IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

ESTATE OF JAMES R. MCMURRAY by, and through the ADMINISTRATRIX OF THE ESTATE, APRIL L. MCMURRAY a/k/a APRIL LEE VACARO, and APRIL L. MCMURRAY a/k/a APRIL LEE VACARO,	:	
Plaintiffs	:	
vs.	:	**No. 12-2063**
ROBERT G. MADEIRA, M.D., JAMES W. KRAMER, M.D., GNADEN HUETTEN MEMORIAL HOSPITAL, BLUE MOUNTAIN HEALTH SYSTEM,	:	
Defendants	:	

Jane S. Sebelin, Esquire	Counsel for Plaintiffs
Joseph V. Seblin, Jr., Esquire	Counsel for Plaintiffs
Kevin H. Wright, Esquire	Counsel for Defendant Madeira, M.D.
Mary Grady Walsh, Esquire	Counsel for Defendant Madeira, M.D.
Joseph T. Healey, Esquire	Counsel for Defendant Kramer, M.D.
John Q. Durkin, Esquire	Counsel for Defendant Kramer, M.D.
Frederick J. Stellato, Esquire	Counsel for Defendant Hospital and Blue Mountain Health System

MEMORANDUM OPINION

Matika, J. – June 28, 2013

This matter comes before the Court as a result of the filing of preliminary objections by each of the four Defendants,

Robert G. Madeira, M.D., (hereinafter "Madeira"), James W. Kramer, M.D., (hereinafter "Kramer"), Gnaden Huetten Memorial Hospital, (hereinafter "GHMH"), and Blue Mountain Health System, (hereinafter "BMHS"). This medical malpractice action arises out of the alleged failure of each Defendant to provide the necessary and proper care to the Decedent, James R. McMurray, (hereinafter "McMurray"). The facts as alleged in the complaint along with the multitude of preliminary objections filed by the Defendants are outlined below.

PROCEDURAL AND FACTUAL BACKGROUND

This case was instituted with the filing of a praecipe for the issuance of a writ of summons on September 21, 2012, and thereafter reissued on October 19, 2012 by April L. McMurray, also known as April Lee Vacaro, (hereinafter "Vacaro"), as the administratrix of the estate of James R. McMurray (hereinafter "Estate"), as well as in her own right.[1] On October 22, 2012, Defendant, Madeira requested that a rule be issued upon the Plaintiffs to file a complaint. The rule was issued that same day. A complaint was then filed on November 1, 2012, and subsequently served upon all Defendants after being reinstated several times.

[1] Plaintiff's Counsel, on October 19, 2012 filed a "praecipe to reinstate or reissue" and in so doing checked the line next to "reinstate the complaint in the above captioned matter." Notwithstanding the fact that a complaint had not yet been filed, the Prothonotary on this date reissued the writ of summons.

In the complaint, there are a number of counts filed by Plaintiffs against various combinations of Defendants depending upon each cause of action. The various counts are as follows:

Count I – Estate and Vacaro vs. Madeira and Kramer (negligence);

Count II – Estate and Vacaro vs. GHMH and BMHS (negligence);

Count III – Estate and Vacaro vs. all Defendants (negligent supervision and entrustment);

Count IV – Estate and Vacaro vs. GHMH and BMHS (vicarious liability);

Count V – Estate and Vacaro vs. Madeira, GHMH, and BMHS (lack of informed consent);

Count VI – Estate and Vacaro vs. all Defendants (loss of consortium);

Count VII – Estate and Vacaro vs. all Defendants (punitive damages);

Count VIII – Estate and Vacaro vs. all Defendants (wrongful death); and

Count IX – Estate and Vacaro vs. all Defendants (survival action).

At all times relevant hereto, Defendant, Madiera, was a physician licensed to practice medicine in the Commonwealth of Pennsylvania. Defendant, Kramer, likewise was a surgeon

licensed to practice medicine in the Commonwealth. Defendants, GHMH and BMHS, are alleged to be hospitals that provide medical care with both Defendants having both of their principle places of business at 211 North 12th Street, Lehighton, Pennsylvania.[2]

On or about September 24, 2010, McMurray entered the hospital emergency room with symptoms of right and left upper quadrant abdominal pain, nausea, vomiting, and bloating. A CT scan was performed within two (2) hours of McMurray's arrival. According to the complaint, this diagnostic test revealed "a thickening to the duodenum and enteritis." As a result, later that evening McMurray was admitted to the Hospital.

Plaintiffs assert that throughout the day of September 25, 2010, McMurray experienced a steady drop in blood pressure and an increase in body temperature. McMurray was also administered pain medication, and despite increasing amounts, the medication did not reduce McMurray's pain level. Furthermore, McMurray also experienced low urine output. According to Plaintiffs, from the time of McMurray's admission to the hospital until his expiration on September 26, 2010 at 11:59 A.M., no surgical consult was done, nor was any doctor called despite the issues outlined above. Plaintiffs further assert that from the time of McMurray's admittance until his death, Madeira was the physician

[2] Plaintiffs allege that GHMH is a subsidiary and part of BMHS and not a separate and distinct hospital. Therefore, from time to time throughout this opinion the Court may refer to them collectively as "hospital."

in charge and Kramer was the surgeon in charge of McMurray's medical care.

It is the Plaintiffs' assertion that each Defendant played a role in McMurray's death as a result of their respective negligence in the care, or lack thereof, provided to McMurray.

Each Defendant has filed a separate set of preliminary objections to a number of the counts in the complaint as applicable to each of them.[3] These objections include lack of specificity of the pleading, the legal insufficiency of the pleading (demurrer) of certain counts therein, and the failure of the Plaintiffs to conform to a rule of law. The Court held argument on these objections which are now ripe for disposition.[4] The Court will address all four sets of preliminary objections together based upon the relief requested in each objection and to what aspect of the complaint it pertains.

DISCUSSION

Pursuant to Pennsylvania Rule of Civil Procedure 1028(a), any party may file objections to any pleading filed by another party. All preliminary objections shall be raised at one time and are limited to the grounds set forth in the subsections of Pennsylvania Rule of Civil Procedure 1028(a)(1)-(8). Pa.R.C.P.

[3] GHMH and BMHS have filed one set of preliminary objections between them.

[4] Counsel for GHMH and BMHS did not appear at oral argument.

1028(a), (b). In relation to this matter, the Defendants have filed objections pursuant to either:

1) Pa.R.C.P. 1028(a)(2) [failure of a pleading to conform to law or rule of court];
2) Pa.R.C.P. 1028(a)(3) [insufficient specificity in a pleading]; or
3) Pa.R.C.P. 1028(a)(4) [legal insufficiency of a pleading (demurrer)].

I. <u>SEPARATE COUNTS</u>

Defendant, Madeira, asserts a preliminary objection in the nautre of a motion to strike for the failure of the Plaintiffs to conform to Rule of Pennsylvania Civil Procedure 1020. Said rule 1020 states, in relevant part:

> (a) The plaintiff may state in the complaint more than one cause of action cognizable in a civil action against the same defendant. Each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.

Pa.R.C.P. 1020(a).

Count I of the complaint is a general claim of negligence against Defendant, Madeira, an internist, and Defendant Kramer who is a surgeon. Paragraph twenty-four (24) of this count spells out Plaintiffs' legal theory of negligence against both Madeira and Kramer (the specificity of which is the subject of

another preliminary objection to be discussed later). The preceding paragraphs, namely one (1) through twenty-two (22), are incorporated into paragraph twenty-three (23) of Count I.

Throughout a number of these paragraphs Plaintiffs' averments are inconsistent and contradictory as against both of these Defendants in this count. For example, in paragraph fifteen (15), Plaintiffs allege that "no surgical consult was conducted," and in paragraph eighteen (18) it states "Dr. Mediera (sic) was in charge of patient's medical care." This suggests one theory of liability grounded in Dr. Madeira's failure to order a surgical consult while being in charge of McMurray's case; in addition to other possible claims of negligence as set forth in the generalities of paragraph twenty-four (24) which are independent of any alleged actions or inactions on the part of Dr. Kramer. Conversely, paragraph nineteen (19) identifies Dr. Kramer as the "surgeon in charge of Mr. McMurray's medical care." If no surgical consult was ordered as alleged in paragraph eighteen (18), the Court finds it perplexing how Doctor Kramer can be alleged by Plaintiffs to be the "surgeon in charge" of McMurray.

These paragraphs advocate that Madeira and Kramer were both responsible for McMurray's care just at different times during his hospital stay. Additionally, paragraph twenty-four (24),

which alleges "careless and negligent conduct" on the part of both Defendants Madeira and Kramer, includes averments that suggest, as pled, such averments pertain to one of the Defendants and not necessarily both. One such averment is paragraph twenty-four (24)(b) which states that "Defendants, Drs. Madeira and Kramer [were negligent in their] failure to request and/or perform a timely surgical consult[.]" Naturally, only one doctor (presumably Madiera) would request the consult from the other doctor (presumably Kramer) who would then perform the consult. The manner in which certain averments in this count are written places these Defendants in a conundrum of sorts since both Doctors could not request a consult *and* likewise perform said consult.

While Plaintiffs are well within their rights to allege negligence against whomever they believe may be responsible for the passing of McMurray, their theories appear to suggest negligence for different periods of time coupled with different acts committed by each doctor separately or possibly jointly. Nonetheless, each doctor Defendant has the right to know which facts compromise the theory of negligence being asserted against them individually or jointly so that each Defendant can adequately formulate his defense and answer the complaint

accordingly. The inclusion of allegations against one Defendant and not necessarily the other unfairly affects this right.

In *General State Authority v. Lawrie and Green*, 356 A.2d 851 (Pa. Cmwlth. Ct. 1976) the plaintiff filed a cause of action with a single count for a breach of contract claim against multiple defendants based upon the defendants' respective breaches of separate contracts. In that case, plaintiff alleged a breach of contract claim against one set of defendants in paragraphs five (5) through thirteen (13), and another breach of contract claim against a different defendant outlined in paragraphs fourteen (14) through twenty (20). The Appellate Court found that despite the fact that the relief sought by the plaintiff against each of the defendants was the same, not unlike this Court's situation, the plaintiff was asserting different facts and allegations against different defendants. Since plaintiff's cause of action involved different breaches, the Commonwealth Court held that plaintiff's complaint as plead, that being a single count against multiple defendants, violated Pennsylvania Rule of Civil Procedure 1020(a).[5]

In the case at bar, while Plaintiffs' averments are meant to make out a cause of action in negligence against both Defendants, Madeira and Kramer, Plaintiffs rely upon two

[5] While Rule 1020 reads differently now than when this case was decided, the concept is the same: identify separate causes of action against different defendants separately.

separate and distinct time frames along with different sets of actions or inactions on the part of each doctor Defendant, respectively. Consequently, the negligence, if any, which may be attributed to each doctor Defendant individually are more than likely separate and distinct. Accordingly, the Court directs Plaintiffs to file separate counts of negligence against Defendants Madeira and Kramer individually and consistent with this opinion as stated above.

II. INFORMED CONSENT

Defendant, Madeira, filed a preliminary objection pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2), for failure to plead in accordance with a law or rule of court to Count V of the complaint titled "lack of informed consent." Additionally, Defendants GHMH and BMHS also assert a preliminary objection to Count V of the complaint; however those Defendants claim that Plaintiffs' Count V should be dismissed based upon legal insufficiency of the facts pled in that count. Pa.R.C.P. 1028(a)(4).

Section 1303.504 of Pennsylvania Statutes Title 40, known as the Medical Care Availability and Reduction of Error Act, (Mcare) governs the liability a doctor faces with respect to informed consent. 40 P.S. § 1303.504 reads as follows:

> (a) **Duty of physicians**.--Except in emergencies, a physician owes a duty to a patient to obtain the informed consent of the patient or the patient's

authorized representative prior to conducting the following procedures:

(1) Performing surgery, including the related administration of anesthesia.

(2) Administering radiation or chemotherapy.

(3) Administering a blood transfusion.

(4) Inserting a surgical device or appliance.

(5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.

(b) **Description of procedure**.--Consent is informed if the patient has been given a description of a procedure set forth in subsection (a) and the risks and alternatives that a reasonably prudent patient would require to make an informed decision as to that procedure. The physician shall be entitled to present evidence of the description of that procedure and those risks and alternatives that a physician acting in accordance with accepted medical standards of medical practice would provide.

(c) **Expert testimony**.--Expert testimony is required to determine whether the procedure constituted the type of procedure set forth in subsection (a) and to identify the risks of that procedure, the alternatives to that procedure and the risks of these alternatives.

