At an IAS Term, Part 15 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 26th day of October 2021.

P R E S E N T:
HON. PAMELA L. FISHER,
J.S.C.

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APRIL HARRIS,

Plaintiff,

DECISION/ORDER

- against -

Index No: 505979/2019

HEALTHPLUS SURGERY CENTER, LLC
MICHAEL JURKOWICH, M.D.,

Defendants.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	Papers Numbered
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed	1, 2, 3
Opposing Affidavits (Affirmations)	4, 5
Reply Affidavits (Affirmations)	6

Upon the foregoing papers in this medical malpractice action, defendant, HealthPlus Surgery Center, LLC, moves after the completion of jurisdictional discovery, to dismiss plaintiff's complaint pursuant to CPLR § 3211(a)(8) for lack of personal jurisdiction.

Plaintiff commenced this medical malpractice action by filing a summons and complaint on March 19, 2019 (Summons & Complaint, NYSCEF #1). Defendant, Dr. Michael Jurkowich, M.D., joined issue on May 17, 2019 (Verified Answer, NYSCEF #4). Plaintiff filed an amended complaint on May 23, 2019, and Dr. Michael Jurkowich, M.D. filed an amended answer on June 4, 2019 (Amended Complaint, NYSCEF #6; Amended Answer, NYSCEF #11). Defendant, HealthPlus Surgery, Center, LLC (HealthPlus) joined issue on June 12, 2019 (Verified Answer, NYSCEF #13). As an affirmative defense in its answer, defendant, HealthPlus affirmed that New York courts do not have personal jurisdiction over it (*Id.* at 6). On October 3, 2019, defendant, HealthPlus, moved to

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dismiss plaintiff's complaint pursuant to CPLR §§ 3211(a)(1) and 3211(a)(8) (Notice of Motion, motion sequence 1, NYSCEF #17). Defendant, Dr. Michael Jurkowich, M.D., cross moved, pursuant to CPLR § 3211(a)(1), to dismiss plaintiff's complaint (Notice of Cross Motion, motion sequence 2, NYSCEF #22). In a decision dated May 20, 2020, Justice Steinhardt granted defendant, HealthPlus's motion to dismiss the complaint against it, pursuant to CPLR § 3211(a)(8), for lack of personal jurisdiction without prejudice, but denied both defendants' motions to dismiss the complaint against them pursuant to CPLR § 3211(a)(1) (Decision + Order on Motion, NYSCEF #35).

On March 15, 2021, plaintiff moved, pursuant to CPLR § 2221(e), for leave to renew HealthPlus's prior motion to dismiss for lack of personal jurisdiction (Defendant's Memorandum of Law in Support at 6). In support of her motion, plaintiff submitted the complaint of a collections' lawsuit filed by defendant HealthPlus in Nassau County Supreme Court, "seeking no-fault insurance benefits from GEICO" (*Id.*). In the complaint, defendant HealthPlus stated that it was a "Health Service Provider licensed to provide such services in the State of New York" (*Id.*; Summons & Complaint, annexed as Exhibit B to plaintiff's motion papers, motion sequence 3). Based on this new information, this Court granted plaintiff's motion to the extent of staying the action pending discovery on the issue of jurisdiction (Short Form Order dated May 3, 2021, NYSCEF # 49). The Court gave the parties 60 days to complete jurisdictional discovery, and an additional 30 days to supplement their papers on the original motion to dismiss (*Id.*). Plaintiff served jurisdictional discovery demands on defendant HealthPlus on May 7, 2021 (Defendant's Memorandum of Law in Support at 7; Defendant's Affirmation in Support ¶ 10, motion sequence 4). Defendant served a response to plaintiff's jurisdictional discovery demands on May 27, 2021 (*Id.* at ¶ 12). On May 27, 2021, defendant HealthPlus also filed a motion to strike plaintiff's notice of deposition, pursuant to CPLR § 3130(1) and demands numbered 1, 2, 4, 5, 6, 7, 8, and 11, pursuant to CPLR § 3103 (Notice of Motion, motion sequence 3, NYSCEF #50). In an order dated July 7, 2021, the Court granted defendant's motion to

