

Mohamed v Goldstein
2026 NY Slip Op 30548(U)
February 11, 2026
Supreme Court, New York County
Docket Number: Index No. 805223/2024
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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AMAL MOHAMED,

Plaintiff,

- v -

JEFFREY GOLDSTEIN, M.D., NYU LANGONE
HOSPITALS, CAREY DOLGIN, M.D. (Formerly
Named herein as JOHN DOE1), JOHN DOES 2-10
and JANE DOES 1-10 (Health Providers whose names
are fictitious and unknown at this time),

Defendants.

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INDEX NO. 805223/2024

MOTION DATE 11/05/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for DISMISSAL.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, lack of informed consent, breach of fiduciary duty, and negligent hiring, training, supervision, and retention of healthcare personnel, the defendant Carey Dolgin, M.D., moves pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred insofar as asserted against him. The plaintiff opposes the motion. The motion is denied.

Dolgin asserted in his supporting affirmation that, on February 2, 2021, at the defendant NYU Langone Hospitals (NYU), he performed a left retroperitoneal dissection to provide exposure for an L4-L5 and L5-S1 discectomy and anterior lumbar interbody fusion that had been performed upon the plaintiff by the former defendant Jeffrey Goldstein, M.D. He further averred that he examined and evaluated the plaintiff postoperatively on April 20, 2021, June 14, 2021, and November 1, 2021, and that November 1, 2021 was the last occasion on which he was involved with the plaintiff's care. In opposition to Dolgin's motion, however, the plaintiff submitted an entry from NYU's chart memorializing a March 13, 2022 encounter between the

plaintiff and NYU emergency medicine physician Chelsea Hayman, M.D., at which the plaintiff complained of severe pain in her lower abdomen, near her “bikini line” due to a hernia, characterizing the pain as 10 on a scale of 10. In addition, the plaintiff complained to Dr. Hayman of frequent urination, newly developed incontinence upon sneezing and coughing, and difficulty emptying her bladder. The plaintiff purportedly told Dr. Hayman that the hernia was caused by the spinal surgery that Goldstein had performed, but that she only wanted to be seen by Goldstein. As relevant to the instant motion, Dr. Hayman wrote: “Collateral from surgeon Dr. Dolgin (sic) who did her procedure who reports she got the procedure through workers comp.” Dr. Hayman, however, did not expressly assert, let alone implicitly indicate, that the subject of insurance coverage was the only issue that she discussed with Dolgin. In response to the plaintiff’s opposition papers, Dolgin elected not to serve a reply and, hence, declined to clarify or describe the extent of his conversations with Dr. Hayman on March 13, 2022.

The plaintiff commenced this action on August 12, 2024 by filing a summons with notice, and amended her summons with notice on September 10, 2024 to substitute Dolgin for one of the fictitious “John Doe” defendants whom she had named in the initial summons with notice. Dolgin thereafter made the instant pre-answer motion to dismiss the complaint insofar as asserted against him, arguing that, inasmuch as he last saw the plaintiff on November 1, 2021, the applicable two-year-and-six-month limitations period expired on May 1, 2024, rendering the action untimely as to him.

On a motion to dismiss a complaint as time-barred, “a defendant must establish, prima facie, that the time within which to sue has expired. Once that showing has been made,” the burden shifts to the plaintiff to raise an issue of fact as to “whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period” (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020], quoting *Quinn v McCabe, Collins, McGeough & Fowler, LLP*, 138 AD3d 1085, 1085-1086 [2d Dept 2016]; see *Murray v*

Charap, 150 AD3d 752 [2d Dept 2017]; *Williams v New York City Health & Hosps. Corp.*, 84 AD3d 1358 [2d Dept 2011]; *Rakusin v Miano*, 84 AD3d 1051 [2d Dept 2011]).

