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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NOV 9 2001

AT GREENBELT
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

SEBLE W. DEJENE

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BY

v.

Civil Action No. AW 00-3121
(Magistrate Judge Jillyn K. Schulze)

PLANNED PARENTHOOD OF
METROPOLITAN WASHINGTON, D.C.

MEMORANDUM

This case has been referred to me by consent of the parties for all further proceedings. (Paper No. 15). Presently pending is Defendant's Motion to Dismiss, which alleges that the court lacks subject matter jurisdiction over this action. (Paper No. 29). Plaintiff, who is not represented by counsel¹ was advised on October 5, 2001, that failure to respond to this motion within seventeen days could result in dismissal of her case without further notice. (Paper No. 30). In addition, my letter to her of October 5, 2001, advised her that a possible consequence of Defendant's motion was dismissal of her case and that her response to the motion was due on October 19, 2001. (Paper No. 31). Nevertheless, Plaintiff did not respond to the motion, which is now ready to be resolved. For the reasons that follow, the motion will be granted.

This is a medical malpractice action which was removed on the basis of this court's diversity jurisdiction. (Papers No. 4 and 7). The parties have agreed that the medical care at issue was provided in Maryland. (Complaint, ¶¶ 1, 3-4); (Def.'s Mot. to Dismiss, ¶ 2). Accordingly, Maryland substantive law governs this action. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

Plaintiff seeks damages for injury which she alleges were caused by Defendant's failure to exercise due care in providing medical treatment to her. Under Maryland law, such claims cannot be filed in court unless they first have been presented to the Maryland Health Claims Arbitration

¹ Plaintiff's counsel was permitted to withdraw on May 31, 2001. (Paper No. 23).

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Office. MD CODE ANN., CTS. & JUD. PROC. §§ 3-2A-01 *et seq.* (1998). This rule is a matter of substantive law which this court must follow in this diversity case. *Rowland v. Patterson*, 882 F.2d 97, 99 (4th Cir. 1989); *Davison v. Sinai Hosp. of Baltimore, Inc.*, 462 F. Supp. 778, 779-80 (D. Md. 1978), *aff'd*, 617 F.2d 361 (4th Cir. 1980).

Defendant submits the affidavit of Maxine Klane, it's Vice President of Patient Services, attesting that Plaintiff did not present her claim to the Maryland Health Claims Arbitration Office. Def.'s Mot. to Dismiss, Ex. B.² This undisputed evidence establishes that Plaintiff did not follow the mandatory procedure set out in Maryland law, and requires that her case be dismissed.

In addition, I note that Plaintiff could not prevail in this case even if it proceeded to trial. On October 5, 2001, the parties were ordered to submit their witness lists and were advised that witnesses not identified by October 31, 2001, would not be permitted to testify. (Paper No. 31). Plaintiff has not identified any physician who would be qualified to testify that Defendant breached the standard of care in treating her. Absent such evidence, Plaintiff cannot meet her burden of showing that Defendant breached the standard of care, and a verdict in Defendant's favor would be required.

By separate order filed today, this case will be dismissed.³

Date: 11/8/01



JILLYN K. SCHULZE
United States Magistrate Judge

² The Director of the Maryland Health Claims Arbitration Office is required to serve a copy of claims filed with the office on the health care provider. MD CODE ANN., CTS. & JUD. PROC. §§ 3-2A-04(a)(1) (1998).

³ Defendant asserts that the dismissal should be with prejudice because any subsequent action would be barred by limitations. While this may ultimately be correct, it is not a decision that can be reached on the present record.