

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**CHARLES HOOPER and
LINDA HOOPER, Wrongful
Death Beneficiaries of Ryan Hooper**

PLAINTIFFS

v.

CAUSE NO. 1:13CV102-LG-JMR

**BILOXI, H.M.A., INC.;
and EMCARE, INC.**

DEFENDANTS

**ORDER GRANTING SECOND MOTION TO
DISMISS FILED BY BILOXI H.M.A., INC.**

BEFORE THE COURT is the Second Motion to Dismiss, or alternatively, Motion for Summary Judgment [77] filed by Biloxi H.M.A., Inc. Biloxi H.M.A. argues that this medical negligence lawsuit filed by Charles and Linda Hooper should be dismissed, because the Hoopers failed to comply with Miss. Code Ann. § 15-1-36(15). The Hoopers only oppose the Motion to the extent that Biloxi H.M.A. may be seeking dismissal with prejudice. After reviewing the submissions of the parties and the applicable law, the Court finds that Biloxi H.M.A.'s Motion to Dismiss should be granted, and the Hoopers' claims against Biloxi H.M.A. should be dismissed without prejudice.

DISCUSSION

The facts and procedural history of this medical negligence lawsuit are described in this Court's prior Orders [28, 76] and are incorporated herein by reference.

Miss. Code Ann. § 15-1-36(15) provides, "No action based upon the health care provider's professional negligence may be begun unless the defendant has been

given at least sixty (60) days' prior written notice of the intention to begin the action." Since this notice requirement is jurisdictional, a lawsuit must be dismissed without prejudice if proper notice is not provided. *Fowler v. White*, 85 So. 3d 287, 291 (¶13) (Miss. 2012); *Arceo v. Tolliver*, 949 So. 2d 691, 695 (Miss. 2006).

Based on the information provided by Biloxi H.M.A. demonstrating that it operates a licensed hospital, the Hoopers now concede that Biloxi H.M.A. was entitled to notice under the statute. The Hoopers also admit that they did not provide notice to Biloxi H.M.A. As a result, the Hoopers' claims against Biloxi H.M.A. must be dismissed without prejudice.

CONCLUSION

For the foregoing reasons, the Hoopers' claims against Biloxi H.M.A. must be dismissed without prejudice.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the the Second Motion to Dismiss, or alternatively, Motion for Summary Judgment [77] filed by Biloxi H.M.A., Inc. is **GRANTED**. The plaintiffs' claims against Biloxi H.M.A. are hereby **DISMISSED WITHOUT PREJUDICE**. The plaintiffs' claims against EmCare, Inc., remain pending.

SO ORDERED AND ADJUDGED this the 6th day of February, 2014.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE