

STATE OF MICHIGAN
COURT OF APPEALS

FAWZIA ALASRI, Personal Representative
of the Estate of MUSSED AHMED ALASRI,

UNPUBLISHED
August 21, 1998

Plaintiff-Appellant,

v

OAKWOOD UNITED HOSPITALS, INC.,
OAKWOOD HOSPITAL CORPORATION,
and JOSE SORIANO, M.D.,

No. 197235
Wayne Circuit Court
LC No. 96-617455 NH

Defendants-Appellees.

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

Plaintiff appeals by right the order dismissing the complaint without prejudice for failure to comply with MCL 600.2912(b); MSA 27.2912(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff asserts that MCL 600.2912(b); MSA 27A.2912(2) is unconstitutional because it violates equal protection and due process protections, constitutes an improper delegation of legislative power, is vague, and conflicts with our Supreme Court's rule-making authority. This Court recently considered and rejected identical claims in *Neal v Oakwood Hosp Corp*, 226 Mich App 701; ___ NW2d ___ (1997). For the reasons stated in *Neal*, plaintiff's arguments are without merit.

Plaintiff also asserts that the trial court erred dismissing this action rather than granting a stay. This Court rejected this argument in *Morrison v Dickinson*, 217 Mich App 308; 551 NW2d 449 (1996), and held that the appropriate remedy for a violation of the notice provision is dismissal without prejudice. Plaintiff is free to refile immediately, the 182-day notice period having expired and the statute of limitation having been tolled during this appeal. *Id.*

Affirmed.

/s/ William B. Murphy

/s/ Robert P. Young, Jr.

/s/ Michael R. Smith