IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLAY ALEXANDER DODSON, Plaintiff vs.	:	CV-19-01803
UNIVERSITY OF PITTSBURGH MEDICAL CENTER, Defendant	:	

OPINION AND ORDER

AND NOW, this 9th day of January 2023, the Court hereby issues the following OPINION and ORDER addressing Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment.

BACKGROUND

Plaintiff commenced this action by filing a pro se Complaint on October 30, 2019.[1] Over the next eighteen months, Plaintiff filed multiple Amended Complaints either as of right or as directed by Order of Court following a grant of Defendant's preliminary objections. On March 4, 2021, the Court entered an Order summarizing the procedural history to that date, sustaining Defendant's outstanding preliminary objections, and directing Plaintiff to file a Fifth Amended Complaint. Plaintiff did so on April 8, 2021, and the Fifth Amended Complaint remains the operative pleading

The Fifth Amended Complaint essentially contends that Plaintiff underwent surgery at Defendant's hospital on February 7, 2019, and subsequently suffered a

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[1] Plaintiff has remained pro se for the entirety of this case.

serious infection of the surgical site due to Defendant's negligence.[2] Plaintiff alleges that he underwent a second surgery at Defendant's hospital on April 19, 2019, and that Defendant was again negligent in the performance of this procedure, resulting in the shortening of Plaintiff's right leg. Plaintiff asserts counts of direct negligence and vicarious liability against Defendant.

On May 6, 2021, Defendant filed a Motion to Strike the certificate of merit Plaintiff provided to Defendant, which this Court denied by Order dated October 6, 2021.[3] On October 25, 2021, Defendant filed an Answer and New Matter to Plaintiff's Fifth Amended Complaint. Defendant's Answer generally denied the allegations in the Fifth Amended Complaint and demanded strict proof thereof at trial. Defendant's New Matter asserted, *inter alia*, that the doctors who performed the surgeries at issue "were employees of Susquehanna Health Medical Group, which is a corporate affiliate of UPMC Susquehanna," an entity that is "separate and distinct" from Defendant. Defendant further denied that the doctors who performed the surgeries "were employees of [Defendant] at any time."

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[2] The initial surgery was performed to treat a severe right ankle fracture.

[3] The October 6, 2021 Order also addressed the eleven separate filings submitted by Plaintiff between May 6, 2021 and July 19, 2021. The Court indicated it was "satisfied... that these filings were to serve as a response to Defendant's Motion to Strike, or are meant to provide information supplementing the record, but do not otherwise require further action by the Court." Throughout this case, Plaintiff has filed dozens of idiosyncratic motions and documents, many of which are difficult to understand. The Court has endeavored to the best of its ability to address them.

Following the filing of Defendant's Answer, the case proceeded to discovery. On November 30, 2021, the Court entered a Scheduling Order requiring, *inter alia*, Plaintiff to provide expert reports by June 27, 2022 and Defendant to provide expert reports by July 25, 2022, with any dispositive motions to be filed by August 5, 2022.[4]

PENDING MOTIONS

A. <u>Plaintiff's Motions for Summary Judgment and Defendant's Reply</u>

On June 28, 2022, Plaintiff filed a Motion for Summary Judgment. In this Motion, Plaintiff asserts the following:

- The February 7, 2019 and April 19, 2019 surgeries were performed at Defendant's facilities;
- It is undeniable that the relevant standard of care was breached;
- Discovery has demonstrated that certain of Defendant's defenses, such as the contention that Plaintiff's harms were caused by pre-existing conditions, are incorrect, as are certain of Defendant's factual averments;
- Defendant's denial that the treating physicians were Defendant's employees is false.

Plaintiff submits that the last of these assertions by itself entitles him to summary judgment, but that in any case the record is sufficient to show by a preponderance of the evidence that he is entitled to summary judgment.

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[4] On July 6, 2022, the Court issued an Amended Scheduling Order moving the case from the arbitration track to the jury trial track; the July 6, 2022 Order did not alter the deadlines for the exchange of expert reports or the filing of dispositive motions.

On June 28, 2022, the Court held a previously scheduled hearing, unrelated to his Motion for summary judgment, to address Plaintiff's myriad motions and filings over the past months. On July 5, 2022, Plaintiff filed a Supplemental Motion for Summary Judgment, apparently to address topics discussed at the June 28, 2022 hearing and other issues. After reiterating the contents of his June 28, 2022 Motion for Summary Judgment, Plaintiff made the following additional assertions:

- Although Defendant characterized "University of Pittsburgh Medical Center" as a "fictitious" entity, its corporate emblem, which Defendant affixes to a number of documents, shows it is real; and

- Defendant is plainly vicariously liable for any breach of the standard of care for treatment it was in control of, including Plaintiff's treatment.

Plaintiff also appeared to suggest that he intended Dalton R. Carpenter, M.D., who authored the statement upon which Plaintiff's certificate of merit was based, to serve as his expert witness.[5]

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[5] In its May 6, 2021 Motion to Strike the Certificate of Merit, Defendant questioned the authenticity of the signature on the statement; the Court addressed this argument in its October 6, 2021 Order. In his July 5, 2022 Supplemental Motion for Summary Judgment, Plaintiff stated: "[Defendant's] attorney has attempted to discredit the Plaintiff's Expert witness by insinuating the criminal act of forgery on the part of the Plaintiff, and was proven wrong. The attorney also argued incorrectly that the expert should name physicians and was corrected by the October 6th 2021 Court order." As discussed below, the October 6, 2021 Opinion and Order addressed the requirements for statements supporting certificates of merit, and explained that expert reports must clear burdens that are more substantial.

On July 22, 2022, Plaintiff filed a "Dispositive motion to enter evidence pursuant to Rule 47. Motions and Supporting Affidavits."[6] In this Motion, Plaintiff elaborates on his argument that the physicians who treated him are either clearly Defendant's employees or otherwise plainly under Defendant's control in a manner that subjects Defendant to vicarious liability; this is obvious, Plaintiff contends, by the fact that the physicians' websites list their "practice location" as various UPMC facilities, each of which holds itself out to the public as part of UPMC. Plaintiff ultimately asks the Court to enter summary judgment based in part on his "Certificate of Merit, and [his] Expert witness report...."[7]

On July 26, 2022, Defendant filed a Response to Plaintiff's Motion for Summary Judgment. Defendant denied that the record established as a matter of law that Defendant or the physicians who performed Plaintiff's surgeries breached the standard of care, or that any of their actions caused Plaintiff harm. Defendant additionally asserted that Plaintiff "has not produced an expert report of any sort" other than the January 1, 2020 statement attached to his certificate of merit, and therefore had not met his burden to present the case to a factfinder, let alone obtain summary judgment.

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[6] The title of Plaintiff's July 22, 2022 Motion cites Rule 47 of the Federal Rules of Criminal Procedure, which does not apply to the instant proceeding. The Court considers the July 22, 2022 Motion, however, as a supplemental motion for summary judgment under the Pennsylvania Rules of Civil Procedure.

[7] The sufficiency of the statements supporting Plaintiff's certificate of merit, to the extent Plaintiff wishes it to serve as his expert report, is addressed in detail *infra*.

B. <u>Defendant's Motion for Summary Judgment</u>

On July 26, 2022, Defendant filed a Motion for Summary Judgment. Defendant first noted that Plaintiff did not depose either of the doctors who performed the 2019 surgeries. Defendant next noted that Plaintiff had not provided any expert report beyond Dr. Carpenter's statement, which Plaintiff argues "does not detail <u>any</u> specific negligence by <u>any</u> specific physician or other healthcare provider; does not identify <u>any</u> alleged medical standard of care that applies or was allegedly violated; and, specifically 'reserves' the details of his opinion 'until full records are available.'"[8] Defendant argued that the Court had already indicated that Dr. Carpenter's statement would not suffice as an expert report, given that the Court stated the following in its October 6, 2021 Opinion and Order:

> "The Court agrees that the written statement attached to the Certificate of Merit, lacking in detail and conclusory as it is, and based on limited medical information, would not withstand challenge if Plaintiff intended to have Dr. Carpenter testify at trial based on this written statement alone."

Defendant argues that Plaintiff's failure to produce a satisfactory expert report is fatal to his claim for medical malpractice. Defendant notes that medical malpractice claims typically require the plaintiff to "prove, through properly qualified expert medical testimony: (1) the standard of care owed by defendant; (2) that defendant failed to meet that standard; and (3) that said failure was the proximate

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[8] Defendant's Motion for Summary Judgment, ¶8 (emphasis in original).

cause of harm to plaintiff."[9] Defendant contends that this standard is no less applicable when a plaintiff's claim sounds in vicarious liability, as a vicarious liability claim is derivative of the underlying malpractice claim. Ultimately, Defendant characterizes the statement from the Court's October 6, 2021 Opinion and Order as providing Plaintiff with "fair warning... that, standing alone, Dr. Carpenter's report would not be legally sufficient, and that plaintiff needed to obtain an expert report of appropriate detail, in addition to Dr. Carpenter's report."[10]

C. Plaintiff's Reply to Defendant's Motion for Summary Judgment and Additional Filings

After the filing of Defendant's Motion for Summary Judgment, Plaintiff filed numerous documents with the Court, many of which wholly or partially respond to the contents of Defendant's Motion for Summary Judgment.

On July 27, 2022, Plaintiff filed a "2nd, Dispositive motion to settle in favor of the Plaintiff, Pursuant to rule 37."[11] In this Motion, Plaintiff contends that Defendant did not cooperate with a discovery request that Plaintiff served on January 20, 2022. The Court addressed the January 20, 2022 discovery request (which Plaintiff filed as a Motion to Compel) at the June 28, 2022 hearing, and Plaintiff's July 27, 2022

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[9] *Id.*, ¶17 (*citing, e.g., Toogood v. Owen J. Rogal D.D.S., P.C.*, 824 A.2d 1140, 1145 (Pa. 2003)).
[10] Defendant's Brief in Support of Motion for Summary Judgment, p.6 (emphasis in original).
[11] The title of Plaintiff's July 27, 2022 Motion cites Rule 37 of the Federal Rules of Civil Procedure, which does not apply to the instant proceeding. The Court considers the July 27, 2022 Motion, however, to the extent it raises cognizable issues under the Pennsylvania Rules of Civil Procedure.

Motion did not contend that Defendant failed to follow through with any Court ordered discovery. Rather, the Motion baldly asserts that because Defendant failed to comply with the discovery request in January, Plaintiff is entitled to summary judgment. Plaintiff attached the January 20, 2022 discovery request to his July 27, 2022 Motion; notably, in the discovery request, Plaintiff asserted that he "filed the Expert witness report and Certificate of Merit with the Lycoming County Courthouse Prothonotary office. The Plaintiff's Expert witness documents are legally sufficient, favorable, and verified that harm to the Plaintiff via medical malpractice was 'More likely than not.'"[12]

On August 1, 2022, Plaintiff filed a "Response to Defendant's filings on July 25th 2022," which addresses both Defendant's Motion for Summary Judgment and Defendant's Reply to Plaintiff's Motion for Summary Judgment. Plaintiff first characterizes the statements in these filings as "frivolous denials without an [Orthopedic] Surgeon Expert witness as required by law…." Notably, Plaintiff asserts "[i]t is/was not necessary to depose the UPMC physicians" who performed the 2019 surgeries, and "[t]he Plaintiff's Expert witness statement is sufficient

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[12] Although the January 20, 2022 discovery request consisted of 35 paragraphs over six pages, Plaintiff requested only three documents: a copy of a "no trespass" letter served upon him by Defendant's counsel; a copy of the "employment contract for the services of" the doctors who performed the 2019 surgeries, and a "sample of the UPMC Police statement of Duty."

without the witness being present. The Court has acknowledged this, and yet the Defendant remains contemptuous with denial."[13]

Also on August 1, 2022, Plaintiff filed a "Memorandum of law pursuant to rule 4003.5."[14] In this Memorandum, Plaintiff appears to argue that he need not produce any written expert report beyond Dr. Carpenter's statement, because he does not intend to call Dr. Carpenter at trial:

> "**DISCUSSION:** The 4003.5 reference is not 4003.1. The law states that a separate report shall be signed by the expert. Noted, it says, a separate report shall, and **'NOT',** "interrogatories" will be signed by the Expert." A separate report **'IS'** the Expert witness statement that has already been provided. And, an interrogatory report from the Expert may be required **'if'** the Expert is expected to testify. **He is not.** Therefore a separate Expert signed interrogatory report is not required. The attorney knows better."[15]

Plaintiff further characterizes the Court's October 6, 2021 Opinion and Order as follows: "By the October 6th 2021 Court Order it is established that the Plaintiff has met the burden of proof. The Plaintiff's Expert witness is absolutely correct. Medical Malpractice is/was; "MORE LIKELY THAN NOT." No further arguments are required."[16]

On August 25, 2022, Plaintiff filed a "2nd Memorandum of law/response to Defendant." Plaintiff cites portions of the Rules of Civil Procedure dealing with

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[13] Plaintiff's Response to Defendant's Filings on July 25, 2022, ¶3.
[14] Pennsylvania Rule of Civil Procedure 4003.5 governs discovery of expert testimony and trial preparation material.
[15] Plaintiff's Memorandum of Law Pursuant to Rule 4003.5, ¶3 (original emphasis and formatting retained).
[16] *Id.* at ¶8 (original emphasis and formatting retained).

certificates of merit and expert discovery, and asserts that his "expert is not required to testify... because the Defendant, as anticipated, could not produce an Expert Witness or Certificate of merit... by the July 25th 2022 deadline, ordered by the Court."

The Court held argument on both parties' Motions for Summary Judgment on October 6, 2022.

On November 4, 2022, Plaintiff filed a "Response to 10-26-2022 Courts Order."[17] In this filing, Plaintiff reiterated his position that he is entitled to summary judgment, and requested a court-appointed attorney should the Court not grant him summary judgment.[18]

APPLICABLE LAW

When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party.[19] The party moving for summary judgment bears the burden of proving both the absence of an issue of material fact and its right to judgment as a

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[17] On October 26, 2022, the Court issued a Scheduling Order informing the parties of potential dates for jury selection and trial.

[18] The Court denies this request. With few exceptions, "[t]he law is well settled that there is no right to counsel in civil cases." *See Rich v. Acrivos*, 815 A.2d 1106, 1108 (Pa. Super. 2003). Those exceptions involve "broad policy considerations implicating a state interest of a civil rights nature"; a claim for medical malpractice is not such an interest. *See May v. Sharon*, 546 A.2d 1256, 1258 (Pa. Super. 1988).

[19] *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. 2011).

matter of law.[20] The Court will only grant summary judgment "where the right to such judgment is clear and free from all doubt."[21] An "adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response" to a motion for summary judgment "identifying (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced."[22] For the purposes of summary judgment, the "record" includes "(1) pleadings, (2) depositions, answers to interrogatories, admissions and affidavits, and (3) reports signed by an expert witness...."[23]

In order to make out a case for medical malpractice, a plaintiff must establish "(1) the physician owed a duty to the patient; (2) the physician breached that duty; (3) the breach of duty was the proximate cause of, or a substantial factor in, bringing about the harm suffered by the patient, and (4) the damages suffered by the patient were a direct result of that harm."[24] It is well established that "because 'the complexities of the human body place questions as to the cause of pain or injury

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[20] *Holmes v. Lado*, 602 A.2d 1389, 1391 (Pa. Super. 1992).
[21] *Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (quoting *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007)).
[22] Pa R.C.P. 1035.3(a).
[23] Pa. R.C.P. 1035.1.
[24] *Eaddy v. Hamaty*, 649 A.2d 639, 642 (Pa. Super. 1997).

beyond the knowledge of the average layperson,' a medical malpractice plaintiff generally must produce the opinion of a medical expert to demonstrate the elements of his cause of action."[25] Therefore:

> "[I]f, at the conclusion of discovery, the plaintiff fails to produce expert medical opinion addressing the elements of his cause of action within a reasonable degree of medical certainty, he has failed to establish a prima facie case and... a moving [defendant] is entitled to summary judgment... [unless] 'the matter... is so simple, and the lack of skill or want of care so obvious, as to be within the range of ordinary experience and comprehension of even non professional persons.'"[26]

ANALYSIS

The written statement provided by Dalton R. Carpenter, M.D., which Plaintiff attached to his certificate of merit and relies on as his expert report, spans three pages. The introduction of the report briefly reviews Dr. Carpenter's experience as it relates to the treatment of Plaintiff, "a large 60 year old man with diabetes and diabetic neuropathy who sustained a severe fracture/dislocation and now will require a [below-the-knee] amputation." Dr. Carpenter notes that he reviewed 1) the initial x-ray of Plaintiff's right ankle; 2) x-rays of the initial work done to stabilize the fracture; 3) x-rays and other images of the ankle at subsequent dates; 4) the Geisinger facility consultation report; and 5) color photographs of Plaintiff's ankle, foot, and leg.

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[25] *Miller v. Sacred Heart Hosp.*, 753 A.2d 829, 833 (Pa. Super. 2000) (*quoting Hamil v. Bashline*, 392 A.2d 1280, 1285 (Pa. 1978)).
[26] *Id.* (*quoting Brannan v. Lankenau Hosp.*, 417 A.2d 196, 199 (Pa. 1980)).

Dr. Carpenter reviews the history of Plaintiff's medical issues, describing the extent of his initial severe right ankle fracture and dislocation before detailing his interpretation of the medical documents he reviewed. Finally, Dr. Carpenter explains his conclusions and opinions, reproduced in their entirety, as follows:

> "Mr. Dodson certainly sustained a severe fracture dislocation of his right ankle. Mr. Dodson was a diabetic with neuropathy of his ankle and foot. These patients require extra diligence in their treatment. It is widely known of the high risk of infection following any surgical procedure on the foot and ankle of such a patient. The other complication of treatment of fractures in these patients is that of a Charcot joint where any attempt at hardware fixation fails and very frequently amputation is the result. Limb salvage can be accomplished in many of these patients with a multi specialist approach which is certainly available at large medical centers.
>
> At this point for Mr. Dodson, the only viable solution for his return to healthy reasonable function is that of a below the knee amputation and fitting with a prosthesis.
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> With the records which I have for this report, I have the opinion that there were deviations from the standard of care which have been proximately causative in the need for a below the knee amputation. The details of this opinion will be reserved until full records are available. The opinion of more likely than not malpractice in this case is based on a reasonable degree of medical certainty."

