

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JUDY J. DYMECK and FRANCIS J. DYMECK
Plaintiffs

v.

No. 12-00550
CIVIL ACTION

RODWAN K. RAJJOUR, M.D., STUART M.
OLINSKY, M.D., (DR. NEUROLOGIST), LALITA
MITTAL, M.D., THOMAS E. CULLEN, D.O.,
THE WILLIAMSPORT HOSPITAL, THE
WILLIAMSPORT HOSPITAL AND MEDICAL
CENTER, THE WILLIAMSPORT HOSPITAL
FOUNDATION, NCPHS FOUNDATION, NCPHS
HEALTH EDUCATION AND RESEARCH
FOUNDATION, TINA M. JACOBS, D.O.,
JAGDEEPK. MEHR, M.D., LARRY E.
BOHNER, II, P.A.-C., SELECT SPECIALITY
HOSPITAL – DANVILLE, INC. a/ka and/or d/b/a
SELECT SPECIALTY HOSPITAL-DANVILLE,
SELECT MEDICAL OF PENNSYLVANIA, INC.,
SELECT MEDICAL CORPORATION, SELECT
MEDICAL HOLDINGS CORPORATION,
GEISINGER MEDICAL CENTER, GEISINGER
HEALTH SYSTEM, GEISINGER HEALTH
SYSTEM FOUNDATION,
Defendants

OPINION AND ORDER

Background

On July 23, 2010, Judy J. Dymeck (Plaintiff) went to the Williamsport Hospital complaining of pain in her buttocks and back. She was admitted to the Hospital on that same day. On August 18, 2010, Plaintiff underwent a total decompressive lumbar laminectomy of L3-L4, partial laminectomy at L-5, along with incision and drainage of an epidural abscess with debridement of bone and wound. Plaintiff was transferred on September 16, 2010 to Select Specialty Hospital in Danville. On September 18, 2010, an examination of Defendant revealed

weakness in the Plaintiff's upper and lower extremities. As a result, an MRI was performed of Plaintiff's cervical, thoracic, and lumbar spine and upon review a collection of epidural fluid was found. On September 19, 2010, Plaintiff was then transferred to Geisinger Medical Center to undergo a C2-C3 laminectomy and resection of epidural phlegmon and abscess. Plaintiff was transferred back to Select Specialty Hospital on September 20, 2010 where she remained until October 22, 2010, when she then was transferred to the Laurel Center for continued care and treatment.

On March 12, 2012, Plaintiffs filed a Complaint in the matter alleging professional negligence on the part of medical personnel and the corporate entities for which they were employed. On April 18, 2012, following the filing of preliminary objections by some of the named defendants, Plaintiffs filed an Amended Complaint. After preliminary objections were again filed to the Amended Complaint, Plaintiffs filed a Second Amended Complaint on May 17, 2012. Plaintiffs generally allege that each and every Defendant failed to properly note, work up, evaluate, diagnose, manage, and treat the Plaintiff's condition. On June 29, 2012, this Court heard argument on the preliminary objections filed to Plaintiff's Second Amended Complaint.

Whether the Plaintiffs' Second Amended Complaint include material facts that support the allegations of negligence

Defendants Stuart M. Olinsky, MD; Lalita Mittal, MD; Thomas E. Cullen, DO; the Williamsport Hospital; The Williamsport Hospital and Medical Center; the Williamsport Hospital Foundation; NCPHS Foundation; NCPHS Health Education and Research Foundation; Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; and Select Medical Holdings Corporation contend that the Plaintiffs' Second Amended Complaint is general, overly broad, and lacks sufficient specificity. Pennsylvania is a

fact pleading state. Miketic v. Baron, 675 A.2d 324, 330 (Pa. Super. 1986). A complaint must set forth the material facts upon which the cause of action is based in a concise and summary form. Pa.R.C.P. 10109(a). The complaint must apprise the defendant of the claim being asserted and summarize the material facts needed to support the claim. Cardenas v. Schober, 783 A.2d 317, 325 (Pa. Super. 2001); Alpha Tau Omega Fraternity v. Univ. of Pennsylvania, 464 A.2d 1249, 1351 (Pa. Super. 1993). 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). The complaint, however, must set forth enough material facts to allow the defendant to prepare a defense to the allegations contained within the complaint. Boyd v. Rockwood Area School Dist., 907 A.2d 1157, 1168 (Pa. Commw. 2006). Based on Connor v. Allegheny Hospital, 461 A.2d 600, 602-03 n.3 (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 actions or theories of liability at a later 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. Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com’n, 950 A.2d 1120 (Pa. Commw. 2008).

Here, the Plaintiffs’ Second Amended Complaint alleges for negligence that:

- a. failure to obtain appropriate, adequate, necessary and/or timely review of systems, including review and evaluation of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex function;
- b. failure to perform an appropriate, adequate, necessary and/or timely physical examination of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex function;

- c. failure to reduce and/or stop sedative, analgesic and/or paralytic medication(s) to perform an appropriate, adequate, necessary and/or timely physical examination of neuromuscular, neurologic, muscular, sensor, motor and/or spinal reflex function;
- d. failure to formulate an appropriate, adequate, necessary and/or timely differential diagnosis;
- e. failure to formulate an appropriate, adequate, necessary and/or timely differential diagnosis of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex deficits;
- f. failure to obtain, recommend, or ensure appropriate, adequate, necessary and/or timely diagnostic studies to evaluate neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex deficits;
- g. failure to obtain, recommend, or ensure appropriate, adequate, necessary and/or timely diagnostic radiologic spinal imaging, including MRI;
- h. failure to obtain, recommend, or ensure appropriate, adequate, necessary, and/or timely diagnostic nerve conduction studies, and/or electromyography to evaluate neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex deficits;
- i. failure to obtain, recommend, or ensure appropriate, adequate, necessary and/or timely diagnostic studies, including indium leukocyte imaging to evaluate infection and/or inflammation of the central nervous system;
- j. failure to interpret correctly, properly and/or timely the results of diagnostic studies or ensure that such studies were correctly, properly, and/or timely interpreted;
- k. failure to perform an appropriate, adequate, necessary and/or timely review of nursing documentation regarding patient's clinical condition;
- l. failure to perform an appropriate, adequate, necessary and/or timely review of nursing documentation regarding patient's clinical condition, including the patient's neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex deficits;
- m. failure to order, recommend, or ensure appropriate, adequate, necessary and/or timely close monitoring of patient's clinical condition;
- n. failure to order, recommend, or ensure appropriate, adequate, necessary and/or timely close monitoring of patient's clinical condition, including the patient's neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex deficits;
- o. failure to obtain appropriate, adequate, necessary and/or timely consultations with other medical and/or surgical subspecialists.
- p. failure to obtain appropriate, adequate, necessary and/or timely consultations with other medical and/or surgical subspecialists in neurology, neurosurgery, interventional radiology, and/or physiatry;
- q. failure to communicate appropriate, adequate, necessary and/or timely information concerning patient status and/or clinical condition, including the patient's neuromuscular, neurologic, muscular, sensory, motor, and/or spinal reflex function and deficits, to other members of the health care team or to ensure that such information was appropriately, adequately, and/or timely communicated;
- r. failure to recognize and/or appreciate timely a change in patient clinical condition and/or status;
- s. failure to recognize and/or appreciate timely a change in patient neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex condition and deficits;

- t. failure to communicate appropriate, adequate, necessary and/or timely information concerning change of patient status and/or clinical condition, including the patient's neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex function or deficits, to other members of the health care team or to ensure that such information was timely, appropriately, and adequately communicated;
- u. failure to perform or recommend appropriate, adequate, necessary and/or timely procedural and/or surgical intervention such as laminectomy, spinal decompression, nerve decompression, abscess drainage, and/or resection of phlegmon or to ensure that such intervention is undertaken;
- v. failure to perform or recommend an appropriate, adequate, necessary and/or timely referral of the patient to a tertiary care facility;
- w. failure to perform or recommend an appropriate, adequate, necessary and/or timely referral of the patient to a tertiary acute care facility for further definitive diagnostic evaluation, management, treatment and/or surgical intervention;
- x. failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient;
- y. failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient by reducing sedative, analgesic, and/or paralytic medications for physical examination of neuromuscular, neurologic, muscular, sensory, motor, and/or spinal reflex function;
- z. failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient by diagnostic radiologic imaging of the spine and/or central nervous system;
- aa. failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient by consultations with medical, surgical, radiological, and/or rehabilitation specialists; and
- bb. failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient by referral of the patient to an acute care tertiary facility for definitive evaluation, management, treatment, and/or surgical intervention.