The statute of limitations applicable to actions to recover for medical malpractice against a private health-care provider is two years and six months, measured from “the act, omission or failure complained of or last treatment where there is a continuous treatment for the same illness, injury or condition which gave rise to the said act omission or failure” (CPLR 214-a). Likewise, the statute of limitations applicable to a cause of action sounding in lack of informed consent is two years and six months from the date of the alleged failure to provide the patient with information concerning the risks and benefits of a particular treatment or procedure (see *Wilson v Southampton Urgent Med-Care, P.C.*, 112 AD3d 499, 499-500 [1st Dept 2013]).

The “continuous treatment” provision of CPLR 214-a posits that the limitations period applicable to a medical malpractice cause of action “does not begin to run until the end of the course of treatment 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*” (*Nykorchuck v Henriques*, 78 NY2d 255, 258 [1991] [internal quotation marks omitted] [emphasis added]; see *Massie v Crawford*, 78 NY2d 516, 519 [1991]; *McDermott v Torre*, 56 NY2d 399, 405 [1982]; *Borgia v City of New York*, 12 NY2d 151, 155 [1962]; *Jajoute v New York City Health & Hosps. Corp.*, 242 AD2d 674, 676 [1st Dept 1997]). The continuous treatment doctrine also is applicable to a cause of action alleging lack of informed consent (see *Murray v Charap*, 150 AD3d 752, 752-754 [2d Dept 2017]).

As germane to the instant motion, the continuous treatment doctrine is applicable to a malpractice cause of action even where different physicians within a hospital department participate sequentially or collaterally in a patient's care, so long as they are functioning “as part of a single medical team or in a single hospital department in an ongoing effort to treat the same medical condition” (*Allende v New York City Health & Hosps. Corp.*, 90 NY2d 333, 339-341 [1997]). Thus, the doctrine applies to multiple physicians working in concert, to the extent that

the “various doctors operated as one medical group, rendering coordinated and continuing care” (*Cox v Kingsboro Med. Group*, 88 NY2d 904, 906 [1996]; see *McCallen v Sherwin*, 2001 NY Slip Op 50131[U], *9. 2001 NY Misc LEXIS 1141, *10-11, 2001 WL1791514, *4 [Sup Ct, Nassau Count, Oct. 5, 2001] [limitations period is tolled where a physician within a practice continued to treat sequelae of an earlier procedure, and where physicians within that same practice “actively consulted” in connection with the same underlying condition]). The court concludes that, in opposition to Dolgin’s showing that he last treated the plaintiff in connection with her spinal condition on November 1, 2021, the plaintiff raised an issue of fact as to whether Dolgin actively consulted with Dr. Hayman on March 13, 2022 in connection with sequelae to the surgery in which he participated. Since Dolgin did not submit a reply affirmation, he did not demonstrate that his consultation with Dr. Hayman was limited in any way, or that it did not encompass medical issues related to the subject surgery and its consequences. Hence, the plaintiff has established that the continuous treatment doctrine applies to her claims against Dolgin, that the last date on which he was involved with her treatment was March 13, 2022, and that the limitations period applicable to the medical malpractice and lack of informed consent causes of action insofar as asserted against him expired on September 13, 2024. Consequently, the plaintiff’s interposition of her claims against Dolgin on September 10, 2024 was timely.

The court further notes that, in those situations where a patient’s later complaints are indeed related to earlier complaints, examinations, and treatment, the Appellate Division, First Department, has articulated a more nuanced rule that takes account of a “plaintiff’s belief” that he or she “was under the active treatment of defendant at all times, so long as” the treatments did not “result in an appreciable improvement” in his or her condition (*Devadas v Niksarli*, 120 AD3d at 1006). Even where a “plaintiff pursued no treatment for over 30 months after” the initial, allegedly negligent surgical treatment (*id.* at 1005),

“[i]n determining whether continuous treatment exists, the focus is on whether the patient believed that further treatment was necessary, and whether he [or she] sought such treatment (see *Rizk v Cohen*, 73 NY2d 98, 104 [1989]). Further, this

