

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division**

<b>ELOISE K. SIMMONS</b>	:	
<i>Plaintiff,</i>	:	
v.	:	<b>Case No. 2024-CAB-006688</b>
	:	<b>Judge Julie H. Becker</b>
<b>MEDSTAR WASHINGTON</b>	:	
<b>HOSPITAL PSYCHIATRIC</b>	:	
<b>DEPARTMENT UNIT OF MENTAL</b>	:	
<b>HEALTH</b>	:	
<i>Defendant.</i>	:	

**ORDER GRANTING DEFENDANT’S MOTION TO DISMISS**

Pending before the Court is Defendant’s motion to dismiss Plaintiff’s complaint for failure to state a claim and for lack of subject matter jurisdiction, filed January 14, 2025. Plaintiff has not filed an opposition. For the reasons set forth below, Defendant’s motion to dismiss is granted.

**BACKGROUND**

On October 18, 2024, Plaintiff filed the instant complaint, alleging that Defendant “discriminated against [her] in many ways” including “leaving her stomach open with 8 infections...six people stick[ing] their hands in [her vagina] and ... taking [her] babies without [her] knowledge.” Compl. at 1 (Oct. 18, 2024). Her complaint further alleges she was assaulted by police officers both at the hospital and in her home and that \$268 was taken by Defendant at one point during her hospitalization and \$150 was taken from her at another point. *Id.*

Defendant seeks to dismiss the complaint pursuant to District of Columbia Superior Court Rule of Civil Procedure 12(b)(6), for failure to state a claim on which relief can be granted, and pursuant to District of Columbia Superior Court Rule of Civil Procedure 12(b)(1), arguing Plaintiff failed to give the 90 days’ notice of her intent to bring a medical malpractice claim required by

D.C. Code § 16-2802(a). *See* Def. Mot. to Dismiss. 1 (Jan. 14, 2025). The Court agrees on both points.

## DISCUSSION

### **A. Failure to state a claim on which relief can be granted**

Defendant argues that Plaintiff has failed to state claims on which relief can be granted for (1) discrimination, (2) conversion, (3) assault, (4) medical malpractice, and (5) that her other allegations of harm also do not make out cognizable claims. The Court agrees and will take each argument in turn.

#### *Legal Standard*

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Potomac Development Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Court must construe the complaint in the light most favorable to the Plaintiff and must take the facts alleged in the complaint as true. *Casco Marina Development, L.L.C. v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003). These factual allegations in the complaint, however, “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a complaint. *Luna v. A.E. Engineering Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). The Complaint must satisfy the

pleadings standards set forth in the Superior Court Civil Rules. Rule 8(a) provides that a complaint must contain a short and plain statement of Plaintiff's claim that "puts the defendant on notice of the claim against him." Super. Ct. Civ. R. 8 (a); *see also Sarete, Inc. v. 1344 U St. Ltd. P'ship*, 871 A.2d 480, 497 (D.C. 2005).

The Court is mindful that Plaintiff in this case is proceeding *pro se*. While it is certainly true that *pro se* litigants "can expect no special treatment from the court," *Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979 (D.C. 1999), the Court of Appeals has required "trial judges to exercise special care with a *pro se* litigant in special circumstances." *Padou v. District of Columbia*, 988 A.2d 286, 292 (D.C. 2010). Specifically, these special circumstances include the filing of pleadings. *Id.* ("In matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers." (citations omitted)). Reasonable accommodations for self-represented litigants may be appropriate because they face special challenges in navigating the legal process and the court system. *See Reade v. Saradji*, 994 A.2d 368, 372-73 (D.C. 2010).

Nevertheless, although "a *pro se* litigant must of course be given fair and equal treatment, he cannot generally be permitted to shift the burden of litigating his case to the courts, nor to avoid the risks of failure that attend his decision to forego expert assistance." *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1993). Furthermore, "[a] court's duty to construe a *pro se* complaint liberally does not permit a court to uphold completely inadequate complaints." *Elmore v. Stevens*, 824 A.2d 44, 47 (D.C. 2003) (citing *Vaughn v. United States*, 579 A.2d 170, 176 (D.C. 1990)).

1. Failure to state a claim for discrimination.

Plaintiff alleges a generalized claim of “discrimination” against Defendant. She does not cite any particular incident or specify what statute she claims Defendants violated. Broadly, to state a claim for discrimination Plaintiff must demonstrate a “failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.” *De Lima v. Int'l Med. Grp., Inc.*, 2004 D.C. Super. LEXIS 21, 20 (D.C. 2004) (citing Black's Law Dictionary (6th Ed.) at 467). The District of Columbia’s Human Rights Acts protects residents of the District against discrimination on the basis of several protected categories. *See* D.C. Code § 2–1401.01. Defendant contends that Plaintiff does not allege membership in any protected class or provide any connection between any protected characteristic and Defendant’s alleged connection. The Court agrees. Plaintiff’s complaint states that Defendant “treated [her] the worst a patient can ever be treated” when they, among other things, left her stomach open, took her money, and stole her babies. Compl. at 1. None of these allegations constitute discrimination absent a showing of Plaintiff’s membership in any protected class and direct connection between the protected status and Defendant’s actions.

2. Failure to state a claim for conversion

In her complaint, Plaintiff alleges that \$268 was taken from her in the psychiatric ward and that \$150 was taken from her at some other point by Defendant. Compl. at 1. Defendant construes these allegations as a claim for conversion. To state a claim for conversion, the Plaintiff must establish that Defendant wrongfully took possession of her property, in this case, the two sums of money. *See* 1 Civil Jury Instructions for DC § 25.03 (2025); *Baltimore v. District of Columbia*, 10 A.3d 1141, 1155 (D.C. 2011). Plaintiff’s complaint fails to state the requisite elements to make a case for conversion. Plaintiff fails to specify who allegedly took this money, when it was taken,

or any facts suggesting that an employee or agent of Defendant is the person who took it. Without these facts or other context surrounding these allegations, the Court cannot discern a claim for conversion against Defendant.

3. Failure to State a claim for assault.

Plaintiff's complaint alleges that the police, "6 men and 1 wom[a]n" assaulted her in the hospital and in her home. Compl. at 2. To state a claim for assault Plaintiff must show that someone "intentionally [and unlawfully] threaten[ed] or attempt[ed] to cause physical harm or offensive contact ... [or] cause[d] an apprehension of imminent physical harm or offensive contact." 1 Civil Jury Instructions for DC § 19.01 (2025); see *Holder v. District of Columbia*, 700 A.2d 738, 741 (D.C. 1997). Defendant argues that Plaintiff has failed to plead sufficient facts about the assault, including whether Defendant had control over these officers' conduct, and when the assault occurred. The Court agrees. Absent further information regarding the alleged assault, there is no basis to believe Defendant is responsible for any alleged harm.

4. Failure to state a claim for medical malpractice.

To state a claim for medical malpractice, Plaintiff must prove that they had a medical relationship with Defendant, Defendant failed to meet the applicable standard of care and this failure to do so caused Plaintiff's injury. See 1 Civil Jury Instructions for DC § 9.01 (2025). As discussed below, while Plaintiff's complaint certainly contains allegations of harm that occurred during medical practice, those claims are implausible. Defendant argues that Plaintiff's claim further fails as she does not identify the procedure during which her stomach was allegedly left open, which medical personnel associated with Defendant performed this surgery, how the procedures used deviated from an applicable standard of care, or the nature of her injury. Mot. to Dismiss at 7. Given Plaintiff's *pro se* status, an omission of some of these facts might not warrant

dismissing her case entirely. However, given both the nature of Plaintiff's allegations and the absence of most required elements, the Court cannot find that Plaintiff has met her burden to state a claim for medical malpractice.

5. Other allegations.

Defendant argues that plaintiff's "vague" claims of Defendant "leaving her stomach open with 8 infections and stealing her babies are subject to immediate dismissal" as they lack "an arguable basis in law in fact." Mot. to Dismiss at 3 (Jan. 14, 2025) (citing *Brandon v. D.C. Bd. of Parole*, 734 F.2d 56, 59 (D.C. Cir. 1984)). A complaint may be dismissed if it relies on factual allegations that are "clearly baseless," a standard that requires the Court find Plaintiff's allegations more than just unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33, 112 S. Ct. 1728, 1733 (1992). Here, the Court agrees that Plaintiff's claims of hospital staff "taking her babies without [her] knowledge" and leaving her stomach open during a procedure rise to that level. Compl. at 1. Again, the Court is mindful Plaintiff is proceeding *pro se* and thus afforded more leeway articulating her claims. However, given the vague and implausible nature of Plaintiff's complaint, the Court finds Plaintiff has failed to state a claim on which relief can be granted.

**B. Lack of Subject Matter Jurisdiction**

Separate from the issue of failure to state a claim, Defendant also argues that the Complaint should be dismissed pursuant to Super. Ct. Civ. R. 12(b)(1) for lack of subject matter jurisdiction.

*Legal Standard*

Whether a trial court has subject matter jurisdiction over a matter is a question of law. *Davis & Assocs. V. Williams*, 892 A.2d 1144, 1148 (D.C. 2006). "Subject matter jurisdiction concerns the court's authority to adjudicate the type of controversy presented by the case under consideration." *Id.* (internal quotation marks omitted).

Motions to dismiss for lack of subject matter jurisdiction may be made by “facial” attack or “factual” attack. *Second Episcopal Dist. African Methodist Episcopal Church v. Priouleau*, 49 A.3d 812, 815 (D.C. 2012). In a facial attack, the court determines jurisdiction “by looking only at the face of the complaint and taking as true the allegations in the complaint.” *Id.* (citing *Heard v. Johnson*, 810 A.2d 871, 877 (D.C. 2002)). In a factual attack, “the court considers matters outside the face of the complaint and does not presume that the allegations in the complaint are true.” *Id.* (citing *Heard*, 810 A.2d at 878); *see also Pardue v. Ctr. City Consortium Schs. of the Archdiocese of Wash., Inc.*, 875 A.2d 669, 675 (D.C. 2005). A factual attack “may occur at any stage of the proceedings and the plaintiff bears the burden of proof that jurisdiction does in fact exist.” *Prioleau*, 49 A.3d at 815 (citing *Heard*, 810 A.2d at 878). Where a factual attack is made, the Court need not construe all facts in the light most favorable to the plaintiff or draw all reasonable inferences in his favor. *Pardue*, 875 A.2d at 675.

Under D.C. Code § 16-2802(a), “[a]ny person who intends to file an action in the court alleging medical malpractice against a healthcare provider shall notify the intended defendant of his or her action not less than 90 days prior to filing the action.” D.C. Code § 16-2802(a). A person must comply with the notice requirements of D.C. Code § 16-2802(a) in order to file a medical malpractice suit. *See* D.C. Code § 16-2802(c). The purpose of the notice requirement within D.C. Code § 16-2802(a) is “to improve the legal process... by encouraging early settlement and facilitating the parties’ ability to reach a settlement.” *Lacek v. Wash. Hosp. Ctr. Corp.*, 978 A.2d 1194, 1998 (D.C. 2002) (internal quotation marks omitted).

A plaintiff’s failure to comply with the notice requirement of D.C. Code § 16-2802(a) deprives the trial court of subject matter jurisdiction over the plaintiff’s claim for medical malpractice. *See id.* at 1196 (affirming trial court’s decision to dismiss claim under Super. Ct. Civ.

R. 12(b)(1)). However, the ninety-day notice requirement may be waived by the Court “[u]pon a showing of a good faith effort to give the required notice” or if “such a waiver is in the interests of justice.” D.C. Code § 16-2802(a); *Lewis v. Wash. Hosp. Ctr.*, 77 A.3d 378, 382 (D.C. 2013).

The Court finds that Plaintiff has failed to comply with the ninety-day notice requirement of D.C. Code § 16-2802(a) and has not proffered evidence of good-faith effort to do so. Plaintiff did not file a Notice of Intent with her complaint and the Court has no reason to believe based on the filings in this case that she did so at all. Plaintiff’s complaint does not make any arguments of a good-faith or interest of justice exception, and she did not file any opposition to Defendant’s motion to dismiss.

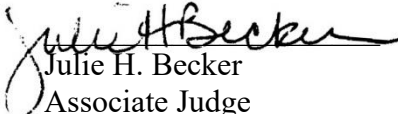
Each of these arguments – failure to state a claim on which relief can be granted, and failure to comply with the notice requirements of D.C. Code § 16-2802(a) – is an independent basis to dismiss Plaintiff’s complaint. Therefore, it is this 24th day of February, 2025,

**ORDERED** that Defendant’s motion to dismiss Plaintiff’s complaint for failure to state a claim and for lack of subject matter jurisdiction, filed January 14, 2025, is hereby **GRANTED**. It is further

**ORDERED** that the case is **DISMISSED** without prejudice and **CLOSED**. It is further

**ORDERED** that the initial scheduling conference set for February 28, 2025, is **VACATED**.

**SO ORDERED.**

  
Julie H. Becker  
Associate Judge

Copies to:

All Parties and Counsel of Record via Odyssey