Plaintiffs' Second Amended Complaint at ¶¶ 115, 120, 125, 130, 135, 142, 167, 173, 178, 183, 189, 214. Plaintiffs repeat the same general averments of negligence for every single Defendant, regardless of when or how a specific Defendant treated or was in contact with the Plaintiff.

Further, the alleged specialty and/or role of each of the Defendants are not distinguished within the allegations. Even though Defendants are from different medical specialties, played different roles, and participated in different aspects of the care and treatment of the Plaintiff, they have the same allegations of negligence asserted against them. The language set forth in the Complaint

makes it impossible for any Defendant to identify with certainty the particular allegations of negligence that will be asserted against him.

Moreover, as pled, the Defendants are unable to respond to the assertions of liability against them, or adequately prepare a defense to these claims. While each individual paragraph maybe specific on its own, when the Complaint is read as a whole it becomes overbroad. Plaintiffs numerous allegations, in sum, encompass most causes of actions, if not all. This is further shown by the fact that the Plaintiffs used the same allegations for each and every Defendant. In addition, there are sections in the allegations where the language alone is excessively broad.¹ The allegations afford the Plaintiffs an opportunity to later assert any causes of action or theory of liability. See Connor, 461 A.2d at 602-03, n.3. The Plaintiffs have filed Certificates of Merit for each of the Defendants and should be able to state individually and more specifically how each Defendant breached a standard of care. The boiler plate allegations used by the Plaintiffs have insufficient specificity and need to be narrowed to each individual Defendant's material facts.

Whether the Plaintiffs' Second Amended Complaint fails to properly identify names or descriptions of unidentified agents

The following Defendants contend that the Plaintiffs Complaint has improperly vague allegations of agency: Stuart M. Olinsky, MD; Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; Select Medical Holdings Corporation; Geisinger Medical Center and Geisinger Health System Foundation. Pennsylvania Rule of Civil Procedure 1019 requires that the material facts upon which a cause of action is

¹ An example of the complaint having broad language is found in allegation “x,” which states, “failure to recommend, suggest, and/or advise of the need for further appropriate, adequate, necessary and/or timely evaluation, treatment, and management of the patient.” Plaintiff's Second Amended Complaint at ¶¶ 115, 120, 125, 130, 135, 142, 167, 173, 178, 183, 189, 214.

based be stated in a concise and summary form and be sufficiently specific so as to enable a defendant to prepare a proper defense. Pa.R.C.P. 1019. A complaint involving theories of liability based upon agency must: 1) identify the agent by name or appropriate descriptions and 2) describe the agent's authority and how the tortious acts of the agent fell within the scope of this authority or, if not authorized, were ratified by the principal. Alumni Ass'n, Delta Zeta Zeta of Lambda Chi Alpha Fraternity v. Sullivan, 535 A.2d 1095, 1100 (1987); Ettinger v. Triangle-Pacific Corp., 799 A.2d 95 (Pa. Super. 2002); see also Yacoub v. Lehigh Valley Med. Ass'n, P.C., 805 A.2d 579 (Pa. Super. 2002) (explaining importance of non-specific allegations of agency in litigation).

In Kapacs, a Court evaluated allegations against a medical clinic for actions by its "agents, servants and/or employees, [named defendants], and various nursing, medical, and technical personnel." Kapacs v. Martin, 81 Pa. D & C. 4th 509, 520-21 (Ct. Com. Pl. 2006). The Court found that the language was specific enough for the Defendant to identify any individuals who were involved with the patient's care during discovery. Id. at 521. Further, the Court found that the Defendants were placed on notice for these individuals. Id.

Here, the Plaintiffs' Second Amended complaint used similar allegations of agency for each of the Defendants. Examples of this include:

The identities of these agents, servants and employees include *Drs. Jacobs, Mehr, and PA Bohner and other physicians, fellows, residents, interns, physician assistants, nurses, nurse practitioners, technicians, and other medical and ancillary staff who attended to Judy J. Dymeck* between September 16, 2010 and September 19, 2010, inclusive, and who were involved in the evaluation, care and/or treatment of Judy J. Dymeck's condition, including those individuals whose names appear in the medical chart on those dates, but are indecipherable to plaintiff, whose names are only known to defendants and not known or knowable to plaintiff after reasonable investigation, and/or whose names will require discovery from defendants.

