led to serious infections --- fungemia, necrotizing fasciitis, osteomyelitis with exposed bone --- which in turn led to Mr. Pearson experiencing septic shock and death. A787. However, the family was not aware that Mr. Pearson had developed such a life-threatening injury while at MWHC, and only learned about how serious it was after his death. A660 at 140; A904; A1037 at 18-19.

The Funeral Director Shares with the Pearson Family a Horrible Photo of the Pressure Injury that Caused Mr. Pearson's Death

Patients with large stage IV pressure injuries are at risk for life-threatening sepsis and infection. A749 at 62. Mr. Pearson died on December 24, 2019, of septic shock and an infection. A787; A749 at 64. Ms. Pearson knew that her husband had a “tiny little” pressure injury, but the MWHC and Kaiser/MAPMG assured her that it was being treated and the problem handled. A660 at 140, lines 2-7. She was not aware of just how serious and horrendous the pressure sore was until the funeral home director, while preparing Mr. Pearson's body for burial, took a photo of the large and deep injury on Mr. Pearson's backside. A789; A904.

Ms. Pearson wondered how such an injury could happen while Mr. Pearson was in the hospital and being seen daily by doctors and nurses allegedly concerned about his health.

After this lawsuit was filed, Ms. Pearson sought an answer to this question and asked for any photos of Mr. Pearson's injury. The Defendants contended that they had no photos of Mr. Pearson's pressure injury. A738 at 20. However, nearly a year later, and only after a threat to compel production, that Plaintiffs received 2 “graphic” photos of Mr. Pearson's Stage 4 pressure injury from MWHC. A790; A791-797.

## SUMMARY OF ARGUMENT

The trial court erred in granting summary judgment because Plaintiffs properly invoked the doctrine of *res ipsa loquitur* to raise genuine issues of material fact as to whether Mr. Pearson's stage IV hospital acquired pressure injury – a “never event” as recognized by the Centers for Medicare & Medicaid Services (CMS) – was proximately caused by Defendants' negligence. The trial court's error in failing to apply *res ipsa loquitur* at the summary judgment stage in the context of this case lacked rationality and fairness where Plaintiffs proffered substantial circumstantial evidence. Defendants are subject to joint liability for negligence under the theory of apparent agency and a group approach to *res ipsa loquitur*, and the trial court erred in determining otherwise given Defendants' well-established coordinated business model of care. Furthermore, the trial court committed manifest error by excluding Plaintiffs experts' testimony on the basis that it is unsubstantiated by medical records and thus unreliable. DC law permits experts properly to invoke their knowledge and experience to review critically records and identify inaccuracies contained therein in the process of forming an opinion. Finally, the trial court gave no valid reason for summarily dismissing Plaintiffs' claim for lack of informed and disregarding the factual basis asserted.

## ARGUMENT

### I. The Trial Court Erred in Determining That the *Res Ipsa Loquitur* Doctrine is Inapplicable

On appeal, this Court reviews a “trial court’s grant of summary judgment *de novo*, applying the same standard as the trial court.” *Reeves v. Wash. Metro. Area Transit Auth.*, 135 A.3d 807, 811 (D.C. 2016). This Court considers “whether ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.’” *Id.*, quoting Super. Ct. Civ. R. 56 (c). “[O]ne who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant.” *Bruno v. W. Union Fin. Servs.*, 973 A.2d 713, 717 (D.C. 2009), quoting *Doolin v. Environmental Power Ltd.*, 360 A.2d 493, 496 (D.C. 1976). However, once satisfied, the burden of production then shifts to the non-moving party to demonstrate that a material fact is genuinely disputed. *Bruno*, 973 A.2d at 717. “In considering a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party, who is entitled to all favorable inferences which may reasonably be drawn from the evidentiary materials.” *Phelan v. City of Mt. Rainier*, 805 A.2d 930, 936 (D.C. 2002) (internal quotation marks and citations omitted).

The Court “may not resolve issues of fact or weigh evidence at the summary judgment stage.” *Fry v. Diamond Construction, Inc.*, 659 A.2d 241, 245 (D.C. 1995) (internal quotation marks omitted); see *Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C. 2009). It must determine whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Hunt v. District of Columbia*, 66 A.3d 987, 990 (D.C. 2013).

“*Res ipsa loquitur* permits a jury to infer negligence from the mere occurrence of an accident. The happening itself affords ‘reasonable evidence’ that the accident arose from a lack of due care.” *McCoy v. Quadrangle Dev. Corp.*, 470 A.2d 1256, 1259 n. 7 (D.C. 1983); see *Hailey v. Otis Elevator Co.*, 636 A.2d 426, 428 (1994); *Quin v. George Washington University*, 407 A.2d 580, 582 (1979). In a medical malpractice case, as in negligence cases generally, a plaintiff seeking to invoke the doctrine of *res ipsa loquitur* must demonstrate that:

(1) the occurrence is of the kind which ordinarily does not occur in the absence of someone’s negligence; (2) it must be caused by an agency or instrumentality within the control (exclusive or joint) of the defendant; (3) it must not have been due to any voluntary action or contribution on the part of the plaintiff.

*Otis Elevator Co.*, 636 A.2d at 428 (brackets and citations omitted); accord *Quin*, 407 A.2d at 582. Plaintiff must prove these requirements by a preponderance of the evidence. *Gubbins v. Hurson*, 885 A.2d 269, 282 (2005). It is well settled that the

applicability of *res ipsa loquitur* may be established by expert testimony and “if an expert can say as a matter of expert knowledge that the injury does not ordinarily occur unless caused by negligence, the jury should be permitted to infer negligence from the occurrence.” *Quin*, 407 A.2d at 583-584. Where a plaintiff cannot adduce direct proof as to the cause of an injury, “then the facts which can be established circumstantially may justify an inference by the jury that negligent conditions produced the injury.” *McCoy*, 470 A.2d at 1259. Notably, “[i]n such a case, a jury is not left in the domain of speculation, but they have circumstances upon which, as reasonable minds, they may ground their conclusions.” *Id.* (internal quotation marks and citation omitted).

Here, the trial court summarily deemed the doctrine of *res ipsa loquitur* inapplicable...wholly dismissing the idea out of hand without allowing discussion, stating:

So my question is, tell me a case where someone is in the hospital, and there’s medical malpractice, but we – but we – but we can’t – but the plaintiff can’t name any specific actor or any specific act, just that the result – this is just the result. But if you had *res ipsa*, you could get to the jury. But without *res ipsa*, which I’m not giving you, it doesn’t apply here.

Hearing Transcript at 18:22-25, 19:1-4. The trial court insisted that Plaintiffs case is “inverted” and “begs speculation from the jury.” Hearing Transcript at 19:18, 21:15-16, 20. Notwithstanding the trial court’s dismissive characterization of Plaintiffs’ case, the record establishes substantial circumstantial evidence that would justify an

inference that Defendants were negligent in their provision of care to Mr. Pearson, thus bypassing the “domain of speculation” and raising a genuine factual dispute as to proximate causation – a quintessential jury question. *McCoy*, 470 A.2d at 1259.

As fully detailed below, the record satisfies each condition for the application of *res ipsa loquitur* such that the trial court erred in denying its applicability in this case.

A. *A fatal Stage IV hospital-acquired pressure injury does not ordinarily occur in the absence of negligence*

As a predicate to understanding Plaintiffs experts’ opinions, it’s important to appreciate that there is no dispute that Mr. Pearson’s Stage IV pressure injury was hospital-acquired...meaning simply that he did not have any pressure injury before entering the hospital, and developed a Stage II injury that progressed to a Stage IV pressure injury while Defendants were treating him for an unrelated ailment. Kaiser’s corporate representative agrees with this fact:

6 Q: We've already taken you through the medical  
7 records and we've determined that this is a hospital  
8 acquired injury, correct?

9 A: In this situation, it seems to be.

10 Q: Not that it seems to be. I mean, based upon  
11 what I asked you, you testified earlier that he did not  
12 have any skin tears on admission and he ended up with  
13 Stage II, then a Stage IV pressure ulcer while he was in  
14 the hospital, isn't that correct?

....

18 A Yes.

A759.

Within this context, Plaintiffs proffered the expert testimony of Thureiyya K. Rodriguez DHA, MSN, COCN, WCN (hereinafter “Dr. Rodriguez”) and Salvador Guerrero, DO (hereinafter “Dr. Guerrero”) to establish that Mr. Pearson’s injury ordinarily would not occur in the absence of negligence.

Dr. Rodriguez holds a doctorate in healthcare administration and nursing registration in New York State, and conducted her wound, ostomy, and continence training at Emory University in Atlanta, GA. She has an active clinical practice where she treats patients for wound/ostomy/continence issues, and skin and wound conditions. She also provides education and training to clinical staff of hospitals and other health facilities. She has served as wound nurse for various healthcare facilities and has performed peer-review analyses for institutional clients. A69-75. In this case, Dr. Rodriguez opined:

It is my conclusion, within a reasonable degree of medical certainty or probability, that the Defendants, including nurses, nurses’ aides and physicians, failed to meet the standard of care required of healthcare professionals with similar backgrounds, that caused [decedent] to develop significant and serious pressure injuries during his hospitalization that he did not have on admission to the facility.

A63-68.

In support of her opinion, Dr. Rodriguez testified that the development of a Stage IV pressure injury evidenced a failure to maintain Mr. Pearson's skin integrity during admission and that the extent of such failure constitutes a "never event." A64; A946-947.

According to the National Quality Forum, "never events are errors in medical care that are clearly identifiable, preventable, and serious in their consequences for patients." A800. Never events are patient safety incidents that are preventable and so serious they should never happen. A811-812. In 2008, the Centers for Medicare and Medicaid Services designated Stage III and IV pressure injuries acquired after admission to a healthcare facility as never events. Notably, the "never" in the term "never event" does not suggest that such injuries are a rarity. Rather, it signals a consensus in the medical field that such injuries should never occur given that they are preventable through the use of evidence-based guidelines. A799-810. Insofar as Dr. Rodriguez identified decedent's injury as belonging to a class of injuries uniformly recognized as errors in medical care that are preventable, it is submitted that Dr. Rodriguez's expert opinion testimony establishes that, categorically, decedent's injury ordinarily does not occur in the absence of negligence.

Plaintiffs' second expert, Dr. Guerrero, is a Certified Wound Specialist Physician with more than a decade of experience in hospital, outpatient post-acute rehabilitation, and long-term care experience. His daily work involves counseling

facility administrators, directors of nursing, and medical directors on maintaining and optimizing standards of wound care and pressure injury prevention. He treats patients with similar conditions experienced by Mr. Pearson, and he has performed clinical evaluations, chart documentation, and weekly rounding with bedside surgical interventions, including debridement, biopsies, and local wound care. Earlier in his career, he served as wound care director for two hospitals. He has performed general and vascular surgical interventions. A32-34; A849.

Dr. Guerrero testified that “[i]f all of the standards of care had been followed and instituted starting with [Mr. Pearson’s] high risk with the multiple comorbidities this would never have happened.” A850.

Given a potentially long hospital stay, the standard of care required measures to ensure that he did not have skin-breakdown during the hospitalization that would result in pressure ulcers. A baseline nutritional evaluation including pre-albumin and PO intake is required, with close nutritionist follow-up to prevent such skin-breakdown. Because of baseline functional status and continence evaluation, Mr. Pearson required assist minimally with repositioning. He therefore was a candidate for early use of a specialized mattress (low air loss mattress), then later strict repositioning every 2 hours, wedge pillows to off-load high risk areas of skin break down (sacrum and buttocks), off-loading boots to prevent deep tissue injuries to calves and heels, and moisture-protectant skin barrier creams to prevent skin break down due to incontinence.

