

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2581CV00293

ELIZABETH DIMASCIO

v.

WATERTOWN HEALTH CENTER LLC, and  
VERO HEALTH MANAGEMENT, LLC.

**MEMORANDUM AND ORDER ON DEFENDANTS' MOTION TO DISMISS  
AND PLAINTIFF'S MOTION TO FILE SECOND AMENDED COMPLAINT**

This matter arises from the alleged negligent custodial care provided to the plaintiff during her stay as a permanent long-term nursing care resident of Watertown Health Center LLC ("WHC"). Plaintiff, through her attorney-in-fact, alleges that WHC engaged in "egregious neglect and misconduct" resulting in "catastrophic, disfiguring, and life-altering injuries to an elderly woman." Specifically, Plaintiff alleges that while she was a resident, she was assessed as a "fall risk" and was totally dependent on WHC staff for all activities of daily living. On July 26, 2023, plaintiff fell while at WHC and suffered an orbital fracture, facial lacerations, and extensive bruising. Following the fall, Plaintiff was never able to walk again nor be as active as she was prior to her injuries. She brings claims of negligence, gross negligence and vicarious liability against all defendants.

Before me is Defendants' motion to dismiss the complaint for Plaintiff's failure to comply with the notice provisions of G. L. c. 231, § 60L, the medical malpractice statute [Paper No. 6] and Plaintiff's Motion for Leave to File a Second Amended Complaint [Paper No. 14]. Upon consideration of the pleadings and arguments by counsel, Defendant's motion to dismiss is

ALLOWED leaving no need for action on Plaintiff's motion for leave to file its Second Amended Complaint.

### DISCUSSION

WHC argues that Plaintiff's claims against the nursing home amount to an "action for malpractice, error or mistake against a provider of health care" subject to the notification requirement in c. 231, § 60L(a) ("a person shall not commence an action against a provider of health care as defined in the seventh paragraph of section 60B unless the person has given the health care provider 182 days written notice before the action is commenced"). Section 60B of that statute defines a "provider of healthcare" as "a person, corporation, facility or institution licensed by the commonwealth to provide health care or professional services as a physician, hospital, clinic or nursing home, dentist, registered or licensed nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, social worker, or acupuncturist, or an officer, employee or agent thereof acting in the course and scope of his employment."

There can be no argument that WHC is a facility licensed to provide health care services as a "nursing home." See G. L. c. 321, § 60B. The notification requirement applies to "[e]very action for malpractice, error or mistake against a provider of health care[.]" *Id.* It is not limited, as Plaintiff argues, to claim for "professional malpractice." Plaintiff's claims for "negligence" and "gross negligence" are claims of "error or mistake" against the nursing home that within the scope of § 60L. *Little v. Rosenthal*, 376 Mass. 573, 576 (1978) (patient's claims for breach of contract and c. 93A violation deemed to be malpractice action); *Anderson v. Attar*, 65 Mass. App. Ct. 910, 911 (2006) ("All treatment-related claims, whether in tort, in contract, or under G.L. c. 93A, must be submitted to a tribunal.") Consequently Plaintiff's claims are subject to the notification requirement of § 60L. Compliance with the notification requirement will not present

any undue hardship or affect Plaintiff's potential recovery as the injuries occurred on July 26, 2023, and her claims are still well within the applicable statute of limitations.

**ORDER**

Defendant's motion to dismiss is **ALLOWED**. The Amended Complaint is **DISMISSED** without prejudice to the Plaintiff refile following compliance with the notification requirement under § 60L. The Court takes no action on Plaintiff's motion to file a Second Amended Complaint as the case has been dismissed.



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Keren E. Goldenberg  
Justice of the Superior Court

February 3, 2026