No. 19-5477

IN THE

Supreme Court of the United States

BRIAN KEITH WAUGH
Petitioner,

v.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL
Respondent.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

ERIN N. MCGONAGLE
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Counsel for Respondent

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APPENDIX A

2017 CA 007831 M WAUGH, BRIAN KEITH Vs. GEORGETOWN UNIVERSITY HOSPITAL RR

001

- Case Type:
  Malpractice
- Case Status:
  Closed
- File Date:
  11/22/2017
- Action:
  Complaint for Malpractice Medical Filed
- Status Date:
  11/22/2017
- Next Event:

All Information | Party | Event | Docket | Receipt | Disposition

Party Information

WAUGH, BRIAN KEITH
- Plaintiff

- Disposition
- IFP
- Disp Date

Alias

Party Attorney
- Attorney
- PRO SE

GEORGETOWN UNIVERSITY HOSPITAL
- Defendant

- Disposition
- Disp Date

Alias

Party Attorney
- Attorney
- DEESE, CRYSTAL S
- Attorney
- HOWARD NICOLAS, DIONA F

Events

Date/Time	Location	Type	Result	Event Judge
02/23/2018 10:00 AM	Courtroom 516	Initial Scheduling Conference-60	Scheduling Conference Hearing Held	
03/13/2018 01:00 PM	MEDIATION CENTER, 410 E Street, N.W., First Floor	Mediation (EARLY MED MAL)	Mediation Cancelled by Chambers	
10/26/2018 10:30 AM	Courtroom 201	Discovery Closed-Status Conference	Status Hearing Vacated	

Docket Information

Date	*Docket Text*	*Image Avail.*
11/22/2017	Complaint for Malpractice Medical Filed. Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image

Date	Docket Text	Image Avail.
11/22/2017	Event Scheduled Event: Initial Scheduling Conference-60 Date: 02/23/2018 Time: 10:00 am Judge: RIGSBY, ROBERT R Location: Courtroom 516	
11/22/2017	Motion to Proceed In Forma Pauperis Filed. Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image
11/22/2017	Order Granting Motion to Proceed In Forma Pauperis Entered on the Docket 11/22/17 signed by J/Keary. tds	Image
11/22/2017	Issue Date: 11/22/2017 Service: Summons Issued Method: Service Issued Cost Per: $ GEORGETOWN UNIVERSITY HOSPITAL Tracking No: 5000196581	
11/28/2017	Complaint Summons and I.O. with Acknowledgment Form mailed to Deft(s) by the Clerk Pursuant to SCR 54-II this date: GEORGETOWN UNIVERSITY HOSPITAL (Defendant);	Image
12/18/2017	Notice of Acknowledgment of Service Filed. Submitted 12/18/2017 16:42. ts. Attorney: DEESE, Ms CRYSTAL S (454759) GEORGETOWN UNIVERSITY HOSPITAL (Defendant);	Image
12/18/2017	Proof of Service Method : Service Issued Issued : 11/22/2017 Service : Summons Issued Served : 12/18/2017 Return : 12/18/2017 On : GEORGETOWN UNIVERSITY HOSPITAL Signed By : Crystal Deese Reason : Proof of Service Comment : Tracking #: 5000196581	
12/19/2017	Final Notice of Acknowledgment of Receipt of Summons, Complaint Initial Order and Addendum mailed to Georgetown University Hospital on December 19, 2017 pursant to SCR 4(c)(4) . vj GEORGETOWN UNIVERSITY HOSPITAL (Defendant);	Image
12/27/2017	Medstar Georgetown University Hospital's Motion to Dismiss Filed. Submitted 12/27/2017 17:35. ajm Attorney: DEESE, Ms CRYSTAL S (454759) GEORGETOWN UNIVERSITY HOSPITAL (Defendant); Receipt: 386357 Date: 01/02/2018	Image
01/17/2018	Amended Complaint Filed Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image
01/17/2018	Consent Motion to extend time to file Opposition to Medstar Georgetown University Hospital's Motion to Dismiss with Prejudice Filed Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image
02/06/2018	Order Granting Consent Motion to Extend Time to Oppose Motion Entered on the Docket on 2/6/18. Signed by Judge Rigsby on 2/6/18. E-filed and e-served on 2/6/18. Copies mailed on 2/7/18. RC.	
02/06/2018	Defendant Medstar Georgetown University Hospital's Motion to Extend Time for Filing Motion to Dismiss Plaintiff's Amended Complaint With Prejudice Filed. submitted 02/06/2018 18:38. tds Attorney: HOWARD NICOLAS, DIONA F (1030575) GEORGETOWN UNIVERSITY HOSPITAL (Defendant); Receipt: 389862 Date: 02/12/2018	Image
02/06/2018	Medstar Georgetown University Hospital's Motion to Dismiss Plaintiff's Amended Complaint With Prejudice Filed. submitted 02/06/2018 18:47. tds Attorney: HOWARD NICOLAS, DIONA F (1030575) GEORGETOWN UNIVERSITY HOSPITAL (Defendant); Receipt: 389867 Date: 02/12/2018	Image
02/06/2018	Order Granting Consent Motion to Extend Time to File Opposition to Medstar Georgetown University Hospital's Motion to Dismiss with Prejudice signed by J/Rigsby on 2/6/18. submitted 02/06/2018 19:48. tds	Image
02/07/2018	Motion to Amend by Leave of Court Filed: Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image

Date	Docket Text	Image Avail.
02/20/2018	Memorandum in Opposition to Medstar Georgetown University Hospital's Motion to Dismiss Plaintiff's Amended Complaint With Prejudice Filed. Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff);	Image
02/21/2018	Medstar Georgetown University Hospital's Reply to Opposition to Motion to Dismiss Amended Complaint Filed. Submitted 02/21/2018 16:30. kd Attorney: DEESE, Ms CRYSTAL S (454759) GEORGETOWN UNIVERSITY HOSPITAL (Defendant);	Image
02/21/2018	Multi-Door Medical Malpractice Early Mediation Form Filed. Submitted 02/21/2018 15:07 jhcs.	Image
02/23/2018	Event Scheduled Event: Discovery Closed-Status Conference Date: 10/26/2018 Time: 10:30 am Judge: RIGSBY, ROBERT R Location: Courtroom 201	
02/23/2018	Track MS - Medical Malpractice Scheduling Order Entered on the Docket DCM Track Track MS was added on 02/23/2018 with the following milestone(s): Exchange Lists of Fact Witnesses TMS due 06/25/2018 Proponent's Rule 26(a)(2)(B) Report TMS due 07/09/2018 Opponent's Rule 26(a)(2)(B) Report TMS due 08/13/2018 Discovery Request TMS due 09/21/2018 Close of Discovery TMS due 10/26/2018 Filing Motions TMS due 11/20/2018 Dispositive Motions Decided TMS due 01/22/2019	Image
02/23/2018	Event Scheduled: Event: Mediation (EARLY MED MAL) Date: 03/13/2018 Time: 1:00 pm Judge: CIVIL 2 MEDIATOR Location: MEDIATION CENTER, 410 E Street, N.W., First Floor	
02/23/2018	Event Resulted: The following event: Initial Scheduling Conference-60 scheduled for 02/23/2018 at 10:00 am has been resulted as follows: Result: Scheduling Conference Hearing Held. CourtSmart. Pltf. Waugh and Deft. Atty. Nicolas present. Case placed on Track MS. Order signed and filed. Copies given. Early mediation set for 3/13/18 @ 1:00 p.m. Discovery closed/Status hearing set for 10/26/18 @ 10:30 a.m. Judge: RIGSBY, ROBERT R Location: Courtroom 201 BRIAN KEITH WAUGH (Plaintiff); ; DIONA F HOWARD NICOLAS (Attorney) on behalf of GEORGETOWN UNIVERSITY HOSPITAL (Defendant)	
02/23/2018	Order Granting Motion to Dismiss Entered on the Docket on 2/23/2018; Signed by Judge Rigsby on 2/23/2018; E-filed and E-served on 2/23/2018; Mailed to Brian Keith Waugh on 2/23/2018. zc ORDERED that Defendant¿s Motion to Dismiss is DENIED AS MOOT; it is further ORDERED that Defendant¿s Motion to Extend Time for Filling Motion to Dismiss Plaintiff¿s Amended Complaint with Prejudice is GRANTED; it is further ORDERED that Defendant¿s Motion to Dismiss Plaintiff¿s Amended Complaint with Prejudice is GRANTED; it is further ORDERED that Plaintiff¿s Motion to Amend by Leave of Court Opposition to Medstar Georgetown University Hospital¿s Motion to Dismiss with Prejudice is DENIED; it is further ORDERED that the case is DISMISSED WITH PREJUDICE.	
02/23/2018	Mediation Cancelled By Chambers The following event: Mediation (EARLY MED MAL) scheduled for 03/13/2018 at 1:00 pm has been resulted as follows: Result: Mediation Cancelled By Chambers Judge: CIVIL 2 MEDIATOR Location: MEDIATION CENTER, 410 E Street, N.W., First Floor	
02/23/2018	Event Resulted: The following event: Discovery Closed-Status Conference scheduled for 10/26/2018 at 10:30 am has been resulted as follows: Result: Status Hearing Vacated Judge: RIGSBY, ROBERT R Location: Courtroom 201	
02/23/2018	Dismissed by Court	
02/23/2018	Omnibus Order 1). Denying as Moot Defendant's Motion to Dismiss; 2). Granting Defendant's Motion to Extend Time for Filing Motion to Dismiss Plaintiff's Amended Complaint With Prejudice; 3). Granting Defendant's Motion to Dismiss Plaintiff's Amended Complaint With Prejudice; and 4). Denying Plaintiff's Motion to Amend by Leave of Court Opposition to Medstar University Hospital's Motion to Dismiss With Prejudice Signed by Judge Rigsby on 02/23/2018. Submitted 02/23/2018 17:49 jhcs.	Image

Date	Docket Text	Image Avail.
03/23/2018	Notice of Appeal Filed Attorney: PRO SE (999999) BRIAN KEITH WAUGH (Plaintiff); Notice of appeal filed by plaintiff from order entered on February 23, 2018 emailed to the District of Columbia Court of Appeals; served to interested parties. cdy	Image
03/14/2019	Court of Appeals Judgment Entered on Docket DB	Image
05/06/2019	Court of Appeals Order Entered on Docket D.B.	Image
05/14/2019	Mandate Issued. Ordered and Adjudged that the trial court's order dismissing appellant's amended complaint is affirmed. D.B.	Image

Receipts

Receipt Number	Receipt Date	Received From	Payment Amount
386357	01/02/2018	DEESE, Ms CRYSTAL S	$20.00
389862	02/12/2018	D HOWARD	$20.00
389867	02/12/2018	D HOWARD	$20.00
Total	Total	Total Total	$60.00

Case Disposition

Disposition	Date	Case Judge
Dismissed-by Court	02/23/2018	

APPENDIX B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

RECEIVED
Civil Clerk's Office
NOV 22 2017
Superior Court of the
District of Columbia
Washington, D.C.

Civil Division

Brian Keith Waugh, Plaintiff
3811 V Street, SE #202
Washington, DC 20020

v.

Civil Action No.

17-0007831

Georgetown University Hospital, Defendant
3800 Reservoir Road, NW
Washington, DC 20007

COMPLAINT

A Jurisdiction

1. Jurisdiction for this Court is DC Code. §11-921

B Statement of Claims for Relief

1. This complaint is filed under DC Codes §16-2801 thru §16-2804.
2. I went to emergency for chest pains and was there between September 7-8, 2014. I was diagnosed with high potassium. I could only go to Georgetown University Hospital and did not want to because of a draft publication I wrote about the year before on Roman Catholicism and American Liberty published online, which included a section about the Jesuit Order and Metaphysics.
3. The first nurse, "Jane Doe," who said she was a nurse, needed to insert an IV for drawing blood and IV solution. First, she inserted the needle between my right forearm below my bicep; she inserted the needle then she pulled it out some and from different angles she inserted the needle in and out; unable to find a vein. My arm was bleeding significantly from the needle. She had her pointer finger exposed in the glove, and she had to clean off her finger, and during this, she had to wipe my arm. The second time, she inserted the needle in the back of my upper right hand, near the wrist fishing without much movement and was unable to find a vein. I asked why so high up in the back of my hand near my wrist. She said something like she knew what she was doing.
4. A second nurse, "Jane Doe," put a needle in my left hand without a problem; but the first nurse said I need a needle in my vein for a CT Scan, and I would not let her try again; she said I thought not, and said a name I cannot remember could do it, which was the second nurse who did it better. She put it fully in my forearm near the middle below my bicep, and pressed down on the needle, I asked why? She said it was to stop the bleeding, and I said my pointing finger and thumb felt funny, light in feeling, she said it was a flexible needle, it would not hurt me. When I adjusted my arm a little, it felt more normal again. I saw a video about how to insert needles from a university and it was improper accordingly.
5. I went to the CT Scan and the Radiology Technician, I think he said was in the Navy at some time. He told me the procedure and what it would feel like; when he saw the needle in my right arm, he was startled and said something like, "What is this?" I said, "They did it for the CT Scan." He said something like, they didn't need to do it. And he said he could not use the needle in my right arm. He thought to use the IV in my left hand and said it would not work because of the fluid in it. He took out the needle in my right arm and put one in the back of my right

hand without a problem. The rapid fluid injected caused the back of my hand to sting intensely. I screamed out loud, Ahhhhhh! I told him I usually have a high threshold of responding to pain as it died down some, and said I may have over reacted. It caught me off guard.

6. It seemed that the atmosphere changed somewhat after the host asked me a question about Religion. While considering, she said fervently, "Catholic?" Then, she said, "Jewish?" I told her after consideration, "Protestant (other)."
7. I attempted to find out who the nurses were first by calling the hospital, and they referred me to the Emergency Room, but I could not get any information. Then I went there and inquired at the nurse's office, then I got my medical records for information, and there was no information about the nurses, whether they are employees or contractors. And no lawyer I contacted would handle the case and learning about medical malpractice law has been difficult for me.
8. I saw two therapists, and a nerve test from a specialist at GW Hospital. The first therapist used light brushes, which one, I could not feel on my finger; the second therapist pressed it with something heavier and I could feel that. Another time after tests, she concentrated on my hand beat backwards, and it gave out like the state it was in the beginning. I had use my left hand. The specialist at GWH, who did acupuncture caused pain and some bleeding, and did the nerve test, which tested for severe nerve damage.
9. My hand feels like it is going to sleep on occasion with prickly pains if I shift and twist my wrist outward suddenly or bend it backwards with significant pressure on it suddenly, but I could still feel generally; and she caused a jolt that nearly lifted me from the table near. My mid-arm has pain in it on occasion also, but I feel it rarely.
10. The neurology doctor first wrote a prescription for a nerve test in my hand, and also, my arm I think, without an IV injection, but she did not give me a referral. And when I went to get it, I told her about the events again, and the first ER doctor at United Medical Center said it might be just some sort of irritation from the injection, I think tendonitis or something, so she wrote a prescription and referral for that instead and it was negative; and since she left. And I have not seen a neurologist since because no doctor wanted to give a prescription for an MRI to examine my nerves.

C Demand for the Relief Sought

1. Acts by the Defendant was and caused the following:
   a. Discrimination by Disparagement of healthcare
   b. Unnecessary Pain, Suffering and Bodily Injury
   c. Negligent infliction of emotional distress
   d. Intentional infliction of emotional distress
   e. Loss of the sense of Freedom in seeking healthcare
   f. In an effort and necessity to trust, acts contribute to the sense of a loss of safety and wellbeing in seeking healthcare
2. Wherefore, I, the Plaintiff demand Judgment against the Defendant in the following Damages:
   a. Compensatory Damages
   b. Punitive Damages

Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020
301-458-1174

Superior Court of the District of Columbia

CIVIL DIVISION
500 Indiana Ave., N.W., Rm—JM-170
Washington, D.C. 20001

Plaintiff

vs.

Defendant

Civil Action No. _____

ANSWER OF DEFENDANT

DISTRICT OF COLUMBIA, ss:

The defendant, for answer to the claim of the plaintiff herein, says that he said plaintiff is not entitled to have judgment as demanded in the complaint for the following reasons:

_____

_____

_____

_____

_____

_____

_____

And, therefore, said defendant respectfully demands that this suit be heard in open court.

DEFENDANT:	ADDRESS:	TELEPHONE NO.
COPY MAILED TO: (ATTORNEY FOR PLAINTIFF)		

APPENDIX C

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

BRIAN KEITH WAUGH 3811 V Street, SE #202 Washington, DC 20020 Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL 3800 Reservoir Road, NW Washington, DC, 20007 Defendant.	Case No.: 2017 CA 007831 M Judge Robert R. Rigsby Next Event: February 23, 2018 Initial Scheduling Conference

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S
MOTION TO DISMISS

Comes now Defendant, by and through undersigned counsel, and hereby moves to dismiss this matter pursuant to D.C. Super Ct. R. 12(b)(6) for being filed beyond the statute of limitations, failing to satisfy a condition precedent (*i.e.* providing a defendant statutorily required pre-suit notice), and for failure to state a claim upon which relief can be granted. In support of this Motion, Defendant directs the Court to the Memorandum of Points & Authorities attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ CSDeese
Crystal S. Deese (#454759)
Jackson & Campbell, P.C.
1120 20th St NW Third Floor South Tower
Washington DC 20036
(202) 457-1611
cdeese@jackscamp.com
Counsel for Defendant

Certificate Pursuant to Rule 12-I

I hereby certify, pursuant to Rule 12-I of the Superior Court Rules of Civil Procedure that consent for the relief sought in this Motion was requested from Brian Waugh via telephone at approximately 5:15 p.m. on December 27th, 2017, but was not obtained.

/s/ Robert D. Anderson
Robert D. Anderson (#983354)

Certificate of Service

I hereby certify on this 28th day of December 2017, I caused Defendant's Motion to Dismiss, Memorandum of Points & Authorities, and proposed order to be served by first-class mail upon:

Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020

/s/ Robert D. Anderson
Robert D. Anderson (#983354)

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

BRIAN KEITH WAUGH 3811 V Street, SE #202 Washington, DC 20020 Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL 3800 Reservoir Road, NW Washington, DC, 20007 Defendant.	Case No.: 2017 CA 007831 M Judge Robert R. Rigsby Next Event: February 23, 2018 Initial Scheduling Conference

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS

Comes now Defendant MedStar Georgetown University Hospital ("Defendant" or "MGUH"), by and through undersigned counsel, and submits this Memorandum of Points and Authorities in Support of its Motion to Dismiss:

INTRODUCTION

On November 22, 2017, Plaintiff Brian Waugh, proceeding *pro se*, filed a Complaint seeking to hold Defendant liable for damages resulting from medical care he sought and received at MGUH on September 7 – 8, 2014, more than 3 years earlier. Plaintiff asserts that the manner in which a nurse allegedly inserted a needle into his arm caused him to feel a tingling sensation when he contorts his wrist in a certain manner and that he occasionally feels his arm is about to fall asleep. In addition to filing the claim outside the three-year statute of limitations, Plaintiff failed to comply with the mandatory

Notice requirement for medical malpractice claims against healthcare providers. See D.C. Code § 16-2802, *et seq.*

The same day Plaintiff filed the instant suit, Plaintiff also filed suit against George Washington University Hospital (the "GWU Complaint")[1] and United Medical Center (the "UMC Complaint"),[2] concerning events alleged to have occurred in 2017. Plaintiff purports to assert the same causes of action in all three complaints even though the events described in the GWU and UMC complaints occurred more than three years after those at MGUH and do not appear to be related in any way to the allegations in the instant matter. No pre-suite notice was ever served on this Defendant as required by law.

Although it is unclear from the Complaint exactly what causes of action Plaintiff is asserting against MGUH, his claims appear to be predicated on events that allegedly transpired on September 7 – 8, 2014. More specifically, Plaintiff's asserts six causes of action against Defendant: (1) discrimination by disparagement of healthcare; (2) unnecessary pain, suffering, and bodily injury; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) loss of the sense of freedom in seeking healthcare; and (6) sense of loss of safety and wellbeing in seeking healthcare. While the majority of Plaintiff's claims are not legally cognizable claims in the District of Columbia, none are sufficiently pleaded as a matter of law. Accordingly, Plaintiff's lawsuit should be dismissed with prejudice.

FACTUAL BACKGROUND

Though Plaintiff filed suit on November 22, 2017, the Compliant describes events that allegedly transpired between September 7, 2014 and September 8, 2014, while

[1] Case No. 2017 CA 007829 M (GWU Complaint).
[2] Case No. 2017 CA 007830 M (UMC Complaint).

Plaintiff was in the MGUH emergency department. According to Plaintiff, a nurse advised him that she needed to insert an IV, inserted the needle in his right arm, and, unable to find a vein, tried to reinsert it from a different angle. Plaintiff asserts that the nurse then inserted the needle near Plaintiff's right wrist but was unable to find a vein. Plaintiff claims that a second nurse then inserted a needle into his forearm and pressed on the needle to stop the bleeding. Plaintiff claims the needle was inserted improperly based on a video he watched on how to insert needles.

According to Plaintiff, a radiology technician said the needle in Plaintiff's right arm had been unnecessary and was unusable. Plaintiff alleges that the radiology technician removed the needle from Plaintiff's right arm and inserted a needle into the back of Plaintiff's right hand.

Plaintiff states that he saw two therapists, neither of which he claims are affiliated with MGUH, who tested Plaintiff for nerve damage. Plaintiff does not identify the therapists by name, specialty, or in any other manner. He does not provide facts regarding the reason for his visit(s) or the date(s) of his visit(s). Plaintiff has not articulated whether his visit(s) to the unidentified therapists are in any way related to his September 7-8, 2014 visit to MGUH. Nevertheless, Plaintiff sates that the tests came back negative, meaning there is no nerve damage.

Plaintiff's claims that his arm feels like it is "going to sleep on occasion" and that he has "prickly pains if I shift and twist my wrist outward suddenly or bend it backwards with significant pressure on it suddenly." The Complaint contains no allegations about how these "feelings" are proximately caused by any act or omission of this Defendant. Plaintiff merely alleges that in September of 2014, when he was in the MGUH

emergency room, two nurses inserted needles into his arm. There are no allegations about what conduct by those nurses led to those feelings, or even that those feelings were related to the needle insertion at all.

It is impossible to determine from the Complaint what anyone at MGUH allegedly did wrong. The Complaint fails to identify the acts or omissions by MGUH that form the basis for any cause of action against Defendant. Plaintiff's Complaint also fails to allege that any act or omission by Defendant caused any sort of damages.

In addition, Plaintiff fails to identify the standard of care that Defendant should have used and does not articulate how Defendant deviated therefrom. Plaintiff alleges no facts suggesting that Defendant's efforts to locate his vein and insert a needle deviated from the standard of care. Neither does Plaintiff articulate any causal relationship between the alleged action and his alleged injuries and damages. These jurisdictional, procedural and legal deficiencies require Plaintiff's Complaint to be dismissed.

STANDARD OF REVIEW

A motion under D.C. Super. Ct. R. Civ. P. 12(b)(6) tests the legal sufficiency of a complaint. Fraser v. Gottfried, 636 A.2d 430, 432 (D.C. 1994). In considering a motion made pursuant to Rule 12(b)(6), the Court must construe the complaint in the light most favorable to the plaintiff, accepting as true his or her factual allegations and granting him or her the benefit of any inferences that can be derived from the facts alleged. McBryde v. Amoco Oil Co., 404 A.2d 200, 202 (D.C. 1979). Dismissal of a complaint is appropriate if the plaintiff can prove no set of facts which would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957); Owens v. Tiber Island Condo. Ass'n, 373 A.2d 890, 893 (D.C. 1977).

ARGUMENT

I. Plaintiff's Claims Are Barred by the Statute of Limitations

A claim for medical malpractice must be brought within three (3) years from the time the right to maintain the action accrues. See D.C. Code § 12-301(8) and Canterbury v. Spence, 464 F.2d 772 (C.A.D.C.1972). A defendant may raise the affirmative defense of statute of limitations via motion under Rule 12(b)(6) when the facts that give rise to the defense are clear from the face of the complaint. See DePippo v. Chertoff, 453 F.Supp.2d 30, 33 (D.D.C. 2006). Dismissal is warranted when "'no reasonable person could disagree on the date on which the cause of action accrued' and 'the complaint on its face is conclusively time-barred.'" Id. (internal citations omitted).

Plaintiff's Complaint clearly alleges that the facts giving rise to his Complaint occurred between September 7 – 8, 2014. However, Plaintiff did not file suit until November 22, 2017, more than three years after the allegedly negligent acts occurred and more than 2 ½ months after limitations expired. Accordingly, Plaintiff's claims are time-barred and dismissal with prejudice is warranted.

II. The Court Lacks Subject Matter Jurisdiction Because Plaintiff Failed to Comply with the Statutorily Mandated Notice Requirement

The Court should also dismiss Plaintiff's lawsuit for his failure to comply with the District of Columbia's statutory notice requirement. Plaintiff failed to provide any pre-suit notice to this Defendant of his intention to sue as required by D.C. Code § 16-2802. In addition, Plaintiff's Complaint fails to allege he provided any such notice.

The District of Columbia's Medical Malpractice Act ("the Act") provides:

> Any person who intends to file an action in court alleging medical malpractice against a healthcare provider ***shall*** notify the intended

> defendant of his or her action not less than 90 days prior to filing the action.

D.C. Code § 16-2802(a) (emphasis added). The Act mandates that "[a] legal action alleging medical malpractice ***shall not*** *be commenced in the court*" unless the plaintiff notifies the defendant of his or her intention to sue. D.C. Code § 16-2802(c) (emphasis added). See also, Leonard v. District of Columbia, 801 A.2d 82, 84-85 (D.C. 1998) ("the word 'shall' is 'a term which creates a duty not an option'") (internal citations omitted). The Act's notice requirement is intended to place "a straightforward and minimal burden on all plaintiffs bringing medical malpractice suits." Coleman v. Washington Hosp. Ctr., 734 F.Supp.2d 58, 61 (D.D.C. 2010).

The plain language in the statute creates a condition precedent to filing suit, i.e., Plaintiff was obligated to provide notice of his intention to sue Defendant before filing suit. See generally, Super. Ct. Civ. R. 9(c); Tucci v. District of Columbia, 956 A.2d 684, 694 (D.C. 2008) (holding that a similar notice requirement under D.C. Code § 16-2309 is a mandatory "condition precedent" to filing suit); East River Const. Corp. v. District of Columbia, 183 F.Supp. 684, 685-86 (D.D.C. 1960) (finding dismissal was appropriate where condition precedent is not pled). Plaintiff did not provide the required notice to MGUH prior to filing the instant action.

Plaintiff's failure to satisfy the statutorily mandated condition precedent to filing suit is a fatal flaw to his right to sue. Tucci, 956 A.2d at 694 (finding dismissal proper when Plaintiff fails to satisfy condition precedent and provide notice of suit). By failing to satisfy the Act's notice provision, Plaintiff has no right to file suit against MGUH—the Complaint is a legal nullity and has no force or effect—because the Court lacks subject matter jurisdiction. See Lacek v. Washington Hosp. Ctr. Corp., 978 A.2d 1194 (D.C.

2009) (affirming dismissal for lack of subject matter jurisdiction based on failure to provide defendant with the required 90-day notice); see also, Lucas v. District Hosp. Partners, LP, Superior Court Case No. 10-CA-7853 M (Cordero, J.) (citing Lacek and dismissing Complaint against defendant who had not received proper notice); Frandsen v. Georgetown Univ. Hosp., Superior Court Case No. 2011 CA 6758 M (Cordero, J.) (dismissing medical malpractice count for failure to comply with D.C. Code § 16-2802(a)). Accordingly, Plaintiff's failure to provide notice of his claim to Defendant and in the absence of some showing of a legally sufficient justification, the Complaint must be dismissed.

III. Plaintiff's Complaint Fails to State a Claim on Which Relief Can Be Granted

District of Columbia courts follow the heightened pleading requirements imposed by the Supreme Court of the United States in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). See Potomac Dev. Corp v. District of Columbia, 28 A.3d 531, 543-44 (D.C. 2011). Pursuant to D.C. Super. Ct. R. 8(a), to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead facts sufficient to enable the court to reasonably infer that a defendant is liable. Iqbal, 129 S. Ct. at 1949. "The pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." Id. While the court must accept a plaintiff's factual allegations as true, it is not bound to accept legal conclusions couched as factual allegations. Grayson v. AT&T Corp., 140 A.3d 1155, 1162 (D.C. 2009) (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)).

"Bare allegations of wrongdoing that are no more than conclusions themselves are not entitled to the presumption of truth and are insufficient to sustain a complaint." Logan

v. LaSalle Bank Nat'l Ass'n., 80 A.3d 1014, 1019 (D.C. 2013). In order to withstand dismissal, a complaint must set forth the elements of a legally viable claim, and the facts alleged must elevate the right to relief above the level of speculation. Tingling-Clemons v. District of Columbia, 133 A.3d 241, 245 (D.C. 2016) (affirming dismissal of claims for breach of contract, D.C. Whistleblower Protection Act violation, and D.C. Human Right Act violation for failure to state a claim).

The first count (discrimination by disparagement of healthcare), is not a viable cause of action in the District of Columbia and should be dismissed as a matter of law. Counts two (unnecessary pain, suffering, and bodily injury), five (loss of the sense of freedom in seeking healthcare), and six (sense of loss of safety and wellbeing in seeking healthcare) are not recognized causes of action in the District of Columbia and should be dismissed as a matter of law. Regarding counts three (negligent infliction of emotional distress) and four (intentional infliction of emotional distress), Plaintiff fails to allege the elements necessary to establish these claims. Accordingly, Plaintiff's claims should be dismissed for failing to state a claim upon which relief can be granted.

A. Claims for Medical Malpractice (Counts 1, 2, 5, and 6)

Any claim for medical malpractice requires a plaintiff to show "the applicable standard of care, a deviation from that standard by the defendant, and a causal relationship between that deviation and the plaintiff's injury." Meek v. Shepard, 484 A.2d 579, 581 (D.C. 1984). Accordingly, a complaint for medical malpractice must allege a set of facts that satisfies each of those elements on a more than superficial level. Tingling-Clemons v. District of Columbia, 133 A.3d 241, 245 (D.C. 2016). See also Rodriguez v. Lab. Corp., 13 F.Supp.3d 121, 133 (D.D.C. 2014) (dismissing negligence claim against

LabCorp in the absence of allegations regarding the manner in which the defendant breached the standard of care, or duty owed, to plaintiff).

In Atraqchi v. GUMC Unified Billing, 788 A.2d 559, 562 (2002), the court found the *pro se* malpractice plaintiff's allegations were "minimally sufficient" to meet the pleading requirement. The Atraqchi's complaint included allegations about the skill exercised by other physicians (*i.e.*, defined the standard of care), specifically identified medical interventions the defendants should have but allegedly failed to perform (*i.e.*, set forth the deviations from the established standard), and contained proximate cause allegations. Id. It should also be noted that the Atraqchi case was decided before Iqbal.

Plaintiff's allegations of medical malpractice fail to set forth what standard of care was required, how those requirements were not met, and how such deviations proximately caused his injuries. These deficiencies are fatal to his filing withstanding dismissal. Plaintiff does not allege what was required of the nurses he is accusing, what they should have but failed to do, or that he has sustained an injury related to such conduct. Plaintiff also fails to allege that he suffered damages as a result of a deviation from the standard of care or that his complaints about his arm falling asleep and tingling are more than common ailments unrelated to any conduct by this Defendant.

To survive a motion to dismiss, a complaint must allege all the elements of a legally viable claim beyond the level of speculation. See Tingling-Clemons, 133 A.3d at 245. Plaintiff's Complaint does not contain the allegations for a legally sufficient medical malpractice complaint, and therefore, must be dismissed. See Meek, 484 A.2d at 581.

B. Negligent Infliction of Emotional Distress (Count 3)

In the District of Columbia, a claim for negligent infliction of emotional distress requires proof of three elements. See David v. District of Columbia, 436 F.Supp.2d 83, 89 (D.D.C. 2006). Plaintiff must prove: "(1) that the plaintiff suffered either a physical impact or was within the zone of danger of the defendant's actions, (2) that the plaintiff suffered emotional distress that was serious and verifiable, and (3) that the defendant acted negligently." Id., citing Bernstein v. Roberts, 405 F.Supp.2d 34, 41-42 (D.D.C. 2005).

District of Columbia courts "have admonished that not every 'trifling distress' should result in a recovery of damages." Wright v. U.S., 963 F.Supp. 7, 18 (D.D.C. 1997) (citing Williams v. Baker, 572 A.2d 1062, 1067-68 (D.C. 1990)). More specifically:

> The fact that the different forms of emotional disturbance are accompanied by transitory, non-recurring physical phenomena, harmless in themselves, such as dizziness, vomiting, and the like, does not make the actor liable where such phenomena are in themselves inconsequential and do not amount to any substantial bodily harm. On the other hand, long-continued nausea or headaches may amount to physical illness, which is bodily harm; and even long continued mental disturbance, as for example in the case of repeated hysterical attacks, or mental aberration, may be classified by the courts as illness, notwithstanding their mental character.

Williams, 572 A.2d at 1068 (quoting Restatement (Second) of Torts § 436A cmt. c).

Here, Plaintiff has failed to allege facts sufficient to establish any of the three elements. Assuming that the act of inserting a needle to establish an IV is the same act that Plaintiff is contending gives rise to his claim for negligent infliction of emotional distress, the Complaint does not articulate that any physical impact is related to this event. Regarding the second element, Plaintiff does not claim he suffered any emotional distress whatsoever, let alone serious and verifiable emotional distress. Similarly,

Plaintiff failed to satisfy the third element because has not alleged any negligence on the part of Defendant. Accordingly, count 3 for negligent infliction of emotional distress should be dismissed.

C. Intentional Infliction of Emotional Distress (Count 4)

To establish a claim for intentional infliction of emotional distress, a plaintiff must show: "(1) extreme and outrageous conduct on the part of the defendant which (2) either intentionally or recklessly (3) causes the plaintiff severe emotional distress." Howard Univ. v. Best, 484 A.2d 958, 985 (D.C. 1984). The conduct must be 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Horman v. Goyal, 711 A.2d 812, 818 (D.C. 1998).

In this case, Plaintiff has failed to identify which of Defendant's actions actually form the basis of his claim. Further, he has not alleged that those acts, whatever they may be, are extreme or outrageous. Assuming that the nurses' efforts to establish an IV line by inserting a needle into Plaintiff's arm is the basis for intentional infliction of emotional distress, such conduct cannot rise to the level "extreme or outrageous" to maintain this claim. The second element is not satisfied because Plaintiff has not alleged that Defendant acted intentionally or recklessly. The third element is also unsatisfied because Plaintiff has not alleged that he suffered emotional distress as a result of Defendant's actions. Insofar as his purported fifth and sixth causes of action, *i.e.*, loss of the sense of freedom in seeking healthcare and the sense of a loss of safety and wellbeing in seeking healthcare, the count fails to satisfy the pleading requirements established in Iqbal.

Accordingly, count four for intentional infliction of emotional distress should be dismissed.

CONCLUSION

Plaintiff's suit should be dismissed for three reasons. First, Plaintiff filed suit more than 3 years after the alleged events such that his claims are time barred. Second, this Court lacks subject matter jurisdiction because Plaintiff failed satisfy a condition precedent to bringing a medical malpractice suit, which was to serve this Defendant with the statutorily mandated pre-suit notice. Lastly, Plaintiff's enumerated counts fail because they are not legally recognized and not adequately pled. For the these reasons, Plaintiff has failed to state a claim upon which relief may be granted, and dismissal with prejudice is warranted. Accordingly, Defendant respectfully asks this honorable Court to grant its motion and dismiss Plaintiff's claims with prejudice.

Respectfully submitted,

JACKSON & CAMPBELL, P.C.

/s/ CSDeese
Crystal S. Deese (454759)
1120 20th Street, N.W.
300 South Tower
Washington DC 20036
(202) 457-1611
cdeese@jackscamp.com
Counsel for Defendant MedStar Georgetown University Hospital

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

BRIAN KEITH WAUGH 3811 V Street, SE #202 Washington, DC 20020 Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL 3800 Reservoir Road, NW Washington, DC, 20007 Defendant.	Case No.: 2017 CA 007831 M Judge Robert R. Rigsby Next Event: February 23, 2018 Initial Scheduling Conference

ORDER

Upon consideration of Defendant MedStar Georgetown University Hospital's Motion to Dismiss, any Opposition thereto, and the record herein, it is on this ___ day of _____, 2018, by the Superior Court for the District of Columbia:

ORDERED that Defendant's Motion to Dismiss is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint be, and the same hereby is, **DISMISSED WITH PREJUDICE**.

_____
Judge Robert R. Rigsby

cc:
Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020

Crystal S. Deese (cdeese@jackscamp.com)

APPENDIX D

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Brian Keith Waugh, Plaintiff
3811 V Street, SE #202
Washington, DC 20020
301-458-1174

FILED
CIVIL ACTIONS BRANCH
JAN 09 2018
Superior Court
of the District of Columbia
Washington, D.C.

v.

Civil Action No. 2017 CA 007829 M

District Hospital Partners, LP
d/b/a George Washington University Hospital, Defendant
900 23rd St NW
Washington, DC 20037

AMENDED COMPLAINT

A Jurisdiction

1. Jurisdiction for this Court is DC Code. §11-921

B Statement of Claims for Relief

1. This amended complaint is filed under Super. Ct. Civ. R. 15(a)(1)(B).
2. On the night of September 14, 2017, I had to drink a solution for a colonoscopy at George Washington University Hospital. The first nurse named Temi brought a stack of cups with her fingers in the cup, and pulled the cups out with her fingers on the inside without gloves; after using them I asked for more cups and pills because she sneezed on the back of her hand while she was in the room with her cart just before she got a pill for me to take with a small cup with her finger inside without gloves on and I was not sure if she cleaned her hands. She brought me new cups and a pill holding the cups with a paper towel and the small one in her hands on the outside. I read after filing this complaint that to require a nurse to wash hands is a duty of a patient according to the George Washington University Hospital website; and hand hygiene (washing hands after sneezing) is required for nurses for the safety of the patients according to the Center for Disease Control (CDC).[1] And the act of bringing the cups with her fingers on the inside and on the rim communicated that this provision was from her personally, that she is the one who is beneficent; that I drink from her hands; and which expresses that she has rights over my eating or drinking experience, which exploits my need for healthcare, and is inconsiderate, and adds a burden of responsibility to tell her not to put her fingers in the cups and on the rim; causing me to be agitated to question her motives, and her possible resentment upon lowering the standard of healthcare by not using gloves or showing she washed her hands if confronted.
    a. These acts are also in violation of the following patient rights at George Washington University Hospital:

[1] *Wash Your Hands*, April 10, 2017, https://www.cdc.gov/features/handwashing/index.html Retrieved on 01/08/2018

Case: 2017 CA 007829 M
0006088454
ORT: CIVMC

i. "8. Receive considerate and respectful care..."
ii. "18. Receive equal treatment at all times and under all circumstances..."
iii. "19. Receive treatment free from mental, physical, sexual and verbal abuse, neglect and exploitation."

3. In the emergency room, the needle for an IV was placed completely in my arm and my arm was uncomfortable to move, and I was told not to move it, I remember. The next day, a phlebotomist secured the IV by a cross tape, which was the difference. But, that day, it was eventually pouring out blood from the covering, and continued after it was twisted tight again, and was eventually removed for a new one. A nurse, Dejena or another, said they needed two IV tubes before the procedure.
4. Temi had attempted in the back of my hand to insert a new one, and fished or probed excessively causing needless pain and a bruise-like swelling. And I told her not to before she got started. To slightly move in and out to get inside the vein is a proper procedure. To move the needle in and out excessively to feel around for a vein is not the best practice, it is an improper procedure and naturally dangerous because it could damage nerves according to NIH and other professionals.
    a. "Phlebotomists are trained to avoid or minimize the practice of "fishing" for the vein if the initial attempt to insert the collection needle into the vein is unsuccessful. In addition to this "fishing" process being painful to the patient, it could cause tissue and vascular damage at and around the phlebotomy site. Further, the underlying damaged tissues release chemicals called cytokines, which, along with blood that may pool in the surrounding tissue, may be drawn into the vacuum of the collection tube, resulting in a fluid that is not truly representative of the circulating blood. Such mixtures of vascular blood and tissue fluids are also more likely to be hemolyzed."[2]
    b. "Holding syringe at approximately a 30 degree angle, with steady smooth, deliberate motion, perform venipuncture. Successful venipunctures are usually visible by blood flow back into the hub of the needle. If blood does not appear in the hub, the needle in the arm can be moved in or out slightly to locate the vein but excessive movement (probing or "fishing") should be avoided..."[3]
    c. "Although probing is a very dangerous procedure which must be avoided, re-direction of the needle is an acceptable procedure if it is performed once per venipuncture."[4]
    d. "However, when it [*a vein*] is not visible and/or the initial puncture is unsuccessful, probing the area subjects the patient to the potential for excruciating pain and permanent injury more so than probing in the area of the cephalic or medial veins."
5. A second nurse named "Sheri," I'm not sure of the spelling, put the needle in my arm saying she saw a vein on the left side of mid right arm, which I didn't see was up, and I told her there

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[2] *Traumatic Draw* https://www.labce.com/spg855294_traumatic_draw.aspx Retrieved on 01/05/2018

[3] *Specimen Collection: Blood Collection by Venipuncture* RL.05.04 Michigan Regional Laboratory System, December 2009
https://view.officeapps.live.com/op/view.aspx?src=http://www.michigan.gov/documents/RL_135816_7.05.01_Specimen_Collection_Blood_by_Venipuncture.doc Retrieved on 01/07/2018

[4] Ohnishi H., [Abstract] How to prevent phlebotomy-related nerve injury The Japanese Journal of Clinical Pathology (March 2007) https://www.ncbi.nlm.nih.gov/pubmed/17441469# Retrieved 01/04/2017

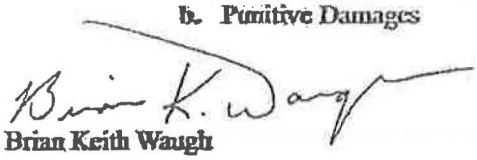
was another nurse, DeJana, who said she saw and could feel a vein, but I didn't see it, and she did nothing but stick it in my mid forearm, and nothing came out. But Sheri, after persisting, although I didn't want her to try again and told her, Sheri had stuck it under my skin; then when she did not hit a vein she adjusted the needle upward while still in my arm and went deeper, which was painful, while I was telling her not to try again, not to fish for a vein. And this was not a slight insertion to enter the center vein of three small branching veins. This an improper procedure as in Paragraph B(4)(b-c). She also brought in a trans-illuminating machine that finds veins, and she looked in the same area of the three small branching veins, but I did not want her to try again, and she did not.

a. And these acts are also in violation of the following patient rights at George Washington University Hospital, which includes those in Paragraph B(2)(a)(i-iii):
    i. "6. Refuse treatment and be told what effect this may have on your health, and to be informed of the other potential consequences of refusal. Furthermore, you have the right to refuse assessment, care or treatment by any specific group or individual not essential to your care needs."
    ii. "9. Receive care committed to the prevention and management of pain."

6. Temi said that a phlebotomist would be in about 4 AM, and they could try then. At a little after 4 AM, another, a third nurse named Peter according to Temi, came in and said he was there to draw my blood explaining what the various tubes meant and that it was necessary to do. I thought he was the phlebotomist. Because of the bruised swelling from Temi's attempt, he said he could not try there. I said there was a vein in the back of my left hand, but, he said the IV could not go there, and I said to just draw blood for the tests. He didn't want to do that and wanted to use the vein at my forearm. It seemed questionable, and I told him like the others don't fish for a vein, which they all made second attempts, and he inserted the needle with an unsteady hand, but blood went into the tube, then he replaced the tube and put in a syringe-type tube to draw out blood, and nothing came out, and he said he wanted to flush the vein and attached the solution tube, and I said to take out the needle, and I said no just take it out, so I began to slowly move his hand back holding the needle and the needle was almost out then he pushed the solution in my arm, and the water solution and blood rolled off my arm, so I said becoming loud, Why did you do that? Why did you push the solution in my arm? I said to take it out!
    a. This is an improper procedure according to Paragraph B(4)(b)
    b. And this is in violation of patient rights:
        i. "6. Refuse treatment and be told what effect this may have on your health, and to be informed of the other potential consequences of refusal. Furthermore, you have the right to refuse assessment, care or treatment by any specific group or individual not essential to your care needs."
        ii. "8. Receive considerate and respectful care..."
        iii. "9. Receive care committed to the prevention and management of pain."
        iv. "18. Receive equal treatment at all times and under all circumstances..."
        v. "19. Receive treatment free from mental, physical, sexual and verbal abuse, neglect and exploitation.

7. The pain that I experience on occasion is in the back of my hand and in the left side of my right forearm about four inches from my armpit.
8. Demand for the Relief Sought

9. Acts by the Defendant was and caused the following:
    a. Physical and Mental Pain and Suffering
    b. Negligent infliction of emotional distress
    c. Intentional infliction of emotional distress
    d. Loss of the sense of Freedom in seeking healthcare
    e. In an effort and necessity to trust, acts contribute to the sense of a loss of safety and wellbeing in seeking healthcare
10. Wherefore, I, the Plaintiff demand Judgment against the Defendant in the following Damages:
    a. Compensatory Damages
    b. Punitive Damages

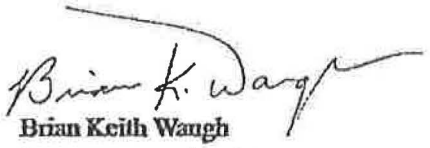


Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020
301-458-1174
bkw.legal.info@gmail.com

CERTIFICATE OF SERVICE

HEREBY, I, Brian Keith Waugh, Pro Se Plaintiff, certify that on January 9, 2018, a true copy of the Amended Complaint as a Matter of Course under Super. Ct. Civ. R. 15(a)(1)(B) was served by first-class mail to the following:

Ref.: District Hospital Partners, LP d/b/a George Washington University Hospital, Defendant
Attn: Thomas Monahan
Bar No. 457213
Goodell DeVries Leech & Dann, LLP
One South Street, 20th Street
Baltimore, Maryland 21202
tvm@gdldlaw.com
(410) 783-4000



Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020
301-458-1174
bkw.legal.info@gmail.com

Superior Court of the District of Columbia
CIVIL DIVISION
Civil Actions Branch
500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001
Telephone: (202) 879-1133 Website: www.dccourts.gov

Brian Keith Waugh
Plaintiff

vs.

Case Number 2017 CA 007829 M

District Hospital Partners, LP d/b/a George Washington University Hospital
Defendant

CSC
1090 Vermont Avenue, NW
Washington DC, 20005

Alias
SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Brian K. Waugh
Name of Plaintiff's Attorney

3811 V Street, SE #202
Address
Washington, DC 20020

301-458-1174
Telephone

Clerk of the Court

By _____
Deputy Clerk

Date _____

如需翻译,请打电话 (202) 879-4828 Veuillez appeler au (202) 879-4828 pour une traduction Để có một bài dịch, hãy gọi (202) 879-4828
번역을 원해시면, (202) 879-4828로 전화주십시오 የትርጉም ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, *DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.*

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation
Vea al dorso la traducción al español

APPENDIX E

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

BRIAN KEITH WAUGH Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL Defendant.	)	Case No.: 2017 CA 007831M Judge: Robert R. Rigsby Next Event: Initial Scheduling Conference, February 23, 2018 10:00 a.m.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE

Comes now Defendant, by and through undersigned counsel, and hereby moves to dismiss this matter pursuant to D.C. Super Ct. R. 12(b)(6) for being filed beyond the statute of limitations, failing to satisfy a condition precedent (*i.e.* providing a defendant statutorily required pre-suit notice), and for failure to state a claim upon which relief can be granted. In support of this Motion, Defendant directs the Court to the Memorandum of Points & Authorities attached hereto and incorporated herein by reference.

Respectfully submitted,

/s/ CSDeese

Crystal S. Deese, Esq. (#454759)
Diona F. Howard-Nicolas, Esq. (#1030575)
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W., Suite 300 South
Washington, D.C. 20036
(T): (202) 457-1600
cdeese@jackscamp.com
dhowardnicolas@jackscamp.com
Counsel for Defendant MedStar Georgetown University Hospital

RULE 12-I CERTIFICATE

I HEREBY CERTIFY, pursuant to Rule 12-I of the Superior Court Rules of Civil Procedure that undersigned counsel attempted to obtain consent for the relief sought in this Motion from Plaintiff Brian Waugh via telephone at approximately 3:50 p.m. on February 6, 2018, but was unable to reach Plaintiff and left him a voicemail. As a result, Plaintiff's consent was not obtained.

/s/ Diona F. Howard-Nicolas
Diona F. Howard-Nicolas (#1030575)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2018 a copy of Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice was served by email and regular first-class mail upon:

Brian Keith Waugh
3811 V Street, SE # 202
Washington, DC 20020
Bkw.legal.info@gmail.com

/s/ Diona F. Howard-Nicolas
Diona F. Howard-Nicolas (#1030575)

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

BRIAN KEITH WAUGH Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL Defendant.	)	Case No.: 2017 CA 007831M Judge: Robert R. Rigsby Next Event: Initial Scheduling Conference, February 23, 2018 10:00 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE

Comes now Defendant MedStar Georgetown University Hospital ("Defendant" or "MGUH"), by and through undersigned counsel, and submits this Memorandum of Points and Authorities in Support of its Motion to Dismiss:

INTRODUCTORY STATEMENT

On November 22, 2017, Plaintiff Brian Waugh, proceeding *pro se*, filed a Complaint seeking to hold Defendant liable for damages resulting from medical care he sought and received at MGUH on September 7 – 8, 2014, more than 3 years earlier. Defendant filed a Motion to Dismiss Plaintiff's Complaint with prejudice on December 18, 2017, asserting effectively identical arguments as Defendant's instant motion. On January 17, 2018, Plaintiff filed an Amended Complaint, an Opposition to Defendant's Motion to Dismiss with Prejudice, and a Consent Motion to Extend Time to file Opposition to Defendant's Motion to Dismiss with Prejudice.

In Plaintiff's Amended Complaint, he asserts that the manner in which a nurse allegedly inserted a needle into his arm caused him to feel a tingling sensation or sharp

pain in his back wrist when he contorts his wrist in a certain manner and that he occasionally feels his arm is about to fall asleep. In addition to filing the claim outside the three-year statute of limitations, Plaintiff failed to comply with the mandatory Notice requirement for medical malpractice claims against healthcare providers. See D.C. Code § 16-2802, *et seq.*

The same day Plaintiff filed the instant suit, Plaintiff also filed suit against George Washington University Hospital (the "GWU Complaint")[1] and United Medical Center (the "UMC Complaint"),[2] concerning events alleged to have occurred in 2017. Plaintiff purports to assert the same causes of action in all three complaints even though the events described in the GWU and UMC complaints occurred more than three years after those at MGUH and do not appear to be related in any way to the allegations in the instant matter. No pre-suit notice was ever served on this Defendant as required by law.

Plaintiff asserts six causes of action against Defendant: (1) discrimination by disparagement of healthcare; (2) unnecessary pain, suffering, and bodily injury; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) loss of the sense of safety and wellbeing; and (6) loss of the sense of freedom in seeking healthcare. While the majority of Plaintiff's claims are not legally cognizable claims in the District of Columbia, none are sufficiently pleaded as a matter of law. Accordingly, Plaintiff's lawsuit should be dismissed with prejudice.

---

[1] Case No. 2017 CA 007829 M (GWU Complaint).
[2] Case No. 2017 CA 007830 M (UMC Complaint).

FACTUAL BACKGROUND

Plaintiff's Amended Complaint fails to cure the deficiencies identified in Defendant's first Motion to Dismiss. The Amended Complaint continues to describe events which occurred more than three years before he first filed suit. Specifically, he claims that on September 7-8, 2014, a nurse, Jane Doe 1, advised him that she needed to insert an IV to draw blood and administer IV solution. Plaintiff alleges that Jane Doe 1 tied a tourniquet above his right bicep, inserted the needle in his right forearm below his bicep, and unable to find a vein, tried to reinsert it from different angles. Plaintiff asserts that Jane Doe 1 then inserted the needle in the back of his upper right hand near his wrist, fishing without movement, but was, again, unable to find a vein. He claims that Jane Doe 1 improperly applied the tourniquet, inserted the needle and probed for his vein based on his review of various medical articles.

Plaintiff claims that a second nurse, Jane Doe 2, then inserted a needle into his forearm and pressed on the needle to stop the bleeding. Plaintiff claims the needle was inserted improperly based on an alleged article published by the National Institute of Health.

According to Plaintiff, a radiology technician said the needle in Plaintiff's right arm had been unnecessary and was unusable. Plaintiff alleges that the radiology technician removed the needle from Plaintiff's right arm and inserted a needle into the back of Plaintiff's right hand.

Plaintiff states that he saw two therapists, neither of whom he claims are affiliated with MGUH, who tested Plaintiff for nerve damage. According to Plaintiff, on November 24, 2014, a neurologist, Dr. Elisa Knutsen, referred him to the first therapist

named Melanie, at the George Washington University Hospital Outpatient Rehabilitation Center. He did not identify Melanie's specialty, but claims to have visited her for treatment in either late 2014 or early 2015, at which time she applied light brush strokes on Plaintiff's hand to test his alleged nerve damage. According to Plaintiff, he could not feel the brush strokes on his finger.

Plaintiff claims that he was treated by an EMG specialist at George Washington University Hospital ("GWUH") also at an unknown date. According to Plaintiff, the EMG specialist performed acupuncture on him, causing him pain and bleeding. He also alleges that this GWUH EMG specialist, at an unspecified time, performed an EMG nerve test on him which allegedly tested positive for severe nerve damage. He claims that the EMG test "caused a jolt from [his] upper right back area that nearly lifted [him] from the table."

He claims to have been treated by a second therapist, Laurie Rogers of MedStar NRH Rehabilitation Network, again, at an unspecified time. Plaintiff did not identify Ms. Roger's specialty, but alleges that she pressed his finger with a heavier object than used by Melanie. Plaintiff claims that unlike the light brush strokes that Melanie applied to his finger, he could feel the heavier object. He alleges that his right hand and arm are sore as a result of the care he received at GWUH. Plaintiff has not articulated whether his visit(s) to the above-mentioned therapists and EMG specialist are in any way related to his September 7-8, 2014 visit to MGUH.

Plaintiff alleges that despite his requests, no doctor has agreed to write him a prescription for an MRI to examine the presence of nerve damage in his hand. Nevertheless, Plaintiff claims that his arm feels like it is "going to sleep on occasion" and

that he has "prickly pains, or sharp pains in [his] back wrist . . . if [he] shifts and twist [sic] [his] wrist outward suddenly or with pressure, or bend [sic] it backwards with significant pressure on it suddenly."

The Amended Complaint contains no allegations about how these "feelings" are proximately caused by any act or omission of this Defendant. Plaintiff merely alleges that in September of 2014, when he was in the MGUH emergency room, two nurses, Jane Doe 1 and Jane Doe 2, inserted needles into his arm. There are no allegations about what conduct by those nurses led to those feelings, or even that those feelings were related to the needle insertions at all.

The Amended Complaint fails to identify the acts or omissions by MGUH that form the basis for any cause of action against Defendant. Plaintiff's Amended Complaint also fails to allege that any act or omission by Defendant caused any sort of damages. In addition, Plaintiff fails to identify the standard of care that Defendant should have used and does not articulate how Defendant deviated there from. Plaintiff alleges no facts suggesting that Defendant's efforts to locate his vein and insert a needle deviated from the standard of care. Neither does Plaintiff articulate any causal relationship between the alleged action and his alleged injuries and damages. These jurisdictional, procedural and legal deficiencies require Plaintiff's Amended Complaint to be dismissed.

STANDARD OF REVIEW

A motion under D.C. Super. Ct. R. Civ. P. 12(b)(6) tests the legal sufficiency of a complaint. Fraser v. Gottfried, 636 A.2d 430, 432 (D.C. 1994). In considering a motion made pursuant to Rule 12(b)(6), the Court must construe the complaint in the light most favorable to the plaintiff, accepting as true his or her factual allegations and granting him

or her the benefit of any inferences that can be derived from the facts alleged. McBryde v. Amoco Oil Co., 404 A.2d 200, 202 (D.C. 1979). Dismissal of a complaint is appropriate if the plaintiff can prove no set of facts which would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1957); Owens v. Tiber Island Condo. Ass'n, 373 A.2d 890, 893 (D.C. 1977).

ARGUMENT

I. Plaintiff's Claims Are Barred by the Statute of Limitations

A claim for medical malpractice must be brought within three (3) years from the time the right to maintain the action accrues. See D.C. Code § 12-301(8) and Canterbury v. Spence, 464 F.2d 772 (C.A.D.C.1972). A defendant may raise the affirmative defense of statute of limitations via motion under Rule 12(b)(6) when the facts that give rise to the defense are clear from the face of the complaint. See DePippo v. Chertoff, 453 F.Supp.2d 30, 33 (D.D.C. 2006). Dismissal is warranted when "'no reasonable person could disagree on the date on which the cause of action accrued' and 'the complaint on its face is conclusively time-barred.'" Id. (internal citations omitted).

Plaintiff's Amended Complaint clearly alleges that the facts giving rise to his Complaint occurred between September 7 – 8, 2014. However, Plaintiff did not file suit until November 22, 2017, more than three years after the allegedly negligent acts occurred and more than 2 ½ months after limitations expired. Accordingly, Plaintiff's claims are time-barred and dismissal with prejudice is warranted.

II. The Court Lacks Subject Matter Jurisdiction Because Plaintiff Failed to Comply with the Statutorily Mandated Notice Requirement

The Court should also dismiss Plaintiff's lawsuit for his failure to comply with the District of Columbia's statutory notice requirement. Plaintiff failed to provide any pre-

suit notice to this Defendant of his intention to sue as required by D.C. Code § 16-2802. In addition, Plaintiff's Amended Complaint fails to allege he provided any such notice.

> The District of Columbia's Medical Malpractice Act ("the Act") provides:
>
> Any person who intends to file an action in court alleging medical malpractice against a healthcare provider ***shall*** notify the intended defendant of his or her action not less than 90 days prior to filing the action.

D.C. Code § 16-2802(a) (emphasis added). The Act mandates that "[a] legal action alleging medical malpractice ***shall not be commenced in the court***" unless the plaintiff notifies the defendant of his or her intention to sue. D.C. Code § 16-2802(c) (emphasis added). See also, Leonard v. District of Columbia, 801 A.2d 82, 84-85 (D.C. 1998) ("the word 'shall' is 'a term which creates a duty not an option'") (internal citations omitted). The Act's notice requirement is intended to place "a straightforward and minimal burden on all plaintiffs bringing medical malpractice suits." Coleman v. Washington Hosp. Ctr., 734 F.Supp.2d 58, 61 (D.D.C. 2010).

The plain language in the statute creates a condition precedent to filing suit, i.e., Plaintiff was obligated to provide notice of his intention to sue Defendant before filing suit. See generally, Super. Ct. Civ. R. 9(c); Tucci v. District of Columbia, 956 A.2d 684, 694 (D.C. 2008) (holding that a similar notice requirement under D.C. Code § 16-2309 is a mandatory "condition precedent" to filing suit); East River Const. Corp. v. District of Columbia, 183 F.Supp. 684, 685-86 (D.D.C. 1960) (finding dismissal was appropriate where condition precedent is not pled). Plaintiff did not provide the required notice to MGUH prior to filing the instant action.

Plaintiff's failure to satisfy the statutorily mandated condition precedent to filing suit is a fatal flaw to his right to sue. Tucci, 956 A.2d at 694 (finding dismissal proper

when Plaintiff fails to satisfy condition precedent and provide notice of suit). By failing to satisfy the Act's notice provision, Plaintiff has no right to file suit against MGUH—the Complaint is a legal nullity and has no force or effect—because the Court lacks subject matter jurisdiction. See Lacek v. Washington Hosp. Ctr. Corp., 978 A.2d 1194 (D.C. 2009) (affirming dismissal for lack of subject matter jurisdiction based on failure to provide defendant with the required 90-day notice); see also, Lucas v. District Hosp. Partners, LP, Superior Court Case No. 10-CA-7853 M (Cordero, J.) (citing Lacek and dismissing Complaint against defendant who had not received proper notice); Frandsen v. Georgetown Univ. Hosp., Superior Court Case No. 2011 CA 6758 M (Cordero, J.) (dismissing medical malpractice count for failure to comply with D.C. Code § 16-2802(a)). Accordingly, Plaintiff's failure to provide notice of his claim to Defendant and in the absence of some showing of a legally sufficient justification, the Complaint must be dismissed.

III. Plaintiff's Amended Complaint Fails to State a Claim on Which Relief Can Be Granted

District of Columbia courts follow the heightened pleading requirements imposed by the Supreme Court of the United States in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). See Potomac Dev. Corp v. District of Columbia, 28 A.3d 531, 543-44 (D.C. 2011). Pursuant to D.C. Super. Ct. R. 8(a), to survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead facts sufficient to enable the court to reasonably infer that a defendant is liable. Iqbal, 129 S. Ct. at 1949. "The pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the defendant-unlawfully-harmed-me accusation." Id. While the court must accept a plaintiff's factual allegations as true, it is not bound to accept legal conclusions couched

as factual allegations. Grayson v. AT&T Corp., 140 A.3d 1155, 1162 (D.C. 2009) (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)).

"Bare allegations of wrongdoing that are no more than conclusions themselves are not entitled to the presumption of truth and are insufficient to sustain a complaint." Logan v. LaSalle Bank Nat'l Ass'n., 80 A.3d 1014, 1019 (D.C. 2013). In order to withstand dismissal, a complaint must set forth the elements of a legally viable claim, and the facts alleged must elevate the right to relief above the level of speculation. Tingling-Clemons v. District of Columbia, 133 A.3d 241, 245 (D.C. 2016) (affirming dismissal of claims for breach of contract, D.C. Whistleblower Protection Act violation, and D.C. Human Right Act violation for failure to state a claim).

The first count (discrimination by disparagement of healthcare), is not a viable cause of action in the District of Columbia and should be dismissed as a matter of law. Counts two (unnecessary pain, suffering, and bodily injury), five (loss of sense of safety and wellbeing), and six (loss of the sense of freedom in seeking healthcare) are not recognized causes of action in the District of Columbia and should be dismissed as a matter of law. Regarding counts three (negligent infliction of emotional distress) and four (intentional infliction of emotional distress), Plaintiff fails to allege the elements necessary to establish these claims. Accordingly, Plaintiff's claims should be dismissed for failing to state a claim upon which relief can be granted.

A. Claims for Medical Malpractice (Counts 1, 2, 5, and 6)

Any claim for medical malpractice requires a plaintiff to show "the applicable standard of care, a deviation from that standard by the defendant, and a causal relationship between that deviation and the plaintiff's injury." Meek v. Shepard, 484

A.2d 579, 581 (D.C. 1984). Accordingly, a complaint for medical malpractice must allege a set of facts that satisfies each of those elements on a more than superficial level. Tingling-Clemons v. District of Columbia, 133 A.3d 241, 245 (D.C. 2016). See also Rodriguez v. Lab. Corp., 13 F.Supp.3d 121, 133 (D.D.C. 2014) (dismissing negligence claim against LabCorp in the absence of allegations regarding the manner in which the defendant breached the standard of care, or duty owed, to plaintiff).

In Atraqchi v. GUMC Unified Billing, 788 A.2d 559, 562 (2002), the court found the *pro se* malpractice plaintiff's allegations were "minimally sufficient" to meet the pleading requirement. The Atraqchi complaint included allegations about the skill exercised by other physicians (*i.e.*, defined the standard of care), specifically identified medical interventions the defendants should have but allegedly failed to perform (*i.e.*, set forth the deviations from the established standard), and contained proximate cause allegations. Id. It should also be noted that the Atraqchi case was decided before Iqbal.

Plaintiff's allegations of medical malpractice fail to set forth what standard of care was required, how those requirements were not met, and how such deviations proximately caused his injuries. These deficiencies are fatal to his filing withstanding dismissal. While Plaintiff cites to alleged medical literature concerning the practice of phlebotomy, he does not allege that he has sustained an injury related to Defendant's conduct. Plaintiff also fails to allege that he suffered damages as a result of a deviation from the standard of care or that his complaints about his arm falling asleep and tingling are more than common ailments unrelated to any conduct by this Defendant.

To survive a motion to dismiss, a complaint must allege all the elements of a legally viable claim beyond the level of speculation. See Tingling-Clemons, 133 A.3d at

245. Plaintiff's Amended Complaint does not contain the allegations for a legally sufficient medical malpractice complaint, and therefore, must be dismissed. See Meek, 484 A.2d at 581.

B. Negligent Infliction of Emotional Distress (Count 3)

In the District of Columbia, a claim for negligent infliction of emotional distress requires proof of three elements. See David v. District of Columbia, 436 F.Supp.2d 83, 89 (D.D.C. 2006). Plaintiff must prove: "(1) that the plaintiff suffered either a physical impact or was within the zone of danger of the defendant's actions, (2) that the plaintiff suffered emotional distress that was serious and verifiable, and (3) that the defendant acted negligently." Id., citing Bernstein v. Roberts, 405 F.Supp.2d 34, 41-42 (D.D.C. 2005).

District of Columbia courts "have admonished that not every 'trifling distress' should result in a recovery of damages." Wright v. U.S., 963 F.Supp. 7, 18 (D.D.C. 1997) (citing Williams v. Baker, 572 A.2d 1062, 1067-68 (D.C. 1990)). More specifically:

> The fact that the different forms of emotional disturbance are accompanied by transitory, non-recurring physical phenomena, harmless in themselves, such as dizziness, vomiting, and the like, does not make the actor liable where such phenomena are in themselves inconsequential and do not amount to any substantial bodily harm. On the other hand, long-continued nausea or headaches may amount to physical illness, which is bodily harm; and even long continued mental disturbance, as for example in the case of repeated hysterical attacks, or mental aberration, may be classified by the courts as illness, notwithstanding their mental character.

Williams, 572 A.2d at 1068 (quoting Restatement (Second) of Torts § 436A cmt. c).

Here, Plaintiff has failed to allege facts sufficient to establish any of the three elements. Assuming that the act of inserting a needle to establish an IV is the same act

that Plaintiff is contending gives rise to his claim for negligent infliction of emotional distress, the Amended Complaint does not articulate that any physical impact is related to this event. Regarding the second element, Plaintiff does not claim he suffered any emotional distress whatsoever, let alone serious and verifiable emotional distress. Similarly, Plaintiff failed to satisfy the third element because has not alleged any negligence on the part of Defendant. Accordingly, count 3 for negligent infliction of emotional distress should be dismissed.

C. Intentional Infliction of Emotional Distress (Count 4)

To establish a claim for intentional infliction of emotional distress, a plaintiff must show: "(1) extreme and outrageous conduct on the part of the defendant which (2) either intentionally or recklessly (3) causes the plaintiff severe emotional distress." Howard Univ. v. Best, 484 A.2d 958, 985 (D.C. 1984). The conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Horman v. Goyal, 711 A.2d 812, 818 (D.C. 1998).

In this case, Plaintiff has failed to identify which of Defendant's actions actually form the basis of his claim. Further, he has not alleged that those acts, whatever they may be, are extreme or outrageous. Assuming that the nurses' efforts to establish an IV line by inserting a needle into Plaintiff's arm is the basis for intentional infliction of emotional distress, such conduct cannot rise to the level "extreme or outrageous" to maintain this claim. The second element is not satisfied because Plaintiff has not alleged that Defendant acted intentionally or recklessly. The third element is also unsatisfied because Plaintiff has not alleged that he suffered emotional distress as a result of

Defendant's actions. Insofar as his purported fifth and sixth causes of action, *i.e.*, loss of the sense of freedom in seeking healthcare and the sense of a loss of safety and wellbeing in seeking healthcare, the count fails to satisfy the pleading requirements established in Iqbal. Accordingly, count four for intentional infliction of emotional distress should be dismissed.

CONCLUSION

Plaintiff's suit should be dismissed for three reasons. First, Plaintiff filed suit more than 3 years after the alleged events such that his claims are time barred. Second, this Court lacks subject matter jurisdiction because Plaintiff failed to satisfy a condition precedent to bringing a medical malpractice suit, which was to serve this Defendant with the statutorily mandated pre-suit notice. Finally, Plaintiff's enumerated counts fail because they are not legally recognized and not adequately pled. For these reasons, Plaintiff has failed to state a claim upon which relief may be granted, and dismissal with prejudice is warranted. Accordingly, Defendant respectfully asks this honorable Court to grant its motion and dismiss Plaintiff's claims with prejudice.

Respectfully submitted,

/s/ CSDeese
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IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

BRIAN KEITH WAUGH Plaintiff, v. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL Defendant.	)	Case No.: 2017 CA 007831M Judge: Robert R. Rigsby Next Event: Initial Scheduling Conference, February 23, 2018 10:00 a.m.

ORDER

Upon consideration of Defendant MedStar Georgetown University Hospital's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice, any Opposition thereto, and the record herein, it is on this ___ day of _____, 2018, by the Superior Court for the District of Columbia:

ORDERED that Defendant's Motion to Dismiss is **GRANTED** for the reasons set forth in the Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice; and it is further

ORDERED that Plaintiff's Amended Complaint be, and the same hereby is, **DISMISSED WITH PREJUDICE.**

_____
Judge Robert R. Rigsby
(Signed in Chambers)

Copies to:

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Brian Keith Waugh
3811 V Street, SE #202
Washington, DC 20020

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APPENDIX F

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division
FILED
CIVIL ACTIONS BRANCH
FEB 20 2018
Superior Court
of the District of Columbia
Washington, D.C.

Brian Keith Waugh, Plaintiff
3811 V Street, SE #202
Washington, DC 20020

v.

MedStar Georgetown University Hospital, Defendant
3800 Reservoir Road, NW
Washington, DC 20007

Civil Action No. 2017 CA 007831 M
Judge Robert R. Rigsby
Next Event: February 23, 2018
Initial Scheduling Conference

MEMORANDUM IN OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE

A Memorandum in Opposition

1. I, Brian Keith Waugh, Pro Se Plaintiff oppose MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE in the Interest of Justice for the following reasons:

B Points and Authorities

1. In Medstar Georgetown University Hospital's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice filed on February 6, 2018, on page 5 under Factual Background and in the last paragraph, Defense makes the Point that in my Amended Complaint under Paragraph B(10), I neither identified the standard of care that Jane Doe 2 should have used, nor articulated how she deviated from them. Notwithstanding, my Complaint should not be dismissed for the following reasons:
2. According to Paragraph B(10)(a)(i-ii) and (b) of my Complaint, when "Jane Doe 2," pressed down on the needle after inserting the IV catheter in the area of the intermediate cephalic vein, and said it was to stop the bleeding; it was unnecessary because my arm was not bleeding at the time. It streamed with blood after "Jane Doe 1" fished in my arm and pulled out the needle, noted in Paragraph B(9) of my Complaint. Therefore, I was injured by the unnecessary acts of the Defendant when she pressed down on the needle, which is contrary to the NIH counsels on standards in Paragraph B(10)(a)(i-ii) of my Complaint, which says in order to avoid nerve injury, "Minimizing needle movement is also suggested." And I notified her immediately of the "neurologic symptoms." I said my fingers felt funny, light in feeling, like it was starting to go to sleep, she said somewhat firmly, it was a flexible needle, it would not hurt me. When I adjusted my arm a little, it felt more normal again and I tried not to move it. Also, the standard of NIH says "To prevent this injury

Case: 2017 CA 007831 M
DRT: CIVREPLYD

["venipuncture-related nerve injuries"] we suggest that during routine antecubital phlebotomy, the area immediately lateral to the biceps tendon and medial to brachioradialis muscle be avoided. If phlebotomy is to be performed in this location an attempt should be made to do it as superficial as possible..." Notwithstanding, she unnecessarily pressed down on the needle in an area suggested that it should be avoided or inserted "as superficial as possible" and caused the injury.

3. In Paragraph B(11) of my Complaint, I said, "I went to the CT Scan and the Radiology Technician" that "when he saw the needle in my right arm, he was startled and said something like, 'What is this?' I said, 'They did it for the CT Scan.' [*double quotes omitted*] He said something like, they didn't need to do it, I do that. I thought he could use the IV in my left hand, and he said it would not work because of the fluid in it. He took out the needle in my right arm and put one in the back of my right hand without a problem. But, the rapid fluid injected caused the back of my hand to sting intensely. I screamed out loud, Ahhhhhh! I told him I usually have a high threshold of responding to pain as it died down some, and said I may have overreacted. It caught me off guard."
    a. I have learned that what occurred is called Extravasation, which is vesicant fluid from an injection in the veins that pours out of the veins into the surrounding tissue. This can be caused by more than one reason, which include infiltration by venipuncture, meaning that a needle point penetrates the wall of the vein. Extravasation can cause acute severe pain, whether stinging or burning. And generally, there should be monitoring for extravasation to treat it if it occurs.
    b. For CT-Scans, there are two contrasts that have been used; one is ionic iodinated contrast and the other is non-ionic iodinated contrast.[1] A non-ionic iodinated contrast medium is the least harmful of the two iodinated contrast, yet, a HIPAA compliant report from NIH says that in extravasation "...Symptoms usually consisted of swelling and/or pain..." The symptoms, which include pain may be short term[2] or long term,[3] and there may be a

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[1] Lusic, Hrvoje and Grinstaff, Mark W. *X-Ray Computed Tomography Contrast Agents* Chemistry Reviews Vol. 113 (March 13, 2013): Issue 3 NIH-PA, PMC https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3878741/ Retrieved on 02/18/2018

[2] Sonis, Jonathan D., et al. *Abstract: Implications of iodinated contrast media extravasation in the emergency department* The American Journal of Emergency Medicine AJEM Vol. 36 (February 2018): Issue 2, Pages 294–296 *PubMed Commons PMC* http://www.ajemjournal.com/article/S0735-6757(17)30920-8/abstract Retrieved on 02/19/2018

[3] Wang, Carolyn L., et al. *Abstract: Frequency, Management, and Outcome of Extravasation of Nonionic Iodinated Contrast Medium in 69 657 Intravenous Injections* Radiological Society of North America RSNA Radiology Vol. 243 (April 2007): Issue 1 Erratum in RSNA Radiology vol. 274 (January 2015) Issue 1 *PubMed Commons PMC* http://pubs.rsna.org/doi/10.1148/radiol.2431060554?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed Retrieved on 02/19/2018

decrease in mobility.[4] The first hand rehabilitation Therapist, Melanie Manuel, suggested I should be able bend my hand back on its own in a 90 degree angle, but I could not and cannot, and it may be painful and other symptoms of paresthesia after about 30 to 45 degrees.

i. Therapist, Melanie Manuel ended her services, I think it was after the first visit. I am not currently able to get a medical record for the exact date.

c. Infiltration occurred by "Jane Doe 1," who probed or fished in the back upper part of my hand near my wrist, which is a cause for extravasation to occur during the rapid injection and severe pain. And "Jane Doe 1" should have known that extravasation could occur in the back of my hand and arm by the failed attempts to insert the needle. And when Jane Doe 2 place the needle in my right armpit near the tendon for the CT-Scan contrast, and pressed down on it, she should have known that infiltration could occur by the needle going in, out, and back in my vein, which can lead to extravasation.[5] Deciding to insert an IV catheter for the CT-Scan may be at her discretion,[6] yet, her unnecessary act was in violation of the standard of care. And the technician had reason to expect that extravasation could occur in my right hand by assessing the intravenous site[7] because of evidence of infiltration (needle piercing the vein wall) by the needle in my right arm and the cotton ball on the back of my upper hand from the attempted insertion of the needle. He said he could not use my left hand because of the clearing solution in the IV catheter.

