

Plaintiff asks the court to direct Defendants to “properly admit or deny the factual averments relating to identity of the person by whom the fact was committed” in paragraphs 23, 25, 28 and 47. Paragraph 23 is especially troubling. The Amended Complaint alleges, in Paragraph 23, that “Defendant, Thomas P. Fiero, M.D., is identified as the attending physician for Keith Abramo in the medical record attached and incorporated herein as Exhibit E (Admission Form).” Although the court questions why Plaintiff needs Defendant to respond to this statement at all, Defendant answered as follows: “Denied as Stated. The allegation as set forth by the Plaintiff in Paragraph 23 is specifically denied as Plaintiff’s interpretation of the medical record, which speaks for itself. Furthermore, the allegation is specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e), and strict proof thereof is demanded at time of trial.” One glance at the Exhibit shows that Dr. Fiero is indeed identified as the attending physician and therefore, the denial is puzzling. Plaintiff is right to seek clarification. Paragraph 25 states: “A physician, whose signature is illegible in the medical record attached and incorporated herein as Exhibit G (Emergency Physician Record) and believed to be either Defendant, Thomas P. Fiero, M.D. or Defendant, Gerhard C. Senula, M.D., examined Keith Abramo and, upon examination, noted among other things the following: [list of notations omitted].” Again, the court questions why Plaintiff worded the statement “believed to be” as Defendants would not be able to respond to Plaintiff’s belief, but in any event, the response, a denial worded as above, creates ambiguity as to whether Defendants are denying that a physician examined Mr. Abramo, whether they are denying that the signature is illegible (it is), or whether they are denying that the examining physician was either Dr. Senula or Dr. Fiero. Clarification is called for.² Paragraph 28 is identical to Paragraph 25 except with respect to the documents referenced, and the Answer is also identical. Paragraph 47 alleges that “Defendants, Gerhard C. Senula, M.D. and Thomas P. Fiero, M.D., failed in fulfilling their duties to Keith Abramo on May 4, 2010 through May 5, 2010, caused him harm, and/or increased the risk of harm to him as follows: [list of allegations of negligence omitted].” In their Answer,

¹ Although there are numerous other defendants in addition to the three defendants who filed the pleading in question, for convenience the court’s reference to “Defendants” in the instant opinion and order will refer to only Dr. Senula, Dr. Fiero and BestPractices.

² The Answer to Paragraph 25 does reference Dr. Senula’s Affidavit of Non-Involvement and therefore clarifies the Answer with respect to him, but still leaves open the question of Dr. Fiero’s involvement.

Defendants deny “that they were at all negligent in the care and treatment of Plaintiff’s decedent on or about May 4, 2010 through May 5, 2010 at the Williamsport Hospital.” They go on to specifically deny the allegations “pursuant to Pennsylvania Rule of Civil Procedure 1029(e)”, however, thereby creating an ambiguity as to whether they are denying Dr. Fiero’s involvement.³ The court believes Plaintiff’s objection is appropriate and will therefore require Defendants to amend their answers to these paragraphs in such a manner as clearly indicates whether they admit or deny Dr. Fiero’s involvement.

Plaintiff also objects to the statements contained in Paragraphs 57, 58 and 59 of Defendants’ New Matter, contending they are conclusory and not supported by any facts in violation of Pa.R.C.P. 1019(a) which requires the statement in a concise and summary form of the material facts on which a defense is based. In Paragraph 57, Defendants aver that “their actions were within the standard of care of similarly situated emergency room physicians at the time of the treatment allegedly rendered to Plaintiff’s decedent”. The court does not find this to be any more than a general denial, which is permitted in an action such as this. In Paragraph 58, Defendants aver that “Plaintiff’s claims are limited and/or barred because Plaintiff knowingly consented to medical treatments provided by the within Defendants and all normal and acceptable risks of such medical procedures as were fully explained to the Plaintiff prior to rendering any such medical care.” The Amended Complaint alleges that “Keith Abramo was discharged in a wheelchair, given [medications] with instructions to apply heat, elevate the affected area, get rest, and follow-up with his family physician or hospital as needed”, and Plaintiff complains that “[a]t no time did any medical personnel at the hospital provide any of the following care or treatment to Keith Abramo [list of treatments omitted].” It is therefore difficult to understand how the allegation in Paragraph 58 relates to the facts as pled, and the court agrees with Plaintiff that this allegation is insufficiently specific. Paragraph 59 presents a similar deficiency. In that paragraph, Defendants aver that “the acts or omissions of others and not the Answering Defendants constitutes an intervening and/or superseding cause of the injuries and/or damages alleged to have been sustained by the Plaintiff” but do not provide any indication of what those acts or omissions might have been, or by whom those acts or

³ As with Paragraphs 25 and 28, Defendants do reference Dr. Senula’s Affidavit of Non-Involvement.

omissions might have been committed. Again, the court agrees with Plaintiff that this allegation is insufficiently specific. These two paragraphs will therefore have to be amended.

ORDER

AND NOW, this 8th day of April 2013, for the foregoing reasons, the preliminary objections are hereby sustained in part and overruled in part. Within twenty (20) days of this date, Defendants shall file a Second Amended Answer and New Matter which (1) answers paragraphs 23, 25, 28 and 47 in a forthright manner so as to enable Plaintiff to clearly discern whether Dr. Fiero is denying involvement in this matter, and (2) alleges facts, if any, to support the claims of paragraphs 58 and 59. Further, the Amended Answer and New Matter shall contain verifications signed by Dr. Senula and Dr. Fiero, as well as a representative of BestPractices, rather than their attorney.

BY THE COURT,

Dudley N. Anderson, Judge

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