

**Anagnosctou v Franco**

2025 NY Slip Op 35068(U)

December 30, 2025

Supreme Court, New York County

Docket Number: Index No. 805135/2025

Judge: Kathy J. King

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. KATHY J. KING PART 06**

*Justice*

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CHRISTOPHER ANAGNOSCTOU,  
Plaintiff,

- v -

CLAUDIO FRANCO, BENEDICT RICH, THE NEW YORK AND PRESBYTERIAN HOSPITAL, THE NEW YORK-PRESBYTERIAN COLUMBIA, IRVING MEDICAL CENTER, COLUMBIA DENTAL MEDICINE-CUHCI, and VANDERBUILT CLINIC,  
Defendants.

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**INDEX NO.** 805135/2025

**MOTION DATE** 07/16/2025

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 23 were read on this motion to/for DISMISS.

Upon the foregoing documents, and oral arguments having been heard, Defendant Claudio Franco, DDS (“Dr. Franco”) seeks an Order, pursuant to CPLR 3211(a) (5), dismissing the within action on the ground that it is barred by the statute of limitations.

**BACKGROUND**

Plaintiff’s complaint alleges a cause of action in dental malpractice arising from Defendants’ negligence, which resulted in serious, severe, and permanent injuries, including loss of viability of the tooth.

On July 23, 2021, Plaintiff treated with Dr. Franco at the Vanderbilt Clinic because he had missing teeth and wanted full restoration of teeth #18-29 with porcelain crowns. Dr. Franco placed paraposts on teeth #25 and #26. A few days later, Plaintiff reported pain in that area, and was

treated with antibiotics over the course of several months. By September 24, 2021, Plaintiff indicated that Dr. Franco informed him that tooth #25 had broken through the tooth wall, damaging both teeth #25 and 26. On February 1, 2022, Dr. Franco referred Plaintiff to an endodontist, Dr. Oghaz. After treating with Dr. Oghaz, Plaintiff followed up with Dr. Franco again on June 7, 2022, at which point he was told Dr. Vlock would take over his care due to Dr. Franco's graduation. Plaintiff then consulted with Dr. Vlock on September 24, 2022, and was eventually reassigned to Dr. Bhardwaj. Treatment continued through early 2023, including visits on January 27 and February 7, until March 29, 2023, when Plaintiff decided to transfer his care to another facility.

Plaintiff commenced this dental malpractice action by filing a summons and complaint on May 15, 2025, alleging dental malpractice between July 23, 2021, and March 29, 2023, related to the placement of a post at tooth #25. Defendant Dr. Franco now moves pursuant to CPLR 3211(a)(5) to dismiss on the ground that the complaint is barred by the statute of limitations.

The Plaintiff opposes the motion.

### **DISCUSSION**

It is well settled that in moving to dismiss a cause of action pursuant to CPLR 3211(a)(5) as barred by the statute of limitations, the moving defendant bears the initial burden of demonstrating, prima facie, that the time within which to commence the cause of action has expired. 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 (*See e.g., Weinstein v Gewirtz*, 208 AD3d 717 [2d Dept 2022]).

CPLR § 214-a provides that: "An action for medical, dental or podiatric malpractice must be commenced within two years and six months of 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.” Here, Defendant Dr. Franco argues that the statute of limitations as to Plaintiff’s claims had to be asserted on or before December 30, 2024, and that the medical malpractice action was time-barred, since he was not involved in the Plaintiff’s care after June 30, 2022, and the Summons and Complaint alleging dental malpractice was filed on May 15, 2025. Applying the law to the facts in this case, the Court finds that Defendant Dr. Franco met his initial burden of demonstrating, prima facie, that the statute of limitation in the within action expired.

