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October 28, 2009

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Re: Aizupitis v. Atkins, et al.
C.A. No. 1278-VCN
Date Submitted: June 22, 2009

Dear Mr. Aizupitis, Dr. Raskin and Counsel:

I. INTRODUCTION

Plaintiff Varis R. Aizupitis ("Aizupitis" or the "Plaintiff"), a patient under the care of the Delaware Psychiatric Center ("DPC"), asks the Court to grant him access to his clinical records pursuant to the Mental Health Patients' Bill of Rights (the "Patients' Bill of Rights").[1] He also requests censure of and damages from the Defendants, primarily current and former health care providers. Defendants have filed several motions to dismiss, arguing *inter alia*, lack of subject matter jurisdiction and failure to state a claim. For the reasons stated below, this action will be dismissed.

II. BACKGROUND

A. *Preliminary Matters*

The Plaintiff represents himself.[2] Aizupitis was convicted on February 23, 1996, of murder and a related weapons charge by a verdict of guilty, but mentally ill, for which he received a sentence of life plus ten years. He has been in custody

[1] 16 *Del. C.* § 5161.

[2] As a self-represented plaintiff, Aizupitis may expect the Court to view his pleadings with somewhat less rigor. *See Sloan v. Segal*, 2008 WL 81513, at *7 (Del. Ch. Jan. 3, 2008) ("Delaware courts, at their discretion, look to the underlying substance of a *pro se* litigant's filings rather than rejecting filings for formal defects and hold those *pro se* filings to a 'somewhat less stringent technical standard' than those drafted by lawyers.") (quoting *Vick v. Haller*, 522 A.2d 86 (TABLE), 1987 WL 36716, at *1 (Del. 1987)).

at the Delaware Psychiatric Center ("DPC") since May 6, 1996, where he resides in the Mitchell Building.[3] On January 28, 2002, the Superior Court adjudged Aizupitis incompetent, which he alleges was based, at least in part, on representations by his treating psychiatrist at the time, Defendant Alexander Zwil, M.D.[4] The Plaintiff alleges that a competency hearing was held on September 29, 2003, at which time Defendant Dr. Raskin and Defendant, Sylvia Foster, M.D., both testified. According to the Complaint, this hearing was "aborted" shortly after the doctors' testimony.[5] Aizupitis claims that his treatment notes were "heavily relied on" by Dr. Zwil and Dr. Raskin in their competency

[3] Compl. at 6. The Complaint's paragraphs are numbered, but the numbers are reset to 1 at the beginning of each of several sections. For convenience, the Court cites to the Complaint by page number.
[4] Compl. at 9. These facts are drawn from the Complaint. The Court has attempted to reconcile as best it can the various statements of the Plaintiffs in the Complaint and his additional filings with the Court. The facts set forth in the Complaint also conflict somewhat with the procedural history laid out by the Delaware Supreme Court in addressing an unrelated habeas corpus petition decided in 2007. *Aizupitis v. State*, 2007 WL 2359556 (Del. 2007). There, the Court explained that Aizupitis was first adjudged incompetent sometime between October 1999 and September 2001, and that a subsequent competency evaluation was ordered in September 2001. The trial court in the 2001 action, however, stayed the proceeding until Aizupitis agreed to be examined by an additional psychiatrist. *Id.* at *1.
[5] Compl. at 11.

evaluations, as well as by several other psychiatrists not named as defendants in the Complaint.[6]

B. *Plaintiff's Concerns with his Clinical Record*

Aizupitis alleges that the DPC denies its patients access to their medical records as a matter of unwritten policy. He claims that it does this to protect its staff from embarrassment and censure, instead of upon a legitimate belief that such access would have a seriously detrimental effect on his or any other patient's health or treatment.[7] Aizupitis has requested his medical records on a number of occasions but contends that he has been repeatedly denied these records without serious consideration of his rights. He argues that his treatment notes are "one-sided" and used "vindictively by staff" to slander his character and that of the other patients.[8] He concludes that the notes "should not be used by anyone [unaware]" of his competency, and he requests a review of his clinical records so that he may prepare for another competency hearing "and file any corrective documentation he deems necessary."[9]

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[6] Compl. at 18.
[7] Compl. at 13.
[8] Compl. at 18.
[9] Compl. at 21.

C. *The Allegations*

Aizupitis levels a number of complaints against his treating psychiatrists, both current and former, as well as DPC staff members and administrators.[10] He claims that he was personally disliked by Dr. Zwil[11] who "encouraged the Mitchell building staff to manufacture incidents of [the Plaintiff's] belligerence and paranoia."[12] Aizupitis further argues that Dr. Zwil used his authority to influence the tone of the treatment reports in order to support involuntary medication, and that Dr. Zwil generally has antagonized and demeaned him.[13] In addition, Aizupitis claims that Dr. Zwil "submitted deliberate falsehoods" to the Superior Court during his competency evaluations, which "substantially damaged" his rights to relief under Superior Court Criminal Rule 61.

In addition, Aizupitis claims that both Dr. Zwil and Dr. Foster[14] have used false and misleading statements to deny him personal access to his clinical records.

[10] The Complaint provides brief descriptions of the Defendants' job titles and/or their relationships to the Plaintiff on page 5. According to Aizupitis, most of these Defendants are either no longer employed at the DPC or no longer have medical authority over him.
[11] Dr. Zwil was a psychiatrist at the Mitchell Building.
[12] Compl. at 17.
[13] Compl. at 17.
[14] Dr. Foster is or was the psychiatrist responsible for the treatment of forensic patients at the Mitchell Building.

He argues that neither Dr. Zwil nor Dr. Foster ever seriously considered his request to review his records, and instead simply copied the language of the Patients' Bill of Rights by claiming that such access would be detrimental to his treatment.[15]

Aizupitis contends that Dr. Raskin[16] recommended to the Superior Court in 2000 that the Plaintiff be involuntarily medicated, although he advised the Plaintiff that "medication was not important," and had testified at Aizupitis's murder trial in 1996 that Aizupitis would retain his right to refuse treatment unless harmful to himself or others.[17] The Complaint alleges that Dr. Raskin has "made himself obnoxious to the plaintiff" by his contradictory recommendations, and it positions Dr. Raskin as a key player in helping the State of Delaware maintain its "fiction of incompetency."[18] The Plaintiff opines that Dr. Raskin has disregarded professional ethics in his dealings with the Superior Court.

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[15] Compl. at 14.
[16] Dr. Raskin serves as the DPC medical director, which involves the supervision of psychiatric and medical care.
[17] Compl. at 12.
[18] Compl. at 16-17.

The Complaint further alleges that Defendant Diane Stachowksy,[19] as the Mitchell Building's unit director, encouraged and exploited the illegal policy of denying patients access to their medical records.[20] The Plaintiff argues that Ms. Stachowsky has used this policy "to persecute and harass the plaintiff with false accusations and willful indifference to the malice of her staff." He believes that Ms. Stachowsky has denied him access to his records as a means of reinforcing her power and frustrating any inquiry into the behavior of the DPC treatment team.[21] In a similar vein, Aizupitis claims that Defendant Talmo[22] and "his fellow administrators . . . have acted with deliberate indifference to [their] administrative responsibilities to make certain that all policies of DPC comport with the law" and that patients have their grievances and injustices adequately addressed.[23]

[19] Ms. Stachowsky was the Unit Director at the Mitchell Building, and was therefore responsible for its specific policies. At oral argument, Aizupitis discussed dismissing Stachowsky as a defendant. The Court need not determine whether he actually intended to dismiss Ms. Stachowsky because, as will be seen later, she will be dismissed as a defendant in this proceeding under Court of Chancery Rule 12(b)(1). The same holds true for Dr. Foster and Dr. Raskin whom Aizupitis also mentioned dismissing.
[20] Compl. at 14.
[21] Compl. at 15.
[22] Mr. Talmo was the DPC hospital director responsible for all aspects of DPC policy, including legal compliance.
[23] Compl. at 19.

Aizupitis also levels allegations against his former attorney, Defendant Daniel Atkins, Esquire.[24] He believes that Mr. Atkins acted in his own self-interest, and by doing so, neglected his professional duties.[25] Specifically, the Plaintiff asserts that Mr. Atkins at one point expressed an opinion that the Plaintiff had a right to review his records, but then later changed his mind; Aizupitis believes that this about-face arose from Mr. Atkins's unwillingness to take on additional work. As a result, he argues that the Office of the Patient Advocate, "as represented" by Mr. Atkins, has condoned an illegal policy," and that the Community Legal Aid Society "is remiss" for not fulfilling its obligations to the mentally ill.[26]

Lastly, Aizupitis claims that Defendant Roland Almona fabricated a slander against him in January 2004, which he views as a source of abuse, frustration, and punishment for him.[27] He seeks access to his treatment notes in some part to address and to clarify this alleged fabrication, which he contends has become a part of his medical record.

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[24] Mr. Atkins is a lawyer for the Patient Advocate, a unit of Community Legal Aid Society, Inc.
[25] Compl. at 16.
[26] Compl. at 19-20.
[27] Compl. at 15. Mr. Almona served as a security attendant in the Mitchell Building.

In sum, the Plaintiff asks this Court for "immediate injunctive relief" so he may review his clinical records. He also requests a mandatory injunction, requiring the DPC to formulate and implement a policy in conformity with the Patients' Bill of Rights. He further asks the Court to censure Dr. Foster and Mr. Atkins for not using due diligence in the exercise of their professional obligations, and he also requests a censure against Dr. Raskin for "unprofessional behavior." Lastly, he requests $1,000 in damages against each of the Defendants Stachowsky, Almona, Talmo, and Zwil.[28]

D. *Defendants' Motions to Dismiss*

Defendants Zwil, Foster, and Atkins, and Defendants Stachowsky, Talmo, and Almona acting jointly, have all filed motions to dismiss, each asserting similar defenses. The Defendants argue that Aizupitis's treating physicians determined, in accordance with the Patients' Bill of Rights, that access to his medical records would be detrimental to his treatment plan, and that Aizupitis has not alleged otherwise. They contend that this determination authorized DPC to withhold the

[28] Plaintiff later asked the Court for leave to amend this Complaint to request $1,000 in damages from Defendant Atkins. Pl.'s Rebuttal of Def. Atkins' Mot. to Dismiss ¶ 16.

Plaintiff's records. In fact, Dr. Foster was still of that opinion when she filed her motion to dismiss.[29]

The Defendants therefore argue that Aizupitis failed to allege a legitimate dispute regarding his right to access his clinical records.[30] They further contend that there exist adequate remedies in other courts as to the Plaintiff's claims for damages and censure. In sum, they argue that Aizupitis failed to state a claim under the Patients' Bill of Rights due to his treating psychiatrists' uncontested clinical determinations, and that this Court lacks subject matter jurisdiction to hear the Plaintiff's remaining claims alleging negligence and professional misconduct.

III. ANALYSIS

The Plaintiff has failed to state a claim that he has been unlawfully denied access to his medical records. Although the Patients' Bill of Rights grants Aizupitis the right to view these records, it limits this right when the treating psychiatrists determine, as they did here, that such access would be detrimental to

[29] Def. Foster's Mot. to Dismiss Pursuant to Rule 12(b)(6) at ¶ 5 and Ex. D. ("[I]t . . . continues to be Dr. Foster's opinion as the supervising psychiatrist overseeing the individualized treatment plan of plaintiff, that access to the requested records would be seriously detrimental to the patient's health and treatment program.").
[30] *Id.* at ¶ 9.

the patient's treatment. Moreover, Aizupitis does not allege that he has been denied his right to have an outside mental health professional of his choice review, and potentially disclose, his records, nor does he allege that his attorneys have ever been denied access to these documents. In fact, it does not appear from the Complaint that Aizupitis made any attempt to pursue an alternative form of statutory relief but was unfairly denied. Lastly, this Court lacks jurisdiction over the Plaintiff's remaining claims: Aizupitis's claims for damages may be pursued in a court of law, while his requests for censure must be presented to the appropriate disciplinary authority.

A. *The Mental Health Patients' Bill of Rights and Chancery Jurisdiction*

Aizupitis has brought a claim under the Patients' Bill of Rights, which provides that any hospital that admits a mentally ill patient pursuant to an involuntary commitment order shall not release his records except to, among others, the patient himself, although "access to specific records may be refused when a clinical determination is made and documented in the patient's individualized treatment plan that such access would be seriously detrimental to

the patient's health or treatment progress."[31] If such a determination has been made, the restricted material may be released "to a licensed mental health professional selected by the patient," who may, in her professional judgment, provide the patient with access to some or all parts of the denied record.[32]

The Court of Chancery has been vested with authority to hear "all actions, including those requesting declaratory relief, to enforce or resolve disputes concerning the rights arising out of [the Patients' Bill of Rights]."[33]

B. *Aizupitis Has Failed to State a Claim Under the Patients' Bill of Rights*

The Plaintiff has failed to state a claim under the Patients' Bill of Rights. Critically, Aizupitis does not contend that the DPC staff failed to make, and document in his record, a determination that access to his records would be seriously detrimental to his treatment. He submitted two letters by Dr. Foster written in response to requests by the Plaintiff for his treatment notes.[34] In each letter, Dr. Foster responds that the "treatment team finds that access to these notes would be detrimental to [Aizupitis's] health and treatment."

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[31] 16 *Del. C.* § 5161(b)(13).
[32] *Id.*
[33] 16 *Del. C.* § 5162.
[34] Compl. Exs. E & F.

Aizupitis challenges these findings, alleging that they are without substance, and maintaining that the DPC psychiatric staff never "seriously considered" his right of access to his clinical records.[35] The question of whether or not Aizupitis's treating psychiatrists duly considered his requests, however, is outside this Court's power to review. The statutory provisions under which Aizupitis seeks relief clearly state that a mental health patient may be denied access to his or her records when "a clinical determination is made and documented in the patient's individualized treatment plan that such access would be seriously detrimental to the patient's health or treatment progress"[36] It is inescapable that such a finding has been made in Aizupitis's case. The statute does not go further and permit this Court to question the accuracy of that clinical determination.[37]

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[35] Compl. at 14. Aizupitis also argues that he has no way of knowing whether these determinations have been documented in his record, as he has not been granted access to his records to verify his psychiatrists' conclusions. Pl.'s Rebuttal of Stachowsky's Mot. to Dismiss ¶ 2. Yet, he does not allege that such conclusions were not in his records and, at times, seems to concede that it is likely that such entries were made. Indeed, he does contend that there is something of a policy to make such entries. *See infra* note 37. Drs. Zwil and Foster made repeated representations in writing that permitting Aizupitis to review his records would be detrimental to his treatment.

[36] 16 *Del. C.* § 5161(b)(13).

[37] Aizupitis claims that DPC refuses patients access to their records as a matter of unofficial policy. He asserts no facts to support this conclusory allegation other than an alleged statement attributed to Dr. Foster to that effect and even claims that "to [his] knowledge, no patient has ever been granted access to treatment notes." Compl. at 13. On a motion to dismiss for failure

This provision does place the patient in something of a quandary: it grants him access to his medical records and provides the Court of Chancery with the authority to enforce this right, but allows access to be denied upon a psychiatric determination for which the statute does not provide judicial review. The General Assembly, however, addressed this problem by providing for an alternative review of denied records by a "licensed mental health professional selected by the patient." This selected professional may then allow the patient access to any or all of the denied material so long as the decision is consistent with the exercise of professional judgment.[38] The statute also permits review by attorneys representing the patient and to "rights-protection agencies" otherwise entitled to access under applicable state and federal law.

Aizupitis nowhere alleges that he requested his treatment notes be assessed by a licensed mental health professional outside the DPC who could have reviewed

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to state a claim, the Court need only accept well-pled facts from which it may then only draw reasonable inferences. *Feldman v. Cutaia*, 956 A.2d 644, 653-54 (Del. Ch. 2007). Aizupitis's allegation of wholesale record denial is entirely conclusory and, thus, the Court cannot reasonably infer his conclusion from the paltry facts as pled.

[38] 16 *Del. C.* § 5161(b)(13).

these records pursuant to Section 5161.[39] He also does not claim that his attorneys have ever been denied access to these records after making a request. Instead, Aizupitis argues that the Patient's Advocate should have more vigorously fought for him to view his own records.[40] The Plaintiff claims that Mr. Atkins abdicated his duties towards his client by changing his opinion over almost a five year period as to whether he believed the Plaintiff had a *personal right* to access his records.[41] Thus, Aizupitis does not allege that Atkins or any other attorney made a request for the Plaintiff's records and was denied, but rather that they failed to secure these records for the Plaintiff's personal review despite repeated determinations by Aizupitis's psychiatrists that such review would be detrimental to his treatment.

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[39] It should be noted that the Plaintiff has filed a motion for the employment of an expert witness; however the requested witness is a bio-ethicist, not a licensed mental health professional. As such, Aizupitis's motion is for the purpose of pursuing his ethical and professional violation claims against the individual defendants, and not a request to allow an outside professional access to his medical records.

[40] Aizupitis alleges in his complaint that Mr. Atkins denied his right to access his records in an October 2004 letter. The Plaintiff made this letter available. Rather than flatly deny Plaintiff's right to access his records, Mr. Atkins explained that access may be denied with the appropriate clinical determination, and he advised Plaintiff to obtain his own mental health professional to obtain the records for him in compliance with the statute. Pl.'s June 24, 2009 Letter to the Court (Second Attachment).

[41] Mr. Atkins expressed the opinion in November 1999 that he "fully expected" DPC to allow Aizupitis access to "at least part of his file." In his October 2004 letter, Atkins did not weigh in on whether he expected the DPC to release some files or none; however, he stated his opinion that the DPC may withhold Aizupitis's entire file, and not just specific documents, so long as the Plaintiff's treating physicians believe that release of the entire record would be detrimental to his treatment. Plaintiff's June 24, 2009 Letter to the Court (First and Second Attachments).

As a final point, the Patients' Bill of Rights also permits the release of a patient's clinical records "pursuant to an order of a court of record."[42] This provision can be read in a couple of ways: first, it may simply qualify the other exceptions to the general rule that clinical records are to be kept private. Most of these exceptions begin with "to," and dictate to whom the records may be released: e.g., the patient, patient's counsel, rights-protection agencies, the State Bureau of Identification. Thus, the provision providing for the release of clinical records "pursuant to an order of a court of record" may simply represent the enforcement mechanism—a court order—by which the records will be delivered to the individuals or entities listed in the exceptions.

It is unlikely that the meaning described above was intended by the General Assembly. This interpretation would be redundant considering the authority expressly granted to the Court of Chancery in Section 1562 over "actions to enforce or resolve disputes concerning the rights arising out of this subchapter." Instead, it is better to read Section 1561 as providing a catch-all by which a court may order the release of these records at its own discretion.

[42] 16 *Del. C.* § 5161(b)(13).

That leads to the question of whether the Court should exercise its discretion in ordering the disclosure of these records to the Plaintiff. The Complaint provides no basis for concluding that such an order would be appropriate. For one, Aizupitis has not exhausted his remedies under the Patients' Bill of Rights. He has not chosen an outside licensed mental health professional to review his records, and to thereafter determine whether any or all of the records should be disclosed to him; this is something the Plaintiff is clearly entitled to do under the statute. Aizupitis also has not alleged that his counsel was ever denied access to his records, and in fact, the Plaintiff attached a 2001 note to his Complaint from the DPC Hospital Director stating that director's support for the "decision to allow access through patient's counsel."[43]

In addition, the Plaintiff's psychiatrists have determined that patient review would work a serious detriment to Aizupitis's treatment plan.[44] The Plaintiff attached a note to his Complaint by Dr. Zwil in which the doctor expressed his belief that "exposure to his hospital records would be counter-therapeutic,

[43] Compl. Ex. B.
[44] Dr. Foster is still of this opinion. Def. Sylvia Foster's Mot. to Dismiss Pursuant to Rule 12(b)(6) at ¶ 5 & Ex. D.

exacerbating his paranoia and causing him additional distress."[45] Given Dr. Zwil's findings and the apparently repeated assertions by Aizupitis's treating psychiatrists that access to his clinical records would be detrimental to his treatment, it would be improvident for this Court simply to hand Aizupitis his records. Once again, the Patients' Bill of Rights creates a mechanism through which a patient denied access to his or her records may obtain outside review, and potential disclosure, by a licensed mental health professional of his or her choice. Despite advice from his counsel, the Plaintiff has chosen not to exercise his other statutory options, and cannot now expect this Court to grant him personal access to his records.[46]

C. *This Court Lacks Jurisdiction over the Plaintiff's Remaining Claims*

Although requesting access to his clinical records represents the primary (indeed, almost exclusive) focus of the Complaint, Aizupitis also has asked this Court to censure his former attorney and psychiatrists and to amend damages

[45] Compl. Ex. B.

[46] It is possible that Aizupitis cannot afford outside review. That issue, however, is not before the Court because Aizupitis never alleged that he attempted to obtain outside review but could not afford it, nor does he ask the Court to appoint an independent mental health professional for him for that purpose.

against most of the Defendants.[47] These other claims are not within this Court's subject matter jurisdiction. The damages claims—essentially based on allegations of professional negligence—are best left to the law courts. Although perhaps arguably committed to the Court's discretion under the clean-up doctrine, the Court declines to exercise any such jurisdiction. As for Plaintiff's request for professional censure or discipline, that task must be left to the appropriate regulatory or disciplinary body.

Under Court of Chancery Rule 12(b)(1), a defendant may assert lack of jurisdiction over the subject matter either in his or her responsive pleadings or by motion.[48] In addition, the Court may dismiss an action whenever it appears by suggestion of the parties *or otherwise* that the Court lacks subject matter jurisdiction.[49] Most of the Defendants here asserted lack of subject matter

[47] Aizupitis also mentions various due process violations and record-keeping shortcomings. These claims, if indeed they are intended as claims, are pled in the most conclusory fashion and lack factual support. The Plaintiff, in addition, asks this Court to enjoin the DPC and require it to formulate and implement policies conforming to the Patients' Bill of Rights. The Court has already determined that the DPC did not unlawfully deny the Plaintiff access to his clinical records, and thus such injunctive relief would be inappropriate.
[48] Ct. Ch. R. 12(b)(1).
[49] Ct. Ch. R. 12(h)(3) (emphasis added).

jurisdiction, but of course, the Court may find such jurisdiction lacking on its own, even in the absence of an affirmative argument by one of the Defendants.

The Court here lacks jurisdiction over the Plaintiff's claims for damages and censure. This Court, as a general matter, lacks subject matter jurisdiction over any matter where sufficient remedy may be had by common law, or statute, before any other court in the State.[50] Under the clean-up doctrine, however, the Chancery Court may extend its authority to claims ordinarily outside its jurisdiction so long as it has some equitable jurisdiction over at least part of the matter in dispute.[51]

Aizupitis's claims for damages and censure all have sufficient remedies before other Delaware Courts or regulatory bodies. The Plaintiff asks this Court to censure Dr. Foster for "not using due diligence in formulating her evaluations," and also asks the Court to censure Dr. Raskin for "unprofessional behavior." Both

[50] 10 *Del. C.* § 342; *see also Chavin v. H.H. Rosin & Co.*, 246 A.2d 921, 922 (Del. 1968) ("Equity has no jurisdiction over a controversy over which there is a complete and adequate remedy at law.").

[51] *Nicastro v. Rudegeair*, 2007 WL 4054757, at *2 (Del. Ch. Nov. 13, 2007). This ancillary power rests within the Court's discretion, and may be exercised for the following reasons: 1) to resolve a factual dispute that must be determined; 2) to avoid a multiplicity of suits; 3) to do complete and fair justice; 4) to avoid a waste of judicial resources; 5) to avoid unnecessary expense; 6) to afford complete relief in a single proceeding; and 7) to overcome insufficient modes of procedure at law. *Id.* In exercising its discretion, this Court has also given great weight to whether the "facts involved in the equitable counts and in the legal counts are so intertwined as to make it undesirable or impossible to sever them." *Getty Ref. & Mktg. Co. v. Park Oil, Inc.*, 385 A.2d 147, 150 (Del. Ch. 1978).

claims must be brought before the Board of Medical Practice, which has "sole authority in this State to . . . supervise, regulate, and discipline members of [the medical profession]."[52] Specifically, the Board of Medical Practice has the power to investigate complaints of unprofessional conduct as well as "reprimand, censure, [or] take other appropriate disciplinary action . . . with respect to any person certified to practice medicine in this State."[53] Likewise, Aizupitis's request for censure of Mr. Atkins "for not using due diligence in formulating his legal analysis" must be brought before the Delaware Supreme Court and its Board on Professional Responsibility, which have exclusive authority for disciplining attorneys generally.[54]

The Plaintiff's claims for $1,000 in damages against Defendants Almona, Talmo, Stachowsky, Atkins, and Zwil are, by their very nature, legal, and therefore may be pursued in a court of law.[55] Indeed, insofar as the Plaintiff alleges medical

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[52] 24 *Del. C.* § 1710(a).
[53] 24 *Del. C.* § 1713(a)(3) & (9).
[54] Del. Lawyers' Rules of Disciplinary Procedure, Rules 1, 2, & 5. *See also In re Appeal of Infotechnology, Inc.*, 582 A.2d 215, 216 (Del. 1990) (holding that only the Delaware Supreme Court "has the power and responsibility to govern the Bar, and in pursuance of that authority, to enforce the Rules for disciplinary purposes").
[55] *See* Del. Const. art. IV, § 7 (granting the Superior Court jurisdiction over all causes of a civil nature . . . at common law); 10 *Del. C.* § 541 (granting the Superior Court jurisdiction as the Constitution and laws of this State confer upon it).

malpractice, jurisdiction over that particular cause of action is vested exclusively in the Superior Court.[56] Because an adequate—and perhaps exclusive—remedy may be had in another court, this Court lacks jurisdiction to award the Plaintiff damages for these claims.

In light of the Court's decision that Aizupitis's claim regarding the release of his medical records fails as a matter of law, it should not retain jurisdiction over any other part of this controversy. The balance of his claims may be remedied by the law courts or must first be brought before the appropriate regulatory authority. In short, they are not intertwined sufficiently with the question formulated by the Complaint, properly brought to this Court, and resolved by reference to the controlling statute.[57]

[56] 18 *Del. C.* § 6802(a) ("Superior Court shall have exclusive jurisdiction of civil actions alleging medical negligence."). It should be noted that Aizupitis filed no affidavit of merit in compliance with 8 *Del. C.* § 6853(a)(1) (relating to expert testimony regarding healthcare negligence).

[57] The clean-up doctrine allows the Court of Chancery to exercise its jurisdiction over claims that may be remedied at law, so long as it has equitable jurisdiction over at least part of the controversy. This case begs the question of whether the Court of Chancery may implement the clean-up doctrine when it has *statutory* jurisdiction over part of a controversy. For current purposes, the Court assumes that it could invoke the clean-up doctrine, but, as noted, concludes that it would not be appropriate in these circumstances.

IV. CONCLUSION

For the foregoing reasons, the Complaint is dismissed. Aizupitis has failed to demonstrate that he has been deprived of his rights under the Patients' Bill of Rights. In addition, adequate remedies for his other claims may be properly had elsewhere, and therefore the Court of Chancery is without subject matter jurisdiction to hear those other claims.

An implementing order will be entered.

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K