

Plaintiff
v.
Defendants

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

Case No.

* * * * *

**AND MOTION
IN LIMINE TO PRECLUDE PLAINTIFF FROM PRESENTING ARGUMENT,
EVIDENCE AND/OR EXPERT TESTIMONY THAT
AND WERE NEGLIGENT**

Defendants and by
their attorneys, and
submit this Motion *in Limine* to Preclude Plaintiff from presenting argument, evidence
and/or testimony at trial that and/or were
negligent, and state:

1. This medical malpractice action involves allegations of negligence against
an emergency medicine physician and physician's assistant for their alleged failure to
diagnose a vascular injury to Mr. left leg during his admission to the St. Agnes
Hospital Emergency Department ("St. Agnes ED") on December 3, 2009. Plaintiff has
also sued St. Agnes and contends that it is vicariously liable for the alleged negligence
of its nurse employee, Defendant

2. It is anticipated the Plaintiff will attempt to elicit testimony or argue at
trial that two additional nurses, and were

negligent. Plaintiff should be precluded from presenting argument and/or evidence at trial that Nurses [redacted] and [redacted] were negligent because Plaintiff failed to satisfy the condition precedent to maintain a cause of action against St. Agnes for the negligence of Nurses [redacted] and [redacted] and further because Plaintiff is unable to establish that these nurses were negligent as a matter of law. Thus, any argument and/or expert testimony regarding the alleged breaches in the standard of care by Nurses [redacted] and [redacted] are improper as a matter of law and would serve no purpose other than to mislead and confuse the jury.

PLAINTIFF'S FAILURE TO SATISFY A CONDITION PRECEDENT

3. The Health Care Malpractice Claims Statute governs Plaintiff's claims against [redacted] and Nurse [redacted]. See Md. Code Ann., Courts & Judicial Proceedings, § 3-2A-01 *et seq.* As a condition precedent to maintaining a negligence claim against any health care provider, the Statute requires, *inter alia*, that Plaintiff file a Certificate and Report from a qualified expert. § 3-2A-04(b)(1)(i) attesting to the alleged departures from the standards of care by the named health care providers.. This statutory requirement is a condition precedent to maintaining a cause of action against health care providers in the Circuit Court. *Carroll v. Konits*, 400 Md. 167, 181, 929 A.2d 19, 28 (2007).

4. The Court of Appeals has interpreted the Statute's Certificate and Report requirement various times and has held that:

Maryland law requires that the Certificate mention explicitly the name of the licensed professional who allegedly breached the standard of care...this requirement is consistent with the General Assembly's intent to

avoid non-meritorious claims. Moreover, it is reasonable because the Certificate would be rendered useless without an identification of the allegedly negligent parties. When a Certificate does not identify, with some specificity, the person whose actions should be evaluated, it would be impossible for the opposition party, the HCADRO, and the courts to evaluate whether a [health care providers], or a particular [health care provider] out of several, breached the standard of care.

400 Md. at 196, 929 A.2d at 36 (citations omitted); *see also* ,

, 157 Md.App. 631, 646, 853 A.2d 813, 822 (2007).

5. As such, in order to maintain an action against Nurse and

Plaintiff must satisfy the Statute's Certificate and Report requirement by explicitly naming these health care providers in his Certificate and Report. This is so regardless of whether Nurses and are sued individually as Defendants, or whether, as here, Plaintiff files suit against the Hospital as the employer of its nursing staff.

6. Here, Plaintiff certified his claims against and Nurse with a Certificate and Report authored by his only nursing expert, . See Certificate of Qualified Expert and Report, attached herewith as *Exhibit*

1. Notably absent from Certificate and Report is any mention of

or . In fact, Certificate and Report fails to identify any of the alleged breaches in the standard of care that were later attributed to Nurses and . See Deposition Transcript, pp.163-64, attached herewith as *Exhibit 2*.

7. Plaintiff's failure to explicitly identify Nurses or as health care providers who have breached the standard of care and proximately cause his

injury renders his Certificate and Report deficient as to these health care providers, and as to _____ as the employer of Nurses _____ and _____

Accordingly, Plaintiff failed to satisfy the condition precedent to maintain a claim against St. Agnes for the alleged negligence of Nurses _____ and _____, and as such, he is prohibited by statute from pursuing any negligence claims against these health care providers.¹ And consequently, Plaintiff must be precluded from presenting testimony/evidence of their alleged negligence or arguing such at trial.

**PLAINTIFF CANNOT ESTABLISH THAT NURSES
ANI WERE NEGLIGENT**

8. Plaintiff designated only one expert witness, _____ to testify as to the standard of care required of St. Agnes' nursing staff and Nurse _____.² Despite the deficiencies in her Certificate and Report set forth *supra*, it is anticipated that Plaintiff will argue and present evidence at trial that Nurses _____ and _____ were negligent.

9. Specifically, it is anticipated that Plaintiff will contend that Nurse _____ breached the standard of care in her triage assessment of Mr. _____ upon his arrival to the St. Agnes Hospital Emergency Department ("St. Agnes Hospital ED") on December 3, 2009 by assigning him an acuity level IV (4) and triaging him to the urgent

¹ This determination is made as a matter of law. _____ 400 Md. at 180, 929 A.2d at 27 (holding that "[t]he determination of whether a Certificate and report are satisfactory...is a determination to be made as a matter of law").

² Defendants _____ and _____ incorporate the arguments set forth in their Motion *in Limine* to Preclude Plaintiff's Medical Experts from offering standard of care opinions regarding the nursing staff. The Motion sets forth Plaintiff's expert witness designations and the testimony of Plaintiff's medical expert witnesses, confirming that _____ is the only expert who will offer standard of care opinions regarding the nursing staff at the St. Agnes Hospital ED.

care section of the St. Agnes Hospital ED. Similarly, it is expected that Plaintiff will contend Nurse [redacted] breached the nursing standard of care with respect to her involvement in Plaintiff's care in the ED.

10. However, [redacted] testified at her deposition that [redacted] complied with the standard of care in assigning Mr. [redacted] as a triage acuity level IV based upon her triage and focused assessments of Mr. [redacted] on December 3, 2009. See *Exhibit 2*, p. 157-158. Similarly, [redacted] testified that [redacted] complied with the standard of care in triaging Mr. [redacted] to the urgent care section of the St. Agnes Hospital ED on December 3, 2009. *Exhibit 2*, pp. 157-58; 162. Given her testimony that Nurse [redacted] appropriately assigned a triage acuity level IV to Mr. [redacted] after conducting a triage and focused assessment of him, and appropriate triaged him to the urgent care section of the St. Agnes Hospital ED, Plaintiff cannot establish that Nurse [redacted] was negligent as a matter of law.

11. Similarly, [redacted] testified at her deposition that although she had not previously identified [redacted] as a Nurse who breached the standard of care in this case, nor did she previously identify any breaches by Nurse [redacted] that Nurse [redacted] improperly administered pain medicine (Dilaudid) to Mr. [redacted] on December 3, 2009. See *Exhibit 2*, pp. 163-164. Nonetheless, [redacted] could not causally link the alleged breach in the standard of nursing care by Nurse [redacted] to any injury, and in fact agreed that there was no injury to Mr. [redacted] as a result of the alleged breach. *Id.* p. 167. As such, Plaintiff is unable to establish that Nurse [redacted] was negligent as a matter of law.

12. Based upon the foregoing opinions and deposition testimony of Plaintiff is unable to establish that Nurse and/or Nurse were negligent. The presentation of any argument and/or evidence by Plaintiff regarding the manner in which Mr. was triaged by Nurse, or the nursing care provided to him by Nurse is unduly prejudicial to and Nurse, and serves no purpose other than to mislead and confuse the jury with issues that are not material to this case. Accordingly, Plaintiff should be precluded from presenting evidence and/or argument regarding the alleged negligence of Nurses and

WHEREFORE, the Defendants respectfully request that their Motion in *Limine* be granted.

Respectfully submitted,

Attorneys for