

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GEORGE THURMAN, Individually :
And USITAI THURMAN, his wife, : No. 02-00518
Plaintiffs :
 :
vs. : CIVIL ACTION - LAW
 :
J. ALFRED JONES, M.D.; BETTY :
TORNATORE; MICHAEL TANITSKY, :
D.O.; HEALTHSOUTH NITTANY :
OF NITTANY VALLEY, INC.; :
CHRISTOPHER DONOHUE, M.D.; :
And CENTRE EMERGENCY MEDICAL :
ASSOCIATION, :
Defendants : Preliminary Objections

ORDER

AND NOW, this ___ day of December 2002, the court GRANTS the plaintiffs' Preliminary Objections to paragraphs 96, 97 and 98 of Defendant Jones' New Matter and STRIKES these paragraphs.

In paragraph 96, Defendant Jones attempts to preserve the right to raise the statute of limitations as a defense. Defendant Jones, however, does not set forth any facts to support his assertion that the plaintiffs' claims may be barred by the statute of limitations. The material facts on which a defense is based are to be set forth in a concise and summary form. Pa.R.Civ.P 1019(a); Allen v. Lipson, 8 Pa. D. & C.4th 390, 394 (Lyc. Co. 1990). If Defendant Jones discovers facts to support a statute of limitations defense,

he can seek to amend his Answer and New Matter.

In paragraphs 97 and 98, Defendant Jones merely alleges the applicability of the Health Care Services Malpractice Act and the MCARE Act. With the exception of the sections pertaining to the statute of repose (which are not specifically cited in Defendant Jones' New Matter), the court does not believe these statutes contain affirmative defenses. The cited sections in paragraph 98 deal with limits on recovery. They have nothing to do with establishing liability or lack thereof. Therefore, they are not affirmative defenses and should not be pled as New Matter. Previously, in ruling on preliminary objections to Dr. Tanitsky's New Matter, the undersigned permitted the pleading of these statutes to stand. Upon further reflection, the court believes the better course of action is to strike such paragraphs as they do not constitute affirmative defenses nor do they set forth new facts extrinsic to the plaintiffs' claims. However, these statutes may be relevant to this case later in the proceedings. Thus, this ruling is without prejudice to any of the defendants asserting the statutes when the determination and payment of damages is at issue.

By The Court,

Kenneth D. Brown, Judge