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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CARLANE HARRIS, individually and as)	Appeal from the
Administrator of the Estate of BETTY)	Circuit Court of
HARRIS, deceased)	Cook County.
Plaintiff-Appellant,)	
)	No. 08 L 8692
v.)	
)	Honorable
ADVOCATE HEALTH AND HOSPITAL)	Thomas L. Hogan,
CORPORTATION, an Illinois non-for-profit)	Judge Presiding.
corporation d/b/a ADVOCATE CHRIST)	
HOSPITAL and MEDICAL CENTER and)	
ADVOCATE CHRIST MEDICAL CENTER,)	
Defendants-Appellees.)	

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice McBride and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in granting defendant's summary judgment motion with respect to plaintiff's medical malpractice and common-law fraud claims and properly granted defendant's section 2-615 motion to dismiss plaintiff's breach of fiduciary duty claim.

¶ 2 Carlene Harris (plaintiff) brought this action against Advocate Health and Hospital Corporation (defendant), an Illinois non-for-profit corporation, for the wrongful death of her

mother, Betty Harris (decedent). The complaint alleged: (1) medical negligence; (2) breach of fiduciary duty; and (3) common-law fraud. The trial court granted defendant's motion to dismiss plaintiff's breach of fiduciary duty claim for failure to state a claim. Additionally, the trial court granted defendant's motion for summary judgment in regard to plaintiff's medical negligence and fraud claims based on the expiration of the statute of limitations. On appeal, plaintiff contends that the trial court erred in granting both defendant's motion to dismiss and its motion for summary judgment.

¶ 3

BACKGROUND

¶ 4 During the pretrial phase of this case, the parties took the depositions of several individuals and also collected various documents relevant to this action. The background set forth here is derived from these sources.

¶ 5 On July 9, 2000, decedent was struck by a car while crossing the street, and was seriously injured by the collision. She was taken by ambulance to Advocate Christ Hospital Emergency Department, and admitted around 4 a.m. Between 4:05 a.m. and 5:10 a.m., Nurse Pamela Colangelo gave decedent four doses of Versed, a sedative, totaling 10 mg.¹ At 5:05 a.m., decedent went into respiratory and cardiac arrest. She was resuscitated, but remained unconscious and on a ventilator. Later that morning, several surgeries were performed to treat her injuries, and she was admitted to the intensive care unit. Over the next two days, testing revealed an absence of brain activity, and on the afternoon of July 11, 2000, decedent was taken off the ventilator and declared dead by Dr. Fishman, one of the hospital's staff physicians.

¶ 6 Plaintiff testified in her discovery deposition that she was notified of decedent's accident late in the evening of July 9, 2000, and arrived at the hospital around midnight. There, she met

¹ Decedent's medical records do not indicate a doctor's order for Versed.

with an African American male doctor² who was involved in decedent's resuscitation effort. The doctor told plaintiff that decedent had been hit by a car, and had suffered internal bleeding and broken bones as a result of the impact. He also told her that decedent was in a coma because of both internal bleeding and the upcoming surgery she needed to repair the injuries arising from the accident. Later that day, plaintiff spoke with another doctor who told her that decedent had brain damage as a result of the injuries from the accident. The doctor indicated that she was not "going to come out of this." Plaintiff did not recall the doctor's name, but described him as a tall Caucasian man, between 30 and 40 years old, with dark hair. A hospital representative tried to convince plaintiff to authorize the hospital to harvest decedent's organs for donation to other patients. Another representative informed her that it was the hospital's policy that patients have to come off the ventilator after so many hours. Decedent's death certificate indicated her cause of death was "due to multiple injuries due to an auto-mobile striking a pedestrian."

¶ 7 In August 2000, plaintiff contacted attorney Carl Salvato for the purpose of initiating a lawsuit against the driver of the car that struck decedent. Salvo testified during his discovery deposition that plaintiff told him that her mother had died from the injuries she sustained after being hit by a car. Salvato obtained decedent's death certificate and medical examiner's report. On September 7, 2000, plaintiff gave Salvato a copy of decedent's medical records, which documented the care that she received at Advocate Christ Hospital. He acknowledged that the records documented the amount of Versed decedent had received. He also stated that if he suspected that decedent's cause of death was due to negligent care, he would have forwarded her medical records to an expert for review. From Salvato's review of the records, he concluded that decedent's death was a "clear-cut case caused by a motor vehicle accident," and he filed a

² The doctor was later identified as Dr. Alexander Evans.

wrongful death complaint against the driver of the car that hit decedent. The case was settled for \$25,000 in February 2002.

¶ 8 Dr. Alexander Evans testified in his discovery deposition that he was a resident at Advocate Christ Hospital on July 9, 2000, and part of the trauma team that cared for decedent. When decedent arrived at the hospital, she had a hemoglobin level of 9. By the time of her cardiac and respiratory arrest, the levels had dropped to 5.9 and then 5.4. Given her precipitous drop in hemoglobin levels, Dr. Evans believed that internal bleeding due to the injuries that she sustained from the car accident caused her arrest. Contrary to his belief, a CT scan revealed no internal hemorrhaging. Dr. Evans then postulated that the decedent's blood loss was coming from the open wounds that she had sustained from the accident. He did not know of the alleged Versed overdose at the time he spoke with plaintiff regarding her mother's condition, and maintained that he did not believe that decedent's death was caused by the alleged overdose. He also stated that he did not omit information from decedent's medical records to falsely mislead plaintiff or anyone else regarding her care and treatment.

¶ 9 Cook County Deputy Medical Examiner Dr. Joseph Cogan testified in his discovery deposition that he examined decedent on July 12, 2000. He concluded that the cause of her death was multiple injuries sustained from an auto accident. Dr. Cogan based his conclusion on decedent's medical records as well as his own review. Defendant did not influence his findings regarding decedent's cause of death.

¶ 10 Dr. Joseph Wood testified in his discovery deposition that he was the Chairman and Medical Director for the hospital's Emergency Department during the time that decedent received care at Advocate Christ Hospital. He stated that a day or two following decedent's death, Laurie Round, Nurse Manager of Clinical Operations for the department, had informed

him that Nurse Colangelo had given 10 mg of Versed to a patient without a doctor's order, causing the patient to suffer respiratory and cardiac arrest. Within a week of the incident, Round told him that she was investigating Nurse Colangelo's conduct. However, because a major local newspaper had run a series of stories about patients dying from nursing errors, she had been told by the hospital's Chief Executive Officer, Carol Schneider, to keep any discipline of Colangelo below a threshold that would require a report to the State. Round informed Dr. Wood that the family had not been notified about the Versed incident, and were led to believe that the injuries from the car accident caused decedent's cardiac arrest. Following an investigation, Round disciplined Colangelo. The discipline was below the level required to be reported to the State. After Dr. Wood learned of Nurse Colangelo's actions, he felt strongly that the family should know the truth about the unauthorized Versed incident.

¶ 11 On August 16, 2000, the hospital's Risk Management Committee (RMC) discussed decedent's care and treatment and a disagreement arose regarding whether decedent's family should be informed about the medications given to her without a physician's order. Dr. Wood testified that some committee members thought that decedent's family should be "told the truth," but others were concerned about a possible lawsuit. He suggested that Scott Beckman, the Vice President of Risk Management for Advocate, should be invited to advise the committee on the hospital's disclosure policy.

¶ 12 During his deposition testimony, Beckman explained that the primary purpose of the RMC was "to review a particular factual scenario, to understand what potentially went wrong, and what you could do to make sure that [it] does not occur again." He stated that the names of the patients and healthcare providers that they discussed were never disclosed to the members of the RMC to ensure "absolute anonymity," and because the focus of the discussions was not the

particular individuals involved in the scenario, but simply to improve the quality of patient care and to implement changes moving forward. He noted that it was not the function of the RMC to contact a patient's family to discuss a particular incident, as the committee "ha[d] no patient relationship." He also provided a sworn affidavit asserting that on August 16, 2000, and October 18, 2000, the specific purpose of the meetings was "to discuss and ultimately formulate a disclosure policy, which was accomplished" and implemented "at the end of 2001 or the beginning of 2002."

¶ 13 On October 18, 2000, Beckman was present at the RMC meeting and the committee revisited decedent's case. According to the minutes from the meeting, the committee was divided as to whether they should disclose the Versed incident to decedent's family. Beckman stressed that disclosing the incident could result in a lawsuit against the hospital, and "monies would be best invested in the purchase of equipment and to increase staffing." During his testimony, Beckman claimed that the committee notes were taken out of context and explained that because the committee could not reach a consensus regarding whether the Versed actually caused decedent's death, it was not clear whether the hospital was liable. Therefore, he believed that the hospital's money would be better spent on improving patient care than defending a potential lawsuit. The RMC ultimately agreed to write a memorandum to Schneider stressing the need for immediate disclosure to families whenever there is an adverse outcome. The minutes from the meeting also state that "Corporate Risk Management waived [decedent's] fees in the amount of \$35,407.00"

¶ 14 Following the meeting, Dr. Wood asked Joyce Voytek, Emergency Department Administrator, whether Schneider had received the RMC's memorandum, and whether the family would receive an accurate disclosure regarding the circumstances surrounding decedent's

death. Voytek responded to Dr. Wood that Schneider would not make any disclosures and that "you've pushed this as far as you can push it, [n]ow let it go." A few months later, Dr. Wood was fired by defendant. Dr. Wood believed that he was fired for advocating for the full disclosure to decedent's family. He brought a lawsuit against defendant, and the parties settled the case for one million dollars. During the lawsuit, Dr. Wood learned that Betty Harris was the name of the patient who had received the unauthorized Versed.

