

WALTER A. ROBBINS and IRMA	:	IN THE COURT OF COMMON PLEAS OF
ROBBINS	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	CIVIL ACTION-LAW
vs.	:	NO. 01-01,305
SUSQUEHANNA HEALTH SYSTEM,	:	
INC.	:	
Defendant	:	PRELIMINARY OBJECTIONS

*Date: JUNE 24, 2002*

**MEMORANDUM OPINION AND ORDER ON PRELIMINARY OBJECTIONS**

This Memorandum Opinion and Order are entered in relation to the Preliminary Objections filed by the Defendant, Susquehanna Health System, Inc. to Plaintiff's complaint. The Preliminary Objections were filed on September 17, 2001 in the nature of a Motion to Strike the Plaintiff's Claim for Punitive Damages. The basis of the objection is that the allegations of the complaint, at the most, allege a showing of gross negligence and do not meet the statutory requisite of pleading wanton conduct or reckless indifference to the rights of others as required by the 1996 amendments to Health Care Services Malpractice Act, 40 P.S. section 1301.812-(a). The objections also assert that the complaint only seeks to hold the named defendant vicariously liable for punitive damages caused by the actions of its employees and therefore does not meet the statutory requisite that to impose vicarious liability for punitive damages that the hospital defendant must have known of and allowed the alleged conduct which gives rise to the claim for punitive damages as limited by the Malpractice Act, in section 1301.812-A(c).

This Court will DENY the Preliminary Objections

The Plaintiff's complaint alleges he was an inpatient at the Defendant's Muncy Hospital. He had been operated upon for a broken ankle. Plaintiff alleges that while recovering

from first operation he was injured when he was dropped as two physical therapists attempted to manually lift him out of bed and into a wheelchair, in direct opposition to a posted order that the Plaintiff should not be ambulated and that a lift was to be used to transfer him. At the time the Plaintiff assertedly weighed 280 pounds. The complaint states the accident occurred when two female employees believed to be physical therapists proceeded to attempt to transfer him from the bed into the wheelchair without making use of the lift, although at the time they had entered the room they had been specifically asked by another nurse-employee of the Defendant, as to if they needed a lift to transfer the Plaintiff. The Court believes that these are sufficient allegations that may permit the jury to conclude the physical therapists of the Defendant were aware that their conduct would create a high degree of risk of physical harm and yet deliberately failed to use the lift as instructed and acted in conscience disregard of the risk of moving the plaintiff. *See, Temple vs. Susquehanna Health System*, Lycoming County Docket Number 97-00,099; *see also*, cases cited by both parties in their briefs.

As to the aspect of the Defendant having knowledge of and allowance of the misconduct by its employees, this Court also believes the allegations may also permit a jury to reach a conclusion that the Defendant possessed such knowledge. The allegation is that a nurse was in the room and observed the intended conduct of the therapists to lift the Plaintiff and allowed the conduct to occur without a lift and questioned the therapists about using the lift. This may impute knowledge. The nurse then, with the knowledge the therapists did not intend to use the lift did not stop the transfer although they had no lift in the room. Obviously the Defendant comes by knowledge through what is known to its various agents and employees.

The deliberate wrongful conduct of the physical therapist is made known to and allowed by the Defendant according to the allegations, through the actions of its nurse.

In addition the Court notes that there are other allegations in the complaint that the obvious results of the Plaintiff's re-injuring of his ankle persisted for a period of three days, without any action being taken by the hospital staff to treat or investigate the seriousness of the Plaintiff's additional injury. These allegations if proven, may serve as a basis to permit Plaintiff to argue that the Plaintiff's wounds and symptoms were ignored because the Defendant was aware that a grievous injury had occurred to Plaintiff as a result of its wanton and reckless misconduct.

**ORDER**

The Preliminary Objections of the Defendant filed September 17, 2001 are DISMISSED.

BY THE COURT:

William S. Kieser, Judge

cc: David C. Shipman, Esquire  
David R. Bahl, Esquire  
David B. Lingenfelter, Esquire  
Judges  
Paul Petcavage, Law Clerk  
Gary L. Weber, Esquire (Lycoming Reporter)

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