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PHILLIPS ET AL VS. GETTYSBURG HOSPITAL ET AL

This opinion is continued from the last issue (November 2, 2012).

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. § 311), there was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania an Application for Registration of Fictitious Name of AUTUMN RIDGE GUITAR SHOP, with the address of the principal place of business being 2316 Harney Road, Littlestown, PA 17340. The name and address of the person who is a party to said registration is: Quinn Gilly, 2316 Harney Road, Littlestown, PA 17340.

Puhl, Eastman & Thrasher
Attorneys

11/9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about September 1, 2012 for the incorporation of THE DANCE ACADEMY, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of dance instruction, together with any legal function of a corporation under Pennsylvania law. The initial registered office of the corporation is 16 Centennial Avenue, Second Floor, Hanover, PA 17331.

11/9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about September 1, 2012 for the incorporation of 100 PACHECO, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of pizza sales-restaurant, together with any legal function of a corporation under Pennsylvania law. The initial registered office of the corporation is 105 Bourbon Trail, Fairfield, PA 17320.

11/9

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about May 1, 2012 for the incorporation of SAI 108 CORPORATION under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of convenience store retail sales, together with any legal function of a corporation under Pennsylvania law. The initial registered office of the corporation is 400 Harrisburg Street, Gettysburg, PA 17325.

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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on or about October 10, 2012 for the incorporation of SAI KRUPA USA, INC. under the Pennsylvania Business Corporation Law of 1988. The corporation shall engage in the business of a grocery store, together with any legal function of a corporation under Pennsylvania law. The initial registered office of the corporation is 100 West Main Street, Fairfield, PA 17320.

11/9

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on October 1, 2012 for PARADISE PRODUCTIONS BIZ, located at 150 Pin Oak Place, McSherrystown, PA 17344. The name and address of each individual interested in the business is Daniele Lee Paredes, 150 Pin Oak Place, McSherrystown, PA 17344. This was filed in accordance with 54 Pa. C.S.A. § 311.

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OMNIBUS MOTION IN LIMINE
FILED ON BEHALF OF
CARDIAC DIAGNOSTIC ASSOCIATES, P.C.;
C. EDWIN MARTIN, M.D.; AND
CALVIN E. PLITT, M.D.

On behalf of all Defendants, Defendants Cardiac Diagnostic Associates, P.C.; C. Edwin Martin, M.D.; and Calvin E. Plitt, M.D. (collectively Associates), challenge the admissibility of various aspects of Plaintiffs' experts' opinions. Associates initially challenge the admissibility of the opinions of Gary Steinberg, F.A.C.H.E., who, as previously mentioned, is being offered as an expert by Plaintiffs in the area of hospital administration. Associates argue Steinberg improperly offers opinions on the standard of care of medical professionals despite lacking the appropriate credentials necessary to support such an opinion. Plaintiffs concede Steinberg is being called solely as an expert in the area of hospital administration and is not qualified to offer opinions on standard of care for medical providers. Plaintiffs clarify, however, that Steinberg's opinions are admissible as they relate to areas within his expertise.

In-depth discussion of this challenge is not necessary as the portions of Steinberg's opinions questioned by Associates have been precluded on the reasoning set forth by this Court in addressing Hospital's Motion in Limine and are therefore moot. Even had these items not been precluded on the basis of Hospital's Motion in Limine, the evidence is not properly admissible as the challenged opinions do not relate to Hospital administration policy or procedure, but rather speak to the standard of care of the treating physicians. Pursuant to § 1303.512 of the Medical Care Availability and Reduction of Error Act ("MCARE Act")⁹, Steinberg does not possess appropriate qualifications to offer opinion on the subjects engulfed in the challenged sections of his opinion. Accordingly, Associates' Motion in Limine is well placed.

Associates next seek to challenge the portions of the opinion of Forensic Pathologist Dr. Cyril Wecht, M.D., J.D., which Associates claim are beyond his expertise. Specifically, Associates challenge Wecht's opinion that Sova's underlying cardiac condition was not fully appreciated nor treated in an efficient, timely, and appropriate

⁹ 40 P.S. § 1301.101 *et seq.*

fashion. Associates also challenge Wecht's comments concerning delay in preparation of the cardiologist's discharge summary and his conclusion that Sova was within minutes of death at the time her transfer by ambulance from Gettysburg Hospital to York Hospital was initiated. Plaintiffs counter that Wecht is qualified as a pathologist and his opinions fall within the purview of those qualifications.

It is difficult to interpret Wecht's opinion that Sova's underlying cardiac condition was not fully appreciated or properly treated by attending physicians as being anything other than an opinion as to the applicable standard of care. Although, historically, Pennsylvania courts have recognized the standard for qualification of an expert witness to be a liberal one, *Rauch v. Mike-Myer*, 783 A.2d 815, 821 (Pa. Super. 2001), in the area of medical malpractice actions, legislative adoption of the MCARE Act has implemented a more rigorous evaluation of a medical expert's qualifications. At a minimum, an expert testifying on a medical matter must possess an unrestricted physician's license to practice medicine and be actively engaged in or retired within the previous five years from active practice or teaching. 40 P.S. § 1303.512(b). More specifically, before an expert may testify on the applicable standard of care, the expert must practice in the same subspecialty as the defendant physician or in a subspecialty with a substantially similar standard for the specific care at issue. 40 P.S. § 1303.512(c). As there is no dispute that Wecht does not, nor has ever, practiced clinical medicine, cardiology, or internal medicine, he may not properly render an opinion on the applicable standard of care for treatment Sova received. Accordingly, Associates' Motion in Limine on this issue will be granted.

While Wecht's comments in regard to the delay in preparation of the cardiologist's discharge summary does not directly relate to an applicable standard of care, it implicates deficiencies in the surgeon's preparation of the report and/or Hospital policy and procedure. Whether or not there was a delay in the preparation of a discharge summary is, if relevant, a factual question quite capable of determination by the jury without a need for expert opinion. Therefore, if this evidence has any relevance and is offered to impute the professionalism of the cardiologist, Wecht's opinion on this subject is improper as it is cumulative and potentially argumentative. On the other hand, if Wecht's opinion is being offered to highlight a breakdown in

Hospital policy or procedure, the same is equally improper as Wecht does not possess proper qualifications as an expert in this area.

Although this Court is sympathetic to Plaintiffs' argument that Defendants are attempting to surgically define the manner in which Wecht expresses his opinions, a casual review of Wecht's opinion and supplemental opinion reveals numerous references to the alleged delay by the cardiologist in preparation of the discharge summary. Yet, Plaintiffs have not, nor likely are able to, express any theory as to how delay in preparation of the discharge summary had any part in causing Sova's death. Although, for the sake of argument, it is conceivable the cardiologist's delay in preparation of the report may have relevance depending on the nature of the testimony at trial, permitting an expert to highlight the fact serves no purpose other than to potentially cause confusion for the jury by improperly attempting to paint the surgeon as derelict in his duties. For this reason, Associates' PreTrial Motion in Limine on this subject is granted.

Associates' final challenge to Wecht's opinion relates to his conclusion that Sova was within minutes of death at the time of her ambulance transfer. Associates' objection in this area appears to be based on the claim that the opinion is speculative. As with other issues raised by Associates, this issue is potentially rendered moot by this Court's rulings on Hospital's Motion in Limine. Nevertheless, for the reasons set forth below, the Court will reserve ruling on Associates' speculation objection until testimony is heard during the course of trial.

In response to Hospital's Motion in Limine, this Court has stricken Plaintiffs' cause of action premised on Hospital's alleged negligence in failing to have appropriate transportation resources available for transferring Sova from Gettysburg Hospital to York Hospital. Specifically, this Court determined that since Plaintiffs' experts opined Sova was dead or near death at the time transportation was initiated, and that the mode of transportation did not cause her death, Plaintiffs' cause of action related to inadequate transportation resources must fail as Plaintiffs lacked expert testimony establishing that the negligence, if any, was a causative factor in Sova's death. Thus, Wecht's opinion in this area is irrelevant to Plaintiffs' case in chief as it does not relate to the surviving causes of action. Yet, it is foreseeable that the several Defendants will attempt to avoid responsibility by alleging Sova's death was not the result of their negligence but rather was caused by

the unexpected accident in which the ambulance was involved during transport. In the event such a defense is pursued, Wecht's opinion may take on added importance. Currently, this Court does not have before it sufficient information as to the full context in which the testimony may be presented, nor an understanding of the entire basis upon which the opinion is based. Accordingly, Defendants' pretrial request for preclusion on this topic is denied without prejudice to the several Defendants raising the same at trial. If the testimony is relevant, once the Court hears the foundation for the opinion, the submission will be addressed.

Associates also challenge the proffered testimony of Dr. Jerome Itzkoff. Associates allege a number of Itzkoff's opinions relate to matters at variance with allegations in the Complaint. On the other hand, Plaintiffs once again point out that the law requires a liberal reading of the Complaint in order for the cause of action to be resolved on the merits rather than technicalities. Plaintiffs suggest such a reading reveals Itzkoff's challenged opinions are reasonably encompassed by the allegations set forth in the Complaint.

In *Reynolds v. Thomas Jefferson University Hospital*, 676 A.2d 1205 (Pa. Super. 1996), our Superior Court succinctly discussed the law of variance as follows:

A variance denotes difference and in reference to legal proceedings it refers to a disagreement or difference between the allegations made and the proof shown, not in a sense that there is a failure of proof, but that, contrary to the fundamental principle of good pleading and practice, the proof fails to materially correspond to the allegations.

A material variance consists of a departure in the evidence from the issues on which a cause of action must depend.

Id. at 1209. Although Pennsylvania courts have held a variance is not material if the alleged discrepancy does not cause prejudice, prejudice exists where a party introduces a new cause of action after the statute of limitations has run. *Id.* at 1210. A new cause of action does not exist if the amendment to the complaint merely adds to or amplifies the original complaint. *Wilson v. Howard Johnson Restaurant*, 219 A.2d 676, 679 (Pa. 1966). "A new cause of action does arise, however, if the amendment proposes a different theory or a different kind of negligence than the one previously raised or if the operative facts supporting the claim are changed." *Reynolds*, 676 A.2d at 1210 (citation omitted).

Instantly, the applicable statute of limitations has clearly expired. As such, if the opinions by Itzkoff propose a different theory than those expressed in the Complaint, or if the operative facts supporting the theory are changed, then the opinions are improper.

Associates challenge three aspects of Itzkoff's opinion as being in variance with the allegations in the Complaint: (1) Dr. Plitt's failure to follow Sova's course of treatment and provide a follow-up diagnosis, (2) Dr. Plitt's failure to treat Sova with appropriate antiplatelet therapy and anticoagulation, and (3) Dr. Martin's request of a medical transfer after Sova was already clinically dead. As topic three has been extensively discussed above, and will be precluded at trial, it is necessary only to specifically address the first two topics.

Allegations in the Complaint alleging negligence on the part of Dr. Plitt are found at paragraph 53 of the Complaint.¹⁰ Even under a liberal reading of those allegations, it cannot reasonably be concluded that the Complaint alleges either a duty, or a breach of a duty by Plitt, to provide follow-up care or treatment to Sova beyond his initial consultation which was conducted at the request of Sova's treating physician. All of the allegations in the Complaint are limited in context to Plitt's initial examination and evaluation of Sova. Expanding these allegations to include negligence on the part of Plitt to properly provide follow-up care introduces a new cause of action

¹⁰ Paragraph 53 of the Complaint reads as follows:

53. Plaintiffs contend that the damages and/or injuries, as hereinafter stated, suffered by Plaintiffs and the Deceased, are the direct and proximate result of the negligent and/or careless conduct of Dr. Plitt, in the following particulars:
- 53.1. In failing to properly review the medical reports and/or records in his care and treatment of the Deceased;
 - 53.2. In failing to request and secure medical records from the Deceased family physician prior to diagnosis and treatment;
 - 53.3. In failing to provide a proper and timely "working diagnosis" relative to the Deceased's condition/complaints;
 - 53.4. In failing to authorize, schedule and do medically necessary non-invasive testing procedures, to include, a stress test, echocardiogram, a nuclear Scan, CT, CT angiogram, MRI and/or doppler study relative to the Deceased's conditions and complaint;
 - 53.5. In failing to take into consideration the Deceased's smoking and family history with regard to the establishment of a "working diagnosis";
 - 53.6. In failing to properly and timely assess and diagnose the Deceased's medical condition during the relevant time frame;
 - 53.7. In failing to take into consideration the Deceased's current complaints with regard to the establishment of a "working diagnosis."

as it is based upon a theory and depends upon operative facts different from those alleged in the Complaint.

Similarly, Itzkoff's opinion that Plitt failed to provide Sova appropriate treatment raises a theory of liability different than those raised in the Complaint. A fair reading of the allegations in the Complaint reveals a focus on Plitt's alleged negligence as failing to properly review medical records, to conduct proper testing, and to consider appropriate information in developing a working diagnosis of Sova's condition. While one may reasonably conclude a proper diagnosis is critical to effective treatment, it is also beyond reproach that "diagnosis" of a condition is different than a "treatment" of that condition.¹¹ Thus, while evidence supporting an allegation that Plitt's improper diagnosis resulted in a lack of treatment which ultimately resulted in Sova's demise is proper, an allegation that Plitt failed to render appropriate treatment is beyond the scope of Plaintiffs' Complaint and will be precluded.

Associates also challenge other aspects of Itzkoff's opinion as lacking the degree of certainty necessary for admissibility at trial. Specifically, Associates challenge numerous references in Itzkoff's opinion letters that speak in terms of possibilities or opine a result "may have" been different. Plaintiffs counter that Associates take the specific language out of context and a fair reading of the reports reveals all of Itzkoff's opinions are expressed to a reasonable degree of medical certainty.

It is hornbook law that in order for an expert's opinion to be admissible at trial, the opinion must be expressed to a reasonable degree of professional certainty. See *McMahon v. Young*, 276 A.2d 534, 535 (Pa. 1971). In determining whether testimony meets this standard, it should be reviewed in its entirety without applying a rigid standard requiring precise language enunciating the legal standard to be utilized by the witness. *Eaddy v. Hamaty*, 694 A.2d 639, 642 (Pa. Super. 1997) (citation omitted).

Reading Itzkoff's reports through the lens of appellate instruction leads to a denial of Associates' PreTrial Motion in Limine. While it

¹¹ *Mosby's Medical Dictionary*, 6th ed., defines "diagnosis" as the "identification of a disease or condition by a scientific evaluation of physical signs, symptoms, history, laboratory test results, and procedures." That same resource defines "treatment" as "the care and management of a patient to combat, ameliorate, or prevent a disease, disorder, or injury."

is true that in certain portions of his reports, Itzkoff's language is less than certain, elsewhere, references to the same topic express much clearer certainty. Ultimately, this issue is best reserved for trial as Itzkoff's opinions are subject to Plaintiffs' specific inquiries and the rigors of Defendants' cross-examination. To the extent his opinions are based on something less than a reasonable degree of medical certainty, they will be stricken. It is, however, premature for this Court to strike Itzkoff's testimony based upon a myopic reading of his written report.

Associates further seek to preclude certain testimony of Dr. Ellis McCullough. McCullough is a non-defendant hospitalist who participated in Sova's care at Hospital. During her deposition, McCullough commented she was uncomfortable with the use of the drug flecainide and explained her reasoning. In sharing her comments, McCullough cautioned she is not familiar with flecainide and would defer to a cardiologist as to whether the drug should be properly prescribed. Associates object to McCullough's testimony concerning her reasoning for not using flecainide alleging McCullough is not qualified to offer opinion on a medication with which she is unfamiliar. Associates further argue use of this statement is misleading as it implies the drug is unsafe. Plaintiffs counter McCullough is not being offered as an expert witness, but rather as a fact witness. As such, Plaintiffs argue her comment falls within the proper realm of her testimony.

Certainly, McCullough may testify as to the factual background of her treatment of Sova. Such a dialogue, however, does not require discussion as to why she prefers one medication over another. When the conversation crosses into the realm of the benefits, risks, and effects of a particular medication, an expert opinion is being solicited. Accordingly, Hospital's Motion in Limine to preclude McCullough's commentary on the propriety of the use of flecainide is granted. By way of clarification, this ruling does not prohibit McCullough's testimony on actual treatment rendered, but rather precludes opinion as to the propriety of the use of flecainide. Additionally, as the testimony is precluded at trial, it may not be bootstrapped into evidence under the guise of forming a foundation for an expert opinion. See *Viener v. Jacobs*, 834 A.2d 546, 558 (Pa. Super. 2003).

Associates' final challenge seeks to preclude a letter dated January 30, 2007 from the patient safety officer at Gettysburg Hospital opining that Sová "developed complications including evidence of a tear of one of the major blood vessels of the heart." Associates seek to preclude this statement on the basis that it constitutes impermissible hearsay and is a gross misstatement of fact as even Plaintiffs' experts agree Sová did not suffer from a tear of one of the major blood vessels of her heart. Plaintiffs argue that the patient safety officer is an employee of Hospital and, therefore, the correspondence is not hearsay as it is an admission by a party opponent. Plaintiffs offer no comment on Associates' claim of blatant misrepresentation.

It is not necessary to address Associates' hearsay objection as the other basis for preclusion of the correspondence has merit. Essentially, Associates claim admission of this testimony is highly prejudicial and a distortion of fact. Indeed, Plaintiffs' expert reports clearly refute the factual claim in the correspondence. Moreover, Plaintiffs' Complaint has not alleged a cause of action against any of the Defendants based upon a factual background which describes a negligent tear of a major blood vessel of decedent's heart. Thus, this correspondence lacks any relevance and is potentially highly prejudicial as it will confuse the jury and imply a negligent act which cannot be factually supported. Moreover, Plaintiffs' experts have full opportunity to opine as to the cause of Sová's death. The well-intended, but factually incorrect, statement of Hospital's patient safety officer adds nothing to that discussion. Accordingly, Associates' motion on this issue will be granted.¹²

PLAINTIFFS' MOTION TO ALLOW EXPERT TESTIMONY UNDER SECTION 512 OF THE MCARE ACT

The final matter before the Court is Plaintiffs' motion seeking the qualification of Dr. Cyril Wecht, M.D., J.D., as an expert in the fields of cardiology and internal medicine. Although conceding Wecht is neither board certified nor actively practicing these specialties, Plaintiffs seek waiver of the qualification requirements of the MCARE Act, claiming Wecht possesses sufficient training,

¹² Even if Plaintiffs are able to establish factual support for the conclusion that Sová suffered from a tear of one of the major blood vessels of her heart, the same remains irrelevant as it constitutes an improper variance from the allegations in the Complaint after the statute of limitations has expired. *Reynolds*, 676 A.2d at 1209-10.

experience, and knowledge to provide the testimony. All Defendants object to Wecht's qualifications as an expert in the subject fields, alleging that his qualifications, while extensive in the field of pathology, are insufficient to permit waiver under the MCARE Act.

With the passage of the MCARE Act, the general assembly created a more stringent standard for admissibility of medical expert testimony in a medical malpractice action by the imposition of specific additional requirements not present in the common law standard. *Gbur v. Golio*, 963 A.2d 443, 452 (Pa. 2009). Recently, in *Vicari v. Spiegel*, 989 A.2d 1277 (Pa. 2010), the Supreme Court succinctly summarized the threshold requirements that must be satisfied under the MCARE Act before an expert is properly qualified to render an opinion:

Thus, pursuant to Section 512 [of the MCARE Act], to testify on a medical matter in a medical malpractice action against a defendant physician, an expert witness must be a **licensed and active**, or a recently retired, **physician**. In addition, in order to render an opinion as to the applicable standard of care, the expert witness must be **substantially familiar** with the **standard of care for the specific care in question**. Furthermore, the expert witness must practice in the **same subspecialty** as the defendant physician, **or** in a subspecialty with a **substantially similar standard of care for the specific care at issue** ("same specialty requirement"). Finally, if the defendant physician is board certified, the expert witness must be **board certified by the same or similar board** ("same board certification requirement"). Importantly, the expert witness must meet **all** of these statutory requirements in order to be competent to testify. However, there is an **exception** to the same specialty and same board certification requirements: if a court finds that an expert witness has sufficient **training, experience, and knowledge** to testify as to the applicable standard of care, as a result of **active involvement** in the defendant physician's subspecialty or **in a related field of medicine**, then the court may waive the same specialty and same board certification requirements.

Id. at 1281 (emphasis in original).

Under this instruction, in order for waiver to be appropriate, it is imperative that the expert witness have sufficient training, experience, and knowledge which derives from active involvement in the defendant physician's subspecialty or a related field of medicine.

Clearly, Wecht is not an active practitioner of either internal medicine or cardiology. Rather, his curriculum vitae reveals he has spent his entire career practicing in the field of pathology. Undoubtedly, that experience has permitted familiarity with numerous medical specialties. Yet, it can hardly be claimed that pathology is a related field of medicine to the clinical practice of cardiology or internal medicine. Indeed, in recognition that he is not qualified in the clinical practice of specialized medicine, Wecht has expressed a self-imposed policy not to proffer testimony regarding medical matters outside his area of specialization. The Court concurs with this self-imposed restriction and denies Plaintiffs' request that Wecht be qualified as an expert in the fields of either cardiology or internal medicine. Specifically, Wecht may not offer opinion as to the standard of care as it relates to those subspecialties.¹³ As the Court is addressing this matter pretrial, out of an abundance of caution, Plaintiffs will be granted thirty (30) days from the date of this Order within which to supplement the record concerning Wecht's qualifications as they relate to the subspecialties of cardiology and internal medicine.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 9th day of May 2012, for the reasons set forth in the attached Opinion, it is hereby Ordered:

- I. The Motion for Partial Summary Judgment filed on behalf of Gettysburg Hospital ("Hospital") is granted in part and denied in part. The Motion is granted to the extent that summary judgment is entered in favor of Hospital and against the Plaintiffs on: (1) Plaintiffs' claim for vicarious liability based upon alleged failure to obtain informed consent and (2) Plaintiffs' claim of corporate negligence related to Hospital's

¹³ Hospital further objects to Wecht offering opinion as to Hospital policy and procedure. Since it does not appear that he has been proffered as an expert on that subject, the Court needs not address the issue. However, a cursory review of his curriculum vitae fails to reveal any information that would permit his qualification as an expert in the field of hospital administration and thus qualified to render such an opinion.

alleged failures to have adequate equipment and facilities available for cardiac catheterizations and a properly equipped helicopter available for emergency transport. Hospital's Motion for Partial Summary Judgment on Plaintiffs' claim of corporate negligence for failing to have policy in place to ensure appropriate information is provided to a treating surgeon is denied.

II. The Motion in Limine of Gettysburg Hospital filed on behalf of all Defendants is granted in part and denied in part. The Motion is granted to the extent that the following evidence is precluded at trial:

- A. The expert opinion of Gary Steinberg, F.A.C.H.E. related to (1) the lack of a quality assurance plan requiring definitive diagnosis, (2) lack of policy requiring written consultation reports from each consulting specialist, (3) Hospital's alleged failure to provide administrative oversight to ensure only low-risk catheterization procedures were conducted at Hospital, (4) Hospital's alleged administrative failure in failing to meet with Fawn Sova's family, and (5) Defendants' alleged ethical breach in arranging transport of Ms. Sova from Gettysburg Hospital to York Hospital;
- B. The testimony of Lillian Phillips related to the Defendants' alleged failure to conduct diagnostic testing and properly obtain informed consent; and
- C. The expert opinion of Gary Steinberg, F.A.C.H.E. related to a breach of the standard of care regarding informed consent.

The Motion is denied to the extent it seeks to preclude cumulative evidence. It is further denied as it relates to allegations concerning claims of malpractice against unnamed physicians as Plaintiffs concede the claims of medical negligence relate only to named Defendants. The Motion as it relates to the testimony of Plaintiffs' private investigator, Charles Tuer, is reserved until trial testimony is presented.

- III. The Motion in Limine filed on behalf of David Kamsler, M.D. and Gettysburg Internal Medicine Associates, Inc. is denied.
- IV. The Motion in Limine of Cardiac Diagnostic Associates, P.C.; C. Edwin Martin, M.D.; and Calvin E. Plitt, M.D. filed on behalf of all Defendants is granted in part and denied in part.

The Motion is granted as follows:

- A. Forensic Pathologist Dr. Cyril Wecht, M.D., J.D., is precluded from offering opinion related to the Defendants' failure to appreciate the medical condition at issue in a timely fashion and also in regard to any opinion concerning delay in preparation of the cardiologist's discharge summary;
- B. Dr. Jerome Itzkoff is precluded from offering opinion as to: (1) Dr. Plitt's failure to follow Ms. Sova's course of treatment, (2) Dr. Plitt's failure to treat Ms. Sova appropriately, and (3) the conduct of Dr. Martin in requesting medical transfer from Gettysburg Hospital to York Hospital;
- C. The testimony of Dr. Ellis McCullough concerning her reasoning for not using flecainide is precluded at trial; and
- D. The correspondence dated January 30, 2007 is precluded at trial.

The Motion is denied as follows: (1) Dr. Wecht's opinion concerning time of death may be admissible at trial subject to the limitations set forth in this Court's attached Opinion and (2) Dr. Itzkoff's opinion based upon a lack of a reasonable degree of medical certainty is not precluded pretrial subject to Defendants reserving the right to renew the objection at the time of trial.

- V. Plaintiffs' Motion to permit Dr. Wecht to testify as an expert in the fields of cardiology and internal medicine is denied. Plaintiffs, however, are granted thirty (30) days from the date of this Order within which to supplement the record as to Dr. Wecht's qualifications.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF PATRICIA A. NEUGARTH BLACK, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Administrator: Eileen N. Banaszewski, 1148 Gypsum Drive, Hampstead, MD 21074

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN M. CARBAUGH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Anthony Laughman, 1210 Westminster Avenue, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

ESTATE OF MIRIAM L. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: John E. Miller, c/o Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF CHARLES STOCKHAM a/k/a CHARLES EDWARD STOCKHAM, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Todd C. Racey, 2636 Victorian Drive, Dover, PA 17315

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF THELMA O. BOYD, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Joe D. Boyd, 128 West King Street, Littlestown, PA 17340; Constance B. Bankert, 1528 East Mayberry Road, Westminster, MD 21158

Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPH W. CLABAUGH a/k/a JOSEPH WILLIAM CLABAUGH, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Mary E. Reiter, 5076 Carrollton Drive, Harrisburg, PA 17112

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF DOROTHY M. DEVINE a/k/a DOROTHY MARY DEVINE, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executrix: Georgia A. Becker, 910D Hanover Street, New Oxford, PA 17350

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF MARY G. HEISER, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executor: Edward W. Heiser Jr., 62 Weikert Road, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RUTH C. MALBON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Elizabeth Richardson Viti, 117 Springs Avenue, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANGELA MARIE RIGBY, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

William E. Rigby, 4950 Fairfield Road, Fairfield, PA 17320

Attorney: David K. James III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRED A. S. SCOTT a/k/a FRED A. SCOTT, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

Executrix: Margaret I. Scott, 10 South Brian Hollow, #95, Houston, TX 77027

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KENNETH E. STEVENS SR., DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Adam Gebhart, 3531 Carlisle Road, Gardeners, PA 17324

Attorney: John C. Zepp III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF JANET R. THOMPSON, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executors: Lee S. Thompson, 11534 Sipes Mill Road, Harrisonville, PA 17228; Laura A. Koontz, 1658 Deer Ford Way, York, PA 17408; Raymond Jay Thompson, 70 Sayber Trail, Orrtanna, PA 17353

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF MARION S. BLACK, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Jessica J. Black, 34 West Middle Street, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF CLYDE W. CROUSE, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrix: Jayme Hull, 301 Tinnan Avenue, Franklin, TN 37067

ESTATE OF DONALD KENT DAVIS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administratrix c.t.a.: Marian E. Davis, 141 Barlow Street, Gettysburg, PA 17325

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

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THIRD PUBLICATION (CONTINUED)

ESTATE OF SUSAN A. ELLIS, DEC'D

Late of Reading Township, Adams
County, Pennsylvania

Executrix: Stacie S. Burnside, c/o
Sharon E. Myers, Esq., CGA Law
Firm, PC, 135 North George Street,
York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA
Law Firm, PC, 135 North George
Street, York, PA 17401

ESTATE OF JOSEPH A. SCARSELLETTA,
DEC'D

Late of the Borough of Bonneauville,
Adams County, Pennsylvania

Executor: Layne Scarselletta, c/o
Daniel C. Herr, Esq., Herr & Low,
P.C., 234 North Duke Street, P.O.
Box 1533, Lancaster, PA 17608

Attorney: Daniel C. Herr, Esq., Herr &
Low, P.C., 234 North Duke Street,
P.O. Box 1533, Lancaster, PA 17608

ESTATE OF IDALIA M. SCHAEFFER,
DEC'D

Late of Tyrone Township, Adams
County, Pennsylvania

Executrix: Isabel C. Lankford, 290-D
Peach Glen-Idaville Road, Gardners,
PA 17324

Attorney: John R. Zonarich, Esq.,
SkarlatosZonarich, LLC, 17 South
Second Street, 6th Floor, Harrisburg,
PA 17101

ESTATE OF FLORENCE L. SMITH,
DEC'D

Late of Conewago Township, Adams
County, Pennsylvania

Executrices: Rita M. Graft, 128 South
Street, McSherrytown, PA 17344;
Denise Graft Zinn, 731 Edgegrove
Road, Hanover, PA 17331

Attorney: Ronald J. Hagarman, Esq.,
110 Baltimore Street, Gettysburg,
PA 17325