

Fleischman v Marrero-Figarella

2026 NY Slip Op 31642(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 805047/2025

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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INDEX NO. 805047/2025

EMILY FLEISCHMAN,

MOTION DATE 05/30/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ARTURO MARRERO-FIGARELLA,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27

were read on this motion to/for DISMISS.

Upon due deliberation of the foregoing papers and the correspondence dated December 9, 15, and 16, 2025,¹ and oral argument having been heard, Defendant Arturo Marrero-Figarella, M.D. ("Defendant") moves for an Order, pursuant to CPLR 3211(a)(8), granting Defendant's Motion to Dismiss, in that this Court lacks personal jurisdiction pursuant to CPLR 302(a).

Plaintiff Emily Fleischman ("Plaintiff") opposes the motion, asserting that Defendant's long-term provision of telehealth services to her while she resided in New York constitutes "transacting business" under CPLR 302(a)(1) or, alternatively, a tortious act committed outside the state causing injury within the state under CPLR 302(a)(3).

BACKGROUND

Plaintiff commenced this medical malpractice action alleging that she sustained injuries resulting from the negligent medical care and management of controlled substances by Defendant.

The physician-patient relationship began in approximately 2013. At the onset of treatment, Plaintiff was a resident of New Jersey and was treated by Defendant exclusively at his office in

¹ NYSCEF Doc. Nos. 25, 26, 27, respectively.

New Jersey. In 2013, Plaintiff relocated to New York. From 2013 through 2018, the parties maintained a treatment relationship comprising periodic in-person visits at Defendant's New Jersey office and remote communications while Plaintiff was in New York and Defendant was in New Jersey. Since that time, Defendant's sole contact with Plaintiff has been through remote telecommunication and the electronic transmission of prescriptions from his base of operations in New Jersey.

Defendant joined issue by interposing a Verified Answer on March 31, 2025, and now moves to dismiss the Complaint pursuant to CPLR 3211(a)(8), arguing that the court lacks personal jurisdiction under both CPLR 302(a)(1) and (a)(3).

Plaintiff opposes.

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211(a)(8), the plaintiff bears the burden of demonstrating that the defendant is subject to the court's jurisdiction. In the instant matter, Defendant moves to dismiss pursuant to CPLR 3211(a)(8), contending that the mere provision of out-of-state treatment to a New York resident is insufficient to trigger the 'long-arm' provisions of CPLR 302(a)(1). Furthermore, Defendant argues that jurisdiction is unavailable under CPLR 302(a)(3) because the 'situs of injury' in a medical malpractice action is the location where the treatment was rendered, rather than the location where the patient resides or experiences the residual effects of the alleged tort.

I. CPLR 302(a)(1): Transacting Business

It is well settled that whether a non-domiciliary is transacting business within the meaning of CPLR 302(a)(1) is a fact-based determination requiring a finding that the defendant's activities were purposeful and established a substantial relationship between the transaction and the claim asserted (*Paterno v Laser Spine Inst.*, 24 NY3d 370, 372 [2014]). Purposeful activities are

volitional acts by which a defendant avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws (*id.*). In the medical context, providing out-of-state treatment to a New York resident—supplemented by follow-up calls or mailed prescriptions for the patient’s convenience—does not constitute the ‘purposeful projection’ of a physician into the New York medical market. Consequently, such incidental contacts are insufficient to subject the defendant to the jurisdiction of the forum (*see id. at 378; Etra v Matta*, 61 NY2d 455, 458 [1984]).

Here, the record demonstrates that Defendant’s telephonic treatment of Plaintiff was “responsive in nature” rather than a purposeful projection of his medical practice into the New York market. Although Plaintiff argues that the years of telehealth sessions constitute a sustained business presence, Defendant affirms that the transition from in-person New Jersey visits to remote care occurred solely to accommodate Plaintiff’s relocation following her move to New York. Under these circumstances, the out-of-state provider does not “purposefully avail” himself of the New York forum simply by maintaining a treatment relationship with a patient who has unilaterally chosen to reside here (*see Paterno v Laser Spine Inst.*, 24 NY3d 370, 379 [2014]).

Plaintiff’s attempt to distinguish this matter by characterizing the telehealth visits as primary treatment, rather than “follow-up,” is unavailing. The dispositive factor is not the label of the medical service, but the nature of the contact (*see Etra v Matta*, 61 NY2d 455, 458-459 [1984]).

Here, Defendant remained based in New Jersey and merely responded to the needs of a patient located elsewhere; thus, such contacts—including evaluations and the transmission of prescriptions to New York pharmacies—remain “insubstantial” for jurisdictional purposes. Furthermore, Defendant’s prior physical ties to New York do not bridge the jurisdictional gap. While Defendant was a “visiting clinician” in the Bronx, New York, until February 2018, that role ended nearly a year before the period of exclusive telehealth treatment of the Plaintiff began.

Because Defendant ceased all clinical activities in New York in 2018, these past contacts are too attenuated to provide the “substantial nexus” required to link his telehealth services to this forum. To hold that a defunct professional affiliation or a dormant license creates permanent jurisdiction would “set a precedent for almost limitless jurisdiction” over out-of-state providers (*Paterno*, 24 NY3d at 379).

Thus, this Court lacks jurisdiction over Defendant ARTURO MARRERO-FIGARELLA pursuant to CPLR(a)1).

II. CPLR 302(a)(3): Tortious Act Outside the State

Here, jurisdiction is equally lacking under CPLR 302(a)(3). Plaintiff’s allegation that the injury “materialized” in New York because she ingested the medication and developed addiction here conflates the *event* of the injury with its *consequences*. In medical malpractice actions, the “situs of the injury” is the location of the original event that caused the harm—in this case, the clinical decision-making and prescribing that occurred in New Jersey—and not the location where the patient later experiences the “resultant damages” (*see Hermann v Sharon Hosp., Inc.*, 135 AD2d 682, 683 [2d Dept 1987]). It is well settled that a plaintiff’s New York residency, including subsequent New York residency, cannot serve as the sole basis for jurisdiction where the underlying treatment occurred entirely in a foreign jurisdiction (*Paterno*, 24 NY3d at 381).

Following the bright-line rule that the place of residence cannot serve as the sole basis for jurisdiction, the Court finds that the ingestion of medication in New York is a downstream consequence of treatment rendered in a foreign jurisdiction (New Jersey) (*Paterno*, 24 NY3d at 381).

Thus, the Court finds that Defendant’s contacts with New York are insufficient to confer personal jurisdiction under either CPLR 302(a)(1) or 302(a)(3).

Accordingly, it is hereby

ORDERED that Defendant Arturo Marrero-Figarella, M.D.'s motion to dismiss for lack of personal jurisdiction pursuant to CPLR 3211(a) is granted; and it is further

ORDERED that the complaint is dismissed in its entirety as against Defendant Arturo Marrero-Figarella, M.D.; 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 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.

This constitutes the Decision and Order of the Court.

4/10/26
DATE

Kathy King
KATHY KING, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE