

Circuit Court for Baltimore City
Case No. 24-C-16-003430

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 317

September Term, 2018

REMONIA B. CHAPLIN, ET AL.,

v.

UNIVERSITY OF MARYLAND MEDICAL
SYSTEM CORPORATION

Nazarian,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: October 25, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

As a precondition to suing a board-certified health care provider for medical malpractice, a plaintiff must file a certificate from a health care provider “in the same or related specialty as the defendant,” which alleges “that the care given by the health care provider is not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.” MD. CODE, COURTS AND JUDICIAL PROCEEDINGS (“CJ”) § 3-2A-02(c)(1); (c)(2)(ii)(1). In this case we hold that a licensed nurse practitioner, even one who is a Certified Clinical Transplant Coordinator, is not “in the same or related specialty” as a board-certified transplant surgeon.

FACTS AND BACKGROUND

Remonia B. Chaplin suffers from end-stage renal disease. She sought and received a kidney transplant at the University of Maryland Medical System’s (UMMS) Transplant Center, performed by Dr. Silke Niederhaus, a surgeon board-certified by the American Board of Surgery, who specializes in kidney transplant surgery.¹ According to the allegations in the complaint, Dr. Niederhaus deviated from the standard of care by

¹ To become a board-certified surgeon, a candidate must have graduated from an accredited medical school in the U.S. or Canada, completed at least five years in a surgical residency program approved by the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada, have a valid U.S. or Canadian medical license, and pass both a written Qualifying Examination and an oral Certifying Examination. *About ABS Certification*, AM. BD. OF SURGERY, <https://perma.cc/U8KX-GCPN> (last visited Oct. 23, 2019). The training required to become a board-certified surgeon includes operative experience, development of surgical skills and an in-depth knowledge of disease management. *Id.*

transplanting an unsuitable kidney into Chaplin. In support of her complaint, Chaplin filed two documents: (1) a “Certificate of Qualified Expert” prepared by Karen Paolini; and (2) a “Report of Karen Paolini, M.S., ANP-BC, CCTC.”² The Circuit Court for Baltimore City found that neither of these documents satisfied the requirements of CJ § 3-2A-02(c) and granted summary judgment for the defendants.³ This timely appeal followed.

DISCUSSION

The Maryland Health Care Malpractice Claims Act (“Act”) requires a certificate from a health care provider in the “same or related specialty” as the defendant:

In any action for damages filed under this subtitle, the health care provider is not liable for the payment of damages unless it is established that the care given by the health care provider is not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the cause of action.

² The acronyms designating Nurse Paolini’s credentials stand for Master of Science, Adult Nurse Practitioner-Board Certified, and Certified Clinical Transplant Coordinator, respectively.

³ Chaplin also advances the theory that the circuit court granted summary judgment as punishment for her tardiness to the summary judgment hearing. We see no basis in the record to support this contention. Moreover, for the reasons stated in this opinion, we conclude that the trial court did not err in granting summary judgment in favor of UMMS on all counts, including the absence of informed consent claim and her husband’s loss of consortium claim, which, as a matter of law, cannot survive the termination of Chaplin’s primary negligence claim. *See Owens-Illinois, Inc. v. Cook*, 386 Md. 468, 486-487 (2005) (describing a loss of consortium claim as a derivative action for the loss of companionship, affection, and assistance within the marital unit based on the injury to one spouse as a result of the defendant’s tortious conduct); *see also Oaks v. Connors*, 339 Md. 24, 33-34, 38 (1995).

CJ § 3-2A-02(c)(1).

The health care provider who is alleged to have deviated from the standard of care is Dr. Silke Niederhaus, a board-certified surgeon. To support her allegations, Chaplin provided a certificate from Karen Paolini, a licensed nurse practitioner and Certified Clinical Transplant Coordinator.⁴

The governing law stresses that when determining if one practitioner is qualified under the Act to opine as to the standard of care applicable to another practitioner, we should not focus on the titles of health care practitioners or the names of their fields of practice. Instead, we look to the substance of what the health care practitioners' respective areas of concern is to discern whether there is sufficient "overlap" to permit the proposed certifying health professional to opine about the applicable standard of care. *DeMuth v. Strong*, 205 Md. App. 521 (2012); *Hinebaugh v. Garrett County Memorial Hosp.*, 207 Md. App. 1 (2012).

In *DeMuth*, we held that when a procedure or treatment corresponds with two specialties, then those two specialties sufficiently "overlap." *DeMuth*, 205 Md. App. at 544. The medical event at issue in *DeMuth* was the failure to properly treat a patient for

⁴ To become a Certified Clinical Transplant Coordinator, one must be certified by the American Board for Transplant Certification (ABTC). Candidates must complete 12 months of work as a clinical vascular organ coordinator and pass the ABTC certification examination to earn the certification. *Certification Examinations*, AM. BD. FOR TRANSPLANT CERTIFICATION, <https://perma.cc/45K5-5LDL> (last visited Oct. 23, 2019). A Certified Clinical Transplant Coordinator is expected to be proficient in the following core areas: transplant referral and evaluation, pre-transplant waiting period, peri-operative period, post-transplant in-patient period, post-transplant out-patient period, living donation, professional development, and professional practice. *Core Competencies*, ORG. FOR TRANSPLANT PROF'S, <https://perma.cc/77EP-HRFM> (last visited Oct. 23, 2019).

decreased blood flow to his leg during the postoperative period following knee replacement surgery. *Id.* at 526. We concluded that because both vascular and orthopedic surgeons are involved in postoperative monitoring and diagnosis to detect vascular complications resulting from orthopedic surgery, there was sufficient “overlap” to view the two fields as “related specialties.” *Id.* at 546. A board-certified vascular surgeon was therefore qualified to act as a certifying expert in a case against a board-certified orthopedic surgeon. *Id.*

In *Hinebaugh*, we applied the test from *DeMuth* to determine whether a doctor of dental surgery (D.D.S.) specializing in oral and maxillofacial surgery could act as a certifying expert against a radiologist and a family medicine practitioner. *Hinebaugh*, 207 Md. App. at 8-9. We held that, because the test is whether the certifying expert is “equally knowledgeable” about “the prevailing standard of care,” a dentist, if otherwise qualified, could provide a certificate regarding a physician’s deviation from the standard of care. *Id.* at 21-23. We also held, however, that although dentists specializing in oral and maxillofacial surgery, radiologists, and family medicine physicians are all qualified to diagnose facial fractures, dentists specializing in oral and maxillofacial surgery do not act as “front line health care providers” when making that diagnosis. *Id.* at 28-29. Therefore, there was an insufficient overlap between the specialties of a dentist specializing in oral and maxillofacial surgery on the one hand and a radiologist and a family medicine practitioner on the other hand. *Id.* at 29. Thus, consistent with *DeMuth* and *Hinebaugh*, the question we must answer is whether the subject matter of Nurse Paolini’s specialty, transplant coordination, overlaps sufficiently with Dr. Niederhaus’ specialty and

experience in surgery so as to allow Nurse Paolini to understand and appreciate the standard of care applicable to surgeons performing kidney transplants.

While we do not wish to diminish in any way the important and lifesaving work that transplant coordinators perform, it is neither the same, nor comparable to the work of a surgeon. Transplant coordinators act pursuant to instructions given by surgeons. Surgeons, not the transplant coordinators, determine, who is eligible for a transplant, what organs are acceptable, and what treatments are necessary based on the standard of care. Transplant coordinators may be aware of the guidelines that surgeons follow during transplant procedures, but coordinators do not decide what those guidelines are or when it is appropriate to depart from them. There is no “overlap,” and therefore, because Nurse Paolini does not practice in the same or related specialty, her certificate does not satisfy the statutory requirement.

Chaplin tries to avoid this result in two ways. *First*, she relies on an exception under CJ § 3-2A-02(c)(2)(ii)(2), which says that a certificate from a board-certified health care practitioner is not required when the “health care provider taught medicine in the defendant’s specialty or a related field of health care.” CJ § 3-2A-02(c)(2)(ii)(2)(B). Chaplin argues that Nurse Paolini has experience teaching medicine in a related specialty because she has contributed to journal articles on transplant outcomes and instructed parts of classes on renal transplant. We leave for another day whether writing journal articles alone is the same as teaching medicine. Here, the subject matter of Nurse Paolini’s articles concerns only transplant coordination, which is not the “same or related field of health care” as a surgeon. *See* CJ § 3-2A-02(c)(2)(ii)(1)(B). Furthermore, Nurse Paolini’s

teaching is limited to training new nurses, not surgeons, on transplant rejection and related medications at the hospital where she works. We are not persuaded that this is sufficient to demonstrate that Nurse Paolini “taught medicine” in Dr. Niederhaus’ specialty or in a related specialty, or that she has a detailed enough knowledge of kidney transplant surgery compared to Dr. Niederhaus. *See* CJ § 3-2A-02(c)(2)(ii)(1)(B).

Second, Chaplin asserts that UMMS, not Dr. Niederhaus, is the named defendant and that under the plain meaning of CJ § 3-2A-02(c)(2)(ii)(1)(B), a certifying expert is only required to be board-certified when the defendant is board-certified. As such, she asserts that Nurse Paolini does not need to be board-certified because UMMS itself is not board-certified in any specialty.

The purpose of statutory interpretation is to determine and effectuate the legislative intent. *Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006). We decline to infer that the General Assembly intended to allow plaintiffs to avoid the carefully constructed certification requirement by the artifice of a minor change in pleading: the substitution of a hospital for a doctor. As Judge Eyler explained in *DeMuth*, the Act aims to prevent frivolous claims from increasing defense costs from the outset. *DeMuth*, 205 Md. App. at 539. We, therefore, will not now read the statute to allow a plaintiff to reframe her complaint with a hospital as the defendant (on a *respondeat superior* claim) rather than the hospital’s doctor (on a direct liability claim) and allow a claim lacking certification to proceed.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**