Court has suggested that a key to a finding of continuous treatment is whether there is ‘an ongoing relationship of trust and confidence between’ the patient and physician (*Ramirez v Friedman*, 287 AD2d 376, 377 [1st Dept 2001]). Plaintiff’s testimony that he considered defendant to be his ‘[doctor] for life,’ and that the efficacy of the [treatment] was guaranteed, was a sufficient basis for the jury to conclude that such a relationship existed”

(*id.* at 1006). Where such a situation obtains,

“[c]ases such as *Clayton v Memorial Hosp. for Cancer & Allied Diseases* (58 AD3d 548 [1st Dept 2009]) are inapplicable . . . , to the extent they reiterate that ‘continuous treatment exists “when further treatment is explicitly anticipated by both physician and patient as manifested in the form of a regularly scheduled appointment for the near future, agreed upon during that last visit, in conformance with the periodic appointments which characterized the treatment in the immediate past”’ (58 AD3d at 549, quoting *Richardson v Orentreich*, 64 NY2d at 898-899)”

(*id.* at 1007). Applying the First Department’s articulation of the law, as this court must (see *D’Alessandro v Carro*, 123 AD3d 1, 6 [1st Dept 2014]), the plaintiff demonstrated that she had not severed any ongoing relationship of trust and confidence that had been established between her and Dolgin.

A negligent hiring, training, supervision, and retention cause of action against a private medical provider constitutes a cause of action independent of a medical malpractice cause of action (see *Burgos v Lau*, 2025 NY Slip Op 33250[U], *2 n 2, 2025 NY Misc LEXIS 7290, *2 n 2 [Sup Ct, N.Y. County, Aug. 28, 2025] [Kelley, J.]; *Estate of Gebert v Huntington Hills Ctr. for Health*, 2024 NY Misc LEXIS 51911, *16 [Sup Ct, Suffolk County, Sep. 5, 2024]; see also *Taylor v Methodist Hosp.*, 6 Misc 3d 1008[A], 2004 NY Slip Op 51750[U], *4, 2004 NY Misc LEXIS 2898, *9 [Sup Ct, Kings County, Nov. 1, 2004] [deeming allegation of “negligent credentialing” to constitute an independent cause of action]), it sounds in general common-law negligence, and it is subject to the three-year limitations period of CPLR 214(5) (see *Calamari v Panos*, 131 AD3d 1088, 1090 [2d Dept 2015]). Although, in the context of medical treatment, such a cause of action usually is asserted against a hospital, a professional corporation, a professional limited liability company, or a similar entity, to the extent that the plaintiff also intended to assert that

cause of action against Dolgin, she timely interposed it against him, regardless of whether the date of his last treatment is deemed to be November 1, 2021 or March 13, 2022.

Although it is unclear as to nature of the particular facts underpinning the plaintiff’s breach of fiduciary duty cause of action, in applying the appropriate limitations period, a court must “look for the reality and the essence of the action and not its mere name” (*Tighe v Ginsberg*, 146 AD2d 268, 271 [4th Dept 1989], quoting *Brick v Cohn-Hall-Marx Co.*, 276 NY 259, 264 [1937]). Consequently, to the extent that Dolgin’s alleged breach of fiduciary duty arose solely from the medical treatment that he provided, the medical malpractice limitations period of CPLR 214-a would apply, since the claim would be duplicative of a medical malpractice cause of action (*see Freely v Donnenfeld*, 150 AD3d 695, 696 [2d Dept 2017]). To the extent that the claim arose from some other type of breach of duty sounding in general negligence, such as the improper release of confidential medical records, the three-year limitations period of CPLR 214(5) would apply (*see Tighe v Ginsberg*, 146 AD2d at 271). Under either analysis, that cause of action is timely insofar as asserted against Dolgin.

Accordingly, it is,

ORDERED that the motion is denied.

This constitutes the Decision and Order of the court.

2/11/2026

DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: