

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Manerva Walker,

Plaintiff,

v.

Trident Medical Center, Director Sara
Young, Live Oaks Mental Health & Wellness,
Director Rick Paczowski, and Deborah
Hickey,

Defendants.

Civil Action No. 2025-CP-08-00922

ORDER GRANTING
DEFENDANTS' SECOND
MOTION TO DISMISS**RECEIVED**

OCT 20 2025

SC Court of Appeals

This matter came before me on September 5, 2025, for a hearing on a Second Motion to Dismiss and a Motion for a More Definite Statement filed by the Defendants on July 2, 2025. Appearing at the hearing were Plaintiff Manerva Walker, *pro se*, and Creasie Parrott Schlachter, Esquire of Barnes, Alford, Stork & Johnson, LLP on behalf of the Defendants.

Having reviewed the pleadings, the motions, and the court's file, and after considering and reflecting upon the arguments presented at the hearing, I hereby **GRANT** the Defendants' Second Motion to Dismiss and **DENY AS MOOT** the Defendants' Motion for a More Definite Statement.

BACKGROUND

The Plaintiff filed her original Complaint on March 19, 2025. In response, the Defendants filed a Motion for a More Definite Statement, a Motion to Dismiss, and an Answer on May 2, 2025. Prior to any hearing on the Defendants' motions, the Plaintiff filed an Amended Complaint on June 19, 2025. Judge Coble subsequently heard the Defendants' motions on June 24, 2025, and entered a Form 4 Order that same day granting the Defendants' Motion for a More Definite Statement and denying the Defendants' Motion to Dismiss without prejudice pending further pleadings from the Plaintiff (which she was given 30 days to file). The Defendants subsequently

responded to the Amended Complaint by filing another Motion for a More Definite Statement, a Second Motion to Dismiss, and an Answer on July 2, 2025.

ANALYSIS

The Amended Complaint does not specify the cause(s) of action asserted by the Plaintiff. However, based on my review of that pleading and the arguments presented at the hearing, it appears that the Plaintiff intended to assert causes of action for medical malpractice and violation of her constitutional rights.

I. THE PLAINTIFF FAILED TO FOLLOW THE MANDATORY PROCEDURE FOR ASSERTING A MEDICAL MALPRACTICE CLAIM UNDER S.C. CODE ANN. § 15-79-125.

When the General Assembly enacted the Tort Reform Act of 2005 Relating to Medical Malpractice, 2005 Act No. 32, it established “a unique two-step procedure that filters frivolous claims but permits the filing of potentially meritorious claims.” Ranucci v. Crain, 409 S.C. 493, 506, 763 S.E.2d 189, 196 (2014). That procedure is set forth in S.C. Code Ann. § 15-79-125, which is quoted in part below.

- (A) Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action. . . .

* * *

- (C) Within ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than sixty days is granted by the court based upon a finding of good cause.

* * *

- (E) If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure.

Pursuant to Section 15-79-125, before filing a medical malpractice action, a plaintiff must: (1) contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness pursuant to S.C. Code Ann. § 15-36-100; (2) serve the Notice of Intent to File Suit upon all named defendants; and (3) mediate the dispute with the defendant(s). A plaintiff may not file a summons and complaint until after all of the above-listed requirements have been satisfied.

In this case, the Plaintiff failed to comply with any of the requirements set forth in Section 15-79-125. Accordingly, she is not permitted to bring a medical malpractice claim against the Defendants. See, e.g., Rutland v. Locklair, Op. No. 2024-UP-073, 2024 S.C. App. Unpub. LEXIS 75, at *1 (Ct. App. Mar. 13, 2024) (“We affirm the circuit court’s dismissal of the claims against [Respondent] to the extent the complaint raises allegations of medical malpractice because [Appellant] failed to file the statutorily mandated notice of intent to file suit and expert affidavit.”); Garrick v. Khoury, Op. No. 2021-UP-166, 2021 S.C. App. Unpub. LEXIS 169, at *1 (Ct. App. May 12, 2021) (“The circuit court did not err in dismissing [Appellant’s] complaint alleging medical malpractice against Respondents because [Appellant] failed to file a notice of intent to file suit and an affidavit of an expert witness”); Shahid v. Birch, 2018-CP-10-03206, 2019 S.C. C.P. LEXIS 622, at *6 (S.C. Com. Pl. Jun. 5, 2019) (“Because Plaintiff has not complied with Section 15-79-125 and has not filed [a Notice of] Intent to File Suit . . . , his claims against the defendants in this action must be dismissed.”). See also Gaither v. United States, No. 5:13-cv-00108-RMG-KDW, 2013 U.S. Dist. LEXIS 187721, at *10 (D.S.C. Oct. 25, 2013) (“[I]t is undisputed that Plaintiff has failed to file a Notice of Intent to File Suit or an expert affidavit with his Complaint, and therefore he cannot proceed with a state law claim of medical malpractice.”), report and recommendation adopted, 2014 U.S. Dist. LEXIS 70773 (D.S.C. May 22, 2014), affirmed, 585 F. App’x 150 (4th Cir. 2014); Jones v. Correct Care Sols., No. 0:11-2890-RBH-PJG, 2013 U.S. Dist.

LEXIS 166594, at *7 (D.S.C. Oct. 21, 2013) (“Because neither an expert affidavit nor a Notice of Intent to File Suit accompanied [the plaintiff’s] Complaint, . . . dismissal of this [medical malpractice] claim is warranted as a matter of law.”), report and recommendation adopted, 2013 U.S. Dist. LEXIS 165013 (D.S.C. Nov. 20, 2013); Straws v. Roach, No. 5:11-cv-00132-TMC-KDW, 2012 U.S. Dist. LEXIS 109071, at *21 (D.S.C. July 13, 2012) (“It is undisputed that Plaintiff has failed to file a Notice of Intent to File Suit or an expert affidavit with his Complaint, and therefore he cannot proceed with a state law claim of negligence or medical malpractice[.]”), report and recommendation adopted, 2012 U.S. Dist. LEXIS 108449 (D.S.C. Aug. 1, 2012).

II. THE PLAINTIFF HAS NOT PROPERLY ALLEGED A 42 U.S.C. § 1983 CLAIM AGAINST THE DEFENDANTS.

Claims for violations of constitutional rights arise under 42 U.S.C. § 1983, which provides in part as follows.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law[.]

To state a claim for relief under Section 1983, a plaintiff “must establish that [she was] deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law.” Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999). See also id. at 50 (“[T]he under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful[.]”) (citation and quotation marks omitted). Cf. Langham v. Porter, 2016-CP-42-1280, 2016 S.C. C.P. LEXIS 938, at *4 (S.C. Com. Pl. Nov. 15, 2016) (“Wal-Mart is a private corporate entity and, thus, 42 U.S.C. § 1983 cannot be read to give rise to a cause of action against Wal-Mart[.]”). Furthermore, “Section 1983 will not support a claim based on a *respondeat superior* theory of

liability.” Polk Cty. v. Dodson, 454 U.S. 312, 325 (1981). As a result, “a private corporation is liable under § 1983 *only* when an official policy or custom of the corporation causes the alleged deprivation of federal rights.” Austin v. Paramount Parks, Inc., 195 F.3d 715, 728 (4th Cir. 1999) (*italics in original*). Finally, Section 1983 cannot be used to assert a claim for inadequate or incompetent medical care. See, e.g., Wright v. Collins, 766 F.2d 841, 849 (4th Cir. 1985) (“Section 1983 was intended to protect only federal rights guaranteed by federal law, and not tort claims for which there are adequate remedies under state law. . . . Negligence or malpractice in the provision of medical services does not constitute a claim under § 1983.”).

In this case, to the extent the Plaintiff has attempted to assert a Section 1983 claim, it fails for each of the following independent reasons: (1) she has not alleged any particular federal right that was supposedly violated; (2) she has not alleged how the Defendants—all of whom are private entities or individuals—purportedly acted under color of state law; (3) she has not alleged an official policy or custom of the corporate defendants that caused the alleged violation of her rights; and (4) inadequate or incompetent medical care does not give rise to a Section 1983 claim.

IT IS, THEREFORE, ORDERED that the Defendants’ Second Motion to Dismiss is **GRANTED** and the Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Defendants’ Motion for a More Definite Statement is **DENIED AS MOOT**:

AND IT IS SO ORDERED.



Berkeley Common Pleas

Case Caption: Manerva Walker VS Trident Medical Center, Director, Sara Young ,
defendant, et al
Case Number: 2025CP0800922
Type: Order/Dismissal

So Ordered

s/ T.J. Rode (#2792)

CERTIFICATE OF SERVICE

I, Allison G. Driggers, an employee of Barnes, Alford, Stork & Johnson, LLP do hereby state that I have, on the date below, served a copy of the below-listed document(s) (together with any appropriate exhibits, attachments, and the like, if applicable) upon all other parties in this matter by depositing same in the United States Mail, Certified Mail – RRR, sufficient postage prepaid, with the return address clearly noted addressed as below.

Document(s) served:

Manerva Walker
458-Courtland Drive
Summerville, SC 29486

Order Granting

Second Motion to Dismiss

Allison G Driggers
Signature of Server

9/30/25
Date of Service