Circuit Court for Montgomery County
Case No. C-15-CV-23-000946

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1019

September Term, 2023

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DENISE CANNON-EARL, *et. al.*

v.

SSC SILVER SPRING OPERATING COMPANY, LLC

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Wells, C.J.,
Arthur,
Ripken,
JJ.

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Opinion by Ripken, J.

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Filed: March 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In March of 2020, a claim was filed in the Health Care Alternative Dispute Resolution Office ("HCADRO") which alleged that, in June of 2018, SSC Silver Spring Operating Company, LLC, doing business as Arcola Health and Rehabilitation Center ("Arcola"), committed medical negligence which resulted in the death of Juanita Cannon ("J. Cannon"). The claim was filed by Denise Cannon-Earl and Servel Cannon ("Appellants"), the children of J. Cannon; Denise Cannon-Earl also joined in her capacity as the personal representative of J. Cannon's estate. The claim was transferred to the Circuit Court for Montgomery County and dismissed without prejudice in July of 2022 due to multiple deficient Certificates of Qualified Expert ("CQE"). In September of 2022, Appellants filed a new claim with HCADRO which was again transferred to the circuit court and subsequently dismissed as time-barred. Appellants timely appealed.

Appellants present the following issue for our review:[1] Whether the circuit court erred in dismissing Appellants' claim with prejudice because it was time-barred and there were no savings clause provisions which applied.

For the reasons to follow, we shall affirm the circuit court's order dismissing the complaint with prejudice.

## FACTUAL AND PROCEDURAL BACKGROUND

J. Cannon was a patient and long-term resident of Arcola, which provided nursing home services, including consultation, rehabilitation, and treatment. J. Cannon had a

[1] Rephrased from: "Whether the Circuit Court Erred in Dismissing Appellants' Claim with Prejudice Where Appellants Were Permitted to Re-File Their Claim under CJP § 5-119 and § 3-2A-04(b)(4)(iv) and The Applicable Law."

percutaneous endoscopic gastrostomy tube ("G-Tube") which provided her with nutrition and hydration. In January of 2018, the G-Tube became dislodged, and J. Cannon was assessed by a nurse employed by Arcola. As a result, an appointment was scheduled by Arcola with a board-certified gastroenterologist in the following month; however, the appointment was later canceled by Arcola. In April that same year, J. Cannon was again evaluated by an Arcola provider due to issues with the G-Tube, although no further testing or appointments were ordered.

In May of 2018, Appellant, Denise Cannon-Earl, took J. Cannon to a gastroenterology clinic whereupon it was recommended that J. Cannon immediately be examined at a hospital. Later that day, J. Cannon went to the emergency room and was subsequently admitted. J. Cannon's condition continued to worsen, and she remained in the hospital until she developed sepsis and died in June of 2018.

In August of 2020, after waiving arbitration before HCADRO, Appellants filed a complaint in the circuit court alleging a survival claim, medical negligence, and wrongful death.[2] Appellants alleged that Arcola committed medical negligence which resulted in J. Cannon's death. In March of 2022, after the close of discovery, Arcola filed a motion for summary judgment alleging that the CQE submitted by Appellants was deficient.[3] Arcola

[2] The record provided by Appellants does not contain a copy of the transfer order from HCADRO that would have permitted Appellants to file the original complaint in the circuit court. However, we note the original complaint was filed in the circuit court in August of 2020 without any challenges to its jurisdiction, nor are any raised on appeal.

[3] The CQE is a required component of a medical malpractice claim. Md. Code Ann., Courts and Judicial Proceedings ("CJP") § 3-2A-04(b)(1)(i). The statute requires that the certificate include a statement by a health care provider attesting that an injury occurred

argued that Appellants' certified expert was not qualified to opine on causation in this case because of the offered expert's status as a nurse. The court conducted a hearing in April of 2022 to address the motion and held that "Maryland law does not allow a nurse to make a diagnostic determination of causation in a complicated sepsis case such as this." The court reserved on Arcola's motion and ordered the Appellants to file a substitute CQE by June 24, 2022.

One month later, in May of 2022, Appellants filed a substitute CQE which was signed by Dr. Mitchell Blass ("Dr. Blass"). In the CQE, Dr. Blass attested to his status as a physician licensed to practice medicine and identified that he was board certified in both internal medicine and infectious diseases. Dr. Blass then opined that "within a reasonable degree of medical certainty, that the healthcare providers of Arcola . . . failed to comply with applicable standards of care while [J.] Cannon was their patient."

Arcola then moved to strike the substitute CQE as deficient for failure to identify the names of the individuals who breached the standard of care when treating Ms. Cannon. Citing *Carroll v. Konits*, Arcola argued that for the CQE to be proper it must "mention explicitly the name of the licensed professional who allegedly breached the standard of care." 400 Md. 167, 196 (2007). As such, Arcola asserted that the complaint must be dismissed.

because of a breach of the standard of care and identifies the individuals who breached the standard of care. *Carroll v. Konits*, 400 Md. 167, 201 (2007). A more detailed explanation of a CQE and its requirements can be found in the Health Care Medical Malpractice Act Background. *See* Discussion Section I.A., *infra*.

In July of 2022, after a hearing on the matter, the court dismissed the complaint without prejudice. The court's order indicated that the complaint was dismissed because the nurse "was not qualified to render the opinions required of a certifying expert in this case" and the substitute CQE attested to by Dr. Blass failed to "identify any individual providers with any specificity who [Appellants] allege breached the standard of care[.]" Appellants proceeded to refile their claim with HCADRO in September of 2022, more than four years after the date of J. Cannon's death. Appellants then submitted the required CQE and corresponding expert report. After waiving arbitration and receiving the transfer order, Appellants filed a new complaint in the circuit court in March of 2023.

In response, Arcola filed a motion to dismiss, asserting the complaint was time-barred. Arcola claimed that the statute of limitations for filing the claim had passed and that no savings clause was applicable to the facts of the case.

Following a hearing, the circuit court issued an order in July of 2023 dismissing the complaint as time-barred. The court found that the statute of limitations expired in June of 2021 and neither savings clause provision, asserted by Appellants, was applicable.

## DISCUSSION

### I. THE COURT CORRECTLY DISMISSED THE COMPLAINT AS TIME-BARRED.

#### A. Health Care Malpractice Claims Act Background

Before addressing the merits of the case, we provide a brief explanation of the relevant provisions within the Health Care Malpractice Claims Act ("HCMCA"),[4] found in section 3-2A-01 *et seq*. of the Courts and Judicial Proceedings Article ("CJP") of the Annotated Code of Maryland. The HCMCA governs "[a]ll claims, suits, and actions . . . by a person against a health care provider for medical injury allegedly suffered by the person in which damages of more than the limit of the concurrent jurisdiction of the District Court are sought[.]" CJP § 3-2A-02(a)(1).

An action is commenced when a party alleging medical malpractice submits a claim to the Director of HCADRO for arbitration. CJP § 3-2A-04(a)(1)(i); *see also Walzer v. Osborne*, 395 Md. 563, 574–75 (2006). After the claim is filed, the party has 90 days to file a proper CQE with the Director. CJP § 3-2A-04(b)(1)(i). Once the CQE has been submitted, either party can waive arbitration and transfer the action to circuit court. CJP § 3-2A-06B(b)(1) and (c)(1). Following a waiver of arbitration, the plaintiff must file a complaint in the circuit court within 60 days of the waiver being filed or risk dismissal. CJP § 3-2A-06B(f)(1)-(3).

"The purpose of the health claims arbitration process and the [CQE] requirement is to weed out non-meritorious claims and reduce the costs of litigation." *Dunham v. Univ. of Md. Med. Ctr.*, 237 Md. App. 628, 646 (2018) (quoting *Retina Grp. of Washington, P.C.*

[4] For a detailed explanation of the history of the HCMCA and the history of medical malpractice claims in Maryland, refer to *Breslin v. Powell*, 421 Md. 266, 278–86 (2011). *See infra*.

*v. Crosetto*, 237 Md. App. 150, 167 (2018)) (internal quotation marks omitted). Thus, the CQE is an integral part of a medical malpractice claim. *See id.* at 652.

A proper CQE exists when a qualified expert "attest[s] to departure from standards of care, and that the departure from standards of care is the proximate cause of the alleged injury[.]" CJP § 3-2A-04(b)(1)(i). The CQE must also identify "explicitly the name of the licensed professional who allegedly breached the standard of care." *Carroll*, 400 Md. at 196. "When a Certificate does not identify, with some specificity, the person whose actions should be evaluated, it would be impossible for the opposing party, the HCADRO, and the courts to evaluate whether a physician, or a particular physician out of several, breached the standard of care." *Id.* Additionally, an attesting expert report must be attached to the CQE; the report consists of additional information to supplement the main contentions contained in the Certificate. *Walzer*, 395 Md. at 583.

A qualified expert is a health care provider who has "had clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant's specialty or a related field of health care, or in the field of health care in which the defendant provided care or treatment to the plaintiff, within 5 years of the date of the alleged act or omission" resulting in the claim. CJP § 3-2A-02(c)(2)(ii)(1)(A). Further, "if the defendant is board certified in a specialty," the health care provider serving as the expert "shall be board certified in the same or a related specialty[.]" CJP § 3-2A-02(c)(2)(ii)(1)(B). Additionally, in a rule colloquially known as the "25% Rule," the qualified expert cannot "devote[] more than 25% of the[ir] . . . professional activities to activities that directly

involve testimony in personal injury claims during the 12 months immediately before the date when the claim was first filed." CJP § 3-2A-04(b)(4)(ii).

A certificate filed without the required information "is tantamount to not having filed a certificate at all" and is remedied by dismissing the complaint without prejudice. *Breslin v. Powell*, 421 Md. 266, 292 (2011) (quoting *D'Angelo v. St. Agnes Healthcare, Inc.*, 157 Md. App. 631, 645 (2004)). As the Supreme Court of Maryland has stated, "[b]ecause the Certificate is vital, an action in circuit court (or federal court) will be dismissed without prejudice if *any* of the Certificate's material requirements are not met." *Id.* at 298 (emphasis in original). The complaint is also dismissed without prejudice if the party failed to attach the attesting expert report to the CQE. *Walzer*, 395 Md. at 567.

When a complaint is dismissed without prejudice, a party is entitled to obtain a proper CQE and file a new claim with HCADRO. *See id*. at 584 ("[I]n cases where the claimants fail to adhere to the Statute, the claim will be dismissed without prejudice, allowing claimants, subject to the statute of limitations or other applicable defenses, an opportunity to begin the process anew."); *see also Breslin*, 421 Md. at 295. Dismissal of the original complaint without prejudice does not inherently toll the statute of limitations on medical malpractice claims. *See Dunham*, 237 Md. App. at 647. If a claim has been dismissed without prejudice and is later refiled after the statute of limitations has expired, CJP § 5-119 (hereinafter the "Title 5 Savings Clause") and CJP § 3-2A-04(b)(4)(iv) (hereinafter the "Title 3-2A Savings Clause"), include extensions and savings clauses that may preserve the plaintiff's claim. *See* CJP § 5-119(b); CJP § 3-2A-04(b)(4)(iv).

The application of the Title 3-2A and Title 5 Savings Clauses are at issue in the case *sub judice*. The Title 5 Savings Clause proscribes that a party has "60 days from the date of the dismissal" to file "a new civil action or claim for the same cause against the same party" if the complaint was dismissed for failure to attach an expert report to the CQE. CJP § 5-119; *see also* CJP § 3-2A-04(b). Similarly, the Title 3-2A Savings Clause provides an additional "120 days after the date of the dismissal" to "refile the same claim or action" if the complaint was dismissed because "a qualified expert failed to comply with the requirements of this subsection[.]" CJP § 3-2A-04(b)(4)(iv).

**B. Parties' Contentions**

Appellants assert that the lower court erred when it dismissed the second complaint with prejudice because it was time-barred. Appellants contend that the Title 3-2A and Title 5 Savings Clauses were applicable, and as such, the complaint was timely filed. At the outset, Appellants argue that filing an improper expert report constitutes the "failure to file a report" under the Title 5 Savings Clause, and thus Appellants were permitted to file a new claim within 60 days of the July 2022 dismissal. CJP § 5-119. Separately, Appellants allege that the Title 3-2A Savings Clause permits the re-filing of a complaint for failure to meet any of the requirements governing the CQE in CJP § 3-2A-04(b) notwithstanding the expiration of the statute of limitations.

Arcola disputes Appellants' interpretations of the two savings clause provisions and argues that the court was correct in dismissing the complaint with prejudice. Arcola asserts that neither savings clause provision is applicable and contends that the plain language of the Title 5 Savings Clause is unambiguous and only extends the time to file a new

complaint for the same action in the event a plaintiff fails to attach an attesting expert report to the CQE. Nor does the Title 3-2A Savings Clause apply, according to Arcola, because the case was not dismissed for failure to comply with the "25% rule." Arcola acknowledges that an ambiguity exists in the Title 3-2A Savings Clause but asserts that the interpretation proposed by Appellant conflicts with the legislative intent and is thus improper.

**C. Standard of Review**

This Court reviews the grant of a motion to dismiss based on statutory interpretation de novo. *Elsberry v. Stanley Martin Companies, LLC*, 482 Md. 159, 178 (2022). When a lower court interprets, and subsequently applies, Maryland statutory and case law appellate courts "must determine whether the . . . conclusions are legally correct." *Breslin*, 421 Md. at 277 (internal quotation marks and citation omitted).

**D. Statute of Limitations**

Medical malpractice claims must be filed within the timeline proscribed by CJP § 5-109(a), which provides that a claim must be filed within the earlier of "[t]hree years of the date the injury was discovered" or "[f]ive years of the time the injury was committed[.]" CJP § 5-109(a)(1)-(2). The parties agree that the second complaint was filed outside the statute of limitations proscribed by CJP § 5-109. J. Cannon died as result of sepsis in June of 2018, six months after the G-tube became dislodged. Thus, three years after the date of discovery would have been, at the latest, June of 2021, more than one year before the second claim was filed with HCADRO. This Court agrees with the parties that the statute of limitations expired before Appellants filed the second complaint in September of 2022, and therefore we turn to the applicability of the savings clauses.

**E. Section 5-119**

First, we dispense with Appellants' contention that the Title 5 Savings Clause is applicable. The Title 5 Savings Clause provides that if a complaint was filed within the statute of limitations and subsequently dismissed without prejudice because the party failed to attach a report from the attesting expert, as required by CJP § 3-2A-04(b)(3), the party may file a new claim for the same cause against the same parties on or before the later of 60 days from the date of dismissal or the expiration of the statute of limitations. CJP § 5-119; *see also Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 526–28 (2013) (noting that the General Assembly enacted the Title 5 Savings Clause as a response to the Supreme Court of Maryland holding that the failure to attach an attesting expert report required dismissal without prejudice).

As discussed *supra*, the attesting expert report consists of an additional document attached to the certificate for the purpose of supplementing the contentions in the certificate with additional information. *Walzer*, 395 Md. at 583. By contrast the certificate is a document that only attests that a breach of the standard of care occurred, that the breach was the proximate cause of the injury and "identif[ies] with specificity" the health care provider(s) alleged to have breached the standard of care. *Carroll*, 400 Md. at 201; CJP § 3-2A-04(b)(1)(i).

The circuit court dismissed the original complaint without prejudice for two reasons, neither of which implicate the "failure to file" an attesting expert report. CJP § 5-119 (a)(2). The first reason the court provided was that the nurse identified in the original CQE "was not qualified to render the opinions required of a certifying expert in this case[.]" The

second reason the court provided was that the subsequent CQE filed by Appellants failed to "identify any individual providers with any specificity who [Appellants] allege breached the standard of care[.]" Both of the reasons articulated in the order address the contents of the certificate itself; the court's reasons were not related to the contents of the report or a failure to file the report.

Thus, this Court need not consider whether filing an improper report constitutes the failure to file a report for purposes of applying the savings clause. The complaint was dismissed for deficiencies with the CQE, not the report, therefore the Title 5 Savings Clause is not applicable. *See Carroll*, 400 Md. at 185 n.15, 201.

**F. Section 3-2A-04(b)(4)(iv)**

*1. Interpretation*

The primary goal of statutory interpretation is to "ascertain and effectuate the intent of the Legislature." *Walzer*, 395 Md. at 571 (quoting *Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006); *see also 75-80 Properties, L.L.C. v. Rale, Inc.*, 470 Md. 598, 623 (2020). We begin by reading the plain language of the statute "giving it its natural and ordinary meaning." *Breslin*, 421 Md. at 286 (quoting *State Dep't of Assessments and Taxation v. Maryland–Nat'l Capital Park & Planning Comm'n*, 348 Md. 2, 13 (1997)); *see also Williams v. Morgan State Univ.*, 484 Md. 534, 546 (2023). In doing so, we read the plain language of the statute "within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Lockshin v. Semsker*, 412 Md. 257, 275–76 (2010). "If the language of the statute is unambiguous and clearly consistent with the

statute's apparent purpose," our analysis is complete, and the statute is applied as written. *Id.* at 275.

However, if we determine the statute is ambiguous, we must continue our analysis. *See Rale, Inc.*, 470 Md. at 624. Ambiguities exist "[w]hen the words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme[.]" *Blackstone v. Sharma*, 461 Md. 87, 113 (2018) (quoting *State v. Bey*, 452 Md. 255, 266 (2017)) (internal quotation marks omitted).

Upon the finding of an ambiguity, this Court resolves it by turning to other indicia of the legislature's intent. *Lockshin*, 412 Md. at 276; *see also Rale, Inc.*, 470 Md. at 624. Such indicia may include:

> the structure of the statute, including its title; how the statute relates to other laws; the legislative history, including the derivation of the statute, comments and explanations regarding it by authoritative sources during the legislative process, and amendments proposed or added to it; the general purpose behind the statute; and the relative rationality and legal effect of various competing constructions.

*Walzer*, 395 Md. at 573 (quoting *Witte v. Azarian*, 369 Md. 518, 525–26 (2002)). Ultimately, the "'job of this Court is to resolve th[e] ambiguity in light of the legislative intent, using all of the resources and tools of statutory construction at our disposal.'" *Id*. at 573 (quoting *Chow v. State*, 393 Md. 431, 444 (2006)).

The parties dispute whether, under the Title 3-2A Savings Clause, the meaning of the term "subsection" permits Appellants to refile the same action within 120 days of dismissal of the original complaint. The Title 3-2A Savings Clause states:

> If a court dismisses a claim or action because a qualified expert failed to comply with the requirements of *this subsection*, unless there is a showing of bad faith, a party may refile the same claim or action before the later of:
>
> 1. The expiration of the applicable period of limitation; or
>
> 2. 120 days after the date of the dismissal.

CJP § 3-2A-04(b)(4)(iv) (emphasis added).

We begin by reading the language of the statute to determine whether any ambiguities exist. The language of the Title 3-2A Savings Clause might be read to refer to the entirety of CJP § 3-2A-04(b) because of the manner in which "subsection" is used throughout the statutory scheme. Support for this interpretation stems from the manner in which the words "paragraph" and "subparagraph" are used within CJP § 3-2A-04(b). Throughout CJP § 3-2A-04(b), "paragraph" identifies the provisions organized by numerals within parentheses. *See*, *e.g.*, CJP § 3-2A-04(b)(6) ("under paragraphs (1) and (2)"). Similarly, the term "subparagraph" refers to the provisions identified by Roman numerals within parentheses. *See, e.g.* CJP § 3-2A-04(b)(4)(v) ("under subparagraph (iv)"). Thus, the word "subsection," as used within the Title 3-2A Savings Clause, may reasonably be interpreted as broadly referring to the entirety of CJP § 3-2A-04(b) because "paragraph" and "subparagraph" are subgroups within CJP § 3-2A-04(b). For example, in CJP § 3-2A-04(b)(6) the provision identifies "paragraphs (1) and (2) of this subsection" which indicates that the use of the word "subsection" is specifically in reference to CJP § 3-2A-04(b). *See* CJP § 3-2A-04(b)(6).

Conversely, when reading the Title 3-2A Savings Clause within the context of that same statutory scheme, another reasonable interpretation arises. *See Lockshin*, 412 Md. at

276. The Title 3-2A Savings Clause provides an additional 120 days to refile the same claim if the statute of limitations has expired when the "court dismisses a claim or action *because a qualified expert failed to comply with the requirements of this subsection*[.]" CJP § 3-2A-04(b)(4)(iv). The requirements outlined in paragraphs (1) through (7) explicitly identify the various parties responsible for completing those requirements, and the qualified expert is identified only in paragraph (4) which mandates compliance with the "25% Rule." *See* CJP § 3-2A-04(b)(1)-(7). Thus, it is reasonable to interpret the Title 3-2A Savings Clause as applying only to CJP § 3-2A-04(b)(4) because it is only that paragraph which explicitly identifies a requirement with which the qualified expert must comply. *See* CJP § 3-2A-04(b)(4). As a result of this ambiguity, we must determine whether the legislature intended for the savings clause to apply to all provisions within CJP § 3-2A-04(b) or only to CJP § 3-2A-04(b)(4).

Accordingly, to resolve the ambiguity in its application, we turn to the legislative history of the Title 3-2A Savings Clause. The provision at issue was introduced in the Senate in February of 2019.[5] S.B. 773, 2019 Leg., 440th Sess. (Md. Feb. 2019) https://perma.cc/3J6F-XLN2 (hereinafter cited as "S.B. 773 First Reader"). Upon introduction, the bill articulated a general purpose that focused on the health care expert's professional activities and requirements regarding that person's testimony in medical

[5] Prior to the enactment of this amendment the rule mandated that only 20% of a health care provider's professional activities could be devoted to activities directly involved in testimony in personal injury claims. Thus, references to the "20% rule" refer to the requirements for a health care provider before the passage of the amendment at issue. *See* CJP § 3-2A-04(b)(4) (2007).

malpractice claims. *See* S.B. 773 First Reader. Notably, the text of the proposed amendment does not reference any other paragraph within CJP § 3-2A-04(b) and is focused only on the requirements explicitly assigned to a health care professional which are solely articulated in CJP § 3-2A-04(b)(4).[6] *See* S.B. 773 First Reader.

The language of the amendment as introduced in the Senate provided that

(b) Unless the sole issue in the claim is a lack of informed consent:

***

(4) (i) In this paragraph, "professional activities" means all activities arising from or related to health care, regardless of whether the activities contribute to or advance a health care provider's profession.

(ii) A health care provider who attests in a certificate of a qualified expert or who testifies in relation to a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care may not have devoted more than 50% of the expert's professional activities to activities that directly involve testimony in personal injury claims during the calendar year when the alleged event or omission giving rise to the cause of action occurred.

(iii) A health care provider's attestation of compliance with the requirements of this subsection creates a presumption that, if otherwise qualified under the Maryland Rules, the health care provider is qualified to testify in a proceeding before an arbitration panel or a court concerning compliance with or departure from standards of care.

(iv) The presumption under subparagraph (iii) of this paragraph may be rebutted only by clear and convincing evidence that the health care provider's attestation was knowingly false.

[6] We note that while the proposed bill also included the addition of paragraph (b)(3), which prohibited discovery of "documents reflecting income earned by a health care professional and tax or financial documents of a health care professional[,]" that provision did not create any duty or obligation on the part of the health care professional. S.B. 773 First Reader.

> (v) A court may not dismiss a claim or action with prejudice solely because a qualified expert failed to comply with the requirements of this subsection.
>
> (vi) If a court dismisses a claim or action because a qualified expert failed to comply with the requirements of this subsection, a party may commence a new claim or action before the later of:
>
> 1. The expiration of the applicable period of limitation; or
>
> 2. 180 days after the date of the dismissal.

S.B. 773 First Reader. Notably, the narrow focus on the health care provider's professional activities, particularly the impact of those professional activities on litigation did not change throughout the entire legislative process. This is evidenced by the committee amendments and testimony from the hearings held before the House Judiciary Committee and Senate Committee on Judicial Proceedings. *See* S.B. 773, 2019 Leg., 440th Sess. (Md. Apr. 2019) https://perma.cc/899D-PVMQ (hereinafter cited as "S.B. 773 Third Reader"); *see also* Hearing on S.B. 773 In H. Jud. Comm. (Md. 2019) Committees - House Hearing Link (advance to 5:08) (hereinafter cited as "House Hearing"); Hearing on S.B. 773 In S. Comm. On Jud. Procs. (Md. 2019) Committees - Senate Hearing Link (advance to 3:39:41) (hereinafter cited as "Senate Hearing").

After the second reading, the bill was amended to strike the provision concerning discovery, modify the requirement from 50 percent to 25 percent, and change the extended limitations period from 180 days to 120 days.[7] *Compare* S.B. 773 First Reader *with* S.B. 773 Third Reader.

[7] The Senate Committee on Judicial Proceedings held a hearing in March of 2019, prior to the second reading, which notably lasted only three minutes. A representative speaking on

During the House Judiciary Committee hearing, the key stakeholders explained the scope of the provision and the reasons for its creation.[8] House Hearing Committees - House Hearing Link (advance to 5:08). One representative speaking on behalf of stakeholder MedChi stated that the purpose of the bill was to address "how the [20%] rule has been applied and issues that have arisen around that." House Hearing Committees - House Hearing Link (advance to 8:50). When outlining the four provisions in the bill, the MedChi representative noted that what would become the Title 3 Savings Clause "provid[es] some ability where if the expert is tossed out very close to the statute of limitations that you would have a period to go back and refile with an expert that met the now 25% rule." House

behalf of stakeholder Maryland Association for Justice (MAJ) informed the committee that all the stakeholders had been meeting since December and MAJ was optimistic that a compromise would be reached such that an amendment to S.B. 773 would be presented to the committee soon. Senate Hearing Committees - Senate Hearing Link (advance to 3:39:41).

[8] The key stakeholders, as identified by the General Assembly, are MedChi, the state medical society, the Maryland Hospital Association, and the Maryland Association for Justice. *See* House Hearing Committees - House Hearing Link (advance to 5:08). We consider their testimony noteworthy because of the Senate's request in the prior legislative session that the identified stakeholders negotiate a solution to the "20% rule," which resulted in the final bill at issue. *See* House Hearing Committees - House Hearing Link (advance to 8:50) (noting the testimony from the MedChi representative which stated "you'll remember those of us who were here last year had quite a bit of activity surrounding the so called 20% rule and the bill died," and "the speaker requested that the folks at this table and others get together and attempt to find areas that we could work out." He further explained, "the bill that you have in front of you identifies those areas and we are all in support of the bill."). Further support for the significance of the stakeholders' testimony comes from Delegate Luke Clippinger, the chair of the House Judiciary Committee during the passage of the bill, when he confirmed that there were no further amendments to the bill, and that the bill as received by the House "represents the agreement from all the parties[.]" House Hearing Committees - House Hearing Link (advance to 10:27).

Hearing Committees - House Hearing Link (advance to 8:50). Testifying on behalf of the Maryland Association for Justice, their representative further explained that the 20% rule "gave some issues of great confusion," and that the "bill is designed" to solve some of those areas of confusion, "so cases are litigated on their merits." House Hearing Committees - House Hearing Link (advance to 7:00).

As evidenced, the testimony of the stakeholders was singularly focused on the details of the 20% rule and its impact on current litigation, including instances when an expert is disqualified for non-compliance with the 20% rule; at no point during the hearing was another provision within CJP § 3-2A-04(b) discussed. *See* House Hearing Committees - House Hearing Link (advance to 5:08).[9] Nor did any discussion arise regarding the possibility of health care providers, serving as qualified experts, completing the duties and responsibilities articulated in other paragraphs throughout CJP § 3-2A-04(b), such as the filing of the CQE and its service on the other party. The bill was ultimately passed without any further amendments. *Compare* S.B. 773 Third Reader *with* CJP § 3-2A-04(b)(4).

Thus, resolving the ambiguity logically, we conclude that the Legislature intended for the Title 3-2A Savings Clause to apply only in the circumstances when a claim is dismissed because the qualified expert fails to comply with the "25% rule" in paragraph (4).

[9] The floor report provides additional support that the legislature intended for the provision to apply to only CJP § 3-2A-04(b)(4). Floor Report, S.B. 773, 2019 Leg., 440th Sess. (Md. 2019); *see also* Jack Schwartz & Amanda Stakem Conn, *The Court of Appeals at the Cocktail Party: The Use and Misuse of Legislative History*, 54 MD. L. REV. 432, 462 (1995) (identifying floor reports and fiscal notes as potentially valuable sources of legislative purpose).

Multiple principles of statutory interpretation further support this conclusion. Here, the qualified expert is explicitly not identified as the party responsible for the duties outlined in paragraphs (1)-(3) and (5)-(7). *See* CJP § 3-2A-04(b)(1)-(7). For example, paragraphs one, two, and three only identify the "claimant or plaintiff[,]" "defendant[,]" or their respective attorneys with specific responsibilities under those paragraphs. *See* CJP § 3-2A-04(b)(1)-(3). By contrast, the qualified expert is only explicitly prescribed requirements to abide by in paragraph (4). *See* CJP § 3-2A-04(b)(1)-(3). Consequently, applying the Title 3-2A Savings Clause to the entirety of CJP § 3-2A-04(b) conflicts with the language of the other paragraphs that expressly identify the parties who are responsible for complying with each requirement. Thus, under the principle of "'*expressio unius est exclusio alterius*'—the expression of one thing is the exclusion of another[,]" this Court presumes that had the Legislature intended for the qualified expert to be responsible for these duties, it would have explicitly identified the qualified expert in the other paragraphs. *Baltimore Harbor Charters, Ltd. v. Ayd*, 365 Md. 366, 385 (2001).

Nor is it logical to apply the broader interpretation of the Title 3-2A Savings Clause to the entirety of CJP § 3-2A-04(b), such that a qualified expert would be considered an individual responsible for the duties articulated in the other paragraphs of CJP § 3-2A-04(b). The duties outlined in the other paragraphs would require the qualified expert to fulfill such responsibilities as filing the CQE with HCADRO, ensuring that an attesting report is attached when the CQE is filed, serving the CQE on other parties, and other duties. *See* CJP § 3-2A-4(b)(1)-(3) and (5)-(7); *see also Breslin*, 421 Md. at 287 (noting that courts should interpret statutes so that "illogical and unreasonable interpretations are avoided.")

The duties outlined above would be unreasonable and illogical to assign to a health care provider serving as a qualified expert.

Limiting the Title 3-2A Savings Clause to the "25% rule" requirement is also supported by the principle of statutory interpretation that encourages courts to construe statutes in a manner that would not render any clause superfluous. *See Kushell v. Dep't. of Natural Resources*, 385 Md. 563, 577 (2005). If this Court applied the broader interpretation of the Title 3-2A Savings Clause, plaintiffs would be provided an additional 120 days after dismissal to refile the same complaint if the qualified expert failed to attach a report when filing the CQE as required by paragraph (3) of CJP § 3-2A-04(b). *See* CJP § 3-2A-04(b)(3) and (4). Thus, the Title 3-2A Savings Clause would be duplicative with the Title 5 Savings Clause, which was enacted to extend the filing deadline 60 days after dismissal without prejudice due to the failure to attach an expert report. *See Puppolo*, 215 Md. App. at 526–28. Therefore, applying the broader interpretation of the Title 3-2A Savings Clause would render the Title 5 Savings Clause superfluous. Interpretating the Title 3-2A Savings Clause to apply only to CJP § 3-2A-04(b)(4) prevents these results and aligns with the legislative intent.

We conclude that the Title 3-2A Savings Clause applies only to CJP § 3-2A-04(b)(4), and thus, the savings clause at issue is only applicable when a complaint has been dismissed without prejudice for failure on the part of the qualified expert to comply with the "25% rule."

*2. Application*

The Title 3-2A Savings Clause provides that:

> [i]f a court dismisses a claim or action because a qualified expert failed to comply with the requirements of this subsection, unless there is a showing of bad faith, a party may refile the same claim or action before the later of:
>
> 1. The expiration of the applicable period of limitation; or
>
> 2. 120 days after the date of dismissal.

Appellants filed the second complaint outside of the statute of limitations and subsequently rely on the Title 3-2A Savings Clause to revive their medical malpractice claim.

As we have explained, the Title 3-2A Savings Clause is not applicable because the original order was dismissed for two reasons, neither of which were a failure to comply with the "25% Rule." By its order, the court dismissed the complaint because of Appellants' "deficient CQE of [the Nurse], who was not qualified to render the opinions required of a certifying expert in this case[,]" and Appellants' subsequent failure to identify with specificity the providers who breached the standard of care causing the injury in the substitute CQE. While the original CQE was ruled deficient because the nurse was unqualified, it was because the court found that the nurse was not qualified to opine on causation within the case, which had no relation to compliance with the "25% Rule."

The substitute CQE fares no better, as the court ruled the CQE was deficient due to a failure to identify the providers with any specificity. Dr. Blass's professional activities and amount of testimony in the preceding twelve months were not mentioned, let alone identified as disqualifying in the order. Thus, the Title 3-2A Savings Clause does not apply, and the lower court did not err when it dismissed the September 2022 complaint with prejudice because it was time barred.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**