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IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT
DAVIS COUNTY, STATE OF UTAH

EMMA HARPER , as Personal Representative of the ESTATE OF DAVID HARPER, Deceased , Plaintiff, MOUNTAIN RIDGE REGIONAL HOSPITAL , and SAMUEL CLARK, M.D. , Defendants.	PLAINTIFFS' MOTION IN OPPOSITION TO SUMMARY JUDGMENT Case No. 123456789 Judge Oscar D. Grouch
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STATEMENT OF UNDISPUTED MATERIAL FACTS

(Intentionally omitted per Memorandum to Examinee)

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(a). Where the facts establishing the accrual of a statute of limitations defense are undisputed, accrual may be resolved by the Court as a matter of law.

II. GOVERNING STATUTE OF LIMITATIONS

The Utah Health Care Malpractice Act, Utah Code Ann. § 78B-3-404, et seq. (the “Act”), provides a two-year limitations period, coupled with a four-year repose period, for medical malpractice claims against health care providers. The Act states, “A malpractice action against a health care provider shall be commenced within two years after the plaintiff or patient discovers, or through the use of reasonable diligence should have discovered the injury, whichever first occurs, but not to exceed four years after the date of the alleged act, omission, neglect, or occurrence. Utah Code Ann. § 78B-3-404(1).

Under Utah law, “determining whether and when an injured patient discovered or should have discovered her legal injury is a fact-intensive question that requires a jury to consider whether the actions taken in response to an injury and the efforts extended to discover its cause were adequate.” *Arnold v. White*, 239 P.3d 449 (Utah 2012) (hereinafter “*Arnold*”); *Robertson v. IHC Health Services*, 2023 U.S. App. LEXIS 18290 *, 2023 WL 4618346 (hereinafter “*Robertson*”). Under the Act, a patient has discovered their injury only when they have discovered their legal injury, meaning they have discovered both the fact of their injury and that the injury was caused by a negligent act. *Arnold*. This occurs when a plaintiff has actual or constructive knowledge of the relevant facts forming the basis of the cause of action. *Id*. Accordingly, without more neither (1) the existence of symptoms, (2) a suspicion that a doctor’s negligence caused medical complications, nor (3) the commencement of an investigation is sufficient to trigger the statute of limitations. *Id*. The level of knowledge sufficient to trigger the limitations period is objective not subjective. *Jensen v. IHC Health Services.*, 202 UT 57, ¶ 26. (hereinafter “*Jensen*”).

A malpractice action against a health care provider cannot be initiated unless and until the plaintiff gives, “the prospective defendant or his executor or success, at least 90 days’ prior notice of intent to commence an action.” Utah Code § 78B-3-412. If the notice is served less than 90 days prior to the expiration of the applicable time period, the time for commencing the malpractice action against the health care provider shall be extended to 120 days from the date of service of notice.” *Id.*

III. THE COURT SHOULD DENY DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT BECAUSE THE CASE WAS FILED WITHIN THE STATUTE OF LIMITATIONS WINDOW FOR MEDICAL NEGLIGENCE.

The Defendants argue that the facts establishing the accrual of a statute of limitations defense are undisputed, and the accrual of the statute of limitations time can therefore be resolved by the Court as a matter of law. Nevertheless, the facts establishing a statute of limitations defense are disputed. While Defendants argue that the statute of limitations should have began running “within weeks of the October 2021 visit,” the statute of limitations actually began running on March 17, 2022 when Mr. Harper discovered his injury. Furthermore, the statute of limitations was extended 120 days when Mr. Harper’s estate filed a notice of intent to commence action on February 23, 2024. Considering the fact-intensive dispute of the accrual of the statute of limitations, this Court should allow a jury to rule on this matter.

A. The statute of limitations began running on March 17, 2022 because this was the day Mr. Harper discovered his injury.

The statute of limitations for a medical malpractice claim runs two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered the injury. Utah Code Ann. § 78B-3-404(1). A patient has discovered their injury only when they have discovered their legal injury, meaning they have discovered both the fact of their injury and that

the injury was caused by a negligent act. *See Arnold*. Without more, the mere existence of symptoms, a suspicion that a doctor's negligence caused medical complications, or the commencement of an investigation is not sufficient to trigger the statute of limitations. A plaintiff does not need to have certain knowledge of negligence in order to have discovered it either. All that is necessary is that the plaintiff be aware of facts that would lead an ordinary person, using reasonable diligence, to conclude that a claim for negligence may exist. *See Arnold*. The level of knowledge sufficient to trigger the limitations period is objective, not subjective. *Jensen v. IHC Health Services.*, 202 UT 57, ¶ 26. Examining the statute of limitations through the lens of Utah case law leads to the objective belief that the statute of limitations in Mr. Harper's case began running on March 17, 2022.

Discovering a legal injury means that someone has discovered both the fact of their injury and that the injury was caused by a negligent act. A patient has discovered their injury only when they have discovered their legal injury, meaning they have discovered both the fact of their injury and that the injury was caused by a negligent act. In *Arnold*, the plaintiff underwent several surgeries in July of 1999. The plaintiff was not healing and had sustained an injury as a result of the procedures. As a result, they were transferred to another care facility at the direction of a family member in August of 1999. A few months later, in November 1999, the plaintiff retained an attorney who requested medical records from the facility, believing that there may be a claim for malpractice. Approximately two years after the letter was sent, an action was filed against the health care providers in December 2001. The defendant in that case argued that the injury was discovered in August 1999 when the plaintiff was transferred to a new care facility after the damage had been discovered, and that the statute of limitations had therefore expired.

The *Arnold* court rejected this assertion saying that the existence of symptoms alone were not enough to charge the plaintiff with knowledge that the symptoms were a result of negligence. This is because there is a great disparity of knowledge of those who provide health care services and those who receive the services with respect to expected and unexpected side effects of a given procedure. Rather, the court said that an injured patient must receive knowledge that they are both injured and that the caregiver's negligence caused that injury.

The *Arnold* rule was later applied in a case involving an individual who received a surgery to remove a portion of their pancreas after previous health problems and surgical complications. *Robertson*. The *Robertson* court ruled that the plaintiff had discovered an injury triggering the statute of limitations accrual time when a physician told them that they would need another surgery to correct the mistakes of a prior surgery or they would die. The court ruled that the plaintiff's explicit discussion with the doctor put them on notice that they had been injured, and that discussing the failures of the previous surgeon was enough for the court to consider that the plaintiff knew there was a causal connection between the prior surgeons' acts and the injury.

In this case, Defendants allege that Mr. Harper should have known that something had been missed by Dr. Clark because his symptoms continued weeks after the initial visit in October 2021. *Clark Depo*. They allege that experiencing these continued and worsening symptoms should have put Mr. Harper on notice that he was injured, and that this was sufficient to trigger the statute of limitations accrual. Nevertheless, applying the rule of *Arnold* demonstrates that although Mr. Harper was experiencing continued and worsening adverse symptoms, this was not enough to create a causal link between Dr. Clark's negligence and the injury. Mr. Harper and his daughter both lacked medical knowledge, and therefore exemplify the disparity in the knowledge of those who provide health care services and those who receive those services discussed in

Arnold. In fact, Mr. Harper's daughter states that she and her deceased father did not know any better, and that they believed some of the symptoms could be attributed to him not eating.

Harper Depo. It was not until March 17, 2022 that Mr. Harper learned of the bowel perforation and its lack of detection from October 2021. In his visit with Dr. Morris, he was finally able to establish the causal link between his ongoing symptoms and the negligence of Dr. Clark.

Affidavit of David Harper. Mr. Harper's interactions with Dr. Morris were also similar to the instance in *Robertson* where the court ruled that an injury had occurred (although the claim was dismissed because the statute of limitations had elapsed). Like *Robertson*, a physician put Mr. Harper on notice that they had incurred an injury and that injury was the result of the actions of a prior physician. Pursuant to the *Arnold* ruling, this was when Harper discovered his injury and the commencement of the statute of limitations period.

Defendants may say that the persisting and worsening symptoms taking place in the extended period of time between October 2021 and March 2022 would be enough to put a reasonable and ordinary person on notice that an injury had occurred and that it was a result of substandard care. This may be true for someone with formal medical training, however, this assertion completely ignores the knowledge disparity between a medical provider and those who receive healthcare services. Furthermore, existing or persisting symptoms or a suspicion that a doctor's negligence may have caused an injury does not itself amount to an "injury" under the statute of limitations. *Arnold*. Accordingly, under Utah law Mr. Harper's injury and its causal link were not discovered until he was formally told by another medical professional on March 17, 2022.

Under Utah law, Mr. Harper's injury was objectively discovered on March 17, 2022. Accordingly, the statute of limitations ran two years from March 17, 2022, which is materially

different than Defendants' claims that the statute of limitations began weeks after October 2021. As a result, the court should deny Defendants' Motion for Summary Judgment.

B. The statute of limitations window was extended because a notice of intent to commence action was filed on February 23, 2024.

Under Utah law, a malpractice action against a health care provider may not be initiated unless the plaintiff gives the prospective defendant 90 days' prior notice of an intent to commence an action against them. When this occurs within 90 days of the expiration of the statute of limitations, the time for commencing the malpractice action against the health care provider is extended to 120 days from the date of service of notice.

On February 23, 2024, Plaintiff served a Notice of Intent to Commence Action. The lawsuit was subsequently filed by Mr. Harper's estate on May 31, 2024. As previously discussed, the statute of limitations began accruing on March 17, 2022 when Mr. Harper received care from Dr. Morris and the accompanying knowledge of his injury and the causal link to Dr. Clarke's negligence. Approximately two years from March 17, 2022 is March 17, 2024 – the day when the statute of limitations would expire. Nevertheless, this time period was extended by 120 days (approximately 4 months) when Plaintiff served the Notice of Intent to Commence Action on February 23, 2024. The May 31, 2024 filing date is well within this extended statute of limitations window. As a result, the action initiated by plaintiff fall within the statute of limitations, contrary to the assertions of the plaintiff.

Plaintiff will likely rely on case law previously ruling that such an action is unconstitutional. *Robertson*. Nevertheless, this law has different provisions than the law alluded to in *Robertson*. Additionally, the plaintiffs in *Robertson* initiated their Notice of Intent to File a Claim after they had already elapsed the statute of limitations when they initially discovered the injury. In this case, the Plaintiffs filed their Notice of Intent to File a Claim before the statute of

limitations had elapsed because they filed approximately one month before the statute of limitations elapsed. Furthermore, courts should look at the evidence in the light most favorable to the nonmoving party in cases of summary judgment. Utah R. Civ. P. 56; *Robertson*. Consequently, the court should not cast aside the assertion that the statute of limitations were extended pursuant to Utah Code § 78B-3-412.

In conclusion, the statute of limitation expiration of March 17, 2024 was extended by 120 days when plaintiff filed a Notice of Intent to Commence Action on February 23, 2024. Accordingly, the case was filed within permitted statute of limitations windows.

IV. THE COURT SHOULD DENY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BECAUSE THERE ARE DISPUTES OF MATERIAL FACT.

Assuming the statute of limitations arguments put forth above fail, the court should still deny Defendants' motion for summary judgment because of disputes of material fact. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(a). In Defendants' Motion for Summary Judgment, it is asserted as undisputed that Mr. Harper waited six months to follow-up. Nevertheless, the record indicates that it took Mr. Harper approximately five months to follow-up as his appointment with Dr. Morris was in March of 2025. *Affidavit of David Harper*. *Deposition of Ms. Harper*. With Defendants' arguments that an injury should have been discovered sooner, this is a mischaracterization of the time Mr. Harper took to seek out additional care to investigate his ongoing and worsening symptoms. This is a mischaracterization of a fact that Defendant relies on to say that Mr. Harper should have been aware of negligence sooner. Such a mischaracterization is severe an

CONCLUSION

For the reasons stated above, Plaintiff respectfully request that the court dismiss Defendant's motion for summary judgment.

Dated November 4, 2025

KELLER, KAYLA

/s/_____
Kayla Keller
Attorneys for Plaintiff