A900.

Defendants sought to characterize the existence of Mr. Pearson’s “comorbidities” -- - more than one illness--- as evidence that negligence was not the cause of the injury and thereby advance a theory that the injury was “unavoidable”. In contrast, Dr.

Guerrero notes that people come to the hospital because they are sick, often with multiple health problems, and the “comorbidities” upon admission are expected. It is the Defendants’ job --- Mr. Pearson’s medical team --- notes Dr. Guerrero, to develop and implement an individualized care plan taking into account his comorbidities, and ensuring that stage III and IV pressure injuries do not occur. A834.

Based on the foregoing, Dr. Guerrero testified that if the standard of care had been followed, Mr. Pearson’s specific pressure injuries *would never have happened*. Dr. Guerrero testifies that only in a very limited circumstance can pressure injuries be deemed “unavoidable” --- described in the literature as “end-of-life” injuries brought on by imminent death in hours or a day or so --- that does not apply here. A844 at 99-100. Even assuming circumstances that do not apply (facts not in evidence), such an assumption does not undermine the reliability of his testimony as it pertains specifically to Mr. Pearson’s injury nor renders the doctrine of *res ipsa loquitur* inapplicable. *See Rivera v. Jewish Home Life Care*, 2024 N.Y. Misc. LEXIS 13868, 10 (New York County, October 30, 2024) (“That there may be a variety of explanations for the decedent’s injuries is not a reason to grant defendant summary judgment or bar the use of the *res ipsa loquitur* doctrine.”); *see also McGuire v. Cold Spring Hills*, 2020 N.Y. Misc. LEXIS 2908, 12-13 (Queens County, May 21, 2020) (denying defendant’s summary judgment motion dismissing claims against it for

negligence and medical malpractice under theory of *res ipsa loquitur* where defendant expert failed to explain how or why decedent's co-morbidities would have caused decedent's sacral pressure ulcer to progress or prevent it from healing, regardless of quality of care).

Dr. Guerrero testified that “[o]nce a pressure ulcer is identified, if you correct what the contributing factors have been for that pressure ulcer you can heal that ulcer.” A850 at 122-123. Specifically, Dr. Guerrero opined that “if you institute the proper treatment and care you can heal those wounds and prevent them from progressing.” *Id.* Here, Mr. Pearson initially developed two Stage II pressure ulcers while under the care of Defendants’ medical personnel. Following the identification thereof, Mr. Pearson’s injury progressed to a Stage IV pressure ulcer. Accordingly, insofar as Defendants-Appellants medical personnel indisputably failed to prevent the Stage II pressure ulcer from progressing, and it was not an “end-of-life” situation, Dr. Guerrero’s testimony establishes that Defendants’ medical personnel failed to adhere to the proper standard of care. *See e.g. Rigney v. North Shore Univ. Hosp.*, 2013 N.Y. Misc. LEXIS 2130, 18 (Suffolk County, May 14, 2013) (plaintiff’s expert raised factual issues precluding summary judgment in medical malpractice case under the theory of *res ipsa loquitur* where expert testified that “[h]ad the staff properly carried out physicians’ orders and complied with proper standards of skin care, a pressure ulcer would not have developed or progressed”).

Dr. Guerrero also stated in his expert report that a hospital-acquired stage III or stage IV pressure injury such as the injury occurring to Mr. Pearson while a patient of Defendants is a “never event” and a “Hospital Acquired Condition” for which CMS will not reimburse the hospital. A901.

B. *Defendants exercised exclusive joint control of Mr. Pearson’s medical care*

The trial court’s finding that the doctrine of *res ipsa loquitur* is inapplicable in this case because there is no identifiable harm-causing instrumentality constitutes plain error in both fact and law. *See* Hearing Transcript at 19:10 (“[T]here’s no instrumentality.”). Initially, the record sufficiently establishes that the harm was caused by something only Defendants controlled – the care Defendants’ medical personnel provided, or failed to provide, Mr. Pearson. It is well established that an inference that an injury was “probably” caused by an instrumentality under a defendant’s exclusive control “may flow automatically where a defendant is in complete control of a procedure which results in injury, and he alone has the means of knowing what occurred. To force the plaintiff in such a situation to allege how and by what means his injury occurred, it has been urged, would do violence to the principle behind *res ipsa loquitur*. *Quin*, 407 A.2d at 584; *see Krebs v. Corrigan*, 321 A.2d 558, 560 (1974) (finding a person can be the harm-producing instrumentality, noting “the *sub silentio* presumption in most medical malpractice cases” is “that a person’s body usually is within his [or her] exclusive control.”). It is uncontested that Defendants’ medical

personnel were in exclusive joint control of Mr. Pearson's care and that said medical personnel were in exclusive control of their respective bodies in administering, or failing to administer, care to Mr. Pearson throughout his hospital admission.

Furthermore, in the context of medical malpractice, where experts are not able to identify with particularity the precise mechanism of injury, they may rely on circumstantial evidence to reason inferentially and opine that medical professionals breached a standard of care that caused harm. *See e.g. Meda v. Brown*, 318 Md. 418, 426-428 (1990) (finding *res ipsa loquitur* applicable where experts opined that anesthesiologist's allowance of injury to ulnar nerve in operating room was not in keeping with the standard of care even though experts could not identify whether the arm was improperly positioned initially or improperly secured to become improperly positioned at a later point). Here, Plaintiffs' expert testimony makes Plaintiffs' theory that Defendants' medical personnel failed to, among other things, properly turn and reposition Mr. Pearson reasonably probable and more probable than any other theory based on the evidence. The record thus satisfies the second condition for application of *res ipsa loquitur* because Defendants exercised exclusive joint control of Mr. Pearson's medical care.<sup>1</sup> Finally, the trial court's finding concerning

---

<sup>1</sup> It is noted that the *res ipsa loquitur* jury instruction does not include the term "instrumentality." Rather, the second element is described as follows: "[T]hat the accident was caused by something only [Defendant] controlled." Instruction § 5.11 [1] RES IPSA LOQUITUR.

the alleged lack of a harm-causing instrumentality as a basis to deny application of *res ipsa loquitur* was made in error given that courts have found *res ipsa loquitur* applicable in instances where not even the precise nature of the harm-causing instrumentality could be identified. *See e.g. Maryland Casualty Co. v. Pennsylvania National Mutual Casualty Insurance Co.*, 260 N.W.2d 380 (Wis. 1977) (Court approved *res ipsa loquitur* instruction against defendant where most likely cause of hotel room fire was cigarette smoking in bed, despite lack of evidence that defendant-guest smoked in the hotel room); *Fowler v. Seaton*, 394 P.2d 697 (Cal. 1964) (finding *res ipsa loquitur* applicable where child plaintiff came home from daycare with concussion/optical nerve injury and despite a lack of evidence concerning any harm-causing instrumentality).

C. *It is beyond dispute that Mr. Pearson did not voluntarily contribute to the development and fatal progression of the injury*

It is uncontested that Mr. Pearson did not voluntarily contribute to the development and fatal progression of his injury. Defendants cannot in good conscious suggest that Mr. Pearson is responsible for a hospital-acquired injury...and injury that he did not have when he entered the Medstar Washington Hospital Center, but an injury that caused infection, septic shock, and ultimately took his life. A545; A787. Accordingly, the third condition for application of *res ipsa loquitur* is satisfied on this record. A759.

While the question of whether *res ipsa loquitur* applies is preliminary a question of law for the trial court to decide, such decision, like the decision of whether to ultimately permit the instruction, must be based upon a factual foundation. Here, the trial court outright refused to consider the theory of *res ipsa loquitur* and disallowed counsel from asserting oral argument with regard thereto even though the factual foundation was met in Plaintiffs' oppositional filings. Much like the determination of whether the *res ipsa loquitur* instruction is appropriate must be made based on the factual foundation at trial, the determination of whether the doctrine is applicable during motion practice must be made on the basis of a sufficient factual predicate. *See Bell v. Taplin*, 2019 D.C. Super. LEXIS 204 (June 6, 2019) (court permitted plaintiff to pursue *res ipsa loquitur* argument at summary judgment stage, noting that before giving any instruction to the jury, plaintiff must establish the foundation for the instruction at trial).

Just as in *Bell v. Taplin*, the trial court erred in denying Plaintiffs the right to pursue a *res ipsa loquitur* argument at the summary judgment stage, and the refusal to permit Plaintiffs from fully placing on the record during the hearing a sufficient factual predicate for the application of the doctrine.

This is a case where the doctrine of *res ipsa loquitur* is applicable. The trial court based its quick conclusion to the contrary, in part, on Plaintiffs' purported inability to name a specific actor or specific act that caused Mr. Pearson's injury.

See Hearing Transcript at 18:22-25, 19:1-4. But Plaintiffs' record evidence directly addresses each of the trial court's questions. To that end, both experts testified that *all members* of Mr. Pearson's medical team had a responsibility to prevent the initial development of the Stage II pressure injury – and that, by *very specific omissions* of failing to turn and reposition Mr. Pearson, and a failure to maintain skin integrity from the early days of his hospitalization, all members of the team failed to meet their collective responsibility. Plaintiffs' experts also testified that all members of the medical team had a responsibility to treat and heal the Stage II pressure injury; the record demonstrates that all members once again failed inasmuch as the injury progressed into a fatal Stage IV pressure injury. The evidentiary record directly addresses the very factors that the trial court refused to acknowledge: that a fatal Stage IV pressure injuries does not occur absent negligence; that Mr. Pearson's medical team was in the exclusive control of his care; and that Mr. Pearson did not contribute to his injury and death. Having made the above proffer, the burden of proving that there was no negligence and that the injury was unavoidable is jointly placed on Defendants. *Otis Elevator Co.*, 636 A.2d at 428.

Plaintiff respectfully requests that this Court find that the trial court committed reversible error by granting summary judgment in favor of Defendants on the basis that *res ipsa loquitur* is inapplicable.

## II. The Trial Court Erred by Failing to Impose Liability on all Defendants Under the Theory of Apparent or Ostensible Agency

On appeal, this Court reviews a trial court's finding of "ultimate facts" – that is, "facts that have a 'legal consequence,'" de novo. *In re Krame*, 284 A.3d 745, 752-753 (D.C. 2022). No deference is owed to the trial court. *Id.* at 753.

While the negligence of one generally cannot be assigned to another, in circumstances involving apparent or ostensible agency, a group approach to *res ipsa loquitur* is appropriate and the trial court erred in determining otherwise given the nature of Defendants coordinated business care operational model. "If two parties have an ongoing relationship pursuant to which they share responsibility for a dangerous activity, and if an accident happens establishing the negligence of one of the two, imposing *res ipsa loquitur* liability on both is proper." Restatement 3d of Torts: Liability for Physical and Emotional Harm, § 17; *see Greet v. Otis Elevator Co.*, 187 A.2d 896, 896 (1963) (where joint control of the instrumentality of harm exists, *res ipsa loquitur* may apply against multiple defendants). In medical malpractice cases in which a team of personnel is responsible for administering care to a patient, where a jury finds that the harm was more likely than not was caused by negligence, a jury may be uncertain as to which member of the medical team committed a negligent act. Under such circumstances, courts permit the doctrine of *res ipsa loquitur* to be asserted against all members of the medical team. Restatement 3d of Torts: Liability for Physical and Emotional Harm, § 17.

