

JOYCE A. BLAIR, Individually and as	:	IN THE COURT OF COMMON PLEAS OF
The Executrix of the Estate of BRENDA	:	LYCOMING COUNTY, PENNSYLVANIA
BLAIR, deceased, JOSEPH BLAIR,	:	
Individually, and CATHERINE WINNIE,	:	
Individually,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 03-00954
	:	
PANKAJ G. MEHTA, M.D.; WOMEN'S	:	
HEALTH CARE ASSOCIATES, P.C.;	:	
AARON D. SIMMS, M.D.; BUPHINDER	:	
S. DATTA, M.D.; WEST BRANCH	:	
EMERGENCY PHYSICIANS; NEW	:	
JERSEY/PENNSYLVANIA EM-1	:	
MEDICAL SERVICES, P.C.;	:	SUSQUEHANNA PHYSICIAN
SUSQUEHANNA PHYSICIAN	:	SERVICES; THE WILLIAMSPORT
SERVICES; THE WILLIAMSPORT	:	HOSPITAL and MEDICAL CENTER
HOSPITAL and MEDICAL CENTER;	:	SUSQUEHANNA HEALTH SYSTEM
and SUSQUEHANNA HEALTH SYSTEM:	:	
Defendants	:	PRELIMINARY OBJECTIONS

Date: May 13, 2004

OPINION and ORDER

Before the Court for determination are the Preliminary Objections of Defendants Susquehanna Physicians Services, The Williamsport Hospital and Medical Center, and Susquehanna Health System (Defendants) filed October 28, 2003. The Court will deny in part and grant in part the Preliminary Objections.

The Preliminary Objections presently before the Court were filed in response to Plaintiffs' Amended Complaint, which was filed on October 21, 2003. The Amended Complaint alleges that Brenda Blair, the deceased, received inadequate medical care and treatment while a patient at the Williamsport Hospital. The Amended Complaint further alleges that this inadequate medical care and treatment caused her death.

The focus of Defendants' Preliminary Objection is that the language in Counts IV and VI is vague in that the agents, employees, apparent agents, ostensible agents, and/or independent contractors of Defendants whose negligence Defendants are allegedly responsible for have not been identified.¹ Defendants argue that the generic language prevents them from adequately preparing a defense since a number of individuals might fit that classification and it would leave open the door for Plaintiffs to plead new theories of liability after the two year statute of limitations has run.

Plaintiffs counter by arguing that the language is sufficiently specific. As to the language in Count VI, the vicarious liability claim, Plaintiffs argue that the agents and employees for whom the Defendants would be vicariously liable for have been identified by the appropriate description. Plaintiffs assert that the Amended Complaint limits the possible people to a specific fact scenario and time frame – the medical care of Brenda Blair from June 19, 2001 until June 28, 2001. Plaintiffs argue that this description allows Defendants to prepare an adequate defense and puts them on notice as to the claims brought against them and the basis of those claims.

As to the language in Count IV, the corporate negligence claim against the Williamsport Hospital and Susquehanna Health System, Plaintiffs argue that vicarious liability law concerning the description of agents does not apply. Plaintiffs argue that the focus of the corporate negligence claim is the actions of the entity, not its agents. Therefore, the identity of

¹ In their Preliminary Objections, Defendants also included a demurrer to Plaintiffs negligent infliction of emotional distress claim against them. The demurrer was resolved by stipulation of Plaintiffs and Defendants. The stipulation stated that the Amended Complaint does not raise a direct claim for negligent infliction of emotional distress against Defendants and Defendants withdrew their preliminary objection in this regard.

caregivers is not a material fact that needs to be pleaded to establish a claim of corporate negligence. But, Plaintiffs alternately argue, if the identity of caregivers was material the Amended Complaint sufficiently identifies them as those medical care providers that were involved with the care of Brenda Blair from June 19, 2001 to June 28, 2001.

Pennsylvania is a fact-pleading state. *Santiago v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 613 A.2d 1235, 1239 (Pa. Super. 1992); *Miketic v. Baron*, 675 A.2d 324, 330 (Pa. Super. 1986). The complaint must set forth the material facts upon which a cause of action is based in a concise and summary form. Pa.R.C.P. 1019(a). The complaint must apprise the defendant of the claim being asserted and the material facts needed to support that claim. *Cardenas v. Schober*, 783 A.2d 317, 325 (Pa. Super. 2001); *Alpha Tau Omega Fraternity v. Univ. of Pennsylvania*, 464 A.2d 1349, 1351 (Pa. Super. 1983).

The amount of detail or level of specificity required is “incapable of precise measurement.” *Pike County Hotels Corp. v. Kiefer*, 396 A.2d 677, 681 (Pa. Super. 1978). However, the complaint must set forth enough material facts to allow the defendant to prepare a defense to the allegations contained within the complaint. *Weiss v. Equibank*, 460 A.2d 271, 274 (Pa. Super. 1983); *Dep't of Transp. v. Shipley Humble Oil Co.*, 370 A.2d 438, 439 (Pa. Cmwlth. 1977). Based on *Connor v. Allegheny Hospital*, 461 A.2d 600 (Pa. 1983), and its progeny, the language used in the complaint must also be specific enough as not to allow the plaintiff to assert new causes of action or theories of liability at a latter date under the guise of merely amplifying what has been timely pleaded. In examining the complaint, the focus is not upon one particular paragraph in isolation. *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805

A.2d 579, 589 (Pa. Super. 2001). The paragraph at issue must be read in conjunction with the complaint as a whole to determine if there is the requisite level of specificity. *Ibid.*

Vicarious Liability

The Court will address the language in the vicarious liability count first. With respect to a vicarious liability claim, ““a complaint must allege, as a minimum, facts which (1) identify the agent by name or appropriate description; and (2) set forth the agent’s authority and how the tortuous acts of the agent either fell within the scope of that authority, or if unauthorized, were ratified by the principal.”” *Rachlin v. Edmison*, 813 A.2d 862, 870 (Pa. 2001) (quoting *Alumni Assoc., Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan*, 535 A.2d 1095, 1100 n.2 (Pa. Super. 1987)). The paragraphs at issue are 95, 96, 97, 98, and 99.

Specifically they state:

95. The Williamsport Hospital and Medical Center and Susquehanna Health System are responsible for the actions or inactions of their agents, servants, and/or employees, ostensible or otherwise, who provided care to Brenda Blair from June 19, 2001 through and including June 28, 2001.
96. Upon information and belief, Defendant physicians and/or other medical care providers who were responsible for the medical care and treatment of Brenda Blair at the Williamsport Hospital and Medical Center were involved in the acts, omissions and conduct set forth in paragraph 19 through 58 above, were, at all times relevant hereto, agents, servants, and/or employees, ostensible or otherwise, of the Williamsport Hospital and Medical Center and Susquehanna Health System.
97. At all times relevant hereto, Defendant physicians and/or other medical care providers who were responsible for the medical care and treatment of Brenda Blair at the Williamsport Hospital and Medical Center were involved in the acts, omissions and conduct set forth in paragraph 19 through 58 above, were acting within the scope of their

employment as agents servants, and/or employees, ostensible or otherwise, with the Williamsport Hospital and Medical Center and Susquehanna Health System.

98. The Williamsport Hospital and Medical Center and Susquehanna Health System is/are the ostensible and/or corporate principal of Defendant physicians, and/or its/their employees. There was a holding out to the public that the corporate Defendants and individuals who provided medical care to Brenda Blair were affiliated with one another, either as agents, servants and/or employees, ostensible or otherwise, or in a joint venture.
99. The Williamsport Hospital and Susquehanna Health System are vicariously liable for the actions or inactions of Defendant physicians and the aforesaid agents, servants, or employees, ostensible or otherwise, who provided medical care and treatment to Brenda Blair at the Williamsport Hospital and Medical Center and were involved in the acts, omissions and conduct set forth in Paragraphs 19 through 58 above, as though the actions or inactions were performed by the entities themselves.

The generic words “agents, employees, apparent agents, ostensible agents, and/or independent contractors” are not impermissibly vague when the Amended Complaint is read as a whole. Paragraph 95 is an introductory statement for Plaintiffs’ vicarious liability claim against Defendants. The individuals this language refers to are the named defendant physicians. The Amended Complaint makes factual assertions regarding their conduct as would relate to the treatment of Brenda Blair between June 19-21, 2001. It is these factual assertions that form the basis of the Plaintiffs’ claims asserted in the Amended Complaint. Furthermore, paragraphs 96 through 99 specifically refer to the defendant physicians as being those individuals for whom Defendants are vicariously liable for. Therefore, Defendants are sufficiently alleged to be vicariously liable for the named defendant doctors.

The language in Paragraphs 95 – 99 that is troublesome can be characterized as “and others” type of language. This type of language is not sufficiently specific. The facts pleaded in the Amended Complaint and qualifying language within the at issue paragraphs limits those “others” to those who rendered medical care to Brenda Blair from June 19, 2001 to June 28, 2001. While this may give Defendants a ballpark idea of the claim being asserted, Defendants need to know the starting lineup to properly prepare a defense.

The “and others” type of language is too broad. The focus of the Amended Complaint is on the conduct of those Plaintiffs contend acted negligently in rendering medical treatment to Brenda Blair. The factual allegations of the Amended Complaint indicate that it is the named defendant physicians that Plaintiffs contend acted negligently in rendering medical treatment to Brenda Blair. The “and others” language is not supported by the factual allegations and creates unnecessary work for Defendants. The “and others” language would cause Defendant to expend needless amounts of energy and time investigating and preparing to defend all possible claims arising out of the actions of those individuals who were involved in the treatment and care of Brenda Blair from June 19, 2001 to June 28, 2001.

To illustrate this, Plaintiffs have pleaded in Paragraph 35 of the Amended Complaint that, “Dr. Mehta discussed Brenda’s condition with a surgeon, who doubted that Brenda had appendicitis, and the decision was made by Dr. Mehta to perform a laparoscopy and possible laparotomy.” and in Paragraph 55 that, “An emergency room physician saw Brenda at approximately 7:00 a.m. ...” on June 27, 2001. It does not appear from the facts pleaded or the causes of actions alleged that Plaintiffs contend that the unnamed surgeon or emergency room physician were negligent. However, these two physicians were involved in

the treatment of Brenda Blair during the period of June 19, 2001 to June 28, 2001 and would fall into the qualifying classification made by Plaintiffs. Despite there not being an allegation of wrongdoing against them, prudence would dictate that Defendants investigate the involvement of these two physicians so that Defendants could prepare a defense against any allegations Plaintiffs could make. Based on the factual allegations pleaded in the Amended Complaint this would be a waste of time and energy since no claim against these physicians has been made.

Plaintiffs' claims are against the named defendant physicians. The facts alleged set forth the conduct of the defendant physicians that Plaintiffs assert was negligent. The facts pleaded do not set forth a cause of action against any "others." If the Plaintiffs have a cause of action against any "others," then they need to set forth facts to establish the cause of action and, thereby, notify Defendants of the claim.

Therefore, the following language, which follows the words, "Defendant physicians" will be stricken from the Amended Complaint: from Paragraph 96 "and /or other medical care providers;" from Paragraph 97 "and/or other medical care providers;" Paragraph 98 "and/or its/their employees;" Paragraph 99 "and the aforesaid agents, servants, or employees, ostensible or otherwise."

Corporate Negligence

The Court will now address the language in Paragraph 81 of the corporate negligence claim against the Williamsport Hospital and Susquehanna Health System. The doctrine of corporate negligence allows an individual to bring a claim against a hospital based on the hospital's actions and independent of any negligence on the part of a third party.

Thompson v. Nason Hosp., 591 A.2d 703, 707 (Pa. 1991). A hospital is liable under the doctrine of corporate negligence if it fails to uphold the proper standard of care owed its patient. *Id.*, at 708. A hospital owes a patient four duties: (1) to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) to select and retain only competent physicians; (3) to oversee all persons who practice medicine within its walls as to patient care; (4) to formulate, adopt, and enforce adequate rules and policies to ensure the quality of care for patients. *Id.* at 707. It is also necessary “to show that the hospital had actual or constructive knowledge of the defect or procedures which created the harm.” *Id.* at 708. Also, it must be demonstrated that the hospital’s negligence was a substantial factor in bringing about the injured party’s harm. *Ibid.*

With respect to Paragraph 81.11 of the corporate negligence claim against Defendants, Plaintiffs run into the same problem encountered in the vicarious liability paragraphs. Paragraph 81.11 of the Amended Complaints states:

Failure to provide reasonable, adequate and competent medical care by physicians and others to evaluate the patient and ascertain the significance of signs and symptoms exhibited by Brenda.

Paragraph 81.11 is an allegation that the Williamsport Hospital and Susquehanna Health System breached the second duty enumerated in *Thompson, supra* -- to select and retain only competent physicians. While the focus of a corporate negligence claim is on the conduct of the entity itself, in order to demonstrate that the hospital failed to select and retain competent physicians a plaintiff must prove that the physicians rendering the medical care were incompetent. The heart of this claim against the hospital is the actions of the physicians and caregivers that rendered the treatment. In order to prepare a defense to this alleged breach of

duty, the defendant hospital would need to know which physician or caregiver's conduct was at issue.

As such the "and others" language in Paragraph 81.11 is impermissibly vague. The facts pleaded in the Amended Complaint focus on the conduct of the named defendant physicians. It would be their conduct that would have to be demonstrated as incompetent for the hospital to have breached this duty. The "and others" language is unsupported by the factual allegations in the Amended Complaint and, as such must be stricken from the Amended Complaint.

For the same reasons, the Court will also strike the allegations of paragraph 81.1 which assert lack of competent ". . . medical and nursing staff and . . ." in addition to physicians. Plaintiffs have not pleaded negligent acts of any medical staff or nurses, except the named Defendant physicians.

Accordingly, the Defendant's Preliminary Objections are denied in part and granted in part.

ORDER

It is hereby ORDERED that the Preliminary Objections of Defendants Susquehanna Physicians Services, The Williamsport Hospital and Medical Center, and Susquehanna Health System filed October 28, 2003 are DENIED IN PART and GRANTED IN PART.

The Preliminary Objection to paragraph 95 is DENIED.

In Count VI of the Amended Complaint, the following language is STRICKEN: from Paragraph 96 “and /or other medical care providers;” from Paragraph 97 “and/or other medical care providers;” Paragraph 98 “and/or its/their employees;” Paragraph 99 “and the aforesaid agents, servants, or employees, ostensible or otherwise.”

In Count IV of the Amended Complaint, the following language is STRICKEN from paragraph 81.1 “medical and nursing staff and” from Paragraph 81.11 “and others.”

BY THE COURT:

William S. Kieser, Judge

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