STATE OF MICHIGAN

COURT OF CLAIMS

BRYAN BUTZIN,

Plaintiff,

v

Case No. 26-000035-MZ

Hon. Sima G. Patel

BOARD OF REGENTS OF UNIVERSITY OF MICHIGAN d/b/a UNIVERSITY OF MICHIGAN HEALTH and JOHN AND JANE DOES 1-10,

Defendants.
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OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION

The Court GRANTS defendants' March 18, 2026 motion for summary disposition under MCR 2.116(C)(4) as to defendants John and Jane Does 1-10 because plaintiff has not alleged any claims against these defendants in their official capacities. The Court GRANTS IN PART and DENIES IN PART defendant Board of Regents' March 18, 2026 motion for summary disposition because some, but not all, of plaintiff's claims sound in medical malpractice. The Court DIRECTS plaintiff to file an amended complaint clarifying his ordinary, gross negligence claims.

I. BACKGROUND

On July 24, 2025, plaintiff was an admitted patient at University of Michigan Health's Adult Psychiatric Services Department. On that day, plaintiff witnessed another patient, TA, violently assault a nurse. Plaintiff alleges that staff "took no effective action to stop the assault

other than attempting to administer an injection to" TA. Staff did not remove TA from the general patient population or restrain him in any way. Approximately one hour later TA violently attacked plaintiff from behind without any warning or provocation, causing plaintiff severe injuries.

Plaintiff filed suit against the Board of Regents of the University of Michigan as well as unidentified staff members, John and Jane Does 1-10, raising a single count of gross negligence. Defendants seek summary disposition. Defendants contend that this Court lacks jurisdiction over John and Jane Does 1-10 because plaintiff has not sued them in their official capacities. The University defendant further contends that plaintiff's claim sounds in medical malpractice, not ordinary negligence, and must be dismissed because plaintiff failed to file the statutorily required notice of intent and affidavit of merit.

II. JURISDICTION

"The Court of Claims is a court of legislative creation" and "of limited jurisdiction." *Council of Orgs & Others for Ed About Parochiaid v State*, 321 Mich App 456, 465; 909 NW2d 449 (2017) (cleaned up). This Court lacks jurisdiction to hear actions against public officials if the claims are levied against them in their individual capacities. *Id*. And this Court must dismiss any claims over which it lacks jurisdiction. *Id*.

Plaintiff has not filed suit against John and Jane Does 1-10 in their official capacities. Accordingly, this Court lacks jurisdiction to consider the claims against them. The Court GRANTS defendants John and Jane Does 1-10's motion for summary disposition.

III. ORDINARY NEGLIGENCE V MEDICAL MALPRACTICE

The University defendant further contends that plaintiff's ordinary gross negligence claim is actually a claim for medical malpractice. And because plaintiff did not follow statutory procedures for filing a medical malpractice action, defendant contends that plaintiff's suit must be dismissed.

"A complaint cannot avoid the application of the procedural requirements of a malpractice action by couching its cause of action in terms of ordinary negligence." *Dorris v Detroit Osteopathic Hosp Corp*, 460 Mich 26, 43; 594 NW2d 455 (1999) (cleaned up). In determining whether a claim sounds in medical malpractice or ordinary negligence, two questions must be answered: "(1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience." *Bryant v Oakpointe Villa Nursing Center, Inc*, 471 Mich 411, 422; 684 NW2d 864 (2004). "Also, if the reasonableness of an action can be evaluated by a jury only after the presentation of expert testimony, the claim sounds in medical malpractice." *Id*. at 423; see also *Dorris*, 460 Mich at 46.

Plaintiff's claim certainly pertains to actions that occurred in the course of a professional relationship; plaintiff was a patient at defendant's medical facility at the time he was attacked by TA. Determining whether plaintiff's claim raises questions of medical judgment beyond the realm of common knowledge and experience requires a review of the allegations raised in plaintiff's complaint.

Plaintiff alleged that fellow patient TA assaulted a nurse approximately one hour before he assaulted plaintiff.

> 16. Despite witnessing [TA's] violent assault on a staff member, Defendants failed to take any reasonable or adequate measures to protect other patients, including Plaintiff, from further violence by [TA].
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> 17. Defendants failed to isolate, restrain, transfer, or otherwise remove [TA] from the general patient population despite his demonstrated violent behavior.
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> 56. Defendants owed a duty of care to Plaintiff to maintain a safe environment, protect him from foreseeable harm, properly supervise dangerous patients, and provide appropriate medical care.
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> 57. Defendants breached this duty through conduct that constituted gross negligence, meaning conduct so reckless as to demonstrate a substantial lack of concern for whether an injury would result.

