

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**TERI DAWSON,
Plaintiff,**

v.

No. 3:16-cv-00827-DRH-SCW

**UNITED STATES OF AMERICA,
SOUTHERN ILLINOIS HEALTHCARE
d/b/a MEMORIAL HOSPITAL OF
CARBONDALE, and INTUITIVE SURGICAL,
INC.,
Defendants.**

ORDER

HERNDON, District Judge:

Before the Court is defendant Southern Illinois Healthcare d/b/a Memorial Hospital of Carbondale's ("SIH") Motion to Dismiss counts II and V (Doc. 50) of plaintiff Teri Dawson's ("plaintiff") Amended Complaint. Plaintiff opposes (Doc. 57). Based on the following, the Motion to Dismiss is **GRANTED WITH LEAVE TO AMEND**.

I. BACKGROUND

On March 14, 2017, this Court entered an order granting plaintiff leave to file an amended complaint, affidavit, and medical report in accordance with 735 ILL. COMP. STAT. 5/2-622 (Doc. 45).¹ On April 4, 2017, plaintiff filed an amended complaint (Doc. 46) with an attached attorney affidavit (Doc. 46-1) and medical

¹ The Court held that the initial complaint did not comply with Illinois' statutory requirements for filing a medical malpractice action, and subsequently granted plaintiff 21-days to cure defects. See Doc. 45.

report (Doc. 46-2). Thereafter, SIH filed the instant motion to dismiss count II—common law negligence, and count V—negligent infliction of emotional distress, pursuant to Rule 12(b)(6) (Doc. 50). SIH argues that plaintiff’s claim again fails to affirmatively state the author of the medical report is currently licensed to practice medicine, and was licensed to practice at the time the medical report was authored (Doc. 51). As a result, SIH contends plaintiff failed to state a cause of action for medical negligence under Illinois law, and requests dismissal of counts II and V with prejudice (*Id.*).

In response, plaintiff argues that affirmatively stating a doctor’s credentials is not the legal standard; and moreover, it would not be appropriate to dismiss claims over a mere stylistic dispute (Doc. 57). Further, plaintiff points to an attached Proposed Second Amended Complaint (Doc. 57-1) which contains amended copies of the medical report and affidavit in effort to resolve any perceived misunderstandings. Plaintiff requests the Court deny SIH’s Motion to Dismiss and accept the amended medical report and affidavit copies in the interest of justice (Doc. 57).

II. ANALYSIS

The analysis here is straightforward and turns solely on plaintiff’s compliance with 735 ILCS 5/2-622. *See Buechel v. United States*, 646 F.Supp.2d 1038, 1039 (S.D. Ill. 2009) (Illinois medical malpractice plaintiff must file complaint, attorney’s affidavit, and medical report written by health professional). “For affidavits . . . , *the written report must be from a physician licensed to*

practice medicine in all its branches.”² See 5/2-622 (emphasis added). Illinois does not define or regulate medical specialties of physicians; therefore “a physician licensed to practice in Illinois is ‘qualified to practice medicine in all of its branches.’ ” See *Ingold v. Irwin*, 302 Ill.App.3d 378, 705 N.E.2d 135, 140 (1998). “When construing a statute, [the] court’s primary objective is to ascertain and give effect to the intent of the legislature.” *Valfer v. Evanston Nw. Healthcare*, 2016 IL 119220, ¶ 22.

A. Physician-Author Must Be Licensed in IL

In this case, it is clear the legislature intended to ensure the physician-author of the medical report is in fact licensed to practice medicine in Illinois. In an attempt to justify, plaintiff points to the second amended medical opinion and affidavit—which were filed as an attachment to plaintiff’s response to SIH’s motion to dismiss—in order to argue that the authoring physician is licensed to practice medicine; and that “[t]he absence of strict technical compliance with the statute is one of form and not of substance. [Therefore] [t]he technical requirements of the statute should not be mechanically applied to deprive the plaintiff of her substantive rights.” *Ingold*, 705 N.E.2d at 140.

Plaintiff is correct in that “[t]he purpose of the enactment was not to burden the plaintiff with insurmountable hurdles prior to filing but to reduce the number of frivolous law suits.” *Id.* However, ensuring the medical report is actually authored by a physician licensed to practice medicine in the state of Illinois is a

² The language used in the statute must be given its plain and ordinary meaning. See *Gillespie Cmty. Unit Sch. Dist. v. Wight & Co.*, 2014 IL 115330.

far cry from an “insurmountable hurdle.” Nothing written within plaintiff’s amended attorney affidavit and/or medical report suggests the reviewing physician is licensed to practice medicine in Illinois. “Thus, although he may be knowledgeable on the subject of [gynecology and robotic-assisted laparoscopic surgery], he is not, by definition, qualified to author the written report required by section 2-622(a)(1) of the Code.” *Id.*

B. Plaintiff Granted Leave to Amend

Stated again, the central purpose of section 5/2-622 is to thwart frivolous medical malpractice lawsuits. *See Cookson v. Price*, 393 Ill.App.3d 549, 914 N.E.2d 229, 232 (2009). Defendants have not argued nor has the Court determined plaintiff’s complaint was frivolous, or that the amended attorney affidavit and medical report were filed in bad faith to delay litigation. Therefore, the Court **GRANTS WITH LEAVE TO AMEND** SIH’s Motion to Dismiss. *See Hahn v. Walsh*, 762 F.3d 617, 634 (7th Cir. 2014) (explaining although district court believed plaintiff’s counsel should have known to submit affidavit and medical report in compliance with 5/2-622, it is error for court to refuse to permit plaintiff to amend complaint in absence of bad faith).

Plaintiff’s proposed Second Amended Complaint (Doc. 57-1)—attached as an exhibit to plaintiff’s response to the motion to dismiss—will not be accepted; it must be file separately.

III. CONCLUSION

Based on the foregoing, SIH’s Motion to Dismiss counts II and V (Doc. 50) of plaintiff’s amended complaint is **GRANTED WITH LEAVE TO AMEND**.

Plaintiff is **GRANTED seven (7) days or until August 7th, 2017** to file a Second Amended Complaint.

IT IS SO ORDERED.

Signed this 31st day of July, 2017.

David R. Herndon



Digitally signed by
Judge David R. Herndon
Date: 2017.07.31
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UNITED STATES DISTRICT JUDGE