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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

John Puetz,

Plaintiff,

v.

Vernon Sechriest, II,

Defendant.

Court File No. 27-CV-24-144

ORDER

On March 22, 2024, the Court conducted a hearing on Defendant Dr. Vernon Sechriest's motion to dismiss, motion to strike, and motion to stay discovery. Brian Lewis represented Plaintiff John Puetz. Chris Angell represented Defendant Vernon Sechriest, II.

Based upon the record, the Court issues the following:

ORDER

1. Defendant Dr. Vernon Sechriest's Motion to Dismiss is hereby GRANTED;
    a. This matter is hereby DISMISSED IN ITS ENTIRETY WITH PREJUDICE;
2. Defendant Dr. Vernon Sechriest's Motion to Strike is GRANTED;
    a. Pursuant to Rule 12.06 of the Minnesota Rules of Civil Procedure and Minnesota Statutes Section 544.36, the Complaint is hereby STRICKEN to the extent it requests "compensatory damages from Defendant in the amount of $10,000,000.00."; and

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3. The court administrator shall stay entry of judgment for thirty days pursuant to Minnesota General Rule of Practice 125; and

4. The attached Memorandum is part of this Order.

Let Judgment Be Entered Accordingly.

BY THE COURT:

Conroy, Lois
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June 20, 2024

Lois R. Conroy
Judge of District Court

MEMORANDUM

I. Facts

Plaintiff John Puetz is a Minnesota resident. (Exhibit 1 at ¶ 3.) Puetz's primary care physician referred him to the orthopedic clinic at the Veterans Administration Medical Center in Minneapolis, Minnesota ("the VA") for evaluation of his knee. (*Id*. at ¶¶ 19-20.)

At the time Puetz was referred, Defendant Dr. Sechriest was then serving as the VA's chief of orthopedics. Dr. Sechriest evaluated Puetz and recommended a total right knee arthroplasty, *i.e*., a total right knee replacement ("the Surgery"). (*Id*. at ¶¶ 21, 23.) Dr. Sechriest performed the Surgery at the VA on January 2, 2020. (*Id*. at ¶¶ 8, 12, 25, 27.)

Puetz alleges that, as a result of Dr. Sechriest's purported malpractice, the Surgery resulted in a tibial fracture and plantar fasciitis. (*Id*. at ¶¶ 31-32, 34-35, 38.) Puetz became aware of these injuries several days after the Surgery. (*Id*. at ¶ 8.)

On January 2, 2024, Plaintiff's counsel mailed the Complaint to commence this

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matter to Dr. Sechriest's current business address in California. (Dec. of Chris Angell at Exhibit 2.) The Complaint asserts a claim for medical malpractice against Dr. Sechriest in connection with the Surgery. (See generally *Id.* at Exhibit 1.) The Complaint expressly acknowledges that Plaintiff's claim arose on January 2, 2020, the date of the Surgery. (Id. at ¶ 12.) The Complaint alleges Dr. Sechriest's claimed malpractice resulted in "lifelong injuries" to Plaintiff's right leg and "lifelong impacts" to Plaintiff's quality of life and seeks damages in the amount of $10,000,000.00. (Id. at ¶¶ 47-48, p. 6.)

The Complaint was not accompanied by a waiver of service of process form for Dr. Sechriest to sign and return, as required by Rule 4.05(a) of the Minnesota Rules of Civil Procedure. (*Id.* at ¶ 4). Dr. Sechriest has never otherwise signed and returned a form waiving his right to be served with process. (*Id*.) However, Plaintiff contends that Dr. Sechriest waived service of the summons by emailing Plaintiff's counsel, voluntarily acknowledging receipt of the summons. (Plaintiff's Memo at Ex. A.)

This matter is before the Court on Dr. Sechriest's motion for dismissal of the Complaint in its entirety and with prejudice for two reasons: 1) Plaintiff's failure to effectively serve Dr. Sechriest with process and 2) Plaintiff's failure to commence this matter within the four-year limitations period applicable to medical malpractice claims. Dr. Sechriest further moves the Court for an Order striking the Complaint to the extent it seeks recovery of $10,000,000.00. Additionally, Dr. Sechriest moved the Court for a motion to stay discovery pending resolution of the Motion to Dismiss, which the Court granted in a separate Order dated April 4, 2024.

II. Defendant Dr. Sechrist's Motion to Dismiss is Granted with Prejudice.

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a. Legal Standard

The Minnesota Rules of Civil Procedure entitle a party to respond to a complaint with a motion for dismissal upon certain grounds. Specifically, Rule 12.02 of the Minnesota Rules of Civil Procedure provides:

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
>
> (a) lack of jurisdiction over the subject matter;
> (b) lack of jurisdiction over the person;
> (c) insufficiency of process;
> (d) insufficiency of service of process;
> (e) failure to state a claim upon which relief can be granted; and
> (f) failure to join a party pursuant to Rule 19.

Minn. R. Civ. P. 12.02.

Without sufficient service of process, a district court has no jurisdiction over a defendant. *See, e.g., Smith v. Flotterud*, 716 N.W.2d 378, 381 (Minn. Ct. App. 2006). Timely service on adverse parties has long been jurisdictional, and thus if service of process is invalid, the district court lacks jurisdiction to consider the case, and it is properly dismissed. *See, e.g.*, *Year 2001 Budget Appeal of Landgren v. Pipestone County Bd. of Com'rs*, 633 N.W.2d 875, 878 (Minn. Ct. App. 2001). Whether service of process was effective, and personal jurisdiction therefore exists, is a question of law. *See, e.g., Shamrock Development, Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn. 2008).

Further, a pleading will be dismissed for failure to state a claim if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which

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would support granting the relief demanded. *See, e.g.*, *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015). Where a complaint fails to state a claim upon which relief can be granted, dismissal with prejudice and on the merits is appropriate. *See, e.g.*, *Martens v. Minnesota Min. & Mfg. Co*., 616 N.W.2d 732, 748 (Minn. 2000). On a motion to dismiss for failure to state a claim upon which relief can be granted, the court is to consider only those facts alleged in the complaint, accepting those facts as true and must construe all inferences in favor of the nonmoving party. *See, e.g.*, *Forslund v. State*, 924 N.W.2d 25, 33 (Minn. Ct. App. 2019). Dismissal of a complaint for failure to state a claim is proper, where it clearly and unequivocally appears from the face of the complaint that the limitations period had run and that no facts tolled running of limitations period. *Pederson v. American Lutheran Church*, 404 N.W.2d 887, 889 (Minn. Ct. App. 1987).

b. Plaintiff Failed to Strictly Comply with Minn. R. Civ. P. 4.05, therefore, Defendant's Motion to Dismiss for Insufficient Service is Granted.

Defendant Dr. Sechriest moves the Court for dismissal for insufficient service pursuant to Minn. R. Civ. P. 12.02(d), asserting that Plaintiff Puetz failed to adequately serve him with process in accordance with Minnesota law. Here, Dr. Sechriest contends that Mr. Puetz attempted to serve him by sending the Complaint via certified mail.

Initiation of an action in a Minnesota court requires a plaintiff to follow the procedures in the Minnesota Rules of Civil Procedure. See, e.g., *Year 2001 Budget Appeal of Landgren v. Pipestone County Bd. of Com'rs*, 633 N.W.2d 875, 877 (Minn. Ct. App. 2001). Rule 3.01 of the Minnesota Rules of Civil Procedure states:

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A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant; or
(b) at the date of signing of a waiver of service pursuant to Rule 4.05; or
(c) when the summons is delivered for service to the sheriff in the county where the defendant resides personally, by U.S. Mail (postage prepaid), by commercial courier with proof of delivery, or by electronic means consented to by the sheriff's office either in writing or electronically; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Minn. R. Civ. P. 3.01.

Service of process in a manner not authorized by the Rules of Civil Procedure is ineffective service. Id. at 878. Service of process must strictly comply with the governing rule of civil procedure. See, e.g., *Nieszner v. St. Paul School Dist. No. 625*, 643 N.W.2d 645, 650 (Minn. Ct. App. 2002).

