

KEVIN McELWEE, individually as parent	:	IN THE COURT OF COMMON PLEAS OF
to JESSICA McELWEE, deceased, and as	:	LYCOMING COUNTY, PENNSYLVANIA
Administrator of the Estate of JESSICA	:	
McELWEE, deceased; KEVIN McELWEE	:	JURY TRIAL DEMANDED
and JO ANN McELWEE, parents of	:	
JESSICA McELWEE, individually,	:	CIVIL ACTION - LAW
Plaintiffs	:	
	:	
vs.	:	NO. 00-01,795
	:	
PAUL E. LEBER, M.D.; ADAM M.	:	
EDELMAN, M.D.; DONALD E.	:	
SHEARER, M.D.; JEANINE	:	
SINSABAUGH; CINDY KOONS; JUDY	:	
KERSHNER; MUNCY VALLEY	:	
HOSPITAL; SUSQUEHANNA HEALTH	:	
SYSTEM; SUSQUEHANNA PHYSICIAN	:	
SERVICES; and EM CARE and/or WEST	:	
BRANCH EMERGENCY PHYSICIANS,	:	PRELIMINARY OBJECTION:
Defendants	:	VERIFICATION

***Date: December 9, 2002***

**OPINION and ORDER**

Before the Court is Plaintiffs Preliminary Objections to the Answer of Defendants Sinsabaugh, Koons, Kershner, Muncy Valley Hospital, Susquehanna Health Systems, and Susquehanna Physician Services to Plaintiffs' Second Amended Complaint filed October 4, 2002. Plaintiffs seek to strike the verification to that answer. The following verification accompanied the Answer:

I, Krista J. McMonigle, hereby state and aver that I am Assistant Director of Risk Management of Susquehanna Health Systems and that I have read the foregoing document which has been drafted by my counsel. The factual statements contained therein are true and correct to the best of my knowledge, information and belief although the language is that of my counsel, and, to the extent that the content of the forgoing document is that of counsel, I have relied upon counsel in making this verification.

This statement is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

S/ Krista J. McMonigle

See, Plaintiffs' Motion, Exhibit 1. The issue before the Court is whether the Answer was adequately verified under the Pennsylvania Rules of Civil Procedure.

Plaintiffs contend that it is not. Plaintiffs argue that the verification is inadequate because McMonigle is not a party. See, Plaintiffs' Brief, 3. Plaintiff acknowledges she may be speaking on behalf of Susquehanna Health Systems, but asserts the verification does not state she is so authorized. *Ibid.* Also, Plaintiff claims the verification is deficient as to the other defendants, since the cause of action is not one, instead arguing there are separate claims against the institutions and the individual nurses. See, Plaintiffs' Brief, 4. Plaintiff further objects to the verification, claiming it is also bad because as to certain content of the answer, McMonigle relied on her counsel. Plaintiff argues that if she had the knowledge, then there is no need for counsel to verify; if she does not have the knowledge, then the verification needs to say why party is not verifying and the basis of counsel's knowledge.

On the contrary, Defendants contend that the verification complies with the Pennsylvania Rules of Civil Procedure. The Defendants asserted in their brief and during argument that Krista McMonigle is an appropriate party to make the verification since she is a representative of a named party, Susquehanna Health Systems. Defendant argues the cases cited by the plaintiffs to support the position that all defendants have to verify the separate claims alleged against them, dealt with plaintiffs' verifications, not defendants'. Therefore, it is argued that none of the cases cited by the Plaintiffs require each of the multiple defendants to

verify the responsive pleading. Defendants do not argue the verification is an attorney verification but that Krista McMonigle is verifying the Answer, not the attorney.

“Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer’s personal knowledge or information and belief and shall be verified.” *See*, Pa.R.C.P. 1024(a). One or more of the parties filing the pleading must make the verification, unless an exception applies. *See*, Pa. R.C.P. 1024(c). The exceptions are if all the parties lack sufficient knowledge or information or all the parties are outside the jurisdiction of the court and verification of none can be obtained within the time allowed for filing the pleading. *See*, Pa. R.C.P. 1024(c). In these situations, “the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person’s information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by the party.” *See*, Pa.R.C.P. 1024(c).

The verification by McMonigle is deficient for two reasons. Firstly, assuming *arguendo* that McMonigle speaks on behalf of Susquehanna Health Systems, the verification is only good as to the answer regarding the claim against Susquehanna Health Systems. Where there are multiple, independent claims against individual defendants, each defendant must provide a verification as to his answer to those claims. *See*, *Flamino v. Flamino*, 10 D. & C.4<sup>th</sup> 47 (Common Pl. 1991); *Shelborne Corp. v. Bestway Basement Waterproofing, Inc.*, 6 D. & C.3d 468 (Common Pl. 1977). It is true that *Flamino* and *Shelborne* dealt with the verification of multiple plaintiffs. However, it would be inconsistent and incongruous to

require multiple plaintiffs with multiple claims to all verify while allowing only one defendant to verify for all defendants despite the different claims against them.

“The law requires verification and without it the statement of claim is ‘mere narration and amounts to nothing.’” *See, Atlof v. Spartan Inns of America*, 25 D. & C.3d 63 (C.P. 1980) (quoting *Edington v. Philadelphia Transportation Co.*, 54 D. & C. 312 (C.P. 1947)). The verification is “necessary to protect a party against spurious allegations.” *See, Monroe Contract Corp. v. Harrison Square, Inc.*, 405 A.2d 954, 958 (Super. 1979). The verification accomplishes this because the purpose of the verification is to establish that the party has read the pleading and attests to its truthfulness. *See, Louwerse v. Louwerse*, 36 D. & C.3d 547 (C.P. 1985). A verification that states the facts are true and correct, without anything more, is to be construed that the verification is made upon the “affiant’s personal knowledge.” *See, Clark v. Clark*, 76 D. & C. 345 (C.P. 1950).

Requiring all defendants to verify the Answer when there are multiple, independent claims against them meets the requirement that the facts alleged are true based on personal knowledge or personal belief. In a case where there are multiple causes of action against multiple defendants, it is possible that not all defendants possess the personal knowledge to verify the truth of the facts asserted regarding a claim against an other defendant. In multiple defendant, multiple claim situations, it is true that some cases may arise out of the same nucleus of facts, but all defendants not might have the same knowledge of those facts. The verification requirement is instituted to ensure that the facts alleged are true based on someone who has personal knowledge swearing that they are true. Requiring all defendants to

verify ensures that the all the facts alleged in the responsive pleading are supported by someone with personal knowledge or believe.

Secondly, the verification by Krista McMonigel is deficient as to Defendant Susquehanna Health Systems. The clear, plain language of the rule states that “[t]he verification shall be made by one or more of the *parties*” unless it falls into one of the enumerated exceptions. *See*, Pa.R.C.P. 1024(c) (emphasis added). Krista McMonigel is not a named party. While she may be the Assistant Director of Risk Management for Susquehanna Health Systems and a valid assumption could be made that she is speaking on behalf of Susquehanna Health Systems, neither the verification or the answer state that she has the authority to speak for and represent Susquehanna Health Systems. Since McMonigel is not a party, her verification must be made under one of the exceptions in Pa.R.C.P. 1024 (c); *See also, Signora v. Kaplan*, 33 D. & C.4<sup>th</sup> 219, 224 (C.P. 1996) (Verification of a petition for relief from default judgment not verified by party and failed to set forth the reason why the attorney verified instead.). If Krista McMonigle is verifying for Susquehanna Health Systems because it lacks sufficient knowledge or is outside the jurisdiction of the court, then the verification is still deficient. As required by Pa.R.C.P.1024(c), the verification does not state why the party, Susquehanna Health Systems, did not verify and what source of information was relied upon by McMonigle to make the verification.

Defendant concedes to Plaintiffs’ contention that the verification is an inadequate attorney verification, is correct. However, Defendants seek to preserve the verification because Krista McMonigle, not the attorney for Susquehanna Health Systems, made the verification at issue. The language which causes the concern is “although the

language is that of my counsel” and “the content of the foregoing document is that of counsel.” This Court interprets the language as an indication that the specific words used in the answer are those of counsel. The language was used to indicate that the, answer as written, is not a statement composed by Krista McMonigle. Such would ordinarily be presumed in any document filed by counsel, as it is counsel’s function to draft an answer such as this and to have it conform to proper pleading practice. However, the language used in this verification might lend itself to the person who signed the verification saying, when asked in discovery or when cross-examined at trial as to its accuracy, or the factual basis for the assertion, “I didn’t write this, counsel did.” Hence, the need for a verification is obvious. The verifier must attest that the facts asserted in the pleading are true, regardless as to the wording used by counsel.

**ORDER**

It is HEREBY **ORDERED** that Plaintiffs Preliminary Objections filed October 4, 2002 are granted. The Defendants Jeanine Sinsabaugh, Cindy Koons, Judy Kershner, Muncy Valley Hospital, Susquehanna Health Systems, and Susquehanna Physician Services shall each file an appropriate verification within ten (10) days of notice of this order.

BY THE COURT:

William S. Kieser, Judge

cc: C. Scott Waters, Esquire  
David R. Bahl, Esquire  
C. Edward S. Mitchell, Esquire  
M. David Halpern, Esquire  
P. O. Box 2024; Altoona, PA 16601  
Judges  
Christian J. Kalaus, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)