

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CLAIRE JOHNSTON, Personal Representative of the  
Estate of GARY JOHNSTON, Deceased,

UNPUBLISHED  
May 1, 1998

Plaintiff-Appellant,

v

No. 197972  
Wayne Circuit Court  
LC No. 96-615629 NH

GARDEN CITY HOSPITAL, OSTEOPATHIC,  
AKRAM M. DAOUD, D.O., MICHAEL  
YANGOUYIAN, D.O., and BRUNO F. BORIN,  
D.O.,

Defendants-Appellees.

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Before: Bandstra, P.J., and MacKenzie and N.O. Holowka\*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition, without prejudice, in this medical malpractice action based on commencement of suit prior to expiration of the statutory notice period prescribed by MCL 600.2912b(1); MSA 27A.2912(2)(1). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Dismissal without prejudice, whatever the motives underlying plaintiff's failure to comply with the statutory pre-suit notice requirement, is the appropriate action by the circuit court. *Neal v Oakwood Hospital Corp*, 226 Mich App 701, 715; \_\_\_ NW2d \_\_\_ (1997); *Morrison v Dickinson*, 217 Mich App 308, 319; 551 NW2d 449 (1996). Additionally, plaintiff's equal protection, US Const, Am XIV, § 1, Const 1963, art 1, § 2, due process, US Const, Am XIV, § 1, Const 1963, art 1, § 17, and separation of powers, Const 1963, art 3, § 2, challenges to the constitutionality of the statute are without merit for the reasons adduced in *Neal, supra* at 716-723.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

We affirm.

/s/ Richard A. Bandstra  
/s/ Barbara B. MacKenzie  
/s/ Nick O. Holowka