As the Court held in its October 6, 2021 Opinion and Order, this is a sufficient statement to support a certificate of merit. Explaining the difference between the standard at the certificate of merit stage and the summary judgment stage, the Court wrote in the October 6, 2021 Opinion and Order:

> "Here, Defendant avers that Dr. Carpenter's statement does not conform to the Certificate of Merit rules in that it fails to identify: 1) the provider(s) being criticized; 2) the care at issue; 3) the alleged

standard of care; and 4) the alleged 'deviations' from the standard of care. Defendant also avers that the statement is deficient because Dr. Carpenter did not review any medical records with the sole exception of x-rays and a single record form a non-UPMC treating physician.... Although Defendant accurately summarizes the deficits in Dr. Carpenter's report, the Court is disinclined to strike the Certificate of Merit on the bases that Defendant has enumerated... [T]here is no requirement under Rule 1042.3 that the underlying report be based on Plaintiff's full medical history or identify the individual providers alleged to have been negligent. Indeed, the latter requirement would be inconsistent with Rule 1042.3(a)(2), which does not require the Certificate of Merit to identify the individual providers for whom the defendant is vicariously liable.

... The standards for admission of expert testimony at trial are clear. Although there is no challenge to Dr. Carpenter's competence... his skill and experience will not permit him to state a judgment at trial based on mere conjecture. 'Expert testimony must be based on more than mere personal belief, and must be supported by reference to facts, testimony or empirical data.' 'The admission or exclusion of expert testimony is in the sound discretion of the trial court and will not be overruled absent a clear abuse of discretion.' A trial court thereby may properly preclude expert testimony where the proffered expert report contains only conclusory statements as to the defendant's negligence or non-negligence. Further, a trial court may determine that a medical expert's methodology is insufficient, and therefore inadmissible at trial, if the expert fails to review relevant medical records in preparing their expert report.

The Court agrees that the written statement attached to the Certificate of Merit, lacking in detail and conclusory as it is, and based on limited medical information, would not withstand challenge if Plaintiff intended to have Dr. Carpenter testify at trial based on this written statement alone. However, there is no concomitant statute or case law of which the Court is aware suggesting that the written statement submitted with the Certificate of Merit must meet that standard... That a *pro se* plaintiff may face a lower burden at the outset of their case than at the trial stage is congruent to this Court, as to hold otherwise would require a *pro se* plaintiff to provide his expert report at the outset of his claim. No plaintiff who is represented by counsel in a professional liability action is held to such a standard.

> The Court is satisfied from review of Dr. Carpenter's written statement that he identifies the surgeries performed on Plaintiff's ankle at UPMC facilities as having fallen below the standard of care, resulting in infection and eventual necrosis in Plaintiff's ankle. It is not entirely clear from the report if Dr. Carpenter alleges negligence in the performance of the surgeries or negligence in the failure to timely follow-up when Plaintiff began experiencing post-surgical infections. Nonetheless, the Court is satisfied that Plaintiff has met his burden under Rule 1042.3(e) in obtaining a written statement supportive of his Certificate of Merit."

Thus, in the October 6, 2021 Order, this Court explained that Dr. Carpenter's statement *would not* suffice as an expert opinion. Although it satisfies the Rules of Civil Procedure regarding certificates of merit because it asserts that deviations from some applicable standard of care likely caused Plaintiff harm, the Court clarified that this is a lower burden than is applicable later in the process when the parties are required to produce their expert reports. The Court specified that Dr. Carpenter's statement is insufficient as an expert report because it does not specify *which* standards of care were violated or *who* violated them. The Court also strongly suggested that the review of a handful of x-rays and a single report from a provider other than Defendant constituted an insufficient medical record from which an expert could draw satisfactory conclusions, and that a review of a much greater portion of Plaintiff's medical record was required to demonstrate a sufficient methodology.

Despite the detailed explanation of the October 6, 2021 Order, Plaintiff has clearly misunderstood the Court's ruling.[27] Although Plaintiff cites the October 6, 2021 Order to support his contention that Dr. Carpenter's statement constituted a sufficient expert report, the Court very clearly stated the opposite: "The Court agrees that the written statement... would not withstand challenge if Plaintiff intended to have Dr. Carpenter testify at trial based on this written statement alone."[28]

