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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOAN PIEL and DALE PIEL,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiffs-Appellants,)	
)	
v.)	No. 13 L 8198
)	
NANCY M. LEE, DPM, RAM ARIBINDI,)	The Honorable
M.D., and FRANCISCAN ST. JAMES)	Kathy M. Flanagan,
HEALTH,)	Judge Presiding.
)	
Defendants-Appellees.)	

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* A surgeon has sufficient qualifications to make a section 2-622 report asserting that a plaintiff has a meritorious cause of action against a hospital, where the plaintiff based the claim against the hospital on the alleged negligence of the hospital's nurses. The section 2-622 report need not name the nurses whose alleged negligence forms the basis for the hospital's potential liability.

¶ 2 Joan and Dale Piel sued three doctors and a hospital, alleging that the defendants' medical malpractice led to the amputation of part of Joan's leg. The circuit court granted the hospital's motion to dismiss, finding that the surgeon's report appended to the complaint

failed to meet the requirements of section 2-622 of the Code of Civil Procedure (Code) (735 ILCS 5/2-622 (West 2016)). We find that the report complies with the statute. We reverse the dismissal of the counts against the hospital, and we remand for further proceedings on the complaint.

¶ 3

BACKGROUND

¶ 4

In July 2011, Joan sought treatment from Dr. Nancy Lee, a podiatrist, who x-rayed Joan's feet. The following month, Joan saw a general practitioner, Dr. Arsenia Nepomuceno, who saw that Joan had a broken ankle and immediately scheduled surgery to take place at a hospital operated by Franciscan St. James Health (Franciscan). Dr. Ram Aribindi performed the surgery. He inserted screws and a plate into Joan's foot. He later found a screw breaking through Joan's skin. He performed a corrective surgery in October 2011.

¶ 5

The foot did not heal. Dr. William Ennis, an infectious disease specialist, saw Joan in November 2011 and found the foot nonviable. In December 2011, Dr. Paul DeFrino amputated part of Joan's leg.

¶ 6

Joan and her husband, Dale, filed a medical malpractice complaint, naming as defendants Dr. Lee, Dr. Aribindi, and Franciscan. After several amendments, the plaintiffs added Dr. Ennis as a defendant, and supported the complaint with a letter from a doctor who said that in his or her opinion, plaintiffs had a reasonable and meritorious cause for filing the complaint against each of the defendants.

¶ 7

Franciscan filed a motion to dismiss the complaint for failure to comply with section 2-622. The circuit court granted the motion and dismissed the counts against Franciscan with prejudice, adding that the court found no just cause to delay appeal. Plaintiffs now appeal.

¶ 8

ANALYSIS

¶ 9

Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. March 8, 2016)) gives this court jurisdiction to consider the appeal.

¶ 10

Section 2-622 of the Code establishes that a plaintiff who files a medical malpractice complaint must attach to the complaint a qualified health care professional's report stating that the plaintiff had a reasonable and meritorious cause for suing each of the defendants. The report also must give reasons supporting the expert's opinion. 735 ILCS 5/2-622(a)(1) (West 2016). "Section 2-622 is designed to reduce the number of frivolous medical malpractice lawsuits that are filed and to eliminate such actions at an early stage. [Citation.] The purpose of the enactment is not to burden the plaintiff with insurmountable hurdles prior to filing (citation), but to ensure that plaintiff has a meritorious claim." *Apa v. Rotman*, 288 Ill. App. 3d 585, 589 (1997). "The technical requirements of the statute should not be mechanically applied to deprive the plaintiff of her substantive rights." *Comfort v. Wheaton Family Practice*, 229 Ill. App. 3d 828, 832 (1992). "[I]f there is no factual support for [some] counts, that should be established on a motion for summary judgment, not by a technical attack on the preliminary report attached to the complaint. The section 2-622 report is a ticket which plaintiff must possess in order to file his complaint. If plaintiff has the ticket, if there has been minimal compliance (citation) with section 2-622 of the Code, the case should move on to summary judgment or trial." *Steinberg v. Dunseth*, 276 Ill. App. 3d 1038, 1049 (1995).

¶ 11

Plaintiffs filed a single report to cover the claims against all defendants. "A single report, however, may suffice as to multiple defendants if the report is sufficiently broad, adequately

discussing the deficiencies in the medical care rendered by each defendant and containing reasons in support of the conclusion that a reasonable and meritorious cause exists for filing an action against each defendant." *Cammon v. West Suburban Hospital Medical Center*, 301 Ill. App. 3d 939, 948 (1998). We review *de novo* a finding that a report fails to comply with section 2-622. *Mueller v. North Suburban Clinic, Ltd.*, 299 Ill. App. 3d 568 (1998).

¶ 12 The report attached to the complaint says:

"I am a physician licensed to practice medicine in all of its branches. I am a practicing board-certified orthopedic surgeon ***. I have practiced and taught within the last 6 years in the same area of health care or medicine that is at issue in this particular action and am knowledgeable in the relevant issues involved in this particular action.

Following the surgery on October 18, 2011, the patient continued to disclose evidence of an infection which involved a Staph aureus MRSA, which is an organism which should have been treated aggressively under the standard of care. The patient was apparently never informed by St. James Hospital's nurses *** or [its] wound clinic doctor *** that the final micro-culture on October 21, 2011 confirmed Clindamycin resistant Staph aure[u]s MRSA infection as the standard of care required of each of these defendants. Instead, she was discharged the following day from St. James Hospital with a MRSA infection. This patient *** should have received additional appropriate IV antibiotics for 10-14 days ***. Instead, she was provided with a short course of Clindamycin *** because St.

James Hospital's nurses never informed the treating doctors of these positive cultures. None of these doctors *** treated this Clindamycin resistant Staph aureus MRSA infection with proper antibiotics ***.

*** As a result of all of these areas of negligence – including *** the failure of St. James Hospital's nurses to inform and advise this patient and the treating doctors *** of the positive culture results *** this patient suffered a below the knee amputation of her right (dominant) leg, which could have easily been prevented.

Based on my review, there is a reasonable and meritorious cause for the filing of a lawsuit in this case."

¶ 13 The report adequately states that the physician has the requisite qualifications and opinion, and gives the reasons supporting the opinion. Franciscan proposes several grounds for finding the report inadequate.

¶ 14 First, Franciscan claims that the orthopedic surgeon lacks the credentials needed to criticize the nurses' actions. Section 2-622 provides that a physician qualified to practice medicine in all its branches has the necessary qualifications to make a 2-622 report concerning a defendant hospital. 735 ILCS 5/2-622(a)(1) (West 2016); *Moyer v. Southern Illinois Hospital Service Corp.*, 327 Ill. App. 3d 889, 900-01 (2002); *Shanks v. Memorial Hospital*, 170 Ill. App. 3d 736, 739 (1988).

¶ 15 Franciscan points out that the trial court should bar the surgeon from testifying at trial as to the standard of care applicable to nurses. See *Sullivan Edward Hospital*, 209 Ill. 2d 100, 112-16 (2004). But, as the *Moyer* court held, "The qualifications required to testify at a trial

are different than those required by section 2-622(a). The type of testimony that will be relied on at a trial has no bearing on the requirements of section 2-622." *Moyer*, 327 Ill. App. 3d at 900; *Brito v. Wexford Health Sources, Inc.*, No. 14-3282, 2015 WL 150339 at *3 (C.D. Ill. March 27, 2015). We find the surgeon qualified to provide the 2-622 report concerning the allegations against Franciscan.

¶ 16 Next, Franciscan argues that the report fails to meet the requirements of section 2-622 because it fails to name the negligent nurses or specify when they should have told the treating doctors about the positive culture. In *Avakian v. Chulengarian*, 328 Ill. App. 3d 147, 160-61 (2002), the court found the 2-622 report sufficient even though it did not name the agent whose alleged mistake allegedly made the defendant hospital liable. Similarly, in *Steinberg*, the court approved a complaint that faulted the performance of the anesthesiologist, "whoever that person might have been." *Steinberg*, 276 Ill. App. 3d at 1043; see also *Brito*, 2015 WL 150339 at *5. We find that the failure to name the allegedly negligent nurses does not justify dismissal of the counts against Franciscan.

¶ 17 Franciscan cites no case regarding a specification of the time for an action required by the standard of care. Here, one can infer that the nurses had a duty to report the infection to the treating doctors once the nurses learned of the positive culture. The lack of any specification in the report as to the time the nurses needed to contact the treating doctors does not justify dismissal of the counts against Franciscan.

¶ 18 Franciscan compares the 2-622 report here to the report found insufficient in *Premo v. Falcone*, 197 Ill. App. 3d 625 (1990). The report in *Premo* said, "Inappropriate actions were taken to intervene and to provide appropriate medical care and treatment." *Premo*, 197 Ill.

App. 3d at 632. The *Premo* court found the report inadequate because the "report never discusses what those actions were." *Premo*, 197 Ill. App. 3d at 632. Here, the surgeon opined that Franciscan, acting through its nurses, breached the standard of care because the "nurses never informed the treating doctors of [the] positive cultures." We find that the report here adequately specifies the allegedly negligent acts of Franciscan.

¶ 19

CONCLUSION

¶ 20

Because the section 2-622 report met the requirements of the statute, we find that plaintiffs have produced their ticket to proceed with their complaint against Franciscan. We reverse the dismissal of the complaint's counts against Franciscan and remand for further proceedings on the complaint.

¶ 21

Reversed and remanded.