(d) **Liability**.—

(1) A physician is liable for failure to obtain the informed consent only if the patient proves that receiving such information would have been a substantial factor in the patient's decision whether to undergo a procedure set forth in subsection (a).

(2) A physician may be held liable for failure to seek a patient's informed consent if the

> physician knowingly misrepresents to the patient his or her professional credentials, training or experience.

(emphasis ours).

Plaintiffs allege that Defendant Madeira is liable to them for failing to inform McMurray, or his wife, about the options and risks associated with surgery. Plaintiffs conclude that had Defendant done so, McMurray and his wife would have agreed to undergo such surgery. Additionally, GHMH and BMHS are also liable under this same theory of liability presumably on the basis of vicarious liability for Madeira's failure to provide the requisite informed consent.

"It has long been the law in Pennsylvania that a physician must obtain informed consent from a patient before performing a surgical or operative procedure." *Stalsitz v. Allentown Hospital*, 814 A.2d 766, 772 (Pa. Super. Ct. 2002). (emphasis ours). This Commonwealth's Supreme Court has consistently held that a physician performing a surgical procedure must obtain informed consent from the patient. *Morgan v. MacPhail*, 704 A.2d 617, 619 (Pa. 1997). Without such consent, the "touching" (surgery) is an unauthorized harmful or offensive conduct to which a patient would have a civil cause of action grounded in the tort of battery. *Gray v. Grunnagle*, 223 A.2d 663, 667 (Pa. 1966). In a claim alleging lack of informed consent, it is the conduct of the unauthorized procedure that constitutes the tort.

Moure v. Raeuchle, 604 A.2d 1003, 1008 (Pa. 1992); *Valles v. Albert Einstein Medical Center*, 805 A.2d 1232 (Pa. 2002). (emphasis ours).

In this instant case, it is clear that no surgery took place as paragraphs twenty-four (a) and thirty-eight allege liability on behalf of certain Defendants for failure to perform surgery. MCARE was enacted to allow a patient to decide, after being advised as to the possible risks of a surgery, whether surgery should be performed. The enactment of this statute was not designed to address a situation where a physician did not put the option of surgery "on the table." There are no averments in the complaint which would suggest otherwise.

Plaintiffs argue that "lack of informed consent" is an appropriate cause of action by virtue of the fact that Defendant Madeira failed to "inform Plaintiff or Plaintiff's Decedent that surgery was an option or explain the risks associated with that surgery." Without passing judgment on the truth or falsity of this averment, assuming such fact as true, Plaintiffs may have a cause of action in negligence; however, Plaintiffs do not have such claim in the civil tort of battery as battery requires an actual touching or surgery. Since no such touching occurred the Court finds that Madeira's preliminary objection in the nature of a motion to strike for failure to conform to law or rule of court must be sustained for the Plaintiffs have failed to

establish the requisite "touching" needed for a lack of informed consent claim.

Defendants' GHMH and BMHS have also sought to have Count V of the complaint dismissed, however on different grounds, that being legal insufficiency of said count. In rendering a decision on a demurrer, such as this, the Court must accept as true all well-pleaded material facts in the complaint as well as any reasonable inferences that can be drawn therefrom. *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208 (Pa. Super. Ct. 2012).

Based on the material facts pled by Plaintiffs, the Court likewise will grant this objection. Even assuming arguendo that the lack of informed consent claim is plead correctly against Defendant Madeira, a hospital, GHMH, or health system, BMHS, cannot be vicariously liable for the actions, or inactions, of a specific physician not employed by them.[6] The courts have held that "hospitals generally have no duty to a patient under the informed consent doctrine, even where the physician is an employee of the hospital, because of the doctrine and because a medical facility cannot maintain control over this 'individualized and dynamic' aspect of the physician-patient relationship." *Calfee v. City Avenue Hospital*, 2003 WL 21197311

[6] There are no allegations established that Madeira was employed by either GHMH or BMHS. Even if he was, this objection would still be sustained for the reasons stated herein.

(E.D. Pa. May 21, 2003) (citing *Valles v. Albert Einstein Medical Center*, 758 A.2d 1238, 1239 (Pa. Super. Ct. 2000) *aff'd* 805 A.2d 1232 (Pa. 2002)). Thus, Count V as it relates to GHMH and BMHS is legally insufficient as such cause of action cannot be maintained in this action and is accordingly dismissed as involving Defendants GHMH and BMHS.

III. LOSS OF CONSORTIUM

Defendant Kramer next argues that Count VI of Plaintiff's complaint, the loss of consortium claim, should be dismissed as duplicative of Count VIII, wrongful death. Further, Defendant Kramer asserts that both counts cannot simultaneously be maintained for that fact that consequently it could result in Plaintiffs recovering twice if they were to be successful on both counts. Plaintiffs counter that these two counts are counts pled in the alternative and are therefore permitted to stand as filed.

In paragraph fifty (50) of the complaint, Plaintiffs aver that:

> [b]y reason of the wrongful death of Plaintiff's Decedent, James R. McMurray, his heir has suffered a pecuniary loss and has incurred funeral, medical and estate administration expenses for which they claim damage hereunder and have been deprived and injured as a result of the loss of support, consortium, comfort, counsel, aid, association, care and services of the decedent, and any other losses recoverable under the Wrongful Death Act.

Additionally, in paragraph forty (40), Plaintiffs aver that, " . . . April L. McMurray lost the companionship, society and services of her husband . . . ."

The general rights of a party bringing a cause of action founded in a wrongful death action is governed by 42 Pa.C.S.A § 8301. Any damages recovered under a wrongful death claim serve to compensate the spouse, children, or parents of the deceased for the pecuniary loss that they have sustained, as a result of that decedent's death. *Tulewiz v. Southeastern Pennsylvania Transportation Authority*, 606 A.2d 427, 431 (Pa. 1992). This includes the pecuniary value of the services, society, and comfort the surviving spouse would have received from the Decedent. *Linebaugh v. Lehr*, 505 A.2d 303, 304 (Pa. Super. Ct. 1986).

