

ROSE M. RITTER, as Administrator of the	:	IN THE COURT OF COMMON PLEAS OF
Estate of ROBERT L. RITTER; ROSE M.	:	LYCOMING COUNTY, PENNSYLVANIA
RITTER, Individually,	:	
Plaintiff	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 98-01,188
	:	
JOHN H. CHAPMAN, M.D., EDWARD L.	:	
WOODS, M.D.; KEITH CHIU, M.D.;	:	
CHRISTOPHER MALAFRONTI, P.A.-C.;	:	
H. WILLIAM MAHAFFY, P.A.-C; PENN	:	
STATE GEISINGER CLINIC, Successor	:	
in Interest to GEISINGER CLINIC,	:	
GEISINGER CLINIC, GEISINGER	:	PRELIMINARY OBJECTIONS IN THE
MEDICAL CENTER,	:	NATURE OF A DEMURRER AND/OR
Defendants	:	MOTION TO STRIKE

OPINION and ORDER

Presently at issue before the Court are Defendants' Preliminary Objections to the First Amended Complaint of Plaintiff Rose M. Ritter, individually and as Administrator of the Estate of Robert L. Ritter (hereinafter "Plaintiff). By Opinion and Order filed March 13, 2000, the Court sustained (in part) Preliminary Objections by Defendants to the original Complaint, as we agreed with Defendants that Plaintiff had failed to support sufficient facts to make a claim for punitive damages and also that the Complaint was insufficiently specific. Plaintiff was allowed to file an amended Complaint, which was filed April 17, 2000.

Defendants now object to the averments in the First Amended Complaint for much the same reasons as given pursuant to their prior Preliminary Objections. Defendants ask that we strike Counts XI through XV, the punitive damages claims, with prejudice. Defendants

further ask that the following paragraphs be stricken for lack of specificity: 58, 62, 66, 70, 74, 77-80, 83-86, 93, 108, 110, 112, 114, 116, 118, 120, 122 and 124.

With respect to their argument against the punitive damages claims, Defendants have set forth the relevant portions of the decisions by our President Judge, the Honorable Clinton W. Smith, in *Temple v. Susequehanna Health Systems, et al.*, Lycoming County No. 97-00,099 and *Trimble v Beltz, et al.*, Lycoming County No. 98-01,720, wherein the Court pronounced the level of reckless or willful conduct which must be pled and proved in order to entitle a plaintiff to punitive damages. Defendants cite a particular excerpt from *Temple* that “[o]nly those who are the victims of deliberate misconduct should be entitled to punitive damages.” Defendants’ Brief p. 3. Plaintiff responds that “this is an incorrect statement of law. No other case has so stated, and it is not even the law of an *en banc* decision in this county.” Plaintiff’s Brief p. 7. Plaintiff urges that, rather than follow the holdings of *Temple* and *Trimble*, this Court should overrule Defendants’ objection to the punitive damages claims by applying our reasoning in the case of *Wein v. The Williamsport Hospital*, No. 96-01,744.

However, we did not refuse to follow *Temple* or *Trimble* in the *Wein* case. On the contrary, in our Opinion and Order of November 24, 1999, we stated that the criteria enunciated in Judge Smith’s rulings *had* been met. In *Wein*, plaintiffs had pled facts to constitute sufficient circumstantial evidence of Defendants’ alleged reckless disregard to the rights of the decedent, where the complaint averred the defendant hospital ignored the obvious risk of swelling following tonsillectomy operations by failing to examine the decedent’s throat or mouth for two days and ignoring patently obvious symptoms that should have led to discovery of his condition.

In the instant case, the First Amended Complaint does not contain sufficient factual allegations to constitute Defendants' reckless disregard of the risks of surgery undergone by the decedent. Therefore, we find that Plaintiff has failed to aver sufficient facts to establish a punitive damages claim under the criteria established by *Temple* and *Trimble*. Accordingly, the punitive damages counts must be stricken, although we decline to strike these counts with prejudice. If Plaintiff can replead the punitive damages claims to meet the standard established in *Trimble* and *Beltz*, they should be allowed one more opportunity to do so.

With regard to the remaining counts, Defendants complain that amended paragraphs 58, 62, 66, 70, 74, 77-80, 83-86, 93, 108 and 110 are insufficiently specific to apprise them of the claims against them. Paragraphs 58 and 66 allege that the negligence of Defendants resulted in a puncture and retrograde dissection. We believe these averments are sufficiently specific and they will not be stricken.

Paragraphs 62.2, 70.2, and 74.3 of the First Amended Complaint still use the term "others" which Defendants seem to find particularly egregious. These subparagraphs claim Defendants "failed to warn *others* within the scope of their responsibilities" of the likelihood of tamponade and "*other* complications which the patient developed" (emphasis added). Paragraphs 77-80, 83-86, 93, 108 and 110 similarly utilize language encompassing "others," without further identifying these unknown persons.

We find that use of the term "other complications *which the patient developed*" (emphasis added) obviously refers to the complications which the decedent in fact experienced and which would be recorded in the decedent's medical records. Therefore, Defendants are sufficiently apprised of the claim against them.

However, utilization of the term “others within the scope of their responsibilities,” “other agents” and similar references are insufficiently specific to identify those, in either individual or categorical terms, whom Plaintiff claims acted negligently and whose negligence is attributed to Defendants. Accordingly, those averments must be stricken.

Finally, with respect to paragraphs 62, 70 and 74, Plaintiff has adequately pled the alleged failure of Defendants to timely treat and/or respond to the decedent’s drop in blood pressure, or to the ventricular fibrillation or tamponade he developed. Defendants assert this allegation is not sufficient to advise them of what act or acts of medical care they did, or failed to do, which negligently caused harm to Plaintiff’s decedent. This Court disagrees. Plaintiff’s allegations set forth medical complications or treatment developments Plaintiff’s decedent suffered which required an appropriate medical response, and that Defendants made no response or responded improperly. Defendants were certainly aware of sufficient facts as to whether these conditions did develop in their patient and what response, if any, they made to these conditions, as well as the reasons therefor. We fail to see how Defendants will have trouble denying that they did *not* fail to timely treat and/or respond to the development of these conditions. Defendants are also sufficiently apprised of the claims against them to be able to answer that their actions or inaction constituted appropriate medical care under the circumstances presented by their patient’s medical condition.

A plaintiff is required to file a complaint which defines the issues and gives notice to the opposing party of what the plaintiff intends to prove at trial, so that the defendant may prepare to meet such proof with its own evidence; in a medical malpractice case, a defendant has at least equal awareness of the underlying facts surrounding the conduct in

question, and accordingly a plaintiff's' burden in pleading sufficient facts is not as great. *See Mau v. Roth, et al.*, 114 Dauph. 297 (1994); *Schofield v. Griffin, et al.*, 117 Dauph. 338 (1997); *Zaborowski v. Esper, et al.*, C.P. Erie County No. 1037-A-1989. In the instant case, Plaintiff has provided Defendants with sufficient notice of the claims against them. If Defendants seek more information, they can file interrogatories, depose Plaintiff, or examine the opinion(s) of Plaintiff's expert(s). *Zaborowski, supra*. However, at this stage of the proceedings the averments are sufficiently pled and will not be stricken.

ORDER

Defendants' Preliminary Objections to Plaintiff's First Amended Complaint are SUSTAINED in part and OVERRULED in part. Consistent with the foregoing Opinion, Counts XI through XV, and paragraphs 62.2, 70.2, and 74.3, 77-80, 83-86, 93, 108 and 110 are HEREBY stricken. Plaintiff shall file an amended complaint within twenty (20) days of the filing date of this Order.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
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Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)