

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JENNIFER HAMM, Individually and as	:	
Administratrix of the Estate of Griffin Hamm, and	:	DOCKET NO. 12-00,638
DARIN HAMM, Individually and as Administrator of the	:	CIVIL ACTION – LAW
Estate of Griffin Hamm,	:	
	:	
Plaintiffs	:	
	:	
	:	
vs.	:	
	:	
	:	
RONALD N. EISTER, M.D.; JAMES THOMAS, M.D.;	:	
PATRICIA A. MAANI, CRNP; JERSEY SHORE	:	
HOSPITAL; JERSEY SHORE HOSPITAL	:	
FOUNDATION, INC.; STAFF CARE, INC.,	:	
Defendants	:	

OPINION AND ORDER

This matter comes before the Court on Defendants’ preliminary objections to Plaintiffs’ First Amended Complaint. The matter arises out of the actions taken by Defendants when two-year-old Griffin Hamm presented to the Jersey Shore Hospital’s emergency room on two consecutive days in January 2011. Defendant Ronald N. Eister, M.D. (Defendant Dr. Eister) filed one set of preliminary objections, and Defendants Patricia A. Maani, CRNP, Jersey Shore Hospital, and Jersey Shore Hospital Foundation (collectively the “Hospital Defendants”) filed a second set of objections. The Court will address each of these objections in turn.¹

I. Preliminary Objections of Dr. Eister

a. Connor² Objections

Defendant Dr. Eister raises *Connor* objections to Paragraphs 112.23, 112.24, and 112.26; these paragraphs provide:

112. Defendant Eister failed to provide reasonable care, caused injury, and/or increased the risk of harm as follows:

¹ The Court notes that all of the above-mentioned Defendants filed scandalous and impertinent objections to Paragraph 98. The Court will address these objections together.

² *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983).

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- 112.23 Failure to have the ability to provide appropriate emergency medical care and treatment to Griffin Hamm;
- 112.24 Inappropriately providing medical care and treatment of pediatric patients without the proper qualifications, experience and/or capability;
- * * * * *
- 112.26 Failure to provide proper and appropriate cardiopulmonary resuscitation;

Amended Complaint. The Court agrees, in part, with Defendant Dr. Eister’s objections.

Pa. R.C.P. 1028(a)(3) provides that a party may raise objections as to the insufficient specificity of a pleading. *See also Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600 (Pa. 1983).

In this instance, the Court believes that Paragraphs 112.23 and 112.24 are insufficiently specific. Paragraphs 112.1-112.22 provide the specific allegations that are the basis of Paragraphs 112.23 and 112.24. The Court believes Plaintiffs will not suffer any prejudice from its striking of Paragraphs 112.23-112.24. Therefore, Defendant’s objections to these paragraphs are SUSTAINED. Paragraphs 112.23 and 112.24 are STRICKEN.

However, the Court believes that Paragraph 112.26 is sufficiently specific to withstand Defendant’s *Connor* objection. Paragraph 112.26 relates to a specific procedure that Plaintiffs allege Defendant Dr. Eister performed incorrectly, and the Court believes this paragraph was properly pleaded. Therefore, Defendant’s objection to this paragraph is OVERRULED.

b. Scandalous and Impertinent Objections to the Autopsy Report

Defendant Dr. Eister raises scandalous and impertinent objections to Paragraphs 97 and 98; these paragraphs provide:

97. An autopsy was performed on Griffin Hamm on February 1, 2011. The anatomic diagnoses indicates the cause of death as “complications of anoxic-ischemic encephalopathy.”

98. The coroner’s certificate of death indicates manner of death as “homicide” due to “failed intubation by physician.”

Amended Complaint. The Hospital Defendants raise the same objection to Paragraph 98. The Court agrees, in part, with Defendants’ objections.

