

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

**JUDY SCIPP and EDDIE SCIPP,
Plaintiffs**

vs.

**SUSQUEHANNA HEALTH BONE & JOINT
INSTITUTE a/k/a SUSQUEHANNA HEALTH
ORTHOPAEDICS, RONALD E. DiSIMONE, M.D.,
and MARC GALIN, CRNP,
Defendants**

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: **NO. CV-20-1205**
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: **CIVIL ACTION –**
: **Preliminary Objections**

OPINION AND ORDER

Before the Court are Defendants’ Preliminary Objection to Plaintiffs’ First Amended Complaint. For the reasons set forth below, the Preliminary Objection is sustained.

I. Factual and Procedural Background

This medical malpractice action was initiated with the filing of a Writ of Summons on December 15, 2020 and, following a Rule to File, Plaintiffs’ initial Complaint was filed February 16, 2021. Preliminary Objections were filed March 11, 2021 and the Honorable Eric R. Linhardt issued an Opinion and Order on July 23, 2021 sustaining the objections in part and overruling them in part. Plaintiffs were ordered to file an Amended Complaint within twenty (20) days, which they did on August 10, 2021.¹ On September 17, 2020, Defendants’ filed a second set of Preliminary Objections in the nature of a Motion to Strike or, in the alternative, a Motion for More Specific Pleading.

¹ The original Complaint named the above captioned Defendants as well as Williamsport Regional Medical Center a/k/a UPMC Williamsport, UPMC Susquehanna, UPMC Susquehanna Health System, Susquehanna Health Innovation Center, and Susquehanna Health Foundation. However, a Judgment of Non Pros was entered against these Defendants on April 22, 2021. Therefore, the Amended Complaint lists only those above-captioned Defendants.

In his July 2021 Order, Judge Linhardt set forth a thorough summary of the operative facts of this case which have remained unchanged between the filing of Plaintiffs' initial Complaint and their Amended Complaint and therefore, this Court will simply re-state them here:

Pursuant to the well-pled facts, on or about November 7, 2018, Plaintiff Judy Scipp visited the office of Defendant Ronald E. DiSimone, M.D. *Complaint in Civil Action ("Complaint")* ¶ 31 (*Feb. 16, 2021*); *Amended Complaint* ¶ 20. At this visit, Ms. Scipp reported the onset of left knee pain some four months prior, describing her level of pain as moderate to severe, and aggravated when standing, walking, and climbing or descending stairs. *Complaint* ¶¶ 32-33; *Amended Complaint* ¶¶ 21-22. After reviewing Ms. Scipp's prior medical records and performing a physical examination, Dr. DiSimone discussed both non-operative and operative treatment options. *See Complaint* ¶¶ 35-39; *Amended Complaint* ¶¶ 24-28. Ms. Scipp stated that understanding the risks, she wanted to proceed with a total knee replacement surgery. *Complaint* ¶ 40; *Amended Complaint* ¶ 29.

Ms. Scipp underwent surgery on December 11, 2018. *Complaint* ¶ 43; *Amended Complaint* ¶ 32. While showing initial signs of recovery, during the latter part of December of 2018 and throughout January of 2019 Ms. Scipp began to experience persistent pain and

redness around the surgical incision site, with swelling and drainage that increased over time both in frequency and duration. *See Complaint ¶¶ 45-50; Amended Complaint ¶¶ 34-39.* She called the office of Dr. DiSimone several times in January of 2019 reporting her physical condition and trying, unsuccessfully, to schedule an appointment. *Complaint ¶ 51; Amended Complaint ¶ 40.* During one of these phone conversations she spoke with Marc Galin, certified registered nurse practitioner (“CRNP”), describing the condition of her knee and telling CRNP Galin that she believed the knee to be infected. She requested that CRNP Galin schedule an appointment with Dr. DiSimone and prescribe antibiotics to treat the infection. *Complaint ¶ 52; Amended Complaint ¶ 41.* CRNP Galin purportedly told Ms. Scipp that an appointment would not be necessary, that her condition was a common post-surgical occurrence, and that she would make a full recovery with time. *Complaint ¶ 53; Amended Complaint ¶ 42.*

Ms. Scipp’s condition, however, merely worsened, and she made several additional unsuccessful attempts to schedule a follow-up appointment. *Complaint ¶¶ 54-55; Amended Complaint ¶¶ 43-44.* In late January 2019, Ms. Scipp saw a cardiologist and showed him the condition of her knee. *Complaint ¶ 56; Amended Complaint ¶ 45.* The cardiologist then called Dr. DiSimone’s office and spoke with CRNP Galin, informing him that Ms. Scipp should be seen

promptly for follow-up treatment as it appeared she had developed a serious infection in her left knee. *Complaint* ¶ 57; *Amended Complaint* ¶ 46. CRNP Galin only then arranged an office appointment with Dr. DiSimone, also eventually prescribing an antibiotic on January 31, 2019. *Complaint* ¶ 58; *Amended Complaint* ¶ 47. At the office appointment, held on February 4, 2019, Dr. DiSimone examined Ms. Scipp's left knee and found it inflamed and emitting discharge. *Complaint* ¶ 59; *Amended Complaint* ¶ 48. On February 5, 2019, Dr. DiSimone performed a follow-up procedure that involved incising, draining, and cleaning the infected knee, with the incision then sutured closed. *Complaint* ¶ 63; *Amended Complaint* ¶ 52. Ms. Scipp was discharged in satisfactory condition from the hospital on February 10, 2019, returning to Dr. DiSimone's office on February 18, 2019 for removal of her sutures. *Complaint* ¶¶ 65-66; *Amended Complaint* ¶¶ 54-55.

However, the pain and swelling in Ms. Scipp's left knee recurred. On March 14, 2019, Dr. DiSimone performed an additional surgery removing the left total knee replacement and infected tissue, and inserting an antibiotic spacer. *Complaint* ¶ 76; *Amended Complaint* ¶ 65. After Ms. Scipp again reported significant swelling in her left knee post-surgery, on June 4, 2019, Dr. DiSimone, along with two surgical assistants, performed yet another procedure removing the

antibiotic spacer. See *Complaint* ¶¶ 100-101; *Amended Complaint* ¶¶ 89-90.

On February 16, 2021, Plaintiff initiated the foregoing medical malpractice action by the filing of a Complaint. The Complaint alleges that delayed and negligently administered treatment exacerbated her preexisting knee issues, and that such treatment has caused her pain and suffering, mental anguish, and a decreased quality of life. See *Complaint* ¶ 109; *Amended Complaint* ¶ 98.

See *July 23, 2021 Order*.

Argument was held December 1, 2021 and is now ripe for decision.

II. Discussion

Pursuant to the Rules of Civil Procedure, “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” Pa.R.C.P. 1019(a). Pennsylvania is a fact pleading state, meaning that pleadings must put the opponent on notice of the issues and formulate those issues by summarizing the facts essential to the claim. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa.Super. 2020).

“While it is impossible to establish precise standards as to the degree of particularity required in a given situation, two conditions must always be met. The pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge.” *Youndt v. First Nat. Bank of Port Allegany*, 868 A.2d 539, 544–45 (Pa.Super. 2005) (internal citations

omitted). The Superior Court has held that “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 in the complaint. Only then can a court determine whether the defendant is put on adequate notice of the claim against which it must defend.” *Yacoub v. Lehigh Valley Med. Assocs.*, 805 A.2d 579 (Pa.Super. 2002).

Defendants argue that Paragraphs 121(a), (c), and (l) and 134(a), (c), and (l) should be stricken because they contain “general, vague, and boilerplate” allegations of negligence pursuant to *Conner*.² Defendants set forth this same argument in their Preliminary Objections to Plaintiffs’ original Complaint and Judge Linhardt found the following allegations to be “too general to apprise Defendants of the scope of Plaintiffs’ claims:”

- a. Failing to conform to the requisite standard of medical care;
- c. Failing to provide and render reasonable medical care under the circumstances;
- l. Substantially increasing the risk of harm to the Plaintiff.

See July 23, 2021 Order at Page 8.

In their Amended Complaint, Plaintiffs modified the language such that Paragraphs 121 and 134 state that Defendant DiSimone and Defendant Galin, respectively, were negligent and careless for:

- a. Failing to conform to the requisite standard of medical care in the surgeries of and follow-up care of Plaintiff Judy Scipp; . . .

² *Conner* is the seminal case in which the Pennsylvania Supreme Court held that general allegations in a complaint could allow plaintiffs amend it even after the running of the statute of limitations. *Conner v. Allegheny General Hospital*, 461 A.2d 600 (Pa. 1983). Since then, this rule has been used by Pennsylvania courts to preclude general allegations in complaints.

- c. Failing to provide and render reasonable medical care in the surgeries of and follow-up care of Plaintiff Judy Scipp; . . .
- l. Substantially increasing the risk of harm to the Plaintiff Judy Scipp by failing in the post-operative care and follow-up after starting treatment on Plaintiff Judy Scipp's left knee.

The question, then, is whether this modified language resolves the initial issue of over generalization. Plaintiffs assert that the 86 factual allegations set forth in their Amended Complaint, when taken as a whole, is sufficient to apprise Defendants of the claims. Defendants argue that it does not because Plaintiffs still fail to allege any improper conduct or describe the specific care that should have been provided but was not and therefore, the allegations fail to apprise Defendants of the claims against them. The Court agrees.

Plaintiff is correct that the factual allegations set forth in their Amended Complaint are extensive and detailed. However, a statement that Defendants failed to conform to the requisite standard of medical care fails to identify exactly which of Defendants' actions Plaintiffs are alleging were improper. Adding the words "in the surgeries of and follow-up care of Plaintiff" is not a factual allegation and does not describe the actions, or inactions, Defendants are alleged to have taken. The Court recognizes that Plaintiffs' Complaint must be read as a whole. Certainly, however, Plaintiffs cannot claim that every single action taken by Defendants, as described by them in more than 86 paragraphs in their Complaint, was improper and outside of the standard of care. They are required by the Rules of Civil Procedure to identify *which* alleged actions were improper.

It is important to note that in other subparagraphs, Plaintiff does sufficiently describe Defendants' actions. Paragraphs 121 and 134 state, for example, that Defendants were negligent for "failing to take and obtain a full adequate and complete medical history," "failing to prescribe antibiotic medication properly and diligently in a prompt and timely manner in an effort to prevent and/or reduce the spread of infection to the left knee," and "failing to seek consultations with other specialists to discuss Plaintiff Judy Scipp's post-operative complaints of pain, infection, and persistent, symptomatology of the left knee." See *Amended Complaint* ¶¶ 121(b), (f), and (j). These are examples of proper allegations that clearly identify the purported improper conduct and put Defendants on notice of what it is they must be prepared to defend.

III. Conclusion

For the reasons set forth above, the Court finds that Plaintiffs' Amended Complaint is not sufficiently pled and therefore, Defendants' Preliminary Objection is sustained and Plaintiffs shall have twenty (20) days to file an Amended Complaint.

ORDER

AND NOW, this 18th day of **January, 2022**, upon consideration of Defendants' Preliminary Objection and Plaintiffs' response thereto, and for the reasons set forth above, Defendants' Preliminary Objection is **SUSTAINED**. Plaintiffs shall have twenty (20) days from the date of this Order to file an Amended Complaint.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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