

material fact which would support a claim for punitive damages under 40 P.S. § 1303.505(b). At Count C, Defendants seek to strike Plaintiff's claims of negligence *per se*. At Count D, Defendants seek to strike all claims against unnamed agents. At Count E, Defendants seek to strike all references in the Complaint alleging "abuse or neglect." At Count F, Defendants seek to strike all claims against "John/Jane Doe." At Count G, Defendants seek to strike all references to increasing revenue, underfunding, and related claims. At Count H, Defendants seek to strike all references to fraudulent documentation.

Questions Presented:

- Count B: Whether a demurrer should be entered to Plaintiff's claims for punitive damages.
- Count C: Whether all allegations in the Complaint asserting violations of 18 Pa.C.S.A. § 2713 and 35 P.S. § 10225.101 should be stricken.
- Count D: Whether Complaint references to unnamed agents should be stricken.
- Count E: Whether Complaint references to "abuse" or "neglect" should be stricken.
- Count F: Whether a demurrer should be entered to claims against "John/Jane Doe."
- Count G: Whether Complaint references to increasing revenue or underfunding should be stricken.
- Count H: Whether Complaint references to fraudulent documentation should be stricken.

Brief Answer:

- Count B: 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. § 1303.505.
- Count C: Plaintiff will be directed to file an Amended Complaint which either deletes all references to alleged violations of 18 Pa.C.S.A. § 2713 and 35 P.S. § 10225.101, or supplies sufficient material allegations of fact to support the conclusion that those alleged violations were causally related to the damage alleged to Plaintiff's decedent.
- Count D: Plaintiff will be directed to file an Amended Complaint which either deletes reference to unnamed agents or alleges material facts in support of the conclusion that the acts or omissions of agents or employees of the Defendants caused the injury to Plaintiff's decedent.

Count E: Plaintiff will be directed to file an Amended Complaint which either deletes the words “abuse or neglect” or alleges material facts in support of the conclusion that some abuse or neglect by Defendants’ agents or employees caused the injury to Plaintiff’s decedent.

Count F: Plaintiff’s claims against John/Jane Doe will not be stricken.

Count G: Plaintiff will be directed to file an Amended Complaint which either deletes all references to increasing revenue or underfunding, or alleges material facts in support of the conclusion that the increasing revenue or underfunding caused the injury to Plaintiff’s decedent.

Count H: Plaintiff will be directed to file an Amended Complaint which either deletes all references to fraudulent documentation or alleges material facts in support of the conclusion that some fraudulent documentation by Defendants’ agents or employees caused the injury to Plaintiff’s decedent.

Discussion:

Count B: 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. § 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., 543 A.2d 1092, 1093–94 (Pa. Super. Ct. 1988).

Plaintiff's claim for punitive damages is controlled by 40 P.S. § 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 or demonstrated reckless indifference to the rights of Plaintiff's decedent.

Count C: Plaintiff will be directed to file an Amended Complaint which either deletes all references to alleged violations of 18 Pa.C.S.A. § 2713 and 35 P.S. § 10225.101, or supplies sufficient material allegations of fact to support the conclusion that those alleged violations were causally related to the damage alleged to Plaintiff's decedent.

Generally speaking, the Complaint contains somewhat more "heat" than "light." While Plaintiff clearly claims that Plaintiff's decedent was wrongfully administered an "opioid cocktail" and suffered damages as a result, the Complaint is replete with claims of a multitude of unrelated errors and omissions.

At Paragraphs 82 through 92 of the Complaint, Plaintiff alleges that Defendants have violated both 18 Pa.C.S.A. § 2713 and 35 P.S. § 10225.101. 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 administration of the opioid cocktail 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 D: Plaintiff will be directed to file an Amended Complaint which either deletes reference to unnamed agents or alleges material facts in support of the conclusion that the acts or omissions of agents or employees of the Defendants caused the injury to Plaintiff's decedent.

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

At Paragraphs 71 of the Complaint, Plaintiff alleges the negligence of Defendants' "agents, employees, and/or servants." At Paragraph 73, Plaintiff claims that the Defendants were negligent for failure to meet nineteen (19) separate duties owed to Plaintiff's decedent. At Paragraph 80, Defendants claim that the Defendants were negligent for failure to meet another thirty-two (32) separate duties owed to Plaintiff's decedent. What is lacking are allegations of material fact which suggests that each such act or omission by the Defendants was the legal cause of the administration of the claimed opioid cocktail to Plaintiff's decedent. Rather than strike references to unnamed agents or employees and their alleged negligence, however, the Court will simply direct the Plaintiff to file an Amended Count I which supplies the missing allegations of material fact.

Count E: Plaintiff will be directed to file an Amended Complaint which either deletes the words "abuse or neglect" or alleges material facts in support of the conclusion that some abuse or neglect by Defendants' agents or employees caused the injury to Plaintiff's decedent.

Paragraph 53 of the Complaint alleges that the Defendants "engaged in a pattern of care replete with harmful and injurious commissions, omissions, and neglect as described herein." Despite that very general claim, the conduct which is actually alleged in the Complaint is that Plaintiff's decedent was administered the "opioid cocktail" and suffered falls and other damages, as a result. The Complaint does not contain allegations of material fact which

support the conclusion that any “pattern of care replete with harmful and injurious commissions, omissions, and neglect” were the proximate cause of the injuries suffered by 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 by the wrongful administration of opioid medications, and that the breach was the legal cause of her falls and other damages suffered by her. It is somewhat unclear to the Court why Plaintiff could not allege material facts which support those claims in fewer than 107 Paragraphs.

Count F: Plaintiff’s claims against John/Jane Doe will not be stricken.

While Pennsylvania law does not ordinarily permit a plaintiff seeking contract damages to secure a judgment against the agent of a disclosed principal, the law of negligence is somewhat different. “A corporate employee may be liable for his own torts, even if he was acting within the scope of his employment when he engaged in the tortious conduct in question, and regardless of whether the employer may also be liable for the employee’s conduct.” *Aldorasi v. Crossroads Hospitality and Management Company, LLC*, 344 F.Supp.3d 814, 822 (E.D. Pa. 2018), citing *Cosmas v. Bloomindaes Bros., Inc.*, 660 A.2d 83, 88-89 (Pa. Super. Ct. 1995).

At this early stage of the proceeding, it is impossible for Plaintiff to predict which of Defendants’ employees participated in the care of Plaintiff’s decedent, how the opioids came to be in her system, and whether the Defendants might argue that any employee involved in the administration of that medication was acting outside of the scope of their employment. Thus, dismissing claims against alleged agents or employees is premature.

Count G: Plaintiff will be directed to file an Amended Complaint which either deletes all references to increasing revenue or underfunding or alleges material facts in support of the conclusion that the increasing revenue or underfunding caused the injury to Plaintiff’s decedent.

Defendants contend that those allegations in the Complaint, which claim that the Defendants’ acts or omissions were motivated by a desire to “increase revenue” or claims of “underfunding” of the Facility, 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 administration of the opioid cocktail to Plaintiff's decedent. Thus, the Court will direct Plaintiff to file an Amended Complaint which either supplies the missing facts, or deletes those allegations.

Count H: Plaintiff will be directed to file an Amended Complaint which either deletes all references to fraudulent documentation or alleges material facts in support of the conclusion that some fraudulent documentation by Defendants' agents or employees caused the injury to Plaintiff's decedent.

Defendants contend that the allegation at Paragraph 80(o) of the Complaint that Defendants "fail[ed] to prevent fraudulent documentation" constitutes "scandalous or impertinent matter." It is impossible for this Court to speculate as to whether that allegation is material to Plaintiff's claims or not, since the Complaint lacks material allegations of fact which connect that claim to the administration of the opioid cocktail to Plaintiff's decedent. Thus, the Court will direct Plaintiff to file an Amended Complaint which either supplies the missing facts, or deletes any claim of "fraudulent documentation."

AND NOW, this 24th day of June, 2024, Defendants' Preliminary Objections to the Complaint 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, as follows:

- a. The Amended Complaint will either delete all references to alleged violations of 18 Pa.C.S.A. § 2713 and 35 P.S. § 10225.101, or will contain sufficient material allegations of fact to support the conclusion that those alleged violations were causally related to the damage alleged to Plaintiff's decedent.
- b. The Amended Complaint will either delete reference to unnamed agents or will contain material allegations of fact in support of the conclusion that the acts or omissions of agents or employees of the Defendants caused the injury to Plaintiff's decedent.
- c. The Amended Complaint will either delete the words "abuse or neglect" or will contain material allegations of fact in support of the conclusion that some abuse or

neglect by Defendants' agents or employees caused the injury to Plaintiff's decedent.

- d. The Amended Complaint will either delete all references to increasing revenue or underfunding or will contain material allegations of fact in support of the conclusion that Defendants' efforts to either increase revenue or underfund the Facility caused the injury to Plaintiff's decedent.
- e. The Amended Complaint will either delete all references to fraudulent documentation, or will contain material facts in support of the conclusion that some fraudulent documentation by Defendants' agents or employees caused the injury to Plaintiff's decedent.
- f. Except to the extent expressly set forth above, Defendants' Preliminary Objections are denied.

BY THE COURT,

William P. Carlucci, Judge

WPC/aml

cc: Court Administrator

Diana R. Kadash, Esquire

One Liberty Place, 1650 Market Street, 36th Floor, Philadelphia, PA 19103

Taylor H. Pickersgill, Esquire and William J. Mundy, Esquire

Burns White LLC, 1001 Conshohocken State Road, Ste 1-515

West Conshohocken, PA 19428