Pa. R.C.P. 1028(a)(2) provides that a party may raise objections for another party’s inclusion of scandalous and impertinent matter within its pleading. *See Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 115 (Pa. Super. Ct. 1998), *aff’d without opinion*, 757 A.2d 367 (Pa. 2000). “To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action.” *Id.* (citing *Commonwealth v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Cmwlth. Ct. 1980)). The Court should strike an impertinent matter sparingly and only after a party shows an affirmative prejudice from the continued inclusion of the matter within the pleading. *Commonwealth v. Hartford Accident and Indemnity Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. Ct. 1979) (providing that even if a matter is found to be impertinent, the matter may simply be ignored or deemed as surplusage within the pleading). However, if specific allegations are found to be scandalous and immaterial and these allegations tend to cast a derogatory light upon players within the litigation, they should be stricken. *See* 710 A.2d at 115.

In support of their objections, Defendants also direct the Court to Pa. R.C.P. 1019. Pa. R.C.P. 1019(a) provides that a party must plead all of the material facts on which its cause of action is based. Relating to the fact pleading requirements, our Superior Court has long held that only the material facts upon which a claim is based should be plead, not the evidence from which

these facts might be inferred. *See Lerner v. Lerner*, 954 A.2d 1229, 1235-36 (Pa. Super. Ct. 2008) (citing *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. Ct. 1974)). With these rules in mind, the Court turns to Defendants' objections.

In this instance, the Court believes that Paragraph 97 is appropriately pleaded. Paragraph 97 pertains to the autopsy report's conclusion as to the cause of Griffin's death. The Court believes this allegation is appropriate to the cause of action. Therefore, Defendant Dr. Eister's objection to this paragraph is OVERRULED.

However, the Court believes that Paragraph 98 is immaterial and scandalous. Paragraph 98 pertains to the autopsy report's conclusion as to the manner of Griffin's death; in particular, the autopsy report concludes that a homicide occurred due to the failed intubation of a physician. The Court believes these allegations are inappropriate pleaded because they are immaterial and cast an unnecessary derogatory light upon all defendants. The Court believes that the inclusion of the "homicide" language has the potential to confuse the ultimate fact finders. The Court does not believe it is appropriate to cast Griffin's death in this light and refuses Plaintiffs' attempt to do so. Therefore, Defendants' objections to this paragraph are SUSTAINED. Paragraph 98 is STRICKEN.

II. Preliminary Objections of the Hospital Defendants

a. Legal Insufficiency Objections

Pa. R.C.P. 1028(a)(4) provides that preliminary objections may be filed by a party if a pleading is legally insufficient; this legal measure is also known as a request for demurrer. In deciding a demurrer, the Court must determine if the factual averments in the complaint support a right to recovery under the law. *Toney v. Chester County Hosp.*, 36 A.3d 83, 99-100 (Pa. 2011). If *no* recovery is possible, the Court must sustain the demurrer; however, if doubt exists

as to whether recovery is possible, the Court should overrule the demurrer. *Id.*; *Bilt-Rite Contractors, Inc. v. Architectural Studio*, 866 A.2d 270, 274 (Pa. 2005). When ruling on a demurrer, the Court must accept as true all well-plead material facts in the complaint, along with any reasonable inferences derived there from. *Id.* See also *Thierfelder v. Wolfert*, 52 A.3d 1251 (Pa. 2012). With this standard in mind, the Court will turn to Defendants' objections.

i. Corporate Liability Claim

Initially, the Hospital Defendants argue that the Plaintiffs cannot recover in corporate liability for Defendant Maani's alleged failure to report up the chain of command when Defendant Dr. Eister ordered actions to be taken that were outside of the general standard of care. In particular, Defendants object to Paragraph 124 of the Amended Complaint, stating:

124. A hospital staff member or employee has a duty to recognize and report abnormalities in the treatment and condition of its patients. If the attending physician fails to act after being informed of such abnormalities, it is incumbent upon the hospital staff member or employee to so advise the hospital authorities so that appropriate action might be taken. When there is failure to report changes in a patient's condition and/or to question a physician's order which is not in accord with the standard medical practice and the patient is injured as a result, the hospital will be liable for such negligence.

Amended Complaint. In their objection, Defendants argue that this statement contravenes the *Thompson*³ requirement that a hospital must have actual or constructive knowledge of their defective procedures in order to be held corporately liable; Defendants argue that Paragraph 124 attempts to expand the doctrine of corporate liability. The Court does not agree with Defendants' analysis of the *Thompson* case.

In *Thompson*, the Supreme Court established a new cause of action in medical malpractice litigation; in particular, the Court held that hospitals may be held liable under the

³ *Thompson v. Nason Hosp.*, 591 A.2d 703 (Pa. 1991).

theory of corporate liability in medical malpractice actions. 591 A.2d at 708. In *Thompson*, plaintiffs alleged that the hospital was negligent for failing to monitor Mrs. Thompson's deteriorating condition; specifically, plaintiffs alleged that the hospital's staff was aware of Ms. Thompson's worsening condition and failed to act. *Id.* at 708-09. Plaintiffs filed suit to hold the hospital corporately liable for its staff's failure to act. The trial court granted summary judgment for the hospital based upon the state of the law, i.e. that hospitals could not be held liable under the doctrine of corporate negligence; our Superior Court reversed the trial court's motion. *Id.* at 709. Upon appeal, our Supreme Court affirmed the Superior Court's reversal. *Id.*

In *Thompson*, our Supreme Court outlined the four general duties that hospitals owe to their patients; these duties include:

- (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- (2) a duty to select and retain only competent physicians;
- (3) a duty to oversee all persons who practice medicine within its walls as to patient care; and
- (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

Id. at 707 (citations omitted). If any one of these duties is breached, a hospital may be held corporately liable if it had actual or constructive knowledge of the defective procedures leading to the harm and if its negligence was a substantial factor in bringing about the harm. *Id.* at 708.

Turning to plaintiffs' claim, the *Thompson* Court provided:

[i]t is well established that a hospital staff member or employee has a duty to recognize and report abnormalities in the treatment and condition of its patients. If the attending physician fails to act after being informed of such abnormalities, it is then incumbent upon the hospital staff member or employee to so advise the hospital authorities so that the appropriate action might be taken. When there is a failure to report changes in a patient's condition and/or to question a physician's order which is not in accord with

standard medical practice and the patient is injured as a result, the hospital will be liable for such negligence.

Id. at 709 (citations omitted). That Court then concluded that there was a material question of fact as to whether the hospital was negligent in supervising Ms. Thompson's care and affirmed the Superior Court's reversal of the trial court's summary judgment motion. *Id.*

In *Welsh v. Bulger*, 698 A.2d 581 (Pa. 1997), our Supreme Court took the opportunity to explain the type of evidence required to prove a claim of corporate negligence against a hospital. In *Welsh*, the plaintiffs alleged that the defendant hospital was corporately negligent when its staff failed to monitor and report the plaintiffs' child's condition. *Id.* at 586. In *Welsh*, the trial court awarded summary judgment in favor of the hospital because the plaintiffs' expert reports failed to support their claims of corporate liability against the hospital. *Id.* at 584. Our Superior Court affirmed this ruling on appeal. *Id.* at 582. However, the Supreme Court reversed.

In *Welsh*, our Supreme Court held that expert testimony is required to prove a hospital's breach of the standard of care and that the deviation was a substantial factor in bringing harm, unless the hospital's negligence was obvious. *Id.* at 585. After establishing that evidentiary standard, the Court applied the standard to the *Welsh* case. In its analysis, that Court cited to *Thompson*, providing that

[a]s we explained in *Thompson*, it is well established that a hospital staff member or employee has a duty to recognize and report abnormalities in the treatment and condition of its patients. If the attending physician fails to act after being informed of such abnormalities, it is then incumbent upon the hospital staff member or employee to so advise the hospital authorities so that appropriate action might be taken. When there is a failure to report changes in a patient's condition and/or to question a physician's order which is not in accord with standard medical practice and the patient is injured as a result, the hospital will be liable for such negligence.

