

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

**REGINA HURTAULT, as personal
representative of the estate and survivors of
infant HURTAULT a/k/a RENECIA
LASHANDA WEBBE, a deceased infant, and
REGINA HURTAULT and RODNEY WEBBE
in their own right,**

Plaintiffs,

vs.

**GOVERNMENT OF THE U.S. VIRGIN
ISLANDS,**

Defendant.

CIVIL NO. 357/1994

**ACTION FOR WRONGFUL
DEATH, MEDICAL
MALPRACTICE, NEGLIGENCE
EMOTIONAL DISTRESS, LOSS
OF CONSORTIUM and
DAMAGES**

NOT FOR PUBLICATION

Lee J. Rohn, Esq.
Law Office of Lee J. Rohn
1101 King Street, Suite 2
Christiansted, St. Croix
U.S. Virgin Islands 00820
(Attorneys for Plaintiffs)

R. Eric Moore, Esq.
Law Office of R. Eric Moore
Post Office Box 3086
Christiansted, St. Croix
U.S. Virgin Islands 00822
(Attorney for Defendant)

CABRET, P.J.

MEMORANDUM OPINION

(June 27, 2000)

This matter is before the Court on Defendant's Motion for Summary Judgment.

Defendant contends that it is entitled to summary judgment because Plaintiff's claims are time-barred and because Plaintiff did not comply with certain requirements of the Tort Claims Act and the Health Care Provider Malpractice Act. For reasons which follow, the Court concludes that Plaintiffs' Complaint must be dismissed.

I. FACTS AND PROCEDURAL HISTORY

The evidence of record shows that on January 13, 1992, Plaintiff Regina Hurtault delivered her infant daughter at the St. Croix Hospital, which is owned by the Virgin Islands Government. The infant died on or about January 15, 1992.¹ On January 27, 1992, Plaintiffs consulted with an attorney and executed a medical authorization for the attorney to obtain information from the hospital and its staff concerning Plaintiffs' treatment. At some date prior to April 13, 1992, Plaintiff filed a notice of intention to file a tort claim with the Governor's Office.²

On December 13, 1993, Plaintiffs filed a complaint in Territorial Court against the Government and several health care providers alleging acts of medical malpractice which caused the wrongful death of their child ("Civil Number 974-93"). Plaintiffs named the Virgin Islands Department of Health as a defendant and alleged that as the owner and operator of the hospital, it

¹ Neither party has conclusively established the specific date the infant died. In Plaintiffs' original complaint, they alleged that the infant was born on January 13, 1992, "and subsequently died." In their Amended Complaint, Plaintiffs likewise fail to allege the date on which the infant died. In Defendant's Motion for Summary Judgment, it asserts that on January 13, 1992, Plaintiffs' infant "died less than two days after birth." In Plaintiffs' response, they assert that the infant was born on January 13, 1992 and "died less than two days later." In Plaintiffs' Notice of Claim filed with the Government, they assert that they were summoned to the hospital on January 14, 1992, that hospital personnel were working to restore the infant's breathing and that after working on the infant, hospital personnel informed them that the infant was dead. It thus appears that the infant could have died on either the 13th, 14th or 15th or January.

² The date of filing is unclear. The file merely contains a letter from the Governor's Office dated April 13, 1992, which acknowledges receipt of the Notice.

is vicariously liable for the acts and omissions of hospital personnel. On December 22, 1993, the Commissioner of Health ("Commissioner") was served with the complaint and summons for Civil Number 974-93 through his Executive Assistant, Yvonne H. Smith.

An uncontroverted affidavit in the record shows that as of January 13, 1994, Plaintiffs' had not filed a proposed complaint with the Commissioner. *See* V.I. Code Ann. tit. 27, § 166i(b) (1997).³ On April 12, 1994, Plaintiffs filed the instant civil action in Territorial Court against the same defendants asserting essentially identical causes of action as Civil Number 974-93. Subsequently, in a letter dated January 14, 1994, but not mailed until January 21, 1994, Plaintiffs sent a copy of the complaint to the Medical Malpractice Action Review Committee under a cover letter stating that it was for review "prior to filing in Court."⁴ On February 15, 1994, the Territorial Director of Risk Management notified Plaintiffs' counsel in a letter that the Medical Malpractice Action Review Committee voted not to review the proposed complaint because the two-year statute of limitations had passed for the filing of claims. On January 22, 1997, the Court dismissed Civil Number 974-93.

³ Civ. No. 974/1993. Affidavit of Patricia D. Steele, then Territorial Director of Risk Management who was responsible for handling all proposed complaints filed with the Department of Health. Patricia D. Steele is now a Judge of the Territorial Court of the Virgin Islands, Division of St. Croix.

⁴ Civ. No. 974-1993. Defendant's Motion for Summary Judgment Exhibits "A" and "B."

II. DISCUSSION

As stated above, Defendant has moved for summary judgment arguing that, *inter alia*, Plaintiffs failed to comply with the requirements of the Health Care Provider Malpractice Act (the "Act"). See V.I. Code Ann. tit. 27, §§ 166-166I (1997). Specifically, Defendant argues that Plaintiffs' violated section 166i(b) of the Act, which provides in relevant part that "[n]o action against a health care provider may be commenced in court before the claimant's proposed complaint has been filed with the Committee and the Committee has received the expert opinion as required by this section[.]" Title 27, §166i(b) (emphasis added). The purpose of the Committee "[is] to arrange for expert review of all malpractice claims before actions based upon such claims are commenced in court." Berry v. Curreri, 837 F.2d 623, 625-26 (3d Cir. 1988). "The Committee review process is designed to eliminate claims lacking merit and encourage prompt settlement of meritorious claims. Id. at 626.

