

**NOTICE**

This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2024 IL App (4th) 230736-U

NO. 4-23-0736

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

August 22, 2024

Carla Bender

4<sup>th</sup> District Appellate  
Court, IL

ISIS LANGSTON and JAMES LANGSTON,	)	Appeal from the
Plaintiffs-Appellants,	)	Circuit Court of
v.	)	Peoria County
SUSAN CATT, MD; AFFINITY WOMEN’S HEALTH	)	No. 22LA173
CARE S.C.; and OSF HEALTHCARE SYSTEM d/b/a	)	
SAINT FRANCIS MEDICAL CENTER, PEORIA,	)	Honorable
Defendants-Appellees.	)	Stewart James Umholtz,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices DeArmond and Grischow concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The written health professional’s report submitted by plaintiffs was sufficient to support some but not all of the allegations of their medical malpractice complaint.

(2) Plaintiffs failed to establish that the trial court abused its discretion by dismissing their claims that were not properly supported by a written health professional’s report.

¶ 2 Plaintiffs, Isis Langston and her husband James Langston, brought a medical malpractice action and loss of consortium claims against defendants, Dr. Susan Catt, Affinity Women’s Health Care S.C. (Affinity), and OSF Healthcare System d/b/a Saint Francis Medical Center, Peoria (OSF), alleging Isis was injured as a result of medical care she received from defendants in August 2020. Defendants filed motions to dismiss plaintiffs’ complaint on the basis that plaintiffs failed to comply with section 2-622 of the Code of Civil Procedure (Code) (735

ILCS 5/2-622 (West 2022)) and provide a report from a qualified health professional certifying that their case had merit. The trial court granted defendants’ motions and dismissed plaintiffs’ operative second amended complaint with prejudice. Plaintiffs appeal, arguing (1) dismissal was unwarranted because the health professional’s report they presented “was sufficient in substance” and (2) the court abused its discretion by not allowing them the opportunity to amend their pleadings. We affirm in part, reverse in part, and remand for further proceedings.

¶ 3

### I. BACKGROUND

¶ 4 On August 22, 2022, plaintiffs filed their original complaint against defendants, raising claims of medical negligence. (Plaintiffs also named Dr. Lindsey Ma and Peoria Women’s Health, LTD, as party defendants; however, they later voluntarily dismissed their claims against those parties.) Plaintiffs alleged Dr. Catt was an obstetrician and gynecologist (ob-gyn) affiliated with Affinity and OSF. In August 2020, Dr. Catt performed “a total abdominal hysterectomy with bilateral salpingectomy” on Isis at OSF. According to plaintiffs, Isis’s “left ureter was transected” during the surgery, which resulted in various complications—including oliguria, acute kidney injury, and acute blood loss anemia—and required plaintiff to undergo additional medical care and surgical procedures. Plaintiffs alleged Dr. Catt was negligent in performing Isis’s surgery, Affinity was negligent “by and through the acts and omissions of” Dr. Catt, and OSF was negligent “by and through the acts and omissions of” Dr. Catt or “other as yet unidentified employees, agents or associates.”

¶ 5

Along with the complaint, plaintiffs’ counsel filed an affidavit pursuant to section 2-622 of the Code. *Id.* He asserted he was unable to consult with a health professional to evaluate the meritoriousness of plaintiffs’ claims prior to the expiration of the relevant statute of limitations. Counsel indicated that, pursuant to section 2-622(a)(2), the required written health professional’s

report would be submitted within 90 days. *Id.* § 2-622(a)(2).

¶ 6 There is no dispute that the parties engaged in informal discovery. The record reflects that on August 18, 2022, just prior to the filing of their complaint, plaintiffs' counsel sent letters to OSF requesting Isis's medical records from August 2020 "to present." OSF provided electronic copies of Isis's records pursuant to those requests.

¶ 7 On November 21, 2022, plaintiffs' counsel filed an affidavit, or "certificate of merit," asserting he had consulted and reviewed the facts of the case with a health professional, Dr. Alla Bodner, a knowledgeable and qualified ob-gyn. He stated Dr. Bodner determined in a written report that there was "a reasonable and meritorious cause for the filing of" plaintiffs' action against defendants. Counsel noted, however, that Dr. Bodner's report identified "additional medical records" that were "needed to complete a thorough evaluation of" Isis's medical treatment by defendants. Counsel asserted that, as a result, plaintiffs were seeking an extension of time so they could obtain additional records for Dr. Bodner to review and a supplemental health professional's report could be filed. According to counsel, plaintiffs were also seeking leave to file an amended complaint following their receipt of Dr. Bodner's supplemental report.

¶ 8 Exhibits consisting of Dr. Bodner's *curriculum vitae* and written report were attached to plaintiffs' counsel's affidavit. In her report, Dr. Bodner identified herself as a board-certified ob-gyn. She stated she had reviewed Isis's medical records but found they were "not a complete record of the course of [Isis's] hospitalizations" and were "presented in a disorganized fashion." Dr. Bodner further asserted as follows:

"Full detailed records are needed from both [Affinity and OSF] in order to complete a full analysis of the events that occurred. Daily physician notes from Isis[']s hospitalization are needed in order to fully evaluate the case. Notes that were

provided are in various orders of dates and do not chronologically display an accurate representation of when and how the injuries to Isis were discovered and who was the responsible party for identifying the complications this patient had encountered. There are no postoperative notes on Isis from her surgeon[, Dr. Catt,] either for her hospital postoperative course or her postoperative office visits and follow up, other than the hospital discharge summary.”

¶ 9 Dr. Bodner next summarized the medical records she reviewed from both Affinity and OSF. In doing so, she noted that on August 24, 2020, Isis was admitted to OSF “for a total abdominal hysterectomy with bilateral salpingectomy,” which was performed by Dr. Catt. Dr. Bodner described information contained in Dr. Catt’s “operative note” or “operative report” from that surgery and stated as follows:

“Based on the operative report[, ] Dr. Catt[ ] reported exploration of the retroperitoneal space and that bilateral ureters were identified; the function and visualization of peristalsis is not documented in the operative report. Based on standard of care post a hysterectomy[, ] [a] gynecologist performs a cystoscopy to identify and visualize functionality of the ureters as well as to confirm that no damage or perforation occurred to the bladder during surgery. Performing the cystoscopy intraoperatively would have allowed Dr. Catt[ ] to identify a malfunction of the left ureter and address it immediately with the assistance of the urology team.”

¶ 10 In concluding her report, Dr. Bodner also stated there “appear[ed] to be multiple breaches of care based on the information that was provided.” She explained as follows:

“Dr. Catt[ ] failed to identify and document the function of the ureters

during the first surgery \*\*\*. Cystoscopy was not done at that time which could have identified the ureter transection early and avoided the acute kidney failure and further complications. Dr. Catt[ ] in her documentation for discharge on the first admission also document[ed] the transection of the right ureter that could have led to further complications in future care.

Based on multiple interventions and prolonged stenting an oral antibiotic should have been used for UTI prophylaxis[,] no notes are available to conclude if it was or was not done.

Patient pre-operative Hgb/HCT was 13.1/40.9 on postoperative day 1 to 9.1 and then 7.2 which should have further initiated a workup for post op hemorrhage and evaluation of ureters. That is a greater decrease in hemoglobin than is expected with an estimated blood loss of 15ml.”

¶ 11 The same date plaintiffs’ counsel filed his affidavit, plaintiffs filed both a “Motion For Extension Of Time To File Supplemental Health Professional Certificate” and a motion for leave to amend their complaint. As indicated in counsel’s affidavit, plaintiffs noted Dr. Bodner identified additional medical records that were needed to complete a thorough evaluation of Isis’s treatment by defendants “to determine if additional acts and/or omissions may serve as the basis of certain claims made against any or all of the Defendants.” They asked for additional time to obtain such medical records for Dr. Bodner’s review and to submit a supplemental report. Plaintiffs also requested leave to file an amended complaint to conform their negligence allegations to the meritorious claims identified by their expert.

¶ 12 The parties agree that in December 2022, plaintiffs’ counsel communicated with OSF, identifying the specific medical records they believed were missing from OSF’s initial

records production. On February 10, 2023, OSF's counsel sent an e-mail to plaintiffs' counsel and attached Isis's medical records in PDF format. The body of the e-mail stated as follows: "Attached is the occurrence record for the above case, including the \*\*\* urology records. Let me know if you have any questions." On February 15, 2023, the trial court entered an agreed order, granting plaintiffs' motion for leave to file an amended complaint and allowing them 60 days to file an amended complaint and supplemental section 2-622 documents.

¶ 13 On April 11, 2023, plaintiffs filed their first amended complaint against Dr. Catt, Affinity, and OSF, along with an amended affidavit from their counsel and a supplemental written report from Dr. Bodner. Plaintiffs' amended complaint contained additional factual allegations and claims that Dr. Catt acted negligently by failing to (1) competently perform Isis's initial surgery, (2) perform an intraoperative cystoscopy to confirm there was no injury to the ureters or bladder, (3) identify and correct the left ureteral transection prior to completing the initial surgery, (4) diagnose the transected ureter in timely fashion, (5) order "a CT scan to look for ureteral injury," (6) recognize Isis's postoperative bleeding on postoperative day one, (7) consult urology on postoperative day one, (8) recognize Isis's continued decline and likelihood of ureteral injury for three days, (9) investigate the early warning signs of ureteral injury, and (10) adequately supervise individuals "making the postoperative care decisions" for Isis.

¶ 14 Plaintiffs claimed Affinity was negligent "by and through the acts and omissions of" Dr. Catt for failing to (1) competently perform Isis's initial surgery, (2) identify and correct the left ureteral transection before completing the surgery, (3) diagnose Isis's left ureteral transection in a timely manner, (4) consult urology in a timely manner postoperatively, and (5) recognize Isis's medical deterioration. They additionally alleged that OSF was negligent "by and through acts and omissions of [Dr. Catt] and other as yet unidentified employees, agents or

associates” for the same reasons, as well as by failing “to ensure that residents and midlevel providers were adequately supervised.”

¶ 15 In his amended certificate of merit, plaintiffs’ counsel stated he had consulted and reviewed the facts of the case with Dr. Bodner, and Dr. Bodner determined in a written report that there was a reasonable and meritorious cause for the filing of an action against defendants. A copy of Dr. Bodner’s written report, dated April 10, 2023, was attached to counsel’s amended certificate. Her report identified the additional medical records she reviewed, including “notes” from the day of Isis’s initial surgery and the two days following that surgery. Dr. Bodner’s report was otherwise the same as her previous report, including her assertions that the records she reviewed were incomplete and “disorganized,” her summary of the medical records she reviewed, and the apparent “breaches of care” she found “based on the information that was provided.”

¶ 16 On April 24, 2023, plaintiffs filed a second amended complaint, which made caption changes to their pleading but was otherwise substantively the same as their first amended complaint.

¶ 17 On May 22, 2023, OSF filed a combined motion to dismiss plaintiffs’ counts against them pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)). Relevant to this appeal, they argued that dismissal with prejudice was warranted under section 2-619 of the Code (*id.* § 2-619) because plaintiffs failed to comply with the requirements of section 2-622, requiring them to obtain a report from a qualified health professional certifying that their claims against OSF had merit. OSF maintained Dr. Bodner’s November 2022 and April 2023 reports were insufficient, asserting as follows:

“Dr. Bodner’s November 2022 report did not contain a statement certifying that the case against OSF has merit, Dr. Bodner’s April 202[3] report did not contain a

statement certifying that the case against OSF has merit at all, let alone dropping down to specifics. There is no statement concerning the standard of care applicable to it and/or how any action or inaction on the part of OSF was negligent. There is no statement that the conduct of OSF proximately caused [Isis's] injuries. The Section 2-622 reports contain no basis for any conclusion that OSF was negligent.”

¶ 18 OSF argued that plaintiffs' claims against them should be dismissed with prejudice, asserting there was sufficient time within the statute of limitations and the extensions of time that plaintiffs received to secure a compliant health professional's report. They also argued that Dr. Bodner reviewed “extensive medical records” related to Isis's medical care and treatment. In particular, OSF asserted that in February 2023, it “tendered approximately 1000 pages of occurrence records to Plaintiffs.” OSF maintained the records it provided “were paginated, bookmarked, and searchable.”

¶ 19 OSF also asserted that Dr. Bodner's conclusions in her report were speculative and insufficient as a matter of law. It noted Dr. Bodner admitted that her investigation was incomplete “and that she lack[ed] a full understanding of what happened and who was responsible.” OSF further pointed out that Dr. Bodner stated “full detailed records [were] needed from both [Affinity and OSF] in order to complete a full analysis of the events that occurred.” It argued that the logical conclusion of Dr. Bodner's statements was that “despite having all the occurrence medical records,” she could not identify any negligent conduct that proximately caused injuries to Isis.

¶ 20 On May 24, 2023, Dr. Catt and Affinity filed a motion to dismiss plaintiffs' claims against them pursuant to section 2-619 of the Code based on plaintiffs' failure to provide a sufficient section 2-622 report. Defendants argued Dr. Bodner's report was deficient because the doctor admitted she could not “deduce from the records which, if any, party [was] responsible for

[Isis's] alleged injuries.” They asserted Dr. Bodner admitted that she lacked an adequate foundation to author a section 2-622 report, noting her statements “that she did not have an ‘accurate representation of when and how the injuries to Isis were discovered and who was the responsible party for identifying the complications.’ ” Defendants also asserted Dr. Bodner’s report was “confusing” and did not “outline” the same alleged failures as set forth in plaintiffs’ operative complaint. Dr. Catt and Affinity also adopted and incorporated by reference portions of OSF’s arguments for dismissal under section 2-619.

¶ 21 On June 21, 2023, plaintiffs filed a combined response to defendants’ motions. They argued that “perceived defects” in their section 2-622 report were the result of defendants’ “own failure to provide full and accurate records surrounding the events which led to [their] cause of action.” According to plaintiffs, Dr. Bodner’s report clearly stated “that no record [was] present to confirm or disaffirm that the standard of care was met post[ ]operatively.” They asserted the lack of necessary records was the reason Dr. Bodner was “unable to clearly identify a defendant responsible for the omissions of diagnosis, treatment[,] and care which should have occurred in the post[ ]operative standard of care.” Plaintiffs reasoned that the postoperative standard of care duties were either not fulfilled or not properly documented and that either scenario would support a finding of negligence.

¶ 22 Plaintiffs argued the records they received from defendants in February 2023 remained incomplete and that “no postoperative care notes [had] been provided.” Plaintiffs also contended that Dr. Bodner’s report was sufficient because it contained specific allegations of fact and clearly identified (1) the applicable standards of care, (2) the breaches of the applicable standards of care, and (3) the causal relationship between the breaches of duty and the damages that Isis suffered. Finally, they argued that they should be granted leave to amend their complaint

to assert additional claims against OSF for institutional negligence, spoliation of evidence, and negligent credentialing.

¶ 23 In replying to plaintiffs' response, defendants denied plaintiffs' assertion that they did not provide Isis's complete medical records. OSF argued that it provided records to plaintiffs "in electronic PDF format per its electronic health records." It asserted the records it provided were "organized, paginated, searchable, and even bookmarked," and that the records were complete and included all of the information Dr. Bodner claimed was missing. It attached exhibits to its reply consisting of screenshots that showed "the bookmarks" that could "be clicked on to assist in navigating the record," along with screenshots of the various documents Dr. Bodner asserted were missing from the records she reviewed. OSF further argued that plaintiffs never raised any questions or concerns with them regarding the state of the record they provided.

¶ 24 On July 20, 2023, the trial court conducted a hearing on defendants' motions to dismiss. In presenting his argument to the court, plaintiffs' counsel suggested that there had been a "misunderstanding about technology." He stated plaintiffs received medical records from OSF in PDF format, but when he "opened the document" it did not "present" the way that defendants suggested that it should. Specifically, it was not in a searchable format and, for example, "the link" they received "to open to OSF and their record" showed "no postoperative notes." Counsel asserted that he "didn't know there was this fancier Adobe product that [he] should have been using." Upon inquiry by the court, the following colloquy occurred:

"THE COURT: When you were noting that each time you clicked on this information and it said 'no postoperative notes,' did that cause you any concerns? Did—

MR. NEPLL [(PLAINTIFFS' ATTORNEY)]: It did cause us concerns.

THE COURT: Did it—isn't it quite common for there to be postoperative notes?

MR. NEPPL: Yes, your Honor.

\* \* \*

THE COURT: When you became aware that there are no postoperative notes, did it cause you to communicate with [counsel for OSF] and say, I'm clicking on this e-mail that you sent me, and I'm not finding any postoperative notes?

MR. NEPPL: That's what I was talking about before where we received the expert's report the day prior to this due date to place the matter on file. And at that point in time given the fact that those—the expert would have greater familiarity with the medical records and clicking on these links and the like, it then stood as a possibility that we have a claim for a different form of negligence, other causes of actions as well, which are identified as potential causes of action in our brief.

And so I guess to answer your question directly, the answer would be, no. I didn't reach back out because of the timing issue. Because when we received the report back, it was time to file it.

\* \* \*

Your point is well-taken though. Could I have reached back out? I could have. But we were still engaging in informal discovery at that point in time. I don't have the remedies with the Court of a, you know, motion to compel or order to compel, either.”

¶ 25 Ultimately, the trial court granted defendants' motions, dismissing plaintiffs' complaint with prejudice. In reaching its decision, the court noted there had been three

opportunities for plaintiffs to file “a valid [section] 2-622 certificate.” It found Dr. Bodner’s report contained “internal inconsistencies” that “really damage[d] the credibility of any of the statements contained within \*\*\* the [section] 2-622 certificate.” The court noted Dr. Bodner stated “she still needs full detailed records to complete a full analysis” but then also gave “in some instances an opinion.” The court further found that Dr. Bodner admitted that she could not determine who was negligent or how they were negligent through her statement that “she could not determine an accurate representation of when and how injuries were discovered or who [was] the responsible party.”

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, plaintiffs argue the trial court erred in granting defendants’ motions to dismiss their cause of action with prejudice. They contend Dr. Bodner’s report was “sufficient in substance” to meet the requirements of section 2-622 of the Code and the court erred in dismissing their second amended complaint without allowing them the opportunity to amend their pleadings.

¶ 29 A. Section 2-622 and Standard of Review

¶ 30 Section 2-622(a)(1) of the Code provides that a medical malpractice complaint must be accompanied by (1) an affidavit certifying that the plaintiff or his attorney has consulted with a health professional who has determined “that there is a reasonable and meritorious cause for the filing of” the plaintiff’s action and (2) a copy of that health professional’s written report. 735 ILCS 5/2-622(a)(1) (West 2022). The statute sets forth pleading requirements that are “designed to reduce the number of frivolous medical malpractice lawsuits at an early stage before litigation expenses mount.” *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 116-17, 806 N.E.2d 645, 656 (2004). A sufficient health professional’s report “establishes only that the plaintiff has a

meritorious claim and, therefore, reasonable grounds for pursuing the action.” *Id.* at 117.

¶ 31 Additionally, a medical malpractice plaintiff “should be afforded every reasonable opportunity to establish his case.” *Steinberg v. Dunseth*, 276 Ill. App. 3d 1038, 1042, 658 N.E.2d 1239, 1244 (1995). Thus, “[t]he requirements of section 2-622 should be liberally construed so that controversies may be determined according to the substantive rights of the parties.” *Mueller v. North Suburban Clinic, Ltd.*, 299 Ill. App. 3d 568, 573, 701 N.E.2d 246, 250 (1998); see *Cutler v. Northwest Suburban Community Hospital, Inc.*, 405 Ill. App. 3d 1052, 1064, 939 N.E.2d 1032, 1042 (2010) (stating “Illinois courts liberally construe a physician’s certificate of merit in favor of the malpractice plaintiff”). “The section 2-622 report is a ticket which [the] plaintiff must possess in order to file his complaint. If [the] plaintiff has the ticket, if there has been minimal compliance [citation] with section 2-622 of the Code, the case should move on to summary judgment or trial.” *Steinberg*, 276 Ill. App. 3d at 1049.

¶ 32 Nevertheless, a plaintiff’s failure to comply with the requirements of section 2-622 is grounds for dismissal under section 2-619 of the Code. 735 ILCS 5/2-622(g) (West 2022). Dismissals under that section are reviewed *de novo*. *Avakian v. Chulengarian*, 328 Ill. App. 3d 147, 160, 766 N.E.2d 283, 294-95 (2002). Accordingly, “the issue of whether a physician’s report complies with section 2-622” is subject to *de novo* review. *Id.*; see *Mueller*, 299 Ill. App. 3d at 572 (same). “However, \*\*\* whether a dismissal under section 2-622 should be with or without prejudice is a matter within the sound discretion of the trial court.” *Cutler*, 405 Ill. App. 3d at 1064; see *Owens v. Riverside Medical Center*, 2020 IL App (3d) 180391, ¶ 23, 158 N.E.3d 332 (“It is within the sound discretion of the trial court to determine whether to grant leave to plaintiff to amend the pleadings to add the requisite section 2-622 documents.”). Thus, an abuse of discretion standard applies when reviewing whether a dismissal with prejudice was proper. *Avakian*, 328 Ill.

App. 3d at 159-60.

¶ 33 B. Sufficiency of Dr. Bodner’s Section 2-622 Report

¶ 34 As stated, plaintiffs argue on appeal that the trial court erred in finding Dr. Bodner’s report was insufficient to meet the requirements of section 2-622 of the Code. They contend the report had “discernable [*sic*] substance” and that it contained “implicit statement[s] of fact that Dr. Catt, as the attending surgeon on OSF premises, was negligent in determining what tests and procedures should be performed and when.”

¶ 35 Section 2-622(a)(1) provides that a health professional’s written report must set forth “the reasons for the reviewing health professional’s determination that a reasonable and meritorious cause for the filing of the action exists.” 735 ILCS 5/2-622(a)(1) (West 2022). “The statute requires a health professional to review the plaintiff’s claim to determine whether it is ‘reasonable and meritorious,’ and in the context of a medical malpractice action one of the crucial factual questions is whether the applicable medical standard of care has been violated.” *Christmas v. Dr. Donald W. Hugar, Ltd.*, 409 Ill. App. 3d 91, 97, 949 N.E.2d 675, 681 (2011). To comply with section 2-622, the health professional’s report is not required to contain specific language that a “reasonable and meritorious cause for filing the action exists.” *Hagood v. O’Conner*, 165 Ill. App. 3d 367, 373, 519 N.E.2d 66, 70 (1988). A report is sufficient where it states with specificity (1) what the defendant did, (2) the reasons why that activity constituted a breach of the applicable standard of care, and (3) the adverse effects suffered by the plaintiff as a result of the breach. *Mueller*, 299 Ill. App. 3d at 576. “A generalized conclusion of medical malpractice cannot support the meritoriousness determination.” *Moss v. Gibbons*, 180 Ill. App. 3d 632, 638, 536 N.E.2d 125, 128 (1989).

¶ 36 Both below and on appeal, defendants have argued that Dr. Bodner’s report was

substantively insufficient because she made statements in her report that showed she lacked sufficient knowledge about the facts to evaluate the case and form opinions about Isis's medical care. They also argue that Dr. Bodner otherwise failed to identify any specific reason why plaintiffs' cause of action had merit. Specifically, they assert Dr. Bodner failed to identify (1) the applicable standards of care or to whom they applied; (2) how, when, or by whom any standard of care was breached; and (3) how any alleged breach proximately caused injury to Isis.

¶ 37 Here, the record shows that while Dr. Bodner believed the medical records she reviewed were incomplete, she did review medical records from both Affinity and OSF that pertained to Isis's medical treatment and the hysterectomy she underwent with Dr. Catt on August 24, 2020. Dr. Bodner dedicated nearly three full pages of her report to summarizing the records she reviewed. In her summary, she noted that on August 24, 2020, Isis was admitted to OSF "for a total abdominal hysterectomy with bilateral salpingectomy" that was performed by Dr. Catt. Dr. Bodner stated she reviewed both Dr. Catt's operative notes and her operative report from that surgery. She identified a standard of care applicable to Dr. Catt in the performance of Isis's hysterectomy, explaining as follows:

"Based on the operative report[,] Dr. Catt[ ] reported exploration of the retroperitoneal space and that bilateral ureters were identified; the function and visualization of peristalsis is not documented in the operative report. Based on standard of care post a hysterectomy[,] [a] gynecologist performs a cystoscopy to identify and visualize functionality of the ureters as well as to confirm that no damage or perforation occurred to the bladder during surgery. Performing the cystoscopy intraoperatively would have allowed Dr. Catt[ ] to identify a malfunction of the left ureter and address it immediately with the assistance of the

urology team.”

Later in her report, Dr. Bodner identified “breaches of care” in Isis’s medical treatment:

“There appears to be multiple breaches of care based on the information that was provided.

Dr. Catt[ ] failed to identify and document the function of the ureters during the first surgery—total abdominal hysterectomy, bilateral salpingectomy. Cystoscopy was not done at that time which could have identified the ureter transection early and avoided the acute kidney failure and further complications.”

¶ 38 Contrary to defendants’ arguments, Dr. Bodner’s above statements sufficiently identified a standard of care and they additionally identified an omission by Dr. Catt during the performance of Isis’s initial surgery that constituted a breach of the standard of care—the failure to identify and document the function of the ureters by performing a cystoscopy. She also identified injuries to Isis which would have been avoided but for the breach, stating that early detection of Isis’s ureter transection would have averted her further medical complications, including acute kidney failure. Dr. Bodner’s opinion on this point was clear and specific, and based on medical records that she reviewed. Plaintiffs’ second amended complaint raised allegations of negligence based on Dr. Bodner’s above opinion.

¶ 39 Further, we find that Dr. Bodner’s opinion regarding Dr. Catt’s breach of the standard of care was not invalidated by her representations that Isis’s medical records were disorganized and incomplete. Dr. Bodner’s comments do not suggest she could not perform *any* analysis regarding the underlying events, only that she needed additional records to complete a *full* analysis. Moreover, Dr. Bodner’s comments show that the information missing from the records she reviewed concerned what occurred during Isis’s postoperative care, not the acts or omissions

that occurred during the initial surgery. The record shows that Isis's initial surgery was performed in August 2020 but that her medical treatment continued until at least January 2021. As set forth above, Dr. Bodner stated in her report that she reviewed "the operative note" and "the operative report" from Isis's initial surgical procedure with Dr. Catt. She indicated that missing medical records included physician notes from Isis's hospitalization and "postoperative notes on Isis from \*\*\* [Dr. Catt] either for her hospital postoperative course or her postoperative office visits and follow up." We find nothing in Dr. Bodner's comments to suggest that she lacked a sufficient factual basis to evaluate what occurred during Isis's initial surgical procedure.

¶ 40 On appeal, defendants argue that plaintiffs acknowledged below that Dr. Bodner's report was deficient and that they have also admitted such deficiencies on appeal. We note, however, that both before the trial court and on appeal, plaintiffs have also argued that Dr. Bodner's report was sufficient because it contained specific allegations of fact and clearly identified breaches of applicable standards of care that resulted in injury to Isis. In particular, in their response to defendants' motions to dismiss, plaintiffs specifically noted Dr. Bodner's identification of a "specific standard of care for Isis[s] \*\*\* first procedure," *i.e.*, identifying and visualizing functionality of the ureters, as well as a breach of that standard by Dr. Catt.

¶ 41 Defendants further suggest that Dr. Bodner's report was insufficient because it did not explicitly distinguish between the involvement of Dr. Catt and OSF. Notably, section 2-622(b) of the Code provides for the filing of "a separate certificate and written report \*\*\* as to each defendant who has been named in the complaint." 735 ILCS 5/2-622(b) (West 2022). However, a single report can apply to more than one defendant and comply with section 2-622 if the "report is sufficiently broad to cover each defendant and discusses deficiencies in the medical care given by the defendants." *Avakian*, 328 Ill. App. 3d at 160. Additionally, "a report speaking to the acts of

an agent is sufficient to support a count against the principal, even though the principal is not specifically named in the report.” *Id.*; *Mueller*, 299 Ill. App. 3d at 573 (stating “no [section 2-622] report need be filed as to any defendant whose claimed liability is wholly vicarious”). Here, plaintiffs’ claims against Affinity and OSF were based (at least in part) on the alleged negligent acts or omissions of Dr. Catt as an employee or agent. Under such circumstances, a separate report was not necessary. Nor would it have been necessary for Dr. Bodner to separately identify such acts or omissions as having been committed by Dr. Catt as Affinity’s or OSF’s employee or agent.

¶ 42 Finally, we note defendants also argue that the present case is similar to this court’s decision in *Moss*, 180 Ill. App. 3d at 638, where a section 2-622 was found insufficient, in part, because it contained only “a generalized conclusion of medical malpractice.” In so holding, we stated as follows:

“The medical report did not mention defendant Manh. The report should discuss the involvement of each defendant in the treatment of the plaintiff. [Citation.] Without such discussion, the report amounts to little more than a generalized conclusion of medical malpractice. A generalized conclusion of medical malpractice cannot support the meritoriousness determination. Consequently, the medical report is insufficient for a meritoriousness determination as to defendant Manh.” *Id.*

In this case, Dr. Bodner’s report specifically mentioned Dr. Catt and her involvement in Isis’s medical treatment. With respect to Dr. Catt—and plaintiffs’ claims against Affinity and OSF that were based on the negligent acts and omissions of Dr. Catt—*Moss* is distinguishable.

¶ 43 Under the circumstances presented, we find, in our *de novo* review, Dr. Bodner’s report was sufficient to support a meritoriousness determination regarding Dr. Catt’s acts or

omissions during Isis's first surgery. The trial court erred in determining otherwise and in granting defendants' section 2-619 motions to dismiss plaintiffs' second amended complaint in its entirety based upon plaintiffs' failure to comply with section 2-622.

¶ 44 In so holding, we note that plaintiffs' counts against all defendants raised allegations of negligence based on the medical care and treatment Isis received *after* her first August 2020 surgery with Dr. Catt. Additionally, counts against OSF were based not only on its vicarious liability for the negligent acts or omissions of Dr. Catt during the first surgery, but also its vicarious liability for the negligent acts or omissions of "other as yet unidentified employees, agents or associates." With respect to Isis's postoperative medical treatment and such "other" individuals, Dr. Bodner's report did not support a meritoriousness determination.

¶ 45 Significantly, Dr. Bodner's statements in her report established that she lacked an adequate factual basis for evaluating the care Isis received after her August 2020 hysterectomy with Dr. Catt. As defendants point out, Dr. Bodner stated she did not know when or how Isis's injuries were discovered or who was responsible for identifying her complications. No individual other than Dr. Catt (during the first surgery) was explicitly named by Dr. Bodner as having provided substandard medical treatment. Although Dr. Bodner identified standards of care applicable to the treatment Isis received immediately following her hysterectomy, she could not state either that those standards of care were definitively breached or who breached them. In one instance, Dr. Bodner identified a standard of care only to suggest that it had been met: "Standard of care at this point is to repeat blood work which was done in 12 hours." In another instance, she indicated that she lacked information to show whether a standard of care had been breached, stating that "an oral antibiotic should have been used for UTI prophylaxis," but "no notes [were] available to conclude if it was or was not done."

¶ 46 Given these circumstances, we find the trial court properly dismissed plaintiffs' claims to the extent they concerned Isis's postoperative medical care following her August 2020 hysterectomy and any "other as yet unidentified" individuals involved in such treatment. As to those matters, Dr. Bodner's written report was not sufficient to establish a meritoriousness determination and, thus, plaintiffs' claims were not properly supported as contemplated by section 2-622.

¶ 47 C. Leave to Amend

¶ 48 On appeal, plaintiffs also argue that the trial court erred in dismissing their claims with prejudice instead of granting them leave to amend. They suggest "Dr. Bodner could have amended her report, and [they] could have amended their complaint to conform with Dr. Bodner's findings."

¶ 49 As noted, a medical malpractice plaintiff "should be afforded every reasonable opportunity to establish his case." *Steinberg*, 276 Ill. App. 3d at 1042. "[A]mendments to pleadings are to be liberally allowed to enable medical malpractice actions to be decided on their merits rather than on procedural technicalities." *Moss*, 180 Ill. App. 3d at 638. The trial court has discretion "to determine whether to grant leave to plaintiff to amend the pleadings to add the requisite section 2-622 documents." *Owens*, 2020 IL App (3d) 180391, ¶ 23. "An abuse of discretion occurs when the court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view." *Holloway v. Chicago Heart & Vascular Consultants, Ltd.*, 2017 IL App (1st) 160315, ¶ 29, 81 N.E.3d 1048.

¶ 50 Here, after the filing of defendants' motions to dismiss, plaintiffs never explicitly requested leave from the trial court to file an amended section 2-622 affidavit and health professional's report or an amended complaint to conform to any new findings by Dr. Bodner.

Rather, in their response to defendants' motions to dismiss, they sought leave to amend their complaint to assert additional claims against OSF for institutional negligence, spoliation of evidence, and negligent credentialing. Plaintiffs appear to have abandoned that request on appeal. At oral argument on defendants' motions to dismiss, plaintiffs' counsel did request the opportunity "make it right" if plaintiffs' section 2-622 filings were found to be inadequate. Ultimately, however, plaintiffs never tendered any proposed amendments to the court.

¶ 51 In *Moss*, 180 Ill. App. 3d at 639, we noted that "[t]he failure to offer a proposed amendment is generally fatal for review of the exercise of discretion by the circuit court." We further stated as follows:

"There are two instances in which a proposed amendment need not be offered to the circuit court. First, a proposed amendment need not be offered where its nature is apparent from the proceeding. [Citation.] Second, a proposed amendment need not be offered where its offer is foreclosed by the circuit court." *Id.*

¶ 52 As OSF points out, plaintiffs suggest the second circumstance applies, asserting that before the trial court granted dismissal with prejudice, they "were given practically no notice of any deficiency in the affidavit or report \*\*\* and no notice that the sufficiency of the affidavit and report had been attacked or questioned." We find the record does not support plaintiffs' assertions, showing, instead, that plaintiffs were given notice of defendants' claims regarding the alleged deficiencies in their section 2-622 affidavit and report and that they had time to respond to defendants' assertions.

¶ 53 Specifically, the record shows plaintiffs filed their amended complaints and section 2-622 documents in April 2023. On May 22 and 24, 2023, defendants filed their motions to dismiss. In its motion, OSF alleged Dr. Bodner's section 2-622 report was deficient and that in

February 2023, it had tendered Isis’s complete medical records to plaintiffs in an electronic format that was paginated, bookmarked, and searchable. On June 21, 2023, plaintiffs filed their combined response and, although they asked for leave to amend their complaint, they sought only to add claims against OSF for institutional negligence, spoliation of evidence, and negligent credentialing. On June 30, 2023, defendants filed replies to plaintiffs’ response, and OSF explained how the information Dr. Bodner claimed was missing from Isis’s medical records was present in the medical records OSF provided to plaintiffs in February 2023. The hearing on defendants’ motions to dismiss was not conducted until July 20, 2023. Accordingly, plaintiffs had both notice and an opportunity to respond to defendants’ challenges.

¶ 54 The record also reflects that in finding that a dismissal with prejudice was warranted, the trial court relied on the particular facts and circumstances of the case. Specifically, the court considered that plaintiffs had at least three opportunities to file an affidavit and health professional’s report that met the standards of section 2-622 and “support[ed] the complaint.” The court’s questioning of plaintiffs’ counsel at the hearing on defendants’ motions to dismiss also suggests that it considered plaintiffs’ failure to communicate with defendants regarding the electronic medical records they received from OSF in February 2023. Although plaintiffs believed the medical records were incomplete, they never raised their concerns with OSF.

¶ 55 Under the circumstances presented, plaintiffs have failed to establish an abuse of discretion by the trial court in granting a dismissal with prejudice of their claims that were not properly supported by a section 2-622 affidavit and written health professional’s report.

¶ 56 D. OSF’s Unresolved Contentions

¶ 57 As noted, the record shows OSF filed a combined motion to dismiss plaintiffs’ counts against it pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)). In