4. I had symptoms of paresthesia around the weekend after going to MGUH's Emergency Room on September 7-8, 2014. I turned my wrist to get something and it started. It felt like a burning sensation, and a stinging, prickly or sprinkling sensation. A couple of times, it felt like my hand was in a boiler by the sensation, and briefly, I could not move my fingers much, I just held it still on my chest bent forward a little while laying back, then the sensations stopped. I waited going to emergency for about 10 days after it happened. During that time, I called a lawyer and he said I need a neurologist, he said it has to be diagnosed.

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[4] Reynolds, Paul M. et al. *Management of Extravasation Injuries: A Focused Evaluation of Noncytotoxic Medications* PHARMACOTHERAPY: The Journal of Human Pharmacology and Drug Therapy. Vol. 34 (2014): Issue 6. Page 618 http://onlinelibrary.wiley.com/doi/10.1002/phar.1396/epdf Retrieved on 02/20/2018

[5] Hadaway, Lynn. *Infiltration and Extravasation: Preventing a complication of IV catheterization* The American Journal of Nursing AJN Vol. 107 (August 2007): Issue 8. pp. 67, 69 http://hadawayassociates.com/uploads/3/5/4/4/35447364/infiltration_and_extravasation.33_copy.pdf retrieved on 02/18/2018

[6] *ibid p. 67*

[7] *ibid pp. 64-65, 70 (nos. 6 and 8)*

5. I waited because when I check for a hospital I could go to, I saw neurologists and major hospitals at 110 Irving Street, NW on a google map within street designs that delineates the mitre and crown of the Pope, and that shows him sitting on his throne. I didn't want to go to any of them. And found online that UMC had a neurologist. I still had apprehension.
    a. On September 18, 2014, UMC's ER Dr. Andrew Couchara diagnosed it as a tendonitis and recommended steroids to numb the pain, I was afraid to be careless using it, that my fingers could stop working by nerve damage, and refused the shot and medicine. He recommended a neurologist, but I needed to get a referral from a primary care physician, I didn't have one. And Neurology there did not accept the insurance. It seemed to matter to Dr. Couchara that I waited over a week; but, he said the injection could have interacted with my wrist and caused the pain.
    b. When I went to UMC and saw the PCP's nurse I called Dr. Williams, on September 22, 2014, I had to brace myself on the bus getting off, and it started again, she felt my hand that it was unusually cold and ordered an ultrasound to check circulation, an EMG and therapy. She said she could not order an MRI, and gave me a referral to see the neurologist. And I changed my insurance to go to UMC, but the neurologist did not accept my insurance.
        i. I did not tell any of the physicians, which hospital the injuries occurred because I wanted to avoid any adverse influences in getting treated, and no one asked, which hospital.
6. The Neurologist, Dr. Knutsen prescribed hand therapy, and initially an MRI of the nerves in my right hand and elbow, which was requested on December 1, 2014, but did not provide pre-treatment information, and I think a referral; therefore, they were declined. And after telling her again what happened initially; that the first ER Doctor I saw at United Medical Center (UMC) diagnosed probable tendonitis from the extravasation, (he did not think it was nerve damage or injury from probing or fishing with a needle, and it was for an neurologist to determine) and she decided to give me an MRI for tendonitis without contrast. I told her about the fishing. And she said the results were negative in a way meaning I was fine, that there is nothing wrong. Yet, I still have symptoms. And since she left.
    a. Both, probing intravenously and extravasation can cause nerve damage, symptoms of paresthesia. And I have learned since about extravasation that although the tendons are not injured, the nerves could be injured.[8] And no one else would, as if to avoid testing them.

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[8] Reynolds, Paul M. et al. *Management of Extravasation Injuries: A Focused Evaluation of Noncytotoxic Medications* PHARMACOTHERAPY: The Journal of Human Pharmacology and Drug Therapy. Vol. 34 (2014): Issue 6. pp. 630 http://onlinelibrary.wiley.com/doi/10.1002/phar.1396/epdf Retrieved on 02/20/2018

b. I included my hand symptoms in going to emergency at UMC overnight AM by ambulance on December 9, 2014 for another issue, which is under another complaint, and waited until the next day, but there was no record of me being admitted, and had to sign in again with the day shift.

7. Therapist, Laurie Rogers is an Occupational Therapist, Registered, Licensed, Certified Hand Therapist (OTR/L, CHT) with over fifteen years experience with hands. She specializes in rehabilitation of the Hand and Upper Extremity. She works at NRH Rehabilitation Network. Therapist, Melanie Manuel has a Master of Science degree in Occupational Therapist, Registered, Licensed. Her clinical interests are in Orthopedic injuries, Postoperative rehabilitation (hand, wrist, elbow and shoulder), Nerve injuries. She works at the George Washington University Hospital Outpatient Rehabilitation Center. Therapists, Laurie and Melanie were selected by me from a list to choose from, which was given to me by the Neurologist, Dr. Elisa Knutsen, who is an orthopedic surgeon, specializing in hand and upper extremities.

   a. In the Complaint I identified the place that Therapist, Laurie Rogers worked as MedStar NRH Rehabilitation Network, but when I selected it, the name MedStar was not apart of the description. I think it was her name and NRH Rehabilitation Network and the address or just the address. I would not have selected her if I saw she was associated with MedStar. One day, I was late and she was unusually angry and loud with me; and during therapy afterwards she pressed down on my mid-forearm with her fingers so hard that it caused intense pain, so I did not return. She is not a Defendant in this Complaint.

C Conclusion

1. By the aforesaid in my Memorandum of Opposition, and other Court Pleadings, I believe I have articulated adequately that the Defendant in this Complaint has deviated from the standard of care provided to patients through acts of the medical staff, which has caused me long-term injuries while I was patient at the Georgetown University Hospital.

Brian K. Waugh

Brian Keith Waugh
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Brian Keith Waugh, Plaintiff
3811 V Street, SE #202
Washington, DC 20020

v.

MedStar Georgetown University Hospital, Defendant
3800 Reservoir Road, NW
Washington, DC 20007

Civil Action No. 2017 CA 007831 M
Judge Robert R. Rigsby
Next Event: February 23, 2018
Initial Scheduling Conference

ORDER

Upon the Superior Court Of The District Of Columbia's consideration of Pro Se Plaintiff, Brian Keith Waugh's OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE, on this _____day of _____, 2018:

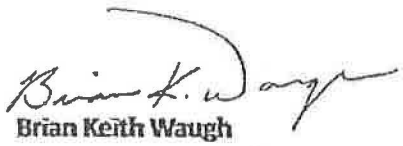
ORDERED that Pro Se Plaintiff's Opposition to Defendant's Motion to Dismiss with Prejudice is GRANTED

ORDERED that Defendant's Motion to Dismiss with Prejudice is DENIED

_____

Honorable Judge Robert R. Rigsby

Ref.: MedStar Georgetown University Hospital, Defendant
Jackson & Campbell, P.C.
Attn: Crystal S. Deese
Bar No. 454759
1120 20th Street, NW
300 South Tower
Washington, DC 20036
(202) 457-1611
cdeese@jackscamp.com



Brian Keith Waugh
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CERTIFICATE OF SERVICE

HEREBY, I, Brian Keith Waugh, Pro Se Plaintiff, certify that on February 20, 2018, a true copy of the MEMORANDUM IN OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT WITH PREJUDICE, and relevant Proposed Order, was served by first-class mail to the following defendant:

Ref.: MedStar Georgetown University Hospital
Jackson & Campbell, P.C.
Attn: Crystal S. Deese
Bar No. 454759
1120 20th Street, NW
300 South Tower
Washington, DC 20036
(202) 457-1611
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Brian Keith Waugh
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APPENDIX G

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BRIAN KEITH WAUGH,	:	
	:	
Plaintiff,	:	2017 CA 007831 M
	:	
v.	:	Judge Robert R. Rigsby
	:	
GEORGETOWN UNIVERSITY HOSPITAL,	:	
	:	
	:	
Defendant.	:	

OMNIBUS ORDER

This matter comes before the Court upon (1) Defendant's Motion to Dismiss, filed on December 27, 2017; (2) Defendant's Motion to Extend Time for Filling Motion to Dismiss Plaintiff's Amended Complaint with Prejudice, filed on February 6, 2018; (3) Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice, filed on February 6, 2018; and (4) Plaintiff's Motion to Amend by Leave of Court Opposition to Medstar Georgetown University Hospital's Motion to Dismiss with Prejudice, filed on February 7, 2018.

BACKGROUND

On November 22, 2017, Plaintiff filed a Complaint against Defendant alleging medical malpractice due to Defendant's improper treatment of Plaintiff on September 7-8, 2014. Plaintiff asserts that a nurse, Jane Doe 1, advised him that she needed to insert an IV to draw blood and administer IV solution. Plaintiff further asserts that Jane Dow 1 tied a tourniquet above his right bicep, instead the needle in his right forearm below his bicep, and unable to find a vein, tried to reinsert it from different angles. Then Jane Doe inserted the needle in the back of his upper right hand near his wrist, but again unable to find a vein. Plaintiff claims that Jane Doe 1 improperly

applied the tourniquet, inserted the needle and probed for his vein based on his review of various medical articles. Afterwards, a second nurse, Jane Doe 2, then inserted a needle into his forearm and pressed on the needle to stop the bleeding. Plaintiff alleges that the needle was inserted improperly based on an alleged article published by the National Institute of Health. Plaintiff alleges that a radiology technician said the needle in Plaintiff's right arm had been unnecessary and the radiology technician removed the needle from Plaintiff's right arm and inserted a needle into the back of Plaintiff's right hand. Plaintiff claims that the manners in which the nurses inserted the needles into his arm caused him to feel a tingling sensation or sharp pain in his back writs when he controls his wrist in a certain manner and that he occasionally feels his arm is about to fall asleep.

Plaintiff further stated that his primary doctor, Dr. Williams at United Medical Center referred him to a therapist, Stephanie, at United Medical Center. Stephanie prescribed Plaintiff a brace upon Plaintiff's request. In addition Plaintiff claims that on November 24, 2014, Dr. Elisa Knutsen, who is a neurologist referred him to two therapists. Plaintiff claims the first therapist Melanie applied light brush strokes on Plaintiff's hand to test his alleged nerve damage and he could not feel the brush strokes on his fingers. Plaintiff claims the second therapist pressed his finger with a heavier object than used by Melanie, and he could feel the heavier object. He alleges that his right hand and arm are sore as a result of the case he received from Defendant. Plaintiff further alleges Dr. Elisa Knutsen finished the treatment due to the negative testing result. Despite his requests, no doctor has agreed to write him a prescription for an MRI to examine the presence of nerve damage in his hand.

Plaintiff asserts six causes of action against Defendant: (1) discrimination by disparagement of healthcare; (2) unnecessary pain, suffering and bodily injury; (3) negligent

infliction of emotional distress; (4) intentional infliction of emotional distress; (5) loss of the sense of safety and wellbeing; and (6) loss of the sense of freedom in seeking healthcare.

ANALYSIS

1. Defendant's Motion to Dismiss

Defendant filed its Motion to Dismiss on December 27, 2017 and Plaintiff filed his Amended Complaint on January 17, 2018. Plaintiff filed his Amended Complaint within twenty-one days of the filing of Defendant's Motion to Dismiss. Therefore, Defendant's Motion to Dismiss is denied as moot.

2. Defendant's Motion to Extend Time for Filling Motion to Dismiss Plaintiff's Amended Complaint with Prejudice

In its Motion to Extend, Defendant states that on February 2, 2018, the legal assistant of Defendant's counsel was terminated from employment with Defendant's counsel's firm. On February 5, 2018, Defendant's attorney discovered Plaintiff's Amended Complaint, upon cleaning the contents of the former legal assistant's desk. Defendant's attorney filed the Motion to Dismiss Plaintiff's Amended Complaint with Prejudice shortly after the discovery of Plaintiff's Amended Complaint. In light of the foregoing, and for good cause shown, the Court grants Defendant's Motion to Extend Time for Filling Motion to Dismiss Plaintiff's Amended Complaint with Prejudice.

3. Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice

D.C. Code § 12-301(8) establishes a three-year statute of limitations for medical malpractice actions. *Berkow v. Lucy Webb Hayes Nat. Training School for Deaconesses and Missionaries Conducting Sibley Memorial Hospital*, 841 A.2d 776, 780 (D.C. 2004). "Where the fact of an injury can be readily determined, a claim accrues for purpose of the statute of limitations at the time the injury actually occurs." *Colbert v. Georgetown Univ.*, 641 A.2d 469,

472 (D.C. 1994) (citations omitted). Plaintiff's right of action will not accrue until Plaintiff knows or should have known that Plaintiff had suffered injury as a result of Defendant's negligence. *Id.* at 474. If the statute of limitations had run, the Court may dismiss the case with prejudice. *Wagshal v. Rigler*, 711 A.2d 112, 113 (D.C. 1998).

Here, Plaintiff stated in his Amended Complaint that the facts giving rise to his Complaint occurred between September 7-8, 2014. Plaintiff was aware of the injury immediately when the alleged injury happened. Therefore, the statue of limitations began to run when the injury occurred between September 7-8, 2014. Plaintiff files the current law suit on November 22, 2017, which is more than three years after the allegedly negligent acts occurred and more than 2 and a half months after limitations expired. Therefore, the Court grants Defendant's Motion to Dismiss Plaintiff's Amended Complaint with prejudice.

In addition, D.C. Code § 16-2802 states in pertinent party:

> (a) Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action . . .
>
> (c) A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied.

Accordingly, Plaintiff shall notify Defendant of his intention to sue 90 days before Defendant's filing of his Complaint on November 22, 2017. Here, Plaintiff failed to provide any evidence that shows Plaintiff has provided the required notice to Defendant in time. Therefore, Plaintiff failed to comply with the District of Columbia's statutory notice requirement, and the Court shall dismiss the current action.

4. Plaintiff's Motion to Amend by Leave of Court Opposition to Medstar Georgetown University Hospital's Motion to Dismiss with Prejudice

On February 7, 2018, Plaintiff filed the Motion asking the Court for a leave to amend Plaintiff's Opposition to Defendant's Motion to Dismiss. However, before February 7, 2018, Plaintiff did not file any Opposition to Defendant's Motion to Dismiss. Alternatively, Plaintiff filed an Amended Complaint after Defendant's filing of its Motion to Dismiss. Plaintiff's Motion is without merit because there is no opposition to amend. Therefore, Plaintiff's Motion to Amend by Leave of Court Opposition to Defendant's Motion to Dismiss with Prejudice is **DENIED**.

CONCLUSION

Accordingly, based on the entire record therein, it is hereby this 23rd day of February 2018, hereby

ORDERED that Defendant's Motion to Dismiss is **DENIED AS MOOT**; it is further

ORDERED that Defendant's Motion to Extend Time for Filling Motion to Dismiss Plaintiff's Amended Complaint with Prejudice is **GRANTED**; it is further

ORDERED that Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice is **GRANTED**; it is further

ORDERED that Plaintiff's Motion to Amend by Leave of Court Opposition to Medstar Georgetown University Hospital's Motion to Dismiss with Prejudice is **DENIED**; it is further

ORDERED that the case is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

Robert R. Rigsby

Robert R. Rigsby
Superior Court of the District of Columbia

Copies to:

Brian Keith Waugh
3811 V Street, SE, # 202
Washington, D.C. 20020
Plaintiff

Diona F Howard Nicolas
Crystal S Deese
Defendant

APPENDIX H

RECEIVED
DISTRICT OF COLUMBIA
COURT OF APPEALS

C MASRV

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18-CV-0329

DISTRICT OF COLUMBIA COURT OF APPEALS

BRIAN KEITH WAUGH V. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL

FILED
APR 30 2018
DISTRICT COURT OF

APPEAL

DISTRICT OF COLUMBIA SUPERIOR COURT

ORIGINAL

Motion for Summary Reversal

My responsive pleading may be treated as the Brief if the court denies the Motion for Summary Affirmance or defers consideration on the merits.