As the highest court of this Commonwealth has stated previously, like a wrongful death action, a successful loss of consortium claim compensates an aggrieved plaintiff for the value of services, society, and comfort he or she would have received from the decedent. *Dennick v. Scheiwer*, 113 A.2d 318, 319 (Pa. 1955); *Walton v. Avco Corp.*, 557 A.2d 372 (Pa. Super. Ct. 1989). Since a loss of consortium claim has long been held to be a derivative claim, *see*, *Krupa by Krupa v. Williams*, 463 A.2d 429 (Pa. Super. Ct. 1983), it cannot be one pled as an alternative to a wrongful death claim. *See*, *Rittenhouse v.*

Hanks, 777 A.2d 1113, 1120 (Pa. Super. Ct. 2001). A surviving spouse cannot recover damages for loss of consortium separate from a wrongful death action. *Linbergh*, 505 A.2d at 305. To allow a party to maintain a separate cause of action for loss of consortium in addition to a wrongful death claim would permit a double recovery should such plaintiff be successful. The Court therefore grants Defendant Kramer's preliminary objections to the inclusion of Count VIII of the complaint and dismiss said count without prejudice.[7]

IV. NEGLIGENT SUPERVISION AND ENTRUSTMENT

The next sets of preliminary objections before the Court address Count III, Negligent Supervision and Entrustment.[8] Plaintiffs assert this cause of action against all Defendants.

Count III of Plaintiffs' complaint alleges that all Defendants are liable to the Plaintiffs by virtue of the fact that each Defendant "negligently supervised and entrusted the medical care and treatment of [McMurray] to the staff of GHMH." Defendants Kramer, GHMH, and BMHS filed preliminary objections challenging the legal insufficiency of such a claim pursuant to Pa.R.C.P. 1028(a)(2).

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[7] Even though Defendant Kramer was the only party to raise the duplicative issue through preliminary objections, the Court's granting of his preliminary objection will serve to dismiss this count as against all Defendants.

[8] Preliminary objections in the nature of a motion to strike as failing to conform to law or a rule of court was filed by Defendant Madeira, while the preliminary objection of Defendants Kramer, GHMH, and BMHS were in the nature of a demurrer based upon the legal insufficiency of this count.

Section 308 of the Restatement (Second) of Torts, titled "Permitting Improper Persons to Use Things or Engage in Activities," defines negligent entrustment as:

> It is negligence to permit a third person to use a thing or to engage in an activity which is under the control of the actor, if the actor knows or should know that such person intends or is likely to use the thing or to conduct himself in the activity in such a manner as to create an unreasonable risk of harm to others.

RESTATEMENT (SECOND) TORTS § 308 (1965).

In order for the Plaintiffs to survive preliminary objection in the form of a demurrer to this count they must establish that:

1) the defendant(s) entrusted the medical staff to use a thing or engage in an activity, which is under the control of the defendant(s); and
2) that the defendant(s) have knowledge that the medical staff would conduct themselves with that thing or in the course of that activity in such a manner as to create an unreasonable risk of harm to McMurray. *Christiansen v. Silfies*, 667 A.2d 396, 400 (Pa. Super. Ct. 1995); *Ferry v. Fisher*, 709 A.2d 399, 403 (Pa. Super. Ct. 1998).

In their complaint, Plaintiffs allege that all Defendants were negligent in entrusting the medical staff with McMurray's care in the following respects:

a. Failure to adequately instruct and train the staff in monitoring of patients for emergency care prior to entrusting them with this responsibility;

b. Failure to adequately provide proper instructions to the staff to communicate with the doctors should they see symptoms exhibited by Plaintiff's decedent;

c. Failure to adequately ascertain that the Defendants lacked the ability necessary to administer medicine and properly treat patients like Plaintiff's decedent within the standard of care;

d. Negligently entrusting the care of patients like Plaintiffs' decedent to the staff despite knowledge that they lacked the ability and the credentials to do so within the standard of care.

Absent from the allegations set forth by Plaintiffs is a factual claim that any Defendant "permitted" the medical staff to engage in an activity or use certain medical equipment that lead to the improper care of McMurray. Also absent from the complaint are any allegations that any of the Defendants possessed, or should have possessed, the requisite knowledge that any of the medical staff intended to conduct themselves in such a manner, as it relates to the care of McMurray, so as to create an unreasonable risk of harm to him.

Without inclusion of such averments, a challenge to this count for legal insufficiency or conformity to law or rule of court must be sustained. Further, this type of cause of action is inappropriate in a medical malpractice action as the standard of care alleged to have been violated by "the staff" is neither

"an item used" or "activity engaged in" as contemplated by the law.

V. WRONGFUL DEATH PLEADING REQUIREMENTS

In terms of the pleading of a wrongful death claim, Pennsylvania Rule of Civil Procedure 2204 states as follows:

> In addition to all other facts required to be pleaded, the initial pleading of the plaintiff in an action for wrongful death shall state the plaintiff's relationship to the decedent, the plaintiff's right to bring the action, the names and last known residence addresses of all persons entitled by law to recover damages, their relationship to the decedent and that the action was brought in their behalf.

Pa.R.C.P. 2204

Defendants GHMH and BMHS argue to the Court that Plaintiffs did not comply with Rule 2204 of Pennsylvania Rules of Civil Procedure and thus request the Court to strike this count. More specifically, these Defendants assert that Plaintiffs did not comply with Rule 2204 insofar as not stating:

1) Plaintiffs' right to bring the action;
2) the names and last known residence address of all persons entitled by law to recover damages;
3) their (Plaintiffs') relationship to McMurray; and
4) that this action was brought on their behalf.

In determining whether the Rule has been met, the complaint must be read with common sense so that the purpose for which

Rule 2204 was adopted can be fulfilled. *Usner v. Duersmith*, 31 A.2d 149, 150 (Pa. 1943).

In examining Plaintiffs' initial pleading as a whole, the Court concludes that Plaintiffs have met the requirements of Pennsylvania Rule of Civil Procedure 2204 regarding what must be averred in a wrongful death action. Paragraph two of the complaint alleges that April L. McMurray is the widow of the decedent, James R. McMurray, and that she resides at 346 Delaware Avenue, Palmerton, PA. 18071, as set forth in paragraph one of the complaint. The complaint also indicates that April L. McMurray was appointed administratrix of the Estate, and paragraph forty-nine of the pleading states that McMurray passed away leaving his wife, April L. McMurray, to survive him. Commonsense dictates that a surviving spouse named as administratrix possesses the right to bring this action on behalf of individuals the law recognizes as an aggrieved party with the right to recover damages for certain alleged wrongs committed.

Therefore, the Court finds no deficiencies in the manner in which the wrongful death count was plead throughout the complaint, and more specifically stated in paragraphs forty-seven though fifty-two.

VI. PUNITIVE DAMAGES

In Count VII of the complaint, Plaintiffs claim they are entitled to punitive damages as against all Defendants as a result of their respective willful, wanton conduct, and reckless behavior in regards to McMurray's care. Each Defendant has filed a preliminary objection in the nature of legal insufficiency to Count VII of the complaint.[9]

Restatement (Second) of Torts, § 908 states as follows:

> 1) Punitive damages are damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.
>
> 2) Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

RESTATEMENT (SECOND) OF TORTS § 908 (1979).

Outrageous conduct has been defined as an act done with bad motives or reckless indifference to others. *Smith v. Brown*, 423 A.2d 743, 745 (Pa. Super Ct. 1980). "The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care. *Albright v. Abington Memorial Hospital*, 696 A.2d 1159, 1164 (Pa. 1997).

[9] GHMH and BMHS also request that the Court strike the inclusion of the word "recklessness" from paragraph forty (40) of the complaint for the same reasons.

Further, under the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P.S. § 1303.505,

> (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.

40 P.S. § 1303.505

"In Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." *Daniel v. Wyeth Pharmaceuticals, Inc.* 15 A.3d 909, 930 (Pa. Super. Ct. 2011) (quoting *Hutchinson ex rel. v. Luddy*, 870 A.2d 766, 771-72 (Pa. 2005)). Punitive damages are generally not recoverable in malpractice actions unless the medical

provider's deviation from the applicable standard of care is so egregious as to show a conscious or reckless disregard of a risk of harm to the patient. *Williams v. Syed*, 782 A.2d 1090, 1096 (Pa. Cmwlth. Ct. 2001).

In paragraphs forty-two (42) through forty-five (45) of Count VII of the complaint, Plaintiffs allege the following:

> 42) The conduct of the Defendants herein, by and through its employees, sub-contractors, workmen, agents and/or servants, either jointly, severally and/or separately constituted a wanton and reckless disregard for the high probability of risk and serious harm or death which resulted from the failure to diagnose and treat Plaintiff's decedent exhibited by said Defendants and/or joint, several, collective and/or separate acts and/or failure to act as more particularly set forth herein.
>
> 43) The staff at Gnaden Huetten Hospital along with Drs. Medeira [sic] and Kramer, had actual knowledge and acted recklessly and wantonly when on September 26, 2012 at 00:00 until 5:55 a.m., Plaintiff's decedent shows extreme signs of distress including significant drops in body temperature and blood pressure and no nurse at Gnaden Huetten Hospital reported this to a doctor or to a supervisor nor is any surgical consult scheduled or conducted.
>
> 44) The staff at Gnaden Huetten Hospital along with Drs. Medeira [sic] and Kramer, had actual knowledge and acted recklessly and wantonly when after the breathing tube failed, and a tracheotomy was not performed.
>
> 45) The staff at Gnaden Huetten Hospital along with Drs. Medeira [sic] and Kramer, had actual knowledge and acted recklessly and wantonly when surgery was necessary for Plaintiff's decedent and no surgery was offered nor was a transfer to a more capable hospital offered.

Accepting as true the well-pled allegations in paragraphs forty-three (43) through forty-five (45), and giving the Plaintiffs the benefit of all reasonable inferences which can be deduced from those facts, the Court believes that for purposes of these preliminary objections alone, Count VIII survives a challenge of legal insufficiency as to Doctors Madeira and Kramer. If proven as alleged, and either or both doctors had actual knowledge of: 1) extreme signs of distress and failed to act; 2) the failure of the breathing tube and failed to perform a tracheotomy; or 3)the need for surgery and failed to request a consult, as to Defendant Madeira, or to perform the surgery, as to Defendant Kramer, arguably a jury could find that said Defendants had a subjective appreciation of the risks associated with McMurray's declining condition and that the doctor Defendants' failure to act accordingly created a conscious disregard of that risk.

A similar outcome may result as to the preliminary objections of GHMH and BMHS as they relate to the punitive damage claim. Subsection (c) of 40 P.S. § 1303.505, titled "Vicarious liability," requires an injured plaintiff, in maintaining a punitive damage claim against a defendant by means of vicarious liability, to prove by a preponderance of the evidence that the party (GHMH or BMHS) knew of that conduct that would give rise to a punitive damage award and allowed such

conduct. 40 P.S. § 1303.505(c). Since the complaint is devoid of any factual allegations as to the knowledge of, and acquiescence of, such conduct of their staff by Defendants GHMH and BMHS, Count VII as it is asserted against those Defendants could be dismissed on the bases of legal insufficiency. However, Plaintiffs should be afforded the opportunity to amend their pleading to allege sufficient facts that would give rise to a claim for punitive damages against either GHMH, BMHS, or both Defendants. Such amended pleading must included sufficient facts to support the legal conclusion that either or both Defendants knew of such conduct and allowed such conduct by its staff as it relates to reckless, willful, or wanton conduct.

VII. STRIKING OF THE WORD "RECKLESSNESS"

In light of the Court's ruling in the preceding section, the Court finds it inappropriate to strike the use of the words "recklessness," "willful," "wanton," or "outrageous conduct" from paragraph forty (40) of the complaint and wherever else referenced therein.

VIII. VERIFICATION

Pennsylvania Rule of Civil Procedure 1024 (c) states as follows:

> The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within

> the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

Pa.R.C.P. 1024(c).

The original complaint in this case had attached to it a verification executed by "Jane S. Sebelin, Esquire," Counsel for the Plaintiffs, which by itself does not conform to the rule outlined above. However, on February 11, 2013, a substitute verification, executed by April McMurray, on behalf of the Plaintiffs was filed. Said substituted verification does comply with Rule 1024. Therefore, the preliminary objections filed by Defendants Madeira, GHMH, and BMHS are deemed moot and dismissed.

IX. LACK OF SPECIFICITY

All Defendants have filed preliminary objections to the complaint in the nature of a motion to strike for lack of specificity, or in the alternative, a request to require the Plaintiffs to file an amended complaint with the requisite specificity as to a number of averments contained in the complaint pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(3). Due to the complex nature and multiplicity of these particular objections the Court will address said objections by

groupings of the numbered paragraphs alleged to be lacking the necessary specificity.

Pennsylvania is a fact-pleading jurisdiction and pursuant to Pennsylvania Rules of Civil Procedure 1019(a) a plaintiff is required to include in the complaint "the material facts on which a cause of action or defense is based, [which] shall be stated in a concise and summary form." Pa.R.C.P. 1019(a). Therefore, the pleading must provide facts sufficient enough to supporting each count and claim set forth therein. *See*, *Cardenas v. Schober*, 783 A.2d 317, 325 (Pa. Super. Ct. 2001).

The pertinent question in evaluating a preliminary objection based upon insufficient specificity is whether the complaint is sufficiently clear to enable a defendant to prepare his or her defense, or whether plaintiff's complaint provides defendant with accuracy and completeness, the specific basis on which recovery is sought so that a defendant knows without question upon what grounds to make his or her defense. *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006). A preliminary objection in the form of a motion for a more specific pleading raises the sole question of whether the pleading is sufficiently clear to enable a defendant to prepare a defense. *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Commission (PGC)*, 950 A.2d 1120, 1134 (Pa. Cmwlth. Ct. 2008). In determining whether a particular paragraph in a

complaint is stated with the necessary specificity, such paragraph must be read in context with all the allegations and averments in the complaint. *Paz v. Commonwealth, Department of Corrections*, 580 A.2d 452, 456 (Pa. Cmwlth. Ct. 1990). Only then can a court determine whether a defendant is put on adequate notice of the claim against which it must defend. *Smith v. Wagner*, 588 A.2d 1308, 1310 (Pa. Super. Ct. 1991).

In *Connor v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983), the Supreme Court permitted an averment that provided a very "general" allegation of negligence. The *Connor* Court held that "if appellee did not know how it 'otherwise fail[ed] to use due care and caution under the circumstances,' it could have filed a preliminary objection in the nature of a request for a more specific pleading or it could have moved to strike that portion of appellants' complaint." *Id.* at 603 n.3. Understandably, a defendant is wary to allow general averments of negligence and other causes of action to be asserted against him or her for fear that such general averments present a plaintiff with an opportunity to attempt to argue and prove various theories of liability at trial, such theory or theories plaintiff did not specifically raise in the pre-trial phase. A defendant would be cautious against such for in theory plaintiff could present to a jury a new theory of liability, one in which

the defendant had neither notice of nor any time to prepare a defense for. In essence, at the eve of trial a plaintiff could bootstrap a new theory of liability against a defendant with such theory supported by the general averments in the complaint; however, defendant would have no opportunity to prepare a defense accordingly. Therefore, courts have routinely granted objections to "general averments of negligence."

Conversely, a plaintiff is not required to plead evidentiary matters. In determining whether a particular averment is pled with adequate sufficiency to put a defendant on notice and provide that defendant with sufficient facts by which the defendant can prepare an adequate answer and defense, such averment must be read in context with all other allegations in the complaint. *Yacoub v. Lehigh Valley Medical Associates, P.C.*, 805 A.2d 579, 588 (Pa. Super. Ct. 2002). The purpose of a complaint is to place a defendant on notice of the claim being asserted against him or her so that the defendant can adequately defend against such claim. *McClellan v. Health maintenance Organization of Pennsylvania*, 604 A.2d 1053 (Pa. Super. Ct. 1992), *appeal denied*, 616 A.2d 985 (Pa. 1992). As stated previously, a complaint must provide a defendant with fair notice of plaintiff's claims along with a summary of the

material facts that support such claim or claims. *Id.*; Pa.R.C.P. 1019(a).

With these principles in mind, the Court turns to the paragraphs of the complaint alleged to be insufficiently pleaded. To simplify such matters, the Court will address the paragraphs objected to in groupings based on the commonality of the issues raised in the various paragraphs.

a) *Conflicting Averments Paragraphs 15, 19 and 24(a)(b)(c)*

Defendant, Kramer contends that paragraph fifteen (15) of the complaint conflicts with or contradicts the averments of paragraphs nineteen (19) and twenty-four (24)(a), (b), and (c). As a result, Defendant claims he is unable to properly plead a response and prepare a thorough defense to the allegations contained within these paragraphs.

Paragraph fifteen (15) reads as follows: "Throughout the day on or about September 25, 2010 and until his death on September 26, 2010 at 11:59 a.m., no surgical consult was conducted."

Paragraph nineteen (19) states accordingly: "Throughout the day on or about September 25, 2010 and until his death on September 26, 2010 at 11:59 a.m., Dr. Kramer was the surgeon in charge of Mr. McMurray's medical care."

Lastly, paragraph twenty-four (24) (a), (b), and (c) respectively, read as follows:

> The careless and negligent conduct on the part of Defendants, Drs. Mediera and Kramer, include the following:
>
> a. Failure to provide surgical care;
> b. Failure to request and/or perform a timely surgical consult;
> c. Failure to properly evaluate the patient for surgery.

Initially, it must be noted that previously in this opinion the Court granted Defendants', Kramer and Madeira, request to "severe" the combined negligence claim as it was asserted against them. In understanding Plaintiffs' claims of negligence, once severance is accomplished, the averments of paragraph twenty-four (24) should provide the necessary specificity as to what each respective doctor Defendant is alleged to have done or not done *vis-à-vis* the decedent McMurray.

Defendant Kramer also raises lack of specificity as it relates to paragraphs fifteen, nineteen, and twenty-four (a) through (c), as Defendant Kramer claims such paragraphs contradict each other and thus he cannot properly defend against such claims. While the court fully understands Defendant Kramer's argument as to "how could he be negligent for not intervening surgically if a consult was never ordered in the

first instance," such averment does not render Defendant incapable of answering such. If such averment is ultimately proven to be true, culpability on the part of Defendant Kramer might not be so as it relates to any negligent conduct. Notwithstanding such, the averments in paragraphs fifteen, nineteen, and twenty-four (a) through (c) do not impair Defendant's ability to answer each averment as plead, or amended in accordance with previous section of this opinion.

Accordingly, the Court denies Defendant Kramer's request to strike paragraph twenty-four (24) (a), (b), and (c), and the request to eliminate those contradictions contained within paragraphs fifteen, nineteen, and twenty-four (a) through (c) without prejudice to raise such objections to any amended complaint.

b) *Paragraph 28 and 29 of Count III – Negligent Entrustment*

Defendants, Kramer, GHMS, and BMHS challenged the sufficiency of paragraph twenty-eight (28) as to the allegations of negligence on their part. Additionally, Defendants GHMH and BMHS challenged the sufficiency of the "agency" averments of both paragraph twenty-eight (28) and paragraph twenty-nine (29). In light of the Court's previous ruling dismissing Count III, Negligent Supervision and Entrustment, as against all

Defendants, the preliminary objections to Count III for lack of specificity are denied as moot.

c) *Paragraphs 16, 26(r),(s),(t),(u),(w) and (y), 31 through 34, 44 through 45 – Insufficiency of "agency" allegations*

Defendants BMHS and GHMH argue that Plaintiffs' complaint, as it relates to paragraphs sixteen (16), twenty-six (26)(r), (s), (t), (u), (w), and (y), thirty-one (31) through thirty-four (34), and forty-two (42)through forty-five (45) are legally insufficient insofar as these averments do not specifically identify, nor appropriately describe, the agents of the Defendants involved in this matter. Moreover, Defendants state Plaintiffs have not plead sufficient facts to set forth the agent's authority, how the alleged tortious acts of the agent falls within the scope of that authority, if such acts were authorized or unauthorized, and how these acts were ratified by either GHMH, BMHS, or both.

Defendants GHMH and BMHS cannot properly and adequately answer the averments contained in the numbered paragraphs above without knowing which "agent" or "agents" Plaintiffs are alleging acted negligently. One of the claims asserted against Defendants, GHMH and BMHS is a vicarious liability claim based upon the alleged conduct of each Defendant's employees. Moreover, Plaintiffs seek punitive damages against both Defendants for the alleged wanton and willful conduct of these

employees. The complaint must give Defendants fair notice of the claims set forth against them which includes the identification of the "responsible people." GHMH and BMHS cannot be expected to "guess" as to which individuals Plaintiffs allege to have been responsible for McMurray's care. Defendants can only properly prepare an answer and defend those claims after investigation of the alleged negligence or reckless conduct of the "named" individuals. Such investigation is not the burden of the Defendants but rather the law imposes such burden upon the Plaintiffs.

Further, in pleading a vicarious liability claim, it is necessary for Plaintiffs to aver the authority of the employee or employees to act on behalf of the principal, that being Defendants GHMH and BMHS. In addition, Plaintiffs must state the acts of the employee or employees that fell within the authority or the scope of that authority, or if such act was not authorized whether GHMH or BMHS ratified those actions. *See*, *Commonwealth v. Minds Coal Mining Corp.*, 60 A.2d 14 (Pa. 1948); RESTATEMENT (SECOND), AGENCY § 250 (1958). Here, Plaintiffs have not done that.

d) *Insufficiency of Negligence Claim – Paragraph 24 (c),(d),(f),(i),(p),(q),(r),(s),(t), and (u)*

Defendant Madeira has filed a preliminary objection in the nature of a motion to strike, or alternatively, require

Plaintiffs to file an amended complaint with more specificity to the subparagraphs (c), (d), (f), (l), (p), (q), (r), (s), (t), and (u) of paragraph twenty-four (24). Defendant Madeira argues that these subparagraphs, as they relate to him, do not contain the requisite specificity so as to allow him to answer and defend the claim of negligence. As stated earlier, Plaintiffs, pursuant to Pennsylvania Rule of Civil Procedure 1019, are required to "plead all the facts that [they] must prove in order to achieve recovery on the alleged cause of action. The pleading must be sufficiently specific so that the defending party will know how to prepare his defense." *Commonwealth ex rel. Pappert v. TAP Pharmaceuticals Prodcuts, Inc.*, 868 A.2d 624, 635 (Pa. Cmwlth. Ct. 2005).

The subparagraphs identified above, unlike the remaining subparagraphs of paragraph twenty-four (24), are general averments of negligence that do not state sufficient facts to permit Defendant Madeira an adequate understanding of the claim asserted against him. For example, in subparagraph (t), Plaintiffs allege that this Defendant "fail[ed] to order the appropriate diagnostic tests and/or studies." Assuming arguendo, that certain diagnostic tests were in fact ordered by Defendant Madeira, such tests that he believed to be appropriate and necessary, Defendant Madeira, consequently, would generally

deny this averment in a responsive pleading. The effect of such would allow Plaintiffs to infer that the tests Defendant Madeira ordered, tests that he believed to be necessary and appropriate, would be an admission that such tests were inappropriate. Accordingly, Plaintiffs are instructed to file an amended complaint setting forth sufficient factual averments in paragraph twenty-four (24) (c), (d), (f), (l), (p), (q), (r), (s), (t), and (u) so that Defendant Madeira, and for that matter Defendant Kramer as well, have a proper understanding of how it is alleged they were negligent.[10]

e) *Insufficiency of Negligence Claim – Paragraph 26(a),(j),(r),(s),(t),(u),(v),(w),(aa),(bb),(cc), (ee), and (ff)*

Lastly, Defendants BMHS and GHMH challenge the specificity of the above subparagraphs of paragraph twenty-six (26). In reviewing these averments in conjunction with all other allegations in the complaint, the Court finds such averments lacking in the requisite specificity so as to allow Defendants, BMHS and GHMH to answer and properly defend these allegations. These particular subparagraphs, not unlike certain subparagraphs of paragraph twenty-four (24), are grossly vague and devoid of the requisite specificity required. Therefore, the Court **grants**

[10] This requirement shall apply to the count of negligence as it relates to both doctor Defendants based upon the Court earlier directing Plaintiffs to file an amended complaint as to the claims of negligence. Thus, the Court is requiring Plaintiffs to file separate counts of negligence against each doctor Defendant with the requisite specificity as stated above.

this motion and require Plaintiffs to file an appropriate amended complaint stating the necessary facts to support the cause of action of negligence as it relates to these specific Defendants, BMHS and GHMH.

CONCLUSION

Based on the foregoing, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

ESTATE OF JAMES R. MCMURRAY by, and through the ADMINISTRATRIX OF THE ESTATE, APRIL L. MCMURRAY a/k/a APRIL LEE VACARO, and APRIL L. MCMURRAY a/k/a APRIL LEE VACARO,	:	
Plaintiffs	:	
vs.	:	**No. 12-2063**
ROBERT G. MADEIRA, M.D., JAMES W. KRAMER, M.D., GNADEN HUETTEN MEMORIAL HOSPITAL, BLUE MOUNTAIN HEALTH SYSTEM,	:	
Defendants	:	

Jane S. Sebelin, Esquire	Counsel for Plaintiffs
Joseph V. Sebelin, Jr., Esquire	Counsel for Plaintiffs
Kevin H. Wright, Esquire	Counsel for Defendant Madeira, M.D.
Mary Grady Walsh, Esquire	Counsel for Defendant Madeira, M.D.
Joseph T. Healey, Esquire	Counsel for Defendant Kramer, M.D.
John Q. Durkin, Esquire	Counsel for Defendant Kramer, M.D.
Frederick J. Stellato, Esquire	Counsel for Defendant Hospital and Blue Mountain Health System

ORDER OF COURT

AND NOW, this day of June, 2013, upon consideration of the Preliminary Objections filed by Defendants Robert G. Madeira, M.D., James W. Kramer, M.D., Gnaden Huetten Memorial Hospital, and Blue Mountain Health Systems, the briefs lodged in

support thereto, Plaintiffs' responsive briefs, and after argument thereon, it is hereby **ORDERED and DECREED** as follows:

1. The Preliminary Objection of Defendant, Robert G. Madeira, in the nature of a Motion to Strike the Complaint alleging that Count I violates of Pennsylvania Rules of Civil Procedure 1020 is **GRANTED**, insofar as Plaintiffs are directed to file an amended complaint that provides separate counts of negligence against Defendant, Robert G. Madeira, M.D., and Defendant, James W. Kramer, M.D.;
2. The Preliminary Objection of Defendant, Robert G. Madeira, M.D., in the nature of a Motion to Strike the complaint on the basis that the complaint violates Pennsylvania Rule of Civil Procedure 1020 and the Preliminary Objection of Defendants Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems in the nature of a Motion to Dismiss on the basis that Count V, Lack of Informed Consent, is legally insufficient are **GRANTED**;
3. The Preliminary Objections of Defendant, James W. Kramer, M.D., in the nature of a Motion to Strike Count VI, Loss of Consortium, for failing to conform to law or rule of court and for being legally insufficient are **GRANTED**. Count VI, Loss of Consortium, is **DISMISSED WITHOUT**

PREJUDICE from the complaint against all Defendants;[11]

4. The Preliminary Objections of Defendants James W. Kramer, M.D., Robert G. Madeira, M.D., Gnaden Huetten Memorial Hospital, and Blue Mountain Health Systems in the nature of a demurrer to the legal insufficiency of Count III, Negligent Supervision and Entrustment, as well as the Preliminary Objection of Defendant, Robert G. Madeira, M.D., for failure to conform to law or a rule of court to the same count are **GRANTED**. Count III, Negligent Supervision and Entrustment is **stricken** from the complaint with **prejudice** as against all Defendants;
5. The Preliminary Objections of Defendants, Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems in the nature of a Motion to Strike (Demurrer) Count VII, Wrongful Death, due to legal insufficiency are **DENIED**;
6. The Preliminary Objections of all Defendants in the nature of a Motion to Strike Count VII, Punitive Damages, as being legally insufficient are **DENIED**. However, Plaintiffs are required to amend Count VII, Punitive Damages, as it relates to Defendants Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems, insofar as Plaintiffs must plead sufficient facts to

[11] This count is dismissed without prejudice so that Plaintiffs may reinstate this claim in the event the wrongful death claims does not "get to trial."

support the claim that Defendants Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems "knew of and allowed the conduct of its agents as being willful, wanton, and reckless" so to permit the claim that Plaintiffs are entitled to punitive damages against those Defendants;

7. The Preliminary Objections of Defendants, Robert G. Madeira, M.D., Gnaden Huetten Memorial Hospital, and Blue Mountain Health Systems in the nature of a Motion to Strike the complaint for failure to conform to law or a rule of court regarding an improper verification are **DENIED as MOOT**;

8. The Preliminary Objections of all Defendants in the nature of Motions for More Specificity of the Pleadings are **GRANTED in part and DENIED in part** as follows:

   a) As to paragraphs fifteen (15), nineteen (19), and twenty-four (24) (a), (b), and (c) of the complaint, the objection is **DENIED without prejudice**;

   b) As to paragraph twenty-eight (28) and paragraph twenty-nine (29) of the complaint, the objection is **DENIED as MOOT** as a result of paragraph four (4) of this Order where the Court dismissed Count III, Negligent Supervision and Entrustment from the complaint. Since Count III contained paragraphs twenty-eight and twenty-nine the Court no longer needs to address such objection to the paragraphs for lack of specificity;

c) The Preliminary Objections of Defendants, Gnaden Huetten and Blue Mountain Health Systems in the nature of a Motion to Strike paragraph sixteen (16), twenty-six (26) (r), (s), (t), (u), (w), and (y), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), forty-two (42), forty-three (43), forty-four (44), and forty-five (45), are **DENIED.** Plaintiffs are alternatively directed to **amend** these paragraphs with more specificity as to the names and/or job titles of each agent, workmen, servant, employee, or staff member of Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems. Further, Plaintiffs are directed to state how each agent, workmen, servant, employee, or staff member fell within the authority of Defendants Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems;

d) The Preliminary Objection of Defendant, Robert G. Madeira, M.D., in the nature of a Motion to Strike paragraphs twenty-four (24) (c), (d), (f), (l), (p), (q), (r), (s), (t), and (u) from the complaint for lack of specificity is **DENIED.** Alternatively, Defendant's, Robert G. Madeira, M.D., motion to require Plaintiffs to file an amended complaint with more specificity as to each of these averments is **GRANTED;**[12] and

e) The Preliminary Objections of Defendants, Gnaden Huetten Memorial Hospital and Blue Mountain Health Systems in the nature of a Motion to Strike paragraph twenty-six(26)(a), (j), (r), (s), (t**)**, (u), (v), (w), (aa), (bb), (cc), (ee), and (ff) are **DENIED** insofar as striking such averments from the complaint; however the preliminary objections are **GRANTED** insofar as Plaintiffs are directed to file an amended

[12] See footnote 10+ of the Court's opinion.

complaint with the necessary specificity required for each of these averments. Lastly, the preliminary objection, as related to subparagraph twenty-eight (28) (a), (b), (c), and (d), is **DENIED as MOOT.**

Plaintiffs are directed to file an amended complaint consistent with this Opinion and Order twenty (20) days from the date hereof.

BY THE COURT:

_____

Joseph J. Matika, J.