

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

RALPH PRESS, as Administrator of the
Estate of PHYLLIS PRESS, Deceased,

Plaintiff,

-against-

LILA G. HOLLIN, as Executrix of the
Estate of SIDNEY HOLLIN, M.D.,
Deceased,

Defendant.

**AFFIRMATION IN
OPPOSITION**

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PRESTON J. DOUGLAS, an attorney duly admitted to practice law in the State of New York, affirms under the penalty of perjury:

This affirmation is submitted in opposition to the motion for Summary Judgment based on the defendant's allegation that the Statute of Limitations had expired at the time of the commencement of the within action.

The within action arises out of surgery performed by the late defendant in 1975 and follow-up care which continued through and beyond the last visit of June 10, 1981. It is conceded that the last time PHYLLIS PRESS saw the late defendant, SIDNEY HOLLIN, was June 10, 1981. At that time, she was six years post surgery in which Dr. Hollin had repaired two aneurysms in Mrs. PRESS's brain. By 1981, Mrs. PRESS was married, and Dr. Hollin gave her a clean bill of health. He directed her to

return for routine follow-up in one year.

It is clear that at the time of the June 10th visit, the patient and the doctor contemplated a continuing and continuous relationship. It is plaintiff's claim that part of this continuing and continuous relationship mandated that Dr. Hollin use modern techniques to ascertain the status of the surgical repairs he performed back in 1975. In fact, the repairs were doomed to slip and open. When the repairs failed on April 5, 1984, PHYLLIS PRESS died. Defendant suggests that we should start the running of the Statute of Limitations clock on June 10, 1981. However, intervening events in which Dr. HOLLIN gave advice and continued to act as the continuing treating physician carry the continuous treatment forward until at least January 20, 1983.

PHYLLIS PRESS gave birth to a child on November 1982. This full-term baby was conceived in or about February 1982. Prior to conception, PHYLLIS PRESS and her husband, RALPH PRESS, the plaintiff herein, consulted with Phillip Bresnick, M.D., an obstetrician. This was in early 1982. During the pregnancy, Dr. Bresnick consulted the late defendant HOLLIN about the wisdom of continuing the pregnancy and was told that PHYLLIS did not require further treatment for the old aneurysms. After the delivery, once again, Dr. Bresnick consulted with Dr. Hollin and was told PHYLLIS PRESS did not need follow-up. Thereafter, in January 1983, Mrs. PRESS began exhibiting some bizarre symptoms which we believe may have been related to the beginnings

of the reactivation of the aneurysms. She complained of severe neck and shoulder pain to her general practitioner, David Papier, M.D. After consultation with Dr. HOLLIN, Dr. Papier prescribed anti-rheumatoid medicine, Clinoril, for which we have the prescription (copy annexed as Exhibit A).

Interestingly enough, Dr. HOLLIN's notes for his last visit on January 10, 1981 do not include the words "advise CT scan" in our copy of the records. We do not know when the alteration took place, but in point of fact, Dr. HOLLIN should have advised a CT scan before, during and after that 1982 pregnancy. He should have told Drs. Bresnick and Papier, when they asked, that Mrs. PRESS needed a CT to assure the stability of her aneurysm repairs. Plaintiff considers that these consultations and advice by Dr. HOLLIN were part of his continuing treatment and his recognition of continuing responsibility for the patient's neurosurgical care. Plaintiff also considers that the alteration which Dr. HOLLIN made to his records was his recognition of a failure to advise the patient needed a modern test to check his work, which test was not available back in 1975. The alteration was made out of guilt, and it was made long after June of 1981. The unaltered and altered copy of the records are annexed for comparison by the Court as Exhibit B.

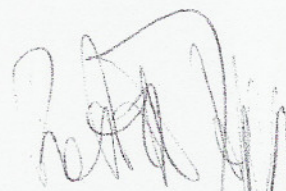
Plaintiff suggests that this Court might consider the late alteration of the record, in and of itself, to be an admission that Dr. HOLLIN considered himself continuously

treating PHYLLIS PRESS. The original unaltered record was obtained by Mr. PRESS (see his Affidavit) on or about March 14, 1984 when PHYLLIS PRESS was hospitalized, dying of the recurring aneurysm. Oddly enough, Dr. HOLLIN died on March 13, 1984. However, on December 20, 1982, after the baby was born, Dr. HOLLIN sent an altered photostat of his records to IDS Life Insurance, apparently recognizing his error in follow-up. In any case, the defendant's dependence on the CT suggestion note in the moving papers is obviously misguided in view of the real facts.

Since PHYLLIS PRESS died on April 5, 1984, and since her pregnancy was less than two and one-half years prior to the date of death, the consultations before and after her pregnancy were well within the Statute of Limitations of two and one-half years. Therefore, PHYLLIS PRESS died possessed of a cause of action for conscious pain and suffering if she had survived. The wrongful death action, brought much less than two years after her death, would, therefore, be timely. She died April 5, 1984 and the Summons and Complaint was served on August 21, 1985, by admission of the defendant.

WHEREFORE, it is respectfully prayed that the within motion be denied in its entirety.

Dated: New York, New York
March 11, 1991



PRESTON J. DOUGLAS