DOCKET NO. CV 18- 6074135 S	:	SUPERIOR COURT
JOEL P. SANTIAGO	:	JUDICIAL DISTRICT OF
V.	:	AT BRIDGEPORT
DNA DIAGNOSTICS CENTER, INC.	:	NOVEMBER 5, 2018

MEMORANDUM OF DECISION RE: MOTION TO DISMISS NO. 103

FACTS

The plaintiff, Joel P. Santiago, commenced the present case against the defendant, DNA Diagnostics Center, Inc., in March of 2018. In his one count complaint, the plaintiff alleges that the defendant wrongfully informed the plaintiff that he was not the father of a child. The plaintiff alleges that the defendant owed him a duty to conduct DNA-based paternity testing within the standard of care and the defendant breached this duty by failing to train and/or supervise staff to properly conduct testing and interpret test results; contaminating the DNA samples submitted by the plaintiff and by the mother of the plaintiff's child; mixing the samples submitted by the plaintiff with those of other clients; failing to train staff about how to properly verify test results; and failing to take measures to prevent erroneous result from being reported to the plaintiff.

On June 7, 2018, the defendant filed a timely motion to dismiss on the ground that the court lacks personal jurisdiction over it. The motion was accompanied by a memorandum of law. On July 17, 2018, the plaintiff filed a memorandum of law in opposition to the defendant's motion. The parties were heard at short calendar on July 23, 2018.

DISCUSSION

"Because a lack of personal jurisdiction may be waived by the defendant, the rules of practice require the defendant to challenge that jurisdiction by a motion to dismiss." (Footnote omitted; internal quotation marks omitted.) *Golodner* v. *Women's Center of Southeastern Connecticut, Inc.*, 281 Conn. 819, 825, 917 A.2d 959 (2007). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde* v. *Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

The defendant argues that, based upon the clear language of the complaint, the plaintiff has alleged a medical malpractice claim. Accordingly, the defendant argues that the plaintiff was required to submit a certificate of good faith signed by the plaintiff or the plaintiff's counsel as well as a written opinion letter from a similar healthcare provider in order to commence the present case and that the plaintiff's failure to do so deprives the court of personal jurisdiction over the defendant. In response, the plaintiff argues that because his complaint sounds in ordinary negligence rather than medical malpractice he was not required to submit either a certificate of good faith or a written opinion letter.

General Statutes § 52-190a (a) provides in relevant part: "No civil action or apportionment complaint shall be filed to recover damages resulting from personal injury or wrongful death occurring on or after October 1, 1987, whether in tort or in contract, in which it is alleged that such injury or death resulted from the negligence of a health care provider, unless the attorney or party filing the action or apportionment complaint has made a

reasonable inquiry as permitted by the circumstances to determine that there are grounds for a good faith belief that there has been negligence in the care or treatment of the claimant. . . . [T]he claimant or the claimant's attorney . . . shall obtain a written and signed opinion of a similar health care provider, as defined in [General Statutes §] 52-184c, which similar health care provider shall be selected pursuant to the provisions of said section, that there appears to be evidence of medical negligence and includes a detailed basis for the formation of such opinion. . . ."

"[T]he attachment of the written opinion letter of a similar health care provider is a statutory prerequisite to filing an action for medical malpractice. The failure to provide a written opinion letter . . . constitutes insufficient process and, thus, service of that insufficient process does not subject the defendant to the jurisdiction of the court. . . . The jurisdiction that is found lacking, however, is jurisdiction over the person, not the subject matter.'' (Citation omitted; internal quotation marks omitted.) *Morgan* v. *Hartford Hospital*, 301 Conn. 388, 401-402, 21 A.3d 451 (2011). "The plain language of [§ 52-190a (c)] . . . expressly provides for dismissal of an action when a plaintiff fails to attach a written opinion of a similar health care provider to the complaint, as required by § 52-190a (a)." (Footnote omitted.) *Rios* v. *CCMC Corp.*, 106 Conn. App. 810, 822, 943 A.2d 544 (2008).

The requirements of § 52-190a apply to claims that sound in medical malpractice, but not to claims for ordinary negligence. *Trimel* v. *Lawrence & Memorial Hospital Rehabilitation Center*, 61 Conn. App. 353, 356, 764 A.2d 203, appeal dismissed, 258 Conn. 711, 784 A.2d 889 (2001). "[P]rofessional negligence or malpractice . . . [is] defined as the failure of one rendering professional services to exercise that degree of skill and learning

commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss, or damage to the recipient of those services. . . . Furthermore, malpractice presupposes some improper conduct in the treatment or operative skill [or] . . . the failure to exercise requisite medical skill . . . . From those definitions, we conclude that the relevant considerations in determining whether a claim sounds in medical malpractice are whether (1) the defendants are sued in their capacities as medical professionals, (2) the alleged negligence is of a specialized medical nature that arises out of the medical professional-patient relationship, and (3) the alleged negligence is substantially related to medical diagnosis or treatment and involved the exercise of medical judgment." (Citations omitted; emphasis omitted; internal quotation marks omitted.) Id., 357-58. "The rule of law that distinguishes between medical malpractice and ordinary negligence requires a determination of whether the injury alleged occurred during treatment because of a negligent act or omission that was substantially related to treatment." Id., 360.

In determining whether a complaint sounds in medical malpractice or ordinary negligence, it is appropriate to consider all of the allegations in the count at issue. See *Perry* v. *Valerio*, 167 Conn. App. 734, 742-43 and 743 n.7, 143 A.3d 1202 (2016). In *Perry*, for example, the plaintiff alleged that the patient was injured in the course of a physical therapy session because the therapist failed to properly secure the patient's leg brace, properly supervise or monitor the patient as she attempted to ambulate, take steps to prevent the patient from falling, and properly support or assist the patient in order to prevent injury. Id., 736-37. The first two prongs of the test laid out in *Trimel* were not disputed by the plaintiff, but as to the third prong, the court noted that "[t]he alleged negligent acts or omissions are substantially

related to [the patient's] medical diagnosis and involved the exercise of [the therapist's] medical judgment. The allegations in the one count complaint suggest that [the therapist] was required to assess [the patient's] physical capabilities in determining how to support her while ambulating and in determining the degree of supervision and support necessary for [the patient] to safely ambulate with her walker while wearing the leg brace. The securing of the leg brace . . . was only one component of the overall physical therapy session, and [the therapist's] alleged failure to properly secure the leg brace was but one of many allegations of negligence in the complaint." Id., 743. The court therefore determined that, based on the allegations before it, the claim sounded in medical malpractice. Id., 743-44.

Whether allegations constitute medical malpractice depends upon the specific circumstances of the case. See *Trimel* v. *Lawrence & Memorial Hospital Rehabilitation Center*, supra, 61 Conn. 357. In *Batista* v. *Jacobs*, Superior Court, judicial district of Hartford, Docket No. CV-09-6006080-S (June 23, 2010, *Sheldon, J.*), for instance, the court determined that the third prong of *Trimel* was met where the plaintiff alleged that the defendant-physician negligently informed the plaintiff that he was HIV positive after receiving the preliminary results of a blood test conducted at a laboratory. The court noted that the plaintiff's claim "would require evidence of the standard of care for a physician in reporting the results of the preliminary HIV test. In particular, the questions to be answered would include: (1) whether a reasonably prudent physician interpreting the preliminary test results received from Quest would have notified a patient of the results; (2) and if so, the manner in which the reasonably prudent physician would do so . . . ." Id. The court further noted that "[b]y alleging an improper *interpretation* of the test results as opposed to allegations of improper

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.