strike demands numbered 2, 4, 5, 6, 7, 8, and 11, on the grounds that these demands were "vague, overbroad, unduly burdensome, and irrelevant" (Short Form Order dated July 7, 2021, NYSCEF # 60). The Court also granted defendant's motion to strike plaintiff's notice of deposition (*Id.*). The Court limited demand #1 to "lawsuits commenced by defendant in the State of New York from November 2017 to November 2019" (*Id.*). The Court ruled that the parties were required to complete jurisdictional discovery by August 12, 2021, and to supplement their papers on the original motion to dismiss within 30 days of the completion of jurisdictional discovery (*Id.*). On August 12, 2021, defendant HealthPlus served an amended response to plaintiff's jurisdictional discovery demands (Defendant's Memorandum of Law in Support at 7). The response indicates that "thousands of no-fault collections actions were filed on behalf of HealthPlus in the State of New York from November 2017 to November 2019" (*Id.*). On September 10, 2021, HealthPlus served a second amended response to plaintiff's jurisdictional discovery demands, which "identif[ied] additional no-fault collections actions filed on behalf of HealthPlus between November 2017 and November 2019" (*Id.* at 8). Defendant submitted supplemental papers in support of its motion to dismiss on September 10, 2021; plaintiff filed supplemental opposition papers on September 21, 2021, and defendant filed reply papers on September 28, 2021 (NYSCEF #'s 61, 65, 70).

In her amended complaint, plaintiff alleges that she is a New York resident who was treated by defendant, Dr. Jurkowich at his office in Manhattan for personal injuries related to a slip and fall accident (Amended Complaint ¶¶ 1, 14, NYSCEF # 6). She states that Dr. Jurkowich gave her cortisone injections, which did not alleviate her pain, so he "suggested the administration of epidural," at HealthPlus in New Jersey (*Id.* at ¶¶ 15-16). She received two epidurals from Dr. Jurkowich at HealthPlus on November 13, 2018 and December 11, 2018, respectively (*Id.* at ¶¶ 18-19). She claims that she was diagnosed with HIV on December 27, 2018, and that she "contracted" HIV "during one of the" two epidurals at HealthPlus (*Id.* at ¶¶ 22, 28).

In support of its motion to dismiss, defendant argues that New York courts do not have personal jurisdiction over it, as HealthPlus "is a New Jersey limited liability company with its principal and sole place of business located in Saddle Brook, New Jersey" (Defendant's Memorandum of Law in Support at 5). Further, defendant claims that "HeatlhPlus does not: (1) have any offices in the State of New York; (2) conduct any advertising or engage in any direct communications with potential New York patients in an effort to solicit business; (3) have a referral program with any New York physicians or medical facilities; or (4) employ physicians from New York (or any other State) to perform medical procedures in HealthPlus's New Jersey facility" (*Id.*). Defendant argues that its filing of unrelated lawsuits in New York State courts does not "provide a basis for personal jurisdiction" (*Id.* at 14).

In opposition, plaintiff argues that New York courts have general jurisdiction over defendant HealthPlus based on its filing of over 2,300 lawsuits in New York State courts between November 2017 and November 2019 (Plaintiff's Memorandum of Law in Opposition at 2-3). Further, plaintiff contends that the Court improperly struck plaintiff's discovery demands (*Id.* at 4-5). Plaintiff suggests that New York courts have jurisdiction over defendant based on the fact that "HealthPlus treated or knowingly permitted the treatment of New York resident patients by New York based physicians at its facility in New Jersey," and arranged for their transportation to and from the facility (*Id.* at 4-5).

In reply, defendant reiterates that New York courts do not have personal jurisdiction over it, based on its filing of unrelated collections actions in New York State (Defendant's Memorandum of Law in Reply at 10). Further, defendant maintains that plaintiff's argument that New York courts have personal jurisdiction over it based on the fact that HealthPlus arranged for the transportation of plaintiff to and from the facility, was "explicitly rejected by Justice Steinhardt in her written decision on May 26, 2020" (*Id.* at 11).

On a motion to dismiss pursuant to CPLR § 3211(a)(8) for lack of personal jurisdiction, the plaintiff "bears the burden of coming forward with sufficient evidence to prove jurisdiction" (*Aybar v. Aybar*, 169 AD3d 137, 142 [2d. Dept. 2019]). A "state court may exercise personal jurisdiction over an out-of-state defendant who has certain minimum contacts with the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" (*BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 [2017]; *International Shoe Co. v. Washington*, 326 US 310, 316 [1945]). There are two types of personal jurisdiction: "general all-purpose jurisdiction" and "specific conduct-linked jurisdiction" (*Aybar*, 169 AD3d at 142). If a court has general jurisdiction over a defendant, it "may hear any claim against that defendant, even if all the incidents underlying the claim occurred in a different State" (*Id.* at 143). In order for a court to assert specific jurisdiction over a defendant, there must be "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation" (*Id.* at 143).

Pursuant to CPLR § 301, the general jurisdiction statute for the State of New York, "[a] court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore" (CPLR § 301). For a court to assert general jurisdiction over a defendant, its "affiliations with the State" must be "so continuous and systematic as to render [it] essentially at home in the forum State" (*Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 [2011]). The United States Supreme Court has held that "only a limited set of affiliations with a forum will render a defendant amenable" to general jurisdiction (*Daimler AG v. Bauman*, 571 US 117, 137 [2014]). In the case of an individual defendant, the "paradigm forum for the exercise of general jurisdiction is the individual's domicile" (*Id.*). In the case of a corporation, "the place of incorporation and principal place of business are paradigm bases for general jurisdiction" (*Id.*). If a corporation is not incorporated in the forum state, and it does not have a principal place of business there, "the general jurisdiction inquiry" "calls

for an appraisal of a corporation's activities in their entirety, nationwide and worldwide," as a "corporation that operates in many places can scarcely be deemed at home in all of them" (*Aybar*, 169 AD3d at 144; *Daimler*, 571 US at 139 n 20). The Supreme Court has held that "mere in-state business," "standing alone," "does not suffice to permit the assertion of general jurisdiction over claims" "that are unrelated to any activity occurring in the forum State" (*Aybar*, 169 AD3d at 144; *BNSF Ry. Co*, 137 S.Ct. at 1559).

Pursuant to CPLR § 302, New York's long-arm statute, "a court may exercise [specific] personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:" (1) "transacts any business within the state or contracts anywhere to supply goods or services in the state; or" (2) "commits a tortious act within the state," or (3) "commits a tortious act without the state causing injury to person or property within the state" (CPLR §§ 302(a)(1)-(a)(3)). Under CPLR § 302(a)(1), "a non-domiciliary is transacting business" within the state if the "non-domiciliary's activities [are] purposeful," and there is "a substantial relationship between the transaction and the claim asserted" (CPLR § 302(a)(1); *Paterno v. Laser Spine Institute*, 24 NY3d 370, 376 [2014]). "Purposeful activities are volitional acts by which the non-domiciliary avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws" (*Id.*). Under CPLR § 302(a)(3), "the situs of the injury in medical malpractice cases is the location of the original event which caused the injury, and not where the party experiences the consequences of such injury" (*Id.* at 381; CPLR § 302(a)(3)).

Defendant's motion to dismiss plaintiff's complaint, pursuant to CPLR § 3211(a)(8), for lack of personal jurisdiction, is granted, as plaintiff has failed to meet her burden to establish that New York courts have personal jurisdiction over defendant. After the Court's decision on May 3, 2021, granting renewal of defendant's prior motion to dismiss, and giving the plaintiff 60 days to complete jurisdictional discovery, plaintiff has failed to produce sufficient evidence that New York courts have

either general or specific jurisdiction over defendant. Plaintiff argues that general jurisdiction has been established based on defendant's filing of over 2,300 unrelated lawsuits in New York State courts between November 2017 and November 2019, but New York courts have held that the filing of unrelated lawsuits in New York State is not a basis to establish general jurisdiction (*Aybar*, 169 AD3d at 145-146). Further, the fact that defendant filed a complaint in a no-fault collections' lawsuit stating that it was licensed to do business in New York, is not sufficient to prove general jurisdiction. Defendant alleges that the statement was a clerical error, but even if the statement were true, being licensed to do business in New York is not enough for a court to assert general jurisdiction over a defendant (Defendant's Memorandum of Law in Support at 6; *See Aybar*, 169 AD3d at 152 [2d. Dept. 2019] (stating that a "corporate defendant's registration to do business in New York and designation of the Secretary of State to accept service of process in New York does not constitute consent by the corporation to submit to the general jurisdiction of New York for causes of action that are unrelated to the corporation's affiliations with New York"); *Best v. Guthrie Med. Group, P.C.*, 175 AD3d 1048, 1049 [4th Dept. 2019]). Plaintiff also argues that this Court may assert general jurisdiction over defendant based on the fact that defendant "arrang[ed] for plaintiff's transportation to and from New York," and "accept[ed] New York patients for treatment by New York physicians at its New Jersey facility" (Plaintiff's Memorandum of Law in Opposition at 2). However, Justice Steinhardt decided this issue in the previous motion to dismiss, and the Court declines to disturb her ruling. As defendant is not incorporated in New York State, and does not have a principal place of business in New York, and plaintiff has not submitted any other evidence in her supplemental papers, plaintiff has not established that this Court has general jurisdiction over defendant.

Further, the cases cited by plaintiff in her supplemental opposition papers are distinguishable. In *Laufer v. Ostrow*, 55 NY2d 305 [1982], the court held that a New Jersey corporation, whose "sole business" was "acting as a sales agent for" a North Carolina corporation, was subject to general

personal jurisdiction in a lawsuit filed in New York by a former employee, a New York resident who solicited business in New York (*Id.* at 308, 311-12). This case can be distinguished, since HealthPlus affirms that it does not solicit New York residents, and even if it did, its business involves other activities. The plaintiff in this case is not a former employee of the defendant corporation, and general jurisdiction has been limited since *Laufer* was decided in 1982. In *Daimler AG v. Bauman*, 571 US 117 [2014], the United States Supreme Court held that the "exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business" is not appropriate (*Daimler*, 571 US at 138; *Aybar*, 169 AD3d at 151). Based on the holding in *Daimler*, it's unclear if *Laufer* would still be decided the same way today.