Here, the record is clear that a team of medical personnel administered care to Mr. Pearson, and Plaintiffs' experts testified that all members of the team were responsible for meeting the standard of care owed to Mr. Pearson. To that end, Dr. Guerrero opined that "all nurses and staff involved in [decedent's] care and treatment (not just the wound care nurses) as well as the attending doctors coordinating and supervising his care" were required to meet the applicable standard of care. A900. Dr. Rodriguez similarly opined that "[a]ny healthcare professional who provided care to the patient is responsible and so they are all accountable for the standard of care and maintaining the skin integrity." A961 at 157-159.

Turning to the related doctrine of apparent agency, while it appears this Court has not made a determination on the issue of apparent or ostensible agency, trial court judges have looked to Maryland case law to provide clarity on issues pertaining to the law of agency. *See, e.g., Bishop v. Capitol Medical Center*, No. 09-CA-5930-M (04/07/2020); *Fitzgerald v. The Anderson Clinic, et. al.*, 2017 CA 007721 M; (DC S Ct. Pasichow, June 2021). The doctrine of apparent agency applies as a matter of law when the evidence establishes: (1) that the apparent principal created, or acquiesced in, the appearance that an agency relationship existed; (2) the plaintiff relied on the appearance of an agency relationship in seeking the services of the apparent agent; and (3) the plaintiff's reliance was reasonable. *Mehlman v. Powell*, 281 Md. 269 (1977); The Restatement (Second) of Agency § 267.

Here, the record contains ample evidence to support a finding that the doctrine of apparent agency applies to Defendants as a matter of law. To that end, in a general sense, Defendants intentionally treat patients collaboratively and seamlessly for business purposes. Kaiser selected MWHC as one of its Kaiser Premiere Hospitals to further this business and professional relationship. *Ex. 23a. What are Kaiser Premiere Hospitals; and Ex. 23b. Kaiser Premier Hospitals by Regions (screenshots from Kaiser's website)*. The structure of the Defendants relationship is designed to “present” to the public one institution providing coordinated care.

In the specific instance of Mr. Pearson’s medical care, the Pearson family accepted and relied on the image of “one institution” providing care. The doctors and nurses are agents of both principals MWHC and Kaiser, regardless of who pays their salaries. The Pearson family was often uncertain which organization the various doctors and nurses worked for. Defendant MWHC presented Defendant Kaiser doctors and nurses as part of the team responsible for care, and Defendant Kaiser doctors and nurses did the same for Defendant MWHC personnel. Both Defendants presented medical professionals as having the authority to act on their behalf to provide patient care to Mr. Pearson. As stated, this seamless and coordinated care constitutes the essence of their business model...benefitting the Defendants as much as Mr. Pearson. The Pearson family’s reliance thereupon was indisputably reasonable.

Notwithstanding the foregoing, and in direct contradiction of *Mehlman*, the trial court rejected a group approach to *res ipsa loquitur*, and refused to impose liability against both Defendants under the theory of apparent agency. At the hearing, the Court stated: “[L]et me understand the structure here. Were some of the physicians employed Medstar [Washington Hospital Center] or all the physicians Kaiser employees?” *Hearing Transcript* at 22:2-4. Counsel for Defendant Kaiser responded:

[T]here were Kaiser physicians involved because they – this was a Kaiser patient. That’s why he was admitted to – or one reason why he was sent to Washington Hospital Center because Washington Hospital Center, Kaiser has – you know, is affiliated with Medstar there. So there are Kaiser physicians there. But there are, though, Medstar physicians who are involved with the care of the patient as well.

Hearing Transcript at 22:6-14. Counsel’s summation illustrates the premise for the imposition of liability under the theory of apparent agency: Defendants have an established affiliation that resulted in Mr. Pearson’s care team consisting of a seamless blend of both MWHC personnel and Kaiser personnel. The trial court acknowledged that Defendant MWHC and Defendant Kaiser both employed doctors that cared for Mr. Pearson, yet deemed it “untenable” that a reasonable jury could find that Mr. Pearson’s entire care team, consisting of medical personnel employed by both Defendants, breached the standard of care owed to Mr. Pearson, thereby causing his injury. *Hearing Transcript* at 48: 5, 9.

Despite stating, “I accept the standard of care. It’s not supposed to happen,” the trial court concluded that Plaintiffs’ inability to identify which specific member

of Mr. Pearson’s coordinated care team breached the standard of care was fatal to all claims, without giving due consideration to the existence of the agency relationship or its practical implications for the care Mr. Pearson underwent that resulted in a fatal pressure injury. In this case, it is critical to recall that unlike the negligent performance of a surgery that can be connected to one care provider, pressure injuries develop over time and involve multiple care providers; an interdisciplinary approach that encompasses all care providers must be taken with respect to prevention as well as the imposition of liability. A961 at 159; A963 at 167.

Insofar as personnel employed by both Defendants comprised the team of medical personnel responsible for the care administered to Mr. Pearson, and Defendants have an ongoing agency relationship, the trial court erred by rejecting the imposition of liability on both Defendants for all doctors and nurses, regardless of who pays their salaries, under the theory of apparent agency.

