

IN THE
COURT OF COMMON PLEAS
OF LYCOMING COUNTY, PENNSYLVANIA

BRENDA L. LUTZ, Individually, and	:	NO. 18-0384
Administrator of the Estate of	:	
DAVID W. LUTZ,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION
	:	
	:	
THE WILLIAMSPORT HOSPITAL,	:	
	:	
Defendant.	:	Preliminary Objections

**OPINION AND ORDER
ON DEFENDANT'S PRELIMINARY OBJECTIONS**

This matter concerns Brenda L. Lutz's ("Plaintiff") suit against The Williamsport Hospital ("Defendant") on behalf of her husband, David Lutz, who allegedly died from the "administration of recklessly excessive amounts of narcotic pain medication."¹ This Court heard argument on July 5, 2018 and reserved decision. This is the Court's Memorandum Opinion on Defendant's Preliminary Objections.

I. First Preliminary Objection

Defendant takes issue with Plaintiff's first paragraph under "Count I – Vicarious Liability," which alleges:

The negligence and recklessness of Defendant The Williamsport Hospital, acting by and through its actual, apparent and/or ostensible agents, servants and employees, **including** Dr. Hani J. Tuffaha, Dr. Ralph E. Thomas, Dr. Kevin Kinhead, Lara Jaussi D.O., Eric Cipicic CRNA, Celeste Caroway R.N., Toni L. Miller R.N., A. Raymond R.N., Nurse Hall, **and others whose names cannot be deciphered from Mr. Lutz's medical**

¹ Plaintiff's Complaint, ¶87. On March 16, 2018, Plaintiff filed a complaint against Defendant alleging: Count I: Vicarious liability, Count II: Corporate negligence, Count III: Wrongful Death, and Count IV: Survival Action. Currently before the Court are four (4) preliminary objections.

records, who participated in his care from the time of his presentation to Williamsport Hospital on March 24, 2016, through the time of his transfer on April 4, 2016, as more specifically described herein, consisted of one or more of the following. . . .²

Defendant argues that "including" should be stricken because it denotes a non-inclusive list despite Plaintiff specifically naming the actors. Defendant also argues that "and others whose names cannot be deciphered from Mr. Lutz's medical records" should be stricken because "Plaintiff has not pled any acts or omissions by any individual whose name cannot be deciphered from the medical records; nor has plaintiff cited to any specific section or entry in the records which cannot be deciphered."³ Defendant continues: "Additionally, plaintiff has not pled any material facts to support claims of negligence by any unnamed agents, servants or employees of the hospital."⁴

Defendant proceeds to discuss precedent regarding a plaintiff averring sufficient claims, facts, and parties such that a defendant can properly prepare a defense.⁵ Defendant asserts that allowing such vague statements in Plaintiff's pleading could allow Plaintiff to "allege negligence by virtually every person who was involved in the care of the plaintiff even after the expiration of the statute of limitations and/or during trial," or "file an amended pleading alleging new theories of liability during trial and/or after the running of the statute of limitations."⁶ Plaintiff does not dispute either assertion, but rather asserts that she is not required to specifically name every potential actor involved when pleading a vicarious liability cause of action in this context, as

² Preliminary Objections of Defendant The Williamsport Hospital to Plaintiff's Complaint, ¶19 (May 30, 2018) (hereinafter "Defendant's Objections") (quoting Plaintiff's Complaint, ¶104) (emphasis supplied by Defendant).

³ *Id.*, ¶21.

⁴ *Id.*, ¶22.

⁵ *Id.*, ¶¶23-27 (quoting *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006); *Alumni Ass'n v. Sullivan*, 535 A.2d 1095, 1100 n.2 (Pa. Super. Ct. 1987)).

⁶ Defendant's Objections, ¶¶28-29.

settled by the Pennsylvania Superior Court in *Sokolsky v. Eidelman* and *Estate of Denmark ex rel. Hurst v. Williams*.⁷

The Court must agree with Plaintiff. In *Sokolsky v. Eidelman*, which involved a legal malpractice claim during a medical malpractice suit, the Pennsylvania Superior Court reversed the trial court's finding that the plaintiff could not recover under vicarious liability against Lehigh Valley Hospital or HRC Manor Care without "specifically identify[ing] the Manor Care and Lehigh Valley staff who acted negligently."⁸ Based on the purpose of a vicarious liability theory, the Court expressly stated "[s]imply because employees are unnamed within a complaint or referred to as a unit, *i.e.*, the staff, does not preclude one's claim against their employer under vicarious liability if the employees acted negligently during the course and within the scope of their employment."⁹

Similarly, in *Estate of Denmark ex rel. Hurst v. Williams*, the Pennsylvania Superior Court reiterated its statements in *Sokolsky*, holding:

While Hurst did not identify the nurses or doctors allegedly responsible (except for Drs. Williams and Hallur), the names of those who performed services in connection with Denmark's care (as described) are either known to the Mercy entities or could have been ascertained during discovery. Accordingly, when read in the context of the allegations of the amended complaint, Hurst's references to "nursing staff, attending physicians and other attending personnel" and "agents, servants, or employees" were not lacking in sufficient specificity and did not fail to plead a cause of action against the Mercy entities for vicarious liability.¹⁰

Since Defendant has failed to provide counter-balancing precedent, the above authorities control. Indeed, as Plaintiff provided the qualifying phrase "whose names

⁷ Plaintiff's Response in Opposition to Preliminary Objections of Defendant The Williamsport Hospital at 2 (July 5, 2018) (hereinafter "Plaintiff's Response"); Plaintiff's Brief in Opposition to Preliminary Objections of Defendant The Williamsport Hospital at 4 (July 5, 2018) (hereinafter "Plaintiff's Brief").

⁸ *Sokolsky v. Eidelman*, 93 A.3d 858, 865 (Pa. Super. Ct. 2014).

⁹ *Id.* at 866.

¹⁰ *Estate of Denmark ex rel. Hurst v. Williams*, 117 A.3d 300, 307 (Pa. Super. Ct. 2015).

cannot be deciphered" in this case, Plaintiff stands on a stronger foundation than the plaintiff in *Breslin v. Mountain View Nursing Home, Inc.* who failed to provide names of employees involved in the decedent's care in the pleading and the Pennsylvania Superior Court denied a preliminary objection based on the above precedent.¹¹ Therefore, Defendant's preliminary objection is **OVERRULED**.

II. Second Preliminary Objection

Defendant takes issue with complaint paragraphs 104(a), (b), (d), (n), (q), (v), (w), (x), (kk), (ll), (nn), (oo), (qq), 109, 115-123, and 125 for being "open-ended, general, vague, and boilerplate allegations of negligence with no factual support."¹² Defendant also argues that Plaintiff has not alleged facts to support her assertion that Defendant "knew of and allowed the reckless conduct of its employees"¹³ Defendant similarly alleges that Plaintiff has failed to factually support her entire Count II claim.¹⁴ As such, Defendant requests that the offending language be stricken, or Plaintiff be required to amend the complaint.¹⁵ Conversely, Plaintiff disagrees with Defendant's characterizations of the complaint, noting that the pled factual history spans from paragraphs 9-102.¹⁶

In reviewing the specific issues Defendant raises, the Court agrees with Plaintiff. Regarding an *insufficient specificity* claim pursuant to *Pennsylvania Rule of Civil Procedure* 1028(a)(3), the germane question is

¹¹ See *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 828-29 (Pa. Super. Ct. 2017) ("While Breslin did not identify by name the nurses, doctors or other staff allegedly responsible, the names of those who performed services in connection with Vincent's care are either known to MVNH, or could be ascertained during discovery.").

¹² Defendant's Objections, ¶39.

¹³ *Id.*, ¶41. The Court will address this argument with Defendant's fourth preliminary objection.

¹⁴ *Id.*, ¶49.

¹⁵ *Id.*, ¶53.

¹⁶ Plaintiff's Brief at 7.

"whether the complaint is sufficiently clear to enable the defendant to prepare his defense," or "whether the plaintiff's complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question upon what grounds to make his defense."¹⁷

Based on this liberal pleading standard,¹⁸ "the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense."¹⁹ The Court finds that Plaintiff's pleading is sufficient to place Defendant on notice of claims asserted against it and does not violate Pennsylvania's liberal pleading standard. Therefore, Defendant preliminary objection is **OVERRULED**.

III. Third Preliminary Objection

Defendant takes issue under Plaintiff's Count I – "Vicarious Liability" with paragraphs 104(n), (q), (r), (v), (z), (aa), (ii), (jj), (kk), (mm), and (pp) as "improperly blend[ing]" allegations of corporate negligence into vicarious liability allegations.²⁰

Plaintiff disagrees, noting that "improperly blending" is not a theory of relief.²¹ A claim of corporate negligence is founded in:

"(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."²²

On the other hand,

"Vicarious liability, sometimes referred to as imputed negligence, means in its simplest form that, by reason of some relation existing between A and

¹⁷ *Rambo v. Greene*, 906 A.2d 1232, 1236 (2006) (quoting *Ammlung v. City of Chester*, 302 A.2d 491, 498 n.36 (1973)).

¹⁸ See *Stroud v. Abington Memorial Hosp.*, 546 F. Supp. 2d 238, 259-60 (E.D. Pa. 2008).

¹⁹ *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Comm'n*, 950 A.2d 1120, 1134 (Pa. Commw. Ct. 2008)

²⁰ Defendant's Objections, ¶¶60-62.

²¹ Plaintiff's Brief at 9-10.

²² *Sokolsky*, 93 A.3d at 869 (quoting *Thompson v. Nason Hosp.*, 591 A.2d 703, 707 (Pa. 1991)).

B, the negligence of A is to be charged against B although B has played no part in it, has done nothing whatever to aid or encourage it, or indeed has done all that he possibly can to prevent it."²³

The paragraphs Defendant takes issue with can be read to concern both theories, however, this is because "[w]here a corporation is concerned, the ready distinction between direct and vicarious liability is somewhat obscured because we accept the general premise that the corporation acts through its officers, employees, and other agents."²⁴ This reflection coupled with the fact that a plaintiff is not required to name employees under a vicarious theory—as noted above—create a duplicative effect in Plaintiff's pleading. In light of this outcome, the Court is not willing to strike these paragraphs of Plaintiff's Complaint. Therefore, Defendant's preliminary objection is **OVERRULED**.

IV. Fourth Preliminary Objection

Defendant argues that Plaintiff has failed to support a claim for punitive damages based on the claims in her Complaint.²⁵ Specifically, Defendant claims that Plaintiff cannot meet the standard set out in the Medical Care Availability and Reduction of Error Act (the "Act").²⁶ As Defendant interprets the allegations, the "medical records reflect that plaintiff's decedent was attended to, and monitored by nurses and physicians throughout the period of care at issue. His status and comfort levels were assessed, and the providers were working to care for him. He was not ignored, abandoned, or

²³ *Scampone v. Highland Park Care Ctr., LLC*, 57 A.3d 582, 597 (Pa. 2012).

²⁴ *Id.*

²⁵ Defendant's Objections, ¶¶63-79.

²⁶ *Id.*, ¶¶66-69. The Act's definition is congruous with the common law – "Punitive damages may be awarded for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the health care provider's act, the nature and extent of the harm to the patient that the health care provider caused or intended to cause and the wealth of the health care provider." 40 P.S. § 1303.505(a).

disregarded – quite the opposite.”²⁷ Plaintiff argues that paragraphs 87, 88, 109, and 125 in her complaint support her claim for punitive damages.²⁸ These paragraphs read:

[87] As a direct result of the reckless and negligent acts and omissions of Defendant and their agents, servant, and employees, and each of them, jointly and severally, as described herein, Mr. Lutz suffered the devastating effects of the administration of recklessly excessive amounts of narcotic pain medication, causing the deterioration fo his physical, respiratory, cardiovascular, and neurological condition, and ultimately causing his death. Defendant and its [. . .] agents, servants, and/or employees, as described herein, were on actual or constructive notice that Mr. Lutz was an opioid naïve patient, and the administration of recklessly excessive amounts of narcotic pain medication to Mr. Lutz amounted to a conscious disregard for his health and safety.

[88] As a direct result of the recklessness and negligence of Defendant and its agents, servants, and/or employee, as described herein, Mr. Lutz’s physical condition was allowed to deteriorate without appropriate medical intervention for an unreasonable period of time following the code on March 24, 2016, causing catastrophic, permanent and fatal injuries ultimately resulting in his preventable death. Defendant and its [. . .] agents, servants, and/or employees, as described herein, were on actual or constructive notice that the area of the hospital where Mr. Lutz’s code occurred lacked the necessary equipment, medication, and personnel to timely and appropriately respond to a code. This conduct amounts to a conscious disregard for the health and safety of Mr. Lutz on the part of Defendant and its agents, as identified and described herein.

[109] At all relevant times, The Williamsport Hospital knew of and allowed the reckless conduct of its employees and/or ostensible agents to persist. This reckless conduct, as described in the Complaint, caused Mr. Lutz’s injuries and death as set forth herein. Therefore, punitive damages are warranted pursuant to §1303.505(c) of the MCARE Act.

[125] As a direct and proximate result of the corporate negligence and recklessness of Defendant The Williamsport Hospital, as described herein, Mr. Lutz was deprived of necessary, timely and appropriate medications, equipment (including but not limited to a crash cart and proper airway management equipment), to evaluate and treat him during the code beginning on March 24, 2016 and extending into March 25, 2016. The failure of Defendant to have these materials available at the time of Mr.

²⁷ *Id.*, ¶175.

²⁸ Plaintiff’s Brief at 11-12.

Lutz's code constitutes a conscious disregard for the health and safety of Mr. Lutz.²⁹

As the Pennsylvania Supreme Court has stated, "Pennsylvania is a fact-pleading state. The complaint must not only apprise the defendant of the claim being asserted, but it must also summarize the essential facts to support the claim."³⁰ However, pursuant to *Pennsylvania Rule of Civil Procedure* 1019, "[m]alice, intent, knowledge, and other conditions of mind may be averred generally."³¹ In this vein, the Pennsylvania Superior Court has stated that "an example of a condition of the mind that may be averred generally is wanton conduct. Because recklessness is also known as 'wanton and willful misconduct,' 'recklessness' is a condition of the mind that may be averred generally."³² Punitive damages "are proper when a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct. . . ."³³ Naturally,

[a]n essential fact needed to support a claim for punitive damages is that the defendant's conduct must have been outrageous. Outrageous conduct is an "act done with a bad motive or with a reckless indifference to the interests of others."

"Reckless indifference to the interests of others", or as it is sometimes referred to, "wanton misconduct", means that "the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow."³⁴

Additionally, under a vicarious liability claim, Plaintiff must aver "that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages."³⁵

²⁹ Plaintiff's Complaint, ¶¶87-88, 109, 125.

³⁰ *McShea v. City of Philadelphia*, 995 A.2d 334, 339 (2010) (internal citations omitted).

³¹ Pa.R.C.P. Rule 1019(b).

³² *Archibald v. Kemble*, 971 A.2d 513, 519 (Pa. Super. Ct. 2009) (citing *Ammlung*, 302 A.2d at 497).

³³ *SHV Coal, Inc. v. Cont'l Grain Co.*, 587 A.2d 702, 704 (Pa. 1991) (internal citation omitted).

³⁴ *Smith v. Brown*, 423 A.2d 743, 745 (Pa. Super. Ct. 1980).

³⁵ 40 P.S. § 1303.505(c).

The Court agrees with Defendant. While conditions of the mind can be averred generally, Plaintiff is still required to provide sufficient facts for such claims. Plaintiff's complaint is devoid of such facts. Therefore, Defendant's preliminary objection is **SUSTAINED**. Plaintiff's averments in her complaint that reference "recklessness," or a variant thereof, are hereby stricken without prejudice: ¶¶86-88, ¶95, ¶104 and its subparts, ¶107, ¶109, and ¶¶124-27. Likewise, Plaintiff's *prayers for relief* in Count I and Count II requesting "punitive damages" are stricken without prejudice. If discovery should reveal facts which would support a claim for punitive damages, Plaintiff may seek to amend the pleadings.

Defendant shall file an answer to Plaintiff's complaint within twenty (20) days from the date of this opinion.

IT IS SO ORDERED.

BY THE COURT,

A handwritten signature in black ink, appearing to read 'Eric R. Linhardt', is written over a horizontal line.

Eric R. Linhardt, Judge

cc: Edward J. Ciarimboli, Esquire
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