

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

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

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

Plaintiff,

v.

HANCOCK REGIONAL HOSPITAL
AS OWNER AND OPERATOR OF
HANCOCK REGIONAL HOSPITAL
d/b/a GREAT LAKES HEALTHCARE CENTER,

Defendant.

MOTION TO DISMISS

Come the Defendants, Hancock Regional Hospital, and Hancock Regional Hospital d/b/a Great Lakes Healthcare Center (hereinafter referred to as “Great Lakes”), by counsel, and hereby request the Court dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b), for lack of subject-matter jurisdiction, improper venue, and failure to state a claim upon which relief can be granted. In support of this motion, Defendants respectfully state as follows:

FACTS

Plaintiff filed the Complaint in the United States District Court for the Northern District of Indiana prior to filing a Proposed Complaint with the Indiana Department of Insurance as required by Indiana law. Plaintiff’s claims sound in medical negligence based upon the allegations contained in the Complaint. Plaintiff has asserted the following:

Great Lakes knew that Mr. Johnson was at risk for developing pressure ulcers and skin breakdowns, and represented to his family that it was knowledgeable, skilled, staffed, and able to care for Mr. Johnson in light of his risks. As such, Great Lakes and its staff were required to implement certain pressure ulcer prevention protocols, which should have included a regular turning and reposition schedule every two hours and as needed as well as pressure reducing/relieving devices to alleviate

pressure from Mr. Johnson's person, to prevent Mr. Johnson from developing pressure ulcers. Mr. Johnson's family reasonably relied on Great Lakes's representations when selecting Great Lakes as a skilled nursing facility to care for him. [Plaintiff's Complaint, para. 19]

Great Lakes knew that Mr. Johnson was at risk for aspiration, due to history of stroke. They also knew that Mr. Johnson was at risk for aspiration pneumonia, decreased oral intake and infection. Great Lakes represented to his family that it was knowledgeable, skilled, staffed, and able to care for Mr. Johnson in light of his risks. As such, Great Lakes and its staff were required to implement certain protocols to prevent and/or minimize the risk for aspiration pneumonia, dehydration, malnutrition and monitor for infection, which should have included an ensuring that head of bed was elevated when he was eating, and for at least 45 minutes thereafter, providing him with assistance with eating, ensuring that nutritional assessment was performed in order to assess his daily nutritional and hydration requirements and care planning in order to prevent dehydration, aspiration pneumonia and sepsis. Mr. Johnson's family reasonably relied on Great Lakes's representations when selecting Great Lakes as a skilled nursing facility to care for him. [Plaintiff's Complaint, para. 20]

As a result of the facility's failure to turn and reposition Mr. Johnson and as a result of their failure to implement proper pressure ulcer prevention protocols, Mr. Johnson had unrelieved pressure to his buttocks for an extended period of time, resulting in the formation of a severe pressure wound. [Plaintiff's Complaint, para. 23]

After Mr. Johnson developed pressure ulcers, Great Lakes nursing staff failed to provide adequate wound care resulting in his pressure wound worsening and becoming infected. [Plaintiff's Complaint, para. 24]

Plaintiff has alleged that Defendants failed to provide reasonable and appropriate care to Mr. Johnson, and as a result he suffered injuries and death. Plaintiff's claims are based in medical negligence, and therefore fall within the purview of the Indiana Medical Malpractice Act. Plaintiff has not yet filed a Proposed Complaint with the Indiana Department of Insurance as required by the Act. Accordingly, Defendants request the Court dismiss Plaintiff's Complaint or in the alternative stay the proceedings pending a medical review panel and require Plaintiff to name the Defendants anonymously as required by statute.

ARGUMENT

I. Plaintiff's Complaint should be dismissed because she has failed to bring the claim before a medical review panel pursuant to the Indiana Medical Malpractice Act.

The Indiana Medical Malpractice Act provides that malpractice is “a tort or breach of contract based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient.” Ind.Code § 34–18–2–18. Health care is “an act or treatment performed or furnished, or that should have been performed or furnished, by a health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.” Ind.Code § 34–18–2–13. A “patient” is “an individual who receives or should have received health care from a health care provider, under a contract, express or implied, and includes a person having a claim of any kind, whether derivative or otherwise, as a result of alleged malpractice on the part of a health care provider.” Ind.Code § 34–18–2–22.

Under Section 4 of the Medical Malpractice Act, an action may not generally be commenced “in court against a health care provider until both the claimant's proposed complaint has been presented to a medical review panel and an opinion is given by the panel.” Kho v. Pennington, 875 N.E.2d 208, 211 (Ind. 2007) (citation omitted). There is a limited exception allowing a claimant to “commence an action in court for malpractice at the same time the claimant's proposed complaint is being considered by a medical review panel,” where the complaint filed does not “contain any information that would allow a third party to identify the defendant.” *Id.* (citing Ind. Code § 34–18–8–7). Plaintiff has not presented the claim to a medical review panel or filed a Proposed Complaint with the Indiana Department of Insurance. Plaintiff has also not named Defendants anonymously as required by statute.

Plaintiff has attempted to circumvent the Medical Malpractice Act by asserting what are otherwise medical negligence allegations as claims pursuant to 42 U.S.C. §1983. However, “[w]hether a case is one of medical malpractice as defined by the MMA is a question for the court.” Anonymous Hosp., Inc. v. Doe, 996 N.E.2d 329, 332 (Ind. Ct. App. 2013) (citation omitted). The Court looks to the “substance of a claim to determine the applicability of the MMA.” Doe by Roe v. Madison Ctr. Hosp., 652 N.E.2d 101, 104 (Ind.Ct.App.1995), trans. dismissed. The facts and allegations asserted in Plaintiff’s Complaint make clear that this is a case of medical negligence that must fall within the purview of the Medical Malpractice Act.

The medical review panel requirement is a substantive feature of the Act that must be enforced in federal court. Hines v. Elkhart General Hospital, 603 F.2d 646, 649–50 (7th Cir. 1979). A plaintiff’s claims are subject to the Medical Malpractice Act when the undisputed evidence indicates that the medical providers acted to promote the plaintiff’s health and exercised their medical judgment to do so. Thompson v. Cope, 900 F.3d 414, 426 (7th Cir. 2018). Furthermore, where the jury is not capable of resolving the factual issues without application of the standard of care prevalent in the local medical community as provided by an expert witness, the case is thought to sound in medical negligence. Id. at 427, citing Anonymous Hospital, Inc., 996 N.E.2d at 333 (Ind. App. 2013).

CONCLUSION

Plaintiff’s Complaint, although styled as a claim pursuant only to 42 U.S.C. §1983, is in fact a claim for medical negligence. Plaintiff may intend to assert claims pursuant to 42 U.S.C. §1983, however given the nature of the allegations Plaintiff is required to submit her claim to a medical review panel prior to proceeding in Court. Plaintiff has not initiated a Proposed Complaint with the Indiana Department of Insurance, and therefore has not complied with the applicable

legislation. Defendants request that Plaintiff's Complaint be dismissed without prejudice, or in the alternative stayed pending a medical review panel proceeding and that Defendants be named anonymously.

WHEREFORE, Defendants, Hancock Regional Hospital, and Hancock Regional Hospital d/b/a Great Lakes Healthcare Center, respectfully request the Court grant their Motion to Dismiss.

Respectfully submitted,

/s/ Clay A. Edwards

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CERTIFICATE OF SERVICE

I certify that on this 16th day of April, 2024, I electronically filed the foregoing document using the E-filing System (IEFS), which will send a notice of electronic filing to the following:

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