

**Reguillo v New York City Health & Hosps. Corp.**

2026 NY Slip Op 31333(U)

March 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 531317/2025

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part MMESP 7 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 30th day of March 2026.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
ISAAC ELIAS REGUILLO,

Plaintiff,

-against-

**DECISION & ORDER**

Index No. 531317/2025  
Mo. Seq. 1

NEW YORK CITY HEALTH AND HOSPITALS CORP.  
(WOODHULL MEDICAL CENTER) and JOHN AND JANE  
DOES #1 THROUGH #100,

Respondents.

-----X  
**HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.**

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

NYSCEF #s: 2–10, 11–13, 15–18

Plaintiff moves (Seq. No. 1) for an Order, pursuant to Gen. Mun. Law § 50-e, granting leave to serve a late notice of claim and/or deem the notice of claim dated August 25, 2025, timely served *nunc pro tunc*. Defendant New York City Health and Hospitals Corporation (“NYCHHC”) opposes the motion.

This action arises from events that occurred at Woodhull Medical Center (“WMC”), a NYC Health and Hospitals Corporation (“NYCHHC”) facility, on August 21, 2024. Plaintiff underwent surgery for a reverse arthroplasty of his right shoulder at WMC on August 21, 2024, and claims that the surgery was negligently performed as demonstrated by subsequent medical events and evaluations. Plaintiff also claims that the Defendant failed to obtain informed consent prior to the surgery, failed to provide alternative treatment options, and failed to inform him that shoulder dislocation was a likely result of the procedure. Following surgery, Mr. Reguillo

experienced recurrent dislocations of his right shoulder on October 4, 2024, and November 15, 2024. Plaintiff's last follow-up appointment for the subject shoulder condition at WMC occurred on April 14, 2025. Plaintiff contends that although the surgery occurred on August 21, 2024, he did not become aware of the alleged malpractice until his June 24, 2025, appointment, when he obtained a second opinion from a shoulder specialist.

Plaintiff served a notice of claim on NYC Health and Hospitals Corporation on or about August 25, 2025. Plaintiff commenced this action on September 10, 2025, and filed an instant Order to Show Cause seeking leave to serve a late notice of claim.

Pursuant to General Municipal Law § 50-e, a notice of claim against a municipal corporation must be served within ninety days after the claim arises unless the court grants leave to serve a late notice of claim. In medical malpractice actions, however, accrual may be tolled where there is continuous treatment for the same illness, injury, or condition which gave rise to the alleged malpractice (*see* CPLR 214-a; *Gomez v Katz*, 61 AD3d 108, 111 [2d Dept 2009]).

The continuous treatment doctrine further supports the Plaintiff's position. Under this doctrine, the relevant period may be tolled where there is an ongoing course of treatment for the same condition that gives rise to the claim, and the patient continues to seek care in reliance on the provider's professional skill (*see* CPLR 214(a); *Gomez* at 111–112). Under the continuous treatment doctrine, the limitations period does not begin to run until the end of the course of treatment if three conditions are met: (1) the patient 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 (*Chvetsova v Family Smile Dental*, 202 AD3d 657, 658 [2d Dept 2022]). Implicit in the doctrine is the recognition that treating

physicians and institutions are in the best position to identify and correct their own malpractice (see *Allende v New York City Health & Hosps. Corp.*, 90 NY2d 333, 338 [1997]; *Ganess v City of New York*, 85 NY2d 733, 735 [1995]; *Cooper v Kaplan*, 78 NY2d 1103, 1104 [1991]). “The underlying premise of the continuous treatment doctrine is that the doctor-patient relationship is marked by continuing trust and confidence and that the patient should not be put to the disadvantage of questioning the doctor's skill in the midst of treatment, since the commencement of litigation during ongoing treatment necessarily interrupts the course of treatment itself” (*Chvetsova* at 658-659, quoting *Gomez v. Katz* at 111).

