

RECENT DEVELOPMENT

LEWIS V. WALETZKY: ADMINISTRATIVE FILING REQUIREMENTS OF THE HEALTH CARE MALPRACTICE CLAIMS ACT ARE PROCEDURAL FOR CHOICE-OF-LAW PURPOSES AND, THEREFORE, THE DOCTRINE OF LEX LOCI DELICTI IS NOT APPLICABLE.

By: Christopher M. Balaban

The Court of Appeals of Maryland held that, for choice-of-law purposes, administrative filing requirements of the Health Care Malpractice Claims Act (“the Act”) are procedural and, therefore, are a condition precedent to bringing a claim in Maryland state or federal court. *Lewis v. Waletzky*, 422 Md. 647, 31 A.3d 123 (2011). As such, it was proper for the United States District Court for the District of Maryland to dismiss the Plaintiff’s case for failure to comply with the filing requirements before bringing her malpractice claim. *Id.*

Katherine Lewis (“Lewis”), a resident of Minnesota, was formerly a resident of Washington, D.C. While a D.C. resident, Lewis sought psychiatric care from Dr. Jeremy P. Waletzky (“Waletzky”), whose office was located in Maryland. Waletzky was Lewis’s psychiatrist from approximately October 2000 through January 2005. During that time, Waletzky prescribed Lewis several psychotropic medications, all of which were filled and ingested by Lewis in D.C. Waletzky never diagnosed Lewis with any serious mental disorder, nor did he make any diagnosis of Lewis’ mental condition. Lewis experienced negative side effects as a result of taking the medications and discontinued their use. Lewis contacted Waletzky in regard to the side-effects she was experiencing and Waletzky instructed her to continue taking the medication, but also prescribed additional medications so she could “taper off” the antipsychotic medications. Eventually she completely withdrew from the antipsychotics, yet her side effects persisted and worsened. At this time, she was diagnosed with a permanent neurological disorder known as Tardive Dyskinesia/dystonia, which was caused by the antipsychotics Waletzky prescribed to her.

Lewis brought this medical malpractice suit against Waletzky in the United States District Court for the District of Maryland for the injuries she sustained as a result of the medication he prescribed. Waletzky filed a Motion to Dismiss the Complaint on the basis that

Lewis failed to comply with the filing requirements of the Act. Lewis claimed that she was not subject to the filing requirements because D.C., where the injury occurred, had no such filing requirements. The district court granted Waletzky's Motion to Dismiss, reasoning that D.C. law would normally govern the litigation, but that the filing requirements of the Act implicated a strong public policy of limiting medical malpractice claims brought in State or Federal courts. As such, the public policy exception to *lex loci delicti* was invoked, and the filing requirements applied to the present litigation.

On appeal, the United States Court of Appeals for the Fourth Circuit determined that the choice-of-law question before the court was unresolved in Maryland, and certified the following question to the Court of Appeals of Maryland:

Does Maryland recognize the public policy exception, or any other exception, to *lex loci delicti* based on the Maryland Health Care Malpractice Claims Act ... which requires a plaintiff to comply with certain mandatory administrative filings prior to filing a medical malpractice lawsuit in a Maryland court?

The Court of Appeals of Maryland began its analysis by discussing the filing requirements at issue before the court. *Waletzky*, 422 Md. at 653, 31 A.3d at 127. The Act requires all malpractice claims to be filed with the Director of the Health Care Alternative Dispute Resolution Office ("HCADRO"). *Id.* at 655, 31 A.3d at 128. The Plaintiff must also file a certificate of a qualified expert, which must contain the expert's opinions in regard to the departure of the medical provider from the normal standard of care, and that this departure was the proximate cause of the plaintiff's alleged injury. *Id.* at 656, 31 A.3d at 128-29. Compliance with these requirements is necessary to maintain a medical malpractice claim, and failure to do so results in dismissal. *Id.* at 656, 31 A.3d at 129 (citing *Kearney v. Berger*, 416 Md. 628, 655, 7 A.3d 593, 608 (2010)).