### **III. The Trial Court Abused Its Discretion by Excluding the Testimony of Plaintiffs’ Experts at the Summary Judgment Stage**

This Court reviews “a trial court’s admission or exclusion of expert testimony for abuse of discretion and only disturb the lower court’s ruling when it is ‘manifestly erroneous.’” *Dickerson v. District of Columbia*, 182 A.3d 721, 726 (D.C. 2018), quoting *Benn v. United States*, 978 A.2d 1257, 1273 (D.C. 2009). However, a trial court’s exclusion of expert testimony must be “based on a reasoned and reasonable exercise of discretion.” *Girardot v. United States*, 92 A.3d 1107, 1109

(D.C. 2014) (quoting *Benn*, 978 A.2d at 1276) (brackets omitted). “Though the trial court's ruling is discretionary, the trial court must ‘take no shortcuts’ and ‘exercise its discretion with reference to all the necessary criteria.’” *Dickerson* at 721. (quoting *Ibn–Tamas v. United States*, 407 A.2d 626, 635 (D.C. 1979)).

Whether under a medical negligence or *res ipsa loquitur* standard, for expert testimony to be admissible, the proffered expert’s testimony “must meet basic standards of competency and relevancy,” address national norms, and not be based merely on local custom or personal opinion. *Hawes v. Chua*, 769 A.2d 797, 806 (D.C. 2001). This requirement is founded on the prerequisite that any expert testimony not be based on mere speculation or conjecture. *See Washington v. Washington Hosp. Center*, 579 A.2d 177, 181 (D.C. 1990); *see also Sponaugle v. Pre-Term, Inc.*, 411 A.2d 366, 367 (D.C.1980) (“An expert witness opinion must be based on fact or adequate data. It is properly received so long as it is not a mere guess or conjecture. While absolute certainty is not required, opinion evidence that is conjectural or speculative is not permitted.”).

While the admissibility of such testimony is governed by Fed. R. Evid. 702, pertinent evidence based on scientifically valid principles will satisfy reliability and relevant standards. *Motorola, Inc. v Murray*, 147 A.3d 751, 756-57 (D.C. 2016); *Lewis v. United States*, 263 A.3d 1049 (D.C. 2021).

In this case, the pertinent issues involve the prevention and treatment of pressure injuries, whether Defendants’ medical professionals met the standard of care in their treatment of Mr. Pearson, and if they did not, whether the violations caused his injury and death. The trial court took no issue with Plaintiffs experts’ education, experience, knowledge, skill or training in the field of wound-care prevention and treatment. Rather, the trial court determined that the proffered expert testimony is unreliable because of the conclusion that both experts reached: that Mr. Pearson’s injury would not have occurred if his medical team had been turning and repositioning him, and ensuring skin integrity, among other medical treatments, pursuant to the applicable standard of care. The trial court took issue that both experts disagree with and dispute the factual record – specifically, Defendants’ medical records that allege that medical personnel turned and repositioned Mr. Pearson every two hours. Hearing Transcript at 32:9-18.

However, it is for Defendants to address Plaintiffs experts’ conclusions through rigorous cross-examination and opposing expert testimony. *District of Columbia v. Wilson*, 721 A.2d 591, 600 (D.C. 1998) (explaining that the conclusions drawn from an expert’s opinion “‘are subject to rigorous cross-examination,’ and after that cross-examination has been conducted, the jury must be deemed intelligent enough to assess the reliability of the expert testimony.”) (quoting *In re Melton*, 597 A.2d 892, 903 (D.C. 1991)).

Accordingly, the trial court's determination to exclude the expert testimony on this basis falls outside the bounds of reasonable judgment. Rather than render the experts' testimony unreliable, their disagreement with the accuracy of Defendants-Appellants' record of care given their education, experience, knowledge, and training in wound prevention and care creates a genuine dispute of material fact that must be resolved by a jury. It is axiomatic that this disagreement, by its very nature, requires the resolution of fact and the weighing of evidence – functions inappropriate for the trial court to perform at the summary judgment stage. When taken in totality, the Plaintiffs experts' opinions satisfy the standard of reliability.

A. *Dr. Guerrero's expert testimony meets the standard of reliability*

In his expert report, Dr. Guerrero described the standard of care required for pressure injury prevention and treatment for a person suffering from multiple comorbidities such as Mr. Pearson:

Mr. Pearson arrive at Medstar Washington Hospital Center as a patient suffering from possible heart ailment with a history of kidney disease. Given a potentially long hospital stay, the standard of care required measures to ensure that he did not have skin-breakdown during the hospitalization that would result in pressure ulcers. A baseline nutritional evaluation including pre-albumin and PO intake is required, with close nutritionist follow-up to prevent such skin breakdown. Because of baseline functional status and continence evaluation, Mr. Pearson required assist minimally with repositioning. He therefore was a candidate for early use of a specialized mattress (low air loss mattress), then later strict repositioning every 2 hours, wedge pillows to off-load high risk areas of skin break down (sacrum and buttocks), off-loading boots to prevent deep tissue injuries to calves and heels, and moisture protectant skin barrier creams to prevent skin break down due to incontinence. This standard of care must be met by all nurses and staff

involved in Mr. Pearson's care and treatment (not just the wound care nurses) as well as the attending doctors coordinating and supervising his care.

A900.

Dr. Guerrero opined that Defendants failed to meet the standard of care in numerous ways, and that such failures caused Mr. Pearson to go from a patient with no pressure injury at admission to a patient with a stage II pressure injury that ultimately progressed to a stage IV pressure injury. This stage IV pressure injury developed extensive necrosis and became infected, leading to a painful debridement (surgical removal of infected and dead or damaged tissue in the wound to help the remaining tissue heal) at bedside, septic shock, sepsis, fungemia, and death. *Id.*

Dr. Guerrero stated that Defendants "failed to identify [these] risks and provide basic preventive standard of care, including off-loading techniques, adequate protective skin care to prevent skin break down, and proper and timely use of pressure relief devices (wedge pillows, low air loss mattress) early on admission." *Id.* Consistent with the above basic preventive measures, Dr. Guerrero also opined that both doctors and nurses employed by Defendants failed to turn and reposition Mr. Pearson regularly every 2 hours, as is recommended to comport with the standard of care. *Id.*

Failing to off-load Mr. Pearson's sacral area consistently caused the wound to develop and grow, contends Dr. Guerrero, despite Defendant MWHC claiming that the "record" establishes that its nurses "always" performed the task:

If this would have taken place, and I just reviewed it briefly, if this was in fact what was happening and actually they were doing the repositioning, then Mr. Pearson wouldn't have developed that Stage II progression [to a] stage unstageable or a Stage IV.

