IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA

MELISSA VILLEGAS, as Administratrix of the Estate of DILBERT JOHNSON, Deceased,

Plaintiff,

v. **Civil Action No.** 2:24-cv-00104

HANCOCK REGIONAL HOSPITAL as Owner and Operator of HANCOCK REGIONAL HOSPITAL d/b/a GREAT LEAKES HEALTHCARE CENTER,

Defendant.
_____/

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The Plaintiff, by and through the undersigned, and pursuant to applicable law and procedure, hereby files this Opposition to Defendant's Motion to Dismiss, and states:

INTRODUCTION AND BACKGROUND

1. On or about March 1, 2022, Delbert Johnson was admitted to Defendant's facility for skilled nursing services following a stroke. *See* Complaint, on file with the Court.

2. Mr. Johnson's medical history was also significant for Type 2 Diabetes, Hypertension, Urinary Retention, and Obesity. *Id.*

3. Defendant knew that Mr. Johnson was at risk for developing pressure ulcers and was required to implement certain pressure ulcer prevention protocols. *Id.*

4. Defendant knew that Mr. Johnson was at risk for aspiration, due to his history of stroke. *Id.*

5. Defendant knew that Mr. Johnson was at risk for aspiration pneumonia, decreased oral intake, and infection. *Id.*

6. Defendant represented to Mr. Johnson's family that it was knowledgeable, skilled, staffed, and able to care for Mr. Johnson, in light of these risks. *Id.*

7. When Mr. Johnson's family visited him at Defendant's facility on or around March 8, 2022, they discovered that he was dehydrated and not on a feeding tube, even though he could not eat because of his stroke. *Id.*

8. Mr. Johnson's family also discovered a severe bed sore between his buttocks and left thigh, which was later determined to be a stage IV pressure wound. *Id.*

9. Mr. Johnson's family removed him from Defendant's facility and transferred him to Franciscan Saint Margaret Health Dyer Hospital on March 17, 2022, where he was noted to have a stage IV decubitus ulcer. *Id.*

10. Mr. Johnson was also found to be severely dehydrated when was admitted to the hospital, and he was diagnosed with dehydration with hypernatremia and an acute kidney injury resulting from dehydration. *Id.*

11. Mr. Johnson was also found to have a urinary tract infection from chronic foley use. *Id.*

12. Mr. Johnson was found to be septic and in hypovolemic shock and was found to have aspiration pneumonia. *Id.*

13. Mr. Johnson's stage IV pressure wound did not heal and, due to infection, he was eventually placed into hospice care. *Id.*

14. On or about October 2, 2022, Mr. Johnson died. *Id.*

15. On or about March 15, 2024, Plaintiff filed the instant lawsuit, alleging: Count I – Deprivation of Civil Rights Enforceable Via 42 U.S.C. § 1983, and Count II – Violations of the

U.S. Constitution Under Amendment 14 for Injury to Human Dignity Enforceable Via 42 U.S.C. § 1983. *Id.*

16. In Count I of the Complaint, Plaintiff alleges that Defendant is bound by the 1987 Omnibus Budget Reconciliation Act (OBRA) and the Federal Nursing Home Reform Act (FNHRA), which was contained within the 1937 OBRA. *Id.* at ¶ 35.

17. Plaintiff further alleges that Defendant is bound by the regulations found at 42 C.F.R. § 483, *et seq.*, which further define and amplify the specific statutory rights of OBRA and FNHRA. *Id.* at ¶ 36.

18. Plaintiff finally alleges that Defendant violated Mr. Johnson's rights under the 14th Amendment to the U.S. Constitution by allowing him to remain in a state that was hazardous to his health and well-being. *Id.* at ¶¶ 41-47.

19. On April 8, 2024, the Court required that Defendant was to answer the Complaint on or before April 16, 2024. *See* Order dated April 8, 2024, on file with the Court.

20. On April 16, 2024, rather than file an Answer as prescribed by the Court, Defendant filed a Motion to Dismiss, claiming that the instant case is a medical malpractice case subject to the requirements of Section 34-18-8-4, which requires that a proposed complaint be presented to a medical review panel and an opinion given by the panel prior to being filed in court. *See* Motion to Dismiss, on file with the Court.

21. Because this case is not a medical malpractice case but is presented to this Court under the Court's federal question jurisdiction in 28 U.S.C. § 1331, this Opposition follows. *See* Complaint at ¶¶ 1-2, on file with the Court.

ARGUMENT AND AUTHORITIES

Under the Indiana Medical Malpractice Act, "an action against a health care provider may not be commenced in a court in Indiana before: (1) the claimant s proposed complaint has been presented to a medical review panel established under IC 34-18-10 (or IC 27-12-10 before its repeal); and (2) an opinion is given by the panel." Ind. Code. § 34-18-8-4. However, the Act only applies to medical malpractice actions arising out of Indiana state law, which this is not. *Smith v. State of Ind.*, 904 F.Supp. 877 (N.D. Ind. 1995). Rather, this case arises under this Court's federal question jurisdiction. *See* Complaint, on file with the Court. Defendant's argument that Plaintiff cannot bring these claims against Defendant in this Court "without first presenting [the] claim to a medical review panel is, in essence, an argument that the plaintiff must first exhaust [the] state administrative remedies before this court may address [the] federal claim." *Smith*, 904 F.Supp at 880. There is no such requirement where federal question jurisdiction is invoked. *Id.*

"Article VI of the Constitution of the United States states that '[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme law of the Land.'" *Id.* "The [P]laintiff has stated a claim against the [D]efendant under a federal law, pursuant to this [C]ourt's federal question jurisdiction under 28 U.S.C. § 1331." *Id.* "[S]tate law is naturally preempted to the extent of any conflict with a federal statute." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000). "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331. There is nothing in the federal question statute that indicates any sort of deference to any state law procedural requirement. *See id.* Further, even in state court, "the statutory procedures for bringing a medical malpractice action are in derogation of common law, and as such, they are to be strictly construed against limiting a claimant's right to bring suit." *Martinez v. Oaklawn*

Psychiatric Ctr., 128 N.E.3d 549, 555 (Ind. Ct. App. 2019) (internal quotations omitted, emphasis added). "The [D]efendant may not use the Indiana Medical Malpractice Act's requirement of presentation of claims to a medical review panel as a means to trump the [P]laintiff's claim under federal law." *Smith*, 904 F.Supp. at 880.

Defendant's cited cases are wholly distinguishable. For example, Defendant cited *Hines v. Elkhart Gen. Hosp.*, 603 F.2d 646 (7th Cir. 1979). *See* Motion to Dismiss, on file with the Court. However, that case was specifically addressed in *Smith*, as being non-persuasive because it involved a claim under Indiana law that was only in federal court because of diversity jurisdiction. *Smith*, 904 F.Supp. at 879. That is why the court in *Hines* stated that "a federal court adjudicating a State-created right solely because of the diversity of citizenship of the parties is . . . only another court of the State . . . ." *Hines*, 603 F.2d at 647. This case is completely distinguishable from *Hines*, where Plaintiff's claims arise solely out of federal rights created by federal laws enforceable through federal laws and procedures. *See Smith*, 904 F.Supp. 877; *see also* Complaint, on file with the Court.

In *Thompson v. Cope*, the plaintiff asserted "federal Fourth amendment claims and state-law tort claims." *Thompson v. Cope*, 900 F.3d 414, 417 (7th Cir. 2018) (emphasis added). The court in that case specifically held that the "state-law claims are subject to the substantive terms of Indiana's Medical Malpractice Act, including damage caps and the requirement to submit the claim to a medical review panel before suit is filed." *Id.* Despite Defendant's attempts to distract this Court with the red herring of statutory definitions under Indiana law, it is clear that Plaintiff's claims are based in federal law to vindicate federal rights and are not subject to Indiana procedural requirements. *See Smith*, 904 F.Supp. 877; *see also* Complaint on file with the Court.

Even in some cases where federal courts are adjudicating state law claims, the state's additional requirements do not always apply. *See*, *e.g.*, *Passmore v. Baylor Health Care Sys.*, 823 F.3d 292, 293 (5th Cir. 2016) ("The main issue on appeal is whether section 74.351['s expert report requirement] applies in federal court. We hold that it does not and therefore reverse and remand."). In that case, the Fifth Circuit found that the state law mandating dismissal for failure to attach the expert report conflicted with Federal Rules of Civil Procedure 26 and 37, and therefore could not apply even in that diversity case. *Id.* at 297. Thus, even if this was a diversity case premised on state law, which it is not, state law requirements do not apply "if (1) the state law or rule direct[ly] colli[des] with a Federal Rule of Civil Procedure and (2) the Federal Rule represents a valid exercise of Congress' rulemaking authority." *Id.* at 296 (quotations omitted, alterations in original). Because this is not a diversity case where this Court is being called upon to adjudicate any questions of state law whatsoever, it is not necessary for Plaintiff to identify which provisions of federal are in direct conflict with the requirement of Section 34-18-8-4. *See Smith*, 904 F.Supp. at 880 (The state law requirement simply does not apply because "[t]he plaintiff has stated a claim against the defendant under a federal law, pursuant to this court's federal question jurisdiction under 28 U.S.C. § 1331.").

The availability of claims under the FNHRA, enforced through Section 1983, without first adhering to the Indiana Medical Malpractice Act's preliminary requirements was recently affirmed by the Supreme Court of the United States. *Health and Hosp. Corp. of Marion Cty. v. Talevski*, 599 U.S. 166 (2023). The Court specifically noted that "[t]o guarantee the protection of federal rights, 'the § 1983 remedy . . . is, in all events, supplementary to any remedy any State might have.'" *Id.* at 177 (quoting *Owens v. Okure*, 488 U.S. 235, 248 (1989)). The supplementary nature of Section 1983 claims necessarily indicates that the federal enforcement of federal rights exists wholly

outside any state statutory procedural system, and that it would therefore be completely illogical and improper to enforce any state procedures on such federal claims.

CONCLUSION

Plaintiff's claims are before this Court pursuant to 28 U.S.C. § 1331, and Plaintiff asserts absolutely no claim under any Indiana state law. As such, Plaintiff's claims under federal law are wholly outside the Indiana Medical Malpractice Act and are not subject to the Act's requirement that a proposed complaint be submitted to the Indiana Department of Insurance. Defendant's request that this case be dismissed or stayed is improper and should be denied.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion to Dismiss, along with any other relief that this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 7th day of May 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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