BRIAN KEITH WAUGH, APPELLANT

V.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL, APPELLEE

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MOTION

I, Pro Se Appellant, Brian Keith Waugh, move for Summary Reversal in the Case of Brian Keith Waugh v. MedStar University Hospital for the following reasons:

STATEMENT OF THE ISSUES

The issues on appeal are based on the February 23, 2018 Omnibus Order of the D.C. Superior Court, which is the Final Order that disposes of all parties' claim. Accordingly, the D.C. Superior Court Dismissed with Prejudice, BRIAN KEITH WAUGH V. MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL, upon the following:

1) In the March 23, 2018 Omnibus Order, the D.C. Superior Court did not Rule on the January 16, 2018 MEMORANDUM IN OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS WITH PREJUDICE, and therefore, did not Rule on the February 20, 2018 MOTION TO AMEND BY LEAVE OF COURT OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS WITH PREJUDICE
2) Defendant was Served Pre-Notice of a Legal Action Within 90 Days of the Expiration of the Statute of Limitations under Super. Ct. Civ. R. 15(c)
3) Plaintiff Filed Complaint Within 90 Days of the Statute of Limitations Extension Provision under D.C. Statutes §16-2803 and §16-2804
4) Plaintiff has Right to Discover Unknown Defendants under Rule

STATEMENT OF THE CASE

This Medical Malpractice Case alleges nerve injuries from excessive probing or "fishing" for a vein, an improper procedure. And nerve injury by putting pressure on a needle in a vein located in a high-risk area, which is counseled against. And that excessive probing caused extravasation, or

intravenous leakage, during rapid IV injection, which caused extreme stinging in the back of my wrist. These acts resulted in paresthesia, a prickly sensation that may sting; lead to a sense of vibrating numbness as if my hand will go to sleep; wrist pain; and fatigue in my armpit on occasion, and rarely pain. But, while my Complaint states a claim upon which relief could be granted, it was ruled against as time-barred without ruling on the January 16, 2018 Opposition Memorandum cited in this Appeal.

STATEMENT OF FACTS

Herein, the Defendant, MedStar Georgetown University Hospital, is identified as MGUH. In the Superior Court's Omnibus Order under paragraph 4, the Court gives one of its reasons for Dismissal, and said, "On February 7, 2018, Plaintiff filed the Motion asking the Court for leave to amend Plaintiff's Opposition to Defendant's Motion to Dismiss. However, before February 7, 2018, Plaintiff did not file any Opposition to Defendant's Motion to Dismiss." And, the Court also said, "Alternatively, Plaintiff filed an Amended Complaint after Defendant's filing of its Motion to Dismiss. Plaintiff's Motion is without merit because there is no opposition to amend. Therefore, Plaintiff's Motion to Amend by Leave of Court Opposition to Defendant's Motion to Dismiss with Prejudice is DENIED." Yet, there is an oversite by the Court, not because the January 16, 2018 Opposition Motion, docketed on January 17, 2018, has no bearing on the Final Judgment, but expressly because it was not noticed by the Court.

In the January 16, 2018 Memorandum in Opposition to MGUH's Motion to Dismiss with Prejudice, Docketed on January 17, 2018, in paragraph B(2), I cited the Case, Atiba v. Washington Hosp. Center, 43 A. 3d 940 (2012) at 943, which does not fully apply because he knew all the defendants. I needed to know the meaning of "within" according to "...served within 90 days of the expiration of the statute of limitations." In the February 20, 2018 Amended Memorandum in

Opposition to MGUH's Motion to Dismiss, I presented an example for the meaning of "within 90 Days" from the D.C. Superior Court Civil Rules and Procedure Manual. Also, according to Paragraph B(3), there was Pre-Notice served on the Defendant without explicitly citing any Rule. Furthermore, in the February 20, 2018 Memorandum in Opposition, there are merited claims against Jane Doe 1 and Jane Doe 2, and against the radiologist technician; and not knowing the names of these persons in the Complaint, they could be potential defendants added to the Complaint by discovery; and because they are unknown, D.C. Code §16-2804 applies.

SUMMARY OF THE ARGUMENT

Superior Court's Omnibus Order Doesn't Notice Plaintiff Opposition Motion

In the Superior Court's Omnibus Order under paragraph 4, the Court gives one of its reasons for Dismissal, and said, "On February 7, 2018, Plaintiff filed the Motion asking the Court for leave to amend Plaintiff's Opposition to Defendant's Motion to Dismiss. However, before February 7, 2018, Plaintiff did not file any Opposition to Defendant's Motion to Dismiss." Nevertheless, the Opposition Memorandum with Points and Authorities was filed with the Amended Complaint on January 16, 2018 and Docketed on January 17, 2018 with the Consent Motion to Extend Time to File the Opposition, but, it was not separately placed on the Court Docket. And on February 6, 2018, I filed an Amended Complaint Docketed on February 7, 2018. Yet, the Court also said,

> "Alternatively, Plaintiff filed an Amended Complaint after Defendant's filing of its Motion to Dismiss. Plaintiff's Motion is without merit because there is no opposition to amend. Therefore, Plaintiff's Motion to Amend by Leave of Court Opposition to Defendant's Motion to Dismiss with Prejudice is DENIED."

The January 16, 2018 Opposition Memorandum of Points and Authorities Docketed on January 17, 2018, in paragraph B(2) on the 90 Days Extension under D.C. Statute §16-2803; and Pre-Notice; and Unknown Defendants under D.C. Statute §16-2804(b)

I have learned that grammatically, the requirement that notice is "served within 90 days of the

expiration of the statute of limitations," generally is held to mean prior to the expiration date; but, it is not a phrase that is bound to mean prior; it may also mean after, whether *prior* or *after* is express or not. To apply a strict rule to the Statute, the phrase means prior to the expiration; to waive this rule under Statute 16-2804(b) is to waive the supposed meaning of the phrase or to unbind the phrase, which may mean after the expiration. **BLACK'S LAW:** waive -- *2. To refrain from insisting on (a strict rule, formality, etc.)* according to §16–2804(b), which is in the genius of §16–2803.]

I said the following because I was not sure of the meaning of the phrase "...within 90 days of the expiration of the applicable statute of limitations...":

> "And according to §16-2803, there are 90 days to file the action after the expiration date, if notice is filed within 90 days of the expiration date. But because it is not a Clear Day Statute, if someone files a pre-notice on the last day of the expiration date, and files an action the next day, it is permitted despite the reasons for giving the Defendant time under §16-2802. And in one ruling, Atiba v. Washington Hosp. Center, 43 A. 3d 940 (2012) at 943, says based on the previous paragraph, "The addition of phrases such as "at least" and "not less than"...[or "within"]...in front of a stated time period would be naturally read as intending no more than to clarify that the required action may be taken prior to the designated minimum date."

I said I understand the following:

> "[t]he minimum date is the time that the computation starts to run, which is commonly on the following day of an occurrence. This required action does not appear to mean the beginning of a cause of action because it is not a "required action." But, it could apply to a Statute requirement as being served notice "...within 90 days of..." because notice can be filed before this time. But, the maximum date is the expiration of the statute of limitations, yet, which is expressly provided an extension of 90 days, which does not have a definite date."

I also said that based on the intention of the word "within" in my January 16, 2018 Opposition to Defendant's Motion to Dismiss in paragraph B(3), which Opposition was not noticed by the Court, although the Motion to Dismiss was Denied as Moot:

> "Concerning the required pre-notice, it seems that the phrase "within 90 days of the applicable statute of limitations" remains ambiguous and undetermined, whether meaning before or after the expiration of the applicable Statute of Limitations, yet, there is clearly

> only 90 days after the expiration date to file an action. Therefore, in effect, the defendant received the pre-notice or was served at the filing of this complaint within 90 days of the expiration of the applicable statute of limitations on November 22, 2017; and it seems that also receiving pre-notice within the 90 days extension may also be acceptable under the expressed circumstances in this Complaint, if service in good faith can be excused and waived by the remedies provided in the Statutes, at the Court's discretion, in the Interest of Justice. Thereby, in the effort to give legally sufficient justification, it seems I have reason to file my Amended Complaint as a Matter of Course with merit under DC Codes §16-2801 thru §16-2804 and Super. Ct. Civ. R. 15(a)(1)(B)."

Therefore, as required in the Case, Lacek v. Washington Hosp. Center Corp., 978 A. 2d 1194 (D.C. 2009), I have cited §16-2804(b) since the Original Complaint. In which Case at 1199, it says that §16-2804(b) "includes a safety net that would permit the trial court to waive the notice requirement "if the interests of justice dictate."" And in which Case, at 2000, according to the Medical Malpractice equitable provision "...that section 16-2803 "unambiguously tolls" the limitations period upon service of the 90-day notice mandated by section 18-2802(a)..."

The Statute requirement in this Case to be waived in the Interest of Justice is not filing the Action, but the required service of Notice within 90 days of the expiration of the Statute of Limitations. Atiba v. Washington Hosp. Center, 43 A. 3d 940 (2012) at 943 says,

> "...if a plaintiff had any doubt or difficulty with the notice period, he could ask for a waiver in filing the suit...See D.C.Code § 16-2804(b)...In any event, virtually all plaintiffs should be able to give the notice much earlier than ninety days prior to the expiration of the statute of limitations and will have no need to rely on D.C.Code § 16-2803..." notwithstanding, the D.C. Code § 16-2804(b) provision can waive any requirements of D.C. Code § 16-2802, which Notice requirement continues into § 16-2803.

The February 6, 2018 Amended Opposition Memorandum to Defendant, MGUH's Motion to Dismiss with Prejudice on the 90 Days Extension

In the February 6, 2018 Amended Opposition Memorandum, I intended that the Amendment of the Opposition clarify the January 17, 2018 Opposition by including the additional information, and said the following in paragraph 2(a)(i) finding an example in D.C. Super. Ct. Civ. R. 5(d)(5)(H) about the phrase "...within 90 days of the expiration of the applicable statute of limitations..." that

says about electronic filing, "(H) Failure to Process Transmission. If the electronic filing is not filed because of a failure to process it, through no fault of the filing party, the court must enter an order allowing the document to be filed nunc pro tunc to the date it was electronically filed, as long as the document is filed within 14 days of the attempted transmission." Accordingly, if the date of the attempted transmission is the last day to file, which is the expiration date, and there is a failure to process it, through no fault of the filing party, the document is accepted as timely, if it is filed within 14 days of the attempted transmission. This shows that the word "within" does not necessarily mean prior, instead, it can mean after also.

The February 6, 2018 Amended Opposition Memorandum to Defendant, MGUH's Motion to Dismiss with Prejudice on the Super. Ct. Civ. R. 15(c) Pre-Notice

The February 6, 2018 Amended Opposition to Motion to Dismiss says in the Conclusion, Paragraph C,

> "The Defendant says in Paragraph I in its Memorandum of Points & Authorities for its Motion to Dismiss without Prejudice that "...Plaintiff did not file suit until November 22, 2017, more than three years after the allegedly negligent acts occurred and more than 2 ½ months after limitations expired..." which is within the extended 90-days period. And Paragraph II says that "...Plaintiff did not provide the required notice to MGUH prior to filing the instant action." And "Plaintiff failed to provide any presuit notice to this Defendant of his intention to sue as required by D.C. Code 16-2802."

Notwithstanding, in effect, the Defendant received the service of pre-notice attempted to be filed at the filing of this Complaint on November 22, 2017; and it seems that also receiving pre-notice within the 90 days extension may also be acceptable under the given circumstances. Therefore, I petition the Court's discretion, which is in the Interest of Justice."

Herein, service of Notice under Super. Ct. R. 15(c) is implied without being explicitly cited in the Complaint, notwithstanding the extension of the Statute of Limitations and the Amended Complaint filed within 90 days, which relates back to the Original Complaint within the extended Statute of Limitations.

Super. Ct. Civ.R. 15(c)(1)(B)(i) says,

> "...An amendment to a pleading relates back to the date of the original pleading when: the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading..." And "...if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: received such notice of the action that it will not be prejudiced in defending on the merits..."

Right to Discovery of Unknown Defendants

Based on the Case, Wakefield v. Thompson, 177 F. 3d 1160, (9th Cir. 1999) at 1163, Section B, upon the Court of Appeals' conclusion that I filed within the Statute of Limitations; the right to discovery of the alleged nurses remains, whose names are unknown, and also, the radiologist technician may be added as potential Defendants if they are contractors.

Due Diligence to Know the Names of Potential Defendants

The Defendant says in its February 21, 2018 Reply to my February 20, 2018 Memorandum in Opposition to Medstar Georgetown University Hospital's Motion to Dismiss Plaintiff's Amended Complaint With Prejudice, which was docketed on February 6, 2018:

> "2. None of Plaintiffs filings contain any allegation that he attempted to provide this Defendant with the statutorily required pre-suit notice. He describes the Nurses in his filings as Jane Does and suggests he once knew their names but no longer recalls. Plaintiff always possessed sufficient information to put the defendant he sued, MedStar Georgetown, on notice of his intention to sue. He never claims to have been unaware of MedStar Georgetown's identity. He has offered no basis for his failure to provide MedStar Georgetown with presuit notice of his intention to sue."

In the January 16, 2018 Amended Complaint, Docketed on January 17, 2018 paragraph B(3), I said,

> "I allege that the acts in the Amended Complaint were filed by fax with the D.C. Department of Health in October 2014, I believe the exact date was October 21, 2014 based on a Word Document date in my computer file and memory; you had to fax them at that time. It was included in a list of other complaints. I knew the full names or first names of those complained about except for the two nurses in this complaint. Therefore, the notice was not particularly under a category, whether as healthcare professional for the nurses called "Jane Doe" 1 and 2 in the Complaint, or healthcare facility for the Hospital. I thought

> the DC Department of Health could help, and talked with a person who inquired to which place it should be directed, I was not sure and told her, and talked to others who called; but, there was no additional information I could tell them. I was sent a certified letter in the new year from the DC Department of Health, seemingly after the first quarter, which I did not receive, and asked for it to be resent, which I didn't receive, and there was no card to sign. I did inquire about it from the first card, and found out that the letter was returned." Here, in the October 2014 faxed complaint, I did not know the name of the radiologist technician at a dental clinic.

In the January 16, 2018 Amended Complaint Docketed on January 17, 2018 paragraph B(2)(a),

> "I allege that before filing the complaint against MedStar Georgetown University with the DC Department of Health, I made more than one attempt to find out the nurses' names over the phone, and I went to the hospital, and attempted to find out at the nurses department, but I could not find out from them who they were, I needed to know their names to give proper notice, and they did not give additional information. I was also given a medical report, but their names were not included..."

Based on the Malpractice Statutes alone, I believed I had 90 days to give notice and 90 days to file an action; yet, I thought I had additional time, only because I did not know the names of potential defendants. The November 22, 2018 Complaint against MedStar Georgetown University Hospital (MGUH) was filed according to the Respondeat Superior provision, which I learned from law firm website that said there were three years to file an action about weeks before filing the November complaint within 90 days after the 3-year Statute of Limitations expired because of the acts of the medical staff, assumed nurses, and potential Defendants, if under contract, and a radiologist technician based on discovery of a claim during the file proceeding, who is also unknown. The nurses' names were unknown, except the first nurse "Jane Doe 1" mentioned the first name of the second nurse "Jane Doe 2," whose name I could not remember at the time of filing a Complaint with the D.C. Department of Health on October 21, 2014.

On March 9 and 11, 2018 approx. 4:00 PM, I thought to call the D.C. Department of Health (DOH) again and this time I was transferred to the Compliance Officer, Mr. Scurlock, who does investigations. During the conversation about the processes of handling the Complaint, he said that

if you don't know the name of the nurses, they could not send it to MGUH. This caused me to remember the conversation I had with one of the departments. My complaint was against the nurses, not the hospital. And I wanted to know who the nurses were and wanted DOH to help; and I suggested that they send it to the hospital to find out, the woman of one of the departments I talked to said they could not because they don't know their names. If they were contractors I would have an action filed against them, if they were employees I would have an action filed against the hospital.

Also, the Compliance Officer said and sent an email saying that based on the list faxed to the D.C. Department of Health, the complaint against MGUH with unnamed nurses would have gone to various departments based on what was stated in the complaint. Initially, the Health Care Facilities Division (HCFD) hospital team would investigate, and the Nurse Supervisory Investigator. This would give Notice to the Hospital, but MGUH said they were not served the required pre-notice or any notice. He said that in order for them to send it to the hospital, you would have to give them the date and time of the incident. The fax revealed it was over night in the Emergency Room between August 7-8, 2014. And he said that it is recommended that DOH archive Medicaid Complaints after one year. And at this time three years or more, they may not research them.

CONCLUSION

In the Interest of Justice during this 150th Commemoration of the 14th Amendment for Equal Protection, which will provide Notice upon a history of Healthcare related Complaints, I move for Summary Reversal and that the Case is Remanded.

Brian Keith Waugh
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Washington, DC 20020
301-458-1174
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CERTIFICATE OF SERVICE

HEREBY, I, Brian Keith Waugh, Pro Se Appellant, certify that on April 30, 2018, a true copy of the Motion for Summary Reversal was served by USPS mail to the following Representative:

Ref.: MedStar Georgetown University Hospital, Appellee
Jackson & Campbell, P.C.
Attn: Crystal S. Deese
Bar No. 454759
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300 South Tower
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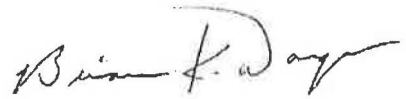

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APPENDIX I

BRIEF FOR APPELLEE
MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL

DISTRICT OF COLUMBIA
COURT OF APPEALS

Case No. 18-CV-329

BRIAN KEITH WAUGH,

Appellant,

v.

GEORGETOWN UNIVERSITY HOSPITAL, A/K/A
MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL,

Appellee.

APPEAL FROM NO. 2017 CA 007831 M IN
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JACKSON & CAMPBELL, P.C.
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Counsel for Appellee MedStar Georgetown University Hospital

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28(a)(2) CERTIFICATE

The undersigned counsel of record for Appellee hereby respectfully certifies that the following parties appear herein:

1. Brian Waugh, Appellant, *pro se*; and

2. MedStar Georgetown University Hospital, Appellee.

The parent corporation of MedStar Georgetown University Hospital, formerly known as Medlantic Healthcare Group, Inc., is MedStar Health, Inc., a not for profit, non-stock membership corporation, and a 501(c)(3) charitable organization.

/s/ CSDeese
Crystal S. Deese (#454759)

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This appeal is from a final order issued by Judge Robert R. Rigsby on February 23, 2018 in the D.C. Superior Court in a case styled as, Waugh v. MedStar Georgetown University Hospital, Case No. 2017 CA 007831 M.

STATEMENT OF THE ISSUES

I. Whether the Trial Court Correctly Dismissed Appellant's Civil Action Because He Filed Suit After the Statute of Limitations Expired.

II. Whether the Trial Court Correctly Determined that Appellant Failed to Provide Pre-Suit Notice Pursuant to D.C. Code § 16-2802.

III. Whether the Limitations Extension Set Forth in D.C. Code § 16-2803 Has Any Application to These Facts.

IV. Whether the Trial Court Correctly Determined that Appellant's Amended Complaint Rendered Moot the Original Motion to Dismiss and All Related Filings.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This is a medical malpractice action arising out of care provided to Appellant Brian Waugh ("Mr. Waugh") at MedStar Georgetown University Hospital ("MGUH"). Mr. Waugh appealed Judge Robert R. Rigsby's Omnibus Order granting MGUH's Motion to Dismiss Plaintiff's Amended Complaint with prejudice. See Omnibus Order, Appendix A.

