

***Appellate Decisions of Interest***  
***Prepared by Brown & Tarantino, LLC***

*Germaine v. Yu, et al.*

Appellate Division, Second Department (March 18, 2008)

**Guiding Principle:** An attending physician is not responsible for any medical malpractice that may occur in the treatment of a hospital patient *after* the attending physician transfers the responsibility of the patient's care to another attending physician and leaves the hospital.

**Summary of the Facts:** Plaintiff Florence Germaine brought a medical malpractice action to recover damages against a resident physician and an attending physician, Dr. S., both of whom treated the plaintiff at the emergency room of Stony Brook Hospital. The plaintiff presented at the emergency room complaining of abdominal pain, nausea, and constipation. Both the resident and attending physician examined the plaintiff and several tests were ordered. Three hours later, the attending physician's shift ended and he left the hospital after transferring the plaintiff's care to another attending physician. The plaintiff remained in the hospital while further tests were ordered and completed, and the resident continued to care for her. Five hours later the plaintiff was discharged with a diagnosis of diverticulitis. Three days later, she was admitted to another hospital where she underwent emergency surgery for peritonitis and a perforated sigmoid colon.

The plaintiff sued the resident and the attending, Dr. S., arguing, among other things, that those physicians committed medical malpractice in their negligent decision to discharge her from the hospital and their negligence caused her to be subsequently hospitalized and undergo surgery. The plaintiff further claimed Dr. S. was negligent in his failure to adequately supervise the resident.

Dr. S. made a motion for summary judgment in the lower court wherein he argued that he provided proper care for the plaintiff and thereafter transferred her care to another attending physician when he left the hospital. The lower court denied the motion and Dr. S. appealed.

**Ruling of the Court:** A unanimous Appellate Division reversed the lower court's decision and ruled that Dr. S. properly transferred responsibility for the care of the plaintiff to another attending physician, and thus was not responsible for any departures from accepted medical practice that occurred thereafter in either the supervision of the resident or the decision to discharge the plaintiff.

**Reasoning:** The Appellate Division noted that the plaintiff failed to provide proof adequate to defeat Dr. S.'s evidence that he transferred responsibility for the plaintiff's care to another attending physician five hours before the plaintiff was discharged from the hospital. Hence he was not responsible for any care given to the plaintiff after he left, including any subsequent care provided by the resident physician.

**Editor's Note:** It is important to note in this case that Dr. S. was able to prove, via an expert's affidavit, that he transferred the plaintiff's care to another attending physician and that any negligence that occurred in the plaintiff's care occurred *after* his care. Hence, Dr. S. was no longer responsible for the actions of the resident once he left. Responsibility for the resident's care was transferred to the new attending physician. The facts of this case, and the Appellate Court's reasoning, are important insofar as they may limit an attending physician's liability for any malpractice committed by residents of a hospital.

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