

<b>Singh v Patel</b>
2026 NY Slip Op 31143(U)
March 19, 2026
Supreme Court, New York County
Docket Number: Index No. 805351/2018
Judge: John J. Kelley
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

-----X

SUCHA SINGH,

Plaintiff,

- v -

RAHUL PATEL, M.D., and NEW YORK PRESBYTERIAN-QUEENS,

Defendants.

-----X

INDEX NO. 805351/2018

MOTION DATE 12/22/2025  
12/22/2025

MOTION SEQ. NO. 003, 004

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 43, 44, 45, 46, 47, 48, 49, 50, 51, 64, 66, 68, 69, 70, 71, 72, 73, 74, 84

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 67, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for DISMISS.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice and lack of informed consent, the defendant Rahul Patel, M.D., moves pursuant to CPLR 1021 to vacate the automatic stay of proceedings imposed by operation of law upon the plaintiff's death on January 5, 2023, and thereupon to dismiss the complaint insofar as asserted against him for the failure timely to substitute a representative of the plaintiff's estate as a party plaintiff (MOT SEQ 003). The defendant New York Presbyterian-Queens (NYPQ) moves for the same relief as to it, and also seeks dismissal pursuant to CPLR 3216, based on the plaintiff's alleged failure to prosecute the action (MOT SEQ 004). The former attorney of the deceased plaintiff submits papers in opposition to the motions. The motions are denied.

The plaintiff commenced this action on November 2, 2018. On January 5, 2023, the plaintiff died, and, in an order dated March 28, 2023 and entered April 7, 2023, this court

memorialized the automatic stay of proceedings imposed by operation of law, retroactive to the date of the plaintiff's death. No party has yet moved to substitute a representative of plaintiff's estate in his place.

It is well settled that “the death of a party divests a court of jurisdiction to conduct proceedings in an action until a proper substitution has been made pursuant to CPLR 1015(a)” (*Griffin v Manning*, 36 AD3d 530, 532 [1st Dept 2007]; see *Perez v City of New York*, 95 AD3d 675, 677 [1st Dept 2012]; *Manto v Cerbone*, 71 AD3d 1099, 1100 [2d Dept 2010]; *Nieves v 331 E. 109th St. Corp.*, 112 AD2d 59, 60 [1st Dept 1985]). Any determination rendered or proceedings held without such a substitution is generally deemed a nullity (see *Griffin v Manning*, 36 AD3d at 532; *Stancu v Cheon Hyang Oh*, 74 AD3d 1322, 1322-1323 [2d Dept 2010]; *Nieves v 331 E. 109th St. Corp.*, 112 AD2d at 60). Rather, the action is automatically stayed as of the date of the decedent's death (see *Perez v City of New York*, 95 AD3d at 677). Moreover, parties may not “by agreement confer subject matter jurisdiction upon [a] court where there is none” (*Cuomo v Long Island Lighting Co.*, 71 NY2d 349, 351 [1988]; see *Haverstraw Park, Inc. v Runcible Properties Corp.*, 33 NY2d 637, 637 [1973]; *Stancu v Cheon Hyang Oh*, 74 AD3d at 1323) by stipulating to conducting further proceedings prior to the substitution of a personal representative for the deceased party. Indeed, any such stipulation purporting to confer subject matter jurisdiction upon a court that lacks such jurisdiction is “legally inoperative” (*Morrison v Budget Rent A Car Syst., Inc.*, 230 AD2d 253, 261 [2d Dept 1997]).

Nonetheless, “determinations . . . pursuant to CPLR 1021 are a necessary exception to the general rule, and the court does not lack jurisdiction to consider such a motion” (*Medlock v Dr. William O. Benenson Rehabilitation Pavilion*, 167 AD3d 994, 995 [2d Dept 2018]; see *Lee v Leeds, Morelli & Brown, P.C.*, 233 AD3d 1072, 1076 [2d Dept 2024]; *Barnabas v Boodoo*, 134 AD3d 970, 972 [2d Dept 2015]; *Vapnersh v Tabak*, 131 AD3d 472, 474 [2d Dept 2015]). CPLR 1021 requires that a motion to dismiss for failure to substitute a representative of a deceased

party's estate may only be made where substitution was not made "within a reasonable time" after the decedent's death. As relevant here, CPLR 1021 provides that

"[a] motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant. If the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate."

The court, however, "may not order dismissal for such failure without first ordering the persons interested in the decedent's estate to show cause why the action should not be dismissed" (*Petty v Meadowbrook Distributing Corp.*, 266 AD2d 88, 88 [1st Dept 1999]; see *Velez v New York Presbyterian Hosp.*, 145 AD3d 632, 633 [1st Dept 2016]). Since neither defendant moved by order to show cause, which would have permitted the court to provide notice to persons interested in the decedent's case to show cause why the complaint should be dismissed, but instead moved pursuant to notice of motion, their motions must be denied on that ground alone.

The court notes that the former counsel for the deceased plaintiff no longer has an obligation to represent any person who becomes the representative of the decedent's estate (*Homemakers, Inc. of Long Is. v Williams*, 131 AD2d 636, 638 [2d Dept 1987]; *Hemphill v Rock*, 87 AD2d 836, 836 [2d Dept 1982]; *Wisdom v Wisdom*, 111 AD2d 13, 14-15 [1st Dept 1985]), and, in fact, "lacked any authority to proceed in the action upon his death" (*Lewis v Kessler*, 12 AD3d 421, 422 [2d Dept 2004]; see *Pepino v Dooley*, 239 AD3d 1008, 1009 [2d Dept 2025]; *Vapnersh v Tabak*, 131 AD3d at 474; *Homemakers, Inc. of Long Is. v Williams*, 131 AD2d at 638; *O'Brien v Flynn*, 228 App Div 704, 704 [1st Dept 1930]; cf. *Zak v Bronx Park Phase I Preserv., LLC*, 237 AD3d 654, 654-655 [1st Dept 2025] [attorney lacked authority to commence action on behalf of client who died before the attorney filed the summons and complaint]). Consequently, the court need not consider the submissions made by the deceased plaintiff's former counsel. Were it to do so, it would be constrained to deny the motions in any event.

The issue of what constitutes a “reasonable time” within the meaning of CPLR 1021 depends on the circumstances of the case (*see Randall v Two Bridges Assoc. Ltd. Partnership*, 139 AD3d 435 [1st Dept 2016]), including the diligence of the party who will ultimately seek substitution, the prejudice to the other parties, and whether the party who eventually will be substituted has shown that the action has potential merit (*see Green v Maimonides Med. Ctr.*, 172 AD3d 824, 826 [2d Dept 2019]). Patel and NYPQ made their motions less than three years after the plaintiff’s death. The plaintiff’s former counsel informed the court that, on November 25, 2025, a date also less than three years after the decedent’s death, the Surrogate’s Court, Queens County, issued limited letters of administration with respect to the decedent’s estate to Baljit Kaur, authorizing Kaur to prosecute a medical malpractice action, although not to settle it (*see SCPA 702[1]; Matter of Casanas*, 216 AD3d 569, 569-570 [1st Dept 2023]), which ultimately will require the issuance of full letters of administration.

The court concludes that the defendants have not established, under the circumstances of this case, that they waited a “reasonable” time before moving to dismiss the complaint, or that there has been a “protracted” delay on the part of the decedent’s next of kin in seeking substitution, let alone that they would be prejudiced by the substitution sought here (*see Dugger v Conrad*, 189 AD3d 478, 479-480 [1st Dept 2020]; *Petion v New York City Health & Hosps. Corp.*, 175 AD3d 519, 520 [2d Dept 2019] [lapse of almost five years between plaintiff’s death and appointment of representative of plaintiff’s estate, and additional lapse of one more year before representative moved to be substituted, was insufficient to support defendant’s cross motion to dismiss complaint pursuant to CPLR 1021, where it could not demonstrate prejudice]; *Tokar v Weissberg*, 163 AD3d 1031, 1032-1033 [2d Dept 2018] [lapse of 2½ years between decedent’s death and defendant’s submission of motion to dismiss under CPLR 1021 is insufficient to support defendant’s contention that substitution had not been made within a reasonable time, particularly where, as here, the case revolved around medical records already in defendant’s possession]; *see also Lee v Leeds, Morelli & Brown, P.C.*, 233 AD3d at 1076-