Id. at 586 n.13 (citing 591 A.2d at 709). After reciting its *Thompson* standard, the *Welsh* Court concluded that the trial court should not have awarded summary judgment in favor of the hospital because plaintiffs' expert report, when read in the light most favorable to plaintiffs, showed that the nurses breached their standard of care because they should have known of the birthing complications and they failed to act on this knowledge; in the expert's opinion, this breach by the nurses was a substantial factor in bringing about the harm to the deceased. *Id.*

Our Superior Court has addressed *Welsh's* applicability to *Thompson's* notice requirement on several occasions. See *Krapf v. St. Luke's Hosp.*, 4 A.3d 642, 652-53 (Pa. Super. Ct. 2010), *appeal denied*, 34 A.3d 831 (Pa. 2011); *Brodowski v. Ryave*, 885 A.2d 1045, 1057 (Pa. Super. Ct. 2005) (en banc), *appeal denied*, 897 A.2d 449 (Pa. 2006); *Rauch v. Mike-Mayer*, 783 A.2d 815, 828 (Pa. Super. Ct. 2001), *appeal denied*, 793 A.2d 909 (Pa. 2002); and *Whittington v. Episcopal Hosp.*, 768 A.2d 1144, 1154 (Pa. Super. Ct. 2001). In these cases, our Superior Court has held that a hospital is put on constructive notice if they should have known about a patient's condition or if it is determined that the hospital's staff must have known about the breach of duty and failed to act. *Id.*

Turning to the instant matter, the Court cannot agree with Defendants' objection to Paragraph 124 because the cited paragraph depicts the current law. The language of Paragraph 124 came verbatim from our Supreme Court's decision in *Thompson*, and it has been repeatedly upheld by courts within the Commonwealth. See also *Retzger v. UPMC Shadyside*, 991 A.2d 915 (Pa. Super. Ct. 2010), *appeal denied*, 15 A.3d 491 (Pa. 2011) (upholding the quoted language from *Thompson* being read as a jury instruction). Therefore, the Court believes Paragraph 124 is properly pleaded; Defendants' objection to this paragraph is OVERRULED.

ii. Negligence Per Se

The Hospital Defendants object to Plaintiffs’ “apparent” claims for negligence per se in Paragraphs 130.21-103.27, 130.29, 130.31-130.32, 130.39-130.41 of the Amended Complaint; these paragraphs provide:

130. Defendants failed to ensure Griffin Hamm safety and well-being which caused injury and/or increased the risk of harm as follows:

* * * * *

130.21 Failure to have and enforce protocols, policies and/or regulations to ensure preparation of complete and legible medical records for services rendered to Jersey Shore Hospital patients. (42 C.F.R. § 485.638(a)(2) / 28 Pa. Code 115.31(b)).

130.22 Failure to have and enforce protocols, policies and/or regulations to ensure all entries in the record shall be dated and authenticated by the person making the entry. (28 Pa. Code 115.33(b)).

130.23 Failure to have and enforce protocols, policies and/or regulations to ensure cardiac defibrillation to patients.

130.24 Failure to have and enforce protocols, policies, and/or regulations to ensure completion of documentation regarding intravenous sites, tubes, and outcomes; (42 C.F.R. § 485.638(a)(2)).

130.25 Failure to have and enforce protocols, policies and/or regulations for training medical care providers on completion of Cardiac Arrest Data Sheets; (42 C.F.R. § 485.638(a)(1)).

130.26 Failure to have and enforce protocols, policies and/or regulations to ensure accurate recording of information on Cardiac Arrest Data Sheets. (42 C.F.R. § 485.638(a)(1)).

130.27 Failure to have and enforce protocols, policies and/or regulations to ensure the Code Team Recorder accurately and simultaneously records information on the Cardiac Arrest Data Sheet during the Code event. (42 C.F.R. § 485.638(a)(1)).

