IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ERIKA and JUSTIN SCHNAUFER, Individually and as Parents and Natural Guardians of C.S., a Minor, Plaintiffs, vs. JOSHUA STUTZMAN, D.O.; ROBERT A. DONATO, D.O.; WILLIAMSPORT OBSTETRICS AND GYNECOLOGY, P.C.; THE WILLIAMSPORT HOSPITAL t/d/b/a THE WILLIAMSPORT HOSPITAL & MEDICAL CENTER and/or WILLIAMSPORT REGIONAL MEDICAL CENTER; SUSQUEHANNA HEALTH SYSTEM t/d/b/a SUSQUEHANNA HEALTH; and CAROLYN A. MIELE, CNM, Defendants.	:	CV-17-0744 CIVIL ACTION - LAW *Omnibus Motion in Limine*

ORDER

AND NOW, following argument held May 6, 2021, on Plaintiffs' Omnibus Motion *in Limine*, the Court hereby issues the following ORDER.

Background

The foregoing is a medical malpractice suit involving a birth injury sustained by minor child C.S. in May of 2017 at the Williamsport Hospital. During delivery, C.S experienced a shoulder dystocia, a condition where the baby's shoulder becomes stuck behind the mother's pubic bone. Plaintiffs allege that due to Defendants' negligence in treating this condition, C.S. sustained an Erb's palsy injury that will permanently limit the range of motion in her right extremity.

On April 27, 2021, in accordance with the filing deadlines set by this Court, Plaintiffs filed an Omnibus Motion *in Limine*, accompanied by a supportive brief. Defendants Joshua Stutzman, D.O., Robert A. Donato, D.O., Williamsport Obstetrics and Gynecology, P.C., and Carolyn A. Miele, CNM ("Physician and Obstetrics Defendants") filed a Response to the Omnibus Motion *in Limine* on May 3, 2021, along with a brief in support of the Response. Defendants The Williamsport Hospital t/d/b/a

The Williamsport Hospital and Medical Center and/or Williamsport Regional Medical Center and Susquehanna Health System t/d/b/a Susquehanna Health ("Hospital Defendants") filed a Response to the Omnibus Motion *in Limine* on May 5, 2021. Plaintiffs' Omnibus Motion *in Limine* is comprised of five separate Motions, which the Court will address below *in seriatim*.

Standard of Review

"A motion *in limine* is a pretrial mechanism to obtain a ruling on the admissibility of evidence, and it gives the trial judge the opportunity to weigh potentially prejudicial and harmful evidence before the trial occurs, preventing the evidence from ever reaching the jury."[1] Generally, evidence will be admissible if it is competent and relevant. "Evidence is competent if it is material to the issue to be determined at trial. Evidence is relevant if it tends to prove or disprove a material fact."[2] However, a court may exclude evidence that is irrelevant, confusing, misleading, cumulative, or prejudicial.[3] Even relevant evidence, "may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury[.]"[4]

Analysis

A. <u>Defendants Must be Precluded from Introducing Irrelevant Background Information Regarding the Named Defendants, Which Does Not Pertain to Their Qualifications Regarding this Case, at Trial</u>

Plaintiffs' First Motion *in Limine* seeks to preclude what Plaintiffs characterize as irrelevant background testimony from the Physician Defendants.[5] Plaintiffs contend that "irrelevant background testimony" would include information about the Physician Defendants' personal lives, such as whether they are married, whether they have

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[1] *Seels v. Tenet Health Sys. Hahnemann, LLC*, 167 A.3d 190, 206 (Pa. Super. 2017) (citing *Parr v. Ford Motor Co.*, 109 A.3d 682, 690 (Pa. Super. 2014)).
[2] *Conroy v. Rosenwald*, 940 A.2d 209, 417 (Pa. Super. 2007) (quoting *Am. Future Sys., Inc. v. BBB*, 872 A.2d 1202, 1212 (Pa. Super. 2005), aff'd, 923 A.2d 389 (Pa. 2007)).
[3] *Pagesh v. Ucman*, 589 A.2d 747, 751 (Pa. Super. 1991) (citations omitted).
[4] Pa.R.E. 403.
[5] For the purpose of simplicity, the Court refers to Defendants Joshua Stutzman, D.O., Robert A. Donato, D.O., and Carolyn A. Miele, CNM, collectively as the "Physician Defendants" although Carolyn A. Miele is a certified-nurse technician.

children, whether they participate in charitable work, or where they attended medical school.[6] Plaintiffs contend that such evidence is irrelevant to the dispositive issue of whether the Physician Defendants met the applicable standard of care, "and. . .is designed only to humanize the physician and to engender sympathy toward him or her."[7] Plaintiffs assert that providing background information could confuse the jury, and indeed cites Pennsylvania Suggested Standard Civil Jury Instruction No. 14.120 for the proposition that such information is irrelevant to the jury's determinations:

> A professional medical negligence, or medical malpractice, case is a civil action for damages and nothing more. **You must decide only the issue of whether the plaintiff [insert name] has suffered injuries as the result of the defendant's negligence, and is thus entitled to monetary compensation for those injuries.** Your verdict does not involve punishment of the defendant, or even criticism of [his] [her] professional abilities, beyond the facts of this case. **Nor does your verdict involve the defendant's reputation, [his] [her] medical practice, or [his] [her] rights as a licensed physician. You should not concern yourselves with any other matter, such as social or political issues relating to medicine.** No thought should be given to these irrelevant considerations in reaching your verdict.[8]

Both the Physician and Obstetrics Defendants and the Hospital Defendants argue in their Responses that a witness's background, training, and experience are all relevant factors as to the witness's competency and the credibility of the witness to a jury.[9] Defendants further emphasize that evidence should not be prohibited merely because it may be harmful to a party, "where those facts are relevant to the issues at hand and form part of the history and natural development of the events and offenses for which the defendant is charged."[10] Defendants' counsel further elaborated at argument that while the defense does not intend to solicit testimony regarding whether a

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[6] Plaintiffs' Omnibus Motion *in Limine* ¶ 9 (April 27, 2021).
[7] Plaintiffs' Omnibus Motion *in Limine* ¶ 10.
[8] Plaintiffs' Omnibus Motion *in Limine* ¶ 20 (quoting Pa. SSJI (Civ.) 14.120 (2020) (emphasis added)).
[9] *See* Memo of Law in Support of [Physician and Obstetrics] Defendants' Response to Plaintiffs' Motion *in Limine* at pg. 4 (May 3, 2020); Response of Defendants The Williamsport Hospital t/d/b/a The Williamsport Hospital and Medical Center and/or Williamsport Regional Medical Center and Susquehanna Health System t/d/b/a Susquehanna Health in Opposition to Plaintiff's Omnibus Motion *in Limine* at pg. 3 (May 5, 2021) ("Hospital Defendants' Response to Plaintiffs' Omnibus Motion in Limine"). .
[10] Memo of Law in Support of [Physician and Obstetrics] Defendants' Response to Plaintiffs' Motion *in Limine* at pg. 3 (quoting *Com. v. Page*, 965 A.2d 1212, 1220 (Pa. 2009)).

Physician Defendant is married or has children, for example, they do intend to elicit background that they deem relevant to the witness's competency and credibility.

Having considered the parties' arguments, the Court is of the opinion that Plaintiffs have overreached in their attempt to exclude background testimony. It is common practice and completely appropriate for counsel to elicit background information in order to familiarize their witnesses to the jury and to provide a frame of reference for the witnesses' testimony. While undoubtedly this process serves to "humanize" the witness, "humanizing" a witness is hardly objectionable as it can also elicit information relevant to the case. In the instant matter, for instance, information about the Physician Defendants' education and history of charitable work could be potentially relevant not only to their credibility, but also to their medical expertise and experience. Furthermore, potential confusion regarding the relevance of such testimony could be alleviated by providing appropriate jury charge. Counsel is also free to clarify the purpose of such testimony at closing argument. The Court credits the average juror as being quite capable of understanding that evidence may be relevant for a limited purpose.

Pursuant to the foregoing, Plaintiffs' First Motion *in Limine* is DENIED. However, Plaintiffs' counsel is in no way prejudiced from objecting at time of trial if Plaintiff's counsel believes that the defense is improperly exploiting this line of questioning

B. <u>Defendants Must be Precluded from Introducing Testimony about COVID-19 and/or the Coronavirus</u>

Plaintiffs' Second Motion *in Limine* seeks to preclude any reference to the COVID-19 pandemic. Plaintiffs argue that such testimony is irrelevant to the matter at hand, which involves a delivery occurring in 2017. Plaintiffs specifically aver that they "anticipate that defense counsel may argue that health care providers, such as doctors and nurses, are heroes and have worked tirelessly to mitigate patient deaths during the pandemic."[11] Defendants provide in their Responses that defense counsel do not intend to solicit testimony regarding the "heroic" efforts of health care workers during the

[11] Plaintiffs' Omnibus Motion *in Limine* ¶ 25.

COVID-19 pandemic, but assert that information regarding the COVID-19 pandemic should be admissible if relevant to a witness's background, training, or qualifications.[12]

The Court again agrees with Defendants. Reference to the pandemic may be relevant if it has had some demonstrable impact on a witness's medical background or experience. For that reason, Plaintiffs' Second Motion *in Limine* is DENIED. However, Plaintiffs' counsel will not be prejudiced from objecting at trial if defense counsel attempt to solely frame a witness health care workers' provision of medical services during the pandemic as laudatory.

C. Defense Counsel Must be Precluded from Telling the Jury that They are Honored or Proud to Represent Their Clients

Plaintiffs' Third Motion *in Limine* seeks to preclude defense counsel from remarking during opening argument that they are "proud" or "honored" to represent their respective clients.[13] Plaintiffs argue that such statements are irrelevant to the matter at hand and would only serve to bias the jury in favor of Defendants.[14] Defendants in their Responses counter that such statements are not prejudicial, and cite Pennsylvania Suggested Standard Civil Jury Instruction No. 1.190 for the proposition that an attorney's opening statement does not constitute evidence.[15] Defense counsel elaborated at argument that such statements are a common courtesy in trial practice when an attorney introduces their client. Defense counsel further argued that Plaintiff's Motion read broadly potentially precludes innocuous statements such as counsel is "pleased to represent" or "pleased to introduce" a client.

The Court agrees that introductory statements to the effect that an attorney is "proud" or "honored" to represent a client is within the bounds of the customary courtesies afforded by attorneys to their clients. The Court does not find a reasonable likelihood of prejudice from brief comments of this nature. Therefore, Plaintiffs' Third Motion *in Limine* is DENIED. This is again without prejudice to Plaintiff's counsel to

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[12] Response of Joshua Stutzman, D.O., Robert A. Donato, D.O., Williamsport Obstetrics and Gynecology, P.C., and Carolyn A. Miele, CNM to Plaintiffs' Omnibus Motion *in Limine* at pg. 4 (May 3, 2021) ("Physician and Obstetrics Defendants' Response to Plaintiffs' Omnibus Motion *in Limine*").
[13] Plaintiffs' Omnibus Motion *in Limine* ¶ 37.
[14] Plaintiffs' Omnibus Motion *in Limine* ¶ 38.
[15] Memo of Law in Support of [Physician and Obstetrics] Defendants' Response to Plaintiffs' Motion *in Limine* at pgs. 4-5; *see also* Hospital Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 7.

object at time of trial should defense counsel exceed the scope of common courtesy in praising a witness.

D. <u>Arguments and Testimony that Defendants Exercised Their Best Judgment, Used Their Best Efforts, Were "Caring" Health Care Providers, and Did Not Intend to Harm C.S. Must be Precluded</u>

Plaintiffs' Fourth Motion *in Limine* seeks to preclude Defendants from introducing testimony or arguing through counsel that the physician Defendants exercised their best judgment and made their best efforts in caring for C.S., and did not act with intent to harm C.S.[16] Plaintiffs argue that such testimony is irrelevant pursuant to the Pennsylvania Superior Court's ruling in *Pringle v. Rapaport*, which rejected the "error of judgment" jury instruction as articulating an improperly subjective standard. The error in judgment instruction is as follows:

> [I]f a physician has used *his best judgment* and he has exercised reasonable care and he has the requisite knowledge or ability, even though complications resulted, then the physician is not responsible, or not negligent. The rule requiring a physician to use his best judgment does not make a physician liable for a mere error in judgment provided he does what he thinks best after careful examination.[17]

In deeming this jury instruction inadequate, the *Pringle* Court summarized that "[t]he standard of care for physicians in Pennsylvania is objective in nature, as it centers on the knowledge, skill, and care normally possessed and exercised in the medical profession, and therefore, the physician's mental state is irrelevant in determining whether he or she deviated from the standard of care."[18] The Pennsylvania Supreme Court reached the same conclusion in *Passarello v. Grumbine*, holding that the trial court's provision of the error in judgment instruction was sufficiently misleading to the jury as to the proper standard of negligence in a medical malpractice action as to call for a mistrial.

Plaintiffs assert that the case law is unambiguous that if a physician's conduct fell below the standard of care, then the physician was negligent regardless of their

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[16] Plaintiffs' Omnibus Motion *in Limine* ¶¶ 44-45. .
[17] *Passarello v. Grumbine*, 87 A.3d 285, 315 (Pa. 2014) (quoting *Pringle*, 980 A.2d at 164).
[18] Plaintiffs' Omnibus Motion *in Limine* ¶ 49 (quoting *Pringle v. Rapaport*, 980 A.2d 159 (Pa. Super. 2009) (*en banc*)) (internal quotation marks omitted).

subjective state of mind.[19] Plaintiffs therefore argue that testimony regarding a Physician Defendant's good intent or judgment is irrelevant would merely bias the jury and create confusion as the applicable negligence standard.[20]

Defendants in their Responses argue that *Pringle* addresses only the inadmissibility of the "error in judgment" jury instruction. However, Defendants argue that they are not requesting the "error of judgment" jury charge, contending that Plaintiffs' Fourth Motion *in Limine* is thereby moot.[21] Defendants further argue that the probative issue in this case is whether the physician Defendants, in exercise of their judgment, met the applicable standard of care.[22] Defendants contend that, "[i]t is axiomatic that defendants shall be permitted to defend the care and treatment rendered to the plaintiff through their testimony and the testimony of expert witnesses. In doing so, the defendants and their experts must be permitted to explain the medical decision making at the time of plaintiff's care and treatment."[23] Defendants further argue that any potential confusion will be settled by the Court's jury instruction as to the applicable medical negligence standard.[24]

Upon review of the case law, the Court again finds that Plaintiffs overreach in their attempt to preclude reference to the Physician Defendants' exercise of judgment. *Pringle*, and similarly *Passarello*, address whether the trial court had erred as a matter of law in providing an "error of judgment" instruction as a jury charge. However, these decisions do not stand for the proposition that a physician's exercise of judgment is never relevant. Both *Pringle* and *Passarello* discuss, for example, the "two schools of thought" doctrine, "[which] holds that a physician will not be liable for choosing, in the

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[19] Plaintiffs' Omnibus Motion *in Limine* ¶ 55 (citing *Carrozza v. Greenbaum*, 866 A.2d 369, 378 n.14 (Pa. Super. 2004), appeal denied in relevant part, 882 A.2d 1005 (Pa. 2005)).
[20] Plaintiffs' Omnibus Motion *in Limine* ¶¶ 56-59.
[21] Physician and Obstetrics Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 5; *see also* Hospital Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 8.
[22] Hospital Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 9 (quoting *Passarello*, 87 A.3d at 297) ("[T]he 'well-settled' standard of care required of a physician or surgeon is whether the physician employed 'the reasonable skill and knowledge' necessary 'to exercise the care and judgment of a reasonable' person.").
[23] Physician and Obstetrics Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 6.
[24] *Id.*

exercise of her or his judgment, one of two or more *accepted* courses of treatment where competent medical authority is divided as to the proper course."[25]

In addition, both *Pringle* and *Passarello* emphasize that, "the purpose of charging the jury is to clarify issues which the jurors might determine."[26] As a jury charge is presented under authority of a court as an accurate summation of the law, a misleading instruction could result in substantial prejudice. In contrast, a physician's testimony regarding the exercise of their best judgment in a particular circumstance does not present an equivalent risk of prejudice. As Defendants have noted, potential confusion as to the correct standard of care may be addressed by counsel through argument, and by the Court's provision of a jury charge as to standard of negligence in a medical malpractice action. For the foregoing reasons, Plaintiff's Fourth Motion *in Limine* is DENIED. Again, Plaintiffs' counsel is without prejudice to object at time of trial if defense counsel should argue a misstatement of the law.

E. <u>Defendants Must be Precluded from Referencing Erika Schnaufer's 2017 Guilty Plea to Endangering the Welfare of Children Charge at Trial</u>

Plaintiffs' Fifth Motion *in Limine* seeks to preclude any evidence or testimony regarding Plaintiff Erika Schnaufer's arrest and guilty plea to Endangering the Welfare of Children.[27] Plaintiffs' contend Endangering Welfare of Children does not constitute a *crimen falsi* offense and further, this charge does not involve minor child C.S.[28] Plaintiffs therefore argue that such evidence is irrelevant, highly prejudicial, and would confuse and mislead the jury if admitted.[29] In fact, Defendants do not contest Plaintiffs' Fifth Motion *in Limine*. Defendants explain in their Responses and reiterated at argument that they do not intend to introduce evidence of Plaintiff's conviction at trial.[30]

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[25] *Passarello*, 87 A.3d at 297 (citing *Pringle* 980 A.2d at 166-67).
[26] *Passarello*, 87 A.3d at 299 (quoting *Pringle* 980 A.2d at 173).
[27] Plaintiffs' Omnibus Motion *in Limine* ¶ 60.
[28] Plaintiffs' Omnibus Motion *in Limine* ¶ 64. *See Com. v. Vasquez*, 237 A.3d 462 (Pa. Super 2020) (affirming that the statutory elements of an Endangering the Welfare of Children ("EWOC") offense are not inherently *crimen falsi*, but elaborating that the underlying facts of any EWOC conviction may involve dishonesty or false statements rendering the EWOC conviction a *crimen falsi* offense).
[29] Plaintiffs' Omnibus Motion *in Limine* ¶ 61.
[30] Physician and Obstetrics Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 7; Hospital Defendants' Response to Plaintiffs' Omnibus Motion *in Limine* at pg. 10.

The Court concurs that evidence and testimony regarding Plaintiff Erika Schnaufer's guilty plea should be precluded for the reasons identified by Plaintiffs. Therefore, without objection, Plaintiffs' Fifth Motion *in Limine* is GRANTED.

Conclusion

In summary, Plaintiffs' First, Second, Third, and Fourth Motions *in Limine* are DENIED. Plaintiffs' Fifth Motion *in Limine* is GRANTED.

IT IS SO ORDERED this 11th day of May 2021.

BY THE COURT,

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Eric R. Linhardt, Judge

ERL/cp
cc: Mark C. Atlee, Esq. / Melissa A. Jabour, Esq.
415 Duke St., P.O. Box 449, Lancaster, PA 17608-0449
Richard F. Schluter, Esq. / John G. Himes, Esq.
835 West Fourth St., Williamsport, PA 17701
Michael O. Pitt, Esq. / Steven F. Reilly, Esq.
2250 Hickory Rd., Ste. 300, Plymouth Meeting, PA 19462-1047