

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

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

**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 histories 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 has been and remains unable to secure a certificate of merit as required by Pa.R.C.P. 1042.3.

Plaintiff filed his first Complaint relating to this matter on August 1, 2019 in federal court without a certificate of merit. This federal case was ultimately dismissed due, in part, to Plaintiff's failure to file a certificate of merit. The instant medical malpractice action was initiated by Complaint on May 2, 2019. A certificate of merit was not filed with the Complaint. Since that time, Plaintiff has been granted three (3) extensions of the deadline to file his certificate of merit –

October 25, 2019, March 11, 2020, and May 21, 2020. Most recently, Plaintiff was directed to file his certificate of merit by July 21, 2020. In this Court's Orders of both March 11<sup>th</sup> and May 21<sup>st</sup>, the Court expressly warned the Plaintiff that, in fairness to the Defendants, no further extensions would be granted and that failure to file a certificate of merit will result in a dismissal of his action.

Still not having secured a certificate of merit, Plaintiff now files a Motion for Extension of Time and/or Waive the Requirement filed July 20, 2020 and another Motion for Extension of Time filed July 27, 2020. Oral argument was held on September 23, 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, 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.* (emphasis added). 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. The Rules of Civil Procedure do provide the

Court with latitude in granting Plaintiffs extensions of time to file a certificate of merit. Rule 1042.3(d) states:

The court, **upon good cause shown**, shall extend the time for filing a certificate of merit for a period not to exceed sixty days . . . .

*Note:* There are no restrictions on the number of orders that a court may enter extending the time for filing a certificate of merit . . . .

In ruling upon a motion to extend time, **the court shall give appropriate consideration to the practicalities of securing expert review** . . . .

Pa.R.C.P. No. 1042.3(d) and *Note* (emphasis added).

First, Plaintiff argues that the certificate of merit requirement should be waived because the institutions in which he has been imprisoned have been on “perpetual lockdowns” and therefore, he has been unable to secure a certificate of merit or an attorney to assist him in obtaining a certificate of merit. However, this Court, as well as the Eastern District of Pennsylvania, has previously held several times that a certificate of merit is required in this case and we will not disturb those decisions now. For these reasons, Plaintiff’s Motion to Waive the Certificate of Merit Requirement is denied.

Plaintiff additionally asks the Court to grant him a *fourth* extension of time to file his certificate of merit. In his motion, Plaintiff states that he “is certain that he has secured representation” in this matter and has actually received correspondence from an attorney. However, Plaintiff has failed to produce the alleged attorney correspondence and, during argument, was unable to identify the attorney. Plaintiff has been given over two years to obtain a certificate of merit. While the Court was sympathetic with Plaintiff’s increased hardship in obtaining a certificate of merit both while in prison and during the COVID-19

pandemic, Plaintiff has been afforded ample opportunities to provide a certificate of merit and the Court has been more than lenient in extending the deadline to do so. Further, it is noted that over eighteen (18) months of the time the Plaintiff had to obtain the certificate of merit preceded any of the COVID-19 restrictions.

Plaintiff failed to show good cause as to why the Court should extend the deadline once more. Plaintiff has not demonstrated that he has advanced his case in any tangible manner. To the contrary, granting an additional extension would likely result in an additional request to extend the deadline. Therefore, Plaintiff's Motions for Extension of Time are denied.

**ORDER**

**AND NOW**, this **25<sup>th</sup>** day of **September, 2020**, for the above reasons, Plaintiff's Motion for Extension of Time and/or Waive the Requirement filed July 20, 2020 and Motion for Extension of Time to File Certificate of Merit filed July 27, 2020 are **DENIED**. Plaintiff's Complaint is hereby **DISMISSED** with prejudice.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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