

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARY K. JAMES,	:	NO. 09 - 02,070
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
PRISON HEALTH SERVICES, INC.,	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendant's preliminary objections to Plaintiff's Fourth Amended Complaint. Argument on the objections was heard December 20, 2010.

Objections to Plaintiff's original Complaint, Amended Complaint, and Second Amended Complaint were addressed by the filing of the Amended Complaint, a Second Amended Complaint and a Third Amended Complaint, respectively. Objections to the Third Amended Complaint were argued before the Court on August 27, 2010, and by Order dated September 7, 2010, Plaintiff was granted leave to file a Fourth Amended Complaint.

Plaintiff claims that while acting in her capacity as a corrections officer at the Muncy State Correctional Institution she had contact with an inmate who had MRSA, that Plaintiff contracted MRSA which caused her certain injuries, that Defendant's employees had treated the inmate and therefore knew or should have known that she was contagious but that they nevertheless released her into the general population and failed to warn Plaintiff that the inmate was contagious, and that Defendant's failures were the proximate cause of Plaintiff's injuries. Plaintiff asserts a claim of vicarious liability for the alleged negligence of Defendant's employees, and a claim of corporate liability for the alleged failings of Defendant.

In the Order of September 7, 2010, the Court rejected Defendant's argument that it had no duty to Plaintiff, but dismissed a count of negligence with the proviso that the allegations contained therein could be included in a claim for vicarious liability. The Court also directed that the fourth amended complaint should "identify, by name or appropriate description or reference to the medical records, the agents, servants or employees for whom Defendant is

alleged to be vicariously liable”, and directed that “Count III shall be re-pled to properly set forth a fact-based claim of corporate liability.”

In the instant preliminary objections, Defendant contends that Plaintiff is still asserting a claim of negligence directly against Defendant rather than through its employees, and that her claim of vicarious liability continues to be deficient because Plaintiff does not specifically identify the individuals for whom Defendant has vicarious liability, nor does she allege how Defendant has the ability to control those individuals’ practice of medicine. Defendant also objects to the claim of corporate liability, contending such is deficient for failing to contain sufficient factual averments to establish that Defendant provided comprehensive health care, failing to set forth with sufficient factual specificity any breach of any of the four areas of responsibility recognized in such a cause of action, and failing to set forth factual averments which establish causation. After a thorough review of the Fourth Amended Complaint, the Court believes that although some of Defendant’s objections have merit, the complaint contains sufficient allegations to apprise Defendant of the claims against it and therefore withstand dismissal.

Plaintiff does indeed continue to assert a claim of negligence directly against Defendant rather than as a claim of vicarious liability. In paragraphs 33 and 34 Plaintiff states that “Defendant Prison Health Services was negligent” and “Defendant knew or should have known”. In paragraph 36, Plaintiff states that “Defendant knew that the inmate Newman would be in contact with the Plaintiff” and that “they failed to protect the Plaintiff”. In a claim of vicarious liability, these allegations should be directed against the agents of Defendant rather than Defendant itself. Therefore, in these paragraphs the agents alleged to have been negligent will be substituted for Defendant.

With respect to the objection that Plaintiff still has not sufficiently identified those agents alleged to have been negligent, the Court agrees that there are numerous references to individuals who could not possibly be identified by Defendant. Overall, however, it is possible to glean from the complaint that Plaintiff is accusing the physician, nurse and/or physician’s assistant who treated inmate Newman for an open wound on her arm in the summer of 2007. The Court believes this description is sufficiently specific for Defendant to be able to identify

the alleged negligent agents. Therefore, any reference to negligent agents will be interpreted to refer to only the physician, nurse and/or physician's assistant who treated inmate Newman for an open wound on her arm in the summer of 2007, and references to anyone other than those individuals will be stricken.

With respect to the objection that Plaintiff does not allege how Defendant has the ability to control its agents' practice of medicine, the Court believes that the allegations that Defendant does control its agents and instructs them how to practice, contained in paragraphs 41 and 42 of the Complaint, are sufficient and that at this stage of the proceedings Plaintiff need not allege how that control is effectuated.¹

Similarly, the objection to the factual specificity of the claim that Defendant provides comprehensive health care is also misplaced. While it may be an appropriate contention in a motion for summary judgment, the Court believes Plaintiff's allegations, contained in paragraphs 31, 32 and 49,² that Defendant provides more than primary care to the inmates and that Defendant is a comprehensive medical facility, are sufficient to overcome the objection.

With respect to the objection to Plaintiff's allegations respecting breach of the four areas of responsibility which form a claim for corporate liability, the Court agrees that Plaintiff has failed to set forth a fact-based claim in three of the four areas. Simply quoting from Thompson v. Nason Hospital, 591 A.2d 703 (Pa. 1991), is insufficient to apprise Defendant of the claims against it. Therefore, sub-paragraphs d, e, and f of paragraph 50 will be stricken. Paragraph 50a will be interpreted to refer only to John Doe, M.D. It remains, of course, for Plaintiff to produce sufficient evidence to support the claim.

Finally, with respect to the sufficiency of the averments of causation, Plaintiff does allege, in paragraph 8, that she was in contact with the infected inmate as part of her duties as a corrections officer, and, in paragraphs 25 and 26, that "as a direct and proximate result of [her] exposure to the inmate, she developed MRSA" and that such "caused [her injuries]." Further, it is reasonably deduced from the complaint that Plaintiff's exposure was a result of the alleged

¹ Of course, if the allegations are not supported by evidence produced through the discovery process, Plaintiff's claim may not be able to withstand summary judgment.

² The Court notes that Paragraphs 31 and 32 should have been placed in the count of corporate liability rather than the count of vicarious liability, but such error does not prevent Defendant from being placed on notice of the claims against it.

release of the inmate into the general population and lack of warning about the inmate's contagious condition. It can also be reasonably deduced that Plaintiff's claim of corporate liability, which focuses on the hiring of competent physicians and assistants, is a claim that had Defendant hired competent physicians and assistants, the inmate would not have been released into the general population and/or the corrections officers would have been warned, and Plaintiff would not have been exposed to the infected inmate, contracted MRSA and suffered her injuries.

The Court admits that the fourth amended complaint is "bare-bones" and certainly could have been more artfully drafted, but dismissal at this stage is appropriate only where it is clear that Plaintiff cannot establish a right to relief under any theory of law.³ As it does appear that Plaintiff may be able to make out her claims, providing that sufficient facts are produced during discovery, the Court will not dismiss the complaint at this time.

ORDER

AND NOW, this day of December 2010, for the foregoing reasons, it is hereby ordered and directed as follows:

1. The following references, in the following paragraphs, shall be substituted by the language "the physician, nurse and/or physician's assistant who treated inmate Newman for an open wound on her arm in the summer of 2007":
 - a. (4) "employees of Prison Health Services",
 - b. (5) "the physician that treated inmate Newman",
 - c. (6) "the nurse and or physician's assistant that treated inmate Newman",
 - d. (13) "[t]he agents or employees of the Defendant",
 - e. (16) "Prison Health Services and its agents",
 - f. (20) "Prison Health Services, Inc.",

³ See Bower v. Bower, 611 A.2d 181 (Pa. 1992).

- g. (21) “Prison Health Services, Inc.” and “an agent or servant of Prison Health Services, Inc.”,
 - h. (23) “[t]he agents and servants of Prison Health Services”,
 - i. (24) “any agent, servant or employee of Prison Health Services, Inc.”,
 - j. (37) “John Doe, M.D. that treated Inmate Newman”,
 - k. (38) “Jane Doe”,
 - l. (39) “their agents, servants or employees that provided care and treatment”,
 - m. (40) “Defendant physicians and others”,
 - n. (41) “its agents, employees, servants, officers and directors”,
 - o. (42) “the agents, employees, servants, officers and directors”,
 - p. (43) “Defendant physicians” and “the aforementioned physicians”,
 - q. (50)(b) “:John Doe, M.D.”
 - r. (50)(c) “Jane Doe and others who cared for Inmate Newman”
2. References to “Defendant” in paragraphs 33, 34 and 36 shall be replaced by “the physician, nurse and/or physician’s assistant who treated inmate Newman for an open wound on her arm in the summer of 2007”.
 3. The second sentence of paragraph 43 is hereby stricken.
 4. Subparagraph 50(a) shall be interpreted to refer to only John Doe, M.D.
 5. Subparagraphs 50(d), (e) and (f) are hereby stricken.

Defendant shall file an Answer within thirty (30) days of this date.

BY THE COURT,

Marc F. Lovecchio, Judge

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Hon. Marc Lovecchio