1077 [despite the fact that the record did not establish diligence in seeking substitution, “there has been no prejudice to the defendants”] *cf. Kelly v St. Francis Hosp.*, 100 AD3d 707, 708 [2d Dept 2012] [affirming dismissal of complaint where no attempt at substitution was made during the three years following the plaintiff’s death]; *Palmer v Selpan Elec. Co.*, 5 AD3d 248, 248 [1st Dept 2004] [dismissing complaint where no substitution had been effectuated for more than four years after the decedent’s death]).

Finally, NYPQ may not rely upon CPLR 3216 to dismiss the amended complaint insofar as asserted against it. CPLR 3216(a) provides that

“[w]here a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to serve and file a note of issue, the court, . . . upon motion, with notice to the parties, may dismiss the party’s pleading on terms. Unless the order specifies otherwise, the dismissal is not on the merits.”

To secure a dismissal pursuant to CPLR 3216, issue must have been joined, and either one year must have elapsed since the joinder of issue, or six months must have elapsed since the issuance of any preliminary court conference order, whichever is later (*see* CPLR 3216[b]). In addition, a defendant must have served a written demand upon the plaintiffs by registered or certified mail, directing the plaintiffs to resume prosecution of the action and to serve and file a note of issue within 90 days after receipt of such demand (*see id.*). The demand also must give notice to the plaintiffs that a default in complying with such demand within that 90-day period will serve as a basis for a motion dismissing the complaint as against that defendant for unreasonable neglect to proceed (*see id.*). If the defendant has satisfied these conditions precedent, and the plaintiff fails to serve and file a note of issue within 90 days, the court may grant a motion by the party seeking dismissal, unless the plaintiff shows justifiable excuse for the delay and a meritorious cause of action (*see* CPLR 3216[e]).

“The plain language of CPLR 3216 provides that no court may dismiss an action, and no party may make a motion seeking dismissal of an action unless a written demand has been served on the party prosecuting the action to serve and file a note of issue within 90 days after receipt of such demand. The demand must also

state that failure to serve and file a note of issue within the 90-day period may serve as a basis for a motion to dismiss the action (CPLR 3216[b][3])”

(Chase v Scavuzzo, 87 NY2d 228, 230 [1995]). Hence, “[g]eneral delay is not a ground for dismissal of the complaint where a plaintiff has not been served with a 90-day demand to serve and file a note of issue” (Grant v Rattoballi, 57 AD3d 272, 273 [1st Dept 2008]). NYPQ has not established that it served a CPLR 3216 90-day notice upon the plaintiff, let alone serve it by certified or registered mail, and there is no basis upon which the court may dismiss the complaint insofar as asserted against it for any “general delay” in completing disclosure and filing the note of issue. Moreover, even had NYPQ served a 90-day notice upon the decedent’s counsel after the decedent’s death, the service of that notice would have been a nullity. Hence, that branch of NYPQ’s motion which was pursuant to CPLR 3216 to dismiss the complaint insofar as asserted must be denied.

Accordingly, it is,

ORDERED that the motion of the defendant Raul Patel, M.D., to dismiss the complaint insofar as asserted against him (MOT SEQ 003) is denied; and it is further,

ORDERED that the motion of the defendant New York Presbyterian-Queens to dismiss the complaint insofar as asserted against it (MOT SEQ 004) is denied.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

3/19/2026  
DATE

MOTION:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	
MOTION:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE