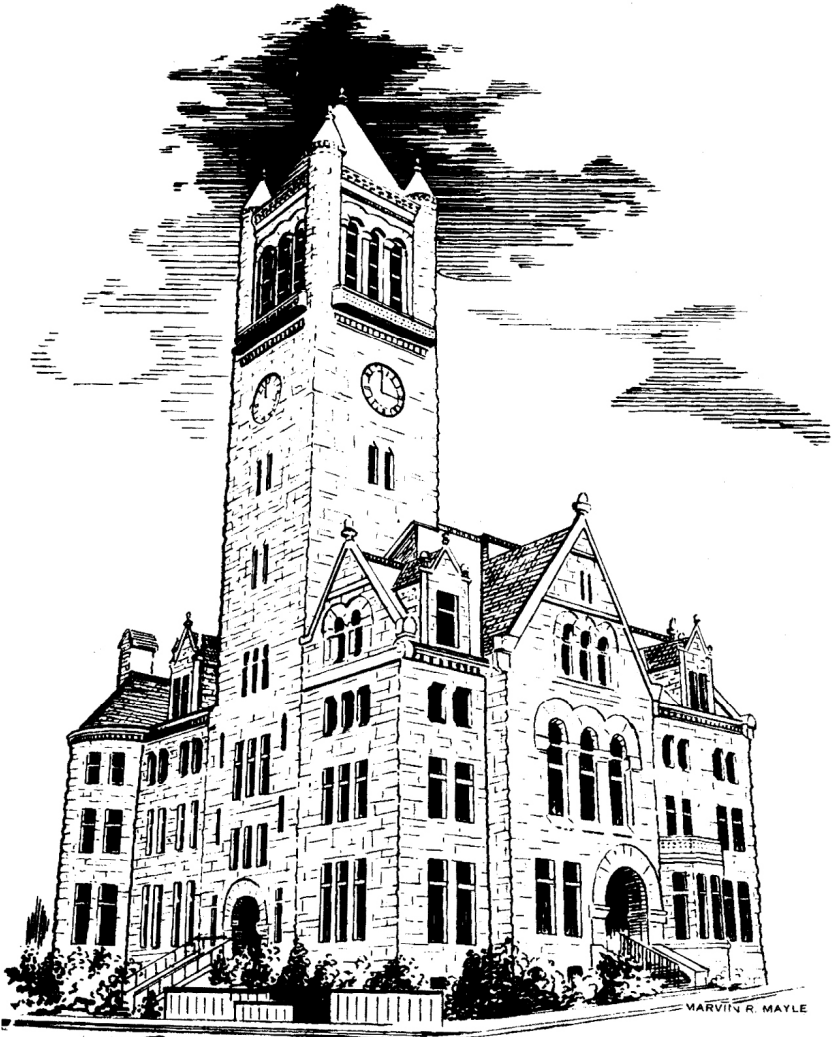


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

**CONSTANCE ROSS BERRY, a/k/a
CONSTANCE JEAN BERRY**, late of
Brownsville, Fayette County, PA (3)
Executor: David Edward Manion
c/o Thomas Murphy & Associates, P.C.
237 East Queen Street
Chambersburg, PA 17201
Attorney: Jared S. Childers

DARIUS EVANS, late of Masontown, Fayette
County, PA (3)
Administratrix: Gabriella Locke
c/o Colin Adair Morgan, Certified Elder
Law Attorney and Julian Gray Associates
954 Greentree Road
Pittsburgh, PA 15220
Attorney: Colin Adair Morgan

PONSELLA EWING, late of Uniontown,
Fayette County, PA (3)
Co-Executor: Elizabeth Ann McCabe and
Mark Decarlucci
c/o Fitzsimmons and Barclay
55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

**GAY NICHELSON, a/k/a GAY W.
NICHELSON**, late of Bullskin Township,
Fayette County, PA (3)
Administratrix: Kathie Nicholson
146 Rice School Road
Mt. Pleasant, PA 15666
c/o 140 South Main Street #301
Greensburg, PA 15601
Attorney: John Cochran

**MAGDALEN A. WILLIAMS, a/k/a
MAGDALEN ANN WILLIAMS, a/k/a
MAGDALEN WILLIAMS**, late of Uniontown,
Fayette County, PA (3)
Personal Representative: Barbara Fetsko
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Anne N. John

GEORGE YANKULIC, late of German
Township, Fayette County PA (3)
Personal Representative:
Mary Ann Vicinelly
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

Second Publication

FLORA JEAN ESSIG, late of Masontown,
Fayette County, PA (2)
Personal Representatives: David L. Essig
and Kim M. Essig
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

ANDREW MIGYANKO, late of Georges
Township, Fayette County, PA (2)
Administrator: Mark Migyanko
c/o P.O. Box 953
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

PATRICIA A. MILLER, late of Fairchance,
Fayette County, PA (2)
Executor: Wayne David Moser
c/o Adams and Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

MARGARET PRICE, late of Scottdale,
Fayette County, PA (2)
Administratrix: Carolyn Price
111 Broad Street
Scottdale, PA 15683
c/o 108 Lexington Avenue
Pittsburgh, PA 15215

Attorney: M. Elizabeth Williams

RONALD KELLY SABO, late of Brownsville Township, Fayette County, PA (2)
Administrator: Ronald V. Sabo
c/o Adams and Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

GEORGE R. SMALLEY, late of Stewart Township, Fayette County, PA (2)
Co-Executors: George R. Smalley, Jr. and Teresa G. Christman
c/o Proden and O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O' Brien

First Publication

GEORGE H. BURKETT, late of Washington Township, Fayette County, PA (1)
Executor: Debra L. Morrow
1243 Ridge Road
Rostraver Township, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

EDITH A. MASNEY, late of Luzerne Township, Fayette County, PA (1)
Executrix: Diana S. Green
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

DOROTHY M. PAQUET, A/K/A DOROTHY PAQUET, late of Fayette City, Fayette County, PA (1)
Executrix: Chris A. Pierce
900 Fayette City Road
Fayette City, PA 15438
c/o 400 Market Street
Elizabeth, PA 15037
Attorney: Daniel F. Bekavac, Jr.

JAMES E. SUMEY, late of South Union Township, Fayette County, PA (1)
Executor: Bradley A. Sumej
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

LEGAL NOTICES

TO: LOUIS PIKULSKY, his heirs and assigns, WILLIAM SHIMKO, his heirs and assigns, STANLEY SMOLACK, his heirs and assigns, and RONALD SHIMKO, his heirs and assigns:

You are hereby notified that Robert Lloyd Marietta has filed a Complaint at No. 2456 of 2019 G.D., in the Court of Common Pleas of Fayette County, Pennsylvania, wherein it is alleged that he has an easement and way of necessity over a certain tract of land situate in Stewart Township, Fayette County, Pennsylvania, more particularly bounded and described as follows:

ALL that certain tract of land situate in Stewart Township, Fayette County, Pennsylvania, as described in a Deed to the Defendants recorded at Deed Book Volume 920, Page 81 in the Recorder of Deeds Office of Fayette County, Pennsylvania.

The Complaint asks the Court to decree that Plaintiff has an easement and way of necessity over said real estate and to enjoin the Defendants, and their heirs and assigns, from closing the easement and way of necessity or interfering with its use by the Plaintiff.

You are hereby notified that you have been sued in court. If you wish to defend against the claims set forth in the Complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER (OR CANNOT AFFORD ONE), GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW (TO FIND OUT WHERE YOU CAN GET LEGAL HELP). THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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Mark D. Brooks, Esquire
Attorney for Plaintiff

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about February 19, 2019, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Essentially Restored with the principal place of business at: 125 Short Cut Rd., Masontown, PA 15461

The name or names and addresses of persons owning and interested are: Nancy J. Ziemkowsky, 125 Short Cut Rd., Fayette, PA 15461

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, January 6, 2020, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0669	MILDRED MAXINE BARRICKLOW	Evelyn Denise Brown and Carolyn Maricondi, Co-Executors
2617-0677	EDWARD R. SHARKEY	Diane S. Paul, Administratrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, January 21, 2020, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (2 of 2)

JUDICIAL OPINION

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

MAEGAN MARIE PERDUE, Administrator	:
of the ESTATE OF MACKENZIE	:
JADE PERDUE, a deceased minor,	:
Plaintiff,	:
	:
v.	:
	:
UNIONTOWN HOSPITAL, FAYETTE	:
REGIONAL HEALTH SYSTEM, UPMC,	:
and DANIELE. NAHHAS, M.D.,	: No. 548 of 2019, G.D.
Defendants.	: Honorable Judge Linda R. Cordaro

OPINION

Cordaro, J.

October 22, 2019

SUMMARY

Before the Court are Defendants' Preliminary Objections to Plaintiffs Complaint. For the following reasons, the Preliminary Objections are overruled.

BACKGROUND

On May 2, 2019, Plaintiff, Maegan Perdue, filed a Complaint in Civil Action against Defendants Uniontown Hospital, Fayette Regional Health System, UPMC, and Dr. Daniel Nahhas, M.D.

In the Complaint, Ms. Perdue alleges that she was an established patient of Uniontown Hospital during her pregnancy with twins. The medical records documented Plaintiff as a "high risk" pregnancy. Complaint at Paragraph 15.

On March 17, 2017, when she was 26 weeks pregnant, Plaintiff awoke at 1:30 AM with abdominal pain and heavy vaginal bleeding. At 1:45 AM, Plaintiff called Uniontown Hospital to inform the staff of her condition and that she was on the way to the Hospital. Plaintiff arrived at the Hospital's Emergency Department at 2:10 AM.

Plaintiff was admitted to the Labor and Delivery Department at 2:18 AM. At 2:21 AM, Plaintiff is documented as having "active free bleeding from the vagina." Complaint at Paragraph 23. At 2:30 AM, Dr. Nahhas was called at his home and informed of Plaintiffs condition. At 2:32 AM, a Sterile Vaginal Exam was performed on Plaintiff and at 2:36 AM, Dr. Nahhas was called and updated as to Plaintiffs condition.

At 2:45 AM, Dr. Nahhas arrived at Uniontown Hospital, where he diagnosed Plaintiff as having a placental abruption and determined that an emergency C-Section was necessary. Plaintiff was taken to the Operating Room at 3:07 AM, and she delivered twins at 3:19 AM.

One of the twins, Mackenzie, was in respiratory distress after delivery. She was transported to UPMC Magee-Womens Hospital, where she passed away at 9:20 AM on March 18, 2017. The other twin survived.

The Complaint alleges one count of Corporate Negligence, two counts of Professional Negligence, and one count of Wrongful Death as a result of the death of baby Mackenzie.

Along with the Complaint, Plaintiff also filed a Certificate of Merit as to each of the Defendants, including Dr. Nahhas, certifying that an appropriate licensed professional has supplied a written statement concluding that the Defendants fell outside acceptable standards, which caused harm to the Plaintiff.

On June 10, 2019, Defendants filed Preliminary Objections to Plaintiffs Complaint. A Hearing on the matter was held on August 23, 2019.

DISCUSSION

Defendants raise two issues in their Preliminary Objections. First, Defendants argue that the Complaint fails to state a prima facie case of Negligence against Dr. Nahhas, who should therefore be removed from the Action. Second, Defendants argue that Paragraph 49(c) of the Complaint is extraordinarily vague and should be stricken.

Defendant's First Preliminary Objection is that the Complaint fails to state a prima facie case of Negligence against Dr. Nahhas.

Preliminary objections in the nature of a demurrer test the legal sufficiency of a plaintiff's complaint. *Feingold v. Hendrzak*, 15 A.3d 937,941 (Pa. Super. Ct. 2011) (citing *Haun v. Community Health Systems, Inc.*, 14 A.3d 120, 123 (Pa. Super. Ct. 2011)). "The standard to be used by the court in ruling on a demurrer is whether the complaint indicates on its face that the claim being made cannot be legally sustained." *Flurer v. Pocono Medical Center*, 15 Pa. D. & C. 4th 645, 648-49 (Monroe County 1992) (citing *County of Allegheny v. Commonwealth*, 490 A.2d 402,408 (Pa. 1985)). Before sustaining the demurrer, the court must determine that upon the facts averred it is certain that the law will not permit the recovery being sought. *Flurer* at 649 (citing *Kyle v. McNamara & Criste*, 487 A.2d 814, 816 (Pa. 1985)). In examining the complaint, the court must accept as true all well-pleaded, relevant, and material facts as well as all inferences fairly deducible from those facts, but not conclusions of law or unjustified inferences. *Flurer* at 649 (citing *County of Allegheny* at 408).

To prevail in a professional negligence action, a plaintiff must plead and prove the four elements of negligence:

- 1) the physician owed a duty to the patient;
- 2) the physician breached that duty;
- 3) the breach of duty was the proximate cause of, or a substantial factor in, bringing about the harm suffered by the patient; and
- 4) the damages suffered by the patient were a direct result of that harm.

Hatwood v. Hospital of the University of Pennsylvania, 55 A.3d 1229, 1241 (Pa. Super. Ct. 2012) (citing *Corrado v. Thomas Jefferson University Hospital*, 790 A.2d 1022, 1030 (Pa. Super. 2001)).

To establish the causation element in a professional negligence action, under the "increased-risk-of-harm" standard, a plaintiff "must introduce sufficient evidence that

the defendant's conduct increased the risk of the plaintiffs harm." Hatwood at 1242 (citing *Winschel v. Jain*, 925 A.2d 782, 788-789 (Pa.Super.2007)). Once the plaintiff introduces evidence that a defendant-physician's negligent acts or omissions increased the risk of the harm ultimately sustained by the plaintiff, it is the role of the jury to decide whether the physician's conduct was a substantial factor in bringing about the plaintiff's harm. *Id.*

Here, Plaintiff alleges in Paragraph 54 of the Complaint that Dr. Nahhas was negligent for various reasons. These include Dr. Nahhas allegedly failing to timely diagnose Plaintiffs emergency, failing to take timely action to treat Plaintiffs emergency, and failing to direct his staff to respond appropriately. Plaintiffs allegation that Dr. Nahhas failed to properly diagnose her condition in a timely manner appears to be disingenuous considering Plaintiff also alleges that Dr. Nahhas diagnosed Plaintiff properly as soon as he arrived at the hospital at 2:45 AM-only 15 minutes after he was called from his home.

However, Plaintiff also alleges that there was a lapse of time from 2:45 AM to 3:07 AM before Plaintiff was taken into an operating room, and it was not until 3:19 AM that the babies were delivered. Whether that period of time constitutes an untimely and negligent delay is not for this Court to decide at this stage in the proceedings, but would be a proper question to put to a jury.

Further, Plaintiffs Complaint raises the issue of whether Dr. Nahhas was negligent in not directing his staff to take proper action. This raises questions such as the degree to which Dr. Nahhas has control over his staff, and whether Dr. Nahhas properly prepared his staff for this type of emergency. These questions are also not for this Court to decide at this stage in the proceedings, but are questions of fact for a jury to determine.

Finally, Plaintiff includes a Certificate of Merit as to Dr. Nahhas, stating that an appropriate licensed professional supplied a written statement and that there is a basis to conclude that Dr. Nahhas's actions fell outside acceptable standards. This lends support that Plaintiff has at least established a *prima facie* case for negligence against Dr. Nahhas.

For these reasons, the Complaint properly raises allegations of professional negligence, and Defendant's First Preliminary Objection is overruled.

Defendant's Second Preliminary Objection is that Paragraph 49(c) of the Complaint is "extraordinarily vague," in violation of Pa.R.C.P. 1019(a). That Rule states that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form."

"Generally speaking, a pleading should be sufficiently specific so as to enable defendant[s] to prepare [their] defense." *Commonwealth, Environmental Pollution Strike Force v. City of Jeannette*, 305 A.2d 774, 776 (Pa. Commw. Ct. 1973). The purpose of a preliminary objection raising an issue of specificity is "to ensure that an adverse party's ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of [the pleader's] suit." *Stilp v. Commonwealth*, 910 A.2d 775,786 (Pa. Commw. Ct. 2006) (citing *Paz v. Commonwealth, Department of Corrections*, 580 A.2d 452,456 (Pa. Commw. Ct. 1990)). However:

[I]t is not enough to focus upon one portion of the complaint. Rather, in determining whether a particular paragraph in a complaint has been stated with the

necessary specificity, such paragraph must be read in context with all other allegations in that complaint. Only then can the court determine whether the defendant has been put upon adequate notice of the claim against which [the defendant] must defend.

Grossman v. Barke, 868 A.2d 561,569 (Pa. Super. Ct. 2005) (citing Yacoub v. Lehigh Valley Medical Associates, P.C., 805 A.2d, 579,589 (Pa. Super. Ct. 2002)).

At issue here is Paragraph 49(c) of the Complaint. This Paragraph is included in Count II, which is a Survival Action-Professional Negligence Claim against Defendants Uniontown Hospital, Fayette Regional Health System, and UPMC. The relevant section of the Paragraph that Defendants challenge is "extraordinarily vague" states:

49. Plaintiffs and decedent's injuries and damages were a direct and proximate result of the negligent, careless, improper and inadequate care provided by the licensed medical providers, nurses and other staff at Uniontown Hospital, themselves and through their acts, commissions or omissions as agents, ostensible agents, servants, workers and employees acting within the scope of their agency, ostensible agency, servitude, workmanship and employment with defendants Uniontown Hospital, [Fayette Regional Health System] and UPMC, as though those defendants performed the acts or omissions themselves, and were a substantial factor in bringing about an increased risk of harm to plaintiff and decedent in the following particulars:

...
c. In failing to properly recognize and communicate the emergent nature of plaintiffs and decedent's conditions;

Here, Plaintiffs Complaint in Professional Negligence against the Defendants stems from Plaintiffs allegations that the Defendants did not act quickly enough in getting Plaintiff from the Emergency Department to the Operating Room for her emergency C-Section. Paragraph 49(c) states that Defendants "fail[ed] to properly recognize and communicate the emergent nature" of Plaintiffs condition. The statement appears to address the duty and breach elements of negligence-that the hospital staff had a duty to recognize Plaintiffs emergency and communicate her emergency effectively, and that the hospital failed to perform those duties. Paragraph 49(c) is not extraordinarily vague, and Defendant's Second Preliminary Objection is therefore without merit.

CONCLUSION

For the foregoing reasons, Defendants' Preliminary Objections are overruled. Defendants have the right to plead over within 20 days after notice of this Court's Order.

ORDER

AND NOW, this 22nd day of October, 2019, in consideration of Defendants' Preliminary Objections to Plaintiffs Complaint, and after a hearing on the matter, it is ORDERED and DIRECTED that the Preliminary Objections are OVERRULED. In accordance with Pa.R.C.P. 1028(d), Defendants have the right to plead over within 20 days after notice of this Order.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Prothonotary



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5 substantive/1 ethics
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5 substantive/1 ethics
- February 11 **A View From the Workers' Comp Bench**
9:00 a.m. to 11:00 a.m.
2 substantive
- March 4 **Civil Litigation Update**
9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics
- March 12 **Hot Topics in Oil & Gas Law**
9:00 a.m. to 12:00 p.m.
3 substantive
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9:00 a.m. to 4:15 p.m.
5 substantive/1 ethics



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