¶ 15 Plaintiff asserts that she was first alerted of her possible claim against defendant in November 2007, when she was contacted by an investigator working for Dr. Wood's attorney who sought her authorization to obtain decedent's medical records for use in the doctor's case. She met with one of Dr. Wood's attorneys, and he explained the doctor's case and that her mother had died from an overdose of Versed. Prior to the conversation, she had believed that her mother died from the injuries sustained from the car accident. Plaintiff then asked the attorney if he could represent her against defendant because she felt that defendant had been dishonest with her.

¶ 16 On August 7, 2008, plaintiff filed a three-count complaint against defendant. Count I alleged common-law fraud; Count II alleged breach of fiduciary relationship with plaintiff, and Count III alleged a wrongful death claim based on the alleged medical negligence of Nurse Colangelo. Plaintiff's attorney submitted an affidavit pursuant to section 2-622 of the Code of Civil Procedure (Code) (735 ILCS 5/2-622 (West 2012)), stating that he reviewed decedent's medical records in consultation with two health care professionals who both found a meritorious cause for the filing of a medical negligence action against defendant. Plaintiff also attached two reports in which both professionals outlined their findings based on a review of decedent's medical records related to her care and treatment at Advocate Christ Hospital from July 9, 2000,

to July 11, 2000. In the first report, Cheryl L. Randolph, a registered nurse, opined that Nurse Colangelo's administration of Versed without a doctor's order was a "clear breach of the standard of care for registered nurses." She concluded that the "excessive amount (10 mg) of *** Versed" led to the respiratory and cardiac arrest that ultimately caused decedent to become brain dead. In the second affidavit, Dr. David F.M. Brown, an emergency medicine doctor, opined that Nurse Colangelo's unauthorized administration of an "excessive amount (10 mg) of Versed" over the course of 65 minutes most likely caused decedent's respiratory and cardiac arrest. He concluded that the medical records revealed that after the arrest, decedent was without oxygen for about 20 minutes, and it was "extremely likely" that the lack of oxygen caused the loss of brain activity that led to decedent's death. He also believed that defendant was responsible for Nurse Colangelo's negligent actions.

¶ 17 On January 8, 2010, plaintiff filed a first amended complaint, which further detailed the facts included in the original complaint. On June 9, 2010, the trial court granted defendant's motion to dismiss plaintiff's breach of fiduciary duties claim (Count II), finding that there was no fiduciary relationship between defendant and plaintiff.

¶ 18 In July 2013, plaintiff filed a second amended complaint. The complaint retained the same three counts as in the first amended complaint, but included Count IV, an alternative theory that the negligent care and treatment of hospital residents was the proximate cause of decedent's death. On October 25, 2013, defendant filed a motion for summary judgment, noting that Count II had already been dismissed. On May 28, 2014, the court granted defendant's motion for summary judgment as to Counts I and III. With regard to Count I, the court found no evidence that defendant fraudulently concealed the facts surrounding decedent's death, as "plaintiff and her attorney had the medical records which contained all the information available necessary to

initiate a lawsuit alleging numerous theories of recovery." As to Count III, the court found that once in possession of decedent's medical records, "plaintiff had a duty to conduct an investigation to determine which claims she, or her attorney, should bring," and because no evidence was produced to show that defendant fraudulently concealed the factual basis of plaintiff's medical negligence claim, the claim was barred by the statute of limitations.³ Plaintiff appealed the trial court's findings.

¶ 19

ANALYSIS

¶ 20 On appeal, plaintiff first contends that the trial court erred in granting defendant's motion for summary judgment on both the medical negligence and common-law fraud claims. Defendant responds that the trial court properly granted its motion for summary judgment because plaintiff's claims are time barred by the statutes of limitations and repose.

¶ 21 "Summary judgment is to be granted only if the pleadings, affidavits, depositions, admissions, and exhibits on file, when reviewed in the light most favorable to the nonmovant, show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Berlin v. Sarah Bush Lincoln Health Center*, 179 Ill. 2d 1, 7 (1997) (citing 735 ILCS 5/2-1005(c) (West 2012)). "A triable issue of fact exists where there is a dispute as to a material fact or where, although the facts are not in dispute, reasonable minds might differ in drawing inferences from those facts." *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999). Whether the trial court properly granted summary judgment is reviewed *de novo*. *Sims v. Tezak*, 296 Ill. App. 3d 503, 508 (1998).

³ The record on appeal does not contain an order dismissing Count II, but the parties ask that we treat the court's earlier dismissal as applying to the second amended complaint. Similarly, although the trial court did not address Count IV in its ruling, the parties agree that we should treat the trial court's summary judgment as applying to Count IV because the court's finding that the statute of limitations had expired would also defeat plaintiff's claim in Count IV. Therefore, we exercise our authority under Illinois Supreme Court Rule 366 (eff. Feb. 1, 1994) and **enter** the judgment which should have been and was assumed to have been given below as to Count II and IV.

¶ 22 Medical Malpractice Claim

¶ 23 The statutes of limitations and repose applicable to actions against physicians and hospitals are set out in section 13-212 of the Code. 735 ILCS 5/13-212 (West 2012). Subsection (a) states, in relevant part:

"[N]o action for damages for injury or death against any physician *** or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought more than 2 years after the date on which the claimant knew, or through the use of reasonable diligence should have known *** of the existence of the injury or death for which damages are sought in the action, whichever of such date occurs first, but in no event shall such action be brought more than 4 years after the date on which occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death." *Id.*

¶ 24 The exception to section 13-212 is contained in section 13-215 of the Code, and states:

"If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 735 ILCS 5/13-215 (West 2012).

¶ 25 Generally, "the concealment contemplated by section 13-215 must consist of affirmative acts or representations calculated to lull or induce a claimant into delaying the filing of his or her claim, or to prevent a claimant from discovering a claim." *Orlak v. Loyola University Health System*, 228 Ill. 2d 1, 18 (2007). A plaintiff must plead and prove that the defendant made misrepresentations or performed acts which were known to be false, with the intent to deceive the plaintiff, and upon which the plaintiff detrimentally relied. *Id.* (citing *Foster v. Plaut*, 252 Ill.

App. 3d 692, 699 (1993)). Mere silence on the part of the defendant and failure of claimant to learn of the cause of action do not amount to fraudulent concealment. *Smith v. Cook County* 164 Ill. App. 3d 857, 862 (1987). Fraudulent misrepresentations which form the basis of the underlying cause of action do not constitute fraudulent concealment under section 13-215 in the absence of a showing that the misrepresentations also tended to conceal the cause of action. *Foster*, 252 Ill. App. 3d at 699. However, the fraudulent concealment exception does not apply if the claimant discovers the fraudulent concealment, or should have discovered it through ordinary diligence, and a reasonable time remains within the remaining limitations period. *Smith*, 164 Ill. App. 3d at 862.

¶ 26 Plaintiff concedes that the time frames set out in section 13-212 were exceeded prior to the filing of her initial complaint in 2008, but contends that, pursuant to section 13-215, her claims were timely filed because she had only discovered her cause of action against defendant in 2007. Although plaintiff centers her argument on the fact that she exercised ordinary diligence in discovering her fraudulent concealment claim, we note that plaintiff's position assumes, without proving, that defendant engaged in acts that amounted to fraudulent concealment. Because we cannot reach the issue of whether plaintiff exercised ordinary diligence in discovering defendant's alleged fraudulent concealment without first determining whether fraudulent concealment occurred in the first place, we begin our analysis there.

¶ 27 **Fraudulent Concealment**

¶ 28 We first address plaintiff's contention that defendant engaged in "a series of affirmative acts" which were designed to perpetuate her misunderstanding of the cause of decedent's death and ultimately prevented her from discovering her claim against defendant within the limitations

period. Defendant responds that plaintiff's claim fails because she has no evidence of any affirmative acts designed to mislead her.

¶ 29 First, plaintiff alleges that defendant reported to the medical examiner only the car accident injuries, and not the Versed overdose, as a potential cause of death, resulting in a misleading death certificate. However, Deputy Medical Examiner Dr. Cogan testified that he examined decedent, reviewed her medical records, and developed his own conclusion that she died from the multiple injuries sustained from the car accident.⁴ The records show the amount, timing, and subsequent effect of the Versed on decedent. Defendant provided all of the relevant information that the medical examiner needed to independently determine decedent's cause of death. Therefore, we disagree with plaintiff's contention that defendant's failure to explicitly identify the Versed administration as a possible cause of death amounted to an affirmative act of intentional deception designed to prevent her from discovering her claim.

¶ 30 Next, plaintiff claims that defendant acted to conceal the cause of decedent's death when hospital representatives prevented the RMC from revealing that Versed may have played a role in her death. Specifically, plaintiff points to Beckman's statement to the RMC that defendant could face a lawsuit if the information was disclosed to plaintiff's family and its administration's failure to generate a memorandum to the CEO stressing immediate disclosure to decedent's family according to the recommendations of the RMC. However, we do not believe that defendant's actions amount to fraudulent concealment because we find no showing of active deceit which prevented defendant from filing her claim. *Id.* Instead, we believe that both Beckman's recommendation and the administration's failure to generate a memorandum to its CEO merely evidence defendant's reluctance to disclose the incident to plaintiff. In fact,

⁴ Even when specifically informed of the alleged Versed overdose by plaintiff's attorneys in 2007, Dr. Cogan's opinion regarding decedent's cause of death remained unchanged.

Beckman testified that he was reluctant to advise the RMC to disclose the incident because committee members were divided regarding whether the Versed incident actually caused decedent's death, which indicated to him that the hospital's liability was not clear. He also noted that it was not the function of the RMC to contact a patient's family to discuss a particular incident as its primary role was to review particular factual scenarios to understand what went wrong and to prevent recurrence. According to Beckman, the specific purpose of the August 16, 2000, and October 18, 2000, meetings was to discuss and formulate a disclosure policy, which the hospital implemented about a year later. Thus, contrary to plaintiff's contention, we do not believe that the RMC acted to intentionally conceal her cause of action so that she could not discover it.

¶ 31 Moreover, we note that neither defendant nor the members of its RMC were ultimately required to make any disclosures to plaintiff. In *Fure v. Sherman Hospital*, 64 Ill. App. 3d 259, 263 (1978), this court held that hospitals and physicians do not have a duty to inform the representative of a deceased patient's estate about questionable medical treatment. Although the court recognized a distinction between requiring physicians to disclose information and prohibiting them from engaging in active deceit, the court held that "[t]he mere failure to disclose a possibly questionable *** course of treatment to a third party representing the deceased patient is, we think, a far cry from fraudulent concealment of an actual known fact or circumstance." *Id.* Also, in *Cramsey v. Knoblock*, 191 Ill. App. 3d 756, 768 (1989), this court reiterated the holding in *Fure* and stated that "[a] physician is not required to charge himself or his partner with professional negligence in order to further a malpractice action." Thus, regardless of the discussions that took place during the RMC meeting, we find that defendant's ultimate decision not to inform plaintiff of her possible cause of action does not amount to evidence of fraudulent concealment.

¶ 32 Lastly, plaintiff alleges that defendant intentionally limited Nurse Colangelo's punishment so that it did not have to report her actions to the State and waived decedent's medical bill to keep plaintiff from discovering her cause of action against defendant. However, even if plaintiff could show that defendant intentionally limited the nurse's punishment to avoid reporting her actions to the State, we do not believe that a more stringent punishment would have resulted in a timely disclosure of the Versed incident because there is no indication that the State or defendant would have made the report available to plaintiff. Thus, we reject plaintiff's contention that the nurse's alleged limited punishment is evidence of the intentional deception needed to prove fraudulent intent. *Orlak*, 228 Ill. 2d at 18. In regard to the hospital's waiver of decedent's medical bill, we fail to see how the waiver in any way prevented decedent's family from making further inquiry into her cause of death. In fact, one could also argue that waiver of a \$35,000 medical bill, with no apparent explanation from defendant, may have had the opposite effect on decedent's family.

¶ 33 Therefore, we find that plaintiff has failed to present sufficient evidence that defendant engaged in affirmative acts that amount to fraudulent concealment.

¶ 34 **Misrepresentation**

¶ 35 Plaintiff also argues that defendant's misrepresentation prevented her from discovering her cause of action against defendant. Specifically, plaintiff points to her conversations with Dr. Evans regarding decedent's medical condition. Defendant responds that plaintiff has no evidence of any knowingly false misrepresentation.

¶ 36 Plaintiff testified that upon her arrival at the hospital, Dr. Evans informed her that decedent's injuries were related to being hit by a car. He also told her that decedent was in a coma due to "internal" bleeding although he testified during his discovery deposition that

"external" bleeding was revealed to be the cause of the hemorrhaging. However, plaintiff cannot show that the doctor made his statement with the intent to conceal her cause of action and that the misrepresentation also tended to conceal the cause of action. See *Foster*, 252 Ill. App. 3d at 699. During his deposition testimony, Dr. Evans maintained that when he spoke with plaintiff he believed that the cause of decedent's death was the result of the injuries that she sustained as a result of the car accident. Although Dr. Evans' testimony regarding the source of decedent's hemorrhaging differed from what he allegedly told plaintiff when she arrived at the hospital, nothing in the record reveals that he knew of the Versed incident and intentionally concealed the information at the time that he spoke with plaintiff about decedent's condition. Thus, even viewing these facts in the light most favorable to the plaintiff, we do not find that the doctor's comments to plaintiff regarding decedent's medical condition amounted to fraudulent concealment or in any way prevented her from discovering her claim.

¶ 37 Moreover, plaintiff cannot show that defendant had knowledge of Dr. Evans' conversation with plaintiff. See *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 464 (2006) (holding that fraudulent concealment by an agent of defendant can only be imputed to a defendant principal if it had knowledge of the fraudulent concealment). Although plaintiff contends that the statements made by both Nurse Round to Dr. Wood regarding the Versed incident and Beckman during the RMC meeting demonstrate that hospital administrators, including the CEO and head of the emergency department, were aware of "what was going on," plaintiff cannot show that any of these four individuals actually had knowledge of the conversation between plaintiff and Dr. Evans. We decline to speculate regarding whether defendant had knowledge.

¶ 38 Because plaintiff presents no evidence of an intentional misrepresentation that prevented her from discovering her cause of action, we do not find that the trial court erred in granting summary judgment in favor of defendant.

¶ 39 Ordinary Diligence

¶ 40 Even if plaintiff could show evidence of fraudulent concealment, her claim would still fail. Plaintiff contends that the trial court erred in concluding as a matter of law, that she did not exercise ordinary diligence in discovering the alleged fraudulent concealment within the limitations period because the court failed to consider "all the relevant circumstances bearing upon the reasonableness of her and her attorney's failure to discover the Versed overdose claim." Specifically, plaintiff argues that her claims should not have been decided by summary judgment because there remained questions of material facts regarding : (1) whether it was reasonable for her and her attorney not to be suspicious of medical negligence when decedent's medical chart strongly suggested that the injuries she sustained during the car accident caused her death; (2) whether it was reasonable for her and her attorney not to suspect that Versed caused decedent's respiratory and cardiac arrest given the few obscure, handwritten notes about the administration of the Versed; and (3) whether facts other than the medical records instilled a reasonable belief in her and her attorney that decedent died from the injuries related to the automobile accident and not medical negligence. Defendant responds that no question of fact exists in plaintiff's case because all the information needed to bring this claim was in the medical records she received and provided to her attorney in September 2000.

¶ 41 We note initially our agreement with plaintiff that, generally, the issue of whether a plaintiff should have discovered her claim with ordinary diligence is a question of fact for a jury.

Smith, 164 Ill. App. 3d at 862. However, in *Smith*, this court also held that where it is apparent from the undisputed facts that only one conclusion can be drawn, the question is one for the court. *Id.* Therefore, the trial court was within its right to decide this issue as a matter of law.

¶ 42 Turning to the merits of plaintiff's argument, we find that no genuine issue of fact exists regarding whether plaintiff should have learned of her cause of action through ordinary diligence after obtaining decedent's medical records and tendering them to her attorney. In *Heredia v. O'Brien*, 2015 IL App (1st) 141952, ¶ 22, this court held that in the context of the statute of limitations, a plaintiff knows or should have reasonably known that an injury was wrongfully caused, not when plaintiff obtained knowledge of a specific defendant's negligent conduct or knowledge that an actionable wrong was committed, but when a plaintiff "becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved." Also, in *Mitsias v. I-Flow Corp.*, 2011 IL App (1st) 101126, ¶ 23, this court held that "as soon as [the plaintiff] has sufficient information about her injury and its cause to spark inquiry in a reasonable person as to whether the conduct of the party who caused her injury might be legally actionable," the plaintiff has a burden to "investigate whether she has a viable cause of action."

¶ 43 Here, it is undisputed that plaintiff obtained decedent's medical records from defendant in September 2000, approximately two months after her death. She then submitted the records to an attorney for the purpose of suing the driver of the car that hit decedent. Plaintiff's attorney reviewed the medical records, the death certificate, and the medical examiner's report and concluded that the only cause of action was against the driver. Plaintiff brought the instant medical malpractice claim in 2008, alleging that she became aware of her cause of action against defendant in 2007 when Dr. Wood's attorney contacted her in relation to his lawsuit against

defendant. However, a review of decedent's medical records reveals that plaintiff had all of the information that she needed to file the instant lawsuit. Although the medical records do not explicitly indicate that an excessive amount of Versed caused decedent's cardiac and respiratory arrest, decedent's "Trauma Flow Sheet" clearly reveals that between 4:05 a.m. and 5:10 a.m., she was given four doses of Versed, totaling 10 mg. The corresponding nursing notes reveal that decedent went into respiratory and cardiac arrest at 5:05 a.m., before being given a final dose of Versed at 5:10 a.m. The record does not indicate a doctor's order for the administration of the drug. Later, several surgeries were performed to treat the injuries related to her car accident; however, decedent never regained brain functioning and was pronounced dead two days later. Thus, when plaintiff obtained the medical records in September 2000 she had in her possession all of the relevant facts that now form the basis of her medical malpractice claim.

¶ 44 In fact, plaintiff's attorney submitted a section 2-622(a) affidavit that alleged a meritorious cause of action against defendant, and attached to the affidavit were two reports from health professionals which concluded, based solely on decedent's medical records from July 9, 2000, through July 11, 2000, that the cardiac and respiratory arrest that caused decedent's loss of brain activity and subsequent death was a result of an "excessive" dosage of Versed. Thus, we find no reason why plaintiff, equipped with these same records in 2000, was not able to bring this claim within the limitations period. Once in possession of decedent's medical records, it was incumbent on plaintiff and her attorney to diligently investigate any potential claims. See *Castello v. Kalis*, 352 Ill. App. 3d 736, 744-45 (2004).

¶ 45 Plaintiff further contends, citing *Fure*, 64 Ill. App. 3d 259, that decedent's medical records were "obscure" and "difficult to decipher" and thus prevented her from becoming suspicious of medical negligence. In *Fure*, this court found that although the plaintiff did not act

with reasonable diligence in obtaining hospital records within two years of her husband's death, where doctors did not explain the cause of death in lay terms and listed the cause of death on the death certificate in technical medical terms, the failure of the plaintiff to discover the actual cause of death within the statutory period did not result from lack of diligence. *Id.* at 271-73. We find *Fure* unavailing. In the instant case, although Versed was not listed as a potential cause of death in decedent's medical records or death certificate, the administration of the drug was clearly documented in her medical records, which plaintiff had in her possession just two months after decedent's death. Moreover, although the medical records may have been difficult for a layman to interpret, we cannot ignore that plaintiff could have in 2000, as she did in 2007, managed to obtain reports from health professionals determining that an excessive dose of Versed was the primary cause of decedent's death.

¶ 46 Lastly, plaintiff contends that certain facts, other than the medical records, instilled in her and her attorney a belief that decedent died from the auto injuries; therefore, their failure to suspect a medical malpractice claim was reasonable. First, plaintiff argues that her conversations with Dr. Evans and an unidentified doctor are crucial in determining whether she exercised ordinary diligence in discovering her claim because both doctors misled her regarding the true cause of decedent's death. However, even if we accept plaintiff's contention that these conversations influenced her state of mind regarding the cause of her mother's death, she is still required to show that these alleged misrepresentations regarding decedent's death tended to *conceal* her cause of action, not merely that they made it more difficult for her to discover through ordinary diligence. See *Foster*, 252 Ill. App. 3d at 699. As discussed above, plaintiff's conversation with Dr. Evans did not preclude her from discovering her cause of action against defendant. Moreover, even if plaintiff is relying on an unidentified doctor's statements solely as

additional evidence to argue that she had been "led by defendant to reasonably believe that her mother's death had resulted from the auto accident injuries," the fact that she cannot put forth evidence that supports her assertions that an unidentified doctor both knew of the Versed incident and made intentional misrepresentations to plaintiff regarding decedent's condition provides little support for her argument. See *Sunderman v. Agarwal*, 322 Ill. App. 3d 900, 902 (2001) (holding that a plaintiff must present some factual basis that would support the claim).

¶ 47 Plaintiff also argues that neither she nor her attorney had reason to question the cause of decedent's death as being multiple injuries from being hit by the car, because the death certificate "officially certified" that cause. Although the death certificate indicates that the cause of decedent's death was the injuries sustained from the accident, plaintiff still had the burden to investigate any potential claims arising from her mother's death as she possessed information which allowed her to make her own independent assessment. See *Mitsias*, 2011 IL App (1st) 101126, ¶ 23. Moreover, we do not find that any of the information in decedent's death certificate amounted to evidence of an intentional misrepresentation that prevented her from discovering her claim through ordinary diligence.

¶ 48 Therefore, we find that the trial court did not err when it determined that no genuine issue of fact existed regarding whether plaintiff should have learned of her cause of action through ordinary diligence.

¶ 49 Common-Law Fraud

¶ 50 We next address plaintiff's contention that the trial court erred in concluding, as a matter of law, that there was no proof of common-law fraud. Specifically, plaintiff alleges that defendant is liable for common-law fraud because it had knowledge of Dr. Evans' fraudulent misrepresentation concerning the cause of decedent's death, and approved it. Additionally,

plaintiff contends that even if the misrepresentation by both Dr. Evans and the unidentified doctor were inadvertent, defendant, by its affirmative acts, perpetuated the "misimpression" created by the doctors. Defendant responds that the trial court properly granted summary judgment in its favor not only because the claim is time barred but also because plaintiff failed to establish the elements of common-law fraud.

¶ 51 To state a cause of action for common-law fraud, a plaintiff must allege: "(1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. An affirmative statement is not always required, however, and fraud may also consist of the omission or concealment of a material fact if accompanied by the intent to deceive under circumstances which create the opportunity and duty to speak. "A successful common-law fraud complaint must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496-97 (1996).

¶ 52 Although plaintiff focuses her argument on the reasons why the trial court's ruling in regard to her common-law fraud claim was erroneous, we agree with defendant that plaintiff has not presented sufficient evidence to establish common-law fraud. In fact, plaintiff's initial brief lacks any substantive discussion regarding the five elements of common-law fraud. Because we review the trial court's decision to grant summary judgment *de novo*, we may affirm on any basis in the record, regardless of the trial court's reasoning. *Garrick v. Mesirow Financial Holdings*,

Inc., 2013 IL App (1st) 122228, ¶ 28. Therefore we need not concern ourselves with the plaintiff's numerous challenges to the trial court's particular rationale. Instead, we find that plaintiff's common-law fraud claim fails because, as revealed in our fraudulent concealment analysis, she fails to present any evidence that a question of fact exists regarding whether defendant knowingly engaged in acts or misrepresentations that amounted to intentional deception to conceal her cause of action. See *Fox v. Heimann*, 375 Ill. App. 3d 35, 47 (2007) (citing *Park v. Sohn*, 89 Ill. 2d 453, 459, (1982) (holding that defendant's knowledge of the falsity of a statement or a deliberate concealment with the intent to deceive is an essential element of common-law fraud)). Thus, for the same reasons we rejected plaintiff's fraudulent concealment claim, we similarly find no merit in her common-law fraud claim.

¶ 53

Breach of Fiduciary Duty

¶ 54 Finally, plaintiff contends that the trial court erred in granting defendant's section 2-615 motion to dismiss her breach of fiduciary duty claim. Defendant responds that plaintiff's claim was properly dismissed as duplicative of the negligence claim and that Illinois law does not support defendant's contention that decedent's fiduciary relationship extends to its legal representative. We agree with defendant.

¶ 55 In *Neade v. Portes*, 193 Ill. 2d 433, 443-44 (2000), our supreme court concluded that because the elements of a medical negligence claim and the breach of fiduciary duty claim in a medical malpractice case are closely related, if both claims are derived from the same operative facts and result in the same injury, the breach of fiduciary duty claim should be dismissed as duplicative. In this case, we find that the operative facts of both plaintiff's medical negligence claim and its breach of fiduciary duty claim center on Nurse Colangelo's alleged unauthorized administration of Versed to decedent and the failure of defendant to inform plaintiff of the

incident. Thus, we determine that plaintiff's breach of fiduciary duty claim is a "re-presentment" of her medical negligence claim. *Id* at 443.

¶ 56 Also, contrary to plaintiff's contention, it well-settled that this court does not recognize a fiduciary relationship that extends to the legal representative of the decedent, regardless of the patient care choices that the representative is asked to make. See *Fure*, 64 Ill. App. 3d at 263 (noting that while the doctor has a fiduciary relationship with the patient which requires the doctor to neither deceive nor withhold vital information from the patient that fiduciary relationship does not extend to the legal representative of decedent).

¶ 57 **CONCLUSION**

¶ 58 Accordingly, based on the record, it is our considered judgment that the trial court did not err in granting summary judgment in favor of defendant with respect to plaintiff's medical malpractice and common-law fraud claims. Additionally, we conclude that the trial court properly granted defendant's section 2-615 motion to dismiss plaintiff's breach of fiduciary duty claim.

¶ 59 Affirmed.