Plaintiff also cites to *Robins v. Procure Treatment Centers, Inc.*, 157 AD3d 606 [1st Dept. 2018], a case in which a New York resident sued a New Jersey corporation who owned the facility where she had "proton radiation treatment" (*Id.* at 607). The Appellate Division, First Department affirmed the trial court's decision denying defendant's motion to dismiss for lack of personal jurisdiction, and allowing jurisdictional discovery (*Id.*). The court held that the plaintiff "made a sufficient start in establishing that New York courts have jurisdiction over [defendant] under CPLR 301" based on "a State filing in which [defendant] identified itself as having a principal place of business in Manhattan" (*Id.*). However, after jurisdictional discovery had been completed in that case, the Court of Appeals ultimately decided that plaintiff's evidence, the State filing, was insufficient to establish that the court had personal jurisdiction over defendant under CPLR § 301 (*Robins v. Procure Treatment Centers, Inc.*, 179 AD3d 412, 413-14 [1st Dept. 2020]). This case is different, as no filing in this case stated that the defendant had a principal place of business in New York, and there was evidence in *Robins* that defendant "marketed its Somerset, New Jersey, location to target New York residents," and "entered into an agreement with a consortium of New York City hospitals for the referral of cancer patients for treatment at its facility" (*Robins*, 157 AD3d at 607). In contrast, the

Court has not been provided with any evidence that there was a referral agreement between HealthPlus and any physician who treated patients at the facility.

Lastly, *Aybar* does not support that defendant is subject to the general jurisdiction of this Court. In *Aybar*, the court held that Ford was not "subject to general jurisdiction in New York," even though its "dealerships employ[ed] numerous New York residents," "Ford operated a stamping (manufacturing) plant in Hamburg, New York," and Ford "received incentive packages and tax credits from New York State" (*Aybar*, 169 AD3d at 140, 152). The court also determined that the exercise of general jurisdiction over Ford was inappropriate despite Ford's commencement of lawsuits in New York State, and its registration to do business in New York State (*Id.* at 146, 152). Given that the defendant in Aybar (Ford) had numerous contacts with New York State, and these contacts were still insufficient for the court to subject defendant to general jurisdiction, the exercise of general jurisdiction in this case would be inappropriate.

Further, although plaintiff does not make any arguments relating to specific jurisdiction in her supplemental opposition papers, the Court agrees with Justice Steinhart's ruling that defendant is not subject to specific jurisdiction in New York. As plaintiff received all of her epidurals at the surgical center, which is located in New Jersey, the situs of the injury is New Jersey, and the court may not exercise specific personal jurisdiction under CPLR § 302(a)(3) (*Paterno*, 24 NY3d at 376). Plaintiff's allegations that "HealthPlus treated or knowingly permitted the treatment of New York resident patients by New York based physicians at its facility in New Jersey," and that defendant arranged transportation for patients to and from its facility, are insufficient to confer specific personal jurisdiction over defendant under CPLR § 302(a)(1) (Plaintiff's Memorandum of Law in Opposition at 4-5; *See O'Brien v. Hackensack University Medical Center*, 305 AD2d 199, 200-01 [1st Dept. 2003] (holding that defendant, New Jersey medical center, did not "transact business" within the meaning of CPLR § 302(a)(1), where it was alleged that "defendant solicits patients that reside in New York," had

an "affiliation with New York's Einstein Hospital in which regard referrals [were] made to New York doctors for laboratory work and examinations," and "that defendant" "participates in studies involving New York residents"); *Hermann v. Sharon Hosp.*, Inc., 135 AD2d 682, 683 [2d. Dept. 1987] (stating that "[t]he fact that some of the defendant hospital's physicians are licensed to practice in both New York and Connecticut and that a sizeable portion of its patients reside in New York is due to the hospital's close geographical proximity to New York, and not to any significant purported activities by the hospital in New York State"); *Paterno*, 24 NY3d at 377 (holding that defendant Florida medical facility did not transact business in New York "through its solicitation and several communications related" to plaintiff's medical treatment)). Accordingly, defendant's motion, pursuant to CPLR § 3211(a)(8), to dismiss plaintiff's complaint against it for lack of personal jurisdiction, is granted.

This constitutes the decision and order of the Court.

ENTER:

Hon. Pamela L. Fisher
J.S.C.

HON. PAMELA L. FISHER