

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHAWNA MORIARITY,  
Plaintiff

vs.

WILLIAMSPORT HOSPITAL AND MEDICAL CENTER,  
WILLIAMSPORT REGIONAL MEDICAL CENTER FAMILY  
MEDICINE RESIDENCY PROGRAM, SUSQUEHANNA  
REGIONAL HEALTHCARE ALLIANCE, SUSQUEHANNA  
HEALTH MEDICAL GROUP, TIMOTHY HEILMANN, M.D.,  
DOUGLAS CHARLES, D.O., and SUSQUEHANNA HEALTH  
SYSTEMS, INC.,  
Defendants

: NO. 11 - 01,036  
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: CIVIL ACTION - LAW  
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: Motion in Limine

**OPINION AND ORDER**

Before the court is Defendants’ Motion in Limine Regarding Plaintiff’s Neurosurgery Expert Reliance on Center for Medicare and Medicaid Services Regulations, filed October 3, 2013. Argument on the motion was heard November 21, 2013.

In her Fourth Amended Complaint, Plaintiff asserts various claims of negligence against two individual physicians, Dr. Charles and Dr. Heilmann, and claims of vicarious liability and corporate negligence against the corporate defendants. The claims revolve around decedent’s care by Dr. Charles, a third year resident, as supervised by Dr. Heilmann, and an alleged delayed diagnosis and treatment of a subdural hematoma. In the instant motion, Defendants seek to preclude Plaintiff’s experts, particularly Dr. Hamilton, from referencing any Center for Medicare and Medicaid Services regulation in the context of establishing the medical standard of care and/or any alleged deviation therefrom.

In his Supplemental Report, Dr. Hamilton opines that “Dr. Heilmann did not meet the standard of care with respect to his responsibilities and duties as the attending physician in a residency program as set out by the US Department of Health and Human Service’s Guidelines for Teaching Physicians, Interns and Residents.” He then goes on to quote the regulations and discusses in what manner Dr. Heilmann’s care allegedly failed to meet those requirements. Defendants contend the regulations concern Medicaid/Medicare funding requirements and do

not establish the applicable standard of care, citing Isaac v. Jameson Memorial Hospital, 932 A.2d 924 (Pa. Super. 2007).

In Isaac, the Superior Court agreed with the trial court that the regulations “relate primarily to a “procedure for payment for medical services” and do not impose a legal standard relevant to an action for informed consent.” Id. at 931. Relying on the Oklahoma Court of Appeals’ reasoning that “the regulations themselves reveal that their purpose is not to impose a national policy prohibiting sterilization of those under the age of 21 years, but to ensure that federal funding is not used to do so”, the Court concluded that fundamentally, the regulations impose administrative, not legal, obligations. Id., quoting Rosson v. Coburn, 876 P.2d 731, 736 (Okla.App.1994). The Court thus refused to allow the regulations to be considered as to do so would “expand the doctrine of informed consent beyond that recognized in Pennsylvania”. Isaac, *supra*, at 932.

Plaintiff argues that the Isaac court was careful to point out that it was not addressing the question of whether the regulations may be asserted in support of a cause of action for negligence,<sup>1</sup> and that the case cannot, therefore, be relied on in this instance. While Plaintiff is correct regarding the Court’s limitation of its holding, this court fails to see why the same reasoning would not apply to a negligence claim, especially in light of the Isaac Court’s reasoning that “if such a legal standard was adopted, ‘then patients whose services are to be paid by Medica[id] would be treated differently than patients whose medical services would be paid by other forms of private or public insurance or self pay. It would be absurd to find that the standard for medical care should be determined by the method of payment for the services as opposed to a legal standard applicable to all person[s] who receive medical care from a doctor or hospital.’ ” Id. at 932-33, quoting Trial Court Opinion, 7/26/06, at 12. This court agrees with the Isaac Court that such would be absurd, as well as inequitable.

Accordingly, the court enters the following:

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<sup>1</sup> Informed consent in Pennsylvania was considered an intentional tort of battery. See Isaac v. Jameson Memorial Hospital, 932 A.2d 924 (Pa. Super. 2007).

**ORDER**

AND NOW, this 22<sup>nd</sup> day of November 2013, for the foregoing reasons, Defendants' Motion in Limine Regarding Plaintiff's Neurosurgery Expert Reliance on Center for Medicare and Medicaid Services Regulations is hereby GRANTED. Plaintiffs' experts may not reference any Center for Medicare and Medicaid Services regulation in the context of establishing the medical standard of care and/or any alleged deviation therefrom.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael Foley, Esq., 600 Linden Street, Scranton, PA 18501  
Richard Schluter, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson