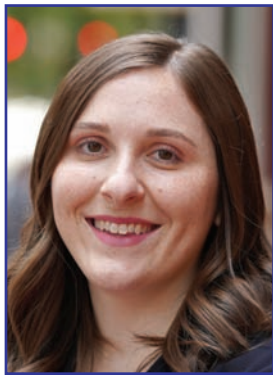




Pledger v. Lynch

Failing to Provide a Screening Certificate of Merit not Grounds for Dismissal in Federal Court

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Medical malpractice defense practitioners beware when defending Federal Tort Claims Act (FTCA) cases for medical negligence. According to the latest holdings of the Fourth Circuit, a plaintiff's failure to comply with the pre-suit expert certification requirement of West Virginia's Medical Professional Liability Act, W.Va. Code § 55-7B-6(b) (MPLA) is not grounds for dismissal in federal court.

In *Pledger v. Lynch*, 5 F.4th 511 (4th Cir. 2021), Lorenzo Pledger, an inmate at a federal prison in West Virginia, brought suit alleging, among other claims, a claim for medical negligence against the United States pursuant to the FTCA. The United States moved to dismiss the claim, and the U.S. District Court for the Northern District of West Virginia granted the motion due to Pledger's failure to provide a screening certificate of merit from a qualifying health care provider prior to filing suit as required by the MPLA. W.Va. Code § 55-7B-6(b).

Pledger appealed, and on July 21, 2021, the Fourth Circuit entered an order reversing the district court's dismissal of the FTCA medical negligence claim and holding that "state-law certification requirements like West Virginia's are inconsistent with the Federal Rules of Civil Procedure," and "are thus supplanted by the Federal Rules of Civil Procedure." In reaching the conclusion, the court was guided by the two-step process for mediating potential conflicts in the application of state or federal law from *Shady Grove Orthopedic Associates, P.A. v Allstate Insurance Co.*, 559 U.S. 393 (2010). Step one requires the court to determine if the federal rules answer the question in dispute, here, "whether a medical malpractice plaintiff must provide pre-suit expert support for his claim." If step one is answered affirmatively the Federal Rules apply unless, during step two, those rules are deemed invalid via the Constitution or the Rules Enabling Act. *Shady Grove*, 559 U.S. at 398.

In *Pledger*, the court answered the first step affirmatively finding that Federal Rules of Civil Procedure 8, 9, 11, and 12 provide the pleading requirements to support a FTCA medical negligence claim and that the MPLA's pre-suit certification requirement conflicts with these Federal Rules because it imposes a heightened pleading requirement not contemplated by the Federal Rules. The court rejected the argument that the MPLA's certification requirement could not conflict with the Federal Rules regarding pleadings, as the MPLA's requirement applies pre-suit and does not require attachment of the certificate to the pleadings and, is thus, not a pleading standard. Instead, the court held the line between attachment of a certificate to a complaint and service of a certificate on a defendant to be artificial, noting that even if the screening certificate were a service requirement and not a pleading standard, there is still no basis for dismissal in failing to comply under the Federal Rules. During step two, the court found that the applicable Federal Rules were not invalid via the Constitution or the Rules Enabling Act. As such, the court determined the certification requirement was preempted by the Federal Rules and inapplicable in federal court. The Fourth Circuit later denied a motion for rehearing *en banc*, leaving the decision intact.

The Pledger decision may open the door to frivolous lawsuits that the MPLA was designed to weed out, as no medical expert will be required to certify that the claims are meritorious. Additionally, while the court's decision was issued in the context of an FTCA claim for medical malpractice governed by the MPLA, it could have sweeping effects on any pre-suit requirements imposed by state law for other types of actions. Judge Quattlebaum's dissenting opinion in *Pledger* noted his concern that the majority's decision, which broadly interpreted multiple Federal Rules when there was not a direct collision with state law, could potentially render inapplicable many substantive state-law provisions. Only time will tell whether Judge Quattlebaum's concerns about the expansion of Shady Grove come to realization.