Here, the record reflects that Plaintiff continued to receive treatment at WMC for the same shoulder condition following the August 21, 2024, surgery, including documented dislocations in October and November 2024, and a follow-up visit on April 14, 2025, at which further surgical intervention was discussed. Defendants contend that the continuous treatment doctrine does not apply beyond April 14, 2025, and that, based on Plaintiff’s last treatment date, Plaintiff had until July 13, 2025, to serve a timely notice of claim (see *Peters v Asarian*, 89 AD3d 1073 [2d Dept 2011]).

The records demonstrate that Plaintiff remained under Defendant’s care for the same complained-of condition and continued to repose trust and confidence in the NYCHHC providers for the treatment of his shoulder. It is noted that Defendant does not contest that April 14, 2025, was Plaintiff’s last day of treatment at WMC. Accordingly, the claim is deemed to have accrued on April 14, 2025. The ninety-day period, therefore, expired on or about July 13, 2025. As Plaintiff did not serve the notice of claim until August 25, 2025, the notice of claim was untimely.

Under Gen. Mun. Law § 50-e (5), the Court may grant an extension of time to serve the

notice of claim, but that extension “shall not exceed the time limited for the commencement of an action by the claimant against the public corporation.” Here the statute of limitations runs until July 13, 2026, and has not yet expired. Therefore, it is within the Court’s discretion to consider whether to deem Plaintiff’s notice of claim timely.

“In determining whether to grant or deny leave to serve a late notice of claim, the court must consider in particular whether the municipality acquired actual knowledge of the essential facts constituting the claim within 90 days of the claim’s accrual or within a reasonable time thereafter” (*Jaime v City of New York*, 41 NY3d 531, 540 [2024]). The Court also considers other relevant facts and circumstances, particularly whether “the delay would substantially prejudice the municipality or public corporation in its defense” and whether the petitioner “demonstrated a reasonable excuse for the failure to serve a timely notice of claim” (*Ibrahim v New York City Tr. Auth.*, 202 AD3d 786, 787 [2d Dept 2022]; see *Newcomb v Middle County Cent. School Dist.*, 28 NY3d 455 [2016]). “The presence or absence of any one of these factors is not dispositive” (*Balbuenas v New York City Health & Hosps. Corp.*, 209 AD3d 642, 644 [2d Dept 2022], quoting *Rodriguez v Westchester Med. Ctr. [WMC]*, 196 AD3d 659, 660 [2d Dept 2021]). However, “courts are to place a great weight” on the factor of actual knowledge (*Jaime* at 540, quoting *Beary v City of Rye*, 44 NY2d 398 [1978]).

The Court first considers whether Defendant acquired actual knowledge of the essential facts constituting the claim within the statutory period or a reasonable time thereafter. It is well established that “mere possession or creation of records does not ipso facto establish actual knowledge” (*Jaime* at 545, quoting *Wally G. ex rel. Yoselin T. v New York City Health and Hosps. Corp.*, 27 NY3d 672, 677 [2016]). In the case of a medical malpractice claim, the records themselves must “evinced that the medical staff, by its acts or omissions, inflicted [an] injury on

plaintiff” (*Wally G.* at 677, quoting *Williams v Nassau County Med. Ctr.*, 6 NY3d 531, 537 [2006]).

The Court notes that several factual assertions relied upon by Plaintiff were raised for the first time in reply papers. Nevertheless, in determining an application pursuant to General Municipal Law §50-e (5), the Court may consider the entire record before it in evaluating the relevant statutory factors. Further, the determination of whether to grant leave to serve a late notice of claim under Gen Mun § 50-e (5) is left to the sound discretion of the trial court (*see Ortiz v Westchester County*, 208 AD3d 487 [2d Dept 2022]).

In support of the motion, Plaintiff argues that Defendant NYCHHC had actual knowledge of the essential facts underlying the claim through the continued treatment and medical records generated during Plaintiff’s treatment at WMC. Plaintiff relies on said records, which reflect that following Mr. Reguillo’s shoulder surgery on August 21, 2024, Plaintiff continued to receive treatment, including follow-up appointments, at Defendant’s facility for subsequent dislocations and physical therapy. In their motion papers, Plaintiff states that WMC documented both his October 4, 2024, and November 15, 2024, shoulder dislocations. Additionally, Plaintiff claims that a few days after the second dislocation in November 2024, his physical therapist at WMC discontinued therapy because his right shoulder remained dislocated from the socket.

Plaintiff further points to a follow-up visit at WMC on April 14, 2025, at which he claims a WMC physician informed him that an additional surgery would be required. Plaintiff claims he then requested a second opinion on June 24, 2025, with an outside physician, who allegedly advised that the initial surgery had not been properly performed. Plaintiff argues that these records demonstrate that the Defendant was aware of the complications and, as such, the potential medical malpractice claim within the statutory period.

Based on the record, Plaintiff has met their burden of establishing that NYCHHC had actual knowledge of the facts underlying the claim. The records show that Plaintiff presented to WMC on two separate occasions with a dislocated right shoulder following surgery. Although the mere creation of records does not constitute actual knowledge, here the details of Plaintiff's claim are apparent from the contemporaneous medical records (See *Ahmed v New York City Health & Hosp. Corp.*, 204 AD3d 870 [2d Dept 2022].) Therefore, those records are sufficient on their face to alert the respondents to the alleged potential malpractice claim within the 90-day period. For this reason, the Court finds Plaintiff has demonstrated NYCHHC's actual knowledge with respect to the claims arising on August 21, 2024.

Even in the absence of actual knowledge, the Court may consider whether the claimant offered a reasonable excuse for the delay, supported by competent evidence (*see generally Balbuenas* at 646-647 [2d Dept 2022]; *Williams v Jamaica Hosp. Medical Center*, 124 AD3d 636, 638 [2d Dept 2015]).

Plaintiff asserts that he had a reasonable excuse for the delay in serving the notice of claim. Plaintiff submits that at the post-operative follow-up appointment on April 14, 2025, the treating physician at WMC informed him that he would require another surgery but did not provide any further explanation. Plaintiff attests that he then requested a referral for a second opinion and was referred out to a physician at another facility. Plaintiff further states that the initial facility to which he was referred did not accept his insurance, which delayed his ability to obtain a second opinion. Plaintiff contends that, contrary to Defendant's arguments, it was the treating physician at WMC who indicated that they no longer wished to treat him. As to his missing appointments in December 2024, Plaintiff submits that he was unable to attend certain appointments because he required one of his children to escort him, and they were unavailable.

Plaintiff maintains that he never intended to terminate his relationship with WMC and instead intended to return following a second opinion.

As reflected in the record, Plaintiff was seen on June 24, 2025, for a second opinion. Plaintiff asserts that at this appointment, his doctor informed him that the initial surgery had not been properly performed and that an additional surgery would be necessary to prevent further dislocations. According to Plaintiff's affidavit, he did not suspect that anything had gone wrong with the surgery performed at WMC until receiving a second opinion and had merely been seeking further evaluation regarding the need for an additional surgical procedure. Plaintiff contends that by the time he learned that the recurring dislocations were allegedly caused by a defective surgery, and then subsequently retained counsel, the 90-day period to serve a timely notice of claim had already lapsed.

It is well established that ongoing medical treatment for one's alleged injury may constitute a valid excuse. "While the statute does not explicitly provide for the consideration of [reasonable excuse], the statute is non-exhaustive, and this factor has firmly taken root in the case law" (*Jaime*, at 541). The Second Department has held that "even absent incapacitation, a reasonable excuse may be established by an allegation that a petitioner was more concerned and preoccupied with his or her alleged injuries or those of a spouse or child than with retaining counsel to pursue a legal claim," provided that "such an allegation is supported by medical evidence" (*Balbuenas*, at 646).