* * * * *

- 130.29 Allowing a certified registered nurse practitioner to perform comprehensive assessments of patients and establish medical diagnoses without adequate qualification, experience, capability (42 C.F.R. § 485.618 / 28 Pa. Code 107.3).
- * * * * *
- 130.31 Granting privileges to physicians and/or other medical care providers without adequate qualification, experience and/or capability. (42 C.F.R. § 485.618 / 28 Pa. Code 107.3).
- 130.32 Granting emergency department privileges to Defendant Eister without adequate qualification, experience and/or capability. (42 C.F.R. § 485.618 / 28 Pa. Code 107.3).
- * * * * *
- 130.39 Failure to ensure emergency procedures by facility staff; (42 C.F.R. § 485.635(b)(4) / 28 Pa. Code 117.1).
- 130.40 Failure to report a serious event within twenty-four (24) hours of occurrence or discovery of the serious event as required by the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.308(a); (28 Pa. Code. 103.4(3) / 40 P.S. 1303.308(a)).
- 130.41 Failure to provide written notification of a serious event to an available family member or designee of Griffin Hamm within seven (7) days of the occurrence or discovery of the event as required by the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.308(b). (28 Pa. Code 103.4(3) / 40 P.S. 1303.308(b)).

Amended Complaint. The Court does not agree with the Hospital Defendants’ objection.

The doctrine of negligence per se establishes the standard of care for an underlying tort action. *Cabiroy v. Scipone*, 767 A.2d 1078, 1082 (Pa. Super. Ct. 2001), *appeal denied*, 782 A.2d 541 (Pa. 2001). Under the doctrine of negligence per se, a party may establish the standard of care in negligence by citing to a statutory scheme. *Id.* Also, through this doctrine, a party may establish a breach of this standard of care by proving a party’s violation of this statutory scheme.

See id.; *Lux v. Gerald E. Ort Trucking, Inc.*, 887 A.2d 1281, 1288 (Pa. Super. Ct. 2005), *appeal denied*, 901 A.2d 499 (Pa. 2006). However, the statutory scheme that the party elects to use as its standard of care must have been established, in part, to protect the interest of the individual who is claiming protection under the scheme. 767 A.2d at 1081. It is *irrelevant* if this statutory scheme provides for its own cause of action; the only relevant inquiry into the statute is whether the statute was established in part to protect a class of individuals. *Id.* Therefore, negligence per se is not, in and of itself, a separate tort liability. 767 A.2d at 1082. Yet, to fully bring an action in negligence, when a party uses a statutory scheme and a breach of that scheme under the doctrine of negligence per se, the party must also aver that the breach was the proximate cause of the resultant harm and damages. *See* 767 A.2d at 1082; 887 A.2d at 1288. With these theories in mind, the Court turns to the Hospital Defendants' arguments.

In their objection, the Hospital Defendants request the Court to strike Plaintiffs' claims for negligence per se. The Hospital Defendants argue that the statutory and regulatory laws cited by Plaintiffs do not establish a right of action and, therefore, that the paragraphs citing these statutes and regulations should be stricken. However, after reviewing Plaintiffs' Amended Complaint, the standard for granting a demurrer and the theory of negligence per se, the Court cannot agree. The Court believes that Plaintiffs may allege that the Hospital Defendants violated these statutes and that this breach was the proximate cause of the harm to Griffin. The Court also believes Plaintiffs properly plead their negligence claims in this case. Therefore, the Hospital Defendants' objection is **OVERRULED**, without prejudice.⁴

⁴ The Court notes that the Hospital Defendants objected to Paragraphs 130.40 and 130.41 as being scandalous and impertinent as well. The Court will address the scandalous and impertinent objections in a later section of this opinion. Yet, for the time being, the Court notes that Paragraphs 130.40 and 130.41 are STRICKEN pursuant to that scandalous and impertinent objection as later discussed.

iii. Punitive Damages

Lastly, the Hospital Defendants object to Plaintiffs' punitive damages claims. Plaintiffs request punitive damages against the Hospital Defendants at Paragraphs 131.9 (corporate liability) and 138.9 (vicarious liability).⁵ The Court does not agree with Defendants' arguments.

The Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. §§ 1303.501-1303.516, governs the above-captioned medical malpractice matter. Under the MCARE Act, punitive damages may be awarded when a health care provider's conduct is the result of "willful or wanton conduct or [acts showing] reckless indifference to the rights of others;" gross negligence, alone, cannot support a claim for punitive damages. 40 P.S. §§ 1303.505(a) and 1303.505(b); *see also Williams v. Syed*, 782 A.2d 1090 (Pa. Cmwlth. Ct. 2001) (holding that neither negligence nor gross negligence justify an award of punitive damages). Additionally, the Act provides that an award of punitive damages under the theory of vicarious liability cannot be awarded unless it can be shown by a preponderance of the evidence that the health care provider knew of the actions, undertaken by its agent, which resulted in a punitive damages award. 40 P.S. § 1303.505(c). With these standards in mind, the Court turns to Defendants' objection.

The Hospital Defendants' argument is twofold. First, Defendants argue that the damages claim cannot stand under the corporate negligence claim because Plaintiffs did not plead that Defendants actions portrayed willful and wanton conduct that recklessly disregarded the rights of others. Second, Defendants argue that the damages claim cannot stand under Plaintiffs' claim for vicarious liability because Plaintiffs cannot prove that the Hospital Defendants knew of its staffs' conduct. With the demurrer standard in mind and after review of the Amended

⁵ The parties have agreed that punitive damages will not be pursued against CRNP Maani. *See* The Hospital Defendant's Preliminary Objections, n.1.

Complaint, the Court does not agree. As the pleadings stand, the Court believes that if the averments are read as truth, a claim could stand for punitive damages under the theory of reckless indifference. Additionally, the Court believes that, read in the light most favorable to Plaintiffs, it could be proven by a preponderance of the evidence that the Hospital knew or should have known of the actions undertaken by Defendant Dr. Eister. Therefore, the Hospital Defendants' objection is OVERRULED; however, this ruling is without prejudice.

b. Scandalous and Impertinent Objections

As stated previously, Pa. R.C.P. 1028(a)(2) provides that a party may raise objections for another party's inclusion of scandalous and impertinent matter within its pleading. *See Common Cause/Pa. v. Commonwealth*, 710 A.2d 108, 115 (Pa. Super. Ct. 1998), *aff'd without opinion*, 757 A.2d 367 (Pa. 2000). "To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action." *Id.* (citing *Commonwealth v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Cmwlth. Ct. 1980)). The Court's exercise of striking an impertinent matter should be used sparingly, only after a party shows an affirmative prejudice from the continued inclusion of the matter within the pleading. *Commonwealth v. Hartford Accident and Indemnity Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. Ct. 1979) (providing that even if a matter is found to be impertinent, the matter may simply be ignored or deemed as surplusage within the pleading).

i. Charting Time Discrepancies

The Hospital Defendants argue that the charting time discrepancies within the Amended Complaint should be stricken as scandalous and impertinent. The Court does not agree with Defendants' objection. In this instance, the Court believes that the discrepancies in charting times are not a scandalous or impertinent matter. These times are material and appropriate to

Plaintiffs' causes of actions dealing with Defendants' proper recordation of emergency room procedures. Therefore, the Court OVERRULES Defendants' objection to the inclusion of these discrepancies.

ii. Department of Health Reporting

Next, the Hospital Defendants raise a scandalous and impertinent objection to Paragraphs 102-107, 130.40, and 130.41, regarding serious event reporting requirements; these paragraphs provide:

102. Upon information and belief, on or about February 25, 2011, Jersey Shore Hospital reported this as a serious event to the Pennsylvania Department of Health. This occurred 31 days following the events that occurred at Jersey Shore Hospital. Applicable law required a report to be made immediately or as soon thereafter as reasonably practicable, but in no event, later than 24 hours after the occurrence or discovery of a serious event or incident. This was part of the pattern or practice of failing or omitting to prepare proper records and documentation in conformity with the standard of care.
103. Upon information and belief, on or about February 25, 2011, Jersey Shore Hospital provided to Griffin Hamm's family a written notification of the serious events which occurred. The written notification was 31 days following the events which occurred at the Jersey Shore Hospital. Applicable law required written notification within seven days of the occurrence or discovery of a serious event. This was part of the pattern or practice of failing or omitting to prepare proper records and documentation in conformity with the standard of care.
104. Upon information and belief, the Jersey Shore Hospital was aware on the morning of January 25, 2011 of the serious events relative to Griffin Hamm.
105. The Pennsylvania Department of Health conducted an investigation with respect to medical care provided to Griffin Hamm at the Jersey Shore Hospital.
106. The Pennsylvania Department of Health investigation confirmed deficiencies with respect to care provided to Griffin Hamm at the Jersey Shore Hospital.

107. The Pennsylvania Department of Health investigation confirmed there was no documentation in the medical records with respect to the examination of Griffin Hamm by the anesthesiologist or the CRNA.

* * * * *

130. Defendants failed to ensure Griffin Hamm safety and well-being which caused injury and/or increased the risk of harm as follows:

* * * * *

130.40 Failure to report a serious event within twenty-four (24) hours of occurrence or discovery of the serious event as required by the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.308(a); (28 Pa. Code. 103.4(3) / 40 P.S. 1303.308(a)).

130.41 Failure to provide written notification of a serious event to an available family member or designee of Griffin Hamm within seven (7) days of the occurrence or discovery of the event as required by the Medical Care Availability and Reduction of Error Act, 40 P.S. § 1303.308(b). (28 Pa. Code 103.4(3) / 40 P.S. 1303.308(b)).

Amended Complaint. After a review of these paragraphs, the Court believes that these paragraphs are immaterial to the instant proceeding.

Pa. R.C.P. 1019(a) provides that parties should plead material facts. Material facts are “ultimate facts, i.e., those facts essential to support the claim.” *Baker*, 324 A.2d at 505 (citations omitted). The instant matter arises out of the actions taken by Defendants when Griffin presented to the Hospital’s emergency room and how these actions allegedly breached Defendants’ standards of care. This complaint does not pertain to the Defendants’ failure to report a serious event to the Department of Health. The Court believes that these paragraphs are not essential to support Plaintiffs’ claims. Therefore, the Court SUSTAINS Defendants’ objection to these paragraphs. Paragraphs 102-107 and 130.40-130.41 are STRICKEN.

iii. Alleged Violations of State and Federal Regulations

Upon agreement of the parties at time of argument, the Hospital Defendants' scandalous and impertinent objection to Plaintiffs' allegations that the Hospital violated federal regulations and state regulatory laws is SUSTAINED. *See* Amended Complaint, ¶¶ 130.21-130.22, 130.24-130.27, 130.29, 130.31-130.32, 130.39-130.41.

The Court enters the following Order.

ORDER

AND NOW, this 16th day of November, 2012, after oral argument on Defendants' preliminary objections and for the reasons stated above, it is hereby ORDERED and DIRECTED as follows:

1. Defendant Dr. Eister's specificity objections to Paragraphs 112.23 and 112.24 are SUSTAINED. Paragraphs 112.23 and 112.24 are hereby STRICKEN.
2. Defendant Dr. Eister's specificity objection to Paragraph 112.26 is OVERRULED.
3. Defendant Dr. Eister's scandalous and impertinent objection to Paragraph 97 is OVERRULED.
4. Defendants' scandalous and impertinent objections to Paragraph 98 are SUSTAINED. Paragraph 98 is hereby STRICKEN.
5. The Hospital Defendants' scandalous and impertinent objection to the averments regarding discrepancies in the timing of medical chart entries is OVERRULED.
6. The Hospital Defendants' scandalous and impertinent objection to the averments regarding Defendants' failure to timely report the events to the Pennsylvania Department

of Health and the Department's findings is SUSTAINED. Paragraphs 102-107 and 130.40-130.41 are hereby STRICKEN.

7. Upon agreement of the parties, the Hospital Defendants' scandalous and impertinent objection to the averments regarding Defendants' alleged violation of federal and state regulations is OVERRULED.
8. The Hospital Defendants' objection regarding negligence per se is OVERRULED without prejudice.
9. The Hospital Defendants' objection regarding corporate negligence is OVERRULED.
10. The Hospital Defendants' objection regarding punitive damages is OVERRULED without prejudice.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

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