

N.Y. Pattern Jury Instr.--Civil 2:149

New York Pattern Jury Instructions--Civil  
Database updated December 2013

Committee on Pattern Jury Instructions Association of Supreme Court Justices

Division 2. Negligence Actions

G. Specific Negligence Actions

4. Malpractice

PJI 2:149 Continuous Treatment

A medical malpractice action must be filed within two years and six months of the act, omission or failure complained of or from the last treatment where there is a continuous treatment for the same (illness, injury or condition) that gave rise to the (act, omission or failure). Plaintiff AB claims that the last date of continuous treatment was on [state date], while defendant CD claims that [state date] was the last time (he, she, it) provided care or treatment to plaintiff AB for [state illness, injury or condition].

Continuous treatment means a course of care or treatment for the condition from which the patient was suffering. Therefore, you must decide when defendant CD last treated plaintiff AB for [state illness, injury or condition].

[Since there are many variations on the basis of the claim of continuous treatment, if applicable, charge some or all of the following:] visits must have been for more than an examination or routine check-up and must not have been for consultation about or treatment for another condition unrelated to the condition at issue. Rather the return visit must be for aftercare, complaints, symptoms, or corrective treatment related to the original condition. If the plaintiff initiates a return visit solely for (an examination, to have the condition checked, or to obtain documentation) that does not constitute continuous treatment.

Treatment by other physicians for the same condition may be some evidence of a break in continuity, but does not in and of itself mean that there was no continuing treatment. A doctor-initiated follow-up appointment is evidence of a continuing relation even if the appointment is missed. Similarly, a prescription may extend the relationship until the expiration of the prescription.]

In deciding whether continuous treatment existed and when the treatment ended, you will consider whether a continuous course of treatment has been established, who initiated the final contact, and whether the final contact was for the purpose of further or corrective care and treatment of the (illness, injury or condition), the treatment of which gave rise to the claim of malpractice.

#### Interrogatory

What was the last date of the continuous course of treatment by defendant for the (illness, injury or condition) that plaintiff claims was negligently treated?