Here, the Court finds that Plaintiff has established a reasonable excuse for the delay. Plaintiff asserts that following the August 21, 2024, surgery, he continued to deal with the condition of his shoulder and the dislocations that followed and sought further evaluation regarding the need for additional surgery into June of 2025. The Court further credits Plaintiff's

explanation that he did not suspect a potential malpractice claim until he obtained a second opinion on June 24, 2025, at which time he was allegedly informed that the initial surgery had not been properly performed. Plaintiff further contends that, following his discovery of the alleged malpractice, additional delay resulted from his efforts to identify and retain counsel to pursue this claim. Plaintiff also explains that some of his missed appointments were due to difficulty getting to WMC. Under these circumstances, and in light of Plaintiff's asserted efforts to obtain continued evaluation and treatment for his shoulder condition, the Court finds that Plaintiff has demonstrated a reasonable excuse for the delay in serving the notice of claim.

Finally, Plaintiff argues that the late notice of claim would not substantially prejudice NYCHHC. On this issue, Plaintiff has the prima facie burden of presenting at least "some evidence or plausible argument that supports a finding of no substantial prejudice" (*Newcomb v Middle County Cent. School Dist.*, 28 NY3d at 466). Once this burden is met, the opposing party must make a particularized showing that they would be substantially prejudiced by the late notice of claim.

Plaintiff contends that the Defendant, NYCHHC, would not be substantially prejudiced by the delay in serving the notice of claim dated August 25, 2025, approximately six weeks after the expiration of the 90-day period. Plaintiff argues that the Defendant had actual knowledge of the potential medical malpractice claim, and additionally that the Defendant possesses all the relevant medical records, imaging studies, and the identities of the treating physicians and staff involved in Plaintiff's care and therefore retains the ability to investigate and defend the claim. Plaintiff further asserts that Defendant has not articulated any specific manner in which the delay has impaired its ability to investigate the circumstances of Plaintiff's treatment.

Defendants argue that Plaintiff has failed to satisfy the burden of demonstrating the absence of substantial prejudice. Defendants contend that Plaintiff's reliance on the existence of medical records and the fact that the treating physicians were employees of NYCHHC is insufficient to establish that the hospital had actual knowledge of the essential facts underlying the claim. Defendants further argue that because the hospital lacked timely notice that malpractice was being alleged, it was deprived of the opportunity to conduct a prompt investigation into the circumstances of Plaintiff's treatment. According to Defendants, the delay therefore substantially prejudiced the municipal defendants because they were unable to investigate the alleged malpractice while the events were still fresh and the relevant personnel and evidence readily available.

In this instance, Plaintiff's submissions have met the prima facie burden of presenting "some evidence or plausible argument" that the delay would not substantially prejudice NYCHHC. Contrary to Defendants' argument, under these circumstances the approximately six-week delay is not, by itself, prejudicial. In response to Plaintiff's prima facie showing, NYCHHC has not presented any particularized evidence demonstrating that the delay impaired its ability to investigate or defend the claim, as required by the Court of Appeals (*Newcomb* at 467). Accordingly, the Court finds no evidence of substantial prejudice.

In sum, the Court finds that Plaintiff has demonstrated that NYCHHC had actual knowledge of his potential medical malpractice claim resulting from the surgery performed on August 21, 2024, because the alleged injury inflicted on the patient can be gleaned from their own medical records within the 90-day period and a reasonable time thereafter. Further, Plaintiff had a reasonable excuse for the delay, and there is no evidence of substantial prejudice to

Defendants resulting from said delay. In consideration of all these factors, the motion for leave to file a late notice of claim is granted.

Accordingly, it is hereby:

**ORDERED** that Plaintiff's motion (Seq. No. 1) seeking an Order, pursuant to Gen. Mun Law § 50-e, granting leave to file a late notice of claim and/or deem the notice of claim timely filed *nunc pro tunc*, is **granted**; and it is further

**ORDERED** that the notice of claim shall be filed and served on NYCHHC within 30 days of entry of this order on NYSCEF.

This constitutes the decision and order of this Court.

ENTER.



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