

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

ANTHONY W. ROMANO, SR., Individually
and as Personal Representative of the
ESTATE OF ANTHONY ROMANO, JR.,
Deceased,

Plaintiff,

V.I. GOVERNMENT HOSPITALS AND
HEALTH FACILITIES CORPORATION d/b/a/
the SCHNEIDER REGIONAL MEDICAL
CENTER, ROY LESTER SCHNEIDER
HOSPITAL, and the MYRA KEATING SMITH
COMMUNITY HEALTH CENTER, ROBERT
C. OEHHAF, M.D., JEFFREY GULLER, M.D.,
THOMAS O. BREWER, M.D., LUIS AMARO,
M.D., JESSICA WILSON, M.D., JASON A.
SNOW, P.A.-C, JOHN DOE PHYSICIANS 1-
10, JANE DOE PHYSICIANS 11-20, JOHN
AND JANE DOE NURSES 21-30, and their
respective agents, servants, ostensible agents,
employees, resident physicians, interns,
nurses, technicians, therapists and other
personnel,

Defendants.

CIVIL NO. ST-15-CV-630

MALPRACTICE ACTION
FOR WRONGFUL DEATH
AND SURVIVAL BENEFITS

JURY TRIAL DEMANDED

MEMORANDUM OPINION

THIS MATTER is before the Court on “Plaintiff’s Motion to Amend Order Dated August 29, 2016” filed on September 19, 2016 by Plaintiff Anthony W. Romano Sr. Defendants filed their Opposition on February 21, 2017.¹ For the reasons set forth herein, the motion will be granted.

¹ The February 21, 2017 Opposition was filed on behalf of Defendants V.I. Government Hospital and Health Facilities Corporation, D.b.a. Roy Lester Schneider Hospital and Schneider Regional Medical Center, Myra Keating Smith Community Health Center, Jeffrey Guller M.D., Luis Amaro M.D., Jessica Wilson M.D., and Jason A. Snow, P.A.-C.

I. Relevant Background

On December 3, 2015 Plaintiff Anthony W. Romano Sr.(Romano) filed a Complaint alleging malpractice against the health care professionals who treated his now-deceased son. On March 11, 2016, Defendants filed a Motion to Dismiss arguing that the Court did not have subject matter jurisdiction over the instant matter because Romano did not comply with Virgin Islands Medical Malpractice Act (MMA), which required Romano to first file a proposed complaint with the Medical Malpractice Action Review Committee.

Romano did not respond to Defendants' Motion to Dismiss and as a result, on August 29, 2016, the Court granted Defendants' Motion to Dismiss.

On September 19, 2016, Romano filed the instant motion to amend the August 29, 2016 Order, stating he "did properly file [the] Complaint with the Medical Malpractice Action Review Committee prior to filing the Complaint in the superior court (sic)." Pl.'s Mot to Amend 2 (emphasis in original). As proof, Romano attached Certified Mail Receipts and a postal receipt that show that, on September 4, 2015, his proposed complaint was mailed to:

Medical Malpractice Action Review Committee
Office of the Commissioner
Department of Health
1303 Hospital Ground
Suite 10
Charlotte Amalie
St. Thomas, VI 00802²

² Pl.'s Memorandum in Support of Motion to Amend, Ex.B1 p.3

Romano also presents affidavits showing proof of service of the Proposed Verified Complaint upon the offices of the Department of Health on St. Thomas and St. Croix, both on September 4, 2015.

Defendants argue that Romano did not meet MMA requirements because his proposed complaint was addressed to the Medical Malpractice Action Review Committee, and not addressed to Phyllis Wallace who was the Acting Commissioner of Health in September 2015.³

II. Discussion

The MMA—codified as 27 V.I.C. §§ 166 et seq.—governs the requirements for prosecuting medical malpractice actions in the Virgin Islands. *See Brady v. Cintron*, 55 V.I. 802, 812-813 (2011). The MMA establishes a Medical Malpractice Action Review Committee (Committee) within the Office of the Commissioner of Health.

The MMA states, “No action against a health care provider may be commenced in court before the claimant’s proposed complaint has been filed with the Committee.” 27 V.I.C. §§ 166i(b). “The proposed complaint shall be deemed filed when a copy is

³ Defendants also argue that Plaintiff did not fulfill the MMA’s jurisdictional requirement that a claimant wait ninety days from his proposed complaint with the Committee before commencing his action in court. *See* 27 V.I.C. § 166i(b). Defendants allege that because Plaintiff filed his proposed complaint on September 4, 2015, and then commenced his action in this court on December 3, 2015, his complaint in this Court is improper because it was only “eight –nine (89) days later.” However, the Court finds Defendants’ computation is incorrect, as December 3, 2015 was ninety (90) days after September 4, 2015. Therefore, this argument fails.

delivered or mailed by registered or certified mail to the Commissioner of Health.”
Id. at 166i(c).

Defendants argue that Romano failed to meet the filing requirement of the MMA because all of Plaintiff’s exhibits are addressed to the Committee, and not addressed specifically to Phyllis Wallace, who was the acting Commissioner of Health during the pertinent time in September 2015. Defs’s Opp. To Pl.’s Mot to Amend, 3.

First, the Court notes that the MMA does not require a claimant’s certified mail to specifically identify the acting (or named) Commissioner of Health by name. Second, although Romano’s proposed complaint was not addressed to Phyllis Wallace, it was nevertheless addressed to the “Office of the Commissioner” at the “Department of Health.”

The Court thus finds that Romano met the MMA filing requirement that at “a complainant must file a proposed complaint with the Committee by mailing a copy by registered or certified mail to the Commissioner of Health.” *Brady v. Cintron*, 55 V.I. 802, 814 (2011). The Court’s finding is in harmony with both the purpose of the MMA, which is to eliminate claims lacking merit; and also the spirit of the Superior Court rules governing amendments, which favors decisions on the merits, and avoids dismissals on mere technicalities. *See Brady*, 55 V.I. at 813; *see also Toussaint v. Stewart*, 2017 V.I. Supreme LEXIS 57, *23 (V.I. 2017).

III. Conclusion

Although Romano did not specifically identify the Department of Health Commissioner by name, he still satisfied the filing requirement of the MMA by sending his proposed complaint by certified mail to the Office of the Commissioner at the Department of Health and having copies hand delivered to the offices of the Department of Health in St. Croix and St. Thomas. Therefore, the Court will vacate the August 29, 2016 Order and reinstate this matter.

An Order consistent with this Memorandum Opinion will be entered.

DATED: December 6, 2017

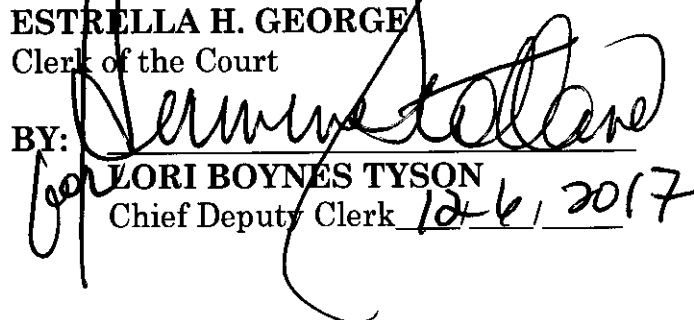


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:

ESTRELLA H. GEORGE
Clerk of the Court

BY:



LORI BOYNES TYSON
Chief Deputy Clerk

12-6-2017