

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**Donta Wade,
Petitioner Below, Petitioner**

v.) No. 25-377 (24-ICA-378)

**University Physicians & Surgeons, Inc.;
Marshall Health Network, Inc.;
Holly Nauert, D.O.; and
Lee Van Horn, M.D.,
Respondents Below, Respondent**

MEMORANDUM DECISION

Petitioner Donta Wade appeals the April 29, 2025, memorandum decision of the Intermediate Court of Appeals of West Virginia (“ICA”), affirming the order of the Circuit Court of Cabell County entered on August 22, 2024. The circuit court granted the respondents’ motions to dismiss Mr. Wade’s amended complaint for failure to comply with the pre-suit notice requirements of the Medical Professional Liability Act (“MPLA”).¹ *See Wade v. Univ. Physicians & Surgeons*, No. 24-ICA-378, 2025 WL 1249410 (W. Va. Ct. App. Apr. 29, 2025) (memorandum decision). Respondent Marshall Health Network, Inc. (“Marshall Health”) filed a timely response brief. Mr. Wade argues that the respondents failed to respond to his “Notice of Impending Legal Action,” thus waiving their rights to contest pre-suit notice requirements required by the MPLA. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision affirming the ICA’s memorandum decision is appropriate. *See* W. Va. R. App. P. 21(c).

Mr. Wade filed his amended complaint on May 20, 2024,² asserting that he was being treated by Respondents University Physicians & Surgeons, Inc. and Marshall Health when he asked to change his primary care provider. As a result, he was assigned to Respondent Dr. Holly Nauert, who was a resident physician. On May 19, 2022, Mr. Wade attended his first appointment with Dr. Nauert. Mr. Wade contends that while he was a patient of Dr. Nauert, he believed she was his primary care physician. Mr. Wade asserts that he had several appointments with Dr. Nauert and that she was “the only physician who evaluated [him] as a patient” during those appointments.

¹ Mr. Wade is a self-represented litigant. Marshall Health is represented by counsel Robert M. Sellards, Ralph J. Hagy, and John H. Zickefoose. The remaining respondents have not participated in this appeal.

² It appears that Mr. Wade filed his initial complaint on May 17, 2024. This initial complaint is not included in the appendix.

The amended complaint also alleges that Mr. Wade asked Dr. Nauert at the beginning of each appointment whether the information shared with her would be confidential, to which Dr. Nauert replied that it would be and that no one would have access to his information except his physician. After several appointments, Mr. Wade requested his last ten years of medical records from University Physicians & Surgeons and Marshall Health.

Mr. Wade further alleged that he then learned that Dr. Nauert was a resident physician, in training, and as such, would routinely discuss her treatment of Mr. Wade with the attending physician, Respondent Dr. Lee Van Horn.

In his amended complaint, Mr. Wade asserted causes of action for: Count I Negligent Infliction of Emotional Distress; Count II Invasion of Privacy; Count III Breach of Contract; Count IV Negligent Oversight; Count V Embarrassment; Count VI Unfair and Deceptive Business Practices; Count VII Willful Misconduct/Punitive Damages; Count VIII Reckless Endangerment; Count IX Humiliation; and Count X Breach of Duty. None of the causes of action contain substantive allegations but instead all state, "Plaintiff reincorporates by reference the allegations contained within the previous paragraphs as if more fully set forth within. At all relevant times the Defendants, jointly and severally, acted willfully, wantonly, and with deliberate indifference to the Plaintiffs' [sic] rights. As a result of the Defendants' misconduct the Plaintiff suffered damages." The petitioner's amended complaint sought \$1,000,000,000.00 in damages.

On June 10, 2024, Drs. Nauert and Van Horn moved to dismiss the case on the basis that Mr. Wade's claims fail as a matter of law; Mr. Wade failed to comply with the pre-suit notice requirements for medical professional liability cases; and the amended complaint fails to assert sufficient facts to create causes of action. On the same date, Marshall Health and University Physicians & Surgeons separately moved to dismiss on the basis that Mr. Wade's claims fail as a matter of law; Mr. Wade failed to comply with the pre-suit notice requirements for medical professional liability cases; and they were entitled to sovereign immunity. On July 3, 2024, Mr. Wade filed a "Statement in Lieu of Screening Certificate of Merit" which asserted that a certificate of merit was not needed in this matter because the causes of action are based on well-established legal theories that do not require expert testimony.

Following an August 5, 2024, hearing, the circuit court entered its order granting the respondents' motions to dismiss. In that order, the circuit court concluded that Mr. Wade's claims were covered by the MPLA and that he was required to comply with the pre-suit notice requirements to provide the respondents with a screening certificate of merit thirty days before he filed his case. The circuit court rejected Mr. Wade's argument that he did not need a certificate of merit because his statement in lieu of a screening certificate of merit specifically stated that the respondents "breached the applicable standard of care between a patient and a Health Care Facility and its Health-care providers." Moreover, the circuit court found that even if a screening certificate of merit was not required, Mr. Wade failed to timely provide the statement in lieu of a screening certificate of merit. The circuit court ruled that it did not have subject matter jurisdiction and dismissed Mr. Wade's case without prejudice. Mr. Wade moved for reconsideration which was denied by the circuit court.

Mr. Wade appealed the circuit court's order to the ICA. The ICA affirmed the circuit

court's August 22, 2024, order in a memorandum decision issued on April 29, 2025, concluding that the MPLA applies to Mr. Wade's claims. The ICA found that the circuit court correctly dismissed Mr. Wade's amended complaint for failure to comply with pre-suit notice requirements of the MPLA. The ICA reasoned that a screening certificate of merit was necessary because Mr. Wade's allegations involved complex medical issues. In addition, even if a screening certificate of merit was not necessary, "it is undisputed that Mr. Wade failed to provide his statement in lieu of screening certificate of merit thirty days prior to filing his complaint," and "[p]ost-suit notice is insufficient to cure the jurisdictional deficiency created by the failure to comply with the pre-suit notice requirements of the MPLA."³ As such, the circuit court's order was affirmed.

On appeal to this Court, Mr. Wade asserts similar interrelated assignments of error argued before the ICA, and he asks this Court to determine whether the circuit court erred in dismissing the complaint based on his failure to comply with the MPLA's pre-suit notice requirements. We review de novo a decision of the ICA upholding the circuit court's granting of a motion to dismiss a complaint. Syl. Pt. 1, *Folse v. Rollyson*, 251 W. Va. 566, 915 S.E.2d 344 (2025).

Mr. Wade argues that the ICA and circuit court erred as a matter of law in dismissing his complaint based on West Virginia Code § 55-7B-6 because the allegations and listed causes of action fall outside the MPLA. This Court has previously stated that whether a cause of action falls within the MPLA is based upon the factual circumstances giving rise to the cause of action, not the type of claim asserted. *See Blankenship v. Ethicon, Inc.*, 221 W. Va. 700, 656 S.E.2d 451 (2007). In his complaint, Mr. Wade attempted to pursue claims stemming from medical care that he received as a patient at a local hospital. Although he framed his allegations under various common law and statutory theories, the lower courts determined that the claims fell within the scope of the MPLA, West Virginia Code §§ 55-7B-1 to -12. We agree that under the circumstances of this matter, the conduct about which he complains was committed within the context of rendering "health care" services by healthcare providers⁴ to Mr. Wade, and therefore the MPLA

³ Moreover, the ICA noted that Mr. Wade failed to state a claim. The ICA stated that in order to survive a motion to dismiss for failure to state a claim, the complaint must set forth enough information to outline the elements of a claim or permit inferences to be drawn that these elements exist. *Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va.*, 244 W. Va. 508, 521, 854 S.E.2d 870, 883 (2020). Although Mr. Wade's complaint set forth ten causes of action, the ICA determined that none of the causes of action contained substantive allegations and nothing in the remainder of the complaint outlined the elements of any of the claims listed by Mr. Wade, or permitted inferences to be drawn that the elements exist. Mr. Wade does not challenge this ruling on appeal.

⁴ This Court acknowledges that Marshall Health argued below that it is not a healthcare provider, and therefore, not subject to Mr. Wade's claims for medical professional liability. However, for the purpose of evaluating a motion to dismiss, we take the allegations in the complaint as true. Syl. Pt. 1, *Wiggins v. E. Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987). Mr. Wade's complaint specifically alleges that he was a patient of Marshall Health.

applies to Mr. Wade's claims.⁵ Because Mr. Wade's claims were covered by the MPLA, the circuit court correctly determined that he was required to comply with the pre-suit notice requirements to provide the respondents with a screening certificate of merit or statement in lieu of a screening certificate of merit thirty days prior to filing his complaint.⁶

Accordingly, we affirm.

⁵ "Where the alleged tortious acts or omissions are committed by a health care provider within the context of the rendering of 'health care' as defined by W. Va. Code § 55-7B-2(e) (2006) (Supp. 2007), the [MPLA] applies regardless of how the claims have been pled." Syl. Pt. 4, in part, *Blankenship v. Ethicon, Inc.*, 221 W. Va. 700, 656 S.E.2d 451 (2007). Furthermore, as this Court has previously stated,

when a complaint contains a cause of action that meets the definition of "health care" under West Virginia Code section 55-7B-2(e), claims that are either "*related to*" or "*contemporaneous to*" the medical injury being asserted, "*all in the context of rendering health care services*," meet the definition, and are encompassed in "medical professional liability" as it is defined in West Virginia Code section 55-7B-2(i). The "health care" claim is the "anchor;" it gets you in the door of MPLA application to allow for inclusion of claims that are "contemporaneous to or related to" that claim, but still must be in the overall context of rendering health care services. It is not a broad stroke application that because a claim is contemporaneous to or related to health care that it falls under the MPLA. To put a finer point on it, you must have the anchor claim (fitting the definition of "health care") and then make the showing that the ancillary claims are (1) contemporaneous with or related to that anchor claim; and (2) despite being ancillary, are still in the context of rendering health care.

State ex rel. W. Va. Univ. Hosps., Inc. v. Scott, 246 W. Va. 184, 194, 866 S.E.2d 350, 360 (2021). Here, generally Mr. Wade sought health care from the respondents, he thought he was receiving health care from a certain provider, but then discovered that there was another potential provider, and he ultimately had concerns over who was actually providing him health care. Under the facts of this case, we find that each of Mr. Wade's claims, as pled in the amended complaint, are either an anchor claim or an ancillary claim that falls within the context of rendering health care.

⁶ West Virginia Code § 55-7B-6 (2022) provides that no person may file a medical professional liability action without first providing a notice of claim and screening certificate of merit at least thirty days prior. However, West Virginia Code § 55-7B-6(c) provides that if a plaintiff believes that no screening certificate of merit is necessary because their case is based upon a well-established legal theory which does not require expert testimony supporting a breach of the applicable standard of care, the plaintiff can file a statement in lieu of a screening certificate of merit. "Because a statement that no screening certificate of merit is required pursuant to W. Va. Code § 55-7B-6(c) is clearly 'in lieu of' providing such a certificate of merit, such statement should be served no later than the applicable statutory deadline for providing a certificate of merit pursuant to W. Va. Code § 55-7B-6." Syl. Pt. 5, *State ex rel. Hope Clinic, PLLC v. McGraw*, 245 W. Va. 171, 858 S.E.2d 221 (2021).

Affirmed.

ISSUED: September 22, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn

Justice William R. Wooton

Justice Charles S. Trump IV

Justice H. L. Kirkpatrick

Justice James W. Flanigan