IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND
CIVIL DIVISION

[redacted],

Plaintiff,

v.

Case No: [redacted]

[redacted] LIMITED PARTNERSHIP, LLP, d/b/a [redacted],

Defendant.

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff [redacted] ("[redacted] by and through undersigned counsel, in response and in opposition to Defendant [redacted], d/b/a [redacted] ("Defendant") Motion to Dismiss states as follows:

I. INTRODUCTION

[redacted] is a citizen and resident of Maryland. (Compl. ¶1). Defendant operates a nursing home and is engaged in the practice of medicine and rehabilitation services. (Id. ¶2). Defendant acts through its agents, servants and employees. (Id.). [redacted] had a fall and sustained a head trauma and was admitted to [redacted] (Id. ¶6). After the discharge from [redacted] on [redacted], [redacted] was admitted to Defendant's care for rehabilitation services. (Id.). During her rehabilitation therapy at Defendant facility, [redacted] received both physical and occupational therapy. (Id. ¶7). [redacted] had a high risk of falls because of her previous fall history and the treatment she received from [redacted] (Id. ¶8). While in the Defendant facility, the standard of care given to [redacted] required

appropriate precautions against her tendency of falling. (Id.). However, on [redacted], while in Defendant facility, [redacted] fell out of her bed and stuck her head on the hard floor in her room. (Id. ¶9). Following the incident, [redacted] was taken to the hospital for further treatment and examination. (Id.). She was later discharged from the hospital and brought back to Defendant facility for further rehabilitation. (Id. ¶10). After her discharge from the hospital, [redacted] suffered continued deficits in her mental status and functioning. (Id.). These continued deficits in her mental status and functioning is casually related to [redacted] fall and head trauma while in Defendant facility on [redacted]. (Id.).

[redacted] filed a one count Complaint against Defendant facility for professional liability on [redacted]. The Complaint alleged, among other things, that Defendant failed to implement appropriate fall precautions despite the known high risk of falls associated with [redacted] (Compl. ¶12). Subsequently, Defendant filed a Motion to Dismiss the Complaint pursuant to Maryland Rule 2-322(b)(2) alleging failure to state a claim upon which relief can be granted. (See Defs.' Mot. to Dismiss). Defendant also alleges that Plaintiff failed to file her claims before the Health Care Alternative Dispute Resolution Office, a condition precedent to filing suit in this Court. (Id.).

This Opposition to the Motion to Dismiss follows.

II. STANDARD OF REVIEW

"Rule 2–322(b)(2) permits a defendant to respond to the complaint with a motion to dismiss for 'failure to state a claim upon which relief can be granted.'" Higginbotham v. Public Service Com'n of Maryland, 171 Md. App. 254, 272, 909 A.2d 1087, 1097 (2006) (quoting Rule 2–322(b)(2)). "'In considering a motion to dismiss for failure to state a claim under Maryland Rule 2–322(b)(2), a [trial] court must assume the truth of all well-pleaded material facts and all inferences that can be drawn from them.'" Id. (quoting Tavakoli–

Nouri v. State, 139 Md. App. 716, 725, 779 A.2d 992 (2001)). "'The grant of a motion to dismiss is proper [only] if the complaint does not disclose, on its face, a legally sufficient cause of action.'" Id. (quoting Tavakoli–Nouri, 139 Md. App. at 725). "When the claim at issue is in tort, the court 'merely determines [the plaintiff's] right to bring the action,' and does not decide whether the claims are meritorious." Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP, 226 Md. App. 420, 437–38, 130 A.3d 1024, 1034 (2016), cert. granted sub nom. Beatty v. Rummel, Klepper & Kahl, 447 Md. 297, 135 A.3d 416 (2016) (citing Figueiredo–Torres v. Nickel, 321 Md. 642, 647, 584 A.2d 69 (1991)).

III. ARGUMENT

A. HCADRO applies only to a claim predicated to medical malpractice.

> [T]he Health Care Malpractice Claims Act applies only to medical malpractice claims in which there has been a breach by a health care provider, 'in his professional capacity, of his duty to exercise his professional expertise or skill,' and that the Act does not apply to claims based upon negligence other than medical malpractice in which 'there was no violation of the provider's professional duty to exercise care.'

Cannon v. McKen, 296 Md. 27, 39, 459 A.2d 196, 202 (1983) (Davidson, Judge, dissenting).

Thus, the fact that the "'acts originate, rather remotely, from a hospital-patient relationship, will not bring them into the ambit of medical malpractice.'" Cannon, 296 Md. at 35 (quoting Jackson v. Biscayne Medical Center, Inc., 347 So.2d 721, 772 (Fla. 3rd DCA 1977)). "'To hold otherwise would lead to the absurd result that every wrongful act committed by a hospital employee in a hospital surrounding amounts to medical malpractice.'" Id. (quoting Jackson, 347 So.2d at 772). Therefore, "the Act covers only those claims for damages arising from the rendering or failure to render health care where there has been a breach by the defendant, in his professional capacity, of his duty to exercise his professional expertise or skill." Id. at 36. "Those claims for damages arising from a professional's failure to exercise due care in non-professional situations such as premises liability, slander, assault, etc., were not intended to be covered under the Act and should

proceed in the usual tort claim manner." Id. at 36–37. Similarly, a "certificate of qualified expert" is a document to be filed by the claimant with the Director of the HCADRO pursuant to § 3-2A-04(b). Kearney v. Berger, 416 Md. 628, 634, 7 A.3d 593, 596 (2010).

In Cannon v. McKen, 296 Md. 27, 459 A.2d 196 (1983), the Court of Appeals of Maryland explained the definition of "medical injury" as follows:

> [T]he legislature did not intend that claims for damages against a health care provider, arising from non-professional circumstances where there was no violation of the provider's professional duty to exercise care, to be covered by the Act. It is patent that the legislature intended only those claims which the courts have traditionally viewed as professional malpractice to be covered by the Act.

Id. at 34. 459 A.2d at 200.

Likewise, in Goicochea v. Langworthy, 345 Md. 719, 694 A.2d 474 (1997), the Court of Appeals has held:

> If the complaint sets forth facts showing that the claimed injury was not inflicted during the rendering of medical services, or that the injury resulted from conduct completely lacking in medical validity in relation to the medical care rendered, the Act is inapplicable, and the action may proceed without first resorting to arbitration.

Id. at 728, 694 A.2d at 479.

Thus, "[t]he Act is limited to claims against health care providers for medical injuries." Goicochea v. Langworthy, 345 Md. 719, 726, 694 A.2d 474, 478 (1997). "The statute states that '[m]edical injury' means injury arising or resulting from the rendering or failure to render health care.'" Id. (citing § 3-2A-01(f)).

Based on the forgoing, HCADRO applies only to a claim predicated to medical malpractice. Plaintiff has not stated a medical malpractice claim in her Complaint; therefore, she is not required to comply with HCADRO, or file a certificate of qualified expert in this case. Thus, an injury from a fall while under the care of a healthcare facility does not constitute a "medical injury" within the meaning of the Act. Such injury is not the result of medical malpractice and will not be covered by the Act.

Therefore, Defendant's motion to dismiss on this ground should be denied.

B. Plaintiff does not state a medical malpractice claim as alleged by the Defendant; therefore, is not required to comply with the condition precedent under HCADRO.

"Medical malpractice 'is predicated upon the failure to exercise requisite medical skill and, being tortious in nature, general rules of negligence usually apply in determining liability.'" Dehn v. Edgecombe, 384 Md. 606, 618, 865 A.2d 603, 610 (2005) (quoting Benson v. Mays, 245 Md. 632, 636, 227 A.2d 220, 223 (1967)).

> [R]ecovery for malpractice 'is allowed only where there is a relationship of doctor and patient as a result of a contract, express or implied, that the doctor will treat the patient with proper professional skill and the patient will pay for such treatment, and there has been a breach of professional duty to the patient.

Dingle v. Belin, 358 Md. 354, 367, 749 A.2d 157, 164 (2000) (quoting Hoover v. Williamson, 236 Md. 250, 253, 203 A.2d 861, 862 (1964).

"The relationship that spawns the malpractice claim is thus ordinarily a contractual one." Id. However, to "establish liability [in an action for professional malpractice], a negligent breach of duty must be proved." Mumford v. Staton, Whaley & Price, 254 Md. 697, 708, 255 A.2d 359, 364 (1969)).

The court in Cannon, referred to Zobac v. Southeastern Hospital Dist., 382 So.2d 829 (Fla. 4th DCA 1980), as an example of a similar situation to this case, which involved a claim for injuries resulting from a slip and fall allegedly caused by water left on the bathroom floor by hospital cleaning personnel. Id. at 34. The District Court of Appeal of Florida, Fourth District concluded that the claim was not subject to mediation and held:

> [I]t is clear to us that the legislative intent was to submit to Medical Liability Mediation only claims arising out of those acts or conduct which are peculiarly malpractice .... Malpractice by definition means 'a dereliction from professional duty or a failure of professional skill or learning that results in injury, loss or damage.' It does not include janitorial negligence, for example, or a breach of duty in maintaining the hospital grounds generally required of possessors of land.

Cannon, 296 Md. at 34 (quoting Zobac, 382 So.2d at 830-31).

Accord Foremost Ins. Co. v. Hartford Ins. Group, 385 So.2d 110 (Fla. 3rd DCA 1980) (hospital's general liability carrier, rather than medical malpractice insurer, required to defend and provide coverage in action brought by patient who slipped and fell on wet floor); Brodie v. Gardner Pierce Nursing & Rest Home, 9 Mass. App. 639, 403 N.E.2d 1184 (Mass. App. 1980) (claim alleging injury resulting from slip and fall due to nursing home's negligent maintenance of stairway not within jurisdiction of medical malpractice tribunal).

Defendant's motion to dismiss is based on the allegation that Plaintiff failed to comply with the condition precedent before initiating a medical malpractice claim by filing her claims before the Health Care Alternative Dispute Resolution Office ("HCADRO"). (Def.'s Mot. to Dismiss, p. 1). This allegation should fail as Plaintiff has not alleged a medical malpractice or medical negligence claim in its complaint.

It is a fundamental rule that negligence exists only where there is a duty owed by one person to another and a breach of that duty occurs, causing injury. (See Walpert, Smullian & Blumenthal, P.A. v. Katz, 361 Md. 645, 655, 762 A.2d 582, 587 (2000). In the instant case, as a nursing home providing healthcare services, Defendant owed a duty of care to its clients to maintain their safety and to act within the standard of care, i.e., to act as a reasonably competent nursing home in a similar situation would act.

Here, [redacted] injured herself from the fall while under the care of Defendant facility. Defendant failed to implement appropriate fall precautions, despite knowledge of [redacted] high risk of falls, by utilizing methods like a bed alarm to alert, placing floor mats at sides, and maintaining low bed position. (Compl. ¶12). None of the aforesaid standard of care or precautionary measures required professional expertise or skill from Defendant. [redacted] fall did not constitute a "medical injury" within the meaning of the Act because the injury was caused under non-professional circumstances and the violation of Defendant's duty to exercise care. Defendant's failure to afford the standard of

care to prevent the fall, despite the knowledge, amounts to violation of the duty owed. Therefore, the alleged injury of [redacted] was not a result of medical malpractice and will not be covered by the Act.

Based on the foregoing, Defendant's argument related to a condition precedent to initiate the suit in a malpractice case should fail, and its motion to dismiss should be denied in its entirety.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff prays that Defendant's Motion to Dismiss should be denied.

Respectfully Submitted,

[redacted]

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this __ day of [redacted], a copy of the foregoing was mailed, postage prepaid, to:

[redacted]

[redacted]