

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Andrea Montgomery-Sabazan, as independent )  
independent administrator of the estate of )  
Billie McKnight, deceased, )

Plaintiff, )

v. )

No. 19 L 12546 )

Fresenius Medical Care Chicagoland, LLC, )  
a foreign limited liability company, Fresenius )  
Medical Care Chicago Kidney Center, a foreign )  
limited liability company, Fresenius Medical )  
Care of Illinois, a foreign limited liability )  
company, Fresenius USA Manufacturing Inc., )  
a foreign BCA, Fresenius USA Marketing, Inc., )  
a foreign BCA, Neomedica, Inc., a foreign BCA, )  
South Holland Complex L.P., Fresenius Medical )  
Care Chicago, LLC, a foreign limited liability )  
company, and Fresenius Medical Care Ventures, )  
LLC, a foreign limited liability company )

Defendants. )

**MEMORANDUM AND OPINION**

In every negligence action, a plaintiff must establish a duty owed by the defendant to the plaintiff. In this case, a question of fact exists as to whether a medical facility owed a duty of care to a patient who ended her treatment against medical advice. Since the facility's policies are not of record to clarify the facility's duty, if any, the defendant's motion to dismiss must be denied.

## Facts

On November 20, 2017, Billie McKnight received dialysis treatment at Fresenius Medical Care Chicago Kidney Center (“Fresenius”). McKnight decided to terminate her treatment and signed an “Early Termination of Medical Treatment Against Medical Advice” (“AMA”). The AMA explicitly stated that:

I, McNight [partially illegible], request to terminate my treatment prior to the prescribed time. I am fully aware that this is against the medical advice of my physician. The risks and consequences of terminating my treatment early, including serious illness or death, have been previously explained to me by my physician and health care team. I hereby assume such risks and agree not to hold my physician, FMCNA, its employees or agents responsible for any ill affects which may result from this action.

A nurse assisted McKnight off the dialysis machine and into her wheelchair. The nurse then assessed McKnight and determined she was competent to leave the facility. A technician took McKnight to the lobby where she left the building and boarded a bus. While boarding the bus, McKnight fell and suffered a subdural hematoma. McKnight’s condition declined and she subsequently died.

Andrea Montgomery-Sabazan, as independent administrator of McKnight’s estate, filed suit against Fresenius alleging negligence and medical malpractice. The complaint alleges that Fresenius owed McKnight a duty of care and caution in assisting and supervising her. Montgomery-Sabazan claims that Fresenius breached its duty by failing, among other things, to: protect McKnight from neglect; ensure that she received adequate supervision and assistance; provide timely assistance; assess her risk of falling; train staff to identify patients with a risk of falling; implement effective fall precautions; document McKnight’s status; maintain a clinical record; assess McKnight after dialysis

treatment; assist McKnight into a senior transport van; and secure her into a seat.

Fresenius challenges the complaint's legal adequacy pursuant to the Code of Civil Procedure. 735 ILCS 5/2-619. Montgomery-Sabazan responded, and Fresenius filed a reply. Both parties submitted various exhibits, but did not include any of Fresenius's internal policies.

### Analysis

In any common law tort action, a plaintiff must establish that "the defendant owed a duty to the plaintiff, that defendant breached that duty, and that the breach proximately caused injury to the plaintiff." *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22. A legal duty arises if there exists a relationship between the parties such that the law imposes on the defendant a standard of reasonable conduct on the plaintiff's behalf. *See id.* Whether a duty is owed under any particular circumstance is a question of law for a court to decide. *See id.* If, however, the existence of a duty hinges on disputed underlying facts, the existence and implication of those facts is for a trier of fact to resolve. *See Combs v. Schmidt*, 2012 IL App (2d) 110517, ¶ 32.

Fresenius brings its motion pursuant to Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. Such a motion admits the legal sufficiency of a plaintiff's claims but raises defects, defenses, or other affirmative matter appearing on the face of the complaint or established by external submissions that defeat the action. *Scheinblum v. Schain Banks Kenny & Schwartz, Ltd.*, 2021 IL App (1st) 200798, ¶ 22. In ruling on a section 2-619 motion, a trial court assumes the truth of all well-pleaded facts. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995).

The central issue at this point in the litigation is the effect of McKnight's AMA. Illinois common law is plain that a patient has the right to refuse medical treatment, even if the patient's life is in jeopardy. *In re Estate of Longeway*, 133 Ill. 2d 33, 45 (1989).

Here, it is uncontested that McKnight had the right to refuse further treatment and sign the AMA. The question is whether Fresenius owed McKnight a duty of care independent of her voluntarily termination of her dialysis treatment.

Montgomery-Sabazan argues that even if McKnight's AMA severs the patient-physician relationship, Fresenius still owed McKnight an administrative duty to ensure its discharged patients leave the premises safely. Montgomery-Sabazan bases this argument on Fresenius's policies, procedures, and practices. That argument finds support in *Heastie v. Roberts*, in which the court wrote that "[h]ospitals also have administrative and managerial duties toward patients, a breach of which may subject them to liability." 226 Ill. 2d 515, 551 (2007) (citing *Advincula v. United Blood Services*, 176 Ill. 2d 1, 28 (1996)). "While evidence of a hospital's customs or policies is not solely determinative of the standard of care, the failure of a hospital to follow its policies can be evidence of a breach of the hospital's duty to a patient." *Edelin v. Westlake Comm. Hosp.*, 157 Ill. App. 3d 857, 862 (1st Dist. 1987). Thus, "[i]n fulfilling its administrative and managerial duties, a hospital must conform to the standard of 'reasonable conduct' in light of the apparent risk" that can be determined by "expert testimony, hospital bylaws, statutes, accreditation standards, custom and community practice." *Heastie*, 226 Ill. 2d at 553.

*Edelin* is particularly persuasive here. In *Edelin*, a hospital allowed a patient to leave the hospital without an escort following her discharge. *Id.* at 859. On the way out, she slipped and fell in the hospital's lobby, injuring herself. *Id.* The court ruled that expert medical testimony was unnecessary to sustain the plaintiff's cause of action because her claim did not focus on negligent medical treatment, but the breach of an administrative duty to provide discharged patients with an escort according to the hospital's policies. *Id.* at 862.


It is reasonable to assume in this case that Fresenius has administrative policies and procedures addressing whether and

the extent to which Fresenius escorts patients from its property and, perhaps, onto awaiting transportation. The problem here is that the policies are not yet part of the record and, therefore, it cannot be judged whether they implicate a duty potentially owed by Fresenius to McKnight. Further, it is unknown whether there exists a particular policy or procedure applicable to escorting patients who are leaving Fresenius AMA. At this point, the AMA McKnight signed could be interpreted as absolving Fresenius of any adverse outcome or as applying only to an adverse outcome directly related to her dialysis treatment. In sum, the existence of a duty could be determined by underlying facts, the existence and implication of which this court cannot determine at this point.

### Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's motion to dismiss is denied; and
2. Fresenius is to answer the complaint on or before December 14, 2021.

  
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John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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