

Fried v Silverman

2025 NY Slip Op 33576(U)

September 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 520565/2025

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of September 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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REBECA FRIED and JEFFREY FRIED,

Plaintiffs,

-against-

MATTHEW SILVERMAN, M.D., BRACHA JAFFE, N.P.,
and BORO PARK OBSTETRICS & GYNECOLOGY, P.C.,

Defendants.

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HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review:

NYSCEF #s: Seq. 1: 12 – 15, 16 – 19, 25 – 28

Seq. 2: 20 – 21, 22 – 24

Defendant Bracha Jaffe, N.P. moves for an Order (Seq. No. 1) to dismiss Plaintiffs’ Complaint against him, pursuant to CPLR 3211 (a) (5), on the grounds that it is time-barred by the statute of limitations, and/or pursuant to CPLR (a) (8), on the grounds that Plaintiffs failed to obtain personal jurisdiction over him.

Plaintiffs oppose the motion and cross move (Seq. No. 2) for leave to amend their Complaint.

Plaintiffs commenced this action on June 20, 2025, asserting claims of medical malpractice in connection to treatment and care rendered at Boro Park Obstetrics & Gynecology, P.C. (“Boro Park Ob/Gyn”) from approximately June 2, 2021 through October 30, 2023. The patient’s husband also asserts claims for loss of services. The underlying claims involve an

alleged failure to timely diagnose and treat the patient's diabetes by Boro Park Ob/Gyn and its employees and agents, including N.P. Jaffe.

Generally, the statute of limitations for a medical malpractice action is two years and six months from "the act, omission, or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure" (CPLR 214-a). The statute provides exceptions for discovery of a foreign object in the patient's body and delay in diagnosis of cancer or a malignant tumor, neither of which are applicable here.

"On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired. If such prima facie showing is made, the burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations is tolled or is otherwise inapplicable." (*RTT Holdings, LLC v Nacht*, 206 AD3d 834, 835 [2d Dept 2022] [internal citations omitted].)

In support of the motion, N.P. Jaffe submits a personal affirmation stating he was employed by co-defendant Boro Park Ob/Gyn from January 5, 2021 until September 1, 2022, and that he could not have been involved in the patient's treatment after that period.

The movant also submits an affirmation from Ariella Zisblatt, a Director of Operations and Compliance Officer at Boro Park Ob/Gyn. She affirms based on her review of employment records that N.P. Jaffe's late date of employment was September 1, 2022.

Based on these submissions, N.P. Jaffe has established prima facie that Plaintiffs' claims against him are time-barred by the statute of limitations. The movants established his last possible date of treatment of the patient, as an employee of Boro Park Ob/Gyn, was September 1,

2022. Thus, the statute of limitations for medical malpractice expired *at latest* on March 1, 2025, three months before the commencement of this action.

In opposition, Plaintiffs argue that the statute of limitations should be measured from the patient's late date of continuous treatment at Boro Park Ob/Gyn. Plaintiffs submit medical records which demonstrate that the patient had a gynecologic examination by N.P. Jaffe on June 2, 2021, and reported pelvic pain and a family history of diabetes. He performed a urine dipstick test which showed elevated glucose levels. He also ordered blood labs which returned with elevated glucose and A1C. A follow-up annual exam was advised, though there is no record of whether she was advised of the lab results.

The patient subsequently returned to other physicians at Boro Park Ob/Gyn on September 13, 2023, September 26, 2023, and October 30, 2023. On September 13, co-defendant Dr. Matthew Silverman performed a urine dipstick test which again showed elevated glucose. On September 26, she reported symptoms including irregular bleeding, pain, and urinary incontinence, and her bloodwork revealed elevated blood glucose and A1C. There is no evidence that either of these results were relayed to the patient. Finally, she returned for a follow-up and prescription refill with Dr. Silverman on October 30, but there is no mention of bloodwork or urinalysis being performed on that date.

The continuous treatment doctrine “seeks to maintain the physician-patient relationship in the belief that the most efficacious medical care will be obtained when the attending physician remains on a case from onset to cure. Implicit in the policy is the recognition that the doctor not only is in a position to identify and correct his or her malpractice, but is best placed to do so.” (*McDermott v Torre*, 56 NY2d 399, 407-408 [1982] [internal citations omitted]). “Medical visits concerning matters unrelated to the condition at issue giving rise to the claim are insufficient to

invoke the benefit of the doctrine” (*Baltzer v Westchester Med. Ctr.*, 209 AD3d 815, 816-817 [2d Dept 2022]). However, “[w]ith respect to failure-to-diagnose cases, a physician cannot escape liability under the continuous treatment doctrine merely because of a failure to make a correct diagnosis as to the underlying condition, where he or she treated the patient continuously over the relevant time period for symptoms that are ultimately traced to that condition” (*Matthews v Barrau*, 150 AD3d 836, 837 [2d Dept 2017]).

