

CORINTHIA DAVIS

*

IN THE

Plaintiff

*

CIRCUIT COURT

v.

*

FOR

ELENA VOLKOV, PA-C

*

BALTIMORE COUNTY

Defendant

*

CASE No.: C-03-CV-23-004833

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MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS FOR FAILURE TO SATISFY CONDITION PRECEDENT

Defendant, Elena Volkov, PA-C, by her attorneys, Ronald U. Shaw, Wilson K. Barnes, III and Shaw, Barnes, Damiano & Ali Schneider, P.A., hereby files this Memorandum in Support of her Motion to Dismiss.

INTRODUCTION

This Court should grant Defendant’s Motion to Dismiss because Plaintiff has failed to satisfy a condition precedent as to her claim for medical negligence against Defendant in this Court. Plaintiff claims she suffered a medical injury as the result of Defendant’s negligence arising out of the rendering of health care to Plaintiff. Pursuant to Maryland law, before filing in this Court, Plaintiff was **required** to file a Certificate of Qualified Expert in the Health Care Alternative Dispute Resolution Office. Plaintiff did file a Certificate, but it is deficient because it does not address causation, a necessary element of a medical malpractice action. Accordingly, Plaintiff’s Complaint must be dismissed for failure to satisfy a condition precedent to the filing in this Court.

BACKGROUND

Plaintiff, Corinthia Davis (“Ms. Davis”), filed this action against Defendant Elena Volkov, PA-C, asserting claims for negligence based on medical malpractice. The gravamen of Plaintiff’s claim against Ms. Volkov, Ms. Davis’s primary care provider, is that Ms. Volkov failed to timely diagnose Ms. Davis’s lung cancer, resulting in a critical delay that allowed her cancer to progress from a treatable, early-stage to an advanced terminal stage. Complaint at ¶ 6. Plaintiff contends that Ms. Volkov did not perform the appropriate clinical follow-up for Ms. Davis after a CT Cardiac Scan report of October 20, 2021 indicated that there was evidence of possible lung cancer in the right middle lobe and right upper lobe of Ms. Davis’s lung. *Id.* at ¶ 9. Ms. Davis’s lung cancer was apparently not discovered until her next annual cancer screening in October, 2022, a full year later. Plaintiff contends that her cancer progressed from an early, treatable stage to an advanced, terminal stage during the one-year delay in diagnosis. *Id.* at ¶ 12. Plaintiff asserts that had Ms. Volkov not ignored or disregarded the findings suggestive of lung cancer in the CT Cardiac Scan report of October 20, 2021, Ms. Davis’s lung cancer would have been diagnosed and treated in time to avoid developing into a terminal cancer. *Id.* at ¶ 13.

Plaintiff filed her Statement of Claim in the Health Care Alternative Dispute Resolution Office (“HCADRO”) on November 13, 2023. Plaintiff concurrently filed a Certificate of Qualified Expert and Report from Amy Bumgarner, APRN (“Ms. Bumgarner”), which is attached as Exhibit 1, and elected to waive arbitration pursuant to § 3-2A-06(B).

Ms. Bumgarner’s Certificate states that Ms. Volkov breached the applicable standards of medical care owed to Ms. Davis by: (1) failing to diagnose her lung cancer based on the CT Cardiac scoring radiology report dated 10-20-2021; (2) failing to follow up clinically on the findings in that report; (3) failing to recommend a follow-up CT chest scan; (3) failing to recommend a follow-up

CT chest scan; and (4) failing to refer Ms. Davis for appropriate cancer treatment. *See* Exhibit 1, Certificate of Qualified Expert and Report from Amy Bumgarner, APRN. Plaintiff's Certificate, however, does not state how any of the aforementioned alleged breaches in the standard of care proximately caused Plaintiff's injuries in this case.

LEGAL BACKGROUND

The Health Care Malpractice Claims Act ("HCMCA"), Md. Code, Cts. & Jud. Proc., §§ 3-2A-01 *et seq.* "governs procedures for all 'claims, suits, and actions ... by a person against a health care provider for medical injury allegedly suffered by the person in which damages of more than the limit on the concurrent jurisdiction of the District Court are sought.'" *See Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 526 (2013) (quoting Md. Code, Cts. & Jud. Proc., § 3-2A-02(a)(1)). The HCMCA requires that "a person with a medical malpractice claim first file that claim with the Director of the [HCADRO]." *See Walzer v. Osborne*, 395 Md. 563, 575 (2006) (internal citations omitted).

The HCMCA also requires that a plaintiff filing suit under the Act must provide a certificate of qualified expert or his case will be dismissed. CJP § 3-2A-04(b)(4); *Barnes v. Greater Baltimore Medical Center*, 210 Md. App. 457, 471 (2013). Maryland law is well established that, as in this case, a claim against a health care provider for damage due to a medical injury **shall** be dismissed, without prejudice, if the plaintiff fails to file a certificate of qualified Expert with the Director of the Health Care Alternative Dispute Resolution Office attesting to departure from standards of care, **and that the departure from standards of care is the proximate cause of the alleged injury** within 90 days from the date of the Complaint. *See* Md. Code, Cts. & Jud. Proc., § 3-2A-04(b)(1)(i) (emphasis added). The purpose of the certificate of qualified health expert

requirement in medical malpractice actions is to weed out non-meritorious claims shortly after suit is filed. *Barnes v. Greater Baltimore Medical Center*, 210 Md. App. 457, 471 (2013).

The filing of a fully compliant certificate of qualified expert is a condition precedent to bringing a medical malpractice action. *Powell v. Breslin*, 195 Md. App 340 (2016).

ARGUMENT

Plaintiff has not filed a compliant Certificate as to Ms. Volkov.

In an action for medical negligence, Plaintiff has the burden of establishing “(1) the applicable standard of care; (2) that this standard has been violated; and (3) that this violation caused the complained of harm.” *Jacobs v. Flynn*, 131 Md. App. 342, 354 (2000) (internal citations omitted). These three necessary elements of a medical claim must be attested to in Plaintiff’s Certificate of Qualified Expert pursuant to § 3-2A-04(b)(1)(i).

Plaintiff’s Certificate outlines how Ms. Volkov allegedly failed to timely diagnose Ms. Davis’s lung cancer, but there is no mention as to whether and how Ms. Volkov’s alleged negligence caused Ms. Davis’s injuries. Specifically, the Certificate does not address how a timely diagnosis of Ms. Davis’s cancer in October 2021 and proper work-up would have prevented Ms. Davis’s cancer developing into a terminal cancer. The absence of any discussion of causation in Plaintiff’s Certificate renders it deficient. By filing a deficient Certificate, Plaintiff has failed to satisfy a condition precedent to the filing in this Court and dismissal is required.

CONCLUSION

Dismissal of this action is required as Plaintiff filed this medical malpractice claim in this Court without first filing a proper Certificate of Qualified Expert.

WHEREFORE, Defendant, Elena Volkov, PA-C, by and through her undersigned counsel, respectfully requests that this Court dismiss Plaintiff's Complaint for failure to satisfy a condition precedent.

Respectfully submitted,

/s/ Wilson K. Barnes, III

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