Next, the court considered Maryland's choice-of-law rules as applied to the filing requirements of the Act. *Waletzky*, 422 Md. at 657, 31 A.3d at 129. The court stated that federal courts, in a diversity action, must apply the substantive law of the state in which they sit, which includes the state's choice-of-law principles. *Id.* (citing *Lab. Corp. of Am. V. Hood*, 395 Md. 608, 611, 911 A.3d 841, 842-43 (2006)). Maryland adheres to the doctrine of *lex loci delicti*, under which a Maryland court faced with a multistate tort action applies the substantive law of the jurisdiction in which the injury occurred, while

the law of the forum where the court sits governs procedural issues. *Waletzky*, 422 Md. at 657-58, 31 A.3d at 129-30.

The court noted that the certified question, as well as the filings and oral arguments made by the parties, centered on whether the public policy exception to *lex loci delecti* would be invoked. *Waletzky*, 422 Md. at 658, 31 A.3d at 130. This assumes that the filing requirements of the Act are substantive, and not procedural. *Id.* However, Maryland's choice-of-law rules require a threshold determination of whether the filing requirements of the act are substantive or procedural. *Id.* If the requirements are substantive, then *lex loci delecti* controls and, absent a public policy exception, the filing requirements would not be enforced. *Id.* If procedural, compliance with the filing requirements are mandatory and a condition precedent to bringing a medical malpractice suit in a Maryland court. *Id.*

Since the court found no prior choice-of-law cases in Maryland concerning a law similar to the filing requirements in the Act, the court turned to other *lex loci delecti* cases for guidance. *Waletzky*, 422 Md. at 659, 31 A.3d at 130. The court found the filing requirements of the Act distinguishable from other laws that were deemed to be substantive. *Id.* The court primarily relied on *Jacobs v. Adams*, a Court of Special Appeals of Maryland case, which centered on the difference between the procedural and substantive dichotomy with regard to choice-of-law rules. *Id.* at 662, 31 A.3d at 132 (citing *Jacobs v. Adams*, 66 Md. App. 779, 505 A.2d 930 (1986)). In *Jacobs*, the court stated that issues are procedural only if they affect the way the forum administers justice. *Waletzky*, 422 Md. at 663, 31 A.3d at 133 (citing *Jacobs*, 66 Md. App. at 790-91, 505 A.2d at 936). The *Jacobs* court held that laws that "restrict, limit, define, qualify, or otherwise simply modify the cause of action" are substantive. *Waletzky*, 422 Md. at 663, 31 A.3d at 133 (quoting *Jacobs*, 66 Md. App. at 791, 505 A.2d at 936.).

The Court of Appeals of Maryland adopted this framework to determine whether a law is procedural or substantive for choice-of-law purposes. *Waletzky*, 422 Md. at 664, 31 A.3d at 133. Procedural laws only affect the way in which the forum administers justice. *Id.* at 665, 31 A.3d at 134. Substantive laws are those, which create or bar a cause of action, define the elements of a claim, or provide a framework for calculating damages. *Id.* at 663-64, 31 A.3d at 133.

The court determined that the filing requirements of the Act were procedural because they govern how one gains access to Maryland courts in a medical malpractice suit, and as such, control how Maryland administers justice. *Waletzky*, 422 Md. at 665, 31 A.3d at

134. The court also found persuasive that the Act itself stated that the filing requirements “shall be deemed procedural.” *Id.* at 666, 31 A.3d at 135 (quoting CJ §3-2A-10). Since the filing requirements were procedural, the doctrine of *lex loci delecti* was inapplicable, and Lewis was required to comply with the requirements as a condition precedent to bringing her medical malpractice suit in a court sitting in Maryland. *Waletzky*, 422 Md. at 666-667, 31 A.3d at 135.

In *Waletzky*, the Court of Appeals of Maryland determined that the filing requirements of the Act are procedural, and accordingly will always be a condition precedent to bringing a medical malpractice suit in a Maryland court. Failure to abide by the mandatory filing requirements will result in dismissal of the claim without prejudice. More importantly, this case gives all Maryland civil litigation practitioners further guidance in determining what is substantive or procedural with regard to choice-of-law for any tort claim brought in a Maryland court involving diverse citizens.