Under subsection 166i(c), the "proposed complaint shall be deemed filed when a copy is delivered or mailed by registered or certified mail to the Commissioner of Health, who shall immediately forward a copy to each health care provider named as a defendant." Title 27, § 166i(c) (emphasis added). See also Green v. Moorehead, 20 V.I. 534 (D.V.I. 1984) ("Under the statute, filing occurred when the complaint was posted[.]"). Significantly, courts have consistently held that a plaintiff's compliance with the proposed complaint filing requirements is a jurisdictional prerequisite to filing a civil action based on the claims presented in the proposed complaint. See Berry, 837 F.2d at 626; Abdallah v. Callender, 28 V.I. 416, 422-23, 1 F.3d 141

(3d Cir. 1993); Freeman v. Government of the Virgin Islands, 25 V.I. 360, 362 (D.V.I. 1990).

Furthermore, because the Act is a waiver of the government's sovereign immunity, "[a] person desiring to proceed under the act must strictly adhere to the procedural requirements of the act before a demand may be pressed. V.I. Telephone Corp. v. Government of the Virgin Islands, 13 V.I. 405 (D.V.I. 1977)." Quinones v. Charles Harwood Mem. Hosp., 20 V.I. 356, 361, 573 F.Supp. 1101 (D.V.I. 1983) (Emphasis added).

In this case, Plaintiffs assert that they complied with the Act's proposed complaint filing requirement on December 22, 1993, when the Commissioner of Health was served with the Complaint in Civil Number 974/1993. The Court disagrees.

The Complaint served on the Commissioner's assistant that day was not a "proposed complaint" in any respect. Rather, this Complaint was the original pleading commencing Civil Action Number 974/1993 and it named the Department of Health as a defendant. Plaintiff has not pointed to anything which would have alerted the Commissioner that the pleading was a "proposed complaint," and the fact that it raised allegations of the Department's vicarious liability and was served with a summons belies Plaintiff's assertion that it was filed for expert review by the Committee. The only response which Plaintiff could have reasonably expected from service of this pleading was that the Commissioner would, as required by the summons, "file his answer or other defenses with the Clerk of this Court, and to serve a copy thereof upon the plaintiff's attorney within twenty (20) days after service of this summons."⁵

⁵ Civil Action Number 974/1993, Summons directed to Dr. Alfred O. Heath, Commissioner of Department of Public Health; Exhibit "5" to Plaintiffs' Opposition to

Plaintiffs also asserts that the Committee received a copy of the Complaint on December 28, 1993. Plaintiff cites no evidence supporting this assertion and they ignore the affidavit testimony of the Territorial Director of Risk Management who was responsible for handling all proposed complaints. In her affidavit, dated January 13, 1994, the Director states: "That a review of the records of the Office of the Commissioner of Health and the Territorial Office of Risk Management indicates that no Proposed Complaint has been filed in the above matter as required by Title 27, V.I. Code §166i, et seq."⁶ Again, Plaintiffs have pointed to no evidence controverting that affidavit.

Finally, to the extent that Plaintiffs rely on the January 1994 filing of their proposed complaint, it is clear that this filing was untimely. The cover letter was dated January 14, 1994, two days after they filed the instant Complaint in Territorial Court, and the envelope was postmarked January 21, 1994, more than one week after Plaintiffs filed the instant Complaint in the Territorial Court. *See Green v. Moorehead*, 20 V.I. 534 (D.V.I. 1984)

III. CONCLUSION

For the reasons stated above, the Court concludes that Plaintiffs' Complaint in this action must be dismissed. The law requires strict adherence to the procedural requirements of the Health Care Providers Malpractice Act. That Act requires a Plaintiff to file a proposed complaint

Defendant's Motion for Summary Judgment.

⁶ Civ. No. 974/1993. Affidavit of Patricia D. Steele, then Territorial Director of Risk Management who was responsible for handling all proposed complaints filed with the Department of Health. Patricia D. Steele is now a Judge of the Territorial Court of the Virgin Islands, Division of St. Croix.

HURTAULT v. GOVERNMENT OF THE VIRGIN ISLANDS

Civ. No. 357/1994

OPINION AND ORDER

Page 7

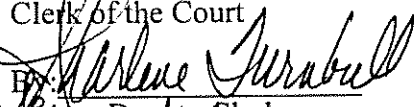
with the Commissioner for expert review before a trial court can obtain subject-matter jurisdiction over an action based on the claims contained in the complaint. In this case, Plaintiffs failed to file a proposed complaint with the Commissioner before they filed their Complaint in the Territorial Court. Accordingly, the Court does not have jurisdiction over this matter.


MARIA M. CABRET
Territorial Court Judge

A T T E S T:

DENISE D. ABRAMSEN

Clerk of the Court

By: 
Denise D. Abramsen
Deputy Clerk

Dated: 6/29/00