

CO 7/2025 MPT 1 - Selected Answer #1

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To: Sydney Nichols
From: Examinee
Date: July 29, 2025
Re: Lowe v. Jost-- Draft of Brief

Draft of Brief Provisions

(1) the Court should Qualify Dr. Shulman as an expert and admit her opinion testimony

Dr. Shulman should be qualified by the Court as an expert witness. To be qualified as an expert, the witness must satisfy the requirements under Franklin Rules of Evidence 702. Dr. Shulman satisfies every requirement.

Rule 702 provides: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts in this case."

The Franklin Court of Appeal interpreted Rule 702 and the requirements for experts in *Smith v McGann* in 2004, particularly when it applies to medical malpractice. Indeed, Franklin and Rule 702 adopts the approach applied by the Supreme Court in *Daubert v. Merrel Dow Pharmaceuticals, Inc.* (*Smith v McGann*)

This approach vests the trial court with broad latitude and discretion to evaluate the reasoning and methodology applied by the proffered expert to the facts at issue, allowing the trial court to operate as the "gatekeeper" in determining the admissibility of expert testimony. (*Smith v McGann*)

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue;

Dr. Shulman's testimony will aid the trier of fact to understand the evidence or determine a fact in issue. The facts at issue concern the standard of care of orthopedic surgeons in the community, and whether Dr. Jost's actions conformed to the standards.

Dr. Shulman has extensive knowledge and experience in orthopedic surgery, sufficient to qualify her as an expert. In her decade of practical experience, she performed approximately 1,000 knee and hip replacements. Additionally, Dr. Shulman has spent the past six years teaching future doctors how to perform those very surgeries. She is uniquely qualified to explain the process and standard of care to the jury in a way which is digestible and understandable. Medical knowledge is not commonly accessible to the general public, and having a qualified teacher would benefit the jury by allowing Dr. Shulman to explain the standards of care to the jury as if they were her students. Therefore, her scientific, technical, and specialized knowledge would aid the trier of fact in understanding the issues or determining the facts at issue.

(b) the testimony is based on sufficient facts or data;

Dr. Shulman's expert opinion is based on sufficient facts and data. To satisfy Rule 702, "...a physician does not have to practice in, or be a specialist in, every area in which she offers an opinion, but the physician must demonstrate that she is 'sufficiently familiar with the standards' in that area by her 'knowledge, skill, experience, training, or education.'" (*Smith v McGann*)

Dr. Shulman practiced in orthopedic medicine from 2004- 2019; 15 years of experience in the field, and conducted more than 1,000 knee and hip replacements. Since 2019 she has been teaching medical students. She has remained current in her knowledge of the standards of care and medical practices. Additionally, Dr. Shulman stated in her deposition that though the community of Olympia, where she practiced, was smaller in terms of size, the applicable standard of care in the practice of orthopedics is comparable. (Affidavit, page 5)

In forming her opinion in the present case, Dr. Shulman reviewed all the surgical and medical records of Ms. Lowe's hip replacement, conducted her own physical examination of Ms. Lowe, and reviewed the complaint and issue in this case. The facts and data present in each of Dr. Shulman's inquiries form the basis for her proffered testimony. Dr. Shulman could not have done much more to prepare her opinion, and therefore the testimony is based on sufficient facts and data.

(c) the testimony is the product of reliable principles and methods

Dr. Shulman's testimony is reliable. Rule 702 and the Daubert standard vests the trial court with great discretion in determining the reliability of evidence. (Smith v McGann). The reliability of expert testimony may be based on a variety of factors, including how many years of experience the expert has, how many articles the expert has read or published in the area, how many conferences attended, the degree to which the expert's opinion and its basis are generally accepted within the relevant community, and whether experts in the field would rely on the same evidence to reach the type of opinion being offered (Smith v McGann).

Dr. Shulman's testimony is reliable because it is based on her extensive experience both performing and instructing knee and hip replacement surgeries. Additionally, in her capacity as an instructor, she must remain current on the standards of care for orthopedic doctors, as she is preparing new doctors to enter the field. Her testimony is based on her extensive professional experience, and is therefore reliable.

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts in this case."

Based on Dr. Shulman's experience, her testimony as to her opinion about the facts in this case constitute a reliable application of principals and methods. Dr. Shulman has applied her experience in approximately 1,000 knee and hip replacement surgeries, plus her six years in teaching to her thorough evaluation of the facts presented.

Her opinion reflects a reliable application of her experience to Ms. Lowe's medical history, X-Rays, physical examination, and evaluation of the complaint and answer. The proffered opinion has a solid basis and is reliable.

Based on the above facts, Dr. Shulman's testimony meets every required element for her to be certified as an expert witness; therefore, the Court should certify her as an expert witness.

(2) the Court should not find Dr. Ajax to be a qualified expert, but even if he is qualified, should exclude all of his proffered opinion testimony.

Dr. Ajax should not be qualified as an expert, and even if he is qualified, his testimony should be excluded because it is unreliable. To be qualified as an expert, the witness must satisfy the requirements under Franklin Rules of Evidence 702. Dr. Ajax fails to satisfy every requirement.

Rule 702 provides: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and

methods to the facts in this case."

A witness should be "qualified as an expert if he is the type of person who should be testifying on the matter at hand." A witness may show knowledge or familiarity with the standard of care by practicing in the same type of medicine in the same geographic location (Smith v McGann) "Generally, experts can testify about the standard of care for a specialist only if the experts specialize in the same or a similar specialty that includes the performance of the procedure at issue" (Smith v McGann)

Dr. Ajax does practice orthopedic medicine in the Franklin, which is the correct geographic region for the case at hand. However, Dr. Ajax's testimony is not reliable enough to satisfy the requirements of 702(3/c) and (4/d).

Under Daubert, and Sec 233, and 702, "qualifications and reliability remain separate and independent prongs..." (Smith v McGann). A reliable expert opinion is based on scientifically valid methodology. (Smith v McGann) However, an expert's opinion must be excluded if the opinion is "so fundamentally unsupported that it can offer no assistance to the jury." (Park v Green) An unsupported expert opinion "fails to consider the relevant facts of the case" and mere speculation can never provide sufficiently reliable basis for an opinion.

Dr. Ajax does not have the requisite experience to offer a reliable opinion on hip replacement surgeries. By his own admission in his affidavit, he has only observed or participated in 170 hip replacement surgeries in 18 years. That includes the 120 surgeries from his residency.

Additionally, when asked what he based his expert opinion on, Dr. Ajax stated only that "Dr. Jost did just one X-Ray after surgery." The entire basis for Dr. Ajax determining Dr. Jost breached the standard of care was the number of X-rays conducted, not a substantive evaluation of the care Dr. Jost gave. Dr. Ajax based his entire opinion on one tangential fact, which is not relevant to the facts at issue in the case.

The case does not concern how many X-rays were required, and nor does Dr. Ajax make any statement to the effect that had Dr. Jost done more X-rays he would have seen Ms. Lowe's fracture, and nor does Dr. Ajax allege Ms. Lowe's fracture occurred at any time other than March 16. The issue is not the number of X-rays, and Dr. Ajax offers no testimony or evidence of any relevant inquiry; he is conflating the inquiries. "Conflating the inquiries is legal error." (Smith v McGann).

For the foregoing reasons, Dr. Ajax is an unqualified witness, and his testimony is not reliable. The testimony would confuse the trier of fact and is not relevant to any important inquiry. Therefore, the Court should not qualify Dr. Ajax as an expert; however, if the Court does qualify Dr. Ajax as an expert, it should strike his opinion as unreliable.

(3) even if the Court qualifies Dr. Ajax to be a qualified expert, the Court should grant our motion for summary judgment because the plaintiff has failed to offer any admissible evidence on elements of her malpractice claim.

The Court should grant Defendant's motion for summary judgment because the plaintiff fails to satisfy her burden to provide evidence on every element of her claim.

Rule 56. Summary Judgment states: " A party may move for summary judgment, identifying each claim or defense-- or the part of each claim or defense-- on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motions."

A motion for summary judgement "'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial' should be granted. (Alexander v ChemCo Ltd. (Fr. SUP. Ct. 2003.)) "In ruling on summary judgment, the court must view the evidence in the light most favorable to the non-moving party." (Jacobs v Becker) The defendant is entitled to summary judgment if the plaintiff fails to produce evidence to prove an element of their claim. (Jacobs v Becker) In order to grant summary judgment there can be no genuine issue of material fact, and

material facts are those which are essential to the establishment of an outcome determinative element. (Jacobs v Becker)

Plaintiff is suing defendant for negligence. To establish a prima facie case for negligence, the plaintiff must show: (1) that a duty existed requiring the defendant to conform to a specific standard of care for the protection of others against the harm, (2) that the defendant failed to conform to that specific standard of care, and (3) that the breach of the standard of care caused harm to the plaintiff. (Jacobs v Becker).

The duty a physician owes to a patient is clear, and is a higher standard than the ordinary torts standard of a reasonable person. "The standard of care for physicians is to act with that degree of care, knowledge and skill ordinarily possessed and exercised in similar situation by the average member of the profession practicing in the field." (Jacobs v Becker) This element is clear on its face.

However, Plaintiff fails to provide any evidence to constitute Dr. Jost breached that duty to Ms. Lowe. Expert testimony is required in medical malpractice cases. (Jacobs v Becker). This is because only expert testimony can establish the required standard of care, whether there was a breach, and how the breach injured the plaintiff (Jacobs v Becker).

The undisputed facts are that on March 16, Ms. Lowe received a hip replacement from Dr. Jost. Ms. Lowe received post operative instructions from Dr. Jost, which were reiterated by her physical therapist. One of the instructions was not to bend more than 90 degrees.

Ms. Lowe offers no facts which indicate Dr. Jost was negligent in either the surgical operation, or post operation protocol. Her complaint alleges the prosthetic was "out of place" but offers no evidence to support the contention, and no evidence to support the contention that it was out of place due to Dr. Jost's breach of his duty.

Additionally, there is an affidavit from a witness who saw Ms. Lowe bend past 90 degrees on March 16, which caused her to fall in pain. Ms. Lowe offers no evidence to the contrary, or to refute that testimony.

Finally, Ms. Lowe's expert can offer no substantive or reliable basis for concluding Dr. Jost breached the standard of care. Dr. Ajax does not even explain the standard of care for orthopedic hip replacements.

The plaintiff has failed to show the essential elements of breach and causation: she can offer no evidence to support the claim that Dr. Jost breached his duty of care to her as a patient, or that Dr. Jost was the cause of her subsequent hip surgery and fracture. "... To succeed on a motion for summary judgement, the defendant must show that the plaintiff has failed to establish a factual basis for any of these elements." (Jacobs v Becker).

For the foregoing reasons, this court should grant defendant's motion for summary judgment against the plaintiff.

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CO 7/2025 MPT 1 - Sample Answer #2

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Plaintiff Dr. Jost's Motion to Exclude Expert Testimony and Motion for Summary Judgment

I. STATEMENT OF FACTS [EXCLUDED]

II. STATEMENT OF LAW [EXCLUDED]

III. ANALYSIS

1. DR. SHULMAN'S OPINION TESTIMONY SHOULD BE ADMITTED.

i. The Court should find Dr. Shulman as an expert, because Dr. Shulman is qualified as an expert by her significant experience, training, and education in orthopedics. Franklin R. Evi.702.

The issue raised by Plaintiff Lowe's medical malpractice case is whether Defendant Dr. Jost departed from good and accepted medical practice when Defendant Dr. Jost conducted a hip replacement surgery on Plaintiff Lowe on March 1, 2022. A witness may be qualified as an expert by knowledge, skill, experience, training, or education. Franklin R. Evi.702.

After her graduation from Franklin Medical School in 2004, Dr. Shulman completed a five-year orthopedic residency during the period of 2004 to 2009. Excerpted Hearing Testimony of Dr. Ariel Shulman. Dr. Shulman is board-certified in orthopedics, which means she completed orthopedic residency and has passed the necessary board certification exam. Id. Dr. Shulman has 10 years of private practice in orthopedics, during which she performed an average of 100 knee and hip replacements annually, and currently teaches orthopedics at Olympia University Medical School. Id. A physician needn't practice in or be a specialist in the area of their offered opinion, so long as the physician is "sufficiently familiar with the standards" in the opined area to satisfy Rule 702. Smith v. McGann.

Sufficient familiarity with Rule 702 standards to prove an expert opinion is reliable in orthopedics can be established through factors including "many years of experience in orthopedics, the many articles [the expert] has read and conferences [the expert] has attended, and the fact that other physicians relied on [the expert's] diagnosis of" the condition at issue. Id. As provided above, despite that Dr. Shulman does not currently practice orthopedics, she has 10 years of experience, performing roughly 100 orthopedic surgeries on her own annually, in addition to the surgeries performed and assisted in throughout her five-year residency in Franklin. Excerpted Hearing Testimony of Dr. Ariel Shulman. Moreover, like in Smith, Dr. Shulman frequently attends, and even presents, lectures at conferences concerning the appropriate procedures for joint replacement, which means that physicians rely on Dr. Shulman's conclusions as to procedures for hip replacements, which is the issue at hand. Id. Further, new physicians rely on Dr. Shulman's diagnosis of the need for hip replacements and her explanations as to the proper procedures for this surgery, as she actively teaches medical students on the subject.

As such, Dr. Shulman has significant knowledge, experience, and continued education that established "sufficient familiarity" to satisfy Rule 702's requirements, just like the expert in Smith.

ii. The Court should admit Dr. Shulman's opinion testimony, because:

(a) it will aid the trier of fact in determining whether Dr. Jost's treatment of Plaintiff Lowe fell below the standard of care as to this treatment of Plaintiff Lowe;

Dr. Shulman's testimony will aid the trier of fact in determining whether Dr. Jost fell below the standard of care in his treatment of Plaintiff Lowe, as she is able to explain in a clear manner

what the proper procedures are in a hip replacement surgery, as well as able to clearly explain what and how certain injuries would result after a patient falls within six-weeks of receiving hip replacement surgery, as is at issue in the case. See Excerpted Hearing Testimony of Dr. Ariel Shulman. Dr. Shulman's skill in this regard likely is partially a by-product of her time lecturing medical students at Olympia University Medical School and physicians on the issue at conferences. Id.

Most importantly, Dr. Shulman explains that Dr. Jost gave Plaintiff Lowe specific instructions for the Plaintiff to not bend or twist her hip following surgery. Id. Dr. Shulman explains that these instructions are key, as bending or twisting at the hip can cause a "dislocation of the hip and possible injury to the femur." Id. The described injury arising from bending more than 90 degrees or twisting at the hip is the exactly the injury suffered by the Plaintiff after her fall. Statement of Facts from Verified Complaint.

(b) it is based on sufficient facts and data from Dr. Shulman's review of all medical and surgical records pertaining to Plaintiff Lowe and a physical examination of Plaintiff Lowe;

An expert's opinion are based on "sufficiently reliable methodology" when the expert bases their conclusion on medical records, CT scans, medical notes, and deposition testimony. Ridley v. St. Mark's Hospital. In this case, in order to provide opinion testimony as to Dr. Jost's alleged negligence, Dr. Shulman conducted a thorough review of all Plaintiff Lowe's surgical and medical records, as well as a physical examination she conducted on Plaintiff Lowe. Excerpted Hearing Testimony of Dr. Ariel Shulman. Moreover, Dr. Shulman read through the Complaint in this action. By reviewing all medical records pertaining to Plaintiff Lowe, including the post-surgical X-ray, conducting a physical examination of the Plaintiff, and reading Plaintiff Lowe's assertions in the Complaint, Dr. Shulman obtained a complete picture of Plaintiff Lowe's health, Dr. Jost's diagnostic process, Dr. Jost's method and manner of conducting the Plaintiff's surgery, and an understanding of the Plaintiff's testimony regarding her suffered injuries. By review of all available sources of information in relation the the Plaintiff's cause of action. Dr. Shulman's opinion testimony is based on "sufficiently reliable methodology" to support her conclusion. See Ridley v. St. Mark's Hospital.

(c) Dr. Shulman's testimony is the product of reliable principles and methods as determined in Smith v. McGann, namely many years of experience in orthopedics, articles read in the *Journal of the American Medical Association (JAMA)* and *The New England Journal of Medicine*, conferences attended, and the fact that attendees of lectures presented by Dr. Shulman and that Olympia University Medical School relies on Dr. Shulman's expertise in teaching orthopedic procedures; and

Dr. Shulman has a proper up-to-date basis of knowledge of the proper principles and methods of hip replacement surgery, despite that she has not performed a hip replacement within the last three years, because Dr. Shulman has not performed a hip replacement since 2019, Dr. Shulman keeps up with medical literature in the area of hip replacements by following all articles on joint replacement in the *Journal of the American Medical Association (JAMA)* and *The New England Journal of Medicine*. Excerpted Hearing Testimony of Dr. Ariel Shulman. The education provided by these articles also ensure Dr. Shulman's knowledge base is sufficient to be applicable in Franklin's jurisdiction, despite that Olympia has a smaller medical community than Franklin, because these journals are relied on across the states, including Franklin and Olympia. Id. On this basis, Dr. Shulman has also asserted that the practice of orthopedics is equivalent across the states of Olympia and Franklin. Id.

(d) Dr. Shulman's opinion reflects a reliable application of the principles and methods of orthopedics, as evidenced by her clear, well-reasoned explanation as to the cause of Plaintiff Lowe's injuries.

Dr. Shulman opinion reliable applies the principles and methods of orthopedics, as she is actually did base her opinion on a complete review of all available facts in the case and is able to explain the proper procedure and the actions of Dr. Jost's that are consistent with the aforementioned proper procedure. Excerpted Hearing Testimony of Dr. Ariel Shulman. As such, Dr. Shulman actually properly applies the "sufficiently reliable methodology" as demanded in Ridley v. St. Mark's Hospital.

Notably, Dr. Shulman's testimony provides that Dr. Jost properly tested Plaintiff Lowe's hip

prosthetic in range-of-motion resting and stability testing after the hip prosthetic was placed while Plaintiff Lowe was under anesthesia, ensuring it was acceptable before closing Plaintiff Lowe's incision. Excerpted Hearing Testimony of Dr. Ariel Shulman. Dr Shulman explains the value of this testing, as Dr. Jost was able to fully observe the prosthetic joint during surgery and there is no evidence of improper placement. Id. Dr. Shulman explains that Dr. Jost also properly ordered and reviewed an X-ray of Plaintiff Lowe's new hip which confirmed the prosthetic hip was properly situated, which is supported by the post-surgery X-ray and the stability of the joint at the conclusion of surgery, as is also evidenced by Plaintiff Lowe's initial progress in physical therapy. Id. This provides a reasonable and articulable basis for Dr. Shulman's conclusion that Dr. Jost's treatment and care of Plaintiff Lowe was "well within the standard of care in the community."

2. DR. AJAX'S TESTIMONY SHOULD NOT BE ADMITTED.

(a) The Court should not find Dr. Ajax to be a qualified expert, because Dr. Ajax is inexperienced with the performing hip replacements.

As provided above, an expert must be sufficiently familiar with the standards of care for the proffered opinion testimony and be qualified through sufficient knowledge, skill, training, or experience. Franklin R. Evi.702.

Dr. Ajax did completed his residency in orthopedics at Olympia General Hospital, not in Franklin. Excerpted Hearing Testimony of Dr. Robert Ajax. Although Dr. Ajax is board-certified to practice orthopedics and owns his own practice, he treats a myriad of conditions, including fractures, knee replacements, and hip replacements. Id. Due to the number of conditions treated by Dr. Ajax, he has only conducted 50 hip replacements independently in practice and conducted roughly 20 on his own during residency. Id. Moreover, since the completion of his residency in 2007, Dr. Ajax has not indicated any manner of continued education to ensure he is up-to-date with current proper procedures for hip replacements in Franklin in the year 2022. Id.

As such, Dr. Ajax does not have a current education or significant basis of experience to render him sufficiently familiar with the standards of care for hip replacements in 2022 in Franklin for Dr. Ajax to be qualified under Rule 702. Franklin R. Evi.702.

(b) Even if the Court finds that Dr. Ajax is qualified as an expert, the Court should exclude all of Dr. Ajax's proffered opinion testimony, because Dr. Ajax's opinions are the result of speculation as to what may have been different which is held in Park v. Green to never be a sufficiently reliable basis for an expert opinion.

An expert's opinion must be based on "sufficiently reliable methodology". See Ridley v. St. Mark's Hospital; see Franklin R. Evi.702. As provided in Park v. Green, "speculation about what might have occurred had the facts been different *can never provide* a sufficiently reliable basis for an expert opinion." (emphasis added). Here, Dr. Ajax asserts that Dr. Jost departed from good and accepted medical practice by not conducting a second X-ray of Plaintiff Lowe's hip after surgery. Dr. Ajax stated that an X-ray from a different angle "might have shown the prosthesis was out of place or that there was a broken bone." Excerpted Hearing Testimony of Dr. Robert Ajax. Thus, Dr. Ajax entirely basis his opinion on speculation that where a second X-ray "might" have revealed different information, when Dr. Ajax did not even review the existing medical and surgical records for Plaintiff Lowe. Id. Expert opinions that are "so fundamentally unsupported" that it can offer no assistance to the jury "must be excluded." Park v. Green. It is not helpful to tell a jury what evidence may show, had it been in existence, and Dr. Ajax states no articulable facts based on the actual circumstances of Plaintiff Lowe's case to support his conclusion that Dr. Jost departed from good and accepted medical practice. Id. As such, Dr. Ajax's opinion must be excluded.

3. Even if Dr. Ajax is qualified as an expert, the Court should grant Defendant Jost's motion for summary judgment, because the Plaintiff Lowe has failed to offer an admissible evidence establishing that (a) that the defendant failed to conform to the applicable standard of care; and (b) that the breach of the standard of care caused the harm to the plaintiff, which is necessary to establish her medical malpractice claim. Jacobs v. Becker.

(a) Dr. Jost did not depart from the standard of care in this treatment of Plaintiff Lowe.

The standard of care for physicians is that they act with the degree of care, knowledge, and skill ordinarily possess and exercised in similar situations by the average member of the profession practicing in that field. Jacobs v. Becker. As asserted by Dr. Shulman, a reputable member of the orthopedic profession, "Dr. Jost's surgical management of [Plaintiff Lowe], the manner in which he carried out the surgery, and his medical assessment of [Plaintiff Lowe's] condition were at all times appropriate and fully comported with the acceptable standards of surgical care." Excerpted Hearing Testimony of Dr. Ariel Shulman. Dr. Ajax only has proffered testimony that Dr. Jost breached his duty of care by failing to perform a second post-surgical X-ray which is speculative and does not provide a conclusive basis for the fact finder to determine there was a breach of the duty of care. Excerpted Hearing Testimony of Dr. Robert Ajax.

(b) Dr. Jost was not the cause of Plaintiff Lowe's injuries.

Dr. Shulman asserted that her opinion is that "no act or omission attributable to Dr. Jost" caused Plaintiff Lowe's sustained injuries, and that Plaintiff Lowe's injuries resulted from her fall two weeks after the surgery when she fell. Excerpted Hearing Testimony of Dr. Ariel Shulman. Notably, Plaintiff Lowe's injuries are the exact type that Dr. Shulman explains arise from bending or twisting at the hip. Id. A neighbor of Plaintiff Lowe, who called the ambulance when Plaintiff Lowe experienced her injury testified that Plaintiff Lowe bent over at her waist touching the ground with her hands. Affidavit of Karen Baines. Right after the Plaintiff stood back up, Plaintiff Lowe cried out in pain and fell to the pavement. Id. This occurred on March 16, 2020, which was just over two weeks after Dr. Jost's surgery on her hip, so well within the period of time that Plaintiff Lowe was instructed to not bend more than 90 degrees at her hip. Affidavit of Dr. Emil Jost. Dr. Ajax has provided no testimony in regard to the causation element of Plaintiff Lowe's injuries.

As such, Dr. Shulman concluded that "no act or omission attributable to Dr. Jost" caused Plaintiff Lowe's sustained injuries, and that Plaintiff Lowe's injuries resulted from her fall two weeks after the surgery when she fell. Excerpted Hearing Testimony of Dr. Ariel Shulman. Moreover, the plaintiff has failed to establish any material fact disputing Dr. Shulman's testimony that the injuries resulted from Dr. Jost's alleged breach of the standard of care.

A Rule 56 motion for summary judgment should be granted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Alexander v. ChemCo Ltd. It has been consistently held that the Plaintiff must establish in a negligence case: (1) the existence of duty; (2) breach of that duty; and (3) that the breach resulted in the Plaintiff's injuries. Jacobs v. Becker. As the plaintiff has not alleged facts sufficient for a fact finder to conclude that Defendant Dr. Jost's purported breach of the standard of care resulted in Plaintiff Lowe's injuries, all other elements of the nonmoving party's case are immaterial. Jacobs v. Becker. As such, there is no dispute of material fact in the case at hand, and the Court must grant the Defendant Dr. Jost's motion for summary judgment.

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