On November 22, 2017, Mr. Waugh, proceeding *pro se*, filed a Complaint against MGUH. See Appendix B, District of Columbia Superior Court Public Docket, Case No. 2017 CA 007831. In the Complaint, Mr. Waugh alleged damages related to medical care he received at MGUH on September 7-8, 2014, over three years before he filed suit. He claimed that a nurse inserted a needle into his arm and caused him to feel a tingling sensation when he moves his wrist a certain way. He claims he occasionally feels his arm is about to fall asleep. See First Complaint, Appendix C.

Mr. Waugh attempted to state six causes of action: (1) discrimination by disparagement of healthcare; (2) unnecessary pain, suffering, and bodily injury; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) loss of the sense of freedom in seeking healthcare; and (6) sense of loss of safety and wellbeing in seeking healthcare. See Appendix C at page 2.

On December 27, 2017, MGUH filed a Motion to Dismiss because (1) Mr. Waugh's claims were time barred as he filed suit more than three years after the alleged hospital visit; (2) the court lacked subject matter jurisdiction as Mr. Waugh did not provide pre-suit notice pursuant to D.C. Code § 16-2802(a); and (3) Mr. Waugh's six counts failed to state legally recognized causes of actions and/or were not sufficiently pled. See Motion to Dismiss, Appendix D.

Mr. Waugh filed both an Amended Complaint and a Consent Motion to Extend Time to File an Opposition to MGUH's Motion to Dismiss on January 16, 2018. See Amended Complaint,

Appendix E. MGUH filed a Motion to Dismiss Plaintiff's Amended Complaint on February 6, 2018. See Motion to Dismiss Amended Complaint, Appendix F. Mr. Waugh filed a request to amend his Opposition to MGUH's original Motion to Dismiss. See Motion to Amend by Leave of Court Opposition to MGUH's Motion to Dismiss, Appendix G. On February 20, 2018, Mr. Waugh filed an Opposition to MGUH's Motion to Dismiss the Amended Complaint. See Opposition to MGUH's Motion to Dismiss Amended Complaint, Appendix H. MGUH filed a Reply on February 21, 2018.

On February 23, 2018, D.C. Superior Court Judge Rigsby issued an Order dismissing Mr. Waugh's Amended Complaint because (1) his claims were barred by the statue of limitations; and (2) the trial court lacked subject matter jurisdiction because he did not comply with the D.C. Code § 16-2802(a) notice requirement. Appendix A at 3-4. This appeal followed.

SUMMARY OF THE ARGUMENT

At the heart of this case is whether a medical malpractice plaintiff can sue months after the statute of limitations expired, without attempting pre-suit notice as required by D.C. Code § 16-2802, and when the limitations extension in D.C. Code § 16-2803 has no bearing. The trial court's judgment should be affirmed, and the arguments in Mr. Waugh's brief rejected. A three year statute of limitations applies to medical malpractice actions. Mr. Waugh filed his original Complaint over two months after the limitations period expired. This he concedes. Second, plaintiffs seeking to bring medical malpractice actions are required to provide notice of their intention to sue and then wait ninety days before filing suit. D.C. Code § 16-2802. Mr. Waugh did not provide MGUH with pre-suit notice. While D.C. Code § 16-2804(b) provides exceptions to the notice requirement in certain circumstances, those exceptions have no bearing on the dispositive limitations issue involved here. Mr. Waugh still filed his lawsuit well after limitations expired. Finally, Mr. Waugh's brief suggests that the trial court incorrectly failed to

consider his request to amend his opposition to MGUH's motion to dismiss the original complaint. However, Mr. Waugh filed an Amended Complaint which mooted not only his original Complaint, but also MGUH's first Motion to Dismiss. In any event, MGUH's Motion to Dismiss the original Complaint was denied as moot. Therefore, the trial court correctly refused to consider Mr. Waugh's Motion seeking leave to amend his opposition to MGUH's Motion to Dismiss the original Complaint.

ARGUMENT

A. Standard of Review

It is well-settled that Rule 12(b)(6) of the Rules of Civil Procedure for the Superior Court of the District of Columbia permits dismissal for failure to state a claim upon which relief can be granted. D.C. Super. Ct. Civ. R. 12(b)(6). Because a motion to dismiss a complaint under Rule 12(b)(6) presents questions of law, a *de novo* standard of review is utilized. See In re Estate of Curseen, 890 A.2d 191, 193 (D.C. 2006).

Although Mr. Waugh represented himself at the trial court level, "a pro se litigant is entitled to no special treatment, nor substantial assistance from the judge assigned to her case." Berkley v. D.C. Transit, Inc., 950 A.2d 749, 756 (D.C. 2008). The pro se litigant also cannot "expect or seek concessions because of [her] inexperience and lack of trial knowledge and training and must, when acting as [her] own lawyer, be bound by and confirm to the rules of court procedure...equally binding upon members of the bar." MacLeod v. Georgetown Univ. Med. Ctr., 736 A.2d 977, 979 (D.C. 1999) (internal quotation omitted). Moreover, "while a pro se litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." Id.

B. Mr. Waugh Admits That He Filed Suit After the Statute of Limitations Expired

Mr. Waugh filed his original Complaint after the statute of limitations expired and his Amended Complaint was properly dismissed on that basis. A three year statute of limitations applies to medical malpractice actions. D.C. Code § 12-301(8); see also Atiba v. Washington Hosp. Center, 43 A.3d 940, 941 (D.C. 2012) (citing DeKine v. District of Columbia, 422 A.2d 981, 986 (D.C. 1980) (dismissing a claim as untimely because it was filed one day late)). Such statutes are strictly construed in accordance with their terms. Atiba, 43 A.2d at 941. A defendant may raise a limitations defense by way of Rule 12(b)(6) motion to dismiss when the facts supporting the defense are apparent on the face of the Complaint. Logan v. LaSalle Bank Nat'l Ass'n, 80 A.3d 1014, 1020 (D.C. 2013). Here, the limitations bar is apparent from the face of Mr. Waugh's Complaint.

Mr. Waugh filed his lawsuit on November 22, 2017. See Appendix B. He claims he received substandard medical care on September 7-8, 2014. See Appendix C, at page 2, ¶ 7. He was aware of what he contends constituted malpractice on September 7-8, 2014. See Appendix E at ¶ 9 (questioning nurse about IV site selection after seeing blood), ¶ 10 (refusing to allow the nurse to try placing the IV again and noting finger and thumb feeling funny), and ¶ 10(b) (learning from the CT Technician that the nurse's IV placemen was unnecessary). See also Appendix E at ¶ 11 (screaming aloud in pain with IV manipulation). Judge Rigsby correctly concluded "Plaintiff was aware of the injury immediately when the alleged injury happened." Appendix A at 4.

Here, Mr. Waugh repeatedly admits he filed suit after limitations expired. In his Amended Complaint, he writes:

> At this time, I had read about the statutes concerning medical malpractice, and I thought that I had 90 days to file notice and 90 days after filing notice to file a

> complaint; which, looking back, it was probably how I interpreted the extended time to file because the laws have not changed; and I believed it was beyond the Statute of Limitations[.]

See Appendix E at ¶ 4. He also states in his Amended Complaint:

> Upon serendipitously learning about the 3-year Statute of Limitations from a website about Medical Malpractice on November 7, 2017, I filed my complaint within (90) days of the expiration of the applicable Statute of Limitations.

See Appendix E ¶ 6.

In his Motion for Summary Reversal, Mr. Waugh states:

> I have learned that grammatically, the requirement that notice is 'served within 90 days of the expiration of the statute of limitations,' generally is held to mean prior to the expiration date . . .

See Motion for Summary Reversal, Appendix I at pages 6-7. He goes on to state:

> I learned from law firm [sic] website that said there were three years to file an action about weeks [sic] weeks before filing the November complaint within 90 days after the 3-year Statute of Limitations expired . . .

Appendix I at page 11.

Mr. Waugh claimed he could file suit 90 days after limitations expired. See Appendix I at pages 7-8. Contrary to Mr. Waugh's assertion, no District of Columbia case holds that suit can be filed 90 days *after* limitations expired without providing the defendant *any* pre-suit notice. See Atiba, 43 A.3d at 941 (holding that ninety clear days are not required to pass after giving pre-suit notice before filing a medical malpractice law suit in accordance with the three year statute of limitations) and Lacek, 978 A.2d at 1201 (affirming the trial court's dismissal of the malpractice complaint, in part, because the appellant "had not shown 'a good faith effort to give required notice' that could 'excuse [her] failure to give notice within the time prescribed'").

Plaintiff's Complaint was untimely. Mr. Waugh did not provide pre-suit notice to MGUH, therefore, no statutory extension of limitations can be claimed pursuant to D.C. Code § 16-2803.

Even if Mr. Waugh's alleged notice to the Department of Health ("DOH") in October 2014 constituted pre-suit notice to MGUH (which, it did not), that communication could not trigger any limitations extension. The only way to extend limitations is to serve the defendant pre-suit notice within 90 days of limitations' expiration. Mr. Waugh could have triggered a D.C. Code § 16-2803 limitations extension if he (a) served MGUH (b) a notice letter any time between June 11, 2017 and September 8, 2017. His alleged DOH fax in October of 2014 did not meet either criteria and thus could not extend limitations under D.C. Code § 16-2803.

C. Mr. Waugh Failed to Provide Pre-suit Notice to MGUH

Mr. Waugh did not attempt to provide MGUH with pre-suit notice as required by D.C. Code § 16-2802. In 2006, the District of Columbia enacted the Medical Malpractice Act ("the Act"). In relevant part, the Act requires that:

> Any person who intends to file an action in court alleging medical malpractice against a healthcare provider shall notify the *intended defendant* of his or her action not less than 90 days prior to filing the action.

D.C. Code § 16-2802(a) (emphasis added). Such notice requirement is intended to place "a straightforward and minimal burden on all plaintiffs bringing medical malpractice suits." Coleman v. Washington Hosp., 734 F.Supp.2d 58, 61 (D.D.C. 2010) (internal citations omitted). The Act mandates that "a legal action alleging medical malpractice shall not be commenced in the court" unless the plaintiff notifies the defendant of the intention to sue. D.C. Code § 16-2802(c). See also Leonard v. District of Columbia, 801 A.2d 82, 84-85 (D.C. 2002) (defining "shall" as denoting mandatory requirements); Parrish v. District of Columbia, 718 A.2d 133,

136 (D.C. 1998) ("the word 'shall' is 'a term which creates a duty, not an option'") (internal citations omitted). The plain language of the statute creates a condition precedent to filing suit in a medical malpractice action; therefore, a plaintiff is obligated to give a defendant notice of his or her intention to sue 90 days before suit is filed. See generally D.C. Super. Ct. Civ. R. 9(c); Tucci v. District of Columbia, 956 A.2d 684, 694 (D.C. 2008) (holding that a similar notice requirement under D.C. Code § 12-309 is a mandatory "condition precedent" to filing suit); East River Const. Corp. v. District of Columbia, 183 F.Supp. 684, 685-86 (D.D.C. 1960) (finding dismissal appropriate where condition precedent is not pled).

Here, Mr. Waugh never alleged that he attempted or accomplished pre-suit notice upon MGUH. See Appendix E at ¶¶ 4-6 (discussing limitations and notice without alleging this Defendant, MGUH, was ever given pre-suit notice) and see generally Appendix G (making no allegations about pre-suit notice).

Mr. Waugh claims that "the acts in the Amended Complaint were filed by fax with the D.C. Department of Health" on October 21, 2014. See Appendix E at 1. However, MGUH, the only named defendant, did not receive his October 2014 fax. Further, Mr. Waugh has never provided any evidence that he, in fact, affected pre-suit notice on MGUH in October 2014 or at any other time.

Mr. Waugh also failed to provide any legal support for the contention that a plaintiff can affect pre-suit notice of a medical malpractice claim upon MGUH by serving the D.C. Department of Health. Contrary to his contention, MGUH did not learn about his claims in October 2014; rather, MGUH first became aware of his claims upon service of his original Complaint in November 2017.

D. The Good Faith and Interests of Justice Exceptions Are Inapplicable

Even if this Court excuses Mr. Waugh's failure to provide pre-suit notice using the good faith effort and/or interests of justice exceptions set forth in D.C. Code § 16-2804(b), Mr. Waugh's lawsuit must still be dismissed. He filed suit in November of 2017 when limitations expired in September of 2017. Why he did not give notice, or whether the Court excuses his failure, are irrelevant to the issue of calculating the statute of limitations. His failure to provide pre-suit notice deprived him of any ability to obtain an extension of limitations under D.C. Code § 16-2803. The fact that his failure to provide pre-suit notice could be excused under D.C. Code § 16-2804(b) has no bearing on the issue of when limitations expired.

E. Mr. Waugh's Amended Complaint Mooted his Opposition to MGUH's Motion to Dismiss the Original Complaint and All Related Filings

The trial court did not consider Mr. Waugh's Motion requesting leave to amend his Opposition to MGUH's Motion to Dismiss the original Complaint. This decision provides no basis for reversal.

A plaintiff may file an amended complaint once as a matter of course before the defendant files an answer. D.C. Super. Ct. Rule 15. This is what Mr. Waugh did. On January 17, 2018, Mr. Waugh filed an Amended Complaint. MGUH had already filed a Motion to Dismiss (on December 27, 2017).

Mr. Waugh's Amended Complaint was properly accepted by the Clerk of Court. It is only the filing of an Answer that would have required leave of court to file an Amended Complaint. Lustine v. Williams, 68 A.2d 900, 901-02 (D.C. 1949). Because no Answer had been filed by the time Mr. Waugh filed his Amended Complaint, his Amended Complaint was properly accepted by the Superior Court Clerk.

Once he filed an Amended Complaint, his original complaint was moot. See District of Columbia Dept of Public Works v. L.G. Indus., Inc., 758 A.2d 950 n.6 (D.C. 2000) (noting that amended pleadings ordinarily supercede prior pleadings and the prior pleading is treated as withdrawn "as to all matters not restated in the amended pleading"). The Amended Complaint also rendered moot the first Motion to Dismiss MGUH filed on December 27, 2017. Thus, the trial court denied MGUH's first motion to dismiss. Appendix A at page 3.

Still, Mr. Waugh complains about the trial court's refusal to consider his Motion seeking leave to amend his opposition to MGUH's first motion to dismiss. There can be no appellate relief stemming from this decision. The first motion to dismiss was denied as moot due to the filing of an Amended Complaint. No appellate relief can put Mr. Waugh in a better position than he is already in as to the original Motion to Dismiss.

While the grant of a Rule 12(b)(6) motion to dismiss is reviewed *de novo*, other rulings related to motions for leave to amend are reviewed for an abuse of discretion. Compare Tingling-Clemmons v. District of Columbia, 133 A.3d 241, 245 (D.C. 2016) (*de novo* review) with Goldkind v. Snider Bros., Inc., 467 A.2d 468, 474 (D.C. 1983) (abuse of discretion review). An abuse of discretion exists only when the trial court acts "on grounds, or for reasons, clearly untenable or to an extent clearly unreasonable." Johnson v. United States, 398 A.2d 354, 363 (D.C.1979). Judicial discretion is the trial court's exercise of its best judgment on the issue at hand. Id. Here, the trial court refused to consider Mr. Waugh's Motion seeking leave to amend his opposition to MGUH's first motion to dismiss. However, that first motion to dismiss was itself denied as moot. There can be no finding of any abuse of discretion on these facts.

CONCLUSION

WHEREFORE, for the reasons set forth above, Appellee MedStar Georgetown University Hospital respectfully asks this honorable Court to affirm the Superior Court's dismissal of Mr. Waugh's claims. Mr. Waugh filed his Complaint after the statute of limitations expired. This is a point he concedes. He failed to provide pre-suit notice as would have been necessary to extend limitations. Such failures are fatal to his lawsuit. Even giving him the benefit of excusing his failure to provide pre-suit notice does not undermine MGUH's entitlement to affirmance of judgment in its favor on the basis of the affirmative defense of statute of limitations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on this 16th day of July 2018, I caused Appellee MedStar Georgetown University Hospital's Brief to be served by first-class mail upon:

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APPENDIX J

BRIAN KEITH WAUGH, Appellant,

v.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL, Appellee.

No. 18-CV-329.

District of Columbia Court of Appeals.

Submitted January 7, 2019.
Decided March 14, 2019.

Appeal from the Superior Court of the District of Columbia, CAM-7831-17, Hon. Robert R. Rigsby, Trial Judge.

Brian Keith Waugh, *pro se*.

Crystal S. Deese and *Diona F. Howard-Nicolas* were on the brief for appellee.

Before THOMPSON and EASTERLY, *Associate Judges*, and RUIZ, *Senior Judge*.

This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

RUIZ, Senior Judge.

This appeal arises out of a medical malpractice action filed by *pro se* appellant Brian Keith Waugh against appellee MedStar Georgetown University Hospital (the "Hospital"). The trial court dismissed appellant's amended complaint on the alternative grounds that it was filed outside of the statutory three-year limitations period governing medical malpractice claims, and that appellant did not provide appellee with ninety days' pre-suit notice as required by statute. We affirm.

I. Factual Background

Appellant alleges that he received improper treatment at the Hospital between September 7-8, 2014, when two nurses went "fishing" for a vein in his right arm. The first nurse's attempt to insert the intravenous needle caused appellant's arm to "bleed[] significantly from the needle hole." And when a second nurse inserted the needle, appellant's "thumb felt funny." A radiology technician then "took out the needle in [appellant's] right arm and put one in the back of [his] right hand without a problem," but it "caused the back of [appellant's] hand to sting intensely," and appellant "screamed out, Ahhhhhh!" Appellant subsequently sought medical care related to the injury. His hand sometimes "feel[s] like it is going to sleep," and he occasionally experiences "prickly pains, or sharp pains in the back of [his] wrist."

Appellant filed his complaint on November 22, 2017.[1] After the Hospital filed a motion to dismiss the complaint, appellant filed both a brief in opposition and an amended complaint. The Hospital filed a motion to dismiss the amended complaint, and appellant filed a motion to amend his brief in opposition to the Hospital's motion to dismiss the original complaint. Then, appellant filed a brief in opposition to the Hospital's motion to dismiss the amended complaint.

The trial court issued an omnibus order resolving all outstanding motions on February 23, 2018. As relevant here, the trial court: (1) denied the Hospital's motion to dismiss the initial complaint as mooted by the amended complaint, (2) denied appellant's motion to amend his brief in opposition to that motion as also mooted by the amended complaint,[2] and (3) granted the Hospital's motion to dismiss the amended complaint on the grounds that appellant did not file his complaint within the three-year limitations period established by D.C. Code § 12-301(8) (2012 Repl.), and did not provide the Hospital with ninety days' pre-suit notice as required by D.C. Code § 16-2802 (2012 Repl.). This appeal followed.

