

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

DA'JUAN BURNS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-11214-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Da’Juan Burns, an inmate incarcerated at defendant’s Ohio State Penitentiary (“OSP”), has alleged medical staff at OSP failed to properly treat him for weight loss and gastritis. Plaintiff has alleged a “medical claim” for the purposes of Civ.R. 10(D)(2) without filing the required affidavit of merit.

{¶ 2} A “medical claim” is defined in R.C. 2305.113(E)(3) as “any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person.”

{¶ 3} Based upon the allegations of plaintiff’s complaint, the court finds that plaintiff has asserted a “medical claim” as that term is defined in R.C. 2305.113(E).

{¶ 4} Civ.R. 10(D)(2) provides, in pertinent part:

{¶ 5} “(a)\*\* [A] complaint that contains a medical claim, dental claim, optometric claim, or chiropractic claim, as defined in section 2305.113 of the Revised Code, shall include one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability. Affidavits of merit shall be provided by an expert witness pursuant to Rules 601(D) and 702 of the Ohio Rules of Evidence.”

{¶ 6} Plaintiff did not file an affidavit of merit with his complaint. The Supreme Court of Ohio has held that where plaintiff fails to file the affidavit required by Civ.R. 10(D)(2), the complaint fails to state a claim for relief. *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St. 3d 167, 2008-Ohio-5379.

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ENTRY OF DISMISSAL

For the reasons set forth in this determination, plaintiff's claim is DISMISSED.  
Court costs are assessed against plaintiff.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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