

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOSEPH ZELIG,

Plaintiff,

v.

CITY MEDICAL OF NEW JERSEY PC,

Defendant.

Civil Action No. 21-cv-961 (TSC)

MEMORANDUM OPINION

Plaintiff Joseph Zelig brings this action against various medical entities, pursuant to 42 U.S.C. § 247d-6d(d) of the Public Readiness and Emergency Preparedness Act, alleging that Defendants negligently perforated his ethmoidal artery during a COVID nasal swab test and failed to properly inform him of the risks of the procedure. ECF No. 1, Compl. ¶¶ 18, 31, 40-41. Defendants filed a Motion to Dismiss on May 5, 2021. ECF No. 4. Pursuant to this court's Local Civil Rules, Plaintiff's response was due May 19, 2021. *See* LCvR 7(b). Plaintiff filed a timely motion, ECF No. 9, requesting an extension, but did not indicate whether he had conferred with opposing counsel to determine whether they would oppose the motion, as required by this court's Local Rules. *See* LCvR 7(m) (requiring that a movant confer with opposing counsel prior to filing a non-dispositive motion and indicate whether the motion is opposed or unopposed). Consequently, the court denied the motion without prejudice, 5/19/21 Min. Order, and Plaintiff filed an unopposed motion for an extension until June 18, 2021. ECF No. 10. The court granted the motion, 6/9/21 Min. Order, but Plaintiff did not file a timely

opposition or file a motion to extend the deadline. Defendants seek dismissal on multiple grounds, including: 1) that Plaintiff failed to file a verified complaint with the requisite attached materials, and 2) that it is unclear whether Plaintiff exhausted his administrative remedies before filing suit. *See* 42 U.S.C. § 247d-6d(e)(4)(A); 247d-6e(d)(1).

By separate order, the court will grant Defendants' motion. Plaintiff did not file a verified complaint with the required attached medical documents. *See* 42 U.S.C. § 247d-6d(e)(4)(A). Nor did Plaintiff allege in his Complaint that he exhausted available administrative remedies and, because he did not respond to Defendants' argument on this issue, the court may treat this issue as conceded. *See* LCvR 7(m) ("If [an opposition] is not filed within the prescribed time, the Court may treat the motion as conceded.").

Date: July 9, 2021

Tanya S. Chutkan

TANYA S. CHUTKAN
United States District Judge