A857 at 152; A903. Dr. Guerrero's position in this regard is supported by the accounts of Mr. Pearson's family members. During their long visits with Mr. Pearson (for hours nearly every day for Ms. Pearson), they observed that Mr. Pearson was not being turned and repositioned by medical personnel at all: "And they were supposed to have been turning him every two hours, changing his position, repositioning him, and it wasn't happening." A658.

Dr. Guerrero's testimony, moreover, supports a *res ipsa loquitur* theory of negligence. The doctor's position is that pressure injuries generally do not occur in the absence of a deviation in the standard of care. When asked whether the occurrence of a pressure ulcer necessarily means that there was a breach in the standard of care, Dr. Guerrero replied, "If all of the standards of care had been followed and had been instituted starting with the identification of Mr. Pearson's high risk with the multiple comorbidities, this would never have happened. A850. Dr. Guerrero's position is the same regarding the progression or worsening of an existing pressure injury: it ordinarily does not happen in the absence of negligence. To that end, he testified, "Once a pressure ulcer is identified, if you correct what the contributing factors have been for that pressure ulcer you can heal that ulcer. I do this every day. I see this every day in the nursing homes pressure ulcers, at certain

stage, and if you institute the proper treatment and care you can heal those wounds and prevent them from progressing. *Id.*

B. *Dr. Rodriguez's expert testimony meets the standard of reliability*

Dr. Rodriguez agrees with Dr. Guerrero that multiple violations of the standard of care led to the development of a hospital-acquired pressure injury for Mr. Pearson. A63-68. She further opined that “[T]he facility will be held responsible for hospital-acquired pressure injuries.” A947 at 104. Dr. Rodriguez further supports the contentions of Dr. Guerrero and the Pearson family that Mr. Pearson was not repositioned despite medical records stating that it was occurring every 2 hours from 10/5/19 to Mr. Pearson’s death on 12/24/19. She opined that the Defendants only implemented prevention strategies once Mr. Pearson was at-risk for friction and shearing as documented on the Braden scale, rather than on his admission given his risk status. Furthermore, she highlighted that from 10/4/2019 through 12/24/2019, the nursing documentation directed the medical care team to “reposition [Mr. Pearson] every 2 hours.” The medical records indicate, however, that several nurses were not following the protocol of repositioning Mr. Pearson. To that end, the medical records state that Mr. Pearson was shifting his position independently, suggesting that Defendants’ medical personnel were not actually performing the directed repositioning function. A64.

The Defendants' inconsistent documentation regarding a turning and repositioning schedule for Mr. Pearson constitutes one basis for Plaintiffs' experts to refute Defendants' position that Mr. Pearson was being turned and repositioned by medical personnel as per a schedule in accordance with the standard of care. A857 at 152; A903. In addition, Nurse Rodriguez opined that medical personnel violated the standard of care by failing to accurately maintain Mr. Pearson's wound documentation. Dr. Rodriguez pointed to inconsistencies in the record concerning skin assessments and the Braden scale – a scoring system used by nurses and other health professionals to assess a patient's risk for pressure injuries. Dr. Rodriguez found that the medical records reflect highly irregular and inconsistent scoring, thereby rendering the scoring unreliable in evaluating Mr. Pearson's pressure injury risk. Finally, Dr. Rodriguez opined that certain documentation appeared to be copy and pasted from previous entries, suggesting lack of authenticity and accuracy, and possibly fraud, with regard to Defendant Hospital's documentation of turning and repositioning. A917-918. Such documentation clearly violates commonly accepted standards (core components) for medical record documentation. A1017, items ##6, 12, and 13.

Based on the foregoing, the trial court's exclusion of Plaintiffs' expert testimony on the grounds that it is unreliable because it disputes multiple aspects of the medical record constitutes an abuse of discretion. The trial court took no issue

with either of the experts' qualifications. Rather, the trial court took issue with the experts' conclusions, finding that their respective opinions were unreliable because they did not comport with Defendants' medical records. There is a critical and distinct difference, however, between disregarding and discrediting a medical record. In this case, both experts reviewed Mr. Pearson's medical records for accuracy and inconsistencies with respect to the development and progression of a fatal Stage IV hospital acquired pressure injury, and both experts formed their opinion as to Defendants deviation from the standard of care therefrom. Insofar as the foregoing expert testimony met the standard for reliability, the trial court abused its discretion in excluding it at the summary judgment stage for identifying a genuine dispute as to the care Mr. Pearson received – one which must be resolved by a jury.

#### **IV. The Trial Court Erred by Dismissing Plaintiffs -Appellants' Lack of Informed Consent Claim**

On appeal, this Court reviews a “trial court’s grant of summary judgment *de novo*, applying the same standard as the trial court.” *Reeves*, 135 A.3d at 811.

To recover on a claim of lack of informed consent, a plaintiff must prove that there was an undisclosed risk that was significant; that the risk materialized, injuring plaintiff; and that plaintiff would not have consented to the procedure if he had been informed of the risk. *Hill v. Medlantic Health Care Grp.*, 933 A.2d 314, 329-30 (D.C. 2007) (internal citations omitted). “A material risk is a risk which a reasonable person would consider significant in deciding whether to undergo a particular

medical treatment.” *Id.* at 330. “[A]t a minimum, a physician must disclose the nature of the condition, the nature of the proposed treatment, any alternate treatment procedures, and the nature and degree of risks and benefits inherent in undergoing and in abstaining from the proposed treatment.” *Hill*, 933 A.2d 330 (emphasis added) (internal citations omitted).

