

pain and left knee pain. During her time as a patient at Pain Centers, the Plaintiff was prescribed methadone for her chronic back pain and given injections for her left knee pain. In February 2018, the Plaintiff decided to start seeking treatment for her chronic back pain and methadone prescription from a nurse practitioner instead of Pain Centers. (Plaintiff's Petition ¶ 9). On February 20, 2018, the Plaintiff had a follow-up appointment at Pain Centers for her left knee pain.

In her Petition, the Plaintiff asserts that Pain Centers engaged in three negligent acts. First, the Plaintiff asserts that on February 20, 2018, an employee of Pain Centers contacted the pharmacy where she fills her prescriptions and convinced them to cancel her prescriptions for methadone and Lyrica that she received from the nurse practitioner. (Plaintiff's Petition ¶ 13). Second, the Plaintiff asserts that on February 20, 2018, Pain Centers, through employee Michelle Prisner, terminated her as a patient. (*Id.* ¶ 14). The Plaintiff asserts that in terminating her as a patient, Pain Centers failed to provide her with the following: (1) a written notification of her termination; (2) a 30 day supply of methadone; (3) a list of other medical practitioners who could treat her back pain. (*Id.*). Third, the Plaintiff asserts that Ms. Prisner contacted the nurse practitioner and told the nurse practitioner that the Plaintiff was still a patient at Pain Centers and only seeking drugs from the nurse practitioner. (*Id.* ¶ 12). The Plaintiff contends that the nurse practitioner terminated her as a patient because of Ms. Prisner's representations that the Plaintiff was "drug seeking". (*Id.*). The Plaintiff asserts that because of the actions of Pain Centers and its employees, she was unable to receive continuous treatment for her back pain from February 20, 2018 to June 11, 2019 and has incurred damages. (Plaintiff's Petition ¶ 16–17).

Pain Centers now moves to dismiss this action. Pain Centers asserts that the Plaintiff has failed to serve a certificate of merit affidavit upon Pain Centers pursuant to section 147.140(1)(a)

of the Iowa Code. Pain Centers seeks dismissal pursuant to section 147.140(6) of the Iowa Code due to Plaintiff's failure serve a certificate of merit affidavit.

ANALYSIS

I. Motion to Dismiss Standard

A motion to dismiss tests "the legal sufficiency of the petition." *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). In ruling on a motion to dismiss, "a court views the well-pled facts of the petition in the light most favorable to the plaintiff, resolving any doubts in the plaintiff's favor." *Turner v. Iowa State Bank & Trust Co. of Fairfield*, 743 N.W.2d 1, 3 (Iowa 2007). The Court can only consider the facts alleged in the plaintiff's petition and facts of which judicial notice may be taken. *Id.*

II. Requisite Certificate of Merit Affidavit for Necessary Expert Witness

To establish a prima facie case of medical negligence, a plaintiff must present evidence which establishes the applicable standard of care, demonstrates that the defendant breached that standard, and "develop[s] a causal relationship between the violation and the alleged harm" caused by the defendant. *Kennis v. Mercy Hosp. Med. Ctr.*, 491 N.W.2d 161, 165 (Iowa 1992) (citing *Daboll v. Hoden*, 222 N.W.2d 727, 734 (Iowa 1974)). "Most medical malpractice lawsuits are so highly technical they may not be submitted to a fact finder without medical expert testimony supporting the claim." *Bazel v. Mabee*, 576 N.W.2d 385, 387 (Iowa Ct. App. 1998). A physician's applicable standard of care can only be established by the testimony of experts. *Welte v. Bello*, 482 N.W.2d 437, 439 (Iowa 1992). "When the causal connection between the tortfeasor's actions and the plaintiff's injury is not within the knowledge and experience of an ordinary layperson, the plaintiff needs expert testimony to create a jury question on causation." *Doe v. Cent. Iowa Health Sys.*, 766 N.W.2d 787, 793 (Iowa 2009) (citing *Bradshaw*

v. Iowa Methodist Hosp., 101 N.W.2d 167, 171 (1960)). However, medical expert testimony is not necessary when (1) the medical provider's lack of care is obvious to a lay person and "required only common knowledge and experience to understand" or (2) the medical provider injured a part of the Plaintiff's body that was not being treated. *Oswald v. LeGrand*, 453 N.W.2d 634, 636 (Iowa 1990).

Iowa law states the following about necessary expert testimony for medical malpractice actions:

In any action for personal injury...against a health care provider based upon the alleged negligence in the practice of that profession or occupation or in patient care, which includes a cause of action for which expert testimony is necessary to establish a prima facie case, the plaintiff shall, prior to the commencement of discovery in the case and within sixty days of the defendant's answer, serve upon the defendant a certificate of merit affidavit signed by an expert witness with respect to the issue of standard of care and an alleged breach of the standard of care.

Iowa Code § 147.140(1)(a) (2020). A plaintiff's "[f]ailure to substantially comply with subsection 1 shall result, upon motion, in dismissal with prejudice of each cause of action as to which expert witness testimony is necessary to establish a prima facie case." Iowa Code § 147.140(6) (2020).

In the present case, Pain Centers asserts that an expert witness is necessary because the Plaintiff's claims against Pain Centers raise technical medical issues. Pain Centers further asserts that the Plaintiff never served a certificate of merit affidavit for an expert witness. The Plaintiff has not filed a resistance to Pain Centers' motion.

Because the Plaintiff failed to file a written resistance to Pain Centers' motion, the only document available for the Court's review is the Petition filed by the Plaintiff. The Petition filed by the Plaintiff contains a single count and is grounded in negligence. The cumulative import of the allegations made in the Petition is that Pain Centers was negligent for terminating Plaintiff's

care, and interfering with Plaintiff's care with a subsequent provider, thereby causing a delay in care and treatment. After reviewing the allegations in Plaintiff's petition, the Court finds that the applicable standard of care for treating and terminating a patient in the Plaintiff's position is not within a lay person's common knowledge. The duties of healthcare professionals related to transfer of patient care, no matter which party initiates the termination of the relationship, would not be obvious to the lay person. Patient care and the transfer of patient care is also now subject to the Federal Health Insurance Portability and Accountability Act of 1996 (HIPPA). The rules and requirements of HIPPA would not be within a lay person's knowledge. In addition, expert testimony would be required to demonstrate any delay in treatment, such as the delay alleged in paragraph 16 of the Petition, was a proximate cause of any damage sustained by the Plaintiff. Accordingly, the Court finds that an expert witness is necessary to identify the standard of care that is required when a physician treats and terminates a patient in the Plaintiff's position. The Court finds expert testimony would also be necessary on the issue of causation related to any delay in treatment and as to any damages causally related to the delay in treatment.

The Court finds the Plaintiff has failed to meet the requirements of section 147.140(1) (a) of the Iowa Code. The Plaintiff failed to serve a certificate of merit affidavit for her expert witness within the statutory deadline. Without an expert witness to establish the applicable standard of care, the Plaintiff cannot establish that Pain Centers breached the applicable standard of care. In addition, without an expert, the Plaintiff cannot show a causal relationship exists between Pain Centers' alleged breaches and the Plaintiff's alleged injuries. Therefore, the Plaintiff's action cannot survive. Accordingly, the Court finds that dismissing this entire action pursuant to section 147.140(6) of the Iowa Code is appropriate and warranted.

RULING

For all of the above-stated reasons, it is the ruling of the Court that the Defendant's Motion to Dismiss should be and hereby is GRANTED in its entirety.

IT IS THEREFORE ORDERED that the Plaintiff's claims against the Defendant are DISMISSED WITH PREJUDICE pursuant to section 147.140(6) of the Iowa Code.

IT IS FURTHER ORDERED that costs are assessed to the Plaintiff.



State of Iowa Courts

Type: OTHER ORDER

Case Number LACE132690
Case Title CHAMPAGNE, ROBIN VS PAIN CENTER OF IOWA PC

So Ordered

A handwritten signature in cursive script that reads "Jeffrey D. Bert".

Jeffrey D. Bert, District Court Judge
Seventh Judicial District of Iowa