Because Plaintiff has not produced an expert report or any expert opinion beyond Dr. Carpenter's initial statement, he has failed to establish the elements of his claim to even a *prima facie* level. Plaintiff has not produced evidence that any particular doctor was violated a duty of care when performing surgery or otherwise treating him. As the Court suggested in the October 6, 2021 Opinion and Order, it is unclear whether Dr. Carpenter suggested medical providers were negligent 1) in performing the first surgery; 2) in caring for Plaintiff between the surgeries; 3) in performing the second surgery; 4) in caring for Plaintiff after the second surgery; or

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[27] Plaintiff's *pro se* status does not excuse this misunderstanding, especially regarding such a fundamental tenet of law as the need to produce legally sufficient evidence supporting one's case. It is well established that "*pro se* status confers no special benefit [and] [t]o the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing." *Norman for Estate of Shearlds v. Temple University Health System*, 208 A.3d 1115, 1118-19 (Pa. Super. 2019).

[28] Indeed, Plaintiff misunderstands the burden of proof and the need for expert testimony. In his various filings, Plaintiff argued that he did not need to call any expert to testify because Defendant failed to produce an expert to rebut Dr. Carpenter's statement. However, as the party bringing the claim, Plaintiff bears the burden of proof, and is required to make out each element of his case to a *prima facie* standard before Defendant even begins to present evidence.

5) during some combination of these periods of care. It is similarly unclear whether Dr. Carpenter's opinion would remain the same after viewing a larger portion of Plaintiff's medical records.

Stated differently, Plaintiff has not produced any evidence that any particular doctor or health care provider caused him harm or *how* that harm arose. The standards of care surrounding surgery to address a severe fracture in a diabetic patient, the attention required to avoid or minimize infection, and the protocols for subsequent surgery to address infection and other complications are indisputably beyond "the range of ordinary experience and comprehension of... non-professional persons." Here, it is Plaintiff who asserts a "standard of care to prevent infection" and a "standard of care to honor the UPMC agreement [to insert a rod, which means that] [t]he surgically shortened limb was an erroneous act by the UPMC provider for which UPMC has strict administrative responsibility with vicarious liability."[29]

Plaintiff's assertions are insufficient as a matter of law. Because of the complexity of the human body, Pennsylvania law requires an expert to establish the standards of care and which actions violated them, causing the plaintiff's harm. The mere fact of an infection, or of a surgical complication, is insufficient to establish that negligence has occurred, let alone who is responsible for it. Because Plaintiff has "fail[ed] to produce expert medical opinion addressing the elements of his cause of

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[29] Plaintiff's August 4, 2022 Memorandum of Law Pursuant to Rule 4003.5, ¶¶6,7 (emphasis omitted).

action… he has failed to establish a prima facie case" of medical malpractice and Defendant is therefore entitled to summary judgment.

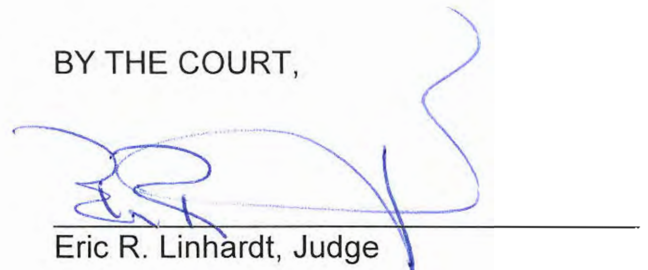
Because the Court has ruled that Defendant is entitled to summary judgment, the Court need not address Plaintiff's Motion for Summary Judgment.

ORDER

AND NOW, this 9th day of January 2023, for the foregoing reasons, the Court GRANTS Defendant's Motion for Summary Judgment and DENIES Plaintiff's Motion for Summary Judgment. This case is hereby DISMISSED.

Plaintiff may file a Notice of Appeal within thirty (30) days of the date of this Order. Any appeal must comply with the Pennsylvania Rules of Appellate Procedure.

IT IS SO ORDERED.



BY THE COURT,

Eric R. Linhardt, Judge

ERL/jcr
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