

RENDERED: JULY 10, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2019-CA-000980-MR

SULEMA TAMAYO RAMIREZ

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. SHAW, JUDGE  
ACTION NO. 19-CI-001336

CHARISE SHIVELY, M.D.;  
KIMBERLY BERNARD, M.D.;  
COMMUNITY MEDICAL ASSOCIATES;  
KERRY CURTISS, APRN; STEVE KANG, M.D.;  
KENNETH PAYNE, M.D.;  
NORTON HEALTHCARE, INC.; AND  
ANGELA WATSON, APRN

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS AND JONES, JUDGES; BUCKINGHAM,<sup>1</sup> SPECIAL  
JUDGE.

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<sup>1</sup> Retired Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution. Judge Buckingham concurred in this opinion prior to the expiration of his appointment.

COMBS, JUDGE: Sulema Tamayo Ramirez appeals from an order of dismissal entered in Jefferson Circuit Court on June 11, 2019. The order dismissed Ramirez’s action against Norton Healthcare, Inc. (“Norton Healthcare”), and Community Medical Associates, Inc., an entity wholly owned by Norton Healthcare. The order also dismissed the action against individual defendants Charise Shively, Steve Kang, Kenneth J. Payne, and Kimberly A. Bernard (duly licensed physicians specializing in obstetrics and gynecology) and Kerry W. Curtiss and Angela Watson (duly licensed advanced practice registered nurses).

Upon the defendants’ motion, the trial court concluded that Ramirez failed to state a claim upon which relief could be granted and that her statutory remedy is an appeal from an order of the Kentucky Board of Medical Licensure (“KBML”). Because Ramirez failed to engage in the administrative proceedings of the KBML, the Jefferson Circuit Court dismissed her lawsuit. We agree that she failed to exhaust administrative remedies as mandated by statute. Therefore, we affirm the dismissal of her lawsuit.

In August 2018, Ramirez underwent a medical procedure implanting an intrauterine device. In October 2018, she underwent a medical procedure to have the device removed. On February 28, 2019, Ramirez filed an action against each individual physician and nurse employed by Community Medical Associates, Inc. (“CMA”), who provided her medical care in the course of these procedures.

Ramirez did not allege a tort claim based upon the breach of any standard of care by the physicians or nurses. Instead, she alleged that by employing the physicians and nurses, the corporate defendants engaged in the unauthorized practice of medicine. She also contended that by working for the corporations, the individual physicians and nurses aided and abetted the unauthorized practice of medicine.

Ramirez alleged that she was a member of the class of persons intended to be protected by the provisions of KRS<sup>2</sup> 311.560 and that she had been injured by having had “hands laid upon” her during the medical procedures in violation of the statute. Additionally, Ramirez alleged that because the corporate defendants were not licensed to practice medicine, they also vicariously engaged in the unlawful touching of her body – a battery. She sought to recover punitive damages. She also sought a declaratory judgment and a permanent injunction barring the corporate defendants from continuing their healthcare operations.

The defendants timely filed an answer denying the allegations against them. Their subsequent motion to dismiss the action was granted, and this appeal followed.

With respect to the practice of medicine, the General Assembly enacted the provisions of the Kentucky Medical and Osteopathic Practice Act with the declared policy of regulating and controlling the practice in order “to protect

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<sup>2</sup> Kentucky Revised Statutes.

the health and safety of the public.” KRS 311.555. The General Assembly created the KBML, the majority of whose members are licensed physicians, believing that such a peer group is best qualified to regulate the practice of medicine in Kentucky. KRS 311.530.

Pursuant to the provisions of KRS 311.565(1), the KBML’s powers and functions are broadly defined to include the exercise of “all the administrative functions of the state . . . in the regulation of the practice of medicine” and, specifically, the power to “[i]ssue, deny, suspend, limit, restrict, and revoke any licenses or permits that may be issued by the board[.]” Additionally, any individual or organization may submit a grievance to the KBML to be “investigated as necessary . . . .” KRS 311.591(2).

Through the legislation, the General Assembly also specifically provided that courts could not review or enjoin the KBML’s actions until all administrative remedies had been exhausted. KRS 311.555. The Supreme Court of Kentucky has confirmed that the legislature has authority to limit the jurisdiction of our circuit courts, and the requirement to exhaust administrative remedies is supported by long-standing precedent. *See Jefferson County Bd. of Ed. v. Edwards*, 434 S.W.3d 472, 477 (Ky. 2014) (citing *Goodwin v. City of Louisville*, 309 Ky. 11, 215 S.W.2d 557, 559 (1948)). “By honoring the exhaustion doctrine, courts avoid interfering with the administrative process, and the initial reviewing

court benefits from the specialized knowledge of the agency.” *Popplewell’s Alligator Dock No. 1, Inc. v. Revenue Cab.*, 133 S.W.3d 456, 471 (Ky. 2004) (footnote omitted).

The General Assembly has determined that the KBML has initial, exclusive jurisdiction to decide whether physicians have violated their licenses to practice medicine and to decide whether an entity has illegally engaged in the practice of medicine. Therefore, in the case before us, the dismissal of the claims against the physicians and corporations by the circuit court for lack of subject matter jurisdiction was required. Moreover, the provisions of KRS 311.550(11) specifically declare that the practice of medicine “does not include . . . the practice as a nurse[.]” Consequently, it is clear that Nurses Curtiss and Watson did not engage in the practice of medicine, nor did they unlawfully aid or abet another to engage in the unauthorized practice of medicine. There is no allegation that the nurses unlawfully practiced outside the scope of their licenses when providing care to Ramirez. The claims against them were also properly dismissed.

Finally, we have considered the motion of the Kentucky Hospital Association filed pursuant to the provisions of CR<sup>3</sup> 76.12(7) for leave to file an *amicus curiae* brief in opposition to the arguments asserted by Ramirez in this proceeding. The motion was passed for consideration to this merits panel. In large

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<sup>3</sup> Kentucky Rules of Civil Procedure.

measure, the tendered *amicus curiae* brief duplicates the arguments presented by the appellees. Consequently, we deny the motion by separate order entered this date.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffrey A. Sexton  
John W. Byrnes  
Louisville, Kentucky

BRIEF FOR APPELLEES:

Ashley Butler  
David Tachau  
Dustin E. Meek