Plaintiffs' Second Amended Complaint at ¶ 36, 42 (emphasis added).

The identities of these agents, servants and employees include *Drs. Rajjoud, Olinsky, Neurologist, Mittal, and Cullen and other physicians, fellows residents, interns, physician assistants, nurses, nurse practitioners, technicians, and other medical and ancillary staff who attended to Judy J. Dymeck* between mid-August 2010 and September 16, 2010, inclusive, and who were involved in the evaluation, care and/or treatment of Judy J. Dymeck's condition, including those individuals whose names appear in the medical chart on those dates, but are indecipherable to plaintiff, whose names are only known to defendants and not known or knowable to plaintiff after reasonable investigation, and/or whose names will require discovery from defendants.

Id. at ¶ 30 (emphasis added). Additional language includes “agents, servants and/or employees to provide medical care and treatment to Judy J. Dymeck” Id. at ¶ 168, 190, 215

Throughout the complaint the Plaintiffs refer to other physicians, interns, residents along with physician assistants, nurses, nurse practitioners, technicians and other medical and ancillary staff. There are no further descriptions of these individuals that are not identified by name. The list the Plaintiffs use, however, does not encompass everyone in the hospital. Plaintiffs have limited themselves to only those individuals that provided medical care and treatment to Judy J. Dymeck. The Defendants are capable of identifying these individuals through the discovery process. Furthermore, the Plaintiffs complaint included details about Judy J. Dymeck's stay at each hospital and the various procedures and treatments she received. The descriptions of the events further place the Defendants on notice of individuals whose names are not known at this early stage of pleading.

Whether the Plaintiffs failed to plead material facts in support of allegations of corporate negligence

Select Specialty Hospital—Danville, Inc., Select Medical of Pennsylvania, Inc., Select Medical Corporation, and Select Medical Holdings Corporation contend that that the Plaintiffs

did not plead sufficient material facts to support allegations of corporate negligence. The corporate negligence alleged includes:

- a. failing to have physicians, interns, residents, fellows, technicians and nurses appropriate in number, training, and/or experience to make appropriate and timely decisions with respect to the evaluation, diagnosis, treatment and management of patients who present to the hospital with a clinical history, physical signs and symptoms, and results of diagnostic studies such as those demonstrated by Judy J. Dymeck, as more particularly described herein;
- b. failing to have physicians, interns, residents and fellows, technicians and nurses appropriate in number, training, and/or experience to make appropriate and timely decisions regarding the evaluation, diagnosis, treatment and management of patients with findings of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits that can lead to irreversible, catastrophic and life-altering irreversible neurological injury including paralysis;
- c. failing to ensure that Judy J. Dymeck received appropriate attention from fully trained and experienced physicians, interns, residents, fellows, nursing staff and technicians able to make appropriate and timely decisions regarding the evaluation, diagnosis, treatment and management of patients with findings of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits that can lead to irreversible, catastrophic and life-altering irreversible neurological injury including paralysis;
- d. failing to select and retain physicians, nurses, physician assistants, nurse practitioners, technicians and other medical staff competent in the evaluation, diagnosis, treatment and management of patients with findings of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits that can lead to irreversible, catastrophic and life-altering irreversible neurological injury including paralysis;
- e. failing to oversee all persons who practice medicine and surgery within its walls as to patient care to assure that Judy J. Dymeck's medical condition and risk for morbidity and mortality were appropriately and timely evaluated, assessed, managed and treated; and,
- f. failing to formulated, adopt and enforce adequate policies and procedures to ensure quality patient care, including written policies and procedures regarding:
 - (1) appropriate, proper reasonable, necessary and/or timely evaluation, treatment and management of the post-operative patient;
 - (2) appropriate, proper reasonable, necessary and/or timely evaluation, treatment and management of the post-operative patient with new clinical signs, symptoms and/or findings;
 - (3) appropriate, proper reasonable, necessary and/or timely evaluation, treatment and management of the post-operative patient with new clinical signs, symptoms and/or findings, including neuromuscular,

- neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits that can lead to irreversible, catastrophic and life-altering irreversible neurological injury including paralysis;
- (4) appropriate, proper reasonable, necessary and/or timely evaluation of the post-operative patient with new clinical signs, symptoms and/or findings of neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits, by spine imaging, including MRI imaging, indium leukocyte imaging, nerve conduction studies and electromyography;
 - (5) appropriate, proper reasonable, necessary and/or timely review of diagnostic and radiologic studies;
 - (6) appropriate, proper reasonable, necessary and/or timely review of diagnostic studies with other specialists; including spine imaging with radiologists;
 - (7) appropriate, proper reasonable, necessary and/or timely consultations with other physicians;
 - (8) appropriate, proper reasonable, necessary and/or timely consultations with other physicians, including surgeons, neurologists, neurosurgeons; and/or physiatrists;
 - (9) appropriate, proper reasonable, necessary and/or timely referral of post-operative patients to tertiary care centers;
 - (10) appropriate, proper reasonable, necessary and/or timely referral of post-operative patients with new clinical signs, symptoms, and/or findings concerning for neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits to tertiary care centers;
 - (11) appropriate, proper, reasonable, necessary and/or timely communications between healthcare providers;
 - (12) appropriate, proper, reasonable, necessary and/or timely documentation of changes in neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex function or deficits in the post-operative patient;
 - (13) appropriate, proper, reasonable, necessary and/or timely communication between healthcare providers, including among physician staff, nursing staff, therapist, and/or technicians regarding new clinical signs, symptoms and/or findings in the post-operative patient concerning for neuromuscular, neurologic, muscular, sensory, motor and/or spinal reflex changes and/or deficits; and,
 - (14) appropriate, proper reasonable, necessary and/or timely communication between the radiologist(s) and attending physician(s) of radiographic findings.

Plaintiffs' Second Amended Complaint at ¶ 157, 204, 229.

Once again, this Court finds that the allegations on corporate negligence are broad and lack specificity. The Plaintiffs use the same language for all corporate negligence claims regardless of Defendant. While the Plaintiffs give nineteen (19) allegations of corporate negligence, when read as a whole they are overwhelmingly broad. The allegations force the Defendants to prepare a defense against basically everything that was ever done or not done to the Plaintiff's condition while at the hospital. There are few claims, if any, the Plaintiffs could not later raise due to the broad or lack of specific allegations. Therefore, the Court finds that the corporate negligence claim has insufficient specificity for any Defendant to prepare a defense.

Whether Plaintiffs' complaint against Select Medical, Select Corporation, and Select Holdings should be dismissed pursuant to Pa.R.C.P. 1028(a)(4)

Select Medical, Select Corporation, and Select Holdings contend that the pleadings against them are legally insufficient under Pa.R.C.P. 1028(a)(4) and have filed a preliminary objection in the nature of a demurrer. "The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible." Mistick Inc. v. Northwestern Nat'l Cas. Co., 806 A.2d 39, 42 (Pa. Super. 2002). The court must resolve the issues solely on the basis of the pleadings. Cooper v. Frankford Health Care System, Inc., 960 A.2d 134 (Pa. Super. 2008). Any doubt as to the legal sufficiency of the complaint should be resolved in favor of overruling the demurrer. Kane v. State Farm Fire & Gas. Co., 841 A.2d 1038 (Pa. Super. 2003).

In Kapacs, a Common Pleas Court dealt with the relationship of Moses Taylor Health Care System and Moses Taylor Hospital in a preliminary objection. Kapacs v. Martin, 81 Pa. D & C. 4th 509 (Ct. Com. Pl. 2006); see also Davis v. Frederick, 2010 U.S. Dist. LEXIS 94979 (E.D. Pa. Sept. 9, 2010) (discussing Pennsylvania state law and relying on Kapacs for a similar

corporate negligence issue). They determined that “it would be premature to dismiss this claim as further discovery is needed to fully appreciate the relationship of Moses Taylor Health Care System and Moses Taylor Hospital relative to the duties of a hospital facility.” Id. at 523-24. They also reasoned that the defendants were sufficiently put on notice for the basis of the claims and to formulate a defense. Id. at 524.

Here, in Plaintiffs’ Second Amended Complaint they allege that:

Select Hospital owned, maintained, operated, and/or controlled a hospital and medical practices and employed physicians, interns, residents, fellows, physician assistants, nurse practitioners, nurses, therapists, technicians and other agents, servants, and employees who purportedly possessed skill and training for the purposes of providing medical care and services to the general public, and Judy J. Dymeck, in particular. The claims asserted against this defendant are for the professional negligence of its actual, apparent and/or ostensible agents, servants and employees who participated in the care of Judy J. Dymeck, as described more fully herein. As stated more fully herein, the claims against this defendant also include a claim for corporate (direct) negligence under Thompson v. Nason, 527 Pa. 330, 591 A.2d 703 (1991), and its progeny of case law, including Welsh v. Bulger, 698 A.2d 581 (Pa. 1997) and Whittington v. Woods, 768 A.2d 1144 (Pa. Super. 2001).

Plaintiff’s Second Amended Complaint at ¶ 20. For Select Medical, Select Corporation, and Select Holdings the Complaint states only that “at all relevant times was engaged in the provision of medical care and services to the public, including Judy J. Dymeck Plaintiff is asserting a professional liability claim against this defendant.” Plaintiffs’ Second Amended Complaint at ¶ 21, 22, 23. Plaintiffs then refer to Select Hospital, Select Medical, Select Corporation, and Select Holdings collectively as “Select Defendants” for the rest of the Complaint. Plaintiffs’ Second Amended Complaint at ¶ 24.

As shown in Plaintiffs’ Complaint, no specific allegations of negligence are linked to Select Medical, Select Corporation, and Select Holdings. The negligence alleged by the Plaintiffs resulted from the medical care and services provided to Judy J. Dymeck by medical

personnel. Only Select Hospital was alleged to have supplied these specific services to the Plaintiffs. The fact that the Plaintiffs then referred to all the entities as “Select Defendants” does not mean that they all engaged in the same specific allegations against Select Hospital.

The Plaintiffs, however, cannot be expected to have personal knowledge of the details of corporate internal affairs in the pleading stage. As stated in Kapacs, discovery is needed for the relationship of the entities to be fully appreciated. Further, this Court cannot be certain from the information provided in the pleadings that there is no recovery available to the Plaintiff from these entities. Therefore, the Defendant’s preliminary objections in the nature of a demurrer will be denied.

Whether there was a lack of proper verification in Plaintiffs’ Second Amended Complaint

Defendants alleged that the Second Amended Complaint had a lack of proper verification because Judy Dymeck did not verify the complaint. On May 24, 2012, the Plaintiffs filed a Praecipe to Attach Additional Verification to Second Amended Complaint, which included the verification of Judy Dymeck. At the hearing on June 29, 2012, the Defendants indicated that they would accept the additional filing and no decision was needed from the Court.

ORDER

AND NOW, this _____ day of August, 2012, based upon the foregoing Opinion, the Court rules on the following Preliminary Objections:

1. Stuart M. Olinsky, MD; Lalita Mittal, MD; Thomas E. Cullen, DO; the Williamsport Hospital; The Williamsport Hospital and Medical Center; the Williamsport Hospital Foundation; NCPHS Foundation; NCPHS Health Education and Research Foundation; Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; and Select Medical Holdings Corporation’s Preliminary Objection that Plaintiffs’ negligence claims lack specificity is SUSTAINED. The Plaintiffs have thirty days (30) from the date of this Order in which to file an Amended Complaint correcting the aforementioned deficiencies.
2. Stuart M. Olinsky, MD; Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; Select Medical Holdings Corporation; Geisinger Medical Center and Geisinger Health System Foundation’s Preliminary Objection that Plaintiffs failed to properly identify or describe unidentified agents is OVERRULED.
3. Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; and Select Medical Holdings Corporation’s Preliminary Objection that Plaintiffs’ failed to plead material facts in support of allegations of corporate negligence is SUSTAINED. The Plaintiffs have thirty days (30) from the date of this Order in which to file an Amended Complaint correcting the aforementioned deficiencies.

4. Select Specialty Hospital—Danville, Inc.; Select Medical of Pennsylvania, Inc.; Select Medical Corporation; and Select Medical Holdings Corporation’s Preliminary Objection in the nature of a demurrer is OVERRULED.

By the Court,

Nancy L. Butts, President Judge

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