At the hearing, while attempting to describe the purported “ipso facto” flaw in Plaintiffs -Appellants’ experts’ opinion that Defendants’ negligence caused Mr. Pearson’s injury, the trial court briefly referenced Plaintiffs -Appellants’ lack of informed consent claim, stating:

Well, for example, for informed consent, I’m, like, informed consent as to what is [-] what the – that – so basically if I – if you’re in the hospital, so now do you have to tell people if you’re in the hospital for an extended stay, even if you come in and you think it’s going to be overnight, that if you’re here for an extended stay and you’re not mobile, if you’re not mobile, you may develop a –

*Hearing Transcript* at 10:14-21. The foregoing constitutes the only mention of Plaintiffs’ lack of informed consent claim at the hearing, aside from the trial court’s brief summation shortly thereafter: “Informed consent as to what?” *Hearing* at 10:24. Plaintiffs were not afforded an opportunity to respond at the hearing. The record evidence, however, demonstrates that Plaintiffs had theretofore directly and succinctly answered the Court’s question: Defendants failed to fully inform Mr. Pearson that a 3-month hospitalization – involving lying on his backside for nearly all of that time – would result in a fatal Stage IV hospital-acquired pressure injury.

A566-567. Plaintiffs believed this failure to be significant, and the risk materialized in the injury and death of Mr. Pearson.

As fully set forth in the record, Defendants failed to disclose reasonably foreseeable risks with respect to their management of Mr. Pearson's long-term hospitalization. The risk of a fatal Stage IV hospital-acquired pressure injury, along with the associated risks of pain, infection, and disfigurement were known to Defendants, but never disclosed to Mr. Pearson. Moreover, Defendants failed to disclose the severity of the injury following its discovery insofar as Ms. Pearson only learned the extent and impact of the injury after Mr. Pearson's death. A567-568; A660 at 140; A789 (photo); A904; A1037 at 18-19.

In failing to fully inform – and the deceiving – Mr. Pearson as to the risks associated with his long-term hospitalization at MWHC, Defendants prevented Mr. Pearson and his family from making a knowledgeable evaluation of his condition and taking action thereupon. Ample record evidence indicates that had Mr. Pearson and his family been fully informed of the aforementioned risks, he would have insisted that he be transferred to a skilled nursing facility that was fully prepared to properly treat and heal the injury before it advanced to its fatal state. A1042 at 40; A663 at 149; A680 at 216-219; A789 (photo); A791-797. Additionally, the record demonstrates that although Dr. Rodriguez began to give her opinion concerning Defendants' failure to follow the recommendation of Kaiser's Patient

Care Coordinator (PCC) to transfer Mr. Pearson from MWHC to a subacute rehabilitation facility, Defendants' counsel discontinued the line of questioning so the opinion could not be provided on the record. A943 at 88.

The trial court summarily disposed of Plaintiffs' lack of informed consent claim despite record evidence and argument that had Mr. Pearson been fully informed of the risk of developing a fatal Stage IV hospital-acquired pressure injury by undergoing a 3-month hospitalization at MWHC, he would have foregone the lengthy hospitalization and sought alternative treatment. As the hearing transcript demonstrates, the trial court gave no valid reason for dismissal of Plaintiffs lack of informed consent claim. Moreover, the trial court's inquiry, "Informed consent as to what," suggests that the trial court failed to consider the factual basis for Plaintiffs - Appellants' claim, as fully set forth in the record.

Accordingly, the trial court's failure to consider Plaintiffs lack of informed consent claim and subsequent dismissal thereof is unsupported by substantial evidence. Given that "summary judgment must be based on a review of the entire record, giving the plaintiff the benefit of all favorable inferences that can be drawn from the record," *Pope v. Romac Int'l*, 829 A.2d 945, 947 (D.C. 2003) (internal quotation marks and citation omitted), the trial court's failure to comprehensively review the record on the issue of lack of informed consent necessitates that the trial court's decision be reversed and the case remanded for proper consideration.

## CONCLUSION

Based on the foregoing, viewing the evidence in the light most favorable to Plaintiffs, and affording the full favorable effect of all reasonable inferences drawn therefrom, genuine disputes of material facts requiring resolution by a jury exist such that the trial court's grant of summary judgment was in error. Further, the trial court erred in failing to apply *res ipsa loquitur*, excluding expert testimony, and refusing to consider a claim for lack of informed consent.

WHEREFORE, Plaintiffs respectfully request that this Court REVERSE the trial court's order of summary judgment and REMAND the matter for further proceedings wherein Plaintiffs are permitted to pursue medical malpractice under the theory of *res ipsa loquitur* and the jury may infer negligence from the circumstances of the injury if it finds the expert testimony credible.

Respectfully submitted,  
Sylvia Pearson, PR  
Estate of Barry Michael Pearson

By: /s/ George L. Garrow, Jr., Esq.  
George L. Garrow, Jr., Esq. Bar #393213  
The Garrow Law Firm, PLLC  
300 New Jersey Avenue, NW, Suite 300  
Washington, DC 20001  
202-469-3411 phone  
202-280-1120 fax  
[ggarrow@me.com](mailto:ggarrow@me.com)  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, Melissa Pickett, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by THE GARROW LAW FIRM, PLLC, counsel for the Appellants to print this document. I am an employee of Counsel Press.

On the **June 30, 2025**, this document will be filed via the Court's electronic filing system which will send a notice of filing and service to all registered users.

Dated: June 30, 2025

/s/ Melissa Pickett  
Melissa Pickett  
Counsel Press