Plaintiff, in opposition, argues that the action is timely based on the continuous treatment doctrine which tolled the statutes of limitations, since Plaintiff continued to treat at the clinic where Defendant Dr. Franco allegedly committed malpractice. Under the continuous treatment doctrine, the time for a plaintiff to bring an action alleging malpractice is stayed “when the course of treatment which includes the wrongful acts or omissions has run continuously and is related to the same original condition or complaint” (*Borgia v City of New York*, 12 NY2d 151 [1962]).

In order to satisfy his burden of proof under the continuous treatment doctrine, Plaintiff must show that: (1) he continued to seek, and in fact obtained, an actual course of treatment from the defendant physician during the relevant period; (2) the course of treatment was for the same conditions or complaints underlying the plaintiff’s medical malpractice claim; and (3) the treatment is continuous” (*Curry v State*, 239 AD3d 1058 [3d Dept 2025]). Medical treatment is deemed to be continuous if “there is evidence of “some relevant continuing relation” between the patient and the allegedly negligent doctor during the period of the subsequent treatment or “an agency or other relevant relationship” between the allegedly wrong-doing physician and a subsequent treating physician” (*Pierre-Louis v Hwa*, 182 AD2d 55, 56 [2d Dept 1992]. *See also Allende v New York City Health and Hosps. Corp.*, 90 NY2d 333, 334 [1997], *Curry v State*, 239 AD3d 1058 [3d Dept

2025], *Conway v Nassau Med. Ctr.*, 298 AD2d 423, 424 [2d Dept 2002], *Ganess by Ganess v City of New York*, 85 NY2d 733, 734 [1995]).

Here, Plaintiff argues that the continuous treatment doctrine applies since he continued to treat tooth #25 at the same clinic with Dr. Bhardwaj and Dr. Vlock, upon Dr. Franco's graduation from his residency program. However, the case law is well settled that for treatment to be continuous it is insufficient to establish the requisite "relevant relationship" where the alleged wrong-doing physician and the subsequent treating physician are affiliated with the same hospital (see *Ganess by Ganess v City of New York*, 85 NY2d 733, 734 [1995], see also, *Curry v State*, 239 AD3d 1058 [3d Dept 2025]). Significantly, "the continuous treatment doctrine is not available unless there is evidence of "some relevant continuing relation" between the patient and the allegedly negligent doctor during the period of the subsequent treatment or "an agency or other relevant relationship" between the alleged wrong-doing physician and the subsequent treating physician." In the case at bar, the Defendant established that there was no continuing relationship with the Columbia Dental Clinic after he graduated in late June of 2022, which Plaintiff failed to rebut.

Accordingly, Plaintiff has failed to raise a question of fact as to whether the statute of limitations is tolled.

As a result, it is hereby

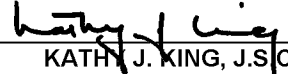
**ORDERED** that the Defendant's motion is granted and the complaint is dismissed as to Defendant Claudio Franco, DDS; and it is further

**ORDERED** that the Clerk is directed to enter judgment in accordance with this Order; and it is further

**ORDERED** that within twenty (20) days of the date of this Order, the Defendant is to serve a copy of this Order on the Plaintiff via first-class certified mail to her/his last known address; and it is further

**ORDERED** that, within twenty (20) days of the date of this Order, the Defendant shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk’s Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the “E-Filing” page on the court’s website, and, to comply with those procedures, the moving Defendant shall (1) upload this Order to the NYSCEF system under document title “SERVICE ON SUPREME COURT CLERK (GENL CLERK)W/COPY OF ORDER,” and (2) separately file and upload the notice required by CPLR 8019(c) a completed Form EF-22, along with a copy of this Order under document title “NOTICE TO COUNTY CLERK CPLR 8019(C),” and the County Clerk and all appropriate court support offices shall thereupon amend the court records accordingly; and it is further

**ORDERED** that the remaining parties are directed to appear for a preliminary conference on March 12<sup>th</sup>, 2026, at 10:00am, in Courtroom 351, 60 Centre Street, New York, NY 10007.

12/30/2025					
DATE			KATHY J. KING, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE