

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

KAREEM MILLHOUSE,	:	
Plaintiff	:	
	:	
vs.	:	NO. CV-19-0716
	:	
RODWAN K. RAJJOUR, MD, et al.,	:	
Defendants	:	CIVIL ACTION - LAW

OPINION

I. Factual and Procedural History

This action arises out of an alleged medical malpractice claim wherein Plaintiff asserts that Defendants' failure to provide post-surgical care and their premature decision to transfer him to a federal correctional institution in Kentucky resulted in worsening injuries after undergoing a back surgery. The procedural history of this matter and previously filed federal matters, which arose under the same transaction or occurrence, is lengthy. Because the history of the cases is set forth in detail in this Court's Opinion dated March 11, 2020, we will provide only the relevant facts as it relates to Plaintiff's instant motions. Essentially, the overarching issue is that Plaintiff is unable to secure a certificate of merit as required by Pa.R.C.P. 1042.3.

During the course of Plaintiff's second federal action, filed in April of 2019, the District Court for the Eastern District of Pennsylvania conditionally granted Plaintiff's Motion to Appoint Counsel for the sole purpose of obtaining a certificate of merit and referred the matter to the Federal Bar Association's Pro Bono Committee. The Committee later informed the court that it was unable to find counsel to assist Plaintiff with this issue. Plaintiff was ordered to proceed with the

matter pro se and file a certificate of merit. Plaintiff subsequently requested this requirement be waived, which the court denied on January 21, 2020.

Plaintiff brought the instant matter on May 2, 2019 and filed another Motion for Appointment of Counsel, which was denied by this Court on October 25, 2019 due to its finding that relevant factors weighed against the Plaintiff obtaining court-appointed counsel. At the same time, the Court gave Plaintiff an additional sixty (60) days to file his certificate of merit. Finding that Plaintiff had shown good cause and a reasonable effort in attempting to obtain a certificate of merit, this Court again granted Plaintiff's Motion for Extension of Time on March 11, 2020, giving him an additional sixty (60) days to file a certificate of merit and cautioning Plaintiff that this would be the last extension granted.

Still not having secured a certificate of merit, Plaintiff now files the following Motions, all of which the Court will address here:

1. A second Motion for Appointment of Counsel dated March 26, 2020;
2. Motion to Waive the Certificate of Service [sic]¹ Requirement dated April 1, 2020;
3. Motion for Extension of Time to File a Certificate of Merit dated April 15, 2020; and
4. A third Motion for Appointment of Counsel dated April 16, 2020.

II. Discussion

"In any action based upon an allegation that a licensed professional deviated from an acceptable professional standard, the attorney for the plaintiff,

¹ While Plaintiff titles his motion as "Motion to Waive the Certificate of Service Requirement," based on the contents of his motion as well as the history of this case, the Court believes the Plaintiff meant to file a Motion to Waive the Certificate of *Merit* Requirement.

or the plaintiff if not represented, shall file with the complaint or within sixty days after the filing of the complaint, a certificate of merit signed by the attorney or party” Pa.R.C.P. No. 1042.3(a). Our Supreme Court has explained that the certificate of merit requirement was adopted to “avoid the burdens that [malpractice claims of questionable merit] impose upon litigants and the courts.” *Womer v. Hilliker*, 908 A.2d 269, 275 (Pa. 2006). The purpose of Rule 1042.3, therefore, is to “identify and weed non-meritorious malpractice claims from the judicial system efficiently and promptly.” *Id.* The absence of a certificate of merit indicates that the Plaintiff is not in a position to support the allegation he has made and that resources will be wasted should the case move forward. *Id.* at 275-76.

A. Motions for Appointment of Counsel

Plaintiff first asks this Court for the second and third times to appoint counsel to assist him in obtaining a certificate of merit. The Eastern District of Pennsylvania attempted to assist Plaintiff in obtaining counsel, but was unable to do so. Further, this exact issue has already been litigated in this Court, which found that Plaintiff is not entitled to court-appointed counsel. Because we agree with the analysis set forth in the October 25, 2019 Opinion and because no new additional facts have arisen, we will not reverse that holding. Therefore, Plaintiff’s Motions for Appointment of Counsel are denied.

B. Motion to Waive Certificate of Merit Requirement

Plaintiff next asks this Court to waive the certificate of merit requirement because he has been unable to obtain one due to the current COVID-19 pandemic. He states that he has written to five attorneys and has received no response because of the current government lockdown orders. He further argues that Defendant's expert witnesses will be able to explain the circumstances to a jury in layman terms, and thus a certificate of merit is not required. Finally, he argues that no jury is required in tort cases.

Plaintiff's arguments fail. While the Court recognizes the difficult times that Pennsylvania, along with the rest of the world, is facing, we cannot ignore the multiple extensions and leniency this Court and other courts have given Plaintiff to allow him to obtain a certificate of merit. Despite Plaintiff's arguments, this Court, as well as the Eastern District of Pennsylvania, has previously held that a certificate of merit is required in this case. It is well settled that the Plaintiff has the burden of proof in a case such as this and allowing Plaintiff to essentially piggy-back off of Defendant's experts would be not only highly prejudicial but contrary to long-standing judicial procedures. Finally, both parties have demanded a jury trial and thus, a jury is in fact required in this case. For these reasons, Plaintiff's Motion to Waive the Certificate of Merit Requirement is denied.

C. Motion for Extension of Time

Finally, Plaintiff asks for another extension of time to file his certificate of merit. In his various motions, he states that he has sent five additional inquiries to

attorneys regarding obtaining a certificate of merit and also plans to contact the prison doctor again to request help. According to the Plaintiff, the prison in which he is housed has been on lockdown since April 11, 2020 due to COVID-19 and, because of this, it has been impossible to seek legal advice.

As stated above, the Court recognizes that Pennsylvania has been under stay-at-home Orders for several weeks. However, some of those restrictions have now been lifted and the Lycoming County Courts have moved from the “Red Phase” to the “Yellow Phase” as of May 8, 2020. Given these unprecedented circumstances, and in fairness to the Plaintiff, the Court will grant Plaintiff’s Motion for Extension. Plaintiff shall have an additional sixty (60) days from the date of this Order to file a certificate of merit. However, in fairness to the Defendants, Plaintiff will not be granted any further extensions and failure to file a certificate of merit within this period will result in a dismissal of Plaintiff’s claims regarding this action.

ORDER

AND NOW, this 21st day of **May, 2020**, the following motions are hereby

DENIED:

1. Plaintiff’s second Motion for Appointment of Counsel dated March 26, 2020
2. Plaintiff’s Motion to Waive the Certificate of Merit Requirement dated April 1, 2020; and
3. Plaintiff’s third Motion for Appointment of Counsel dated April 16, 2020.

Plaintiff's Motion for Extension of Time to File a Certificate of Merit dated April 15, 2020 is hereby **GRANTED**. Plaintiff shall have sixty (60) days from the date of this Order to file a Certificate of Merit. Failure to do so will result in a dismissal of this action.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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