Zambrano v NYU Langone Hosp. Brooklyn
2026 NY Slip Op 31591(U)
April 10, 2026
Supreme Court, Kings County
Docket Number: Index No. 526138/2025
Judge: Consuelo Mallafre Melendez

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 10th day of April 2026.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MARIA AUXILIADORA ROMERO ZAMBRANO,

Plaintiff,

-against-

NYU LANGONE HOSPITAL BROOKLYN and JEFFREY V. LUCIDO, DPM,

Defendants.

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DECISION & ORDER

Index No. 526138/2025
Mo. Seq. 1

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

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:
NYSCEF #s: 8 – 14, 18 – 20, 22

Defendants NYU Langone Hospital Brooklyn ("NYU") and Jeffrey V. Lucido, DPM ("Dr. Lucido"), move for an Order (a) dismissing plaintiff's First Cause of Action, with prejudice, for medical malpractice, as time barred per the applicable statute of limitations, pursuant to CPLR Rule 3211(a)(5) and CPLR § 214-a, (b) dismissing plaintiff's Second Cause of Action, with prejudice, for failure to state a cause of action for negligent hiring, supervision, training and retention, pursuant to CPLR Rule 3211(a)(7), and (c) dismissing plaintiff's Third Cause of Action for negligence, with prejudice, as time barred per the applicable statutes of limitations, pursuant to CPLR Rule 3211(a)(5) and CPLR § 214-a (Seq. No. 1).

Plaintiff opposes the motion.

In evaluating the dismissal of complaints on the grounds that they are barred by the statute of limitations, the defendants bear the initial burden of proving, prima facie, that the time in which to

commence an action has expired (*Osborn v DeChiara*, 165 AD3d 1270, 1271 [2018]). "The burden then shifts to the plaintiff to present evidence raising a triable issue of fact as to whether an action falls within an exception to the statute of limitations or whether the continuous treatment doctrine applies to toll the statute of limitations" (*id.* at 1271-1272).

Maria Auxiliadora Romero Zambrano ("Plaintiff") commenced this action on August 1, 2025, seeking damages allegedly arising from medical care rendered by Dr. Lucido at NYU. The claims against the moving Defendants stem from treatment rendered to Plaintiff starting on August 14, 2020, for podiatric surgery.

On August 14, 2020, Plaintiff presented to NYU for an operation to her left foot and ankle with Dr. Lucido. Plaintiff had revision surgery with Dr. Lucido on March 26, 2021, and she had a final visit with him on May 31, 2022. The record indicates Plaintiff was seen for her left and right foot and ankle by other NYU providers from June 16, 2022, through July 22, 2025. In Plaintiff's complaint, she alleges that NYU and Dr. Lucido were negligent for the surgery and treatment provided by Dr. Lucido in the August 14, 2020, surgery by failing to implement a more comprehensive surgical plan, failing to consider hardware placement, and failing to monitor her postoperative condition. Plaintiff further alleges that these were deviations from the standard of care that resulted in the need for Plaintiff's revision surgery on March 26, 2021.

The movants allege and are conceded by Plaintiff that treatment for Plaintiff's injury ended on May 31, 2022, with her last appointment with Dr. Lucido. Therefore, Defendants argue that the statute of limitations for medical malpractice against NYU and Dr. Lucido began to run from May 31, 2022, and expired on December 2, 2024.

The statute of limitations for a medical malpractice action in New York 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. Under the continuous treatment doctrine, the statute of limitations begins to run at the end of the course of treatment (*Chvetsova v Fam. Smile Dental*, 202 AD3d 657, 658 [2022], citing *Wright v Southampton Hosp.*, 187 AD3d 1242, 1244 [2020]). There are three principal elements of the continuous treatment doctrine. First, the patient "continued to seek, and in fact obtained, an actual course of treatment from the defendant physician during the relevant period" (*id.* at 658). This course of treatment may include surgery, therapy, or the prescription of medications (*Hall v Bolognese*, 210 AD3d 958, 962 [2022], citing *Schwelnus v Urological Assoc. of L.I., P.C.*, 94 AD3d 971, 973 [2012]). Second, the course of treatment provided by the physician must be for the same conditions or complaints underlying the plaintiff's medical malpractice claim (*Chvetsova*, 202 AD3d at 658). Third, the physician's treatment must be continuous (*id.*). To be "continuous," further treatment must be "explicitly anticipated by both physician and patient as manifested in the form of a regularly scheduled appointment for the near future, agreed upon during the last visit, in conformance with the periodic appointments which characterized the treatment in the immediate past" (*id.* at 659, citing *Gomez v. Katz*, 61 AD3d 108, 112 [2009]).

Continuous treatment must be more than simply the continuation of a general doctor-patient relationship or continuing efforts to arrive at a diagnosis (*Cox v Kingsboro Med. Grp.*, 214 AD2d 150, 153-154 [1995]). Instances when a patient initiates return visits to have a condition checked is not sufficient for continuous treatment, and the statute of limitations may begin to run once a provider considers the patient's treatment to be completed and does not request the patient to return for further examination (*see Cox*, 214 AD2d at 153-154; *McDermott v Torre*, 56 NY2d 399, 405-406 [1982]). However, a patient initiating a return visit to complain about and seek treatment for a matter related to the initial treatment would fall within the scope of continuous treatment (*Cox*, 214 AD2d at 153; *McDermott*, 56 NY2d at 405-406). A fundamental pillar 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" (*Wright*, 187 AD3d at 1244 [2020], quoting *Gomez*, 61 AD3d at 111).

Further, to impute treatment from one provider onto others, there must be an agency or other relevant relationship between the healthcare providers (*Cox*, 214 AD2d at 153-154; *see also McDermott*, 56 NY2d at 408). A provider's affiliation with a healthcare facility alone does not establish the continuous treatment (*Cox*, 214 AD2d at 155). The statute of limitations applicable to one provider cannot be imputed to another provider simply by virtue of their shared affiliation with the same hospital or practice (*id.* at 153, citing *Meath v Mishrick*, 68 NY2d 992 [1986]). Similarly, subsequent treatment by different providers cannot be imputed to the defendant provider and hospital alleged to have committed malpractice, and the continuous treatment doctrine is therefore unavailable to toll the limitations period (*Cox*, 214 AD2d at 153-154). To invoke the continuous treatment doctrine across providers, a plaintiff must establish either a continuing relationship between the patient and the defendant physician, or an agency or other relevant relationship between that physician and the subsequent treating provider (*id.* at 153-154). Mere referral relationships or common institutional affiliation are insufficient (*id.*).

In *Cox*, the Second Department noted that in *Meath v Mishrick*, "the Court of Appeals relied upon the reasoning in *McDermott v Torre* . . . in finding that an attending physician's continuous treatment should not be imputed to a hospital pathologist" (*Cox*, 214 AD2d at 153, citing *Meath*, 68 NY2d at 994; *McDermott*, 56 NY2d at 408). Indeed, it is well settled that "in order to impute one physician's treatment of a patient to another physician for purposes of the continuous treatment doctrine, there must be evidence of 'an agency or other relevant relationship' between the two physicians" (*Harris v N. Shore Univ. Hosp. at Syosset*, 16 AD3d 549, 550 [2005], quoting *Meath*, 68 NY2d at 994; *McDermott*, 56 NY2d 399).

In *Harris*, the plaintiff claimed the moving defendant injured her vocal cords while administering anesthesia and contended that the continuous treatment doctrine tolled the statute of limitations during the period of time after surgery that the plaintiff remained under the care of the physician who had performed the operation (*Harris*, 16 AD3d at 549). The court found no continuous treatment existed as there was no

evidence of any relevant relationship between the two physicians (*id.*). The follow-up care that the plaintiff's surgeon provided after the operation could not be imputed to the movant (*id.*).

Here, the movants assert that the medical malpractice action against Dr. Lucido should be dismissed because it is time barred. It is uncontested that the last date he treated Plaintiff was on May 31, 2022. The movants argue that Plaintiff was required to file her summons and complaint within two years and six months after that date, by December 2, 2024. Based on the submissions before the Court, Defendants have established, prima facie, that the statute of limitations has expired, and the burden shifts to Plaintiff to demonstrate that the continuous treatment doctrine applies to toll it.

Plaintiff argues that continuous treatment should apply through at least July 22, 2025, on the grounds that she continued treating with other physicians and employees at NYU "for the identical left foot and ankle condition arising directly from the surgeries Dr. Lucido performed, using the same diagnosis codes, and rendered by NYU Langone orthopedic surgeons, radiologists, podiatrists, and pain management specialists who were managing the ongoing complications of those surgeries." Plaintiff has failed to meet this burden.

As relevant to Dr. Lucido, regarding the first element of continuous treatment, Plaintiff did not continue to seek an actual course of treatment from the defendant physician during the relevant period. Both sides agree that Plaintiff's last visit with Dr. Lucido occurred on May 31, 2022. While she consulted with a subsequent surgeon, other physicians, and therapists at NYU, treatment by those providers does not impute to Dr. Lucido because there was no agency or other relevant relationship among them. Arguably, the fact that Plaintiff consulted with another surgeon and did not return to Dr. Lucido may evidence a termination of the relationship and negate continuous treatment.

The sole fact that Plaintiff's providers were affiliated with NYU does not establish the necessary nexus for continuous treatment (*Allende v New York City Health and Hosps. Corp.*, 90 NY2d 333, 334 [1997]). As the court in *Cox* clarified, a plaintiff must demonstrate either that the defendant physician

maintained a continuing relationship with the patient, or that a genuine agency or relevant relationship existed between that physician and the subsequent treaters, neither of which Plaintiff has shown here (*Cox*, 214 AD2d at 153-154; *Harris*, 16 AD3d at 550-551). The record does not reflect that there existed any agency affiliation between Dr. Lucido and the subsequent providers. The contention that all the physicians were employed by the same institution is insufficient to impute subsequent treatment to Dr. Lucido for purposes of extending the statute of limitations. There is also no evidence that the providers were working in conjunction with Dr. Lucido to address Plaintiff's condition.

Regarding the second element, Plaintiff does not establish that the subsequent course of treatment was for the same conditions or complaints underlying her medical malpractice claim. Plaintiff offers billing codes from later providers as evidence of continuity, but the Court rejects the use of billing codes as evidence of a continuous relationship. The codes alone are not evidence that the treatment provided was for the condition claimed in her original complaint, nor do they establish any coordination between Dr. Lucido and those providers. In addition, the fact that subsequent providers treated the same anatomical area does not establish that their treatment was a continuation of Dr. Lucido's care. Further, to the extent Plaintiff's return visits were self-initiated to have her condition checked or monitored, such visits are insufficient to establish continuous treatment (*Cox*, 214 AD2d at 153).

Regarding the third element, Plaintiff fails to demonstrate that the treatment was "continuous." The record does not establish that Plaintiff and Dr. Lucido anticipated further treatment through regularly scheduled appointments in conformance with the periodic appointments which characterized the treatment in the immediate past (*Chvetsova*, 202 AD3d at 659, citing *Gomez*, 61 AD3d at 112). There is no indication that any appointment after May 31, 2022, was scheduled at Dr. Lucido's direction or as part of an ongoing, coordinated plan of care. The statute of limitations begins to run once a physician considers the patient's treatment complete and does not request the patient to return (*Chvetsova*, 202 AD3d at 658; *Cox*, 214 AD2d at 153; *McDermott*, 56 NY2d at 405-406). The record reflects that is precisely what occurred as of May 31, 2022.

This Court finds that Plaintiff has not met her burden of establishing that there existed a continuous course of treatment between Dr. Lucido and Plaintiff's subsequent providers at NYU. Plaintiff's claims against Dr. Lucido are therefore untimely, and the medical malpractice claims against him are dismissed as time barred.

The Court turns next to the claims against NYU. Plaintiff's claims against NYU are based on vicarious liability for the alleged malpractice of Dr. Lucido. "A claim of vicarious liability cannot stand when 'there is no primary liability upon which such a claim of vicarious liability might rest'" (*Wijesinghe v Buena Vida Corp.*, 210 AD3d 824, 826 [2022], quoting *Karaduman v Newsday, Inc.*, 51 NY2d 531 [1980]). As vicarious liability depends on the underlying claim against the treating physician, NYU's liability can extend no further than Dr. Lucido's own. Where the principal malpractice claim against the treating physician is time barred, the claim against NYU premised on his conduct is likewise time barred. As discussed, the subsequent providers that treated Plaintiff after May 31, 2022, had no agency or relevant relationship with Dr. Lucido, and their treatment cannot be imputed to him for purposes of tolling the statute of limitations. NYU's vicarious liability attaches only to Dr. Lucido's conduct, and because that claim is time barred as of December 2, 2024, the claims against NYU are also time barred. Accordingly, the motion to dismiss the medical malpractice claims against NYU is granted.

The Court must also consider Plaintiff's claims for negligent hiring, supervision, training and retention. It is well established that this theory of liability is available only in the absence of a "scope of employment" relationship. "[W]here an employer is liable for the employee's negligence under the theory of respondeat superior, the plaintiff may not proceed with a cause of action to recover damages for negligent hiring and retention" (*Tabchouri v Hard Eight Restaurant Company, LLC*, 219 AD3d 528, 533 [2023], quoting *Ashley v City of New York*, 7 AD3d 742 [2004]). The record reflects that Dr. Lucido performed podiatric surgery on Plaintiff in his capacity as a physician affiliated with NYU, acting within the scope of that employment relationship. The Court finds that Plaintiff's claims against Dr. Lucido and NYU in this action arise from respondeat superior liability and the alleged malpractice of their providers.

Accordingly, the part of the motion seeking to dismiss the negligent hiring, supervision, training and retention claims is granted.

Finally, the Court will consider whether the claims brought on by Plaintiff sound in negligence for purposes of applying the longer statute of limitations applicable to negligence. It is well established that in determining whether a claim is medical malpractice or negligence, the "critical factor is the nature of the duty owed to the plaintiff that the defendant is alleged to have breached" (*Snow v Gotham Staffing, LLC*, 227 AD3d 1029, 1031 [2024]). A claim relates to medical malpractice "when the challenged conduct 'constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician'" (*Weiner v Lenox Hill Hosp*., 88 NY2d 784, 788 [1996]; *Bleiler v Bodnar*, 65 NY2d 65, 72 [1985]). Plaintiff's claims arise out of the alleged failure to properly perform podiatric surgery on August 14, 2020. The core of Plaintiff's Complaint is therefore grounded in medical judgment and decision-making, and her claims sound in medical malpractice rather than negligence. The two years and six months statute of limitation accordingly applies, and because Plaintiff filed her Summons and Complaint after December 2, 2024, the claims are time-barred.

Accordingly, it is hereby:

ORDERED that Defendants Jeffrey V. Lucido, DPM, and NYU Langone Hospital Brooklyn's motion (Seq. No. 1) seeking to dismiss Plaintiff's claims against them based on the statute of limitations is **GRANTED**, and the action is **dismissed** in its entirety.

This constitutes the decision and order of this Court.

ENTER.

Hon. Consuelo Mallafre Melendez
J.S.C.