

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A08-0946

A08-0947

A08-0948

A08-0950

Janis Arlene Anderson,
Appellant,

vs.

Cloquet Memorial Hospital,
Respondent (A08-946),

Dr. Chad E. Fey,
Respondent (A08-947),

Dr. David Luehr,
Respondent (A08-948),

Raiter Clinic,
Respondent (A08-950).

Filed April 14, 2009

Affirmed

Crippen, Judge*

Carlton County District Court
File Nos. 09-CV-07-2872, 09-CV-07-2950,
09-CV-07-2951, 09-CV-07-2952

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Janis Arlene Anderson, 3695 Raven Drive, Cloquet, MN 55720 (pro se appellant)

Steven R. Schwegman, James S. McAlpine, Quinlivan & Hughes, P.A., 400 1st Street South, Suite 600, St. Cloud, MN 56302-1008 (for respondent Cloquet Memorial Hospital)

Charles B. Bateman, Tracy A. Schramm, Reyelts & Bateman, Ltd., 332 West Superior Street, Suite 700, Duluth, MN 55802 (for respondents Dr. Fey, Dr. Luehr, Raiter Clinic)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Crippen, Judge.

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Janis Anderson argues that her malpractice claims, premised on the failure to prescribe a medication, are outside the statutory mandate for expert-witness affidavits. We affirm the district court's decision to dismiss.

FACTS

Appellant commenced litigation against each respondent individually on July 13, 2007. She alleged that respondent doctors were inadequately informed about medication choices and that other respondents, the hospital and clinic, provided improper oversight for their physicians' medical knowledge or resources. No expert-review affidavits accompanied the complaints.

Respondents moved the district court to dismiss appellant's claims because she had failed to provide the expert-testimony affidavits required by Minn. Stat. § 145.682, subds. 2-4 (2008). The hospital also moved, in the alternative, for summary judgment on the grounds that appellant had not presented evidence the hospital was the cause of her

injuries. Appellant argued her claims were outside the statute's scope. The district court granted the motions to dismiss and declined to reach the hospital's summary-judgment motion. This consolidated appeal follows.

D E C I S I O N

1.

We review dismissals under section 145.682 for an abuse of discretion. *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990).

A plaintiff bringing “an action alleging malpractice, error, mistake, or failure to cure . . . against a health care provider which includes a cause of action as to which expert testimony is necessary to establish a prima facie case” must serve the defendant with two affidavits, the expert-review affidavit with the complaint and the expert-identification affidavit within 180 days thereafter. Minn. Stat. § 145.682, subd. 2. The first affidavit is to state that a qualified expert has reviewed the case's facts and concluded that a defendant “deviated from the applicable standard of care and by that action caused injury to the plaintiff.” *Id.*, subd. 3. The second affidavit must set forth the identity of all experts the plaintiff expects to call at trial, each expert's opinion, and the grounds on which it is based. *Id.*, subd. 4. Failure to provide these affidavits results in mandatory dismissal upon motion. *Id.*, subd. 6 (2008).

Appellant argues her claims against the hospital and the clinic are outside the statute because they merely allege negligent supervision. But if the thrust of a plaintiff's claim is that a defendant departed from the recognized standard of care and thereby caused injury, then the claim “sounds in medical malpractice.” *D.A.B. v. Brown*, 570

N.W.2d 168, 171 (Minn. App. 1997). And the gravamen of appellant's claims is that the hospital and clinic fell short of the recognized standard of care in providing physicians with access to information, and that doctors, if adequately informed, would have treated her condition differently. These are medical-malpractice claims subject to the statutory affidavit requirements.

As to her claims against Dr. Fey and Dr. Luehr, appellant argues that expert testimony would not be necessary to establish the standard of care, the physicians' deviation from the standard, and causation. She relies on the general-knowledge-and-experience exception recognized by our supreme court in *Tousignant v. St. Louis County*, 615 N.W.2d 53, 58 (Minn. 2000). But appellant has failed to show that the facts fitting the elements of medical malpractice are within a lay person's general knowledge and experience. Expert medical testimony would be necessary to show both the standard of care for treating her condition and whether any deviation caused her injury.

The district court did not abuse its discretion in dismissing appellant's claims.

2.

Additionally, appellant argues that section 145.682 violates her right to a jury trial, protected by Minn. Const. art. I, § 4. Because we ordinarily are to limit our review to those issues raised before the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), we decline to address this constitutional challenge, which was not presented below.

Affirmed.