II. Standard of Review

The trial court may dismiss a claim for failure to comply with the applicable statute of limitations under Super. Ct. Civ. R. 12(b)(6) if "the claim is time-barred on the face of the complaint." Logan v. LaSalle Bank Nat'l Ass'n, 80 A.3d 1014, 1020 (D.C. 2013). "We review *de novo* the trial court's dismissal of a complaint under Super. Ct. Civ. R. 12(b)(6)." *Id.* at 1019.

III. Analysis

Before bringing a medical malpractice action in the District of Columbia, a plaintiff must satisfy two procedural requirements. First, the plaintiff must serve the defendant with notice of intention to file suit "not less than 90 days prior to filing the action." D.C. Code § 16-2802(a) (2012 Repl.).[3] This requirement serves to "encourage early settlements and facilitate the parties' ability to reach a settlement," which in turn "lower[s] each party's individual costs," and "promote[s] judicial economy by decreasing the time and money spent on these complicated and contentious issues." Medical Malpractice Reform Act of 2006, D.C. Council, Report on Bill 16-418 at 1-2 (Apr. 28, 2006); *see also* Lacek v. Washington Hosp. Ctr. Corp., 978 A.2d 1194, 1198 (D.C. 2009). In the event the parties are unable to resolve their dispute outside of the judicial process, the plaintiff must satisfy a second requirement: filing the complaint within the District of Columbia's three-year limitations period for medical malpractice actions. D.C. Code § 12-301(8) (2012 Repl.).

These two requirements interact with one another. If the pre-suit notice required by D.C. Code § 16-2802(a) "is served *within 90 days* of the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended 90 days from the date of the service of the notice." D.C. Code § 16-2803 (2012 Repl.) (emphasis added).

This case centers on the "within 90 days" requirement to trigger the statute-of-limitations extension. Appellant concedes that the three-year limitations period applicable to his claims began to run when his alleged injuries occurred on September 7-8, 2014,[4] and that his complaint was not filed within three years of that date. However, he contends that because his complaint was filed "within 90 days" *after* the limitations period expired, it is eligible for the statute-of-limitations extension provided by D.C. Code § 16-2803, and should be deemed timely. We disagree.

A. Statute of Limitations

In construing the statute-of-limitations extension provided by D.C. Code § 16-2803, "we must first look at the language of the statute by itself to see if the language is plain and admits of no more than one meaning." Peoples Drug Stores, Inc. v. District of Columbia, 470 A.2d 751, 753 (D.C. 1983) (en banc) (citation and alteration omitted).

As appellant notes, the phrase "within 90 days of the expiration of the applicable statute of limitations" admits of more than one meaning, as it could mean within 90 days *before* the expiration of the applicable statute of limitations period, or within 90 days *after* the expiration of the limitations period.[5] Accordingly, because statutory interpretation is a "holistic endeavor," Washington Gas Light Co. v. Pub. Serv. Comm'n, 982 A.2d 691, 716 (D.C. 2009) (citation omitted), we must search beyond the text of this isolated provision to ascertain its meaning, Gondelman v. District of Columbia Dep't of Consumer & Regulatory Affairs, 789 A.2d 1238, 1245 (D.C. 2002). We are guided in this inquiry by the underlying policies and objectives of the statute as a whole, and the interaction between the statute-of-limitations extension and related statutory provisions. *Id.*

The statutory provision that is most obviously related to the statute-of-limitations extension is the three-year statute of limitations itself. Such statutes are designed to "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence," Ehrenhaft v. Malcolm Price, Inc., 483 A.2d 1192, 1202 (D.C. 1984) (citation omitted), and are to be "strictly construed in accordance with their terms," Atiba v. Washington Hosp. Ctr., 43 A.3d 940, 941 (D.C. 2012).

Appellant's construction of the statute-of-limitations extension provision would undermine these policies by reading an implicit ninety-day exception into the statute of limitations based solely on the phrase "within 90 days of the expiration of the applicable statute of limitations."[6] If appellant's view that "within 90 days of the expiration" means "within 90 days *after* the expiration" were to prevail, medical malpractice defendants could receive notice of a claim for the first time more than three years after the right to bring the lawsuit accrued, in contravention of the policy decision the District of Columbia Council reached in enacting the three-year statute of limitations. Interpreting "within 90 days of the expiration" to mean "within 90 days *before* the expiration," by contrast, accords with the policies underlying the statute of limitations, as defendants would in all cases have notice of the claims that may be asserted against them no more than three years after the right to bring the claims arose.

Moreover, the statute-of-limitations extension serves an understandable policy objective when applied to plaintiffs who serve notice of their claims *before* the three-year limitations period expires that is absent when it is applied to plaintiffs who serve notice of their claims only *after* the limitations period expires. If the ninety-day pre-suit notice requirement were not accompanied by a corresponding extension to the limitations period, it would effectively move up the statute-of-limitations deadline by ninety days, barring plaintiffs who served notice with less than ninety days remaining in the limitations period from bringing an action. The statute-of-limitations extension ameliorates this concern for plaintiffs who serve pre-suit notice within 90 days *before* the limitations period expires by extending that deadline by "90 days from the date of the service of the notice." D.C. Code § 16-2803. It serves no similar purpose for plaintiffs who serve pre-suit notice for the first time only *after* the limitations period has already expired, as they face no possible hardship from an impending statute-of-limitations deadline.

Therefore, we conclude that, to be eligible for the ninety-day statute-of-limitations extension set forth in D.C. Code § 16-2803, a plaintiff must serve pre-suit notice within ninety days *before* the limitations period expires. As explained in the following section, there is no evidence that appellant did so here. As a result, appellant was required to file his action no more than three years after "the time the right to maintain the action accrue[d]," D.C. Code § 12-301(8), with no extension. Because it is clear from the face of appellant's amended complaint that he did not do so, we find no error in the trial court's conclusion that appellant's claims were barred by the statute of limitations.

B. Pre-Suit Notice

Providing ninety-days' pre-suit notice is a condition precedent to filing a medical malpractice action. See D.C. Code § 16-2802(c) ("A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied."). Appellant argues that he satisfied this requirement for two reasons.

First, appellant contends that the filing of the complaint itself serves as the notice required by D.C. Code § 16-2802(a). We see no merit in this argument. Deeming the filing of a complaint to be sufficient would be inconsistent with the text of the *pre-suit* notice requirement, D.C. Code § 16-2802(a) (requiring that notice must be served "not less than 90 days *prior to* filing the action") (emphasis added), and would subvert its purpose, see Lacek, 978 A.2d at 1198 (explaining that the filing of a complaint "force[s] the Hospital to incur the expense of either answering or filing a motion to dismiss," whereas the pre-suit notice period allows for the possibility that "a settlement could [be] achieved and litigation costs avoided"). We have deemed the filing of a complaint to be insufficient to satisfy a similar pre-suit notice requirement, see Campbell v. District of Columbia, 568 A.2d 1076, 1078 (D.C. 1990) (rejecting "appellants' argument that the statutory purpose of [D.C. Code] § 12-309 can be served just as well by a complaint that is filed within the six-month period for giving notice"),[7] and see no reason a different result should obtain here. We thus reject appellant's first argument that the pre-suit notice requirement was satisfied.

Second, appellant contends that he satisfied the notice requirement because "the acts in the Amended Complaint were filed by fax with the D.C. Department of Health in October 2014." If appellant had provided pre-suit notice in October 2014, it would have been more than ninety days before the September 2017 expiration of the limitations period, and timely under D.C. Code § 16-2802(a). But appellant's allegation that he sent a fax to the D.C. Department of Health outlining the facts underlying his complaint is wholly insufficient to establish that he served "the intended defendant" (i.e., the Hospital in this case) with pre-suit notice at its "last known address registered with the appropriate licensing authority." D.C. Code § 16-2802(a). Similarly, appellant's claim that he was unable to ascertain the identities of the nurses or radiology technician who allegedly provided the improper care provides no basis to excuse his failure to notify *the Hospital* within ninety days before filing suit. Therefore, we reject appellant's second argument that the pre-suit notice argument was satisfied as well.

IV.

For the foregoing reasons, appellant did not file his complaint within the applicable limitations period and failed to provide the Hospital with the required pre-suit notice. Accordingly, the trial court's order dismissing appellant's amended complaint is

Affirmed.

[1] The complaint alleged six causes of action: (1) discrimination by disparagement of healthcare; (2) unnecessary pain, suffering, and bodily injury; (3) negligent infliction of emotional distress; (4) intentional infliction of emotional distress; (5) loss of the sense of freedom in seeking healthcare; and (6) loss of sense of safety and wellbeing in seeking healthcare.

[2] The trial court alternatively stated that there was no opposition brief to amend. This is not supported by the record. Appellant did file a brief in opposition to the Hospital's first motion to dismiss, but it was improperly docketed as part of his motion for an extension of time to file an opposition brief, rather than as a separate filing. However, we find no reversible error in the trial court's misstatement, given its alternative holding that appellant's motion to amend his opposition to the Hospital's motion to dismiss the initial complaint was moot.

[3] D.C. Code § 16-2802 provides that:

(a) Any person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action. Notice may be given by service on an intended defendant at his or

her last known address registered with the appropriate licensing authority. Upon a showing of a good faith effort to give the required notice, the court may excuse the failure to give notice within the time prescribed.

(b) The notice required in subsection (a) of this section shall include sufficient information to put the defendant on notice of the legal basis for the claim and the type and extent of the loss sustained, including information regarding the injuries suffered. Nothing herein shall preclude the person giving notice from adding additional theories of liability based upon information obtained in court-conducted discovery or adding injuries or loss which become known at a later time.

(c) A legal action alleging medical malpractice shall not be commenced in the court unless the requirements of this section have been satisfied.

[4] *See* Colbert v. Georgetown Univ., 641 A.2d 469, 472 (D.C. 1994) ("Where the fact of an injury can be readily determined, a claim accrues for purpose of the statute of limitations at the time the injury actually occurs.").

[5] *See Webster's Third New Int'l Dictionary* 2627 (1993) (defining "within" as meaning, among other things, "*before* the end or *since* the beginning of" a period of time, and providing "troops would be withdrawn . . . within two years *after* the end of the war" as an illustration of the latter usage) (emphases added).

[6] Cf. D.C. Code § 16-2802(a) (requiring that notice of intent to file suit must be given "not less than 90 days prior to filing the action").

[7] D.C. Code § 12-309(a) provides that, with limited exceptions:

[A]n action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage.

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APPENDIX K

District of Columbia
Court of Appeals

FILED
MAY 06 2019
DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 18-CV-329

BRIAN KEITH WAUGH,

Appellant,

v. CAM7831-17

GEORGETOWN UNIVERSITY HOSPITAL,

Appellee.

BEFORE: Glickman, Fisher, Thompson, Beckwith, Easterly, and McLeese Associate Judges.

ORDER

On consideration of appellant's petition for rehearing *en banc*; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Chief Judge Blackburne-Rigsby did not participate in this case.

Copies to:

Honorable Robert R. Rigsby

Civil Division
Quality Management Unit

Brian Keith Waugh
3811 V Street, SE
Apartment 202
Washington, DC 20020

No. 18-CV-329

Copies e-served to:

Crystal S. Deese, Esquire
Diona F. Howard-Nicolas, Esquire
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bep

APPENDIX L

098

No. 19-5477

ORIGINAL

Supreme Court, U.S.
FILED
AUG 05 2019
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN KEITH WAUGH — PETITIONER
(Your Name)

vs.

MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

DISTRICT OF COLUMBIA COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN KEITH WAUGH
(Your Name)

3811 V STREET, SE #202
(Address)

WASHINGTON, DC 20020
(City, State, Zip Code)

301-458-1174
(Phone Number)

QUESTIONS PRESENTED

The Medical Malpractice Amendment Act of 2006 makes a distinction between D.C. Code § 16-2802 and D.C. Code § 16-2804. Under D.C. Code § 16-2804, the 90 day pre-Notice of D.C. Code § 16-2802 is inapplicable; and the form of words change in D.C. Code § 16-2804(a)(2) and (3) based on the Medical Malpractice Amendment Act of 2006. In the Interests of Justice, can the filing of a claim(s) in an Amended Complaint serve as Notice characteristic of State and Federal Rules and Civil Procedures' Rule 15(c) Notice?

Within my Petition for Rehearing En Banc, which was denied on May 6, 2019,I made it known that under certain circumstances, I had difficulty in reading, comprehending, and retaining information, also mental blocks adversely affecting my pursuits of Justice caused by a childhood event, which was in Court records. In this Case, factoring that Rehearing En Banc was denied by the District of Columbia Court of Appeals, does the Interests of Justice dictate Tolling the Statute of Limitations?

INDEX TO APPENDICES

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals to review the merits appears at Appendix A to the petition and has been designated for publication but is not yet reported. The opinion of the Superior Court of the District of Columbia appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the District of Columbia Court of Appeals decided my case was 03/14/2019. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on the following date: 05/06/2019, and a copy of the order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V;

D.C. Code §12-301(8) (2019),

D.C. Code § 16-2802 (2019),

D.C. Code § 16-2803 (2019),

D.C. Code § 16-2804(a)(2) (2019),

D.C. Code § 16-2804(a)(3) (2019);

B16-334, Medical Malpractice Amendment Act of 2006

STATEMENT OF THE CASE

In the Case, Brian Keith Waugh v. MedStar Georgetown University Hospital 203 A.3d 784 (D.C. 2019), the District of Columbia Appellate Court upheld the ruling of the Superior Court of the District of Columbia that I did not give the Defendant the required 90 days pre-Notice, that the 90 day pre-Notice is strictly pre-litigation Notice. By rehearing En Banc, it was made known to the Appellate Court that it did not factor D.C. Code § 16-2804(a)(2), based on a new claim of Extravasation in my MEMORANDUM IN OPPOSITION TO MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL'S MOTION TO DISMISS WITH PREJUDICE (B)(3)(c) on 02/20/2018, and D.C. Code § 16-2804(a)(3), based on correcting a misnomer noticed by the Defendant in the original Complaint by amendment on 01/17/2018, and that D.C. Superior Court Rules and Civil Procedures Rule 15(c)(C)(i) permits a Pleading to serve as Notice. Therefore, the ruling of the Appellate Court on Notice conflicts with Rule 15(c) provision for Notice during the Litigation process in both the Federal and D.C. Superior Court Rules and Civil Procedures followed by the States because under D.C. Code § 16-2804, changes in the form of words of Legislative history by "omission, addition, or substitution" and in procedure by making the 90-day pre-Notice requirement of D.C. Code § 16-2802 inapplicable, indicate that Notice may be customarily given during the litigation process. See Rauch v. Board of Com'rs of Marion County, 72 Ind. App 412 124 N.E. 704 (1919)

B16-334, Medical Malpractice Amendment Act of 2006 says the following,

> The District of Columbia Health Occupations and Revision Act of 1985 was amended "...to require individuals who intend to file suit alleging medical malpractice to file with potential defendants a 90-day notice of intent to file suit in the District of Columbia Superior Court, to require parties to the suit to engage in mediation early in the litigation process..." Also that "The 90-day notice requirement and early mandated mediation serve similar purposes...These measures encourage early settlements and facilitate the parties' ability to reach a settlement."
>
> And it also says of the 90 day pre-Notice requirement, "Sec. 16-2804...This re xxquirement also shall be inapplicable to claims unknown to the person when filing the claim or to intended defendants who are identified in the notice by misnomer. The section permits waiver of this requirement by the court upon the finding of a good-

faith effort or if the interests of Justice dictate."

And D.C. Code § 16-2804(a)(2) and (3), and (b) say,

> "(a) Statute 16-2802 Notice is inapplicable when: (2) Any claim that is unknown to the person at the time of filing his or her notice; or (3) Any intended defendant who is identified in the notice by a misnomer. (b) Nothing indicated herein shall prevent the court from waiving the requirements of § 16-2802 upon a showing of good faith effort to comply or if the interests of justice dictate."

Also, the Court of Appeals for the District of Columbia ruled that my Case was filed beyond the expiration of the Statute of Limitations. When I read the Statutes on Medical Malpractice in the first year that my cause of action accrued, I did not comprehend them. I thought the 90 days were for Notice in D.C. Code § 16-2802, and the other 90 days of D.C. Code §16-2803 was time for the Statute of Limitations because in part, there was no reference to D.C. Code §12-301(8) for Statute of Limitations. But, I thought I had time for a possible lawyer because I did not know who were the Defendants according to D.C. Code § 16-2804, whether contractors or employed, and no one gave me information.

I learned of the three (3) year Statute of Limitations, while learning about a M.D. Certificate of Merit online after two other failed Medical Malpractice Cases in an attempt to remove abscesses since 2014, which one still remains. Within about 2 weeks after reading about the 3 year Statute of Limitations in November 2017, I filed my Complaint in D.C. Superior Court based on what I could remember in D.C. District Court because of a mental block, I could not read the Rules and Civil Procedures. Medical issues have an affect on me also.

In filings, I made it known I was intimidated about Medical Malpractice Law, and discouraged by my failed attempt to file a Civil Rights Complaint, and about my related difficulty in reading and comprehending, and mental block based on failing an advanced 2nd grade English course. The class was learning grammar analysis when I transferred as a new student in the middle of the year; they were memorizing grammatical terms and identifying

them in sentences. It was new to me, and it was difficult comprehending and retaining information. And I failed a similar class in 10th grade, but got a B overall in night school for reading and comprehension. This has been a surmountable disability, but, it has impaired me in my pursuits of Justice as well as other past, and desired pursuits. Either, I may find it easier to read something a second time, or it may occur in reading something a second time, or reading something to learn that is new and intimidating that I am unfamiliar with, something I was not taught; as during appeal in my first Case in the District of Columbia or in this second filing of Cases on medical malpractice in the District of Columbia. Although, I do not have an expert witness, and despite my effort to pursue Justice, my disability in reading, comprehending, and retaining information, and mental blocks is evident and can be judged by a lay person. McCracken v. Walls-Kaufman, 717 A. 2d 346, 355 (D.C. 1998) I had difficulty reading and comprehending on appeal in a 2009 Civil Rights Conspiracy Complaint for discrimination based on Race and Handicap in D.C. District Court and was barred from filling because of amending my petition, after I was able to read and understand the rules better, 2 or 3 times before there was a ruling.

REASONS FOR GRANTING THE PETITION

The District of Columbia Court of Appeals has decided an important Federal Question in a way that conflicts with relevant decisions of this Court on Notice and Tolling the Statute of Limitations, which are contrary to the 5th Amendment of the U.S. Constitution, and shall adversely affect current Cases in the District of Columbia, which include my own pending, and conflict with decisions from other States. Therefore, The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian K. Day

Date: August 5, 2019