

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARCIE A. ROGAN and JAMES N. RAISLEY, <i>Co-Administrators of the Estate of Kathleen Ann Rogan, Deceased,</i>)	
)	Civil Action No. 12 - 1375
)	
)	District Judge Mark R. Hornak
)	Chief Magistrate Judge Lisa Pupo Lenihan
Plaintiff,)	
)	
v.)	
)	
COUNTY OF LAWRENCE, PENNSYLVANIA, BRIAN COVERT, <i>Warden of the Lawrence County Correctional Facility,</i> JOHN DOE #1, <i>Lawrence County Correctional Facility Employee,</i> PRIME CARE MEDICAL, INC., JOHN DOE #2, <i>Physician Employee,</i> JOHN DOE #3, <i>Medical Specialist Employee of Prime Care Medical Inc.,</i>)	
)	
)	
Defendants.)	

MEMORANDUM ORDER

This case is before the Court on the Report and Recommendation issued by Chief Magistrate Judge Lenihan filed on August 1, 2013. (ECF No. 29.) The Chief Magistrate Judge recommended that the Second Motion for Judgment on the Pleadings (ECF No. 16) filed by John Doe #2, John Doe #3 and PrimeCare Medical (“the Medical Defendants”) be denied without prejudice to Plaintiffs’ right to explain the reasons for the delay in filing their Certificate of Merit (“COM”). She also recommended that the Court deny the Medical Defendants’ Motion and that Plaintiffs be afforded the opportunity to file an amended COM should Plaintiffs demonstrate a reasonable explanation or legitimate excuse for their delay. If, however, Plaintiffs cannot make

this showing, then she recommended that the Medical Defendants' Motion be granted to the extent it seeks dismissal of Plaintiffs' professional liability claims.

The parties were served with the Report and Recommendation and advised that they had until August 19, 2013, to file written objections. The Medical Defendants filed timely Objections on August 5, 2013, objecting to the procedural aspects of the proposed ruling. Specifically, they argue that the Court should grant the Medical Defendants' Motion but allow Plaintiffs only a specific period of time in which to provide an explanation for their delay in filing the COM. Upon review, the Objections do not undermine the Recommendation of the Chief Magistrate Judge. However, the Court will order that oral argument be held on the issue of whether Plaintiffs have demonstrated the requisite showing necessary to excuse their delay in filing the COM. This is to take place before the Chief Magistrate Judge at a date and time to be set by the Chief Magistrate Judge after the issuance of this Order.

The Chief Magistrate Judge shall enter such orders as she determines to be just and proper, requiring written submissions as to such matters in advance of such proceedings. Therefore, after *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following Order is entered.

AND NOW, this 23rd day of August, 2013,

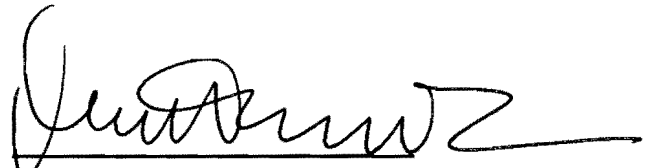
IT IS HEREBY ORDERED that the Second Motion for Judgment on the Pleadings (ECF No. 16) is **DENIED** without prejudice to Plaintiffs' right to explain the reasons for the delay in filing their COM at a hearing to be held before the Chief Magistrate Judge at a date and time to be set hereafter. If Plaintiffs are able to demonstrate a reasonable and sufficient explanation or legitimate excuse for their delay in filing, then the Second Motion for Judgment on the Pleadings will be denied and Plaintiffs will be allowed to file an amended COM that

complies with the Pennsylvania Rules of Civil Procedure. If, however, they are not, then the Second Motion for Judgment on the Pleadings will be granted and Plaintiffs' professional liability claims will be dismissed with prejudice.

IT IS FURTHER ORDERED that the Report and Recommendation dated August 1, 2013 (ECF No. 29) is **ADOPTED** as the opinion of this Court.

AND IT IS FURTHER ORDERED that this case is referred back to the Chief Magistrate Judge for all further pretrial proceedings not inconsistent with this Order.

By the Court:

A handwritten signature in black ink, appearing to read 'Mark R. Hornak', written over a horizontal line.

Mark R. Hornak
United States District Judge

cc: Counsel of Record