The Court of Appeals has held that the continuous treatment doctrine may be applied even where there is a lengthy gap in treatment exceeding the statute of limitations (*Lohnas v Luzzi*, 30 NY3d 752, 756 [2018]). The key element is “whether treatment was anticipated to continue” by both parties (*Baltzer* at 817).

The doctrine also applies to a patient’s ongoing treatment from a medical group or practice, and it may be imputed to individual providers in that group. It is well established that “the continuous treatment doctrine may be applied to a physician who has *left a medical group*, by imputing to him or her the continued treatment provided by subsequently-treating physicians in that group” (*Mule v Peloro*, 60 AD3d 649, 650 [2d Dept 2009] [internal quotation marks and citations omitted]; *see also Ozimek v Staten Is. Physicians Practice, P.C.*, 101 AD3d 833 [2d Dept 2012]). Relevant to this issue is whether the plaintiff was “a patient of the practice” rather than the individual physician. For example, the Second Department has found an issue of fact where the plaintiff demonstrates “that she was treated by other nonparty physicians who were employees of the Practice, that the billing for all the medical services rendered to her was generated by the Practice rather than the individual physicians, that the shared notes and records created for each of the Practice’s patients by the various physicians employed by the Practice

were maintained by the Practice, and that the Practice's letterhead included [the names of multiple treating physicians].” (*Osborn v DeChiara*, 165 AD3d 1270, 1272 [2d Dept 2018].)

Here, Plaintiffs have submitted medical records showing the patient’s treatment dates, complaints, lab results, examination notes, and billing statements from N.P. Jaffe and subsequent providers at Boro Park Ob/Gyn. As in *Osborn*, all medical records in the chart bear a “Boro Park Obstetrics and Gynecology, P.C.” letterhead with the names of nine physicians underneath, not including nurse practitioners. Her billing statement and charges from 2021-2023 were generated by the Boro Park Ob/Gyn practice and not an individual provider. All the notes from her Boro Park Ob/Gyn examinations, history, prescriptions, and treatment plans were generated in a uniform style and shared by different providers, with references to N.P. Jaffe’s encounter appearing under the “Previous Assessment Plan” and “Date of last labs” when she saw Dr. Silverman in 2023.

Plaintiffs also submitted a personal affirmation from the patient stating that she was a regular patient of Boro Park Ob/Gyn since 1996, and that she saw “many different providers” at the practice including co-defendant Dr. Silverman and non-party Dr. Ari Schwartz. She further stated that “if one of the doctors was not available, the practice would tell me I was seeing someone else,” which is what occurred when she had an appointment on June 2, 2021 and was told she would be examined by N.P. Jaffe.

Plaintiffs’ submissions establish that she was a patient of Boro Park Ob/Gyn rather than an individual physician, and N.P. Jaffe treated her in June 2021 as a nurse practitioner on behalf of the practice. Further, the records from those visits, including the notes on her reported complaints and lab results, demonstrate that she received treatment in June 2021 and September-

October 2023 for symptoms related to her underlying claim of failure to diagnose and treat her elevated glucose and diabetes.

For these reasons, the Court finds that the continuous treatment doctrine applies and renders Plaintiffs' claims against N.P. Jaffe timely. The part of the motion seeking to dismiss the Complaint against him as time-barred is **denied**.

On the issue of personal jurisdiction, Plaintiffs' time to serve the Summons and Complaint on N.P. Jaffe had not yet expired when this motion was filed. At oral argument before this Court on September 18, 2025, the parties affirmed that Defendant N.P. Jaffe has been served and accepted service of the Complaint. The part of the motion seeking to dismiss on personal jurisdiction grounds is therefore denied as moot.

Finally, there is no opposition to Plaintiffs' cross motion (Seq. No 2) for leave to amend the Complaint to correct the patient's first date of treatment from "June 4, 2021" to "June 2, 2021." Accordingly, Plaintiffs' cross motion is granted.

It is hereby:

ORDERED that Defendant N.P. Jaffe's motion (Seq. No. 1) seeking to dismiss Plaintiffs' claims against him on the basis of the statute of limitations and lack of personal jurisdiction, is **DENIED**; and it is further

ORDERED that Plaintiffs' cross motion (Seq. No. 2) for leave to amend the Complaint is **GRANTED** without opposition; it is further

ORDERED that Plaintiff shall serve an amended Complaint within 30 days of the date of this Decision and Defendants shall file their Answers 20 days thereafter.

This constitutes the decision and order of this Court.

ENTER.



**Hon. Consuelo Malafre Melendez
J.S.C.**