This gross negligence, plaintiff alleged, included "recklessly and grossly negligently failing to": "prevent an unreasonable assault" by a person with known violent tendencies; "take any reasonable measures to protect Plaintiff and other patients after witnessing [TA] assault a nurse"; "isolate, restrain, transfer, or otherwise remove [TA] from the general patient population" after he assaulted the nurse; "train, monitor, and supervise employees" to prevent foreseeable assaults; and "implement and enforce adequate policies and procedures for managing patients with known violent propensities."

In *Gregory v Heritage Hosp*, the companion case of *Dorris*, the plaintiff was attacked and beaten unconscious by another patient in the middle of the night while admitted at the defendant's psychiatric unit. *Dorris*, 460 Mich at 31. The plaintiff filed an ordinary negligence claim, alleging the defendant "owed a duty to its patients to hire employees who would protect them from other patients with violent propensities and to closely monitor those patients with such propensities"; "owed a duty to its patients to have adequate staffing to control the behavior of the patients under psychiatric care"; and breached those duties "by having insufficient staff to monitor the behavior

of its patients and by allowing patients with violent propensities to roam around the hospital and enter other patients' rooms without supervision." *Id*. at 46-47. The Court of Appeals held:

> [T]hese allegations concerning staffing decisions and patient monitoring involve questions of professional medical management and not issues of ordinary negligence that can be judged by the common knowledge and experience of a jury. The ordinary layman does not know the type of supervision or monitoring that is required for psychiatric patients in a psychiatric ward. [*Id.* at 47.]

In *Ackley v Kingswood Hosp, Inc*, unpublished per curiam opinion of the Court of Appeals, issued May 14, 2020 (Docket No. 346350), the minor plaintiff was a patient in a juvenile psychiatric unit. The plaintiff's roommate threatened to sexually assault him, and the plaintiff notified staff of this threat. The defendant asserted that it promptly moved the assailant to another room and monitored the plaintiff throughout the night. The plaintiff alleged that the defendant failed to adequately monitor the patients, the assailant carried out his threats and sexually assaulted the plaintiff, and that the defendant tampered with evidence and failed to notify law enforcement of the assault. *Id.*, slip op at 2.

The Court of Appeals held the plaintiff's allegations that the defendant's "staff failed to take *any* responsive action after they were notified of [the assailant's] threat; and after [the assailant] carried out the threat, [the defendant's] staff attempted to cover the incident up" sounded in ordinary negligence because no medical judgment was required to review these claims. *Id.*, slip op at 3. The Court of Appeals determined the plaintiff's allegation that the defendant "failed to protect him from sexual advances made by other patients" was an ordinary negligence claim, because, although not as clear, the plaintiff was essentially alleging the defendant completely failed to act, for example, by failing to investigate the plaintiff's report. *Id*. (cleaned up). The Court of Appeals held that the plaintiff's claims that the defendant failed "to take the appropriate measures is a much closer question." *Id*. (cleaned up). These claims attacked the sufficiency and propriety

of the defendant's staffing, supervisory, training, and patient monitoring decisions, all of which involved medical judgment. *Id*.

Consistent with the cited caselaw, plaintiff's claims that defendant had a duty to provide appropriate medical care; properly supervise patients they knew or should have known were violent; train, monitor, and supervise employees so they are prepared to prevent assaults; and implement and enforce adequate policies and procedures to maintain the safety of patients in their psychiatric care unit all involve questions of medical judgment that the factfinder could not assess without the assistance of expert testimony. Psychiatric in-patient units house unpredictable and sometimes violent patients. How to best handle the care of those patients while still providing necessary care for all patients are decisions requiring medical judgment, as are decisions about the policies and procedures to put in place and how to educate and train medical staff to properly manage these situations. These particular claims within plaintiff's complaint sound in medical malpractice, not ordinary negligence, and therefore must be dismissed.

To the extent plaintiff alleges that defendant was aware of the violent tendencies of a particular patient and failed to take any action to protect the other patients under defendant's care or prevent TA from committing another assault, plaintiff's claims sound in ordinary negligence. Those claims were properly raised and will not be dismissed.

IT IS ORDERED:

1. The Court GRANTS defendants' March 18, 2026 motion for summary disposition under MCR 2.116(C)(4) as to defendants John and Jane Does 1-10.

2. The Court GRANTS IN PART and DENIES IN PART defendant Board of Regents' March 18, 2026 motion for summary disposition under MCR 2.116(C)(8), dismissing those claims sounding in medical malpractice.

3. Plaintiff is DIRECTED to file a second amended complaint clarifying the claims sounding in ordinary negligence no later than June 18, 2026.

4. Defendant is DIRECTED to respond to plaintiff's second amended complaint within 21 days of receipt.

5. This is not a final order resolving all issues in this suit.

Date: May 28, 2026

Sima G. Patel
Judge, Court of Claims