Service of process is governed by Rule 4 of the Minnesota Rules of Civil Procedure. Minn. R. Civ. P. 4.01, et seq. Rule 4 authorizes service by personal service and – in certain circumstances – by publication. Minn. R. Civ. P. 4.03; Minn. R. Civ. P. 4.04. However, Rule 4 does not authorize initiating a lawsuit by mail. Minn. R. Civ. P. 4.01, *et seq*.; *Nieszner v. St. Paul School Dist. No. 625*, 643 N.W.2d 645, 649 (Minn. Ct. App. 2002) ("Certified mail does not constitute service of process by mail."). Rather, Rule 4 allows a party to request a waiver of service via mail. Minn. R. Civ. P. 4.05(a). Rule 4.05(a) of the Minnesota Rules of Civil Procedure ("Rule 4.05") provides that a plaintiff may request that a defendant waive service of a summons. Specifically, Rule 4.05(a) provides that, the notice and request must:

(1) be in writing and be addressed:

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(A) to the individual defendant; or
(B) for a defendant subject to service under Rule 4.03(b)-(e) to the agent authorized to receive service;

(2) be accompanied by a copy of the complaint, two copies of Form 22B or a substantially similar form,[5] and a prepaid means for returning a signed copy of the form;

(3) inform a defendant, using Form 22B or a substantially similar form, of the consequences of waiving and not waiving service;

(4) state the date when the request is sent;

(5) give a defendant 30 days after the request was sent--or 60 days if sent to a defendant outside the United States--to return the waiver; and

(6) be sent by first-class mail or other reliable means.

Id.

If a plaintiff files a waiver of service signed by the defendant, proof of service is not required and the matter proceeds as if process had been served on the date the waiver was signed. Minn. R. Civ. P. 4.05(d). A litigant seeking to effect service of process by mail must be prepared to serve the intended party personally if the party fails to return the signed waiver of service. *See, e.g.*, *Nieszner v. St. Paul School Dist. No. 625*, 643 N.W.2d 645, 649 (Minn. Ct. App. 2002). Plaintiff contends that "substantial compliance" with Rule 4.05 is required, however, the Court is not persuaded. Service of a complaint by mail requires strict compliance with the rules of civil procedure and is not effective if the waiver of service is not signed and returned by the defendant. *See, e.g., Kokosh v. $4657 U.S. Currency,* 898 N.W.2d 284, 288 ("Service by mail requires strict compliance …)*; Coons v. St. Paul Companies,* 486 N.W.2d 771, 776 (Minn. Ct. App. 1992) ("Rule 4.05 requires strict compliance …"). In the absence of a signed and returned acknowledgment, proof of

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actual receipt and actual notice of the lawsuit is not sufficient to establish effective service. *See, e.g., Coons v. St. Paul Companies*, 486 N.W.2d 771, 775-76 (Minn. Ct. App. 1992). Absent personal service of process, or waiver of service by the defendant, a court ordinarily may not exercise jurisdiction over a defendant. Id. at 648. Actual notice of a lawsuit will not subject a defendant to personal jurisdiction unless the plaintiff substantially complied with Rule 4 of the Minnesota Rules of Civil Procedure. See, e.g., *Smith v. Flotterud*, 716 N.W.2d 378, 382 (Minn. Ct. App. 2006).

Here, the Summons and Complaint sent to Dr. Sechriest did not include a written notice and request that Dr. Sechriest waive personal service and stating the date the notice and request were sent, as required by Rule 4.05(a)(1) and (4). (Declaration of Vernon Franklin Sechriest, M.D. at ¶ 3.) The Summons and Complaint sent to Dr. Sechriest did not include two copies of Form 22B or a substantially similar form and a prepaid means for returning a signed copy of the form, as required by Rule informing Dr. Sechriest of the consequences of waiving and not waiving service, as required by Rule 4.05(a)(2). (Id.) The Summons and Complaint sent to Dr. Sechriest did not include a Form 22B or a substantially similar form informing Dr. Sechriest of the consequences of waiving and not waiving service, as required by Rule 4.05(a)(3). (Id.) And the Summons and Complaint sent to Dr. Sechriest did not include anything advising Dr. Sechriest that he had thirty days to sign and return a waiver of service, as required by Rule 4.05(a)(5). (Id.) Indeed, the only provision of Rule 4.05 which with Plaintiff did comply is that he sent the Summons and Complaint to Dr. Sechriest by first-class mail or other reliable means, as required by Rule 4.05(a)(6).

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(Dec. of Chris Angell at Exhibit 2.) As such, the Court finds that Plaintiff did not strictly comply with Rule 4.05 and did not effectively serve Dr. Sechriest with process. Therefore, the Court grants Defendant's motion to dismiss for lack of adequate service.

c. Plaintiff's Claims are Time-Barred Under the Applicable Statute of Limitations Period, therefore, Defendant's Motion to Dismiss for Failure to State a Claim is Granted.

Defendant Dr. Sechriest moves the Court for dismissal pursuant to Minn. R. Civ. P. 12.02(e), asserting that Plaintiff Puetz's claims are time-barred under the four-year statute of limitations period that apply to medial malpractice claims. Plaintiff asserts that that the limitations period applicable to his claim against Dr. Sechriest was and remains tolled during the pendency of his separate federal lawsuit against the United States.

Medical malpractice claims are subject to a four-year statute of limitations that begins to run when the cause of action accrues. Specifically, Minnesota law provides that, an action by a patient or former patient against a health care provider alleging malpractice, error, mistake, or failure to cure, whether based on a contract or tort, must be commenced within four years from the date the cause of action accrued." Minn. Stat. § 541.076(b) (emphasis added). Service of the summons must be made before expiration of the period of limitations. See, e.g., *Cornell v. Ripka*, 897 N.W.2d 801, 809 n.1 (Minn. Ct. App. 2017).

Ordinarily, a claim for medical malpractice "accrues when the physician's treatment for the particular condition ceases." Id. The termination-of-treatment rule, which establishes the accrual date for most medical-malpractice causes of action, delays accrual

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until treatment for the particular condition is terminated. *Broek v. Park Nicollet Health Services*, 660 N.W.2d 439, 442 (Minn. Ct. App. 2003). However, where as here, the acts of malpractice occurred on a specific date, the statute of limitations begins to run at the time the plaintiff sustains damage from that act. *See, e.g., Ciardelli,* 582 N.W.2d at 912. A discrete act of negligence by a medical professional falls within the single act exception when "it was complete at [a] precise time [and] no continued course of treatment could either cure or relieve it." *Id.* Here, Plaintiff's claims relate exclusively to claimed malpractice that occurred on January 2, 2020. (Dec. of Chris Angell at Exhibit 1.) Indeed, the Complaint expressly acknowledges that Plaintiff's claim arose on January 2, 2020. (*Id.* at ¶ 12.) Further, after the purported malpractice had occurred, no continued treatment could cure or relieve it. (*Id*.) Plaintiff characterizes it as a "lifelong" injury with a "lifelong" impact on his quality of life. (Id. at ¶¶ 47- 48.) Finally, Plaintiff admittedly was aware of his injuries several days after the Surgery. (Id. at ¶ 8.)

For the foregoing reasons, pursuant to the single act exception to the termination-of-treatment rule, the Court finds that Plaintiff's claims accrued on January 2, 2020, or within "several days" thereafter. As Plaintiff did not serve Dr. Sechriest with process by January 2, 2024 or "several days" thereafter, the Court finds that Plaintiff's claims are now time-barred. Therefore, the Court grants Defendant Dr. Sechriest's motion to dismiss with prejudice.

III. Defendant's Unopposed Motion to Strike the Complaint to the Extent it Alleges $10,000,000 in Damages.

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Minnesota law provides:

> In a pleading in a civil action which sets forth an unliquidated claim for relief, whether an original claim, cross-claim, or third-party claim, if a recovery of money is demanded in an amount less than $50,000, the amount shall be stated. If a recovery of money in an amount greater than $50,000 is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than $50,000 is sought.

Minn. Stat. § 544.36 (emphasis added); see also Minn. R. Civ. P. 8.01 ("If a recovery of money for unliquidated damages in an amount greater than $50,000 is demanded, the pleading shall state merely that recovery of reasonable damages in an amount greater than $50,000 is sought.")

Here, in violation of Minnesota law, the Complaint alleges damages in the amount of $10,000,000.00. (Dec. of Chris Angell at Exhibit 1 p. 6.) Further, Plaintiff does not oppose Defendant's motion to strike the offending damage pleading from the Complaint. Therefore, the Court grants Defendant Dr. Sechriest's motion to strike.

IV. Conclusion

For the foregoing reasons, the Court grants Defendant's Motion to Dismiss, dismissing this matter in its entirety and with prejudice, and grants the Defendants Motion to Strike and striking the Complaint to the extent it alleges $10,000,000.00 in damages.

LRC