

Commission has no subject matter jurisdiction over constitutional violations. 4.)

Claimant failed to state a claim under Tenn. Code. Ann. 4-21-801.

In his response, Claimant alleges he did file a Certificate of Good Faith in his Health Care Liability Claim. The Claimant believes that the following statement in his claim comports to be a Certificate of Good Faith:

Plaintiff believes based upon the information, knowledge, belief, and physical experience. The available information from medical records is concerning the care and treatment of the *plaintiff* for the incident or incidents at issue. That there is a "*good faith*" basis to maintain the action consistent with the requirements of T.C.A. §29-26-115(a)(2&3) which states,

"That a defendant acted with less than or "Failed to Act" with ordinary and reasonable care" in accordance with the standards. And in a proximate result of the "Defendant's negligent act or omission," the *plaintiff* suffered injuries which would not otherwise have occurred. The facility gave a "*Written Statement*" confirming that upon their own information and belief in accordance to T.C.A. §29-26-122.

Regrettably, the Claimant is mistaken. This statement does not fulfill the requirements of Tenn. Code Ann. §29-26-122. The statute requires the certificate to state that:

- (1) The plaintiff or plaintiff's counsel has consulted with one (1) or more experts who have provided a signed written statement confirming that upon information and belief they:
 - (A) Are competent under §29-26-115 to express an opinion or opinions in the case; and

(B) Believe, based on the information available from the medical records concerning the care and treatment of the plaintiff for the incident or incidents at issue, that there is a good faith basis to maintain the action consistent with the requirements of § 29-26-115.

Tenn. Code Ann. §29-26-122(a)(l)

Mr. Bowers' statement does not address these requirements and therefore cannot be construed as a satisfactory Certificate of Good Faith. Therefore, the health care liability claim must be dismissed.

As to the remainder of the Claimant's constitutional and civil rights claims, the Claims Commission is a tribunal (court) of exclusive and limited jurisdiction. It may only adjudicate the claims the General Assembly has set by statute. The Tribunal's jurisdiction is embodied in Tenn. Code Ann. § 9-8-307. There is no language in statute that gives the Tribunal jurisdiction over constitutional or civil rights actions other than the unconstitutional taking of private property. Furthermore, Tenn. Code Ann. § 9-8-307(d) clearly sets out that the State is not liable for the willful, malicious, or criminal acts of state employees. Therefore the remaining claims must be dismissed also.

IT IS THEREFORE ORDERED:

That the claim is respectfully dismissed with prejudice.

ENTERED this 21 day of January 2015.

A handwritten signature in black ink, appearing to read 'R. Hibbett', is written over a horizontal line. The signature is stylized and extends to the right of the line.

ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 26 day of Jan., 2015.



PAULA SWANSON
Administrative Clerk
Tennessee Claims Commission