

**IN THE COURT OF COMMON PLEAS OF**  
**LYCOMING COUNTY, PENNSYLVANIA**

THOMAS STACEY, ADMINISTRATOR OF THE ESTATE OF LOIS JEAN CAIN DECEASED,	: No. CV 23-00757 : : : :	
Plaintiff,	:	
VS	:	CIVIL ACTION
	:	
UPMC MUNCY d/b/a MUNCY PLACE	:	
a/k/a MUNCY VALLEY HOSPITAL,	:	
Defendant.	:	Preliminary Objections

---

**OPINION AND ORDER**

This matter came before the Court on February 9, 2024, for oral argument on Defendants' Preliminary Objections to the Complaint. For the reasons more fully set forth below, those Preliminary Objections are granted in part, and denied in part.

**Background**

Plaintiff's Complaint, filed December 1, 2023, is 190 paragraphs long, and asserts claims in six (6) counts. It appears that the gravamen of Plaintiff's claim is simply that Plaintiff's decedent, while a resident of Muncy Place, suffered injury resulting from a fall, and that those injuries eventually led to her death.

Defendants' Preliminary Objections filed December 29, 2023, seek relief in five (5) Counts. At Count 1, Defendants seek a dismissal of all allegations in the Complaint regarding the alleged violation of regulations promulgated under the Federal Nursing Home Reform Act, also known as the Omnibus Budget Reconciliation Act (hereinafter "OBRA"), since there is no allegation that those alleged violations are causally related to the fall by Plaintiff's decedent. At Count 2, Defendants seek a demurrer to Plaintiff's claims for punitive damages, since the Complaint lacks any allegations of material fact which would support a claim for punitive damages under 40 P.S. Section 1301.505(b). At Count 3, Defendants seek to strike the allegations of alleged citations set forth in Paragraph 82 of the Complaint, since there is no allegation that those alleged citations were causally related to the fall by Plaintiff's decedent. At Count 4, Defendant seek an amended pleading with more specific allegations of fact regarding Plaintiff's claim of negligence. At Count 5, Defendants seek to strike allegations at Paragraphs 70 and 87 through 93 and 107(rr) and

176 and 185 of the Complaint, which lack allegations of material fact, and appear to be more in the nature of “name-calling.”

**Questions Presented:**

Count 1: Whether all allegations in the Complaint of alleged violations of OBRA regulations and Section 2713 of the Pennsylvania Crimes Code should be stricken.

Count 2: Whether a demurrer should be entered to Plaintiff’s claims for punitive damages.

Count 3: Whether the allegations regarding past citations in Paragraph 82 of the Complaint should be stricken.

Count 4: Whether Plaintiff should be directed to file an Amended Complaint with more complete allegations of material fact.

Count 5: Whether the allegations set forth at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the Complaint should be stricken.

**Brief Answer:**

Count 1: Plaintiff will be directed to file an Amended Complaint which either deletes all references to alleged violations of OBRA regulations or the Pennsylvania Crimes Code, or supplies sufficient material allegations of fact to support the conclusion that those alleged violations were causally related to the fall and resulting injury to Plaintiff’s decedent.

Count 2: No demurrer will yet be entered to Plaintiff’s claims for punitive damages, but Plaintiff will be directed to file an Amended Complaint which contains material allegations of fact to support a claim for punitive damages under 40 P.S. Section 1303.505.

Count 3: Plaintiff will be directed to file an Amended Complaint which either deletes the allegations of past citations as listed in Paragraph 82 of the Complaint, or contains material allegations of fact which connect those citations to the injury to Plaintiff’s decedent.

Count 4: Plaintiff will be directed to file an Amended Complaint which clearly alleges material facts which form the basis of Plaintiff’s claims of negligence.

Count 5: Plaintiff will be directed to file an Amended Complaint which either deletes the allegations set forth at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the original Complaint, or contains material allegations of fact which support the claims

asserted in those paragraphs, and which support the conclusion that those issues were causally related to the fall and resulting injury to Plaintiff's decedent.

*Count 1: Plaintiff will be directed to file an Amended Complaint which either deletes all references to alleged violations of OBRA regulations and the Pennsylvania Crimes Code, or contains material allegations of fact which support the conclusion that those alleged violations were causally related to the fall and resulting injury to Plaintiff's decedent.*

Generally speaking, the Complaint contains a great deal of "heat" but sheds very little "light." The Complaint contains 190 Paragraphs, and asserts six (6) different claims for relief. Paragraphs 6 through 33 are little more than "boilerplate" conclusions of nursing home misconduct, which might conceivably be included within any complaint filed by any plaintiff against any health care facility. The allegations of material fact actually begin at Paragraph 34, and continue through paragraph 69. Thereafter, Plaintiff returns to general conclusions of law.

At Paragraphs 119 of the Complaint, Plaintiff alleges that Defendants have violated nine (9) different sections of the OBRA regulations. At Paragraphs 120 through 125, Plaintiff alleges that Defendants have violated Section 2713 of the Pennsylvania Crimes Code. What is completely lacking is any allegation of material fact which suggests that any such act or omission by the Defendants was the legal cause of the fall and injury to Plaintiff's decedent. Rather than strike those allegations, however, the Court will simply direct the Plaintiff to file an Amended Complaint which either deletes those allegations, or supplies the missing allegations of material fact which support a claim of causation.

*Count 2: No demurrer will yet be entered to Plaintiff's claims for punitive damages, but Plaintiff will be directed to file an Amended Complaint which either deletes the claim for punitive damages or contains material allegations of fact to support the claim for punitive damages under 40 P.S. Section 1303.505.*

The settled law of this Commonwealth is that preliminary objections in the nature of a demurrer are not favored.

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959),

and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein*, *supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein*, *supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also Schott v. Westinghouse Electric Corp.*, *supra*, 436 Pa. at 291, 259 A.2d at 449.

*Mudd v. Hoffman Homes for Youth, Inc.*, 374 Pa. Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)).

Plaintiff's claim for punitive damages is controlled by 40 P.S. Section 1303.505, which provides as follows:

**(a) Award.**--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.

**(b) Gross negligence.**--A showing of gross negligence is insufficient to support an award of punitive damages.

**(c) Vicarious liability.**--Punitive damages shall not be awarded against a health care provider who is only vicariously liable for the actions of its agent that caused the injury unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages.

**(d) Total amount of damages.**--Except in cases alleging intentional misconduct, punitive damages against an individual physician shall not exceed 200% of the compensatory damages awarded. Punitive damages, when awarded, shall not be less than \$100,000 unless a lower verdict amount is returned by the trier of fact.

**(e) Allocation.**--Upon the entry of a verdict including an award of punitive damages, the punitive damages portion of the award shall be allocated as follows:

**(1)** 75% shall be paid to the prevailing party; and

**(2)** 25% shall be paid to the Medical Care Availability and Reduction of Error Fund.

Defendants seek a demurrer to Plaintiff's entire claim for punitive damages. While the allegations set forth in the Complaint fall short of material allegations of "willful or wanton conduct or reckless indifference" to the rights of Plaintiff's decedent, the Court is not yet convinced that the Plaintiff cannot plead sufficient material facts. For that reason, the Court will direct the Plaintiff to file an Amended Complaint, which either deletes any claim for punitive damages, or sets forth sufficient material allegations of fact to support the claim that the Defendants acted willfully, or that their conduct was wanton and demonstrated reckless indifference to the rights of Plaintiff's decedent.

*Count 3: Plaintiff will be directed to file an Amended Complaint which either deletes all references to alleged past citations as listed in Paragraph 82 of the original Complaint, or contains material allegations of fact which support the conclusion that those alleged citations were causally related to the fall and resulting injury to Plaintiff's decedent.*

At Paragraphs 82 of the Complaint, Plaintiff alleges that Defendants "had been cited by governmental units regarding Muncy Place" with a litany of regulatory violations, with dates between June 7, 2013 and September 15, 2023. What is completely lacking is any allegation of material fact which suggests that any such act or omission by the Defendants was the legal cause of the fall and injury to Plaintiff's decedent. Rather than strike Paragraph 82, however, the Court will simply direct the Plaintiff to file an Amended Complaint which either deletes Paragraph 82, or supplies the missing allegations of material fact which support a claim of causation.

*Count 4: Plaintiff will be directed to file an Amended Complaint which clearly alleges material facts which form the basis of Plaintiff's claims of negligence.*

Rule 1019(a) of the Pennsylvania Rules of Civil Procedure requires that "the material facts on which a cause of action or defense is based shall be stated in a concise and summary form." The purpose of the Rule is to require the pleader to disclose material facts sufficient to notify the adverse party of the claims it will have to defend against.

*Commonwealth by Shapiro v. Golden Gate National Senior Care, LLC*, 648 Pa. 604, 636,

194 A.3d 1010, 1029 (2018), citing *Martin v. Lancaster Battery Company, Inc.*, 530 Pa. 11, 606 A.2d 444, 448 (1992) and *Landau v. West Pennsylvania National Bank*, 445 Pa. 217, 282 A.2d 335, 339 (1971); *Accord, Youndt v. First National Bank of Port Allegany*, 868 A.2d 539, 544 (Pa. Super. Ct. 2005).

Paragraph 60 of the Complaint alleges that, on August 12, 2022, Plaintiff's decedent was found on the floor of her room "with pool of blood on ground next to right leg. Resident's head was at the foot of the bed." That Paragraph also alleges "She did not know how she ended up on the floor." Paragraphs 61 through 68 allege material facts regarding her care after the fall, ending in the allegation at Paragraph 68 that she died on August 16, 2022, and that her cause of death was "Multiple Blunt Force Trauma due to Fall out of bed." Taken collectively, those paragraphs clearly allege that, while Plaintiff's decedent was in the care of the Defendants, she sustained injuries as a result of a fall in her room, and subsequently died. Where the Complaint falls short is the absence of material facts regarding exactly how the acts or omissions of the Defendants caused her fall.

The Complaint is certainly replete with allegations. Plaintiff alleges a host of failures by the Defendants at Paragraph 119. At Paragraph 82, Plaintiff alleges a great many events which resulted in Muncy Place being "cited by government units" over a period of ten (10) years. Plaintiff claims punitive damages as a result of Defendant's conduct, which Plaintiff asserts (at Paragraph 126) to be "intentional, outrageous and willful, and exhibited a reckless indifference to the health, safety, and well-being" of Plaintiff's decedent. Plaintiff makes a great many claims at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the Complaint of "mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facilities employees, failure to provide adequate and appropriate health care" and a host of other failures and misdeeds by the Defendants. What is remarkably lacking in the Complaint is any material allegations of fact to support the conclusion that any of the alleged failures by the Defendants had anything to do with the fall and resulting injury to Plaintiff's decedent. The essence of Plaintiff's claim is that Defendants owed Plaintiff's decedent a duty of care, that they breached that duty, and that the breach was the legal cause of her fall on August 16, 2022. It is somewhat unclear to the Court why Plaintiff could not allege material facts which support those claims in fewer than 190 Paragraphs.

At Count 4 of their Preliminary Objections, Defendants seek only an Amended Complaint with greater specificity. The Plaintiff will be directed to file an Amended Complaint which contains sufficient allegations of material fact to demonstrate how the Defendants breached their duty of care to Plaintiff's decedent, and how that breach was the legal cause of the fall and injury to Plaintiff's decedent.

*Count 5: Plaintiff will be directed to file an Amended Complaint which either deletes the allegations set forth at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the original Complaint, or contains material allegations of fact which support the claims asserted in those paragraphs, and which support the conclusion that those issues were causally related to the fall and resulting injury to Plaintiff's decedent.*

As more fully discussed above, Plaintiff makes a great many claims at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the Complaint of "mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facilities employees, failure to provide adequate and appropriate health care" and a host of other failures and misdeeds by the Defendants.

Defendants contend that those allegations constitute "scandalous or impertinent matter" in violation of Rule 1028 (a)(2) of the Pennsylvania Rules of Civil Procedure. It is impossible for this Court to speculate as to whether those allegations are material to Plaintiff's claims or not, since the Complaint lacks material allegations of fact which connect those matters to the fall and injury to Plaintiff's decedent. Thus, the Court will direct Plaintiff to file an Amended Complaint which either supplies the missing facts, or deletes Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185.

**AND NOW**, this 15<sup>th</sup> day of February, 2024, Defendants' Preliminary Objections to the Complaint filed December 29, 2023, are granted in part and denied in part.

Plaintiff is directed to file an Amended Complaint within twenty (20) days of the date of filing of this Order. The Amended Complaint will comply with the following:

1. The Amended Complaint will either delete all references to alleged violations of OBRA regulations and the Pennsylvania Crimes Code, or will contain material allegations of fact which support the conclusion that those alleged violations were causally related to the fall and resulting injury to Plaintiff's decedent.
2. The Amended Complaint will either delete the claim for punitive damages or will contain material allegations of fact to support the claim for punitive damages under 40 P.S. Section 1303.505.
3. The Amended Complaint will either delete all references to alleged past citations as listed in Paragraph 82 of the original Complaint, or will contain material allegations of fact which support the conclusion that those alleged citations were causally related to the fall and resulting injury to Plaintiff's decedent.
4. The Amended Complaint will contain material allegations of fact which form the basis of Plaintiff's claims of negligence, and which allege how the claimed negligence was causally related to the fall and resulting injury to Plaintiff's decedent.
5. The Amended Complaint will either delete the allegations set forth at Paragraphs 70 and 87 through 93 and 107(rr) and 176 and 185 of the original Complaint, or will contain material allegations of fact which support the claims asserted in those paragraphs, and which support the conclusion that those issues were causally related to the fall and resulting injury to Plaintiff's decedent.

In all other respects, Defendants' Preliminary Objections are denied.

By the Court,

William P. Carlucci, Judge

WPC/aml

cc: Brian Bluth, Esquire  
Andrei Govorov, Esquire  
1818 Market Street-Suite 3200  
Philadelphia, PA 19103