

00 JJD-CD
CONNIE ELLIS -vs- CIGARFITTER HOSPITAL et al

①
LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

② CONNIE ELLIS
321 1/2 Lafayette Street
Bristol, PA 19007

vs.

③ CLEARFIELD HOSPITAL
809 Turnpike Avenue
Clearfield, PA 16830

and

④ PHILIP J. AYCOCK, M.D.
C/O Clearfield Hospital
809 Turnpike Avenue
Clearfield, PA 16830

: COURT OF COMMON PLEAS of
: CLEARFIELD COUNTY, PA

: TERM:

: NO: 00-383-CO

PRAECLPPE

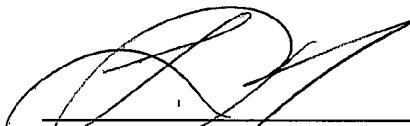
TO THE PROTHONOTARY:

Kindly issue Writ of Summons with reference to the above captioned matter.

FILED

MAR 28 2000

William A. Shaw
Prothonotary


LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

FILED

3687

MAR 28 2007

Willie S. Gatty, Pd

William A. Shaw

Probationary

Pd \$80.00

3 Writs Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

CONNIE ELLIS,

Plaintiff(s)

vs.

CLEARFIELD HOSPITAL,

and

PHILIP J. AYCOCK, M.D.

Defendant(s)

To the above named Defendant(s) you are hereby notified
that the above named Plaintiff(s), has/have commenced a Civil Action
against you.

Date March 28, 2000



William A. Shaw, Prothonotary

Issuing Attorney:

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,

CIVIL DIVISION

Plaintiff,

No. 00-383-CD

vs.

Code:

CLEARFIELD HOSPITAL and
PHILIP J. AYCOCK, M.D.,

Issue No:

Defendants.

PRAECEIPE FOR APPEARANCE

Filed on behalf of Philip J. Aycock,
M.D., Defendant

Counsel of Record for This Party:

Marian Patchen Schleppy, Esquire
PA I.D. # 72880

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

FILED

JURY TRIAL DEMANDED

APR 06 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,) CIVIL DIVISION
)
Plaintiff,) No. 00-383-CD
)
vs.)
)
CLEARFIELD HOSPITAL and)
PHILIP J. AYCOCK, M.D.,)
)
Defendants.)

PRAECIPE FOR APPEARANCE

To: William A. Shaw, Prothonotary and Clerk of Courts

Kindly enter our appearance on behalf of Philip J. Aycock, M.D., Defendant, in the above captioned case.

This case will be handled by Marian Patchen Schleppy, Esquire.

JURY TRIAL DEMANDED.

GACA MATIS BAUM & RIZZA

By: 

Marian Patchen Schleppy, Esquire

PA ID # # 72880

Attorneys for Philip J. Aycock, M.D.,
Defendant

300 Four PPG Place
Pittsburgh, PA 15222
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing
PRAECIPE FOR APPEARANCE upon all counsel of record by United States, First-class mail,
postage prepaid, this 3rd day of April, 2000.

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

GACA MATIS BAUM & RIZZA


Marian Patchen Schleppy, Esquire

FILED

APR 06 2000
Olli do no cc
William A. Shaw
Prothonotary
101

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,

CIVIL DIVISION

Plaintiff,

No. 00-383-CD

vs.

Code:

CLEARFIELD HOSPITAL and
PHILIP J. AYCOCK, M.D.,

Issue No:

Defendants.

PRAECIPE FOR RULE FOR
COMPLAINT

Filed on behalf of Philip J. Aycock,
M.D., Defendant

Counsel of Record for This Party:

Marian Patchen Schleppy, Esquire
PA I.D. # 72880

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

FILED

APR 01 2000

JURY TRIAL DEMANDED

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,) CIVIL DIVISION
)
 Plaintiff,) No. 00-383-CD
)
 VS.)
)
 CLEARFIELD HOSPITAL and)
 PHILIP J. AYCOCK, M.D.,)
)
 Defendants.)

PRAECIPE FOR RULE FOR COMPLAINT

To: William A. Shaw, Prothonotary and Clerk of Courts

Kindly issue a Rule on plaintiff to file her Complaint within twenty (20) days.

JURY TRIAL DEMANDED

GACA MATIS BAUM & RIZZA

By:



Marian Patchen Schleppy, Esquire
PA ID # 72880
Attorneys for Philip J. Aycock, M.D.,
Defendant

300 Four PPG Place
Pittsburgh, PA 15222
(412) 338-4750

FILE

APR 6 200

O/1107 | Rule to Atty Schleppy
William A. Shabot
Prothonotary

ES
JES

COPY

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

CONNIE ELLIS

Plaintiff

vs.

No. 00-383-CD

CLEARFIELD HOSPITAL and

PHILIP J. AYCOCK, M.D.,

Defendant

RULE TO FILE COMPLAINT

TO: Plaintiff(s): CONNIE ELLIS

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: April 6, 2000

LOUIS PODEL

(4)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELLIS, CONNIE
VS
CLEARFIELD HOSPITAL

00-383-CD

PRAECIPE & SUMMONS
SHERIFF RETURNS

NOW MARCH 29, 2000 AT 1:24 PM EST SERVED THE WITHIN PRAECIPE & SUMMONS ON CLEARFIELD HOSPITAL, DEFENDANT AT EMPLOYMENT 809 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO THERESA POLOCHECK, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW MARCH 29, 2000 AT 1:29 PM EST SERVED THE WITHIN PRAECIPE & SUMMONS ON PHILIP J. AYCOCK, M.D., DEFENDANT AT EMPLOYMENT C/O CLEARFIELD HOSPITAL, 809 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SUSAN VOKES, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

25.33 SHFF. HAWKINS PAID BY: ATTY.
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

7th DAY OF April 2000
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,

Chester A. Hawkins
by Maelyn Hamr

CHESTER A. HAWKINS
SHERIFF

FILED

APR 07 2000

William A. Shaw
Prothonotary *ESB*

COPY

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS
321 1/2 Lafayette Street
Bristol, PA 19007

: COURT OF COMMON PLEAS of
: CLEARFIELD COUNTY, PA

vs.

CLEARFIELD HOSPITAL
809 Turnpike Avenue
Clearfield, PA 16830

: TERM:

and

PHILIP J. AYCOCK, M.D.
C/O Clearfield Hospital
809 Turnpike Avenue
Clearfield, PA 16830

: NO: 00-383-00

PRAECIPE

TO THE PROTHONOTARY:

Kindly issue Writ of Summons with reference to the above captioned matter.

I hereby certify this to be a true
and accurate copy of the original
document filed in this office.

Mar. 12, 1980

LOUIS PODEL

LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

Attest.

William L. B.
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

COPY

CONNIE ELLIS,

Plaintiff(s)

vs.

CLEARFIELD HOSPITAL,

and

PHILIP J. AYCOCK, M.D.

Defendant(s)

To the above named Defendant(s) you are hereby notified
that the above named Plaintiff(s), has/have commenced a Civil Action
against you.

Date March 28, 2000



William A. Shaw, Prothonotary

Issuing Attorney:

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

(5)

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

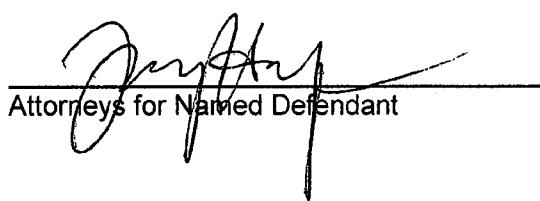
PRAECIPE FOR APPEARANCE

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 11TH DAY OF APRIL, 2000.



Attorneys for Named Defendant

FILED

APR 12 2000

William A. Shaw
Prothonotary

CONNIE ELLIS,

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA

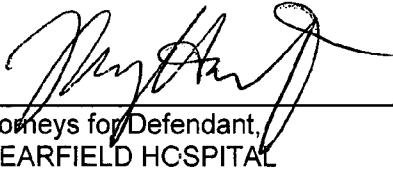
NO. 00 - 383 CD

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance as counsel of record for the Defendant, **CLEARFIELD**
HOSPITAL, in the above-captioned action.

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT



Attorneys for Defendant,
CLEARFIELD HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

FILED

APR 12 2000
M 10:26 NOCC
William A. Shaw
Prothonotary
[initials]

(6)

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

**PRAECIPE FOR ISSUANCE OF RULE TO
FILE A COMPLAINT**

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 11TH DAY OF APRIL, 2000.



Attorneys for Named Defendant

FILED

APR 12 2000

William A. Shaw
Prothonotary

CONNIE ELLIS,

Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

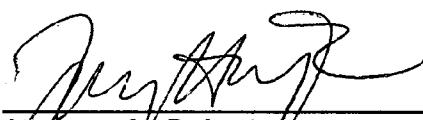
No. 00-383-CD

PRAECIPE FOR ISSUANCE OF RULE TO FILE COMPLAINT

TO: CAROL NEWMAN, PROTHONOTARY

Please enter a Rule upon the plaintiff, CONNIE ELLIS to file a Complaint in the
above-captioned action within twenty (20) days of the date of service of said Rule.

PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT



Attorneys for Defendant
CLEARFIELD HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

APR 12 2009

WILLIAM A. SHAW
Prothonotary

Atty Hartke
REB

COPY

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

CONNIE ELLIS

Plaintiff

vs.

No. 00-383-CD

CLEARFIELD HOSPITAL and

PHILIP J. AYCOCK, M.D.,

Defendant

RULE TO FILE COMPLAINT

TO: Plaintiff(s): CONNIE ELLIS

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: April 12, 2000

7

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

CERTIFICATE OF SERVICE/RULE

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 13TH DAY OF APRIL, 2000.



Attorneys for Named Defendant

FILED

APR 14 2000

William A. Shaw
Prothonotary

CONNIE ELLIS, Plaintiff : IN THE COURT OF COMMON PLEAS
vs. : OF CLEARFIELD COUNTY, PA
CLEARFIELD HOSPITAL and PHILIP J. AYCOCK, M.D., Defendants : NO. 00 - 383 CD

CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT

TO: WILLIAM A. SHAW, PROTHONOTARY

You are hereby notified that on the **13thth** day of **APRIL, 2000**, Defendant,
CLEARFIELD HOSPITAL, served a RULE upon the Plaintiff by mailing the original of
same via First Class Mail, postage prepaid, addressed to the plaintiff's counsel:

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

PFAFF, MCINTYRE, DUGAS, HARTYE &
SCHMITZ

Attorneys for Defendant,
CLEARFIELD HOSPITAL

**FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581**

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

CONNIE ELLIS

Plaintiff

vs.

No. 00-383-CD

CLEARFIELD HOSPITAL and

PHILIP J. AYCOCK, M.D.,

Defendant

RULE TO FILE COMPLAINT

TO: Plaintiff(s): CONNIE ELLIS

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw, Prothonotary

Dated: April 12, 2000

FILED

APR 14 2000

M 10 A.M. '00 CC

William A. Shaw

Prothonotary

ES
KES

8
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,) CIVIL DIVISION
)
 Plaintiff,) No. 00-383-CD
)
 vs.)
)
 CLEARFIELD HOSPITAL and)
 PHILIP J. AYCOCK, M.D.,)
)
 Defendants.)
)

CERTIFICATE OF SERVICE

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Please take notice that on the 12TH day of APRIL, 1999, we served a Rule upon Plaintiffs attorney, Louis Podel, Esquire.

GACA MATIS BAUM & RIZZA

By: 
Marian Patchen Schleppy, Esquire
PA ID # # 72880
Attorneys for Philip J. Aycock, M.D.,
Defendant

Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750

FILED

APR 20 2000

William A. Shaw
Prothonotary

SENDER: COMPLETE THIS SECTION**COMPLETE THIS SECTION ON DELIVERY**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James Portel 26
2401 PA Ave #1044
Philadelphia PA
19130

A. Received by (Please Print Clearly)

James

B. Date of Delivery

10/22/99

C. Signature

X James

D. Agent

Addressee

D. Is delivery address different from item 1?

 Yes No

If YES, enter delivery address below:

*James**Portel**26**1044**Philadelphia**PA**19130*

3. Service Type

 Certified Mail Express Mail Registered Mail Return Receipt for Merchandise Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

 Yes

2. Article Number (Copy from service label)

399 01/10/99 424

Domestic Return Receipt

102595-99-M-1789

PS Form 3811, July 1999

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

CONNIE ELLIS

Plaintiff

vs.

No. 00-383-CD

CLEARFIELD HOSPITAL and

PHILIP J. AYCOCK, M.D.,

Defendant

RULE TO FILE COMPLAINT

TO: Plaintiff(s): CONNIE ELLIS

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw, Prothonotary

Dated: April 6, 2000

FILED

APR 20 2000
SAC/DOCC
William A. Shaw
Prothonotary
FEB 24

(9)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONNIE ELLIS :
: :
VS. : :
: :
PHILIP J. AYCOCK and CLEARFIELD :
HOSPITAL : :
: NO: 00-383-CD

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims 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 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.

LAWYER REFERENCE SERVICE
One North 2nd Street
Clearfield, PA 16830
1-800-692-7375

FILED

MAY 22 2000

William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
PHILIP J. AYCOCK, M.D. and CLEARFIELD :
HOSPITAL : No: 00-383-CD

CIVIL ACTION

1. Plaintiff, CONNIE ELLIS, is an individual and a citizen of the Commonwealth of Pennsylvania, residing therein at 321 ½ Lafayette Street, Bristol, Pennsylvania.

2. Defendant, PHILIP H. AYCOCK, M.D. (hereinafter referred to as "AYCOCK") is now and at all times material hereto was a licensed physician maintaining an office for the practice of medicine at c/o Clearfield Hospital 809 Turnpike Avenue, Clearfield, Pennsylvania.

3. Defendant, CLEARFIELD HOSPITAL, (hereinafter referred to as "CLEARFIELD") is now and at all times material hereto was a hospital, a duly authorized legal entity authorized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania providing healthcare services with a place of business at 809 Turnpike Avenue, Clearfield, Pennsylvania.

4. At all times material hereto, defendant, CLEARFIELD, acted through its agents, servants, ostensible agents and/or employees including but not limited to defendant, AYCOCK, and was engaged in rendering professional medical care to the ill and injured including plaintiff, CONNIE ELLIS, and said agent, servants, ostensible agents and/or employees were acting within the course and scope of this employment and/or authority for and on the business of defendant, CLEARFIELD, and under its control or right to control.

5. At all times material hereto defendant, AYCOCK, was held out as an agent, servant, ostensible agent or employee of defendant, CLEARFIELD.

6. At all times material hereto defendant, AYCOCK, was an agent, servant and/or employee of defendant, CLEARFIELD, acting within the course and scope of his employment and/or authority for and on the business of defendant, CLEARFIELD, under its control or right to control.

7. Plaintiff came under the care of defendants, AYCOCK and CLEARFIELD, on or about August 4, 1997.

8. Each defendant owed plaintiff, CONNIE ELLIS, a duty to possess and exercise that degree of professional skill, care and knowledge ordinarily possessed and exercised by and/or required of practitioners within the health care profession or within his, her, its field of specialization.

9. Defendant, CLEARFIELD, owned plaintiff, CONNIE ELLIS, those corporate hospital duties described by the Pennsylvania Supreme Court in Thompson vs. Nason Hospital, 591 A.2d 703 (1991).

10. Defendant, CLEARFIELD, owed a duty to plaintiff to insure plaintiff's safety and well-being while she was a patient in defendant's hospital.

11. Plaintiff, CONNIE ELLIS, was referred to the defendant, AYCOCK, for treatment and evaluation of a rectovaginal fistula as well as for a right breast mass.

12. On August 25, 1997 defendant, AYCOCK, performed an operation at defendant, CLEARFIELD, to repair a rectovaginal fistula.

13. Plaintiff, CONNIE ELLIS, was not given any instructions on bowel preparation prior to this operation.

14. Plaintiff, CONNIE ELLIS, was not provided any dietary restrictions post-operatively.

15. Shortly after the surgery plaintiff, CONNIE ELLIS, had a bowel movement which disrupted the surgical repair.

16. Plaintiff, CONNIE ELLIS, returned to defendant, AYCOCK, after the surgery with varioius complaints including severe pain.

17. Defendant, AYCOCK, advised plaintiff that this would heal over time.

18. On or about May of 1998 because plaintiff, CONNIE ELLIS, was still having pain, she went to see Dr. Parsons at the Tyrone Medical Center. At this point in time plaintiff, CONNIE ELLIS, learned for the first time that her physical problems would not heal on their own and it was at this time that plaintiff first knew or had reason to know that the actions of the defendants were below the standard of care.

19. Each defendant breached his, her, its aforesaid duty to plaintiff by committing negligent acts or omissions as set forth morefully in the following paragraphs.

20. The acts of negligence attributable to defendant, AYCOCK, consisted of the following:

- (a) failing to provide reasonable and proper medical care under the circumstances;
- (b) failing to provide medical care in conformance with the requisite standards of care;
- (c) failing to possess and exercise that fund of medical knowledge relevant to diagnosis and management of rectovaginal fistula;
- (d) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (e) failing to properly treat and care for plaintiff's rectovaginal fistula;
- (f) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (g) failing to provide prophylactic antibiotics prior to surgery;
- (h) failing to provide post-operative antibiotics;

- (i) failing to recommend dietary restrictions post-operatively;
- (j) failing to properly perform surgery on the rectovaginal fistula;
- (k) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;
- (l) failing to send plaintiff, CONNIE ELLIS, for appropriate post-operative diagnostic studies;
- (m) failing to refer plaintiff to an appropriate specialist;
- (n) failing to render and provide reasonable medical care to the plaintiff for the condition from which she was suffering;
- (o) failing to provide prompt, adequate and appropriate post-operative care;
- (p) failing to promptly and appropriately respond to plaintiff's complaints, signs and symptoms;
- (q) failing to make a proper and/or adequate examination of the plaintiff before, during and after administering medical care to her.

21. The acts of negligence attributable to defendant, CLEARFIELD, consisted of the following:

- (a) failing to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- (b) failing to select and retain only competent physicians and other personnel;
- (c) failing to properly oversee all persons who practice medicine within its walls as to patient care;
- (d) failing to formulate, adopt and enforce adequate rules and policies to insure quality care for the patients;

- (e) failing to provide reasonable and proper medical care under the circumstances;
- (f) failing to provide reasonable and proper nursing care under the circumstances;
- (g) failing to provide medical care in conformance with the requisite standards of care;
- (h) failing to provide nursing care in conformance with the requisite standards of nursing care;
- (i) failing to properly supervise the conduct of physicians, residents, interns, nurses and other employees including but not limited to defendant, AYCOCK, involved in the care and treatment of plaintiff, CONNIE ELLIS;
- (j) failing to possess and exercise that fund of medical knowledge relevant to diagnosis and management of rectovaginal fistula;
- (k) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (l) failing to properly treat and care for plaintiff's rectovaginal fistula;
- (m) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (n) failing to provide prophylactic antibiotics prior to surgery;
- (o) failing to provide post-operative antibiotics;
- (p) failing to recommend dietary restrictions post-operatively;
- (q) failing to properly perform surgery on the rectovaginal fistula;
- (r) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;

- (s) failing to send plaintiff, CONNIE ELLIS, for appropriate post-operative diagnostic studies;
- (t) failing to refer plaintiff to an appropriate specialist;
- (u) failing to render and provide reasonable medical care to the plaintiff for the condition from which she was suffering;
- (v) failing to provide prompt, adequate and appropriate post-operative care;
- (w) failing to promptly and appropriately respond to plaintiff's complaints, signs and symptoms;
- (x) failing to make a proper and/or adequate examination of the plaintiff before, during and after administering medical care to her.

22. Other material facts which may be necessary to properly and fully draft this Complaint are in the exclusive possession of defendants.

23. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained those injuries more particularly hereinafter set forth.

24. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that plaintiff would suffer those injuries set forth herein.

25. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained the following injuries: fecal incontinence; breakdown of rectovaginal fistula repair; injury of the rectal sphincter; and in addition severe physical and emotional injuries and injuries to her nerves and nervous system, all of which are or may be permanent in nature.

26. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that the aforesaid injuries would be sustained by plaintiff, CONNIE ELLIS.

27. As a result of the aforesaid negligent acts and/or omissions of the defendants, plaintiff, CONNIE ELLIS, has been required to incur expenses and obligations in an effort to treat and care for the aforementioned injuries.

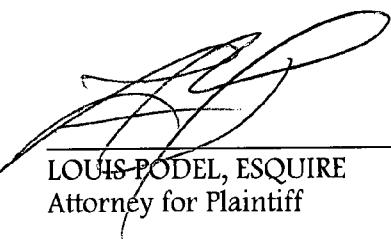
28. As a result of the injuries and disabilities as previously mentioned, plaintiff, CONNIE ELLIS, will be require to spend money in the future to defray the medical expenses for the treatment of her injuries.

29. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from engaging in and enjoying the normal activities of life and has suffered embarrassment, humiliation and loss of life's pleasures.

30. As a result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from attending to her usual duties, activities and occupation causing her a loss of earnings.

31. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has suffered a loss and depreciation of her earnings and earning capacity and will continue to suffer such loss and depreciation for an indefinite time in the future, all to her great detriment and loss.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally in a sum in excess of that requiring submission to arbitration as well a lawful interest and costs.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

VERIFICATION

The undersigned, having read the attached which was prepared by my attorney, hereby verify that the information contained therein may include information furnished to my attorney by individuals other than myself; that the language used therein is that of my attorney, and that to the extent the information set forth therein is not known to me, I have relied upon my attorney in taking this Verification. Subject to the above limitations, the information contained therein is true and correct to the best of my information, knowledge and belief, subject to the penalties imposed by 18 Pa. C.S. §4904.

Connie Ellis
CONNIE ELLIS

DATED: 5/16/05

FILED

F. M. A.

May 22 2000
D. G. / / C. C. / /
William A. Shaw
Prothonotary

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

CONNIE ELLIS,

No. 00 - 383 CD

Plaintiff

vs.

NOTICE OF SERVICE

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.

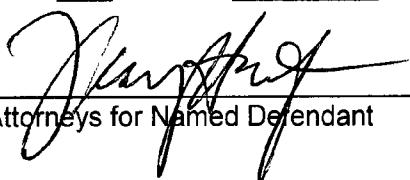
Defendants

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 7TH DAY OF JULY, 2000.



Attorneys for Named Defendant

FILED

JUL 10 2000

William A. Shaw
Prothonotary

CONNIE ELLIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff : CLEARFIELD COUNTY, PA
vs. :
CLEARFIELD HOSPITAL and PHILIP J. : NO. 00 - 383 CD
AYCOCK, M.D., :
Defendants : JURY TRIAL DEMANDED

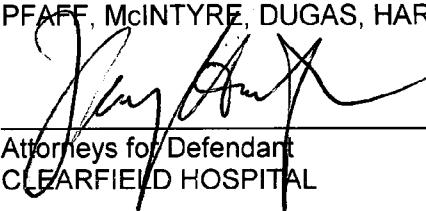
**NOTICE OF SERVICE OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF**

TO: PROTHONOTARY

You are hereby notified that on the **7th day of JULY, 2000**, Defendant, CLEARFIELD HOSPITAL, served Interrogatories and Request for Production of Documents on the Plaintiff by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Louis Podel, Esquire
The Philadelphian
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT



Attorneys for Defendant
CLEARFIELD HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

JUL 10 2000
O 9:28 AM '00
cc
William A. Shaw
Prothonotary
FBI

LOUIS PODEL, ESQUIRE
 2401 Pennsylvania Avenue
 Suite 1C44
 Philadelphia, PA 19130
 (215) 769-0100
 ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
 vs. : CLEARFIELD COUNTY, PA
 :
 :
 PHILIP J. AYCOCK, M.D. and CLEARFIELD :
 HOSPITAL : No: 00-383-CD

PLAINTIFF'S ANSWERS TO PRELIMINARY OBJECTIONS
OF DEFENDANT, CLEARFIELD HOSPITAL

1. Denied. It is specifically denied that the material facts are not stated in a concise and summary form. To the contrary, the Complaint is very detailed and clearly provides the defendant with an opportunity to answer the Complaint.

2. Denied. It is specifically denied that paragraphs 20(n), (o), (p) and (q) are boilerplate allegations of negligence. On the contrary, they comport with the law in this regard as set forth in all of the case law. A Complaint must be read in its entirety and when this Honorable Court reads the entire Complaint it will see that the allegations as noted above are not boilerplate allegations.

3. Denied. It is specifically denied that the allegations of negligence listed in the paragraphs above violate the Court's holding in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, plaintiff requests that these Preliminary Objections be denied.

LOUIS PODEL, ESQUIRE
 Attorney for Plaintiff

FILED

JUL 24 2000
 5/11/2000
 William A. Shaw
 Prothonotary

2 CFT to MTR EGD

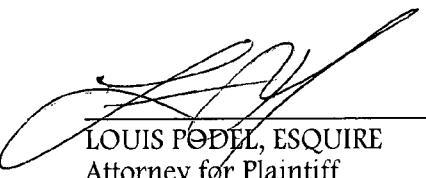
157
LOUIS PODER, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
: :
PHILIP J. AYCOCK, M.D. and CLEARFIELD :
HOSPITAL : No: 00-383-CD

NOTICE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD THIS 6TH DAY OF JULY, 2000.


LOUIS PODER, ESQUIRE
Attorney for Plaintiff

FILED

JUL 25 2000

William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
PHILIP J. AYCOCK, M.D. and CLEARFIELD :
HOSPITAL : No: 00-383-CD

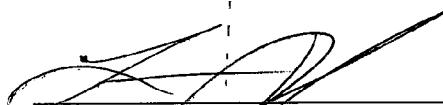
NOTICE OF SERVICE OF INTERROGATORIES AND
REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

TO: PROTHONOTARY

You are hereby notified that on the 6th day of JULY, 2000 Plaintiff, CONNIE ELLIS, served Interrogatories and Request for Production of Documents on the Defendants by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Frank J. Hartye, Esquire
Pfaff, McIntrye, Dugas, Hartye & Schmitt
PO Box 533
Hollidaysburg, PA 16648

Marian Patchen Schleppy, Esquire
300 Four PPG Place
Pittsburgh, PA 15222-5404


LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

FILED

JUL 25 2000
IN 1129100
William A. Shaw
Prothonotary

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

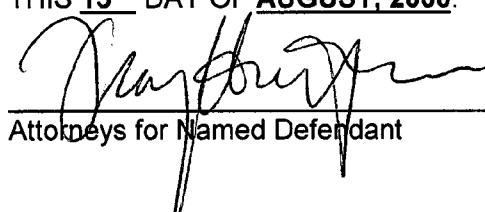
Defendants

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 15th DAY OF AUGUST, 2000.



Attorneys for Named Defendant

FILED

AUG 16 2000

10:30 AM

William A. Shaw
Prothonotary

No. 41



CONNIE ELLLIS,
Plaintiff
vs.
CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,
Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
NO. 00 - 383 CD

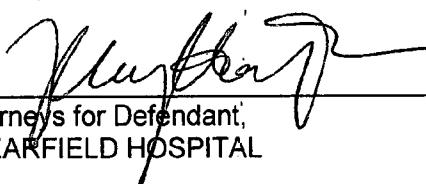
**NOTICE OF SERVICE OF ANSWERS TO
PLAINTIFF'S EXPERT INTERROGATORIES**

TO: PROTHONOTARY

You are hereby notified that on the 15th day of AUGUST, 2000, Defendant, CLEARFIELD HOSPITAL, served Answers to Plaintiff's Expert Interrogatories on the Plaintiff by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT



Attorneys for Defendant,
CLEARFIELD HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D. #: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

**NOTICE OF SERVICE OF ANSWERS TO
PLAINTIFF'S EXPERT INTERROGATORIES**

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 11th DAY OF SEPTEMBER, 2000.

Attorneys for Named Defendant

FILED

SEP 12 2000

William A. Shaw
Prothonotary

CONNIE ELLIS,
Plaintiff
vs.
CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,
Defendants

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
NO. 00 - 383 CD

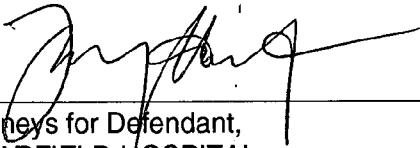
**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S
INTERROGATORIES ADDRESSED TO DEFENDANT, CLEARFIELD HOSPITAL**

TO: PROTHONOTARY

You are hereby notified that on the 11th day of **SEPTEMBER, 2000**, Defendant, CLEARFIELD HOSPITAL, served Answers to Plaintiff's Interrogatories Addressed to Defendant, Clearfield Hospital on the Plaintiff by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT



Attorneys for Defendant,
CLEARFIELD HOSPITAL
FRANK J. HARTYE, ESQUIRE
PA I.D. #: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

SEP 12 2000
10:40 AM '00
William A. Shaw
Prothonotary

AP
FILED

JUN 19 2000

William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
PHILIP J. AYCOCK, M.D. and CLEARFIELD :
HOSPITAL : No: 00-383-CD

PLAINTIFF'S ANSWERS TO PRELIMINARY OBJECTIONS
OF DEFENDANT, CLEARFIELD HOSPITAL

1. Denied as stated. It is admitted that plaintiff filed a Complaint alleging various acts of negligence. However, the Complaint is extremely detailed and cannot be summarized in only three sentences and the Complaint speaks for itself.

2. Denied. The allegations of negligence are specific and detailed. They are surely not merely boilerplate allegations of negligence. On the contrary, it is these Preliminary Objections that are boilerplate.

3. Denied as stated. Paragraph 9 of plaintiff's Complaint speaks for itself. The fact that the case of Thompson v. Nason Hospital is referred to should only help the defendants in preparing their defense.

4. The allegations as set forth in paragraph 21, subparagraphs (a), (e), (f), (g), (h), (j), (q), (r), (s), (t), (u) and (w) are not boilerplate allegations of negligence as is alleged. On the contrary, these are specific allegations of negligence as set forth more fully in Plaintiff's Brief.

5. Denied. It is denied that the allegations contained in paragraph 22 are inaccurate and inappropriate. Plaintiff has not had the ability to conduct complete pre-complaint discovery with depositions of the responsible parties. For the reasons set forth in Plaintiff's Brief, paragraph 22 should not be stricken. Indeed a medical

malpractice case is a complicated case and much of the information is in the hands of the defendants.

WHEREFORE, plaintiff demands that the Preliminary Objections be dismissed.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS : COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
: :
PHILIP J. AYCOCK, M.D. and CLEARFIELD :
HOSPITAL : No: 00-383-CD

BRIEF IN OPPOSITION TO DEFENDANT, CLEARFIELD
HOSPITAL'S PRELIMINARY OBJECTIONS

I. Defendant, Clearfield Hospital, is raising Preliminary Objections to specific paragraphs of Plaintiff's Complaint. A reading of Plaintiff's Complaint attached hereto as Exhibit "A" clearly shows that this is a very detailed pleading. Defendant's understand that this matter involves significant injuries as a result of Dr. Aycock's poor and inappropriate pre-operative and post-operative care. Defendant claims that plaintiff has set forth various boilerplate allegations of negligence. On the contrary, it is these Preliminary Objections that are merely boilerplate.

The paragraphs objected to by defendant are not broad, vague and catch-all allegations of negligence. It must be kept in mind that this is a complex medical malpractice case and there must be some flexibility permitted in the pleading of a claim. The defendants have the unique opportunity to view all of plaintiff's medical

records and interview other medical personnel involved in plaintiff's care. This same opportunity is not available to the plaintiff until discovery takes places and the physician's deposition is taken. The Complaint, when read as a whole, clearly is specific and allows the defendant to prepare its defense.

Specifically, defendant objects to paragraph 9 of Plaintiff's Complaint. Paragraph 9 sets forth the corporate duties which were breached in this case. It certainly permits the defendant to have a clear understanding of plaintiff's claim.

Additionally, paragraph number 22 sets forth the reality of a medical malpractice case and the fact that there is information that is solely available to the defendant and the defendant hospital. The defendant also objects to various allegations of negligence in paragraph 21. When these allegations are viewed individually as well as within the context of the entire Complaint, it is clear that these are not vague allegations of negligence.

Paragraph 21(a) sets forth a concise allegation of negligence in the failure to maintain safe facilities and equipment. It is not simply a boilerplate allegation of any and all "negligence."

Paragraph 21(e) sets forth an element of the medical malpractice claim as does paragraph 21(g). Paragraph 21(f) and (h) refers to the lack of proper nursing care. Paragraph 21(j) refers specifically to the failure to appropriately manage a rectovaginal

fistula. Paragraph 21(l) again refers to the improper treatment and care of plaintiff's rectovaginal fistula.

It is worth repeating that none of these paragraphs are merely boilerplate allegations of negligence. Paragraph 21(q) refers to the failure to properly perform the surgery on plaintiff's rectovaginal fistula and paragraph 21(r) discusses the fact that the anal sphincter muscle was improperly cut during the rectovaginal fistula repair. How could anyone claim this is a vague allegation of negligence. Paragraph 21(s) discusses the fact that the plaintiff was not sent for appropriate post-operative studies and paragraph 21(t) refers to the fact that plaintiff was not sent to appropriate specialists. Paragraph 21(u) refers to the improper medical care that the plaintiff received for a rectovaginal fistula and paragraph 21(w) refers to the fact that the medical providers failed to promptly and appropriately respond to plaintiff's complaints, signs and symptoms.

As set forth earlier, these are allegations that indicate the specific negligence of the defendants. As stated, the defendant is in a position of being able to discuss these allegations with the individuals who treated plaintiff to determine what information they had available to them and what information they communicated to others. To be more specific would require the deposition of the defendants. These allegations are not vague nor will they create any prejudice to the defendants. The defendants are merely filing boilerplate preliminary objections which in this instance have no merit

whatsoever. Respondent is confident that when the Court reads the entire Complaint it will determine that this matter was well pled and in much greater detail than is seen in the average pleading. Paragraph 21 alone lists approximately 24 specific acts of negligence and provides a complete picture of plaintiff's allegations.

II. STANDARD OF REVIEW

Any doubt about sustaining preliminary objections should be resolve against the objecting party. Dickens v. Upper Chichester Twnshp., 123 Pa Commw. 226,231, 553A.2d 510, 513 (1989)(citing Goodheart v. Thornburgh, 104 Pa. Commw. 385, 522 A.2d 125 (1987)). Preliminary objections shall be sustained only when they are clear and free from doubt. Grant Cent. Sanitary Landfill, Inc. v. Commonwealth Dep't of Environ, Resources, 123 Pa. Commw. 498, 501, 554 A.2d 182, 184 (1989)(citing Ohio Casualty Group of Inc Co. v. Argonaut Ins. Co., 91 Pa. Commw. 560, 500 A2d 191 (1985)).

III. ARGUMENT

Plaintiffs, in their Complaint, have properly alleged claims of negligence against the defendants in accordance with Pa R.Civ. P. 1019(a). Accordingly, this Honorable Court should overrule the defendants' Preliminary Objections and deny the defendants' accompanying motions.

Defendants rely in its Motion on the case of Conner v. Allegheny Hospital, 501 Pa. 306, 461 A2.d 600 (1983). This reliance is misplaced. In Connor the Court

criticizes language which simply says “failing to use due care and caution under the circumstances.” The plaintiffs in Connor, attempted to amend their Complaint after the statute of limitations had run in order to amplify their allegations of negligence and incorporate a newly obtained expert opinion. Id. At 309, 461 A.2d at 602-02. The trial court denied the motion to amend the complaint; subsequently, the court granted the defendants’ motion for summary judgment and dismissed the complaint. Id at 309, 461 A.2d at 602. The Superior Court affirmed the denial of plaintiff’s motion to amend their complaint as the motion “sought to add new allegations of negligence acts by proceeding on a different theory” after the statute of limitations period had expired. Id. At 309-10, 461 A.2d at 602 (quoting Connor v. Allegheny Gen'l Hosp., 300 Pa. Super, 321, 446 A.2d 635, 638 (1982)). The Supreme Court of Pennsylvania reversed, holding in accordance with the existing law, that the proposed amendment merely amplified the cause of action stated in the complaint’s original broad allegation of “failing to use due care and caution under the circumstances.” Id. At 310-11, 461 A.2d at 602.

The Supreme Court, in its much cited footnote, suggested that the defendants in preliminary objections could have moved to strike the broad allegation or could have requested a more specific pleading to clarify the broad allegation, had defendant so wished. Connor, 501 Pa. at 311 n.3., 461 A.2d at 602 n.3. The court did not, however, express an opinion as to whether either of such actions would have been successful had

they been undertaken. Consequently, Connor does not stand for the proposition that any and all vague allegations of negligence should be stricken or pled with greater specificity if the appropriate preliminary objections are made. Even more importantly, the court did not mandate or even suggest that every allegation of negligence in a complaint should be the subject of such preliminary objections.

It is apparent that Connor was an effort by the Supreme Court of Pennsylvania to encourage resolution of medical malpractice claims by trial, rather than precluding them by technicality in a pleading. It certainly was not meant to encourage objection to every allegation of negligence made by a plaintiff in his complaint. As stated by Judge Cirillo of the Superior Court, writing in dissent in Connor: “[h]ypertechnicality and formalism in pleadings are contrary to the modern practice of allowing free amendment in order to promote the resolution of cases on their merit.” Connor, 300 Pa. Super. At 330 n.4. 446 A.2d at 640 n.4. (Cirillo, J., dissenting)(emphasis added). Judge Cirillo’s reasoning was later adopted by the Supreme Court of Pennsylvania in reversing the Superior Court’s holding in Connor.

Moreover, general allegations as to violations of the standard of care have often been upheld, subsequent to Connor. For example, in Winters v. Lonergan, 36 Cumb. L.J. 99 (Cumberland C.P. 1985), the court denied a motion to strike an averment in a medical malpractice case based on a plaintiff’s failure to comply with Pa. R.Civ. P. 1019(a). The contested paragraphs averred that the defendant failed to exercise

reasonable care in the establishment and implementation of appropriate standards of procedures for diagnosis, treatment, follow-up and monitoring of patients with medical problems. Id.

In addition, in Groff v. Lancaster Gen'l Hosp., the court upheld allegations that the defendant failed to properly treat and diagnose decedent's condition and that the defendant hospital failed to provide proper care as required by the Joint Commission on Accreditation of Hospitals. 71 Lanc. 224 (Lancaster C.P. 1988). Similarly, in Wagner v. Fratchley, the court upheld allegations of negligence which merely reiterated the standard of care owed by the defendant. 40 Pa. D. & C.3d 73 (Cumberland C.P. 1986). The court held that allegations of negligence which are statements of the standard of care owed by the defendant physician or hospital and averments of failure of defendants to conform thereto are sufficiently specific as to allow defendants to prepare their case and will not be stricken. Id. In Wagner, the following allegations of negligence were all upheld:

Failure to properly diagnose, treat, exercise due care and conform to the standards of reasonable and adequate medical and surgical treatment and care of plaintiff..

Failure to promptly and properly treat the plaintiff

Failure to properly possess adequate medical skills, knowledge, experience and techniques in the proper treatment of plaintiff's condition.

Failure to properly bring to bear such medical skills and knowledge as were then possessed in the treatment and care of the plaintiff.

Failure to properly conform to the accepted standards of medical practice and care in the diagnosis, care and treatment and medical management of plaintiff's condition.

Failure to properly conform to the reasonable standards of medical and/or hospital practice.

Wagner, 40 Pa. D. & C. 3d at 74-75.

By comparison, the "objectionable" subparagraphs of plaintiff's Complaint are much more specific than the allegations cited above, all of which were upheld. Upon analysis of each allegation it is clear that plaintiff has satisfied and in most cases surpassed the levels of specificity reached in the cases cited above.

More recently, in Johnson v. Patel, 94 Lackawanna Jurist 37 (Lackawanna C.P. 1993), the court discussed, at length, the application of Connor in the context of medical malpractice cases:

As a result [of Connor], defense attorneys have become fearful of being trapped by broad and highly pliable averments in complaints, and they have deluged the trial courts with preliminary objections in the nature of motions to strike or motions for more specific pleadings. Zaborowski v. Esper, 72 Eric Co. L.J. 194 (1989). While this response is understandable, we must also weigh the practical considerations involved with medical malpractice actions.

Indeed, as soundly stated by the court in Solvibile v. Medical College of Pa,
23 Phila. 124 (1991),

At the time the suit is filed, the defendants are in a far more control of the information than the plaintiff. It is the hospital that controls all the records, and the physicians and hospital staff are far less likely to volunteer information to the plaintiff absent formal depositions... Therefore, it may be appropriate to allow the plaintiff more time to present detailed reasons once the defendant is put on notice that there was an injury and they are being held responsible. Once they are sued, their "response" is already upset. These defendants should have no objection if it takes more time for the plaintiff to investigate and discover exactly what the defendants did improperly. Once charged with negligence the doctors...generally have a much easier time of investigating their own actions than do the plaintiffs.

Id. At 126.

Johnson, 94 Lackawanna Jurist at 39-40. See also, Zaborowski v. Esper, 72 Eric Co. L.J. 194, 199 (1989)(“[A medical malpractice] defendant not only has at least equal awareness of the facts but is likely to have superior knowledge and understanding of the significance of what actually transpired.... [E]xact facts pertaining to the propriety of care of the [injured party] are within the physician’s records or recall.”).

These cases illustrate that medical malpractice actions are extreme examples of the disparity of factual knowledge between plaintiff and defendant. Thus, numerous courts have held that the pleading requirements of Rule 1019(a) will be relaxed in the context of medical malpractice to afford plaintiffs the opportunity to overcome this disadvantage through discovery. See 5 Stephen M. Feldman, Pennsylvania Trial Guide § 25:60, at 170 (2d rev.ed. 1991)(citing International Union, U.B.F.C.S.D. and D.W. v. Watkins, 417 Pa 120, 207 A.2d 776 (1965)). In addition, where the facts involved in a pleading are within the exclusive knowledge of an opponent, a party also has greater leeway in their pleadings. 2 Goodrich-Amram §1019:5, at 314 (1991)(citations omitted). See also, Starr, 109 Dauphin at 151 (“Where a matter involved in a pleading is equally or more in the knowledge of an opposing party, the requirements of precision and detail are more easily met.”).

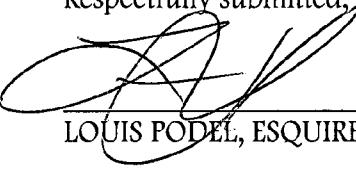
In the circumstances of a medical malpractice action where a defendant has exclusive control and knowledge of the circumstances which led to the injury, careful pleading by the plaintiffs require the assertion of a breach of all applicable standards of

care. Defendants are not prejudiced thereby, but the plaintiffs might be very prejudiced if they were compelled to select a narrow theory of negligence at the time of pleading, when discovery might later reveal specific acts of negligence which were not known to the plaintiffs at the time of pleading. The plaintiffs should not suffer the risk of a preclusion of a remedy simply because he could not, at the time of pleading, articulate the precise act or omission leading to the injury and the corollary standard of care breached. See, e.g., Klein v. Montefiore Hosp., 132 P.L.J. 526, 527 (Allegheny C.P. 1984).

Here, the information sought by the defendants is more available to the defendants than to the plaintiff. The medical records of plaintiff's decedent are easily accessible to defendants, as they are the physicians who treated and the medical center at which plaintiff was treated. Also, the defendants would be more familiar with the requisite standards of medical care and medical policies and procedures. Accordingly, it would be unjust to sustain the defendants' Preliminary Objections, since the defendants hold the key to this information.

WHEREFORE, plaintiffs respectfully request that defendant's Preliminary Objections be denied.

Respectfully submitted,



LOUIS PODEL, ESQUIRE

VERIFICATION

LOUIS PODEL, ESQUIRE, hereby states that he is the Attorney for the Plaintiffs in this action and verifies that the statements made in the foregoing ANSWER TO PRELIMINARY OBJECTIONS are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

DATED: 6/8/00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONNIE ELLIS :

VS. :

PHILIP J. AYCOCK and CLEARFIELD
HOSPITAL : NO: 00-383-CD

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims 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 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.

LAWYER REFERENCE SERVICE
One North 2nd Street
Clearfield, PA 16830
1-800-692-7375

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 22 2000

Attest.

William L. Brown
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

: No: 00-383-CD

CIVIL ACTION

1. Plaintiff, CONNIE ELLIS, is an individual and a citizen of the Commonwealth of Pennsylvania, residing therein at 321 ½ Lafayette Street, Bristol, Pennsylvania.

2. Defendant, PHILIP H. AYCOCK, M.D. (hereinafter referred to as "AYCOCK") is now and at all times material hereto was a licensed physician maintaining an office for the practice of medicine at c/o Clearfield Hospital 809 Turnpike Avenue, Clearfield, Pennsylvania.

3. Defendant, CLEARFIELD HOSPITAL, (hereinafter referred to as "CLEARFIELD") is now and at all times material hereto was a hospital, a duly authorized legal entity authorized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania providing healthcare services with a place of business at 809 Turnpike Avenue, Clearfield, Pennsylvania.

4. At all times material hereto, defendant, CLEARFIELD, acted through its agents, servants, ostensible agents and/or employees including but not limited to defendant, AYCOCK, and was engaged in rendering professional medical care to the ill and injured including plaintiff, CONNIE ELLIS, and said agent, servants, ostensible agents and/or employees were acting within the course and scope of this employment and/or authority for and on the business of defendant, CLEARFIELD, and under its control or right to control.

5. At all times material hereto defendant, AYCOCK, was held out as an agent, servant, ostensible agent or employee of defendant, CLEARFIELD.
6. At all times material hereto defendant, AYCOCK, was an agent, servant and/or employee of defendant, CLEARFIELD, acting within the course and scope of his employment and/or authority for and on the business of defendant, CLEARFIELD, under its control or right to control.
7. Plaintiff came under the care of defendants, AYCOCK and CLEARFIELD, on or about August 4, 1997.
8. Each defendant owed plaintiff, CONNIE ELLIS, a duty to possess and exercise that degree of professional skill, care and knowledge ordinarily possessed and exercised by and/or required of practitioners within the health care profession or within his, her, its field of specialization.
9. Defendant, CLEARFIELD, owned plaintiff, CONNIE ELLIS, those corporate hospital duties described by the Pennsylvania Supreme Court in Thompson vs. Nason Hospital, 591 A.2d 703 (1991).
10. Defendant, CLEARFIELD, owed a duty to plaintiff to insure plaintiff's safety and well-being while she was a patient in defendant's hospital.
11. Plaintiff, CONNIE ELLIS, was referred to the defendant, AYCOCK, for treatment and evaluation of a rectovaginal fistula as well as for a right breast mass.
12. On August 25, 1997 defendant, AYCOCK, performed an operation at defendant, CLEARFIELD, to repair a rectovaginal fistula.
13. Plaintiff, CONNIE ELLIS, was not given any instructions on bowel preparation prior to this operation.
14. Plaintiff, CONNIE ELLIS, was not provided any dietary restrictions post-operatively.
15. Shortly after the surgery plaintiff, CONNIE ELLIS, had a bowel movement which disrupted the surgical repair.

16. Plaintiff, CONNIE ELLIS, returned to defendant, AYCOCK, after the surgery with various complaints including severe pain.

17. Defendant, AYCOCK, advised plaintiff that this would heal over time.

18. On or about May of 1998 because plaintiff, CONNIE ELLIS, was still having pain, she went to see Dr. Parsons at the Tyrone Medical Center. At this point in time plaintiff, CONNIE ELLIS, learned for the first time that her physical problems would not heal on their own and it was at this time that plaintiff first knew or had reason to know that the actions of the defendants were below the standard of care.

19. Each defendant breached his, her, its aforesaid duty to plaintiff by committing negligent acts or omissions as set forth more fully in the following paragraphs.

20. The acts of negligence attributable to defendant, AYCOCK, consisted of the following:

- (a) failing to provide reasonable and proper medical care under the circumstances;
- (b) failing to provide medical care in conformance with the requisite standards of care;
- (c) failing to possess and exercise that fund of medical knowledge relevant to diagnosis and management of rectovaginal fistula;
- (d) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (e) failing to properly treat and care for plaintiff's rectovaginal fistula;
- (f) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (g) failing to provide prophylactic antibiotics prior to surgery;
- (h) failing to provide post-operative antibiotics;

- (i) failing to recommend dietary restrictions post-operatively;
- (j) failing to properly perform surgery on the rectovaginal fistula;
- (k) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;
- (l) failing to send plaintiff, CONNIE ELLIS, for appropriate post-operative diagnostic studies;
- (m) failing to refer plaintiff to an appropriate specialist;
- (n) failing to render and provide reasonable medical care to the plaintiff for the condition from which she was suffering;
- (o) failing to provide prompt, adequate and appropriate post-operative care;
- (p) failing to promptly and appropriately respond to plaintiff's complaints, signs and symptoms;
- (q) failing to make a proper and/or adequate examination of the plaintiff before, during and after administering medical care to her.

21. The acts of negligence attributable to defendant, CLEARFIELD, consisted of the following:

- (a) failing to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- (b) failing to select and retain only competent physicians and other personnel;
- (c) failing to properly oversee all persons who practice medicine within its walls as to patient care;
- (d) failing to formulate, adopt and enforce adequate rules and policies to insure quality care for the patients;

- (e) failing to provide reasonable and proper medical care under the circumstances;
- (f) failing to provide reasonable and proper nursing care under the circumstances;
- (g) failing to provide medical care in conformance with the requisite standards of care;
- (h) failing to provide nursing care in conformance with the requisite standards of nursing care;
- (i) failing to properly supervise the conduct of physicians, residents, interns, nurses and other employees including but not limited to defendant, AYCOCK, involved in the care and treatment of plaintiff, CONNIE ELLIS;
- (j) failing to possess and exercise that fund of medical knowledge relevant to diagnosis and management of rectovaginal fistula;
- (k) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (l) failing to properly treat and care for plaintiff's rectovaginal fistula;
- (m) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (n) failing to provide prophylactic antibiotics prior to surgery;
- (o) failing to provide post-operative antibiotics;
- (p) failing to recommend dietary restrictions post-operatively;
- (q) failing to properly perform surgery on the rectovaginal fistula;
- (r) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;

(s) failing to send plaintiff, CONNIE ELLIS, for appropriate post-operative diagnostic studies;

(t) failing to refer plaintiff to an appropriate specialist;

(u) failing to render and provide reasonable medical care to the plaintiff for the condition from which she was suffering;

(v) failing to provide prompt, adequate and appropriate post-operative care;

(w) failing to promptly and appropriately respond to plaintiff's complaints, signs and symptoms;

(x) failing to make a proper and/or adequate examination of the plaintiff before, during and after administering medical care to her.

22. Other material facts which may be necessary to properly and fully draft this Complaint are in the exclusive possession of defendants.

23. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained those injuries more particularly hereinafter set forth.

24. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that plaintiff would suffer those injuries set forth herein.

25. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained the following injuries: fecal incontinence; breakdown of rectovaginal fistula repair; injury of the rectal sphincter; and in addition severe physical and emotional injuries and injuries to her nerves and nervous system, all of which are or may be permanent in nature.

26. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that the aforesaid injuries would be sustained by plaintiff, CONNIE ELLIS.

27. As a result of the aforesaid negligent acts and/or omissions of the defendants, plaintiff, CONNIE ELLIS, has been required to incur expenses and obligations in an effort to treat and care for the aforementioned injuries.

28. As a result of the injuries and disabilities as previously mentioned, plaintiff, CONNIE ELLIS, will be require to spend money in the future to defray the medical expenses for the treatment of her injuries.

29. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from engaging in and enjoying the normal activities of life and has suffered embarrassment, humiliation and loss of life's pleasures.

30. As a result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from attending to her usual duties, activities and occupation causing her a loss of earnings.

31. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has suffered a loss and depreciation of her earnings and earning capacity and will continue to suffer such loss and depreciation for an indefinite time in the future, all to her great detriment and loss.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally in a sum in excess of that requiring submission to arbitration as well a lawful interest and costs.

LOUIS PODEL

LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

VERIFICATION

The undersigned, having read the attached which was prepared by my attorney, hereby verify that the information contained therein may include information furnished to my attorney by individuals other than myself; that the language used therein is that of my attorney, and that to the extent the information set forth therein is not known to me, I have relied upon my attorney in taking this Verification. Subject to the above limitations, the information contained therein is true and correct to the best of my information, knowledge and belief, subject to the penalties imposed by 18 Pa. C.S. §4904.

Connie Ellis
CONNIE ELLIS

DATED: 5/16/00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,) CIVIL DIVISION
)
Plaintiff,) No. 00-383-CD
)
vs.)
)
CLEARFIELD HOSPITAL and)
PHILIP J. AYCOCK, M.D.,) JUL 17 2000
)
Defendants.) William A. Shaw
) Prothonotary

FILED

JUL 17 2000

William A. Shaw
Prothonotary

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT IN CIVIL ACTION

PHILIP J. AYCOCK, M.D., Defendant, by his attorneys, Gaca, Matis, Baum & Rizza, files the following preliminary objections to Plaintiff's Complaint In Civil Action pursuant to Rule 1028(3), Pa.R.C.P.:

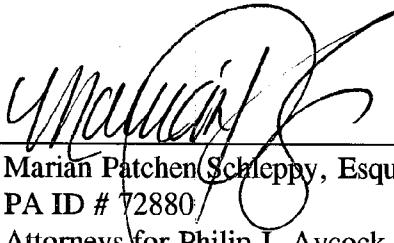
**MOTION FOR A MORE SPECIFIC PLEADINGS
OR IN THE ALTERNATIVE MOTION TO STRIKE**

1. The material facts on which the cause of action are based on not stated in a concise and summary form as required by Rule 1019(a), Pa. R.C.P.
2. In Paragraph 20(n), (o), (p) and (q), the Plaintiff sets forth boiler plate allegations of negligence.
3. The boilerplate allegations of negligence in the above listed paragraphs are in violation of the Court's holding in *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, the Plaintiff's Complaint in Civil Action should be stricken and/or in the

alternative, the Plaintiff should be required to file a more specific complaint in conformity with the Pennsylvania Rules of Civil Procedure.

GACA MATIS BAUM & RIZZA

By: 

Marian Patchen Schleppy, Esquire

PA ID # 72880

Attorneys for Philip J. Aycock, M.D.,
Defendant

Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750



FILED

JUL 17 2000

M 18511/rock
William A. Shaw
Prothonotary

GK

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

:

:

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

:
: No: 00-383-CD

NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS
TO INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS OF DEFENDANT, CLEARFIELD HOSPITAL

TO THE PROTHONOTARY:

You are notified that on the 25th day of September, 2000 plaintiff, CONNIE ELLIS, served Answers to Interrogatories and Request for Production of Documents on behalf of defendant, Clearfield Hospital, by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Frank J. Hartye, Esquire
Pfaff, McIntrye, Dugas, Hartye & Schmitt
PO Box 533
Hollidaysburg, PA 16648

Marian Patchen Schleppy, Esquire
300 Four PPG Place
Pittsburgh, PA 15222-5404



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

FILED

SEP 29 2000

William A. Shaw
Prothonotary

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

CONNIE ELLIS,

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP
AYCOCK, M.D.,

Defendant

: No: 00-383 CD

:
: NOTICE OF SERVICE OF PLAINTIFF'S
: ANSWERS TO INTERROGATORIES AND
: REQUEST FOR PRODUCTION OF
: DOCUMENTS OF DEFENDANT,
: CLEARFIELD HOSPITAL

:
: Filed on Behalf of:
: PLAINTIFF, CONNIE ELLIS

:
: Counsel of Record for this Party;
: LOUIS PODEL, ESQUIRE
: 2401 Pennsylvania Avenue; 1C44
: Philadelphia, PA 19130
: (215) 769-0100

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 25th DAY OF SEPTEMBER, 2000.


LOUIS PODEL, ESQUIRE

FILED

SEP 29 2000

2000-10-21 NO CC
William A. Shaw
Prothonotary

44

(A)

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

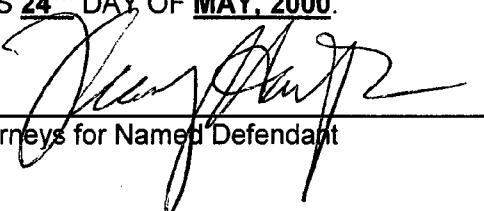
**PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT**

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 24TH DAY OF MAY, 2000.


Attnorneys for Named Defendant

FILED

MAY 25 2000

William A. Shaw
Prothonotary

CONNIE ELLIS,
Plaintiff
vs.
CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA
: NO. 00 - 383 CD
:
:
:
:

PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Defendant CLEARFIELD HOSPITAL by and through its counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT and files the following Preliminary Objections to Plaintiff's Complaint.

1. Plaintiff filed a Complaint on or about May 22, 2000 alleging various acts of negligence against Dr. Philip Aycock as a result of surgery performed at Clearfield Hospital on August 25, 1997. The basis of the Complaint is that the patient had a bowel movement following the repair of a rectovaginal fistula which disrupted the repair. Plaintiff claims that nine months later, she figured out that her physical problems would not heal on their own.
2. The allegations of negligence directed to Clearfield Hospital are boilerplate allegations of corporate negligence and what appear to be allegations based upon agency for the actions of Dr. Aycock.

MOTION TO STRIKE

3. Paragraph 9 of Plaintiff's Complaint refers to duties imposed upon the hospital and refers to Thompson v. Nason Hospital. Such a reference in the Complaint is inappropriate and, therefore, Paragraph 9 should be stricken.
4. The allegations contained in Paragraphs 21(a), (e), (f), (g), (h), (j), (l), (q), (r), (s), (t), (u) and (w) are all boilerplate allegations of negligence which are not based upon any

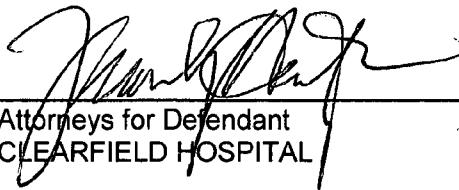
facts set forth in Plaintiff's Complaint. These allegations are contrary to Pennsylvania Rule of Civil Procedure 1019 and applicable case law and, therefore, should be stricken.

5. The allegations contained in Paragraph 22 are inaccurate and inappropriate and should be stricken from Plaintiff's Complaint. Pursuant to the Rules of Procedure, Plaintiff has the authority to conduct pre-Complaint discovery and, therefore, has had the ability to thoroughly investigate this matter over the last three years.

WHEREFORE, Defendant CLEARFIELD HOSPITAL requests this Honorable Court to strike Paragraphs 9, 21(a), (e), (f), (g), (h), (j), (l), (q), (r), (s), (t), (u) and (w), as well as Paragraph 22 of Plaintiff's Complaint.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT

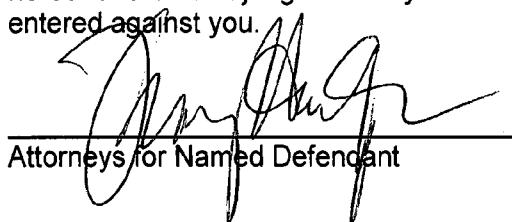


Attorneys for Defendant
CLEARFIELD HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

TO THE WITHIN NAMED PARTIES:

You are hereby notified to plead to the enclosed **PRELIMINARY OBJECTIONS** within twenty **(20)** days from service hereof or a default judgment may be entered against you.



Attorneys for Named Defendant

FILED

May 25 2000
mila domino
William A. Shaw
Prothonotary
GAK

(19)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CONNIE ELLIS :
-vs- : No. 00-383-CD
CLEARFIELD HOSPITAL and PHILIP :
J. AYCOCK, M.D. :

ORDER

NOW, this 2nd day of October, 2000, upon consideration of Preliminary Objections filed in the above-captioned matter, it is the ORDER of this Court that decision thereon shall be continued pending completion of discovery and the filing of Plaintiff's Amended Complaint to address the paragraphs to which the objections pertain. Said discovery to be completed within four months from date hereof and Amended Complaint to be filed within 20 days thereafter.

By the Court,

President Judge

FILED
OCT - 2 2000
William A. Shaw
Prothonotary

FILED
OCT 3:30 PM
2000

William A. Shaw
Prothonotary

2000

Yanet M. Diaz
Luis Fidel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CONNIE ELLIS

-vs-

: No. 00-383-CD

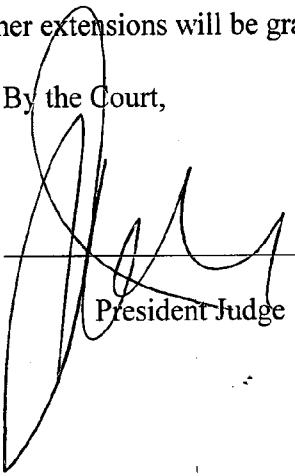
CLEARFIELD HOSPITAL and

PHILIP J. AYCOCK, M.D.

ORDER

NOW, this 24th day of January, 2001, upon request of Marian Patchen Schleppy, Esquire, it is the ORDER of this Court that discovery in the above-captioned matter shall be extended to April 30, 2001. No further extensions will be granted.

By the Court,


President Judge

FILED

JAN 25 2001

William A. Shaw
Prothonotary

FILED

JAN 25 2001

Off. of the Prothonotary
William A. Shaw
Prothonotary

cc: Cathy Hartje
cc: Cathy Schleppi
cc: Cathy Fodle

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

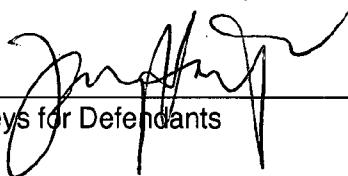
**ANSWER AND NEW MATTER TO
PLAINTIFF'S AMENDED COMPLAINT**

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 16TH DAY OF APRIL, 2001.



Attorneys for Defendants

FILED

APR 17 2001

William A. Shaw
Prothonotary

CONNIE ELLIS,	Plaintiff	:	IN THE COURT OF COMMON PLEAS OF
		:	CLEARFIELD COUNTY, PA
vs.		:	NO. 00 - 383 CD
CLEARFIELD HOSPITAL and PHILIP J.		:	
AYCOCK, M.D.,	Defendants	:	
		:	

ANSWER AND NEW MATTER TO PLAINTIFF'S AMENDED COMPLAINT

AND NOW, comes the Defendant CLEARFIELD HOSPITAL by and through its counsel, PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT and files the following Answer and New Matter to Plaintiff's Amended Complaint.

1. The allegations contained in Paragraph 1 are true to the best of defendant's knowledge.
2. The allegations contained in Paragraph 2 are not directed to answering defendant.
3. Admitted.
4. Denied. It is denied that Dr. Aycock was an agent, ostensible agent, servant or employee of Clearfield Hospital, and therefore, all the allegations contained in Paragraph 4 are denied as stated.
5. Denied. It is denied that Clearfield Hospital held out Dr. Aycock as its agent, servant, ostensible agent or employee. To the contrary, Connie Ellis was referred to Dr. Aycock by Dr. Carevale's office.
6. Denied. It is denied that Dr. Aycock was an agent, servant or employee of Clearfield Hospital, and therefore, all the allegations in this Paragraph are denied.
7. It is denied that the plaintiff came under the care of Clearfield Hospital on August 4, 1997.

8. The allegations contained in Paragraph 8 are boilerplate allegations, and therefore, they are denied as stated.

9. The allegations contained in Paragraph 9 are conclusions of law; no further response is required.

10. The allegations contained in Paragraph 10 are conclusion of law; no further response is required.

11. To the best of defendant's knowledge, Connie Ellis was referred to Dr. Aycock by the office of Dr. Carevale.

12. Admitted.

13. After reasonable investigation, defendant is without sufficient knowledge or information as to the truth of these averments, and therefore, they are denied as stated.

14. Admitted that the postop discharge orders indicated a regular diet.

15-18. After reasonable investigation, defendant is without sufficient knowledge or information as to the truth of these averments, and therefore, they are denied as stated.

19. It is denied. It is denied that Clearfield Hospital or any of its agents, servants or employees were negligent or careless in any manner.

20. The allegations contained in Paragraph 20 are not directed to answering defendant; no further response is required. Insofar as a response may be deemed to be necessary, it is denied that Dr. Aycock was an actual or ostensible agent, servant or employee. It is denied that Dr. Aycock was negligent.

21. Denied. It is denied that Clearfield Hospital or any of its agents, servants or employees, were negligent or careless in any manner, and therefore, all the allegations contained in Paragraph 21 and subparagraphs thereof are specifically denied and strict proof thereof is demanded at time of trial.

22. Denied. It is denied that Clearfield Hospital, or any of its agents, servants, ostensible agents, or employees, were negligent or careless in any manner.

23. It is denied that Clearfield Hospital, or any of its agents, servants, ostensible agents, or employees, were negligent or careless in any manner, and therefore, it is denied that their actions increased the risk of harm to the plaintiff.

24-30. The allegations contained in Paragraphs 24 through 30 are denied. It is denied that Clearfield Hospital or any of its agents, servants, ostensible agents or employees were negligent or careless in any manner. It is further denied that any action or inaction on the part of Clearfield Hospital, or any of its agents, servants, ostensible agents, or employees, either caused or contributed to or increased the risk of harm of injury to the plaintiff; and therefore, all the allegations contained in Paragraphs 24-30 are denied, and strict proof thereof is demanded at time of trial.

WHEREFORE, Clearfield Hospital demands Judgment in it favor with cost of suit awarded to Clearfield Hospital.

NEW MATTER

By way of further and more complete Answer, defendant avers the following New Matter.

31. Plaintiff initiated the within action by filing a Praecept for Writ of Summons on or about March 28, 2000. Plaintiff's cause of action is based upon events, which took place in August of 1997. By December 1997, the plaintiff felt she had a problem with her bowels, which she did not have prior to surgery, and that resulted from the surgery of Dr. Aycock.

32. Plaintiff's cause of action is based upon a claim of medical negligence, and therefore, the two-year Statute of Limitations applies.

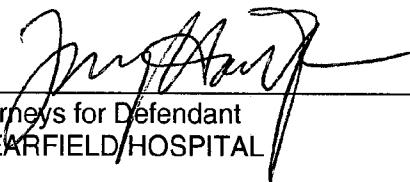
33. Plaintiff failed to file this cause of action within the two-year Statute of Limitations, and therefore, this cause of action is barred and should be dismissed.

34. If plaintiff suffered any injuries or damages as a result of actions or inactions of individuals, as alleged in Plaintiff's Complaint, such actions or inactions were of individuals or entities other than Clearfield Hospital, its agents, servants or employees and over whom Clearfield Hospital neither exercised nor had the right or duty to exercise control, and for whose actions or inactions Clearfield Hospital is not responsible, or otherwise legally liable.

WHEREFORE, Clearfield Hospital demands Judgment in its favor with cost of suit awarded to Clearfield Hospital.

Respectfully submitted,

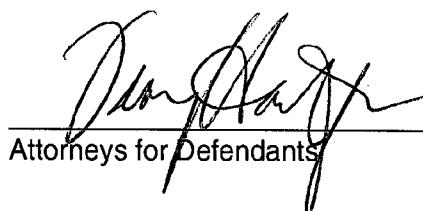
PFAFF, McINTYRE, DUGAS, HARTYE &
SCHMITT



Atorneys for Defendant
CLEARFIELD/HOSPITAL

FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

TO THE WITHIN NAMED PARTIES:
YOU ARE HEREBY NOTIFIED TO
PLEAD TO THE ENCLOSED ANSWER
AND NEW MATTER TO PLAINTIFFS'
AMENDED COMPLAINT WITHIN **20 DAYS**
FROM SERVICE HEREOF OR A DEFUALT
JUDGMENT MAY BE ENTERED AGAINST
YOU.



Atorneys for Defendants

APR - 5 REC'D TJC

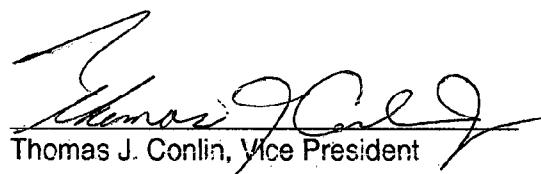
P 174 MH

VERIFICATION

I, Thomas J. Conlin, Vice President of **CLEARFIELD HOSPITAL** do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER TO PLAINTIFF'S AMENDED COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

CLEARFIELD HOSPITAL


Thomas J. Conlin, Vice President

Date: 4/9/61

FILED

APR 17 2001

12:50 PM
William A. Shaw
Prothonotary

No 96 Q
JAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA

CIVIL DIVISION

CONNIE ELLIS :
:
VS. :
:
PHILIP J. AYCOCK and :
CLEARFIELD HOSPITAL : No: 00-383-CD

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims 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 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.

LAWYER REFERENCE SERVICE
One North 2nd Street
Clearfield, PA 16830
1-800-692-7375

FILED

APR 23 2001

William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

:

:

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

:
: No: 00-383-CD

AMENDED CIVIL ACTION

1. Plaintiff, CONNIE ELLIS, is an individual and a citizen of the Commonwealth of Pennsylvania, residing therein at 321 1/2 Lafayette Street, Bristol, Pennsylvania.

2. Defendant, PHILIP H. AYCOCK, M.D. (hereinafter referred to as "AYCOCK") is now and at all times material hereto was a licensed physician maintaining an office for the practice of medicine at c/o Clearfield Hospital 809 Turnpike Avenue, Clearfield, Pennsylvania.

3. Defendant, CLEARFIELD HOSPITAL, (hereinafter referred to as "CLEARFIELD") is now and at all times material hereto was a hospital, a duly authorized legal entity authorized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania providing healthcare services with a place of business at 809 Turnpike Avenue, Clearfield, Pennsylvania.

4. At all times material hereto, defendant, CLEARFIELD, acted through its agents, servants, ostensible agents and/or employees including but not limited to defendant, AYCOCK, and was engaged in rendering professional medical care to the ill and injured including plaintiff, CONNIE ELLIS, and said agent, servants, ostensible agents and/or employees were acting within the course and scope of this employment and/or authority for and on the business of defendant, CLEARFIELD, and under its control or right to control.

5. At all times material hereto defendant, AYCOCK, was held out as an agent, servant, ostensible agent or employee of defendant, CLEARFIELD.

6. At all times material hereto defendant, AYCOCK, was an agent, servant and/or employee of defendant, CLEARFIELD, acting within the course and scope of his employment and/or authority for and on the business of defendant, CLEARFIELD, under its control or right to control.

7. Plaintiff came under the care of defendants, AYCOCK and CLEARFIELD, on or about August 4, 1997.

8. Each defendant owed plaintiff, CONNIE ELLIS, a duty to possess and exercise that degree of professional skill, care and knowledge ordinarily possessed and exercised by and/or required of practitioners within the health care profession or within his, her, its field of specialization.

9. Defendant, CLEARFIELD, owned plaintiff, CONNIE ELLIS, those corporate hospital duties described by the Pennsylvania Supreme Court in Thompson vs. Nason Hospital, 591 A.2d 703 (1991).

10. Defendant, CLEARFIELD, owed a duty to plaintiff to insure plaintiff's safety and well-being while she was a patient in defendant's hospital.

11. Plaintiff, CONNIE ELLIS, was referred to the defendant, AYCOCK, for treatment and evaluation of a rectovaginal fistula as well as for a right breast mass.

12. On August 25, 1997 defendant, AYCOCK, performed an operation at defendant, CLEARFIELD, to repair a rectovaginal fistula.

13. Plaintiff, CONNIE ELLIS, was not given any instructions on bowel preparation prior to this operation.

14. Plaintiff, CONNIE ELLIS, was not provided any dietary restrictions post-operatively.

15. Shortly after the surgery plaintiff, CONNIE ELLIS, had a bowel movement which disrupted the surgical repair.

16. Plaintiff, CONNIE ELLIS, returned to defendant, AYCOCK, after the surgery with varioius complaints including severe pain.

17. Defendant, AYCOCK, advised plaintiff that this would heal over time.

18. On or about May of 1998 because plaintiff, CONNIE ELLIS, was still having pain, she went to see Dr. Parsons at the Tyrone Medical Center. At this point in time plaintiff, CONNIE ELLIS, learned for the first time that her physical problems would not heal on their own and it was at this time that plaintiff first knew or had reason to know that the actions of the defendants were below the standard of care.

19. Each defendant breached his, her, its aforesaid duty to plaintiff by committing negligent acts or omissions as set forth morefully in the following paragraphs.

20. The acts of negligence attributable to defendant, AYCOCK, consisted of the following:

- (a) failing to provide reasonable and proper medical care under the circumstances;
- (b) failing to provide medical care in conformance with the requisite standards of care;
- (c) failing to possess and exercise that fund of medical knowledge relevant to diagnosis and management of rectovaginal fistula;
- (d) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (e) failing to properly treat and care for plaintiff's rectovaginal fistula;
- (f) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (g) failing to provide prophylactic antibiotics prior to surgery;
- (h) failing to provide post-operative antibiotics;

- (i) failing to recommend dietary restrictions post-operatively;
- (j) failing to properly perform surgery on the rectovaginal fistula;
- (k) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;
- (l) failing to send plaintiff, CONNIE ELLIS, for appropriate post-operative diagnostic studies;
- (m) failing to refer plaintiff to an appropriate specialist;
- (n) failing to provide prompt, adequate and appropriate post-operative care for the plaintiff's complaints of constipation, bleeding and pain;
- (o) failing to take notice of and/or to advise the plaintiff that there was damage to her anal sphincter muscle;

21. The acts of negligence attributable to defendant, CLEARFIELD, consisted of the following:

- (a) failing to select and retain only competent physicians and other personnel;
- (b) failing to properly oversee all persons who practice medicine within its walls as to patient care;
- (c) failing to formulate, adopt and enforce adequate rules and policies to insure quality care for the patients;
- (d) failing to properly supervise the conduct of physicians, residents, interns, nurses and other employees including but not limited to defendant, AYCOCK, involved in the care and treatment of plaintiff, CONNIE ELLIS;
- (e) failing to insure proper, clear and complete communication of medical information regarding plaintiff's medical problems to medical and/or support personnel involved in plaintiff's care;
- (f) failing to properly treat and care for plaintiff's rectovaginal fistula;

- (g) failing to properly order a bowel preparation prior to the rectovaginal surgery;
- (h) failing to provide prophylactic antibiotics prior to surgery;
- (i) failing to provide post-operative antibiotics;
- (j) failing to recommend dietary restrictions post-operatively;
- (k) failing to properly perform surgery on the rectovaginal fistula;
- (l) improperly cutting the anal sphincter muscle during the rectovaginal fistula repair;
- (m) failing to refer plaintiff to an appropriate specialist;
- (n) failing to provide prompt, adequate and appropriate post-operative care;
- (o) failing to make a proper and/or adequate examination of the plaintiff before, during and after administering medical care to her.

22. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained those injuries more particularly hereinafter set forth.

23. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that plaintiff would suffer those injuries set forth herein.

24. As a result of the aforesaid negligent acts and/or omissions of each of the defendants, their agents, servants, ostensible agents and/or employees, plaintiff, CONNIE ELLIS, sustained the following injuries: fecal incontinence; breakdown of rectovaginal fistula repair; injury of the rectal sphincter; and in addition severe physical and emotional injuries and injuries to her nerves and nervous system, all of which are or may be permanent in nature.

25. Each of the negligent acts and/or omissions by each defendant increased the risk of harm in that they increased the likelihood that the aforesaid injuries would be sustained by plaintiff, CONNIE ELLIS.

26. As a result of the aforesaid negligent acts and/or omissions of the defendants, plaintiff, CONNIE ELLIS, has been required to incur expenses and obligations in an effort to treat and care for the aforementioned injuries.

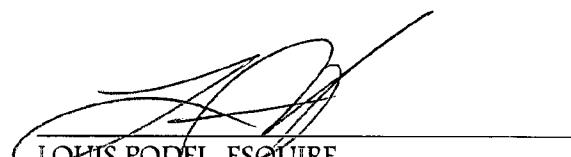
27. As a result of the injuries and disabilities as previously mentioned, plaintiff, CONNIE ELLIS, will be require to spend money in the future to defray the medical expenses for the treatment of her injuries.

28. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from engaging in and enjoying the normal activities of life and has suffered embarrassment, humiliation and loss of life's pleasures.

29. As a result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has been prevented from attending to her usual duties, activities and occupation causing her a loss of earnings.

30. As a further result of the aforesaid acts of negligence by defendants, plaintiff, CONNIE ELLIS, has suffered a loss and depreciation of her earnings and earning capacity and will continue to suffer such loss and depreciation for an indefinite time in the future, all to her great detriment and loss.

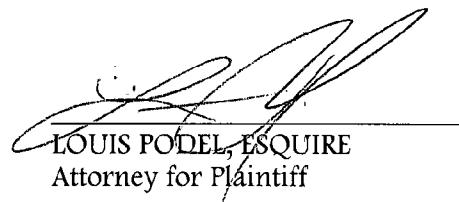
WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally in a sum in excess of that requiring submission to arbitration as well a lawful interest and costs.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

VERIFICATION

LOUIS PODEL, ESQUIRE, hereby states that he is the Attorney for the Plaintiffs in this action and verifies that the statements made in the foregoing AMENDED CIVIL ACTION are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

DATED: 4/16/01

FILED

APR 23 2001
01913412 CLAETTY Rock
William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100

ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

:

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

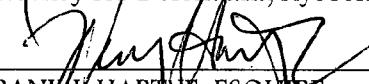
:
: No: 00-383-CD

STIPULATION

It is hereby STIPULATED and AGREED by and between LOUIS PODEL, ESQUIRE, attorney for Plaintiff, Connie Ellis; MARIAN PATCHEN SCHLEPPY, ESQUIRE, attorney for Defendant, Philip J. Aycock, M.D., and FRANK J. HARTYE, ESQUIRE, attorney for defendant, Clearfield Hospital, that plaintiff be permitted to file an Amended Complaint with reference to the above captioned matter.


LOUIS PODEL, ESQUIRE
Attorney for Plaintiff


MARIAN PATCHEN SCHLEPPY, ESQUIRE
Attorney for Defendant, Aycock


FRANK J. HARTYE, ESQUIRE
Attorney for Defendant, Clearfield Hospital

FILED

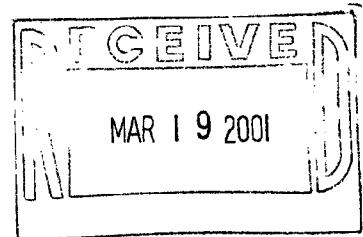
APR 23 2001

01935/26 atty

William A. Shaw

Postmaster

E. Podel



LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

: No: 00-383-CD

PLAINTIFF'S ANSWER TO NEW MATTER OF
DEFENDANT, CLEARFIELD HOSPITAL

31. Denied in part and admitted in part. It is admitted that plaintiff initiated the within action by filing a Praecept for Writ of Summons on or above March 28, 2000. It is denied that plaintiff's cause of action arose by December of 1997. To the contrary, plaintiff's cause of action did not arise until she went to see another physician in May of 1998. Up until that point in time she had been relying on Dr. Aycock's advice that her problems would resolve with time.

32. Denied. This allegation is a conclusion of law to which no answer thereto is required and further denied for the reasons set forth in paragraph 31.

33. Denied. This allegation is a conclusion of law to which no answer thereto is required and further denied for the reasons set forth in paragraph 31.

34. Denied. This allegation is a conclusion of law to which no answer thereto is required.

FILED

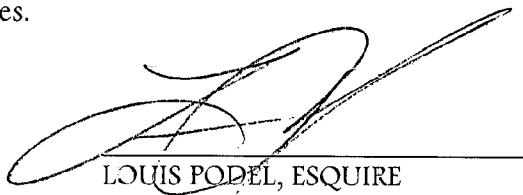
APR 23 2001

William A. Shaw
Prothonotary


LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

VERIFICATION

LOUIS PODEL, ESQUIRE, hereby states that he is the Attorney for the Plaintiffs in this action and verifies that the statements made in the foregoing ANSWER TO NEW MATTER OF DEFENDANT, CLEARFIELD HOSPITAL, are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

DATED: 4/19/01

FILED

APR 23 2001
171035/MCC
William A. Shaw
Prothonotary

REB

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

CONNIE ELLIS,

No. 00-383 CD

Plaintiff

ISSUE:

PRAECIPE FOR ARGUMENT LIST

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

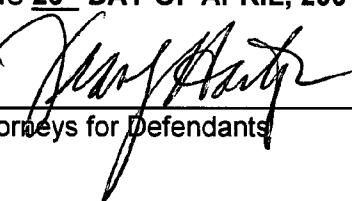
Defendants

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 26th DAY OF APRIL, 2001.



Attorneys for Defendants

FILED

APR 27 2001

William A. Shaw
Prothonotary

CONNIE ELLIS, : IN THE COURT OF COMMON PLEAS OF
Plaintiff : CLEARFIELD COUNTY, PA
vs. : NO. 00 - 383 CD
CLEARFIELD HOSPITAL and PHILIP J. :
AYCOCK, M.D., :
Defendants :
:

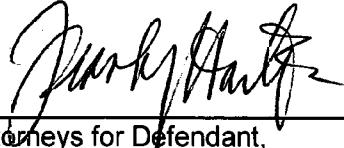
PRAECIPE FOR ARGUMENT LIST

TO: PROTHONOTARY

Please list the Motion for Summary Judgment filed on behalf of Defendant, Clearfield Hospital, on the next available Argument List.

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT

By _____


Attorneys for Defendant,
CLEARFIELD HOSPITAL

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

APR 27 2001
M 1044 110CC
William A. Shaw
Prothonotary
822

copy to court

4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,

CIVIL DIVISION

Plaintiff,

No. 00-383-CD

vs.

Code:

CLEARFIELD HOSPITAL and
PHILIP J. AYCOCK, M.D.,

Issue No:

Defendants.

ANSWER AND NEW MATTER TO
AMENDED COMPLAINT IN CIVIL
ACTION

Filed on behalf of Philip J. Aycock,
M.D., Defendant

Counsel of Record for This Party:

Marian Patchen Schleppy, Esquire
PA I.D. # 72880

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

JURY TRIAL DEMANDED

FILED

APR 30 2001
m 18:30 / m
William A. Shaw
Prothonotary
No C/C S
828

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,)	CIVIL DIVISION
)	
Plaintiff,)	No. 00-383-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL and)	
PHILIP J. AYCOCK, M.D.,)	
)	
Defendants.)	

ANSWER AND NEW MATTER TO AMENDED COMPLAINT IN CIVIL ACTION

PHILIP J. AYCOCK, M.D., Defendant, by and through his attorneys, Gaca Matis Baum & Rizza and Marian Patchen Schleppy, Esquire, in response to Plaintiff's Amended Complaint in Civil Action sets forth the following:

1. If any factual allegations in the Plaintiff's Amended Complaint in Civil Action are not responded to in the following paragraphs, after reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of said allegations.
2. Each paragraph of this Answer incorporates by reference all other paragraphs of the Answer.
3. Any allegation or implication that Defendant, Aycock, was acting through agents, servants and employees is denied as stated. To the contrary, it is averred that at all times relevant hereto, any other physicians or health care providers who provided care to Plaintiff were acting as independent contractors or as agents, servants and employees of other persons or entities.

4. After reasonable investigation, this answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained within Paragraphs 1 and 18. Any allegation that Plaintiff did not know or had reason to know of her "physical problems" until May of 1998 pleads conclusions of law to which no response is required. To the extent that a response is required, these allegations are denied. Strict proof of same is demanded at time of trial.

5. The allegations contained within Paragraphs 3, 4, 9, 10 and 21, including subparagraphs (a) through and including (x), pertain to other Defendants and no response is required of this answering Defendant. To the extent that a response is required because of allegations of negligence or agency, these allegations are specifically denied.

6. Paragraph 2 is denied as stated to the extent that it alleges that this answering Defendant was employed as a physician by Clearfield Hospital. It is admitted that Dr. Aycock was and is now a licensed physician. His correct address is 1212 Turnpike Avenue, Clearfield, PA 16830. By way of further response, Dr. Aycock was not, at any time relevant hereto, an actual or ostensible agent of Clearfield Hospital. Dr. Aycock was at all times an independent staff physician with privileges at Clearfield Hospital.

7. Paragraphs 5 and 6 are specifically denied. It is denied that Dr. Aycock was held out as an agent, servant, ostensible agent or employee of Defendant, Clearfield Hospital. It is also further specifically denied that Dr. Aycock was an agent, servant and/or employee of Defendant, Clearfield Hospital, or that he was acting within the course and scope of his employment and/or authority for and on the business of Clearfield Hospital or under its right

to control. Dr. Aycock was, at all times relevant hereto, an independent staff physician with privileges at Clearfield Hospital.

8. Paragraphs 7, 11, 12, 15 and 16 are admitted to the extent that the said allegations contained therein are consistent with the recordations within Dr. Aycock's office records and the records of Clearfield Hospital; to the extent that these allegations are inconsistent with these recordations or are not recorded at all, after reasonable investigation, this answering defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained within these paragraphs. Said averments are deemed denied and strict proof of same is demanded at time of trial.

9. Paragraph 8 states conclusion of law to which no response is required. To the extent that a response is required, it is averred that Dr. Aycock did in fact possess and exercise the degree of professional skill, care and knowledge ordinarily possessed and exercised and/or required of practitioners within the health care profession and within his field of specialization.

10. Paragraphs 13, 14, 17, 19, 20 including Subparagraphs (a) through and including (o), 23, 24, 25, 26, 27, 28, 29, and 30 are denied. This answering Defendant was not negligent and his conduct did not cause, contribute to or increase the likelihood of any alleged harm to Plaintiff.

WHEREFORE, the Defendant, PHILIP J. AYCOCK, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against Plaintiff with costs of suit sustained.

NEW MATTER

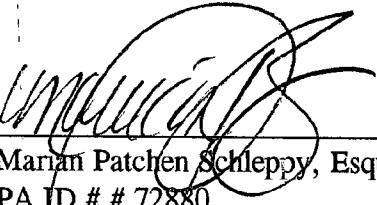
By way of further defense, this Defendant pleads the following New Matter:

12. Answering Defendant incorporates herein by reference the foregoing Answer as though fully set forth herein.

13. The Plaintiff's claim is barred in whole or in part by the applicable statute of limitations.

WHEREFORE, the Defendant, PHILIP J. AYCOCK, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against Plaintiff with costs of suit sustained.

GACA MATIS BAUM & RIZZA

By: 

Marian Patchen Schleppy, Esquire

PA ID # # 72880

Attorneys for Philip J. Aycock, M.D.,
Defendant

Gaca Matis Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222-5404
(412) 338-4750

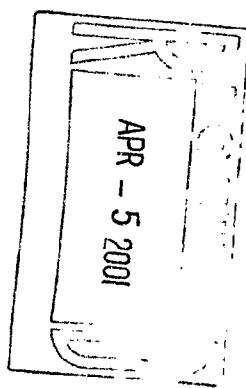
26972

VERIFICATION

I, PHILLIP J. AYCOCK, M.D., have read the foregoing ANSWER AND NEW MATTER TO AMENDED COMPLAINT IN CIVIL ACTION. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Philip J. Aycock, M.D.
PHILLIP J. AYCOCK, M.D.
Date: 4/2/01



APR - 5 2001

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing ANSWER AND NEW MATTER upon all counsel of record by United States, First-class mail, postage prepaid, this 30th day of April, 2001.

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

Frank J. Hartye, Esquire
Pfaff, McIntyre, Dugas & Hartye
P.O. Box 533
Hollidaysburg, PA 16648-0533

GACA MATIS BAUM & RIZZA



Marian Patchen Schleppy

FILED

APR 30 2001

William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

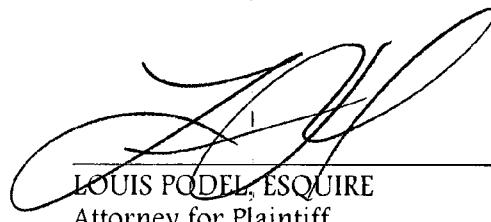
PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

: No: 00-383-CD

PLAINTIFF'S ANSWER TO NEW MATTER OF
DEFENDANT, PHILIP J. AYCOCK

12. No answer is required.

13. Denied in part and admitted in part. It is admitted that plaintiff initiated the within action by filing a Praecept for Writ of Summons on or above March 28, 2000. It is denied that plaintiff's cause of action arose by December of 1997. To the contrary, plaintiff's cause of action did not arise until she went to see another physician in May of 1998. Up until that point in time she had been relying on Dr. Aycock's advice that her problems would resolve with time.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

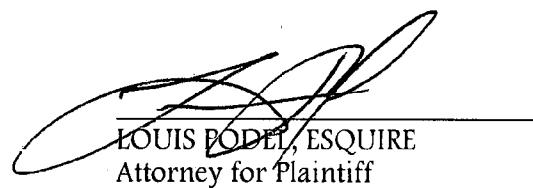
FILED

MAY 10 2001

William A. Shaw
Prothonotary

VERIFICATION

LOUIS PODEL, ESQUIRE, hereby states that he is the Attorney for the Plaintiffs in this action and verifies that the statements made in the foregoing ANSWER TO NEW MATTER are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

DATED: 5/3/01

FILED

MAY 10 2001
M. L. Rose, NOCC
William A. Shaw
Prothonotary

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

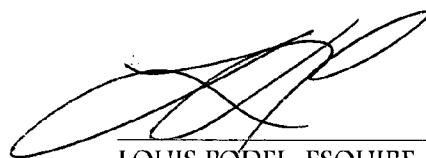
PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

:
: No: 00-383-CD

SUBSTITUTION OF VERIFICATION

TO THE PROTHONOTARY:

Kindly substitute the attached Verification of Plaintiff to Plaintiff's Amended Complaint for the Verification filed by counsel.



LOUIS PODEL, ESQUIRE
Attorney for Plaintiffs

FILED

MAY 14 2001
m 1846am G
William A. Shaw *G*
Prothonotary

VERIFICATION

The undersigned, having read the attached which was prepared by my attorney, hereby verify that the information contained therein may include information furnished to my attorney by individuals other than myself; that the language used therein is that of my attorney, and that to the extent the information set forth therein is not known to me, I have relied upon my attorney in taking this Verification. Subject to the above limitations, the information contained therein is true and correct to the best of my information, knowledge and belief, subject to the penalties imposed by 18 Pa. C.S. §4904.

Connie Ellis
CONNIE ELLIS

DATED: April 13, 2001

LOUIS PODEL, ESQUIRE
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130
(215) 769-0100
ID#23870

Attorney for Plaintiff

CONNIE ELLIS

: COURT OF COMMON PLEAS OF
: CLEARFIELD COUNTY, PA

vs.

PHILIP J. AYCOCK, M.D. and CLEARFIELD
HOSPITAL

:
:
:
: No: 00-383-CD

PLAINTIFF'S ANSWER TO MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT, PHILIP J. AYCOCK, M.D.

FILED

1. Admitted
2. Admitted
3. Admitted
4. Admitted

MAY 29 2001

William A. Shaw
Prothonotary

5. Denied as stated. Plaintiff indicated in her deposition that she began leaking approximately a month after her last visit to Dr. Aycock. She further indicated that she knew she needed additional follow up care but that she did not want to return to Dr. Aycock because of his rough mannerism. (See Deposition page 104, line 25 through Page 105, line 2). At this point in time plaintiff was still under the care of Dr. Aycock and his advice was that her symptoms would heal in time. Her search for a new physician was not predicated on any thought that Dr. Aycock's conduct was inappropriate.

6. Denied as stated. Plaintiff was aware that her symptom of leakage occurred sometime following her surgery by Dr. Aycock. She was advised by Dr. Aycock that it was not unexpected to have various symptoms and that they would heal over time. Plaintiff relied on this advice.

7. Denied as stated. As set forth previously, plaintiff testified at her deposition (page 104 and 105) that she did not care for Dr. Aycock's mannerisms and, therefore, began a search for a new physician.

8. Denied as stated. At plaintiff's deposition (page 141 referred to by the defendant) plaintiff discussed with her family members following up on her symptoms.

9. Denied. Plaintiff was not aware that she was injured by Dr. Aycock until she saw Dr. Parsons in May of 1998.

10. Denied. A fair reading of plaintiff's testimony (a copy of which is attached) will indicate that plaintiff was not aware that Dr. Aycock caused her any injury until she met with Dr. Parsons in May of 1998. She was only aware that she had new symptoms following her treatment with Dr. Aycock. She was advised that those symptoms were not unexpected and would heal over time.

11. Admitted with the addition of the discovery rule exception.

12. Admitted

13. Admitted

14. Denied. The implications in paragraph 14 of defendant's Motion are denied. Plaintiff was aware of symptoms which she associated with being a normal consequence of Dr. Aycock's surgery. She knew she needed follow up care and decided to seek the advice of a new physician because she did not care for Dr. Aycock's mannerisms. She was not aware that she had been injured by Dr. Aycock's conduct.

15. Denied. As set forth previously, plaintiff was not aware that her symptoms were the result of Dr. Aycock's negligent acts until she met with Dr. Parsons in May of 1998.

16. Denied for the reasons set forth previously.

17. Denied. Plaintiff had until May 2000, two years from when she met with Dr. Parsons to bring this action. Until May of 1998 she was still technically under the care of Dr. Aycock and had been relying on his statements that her symptoms were not unexpected and were a natural consequence of her surgery and would heal over time. (See Affidavit of Plaintiff, Connie Ellis, attached hereto as Exhibit "A").

18. Denied. It is admitted that the instant action was commenced on March 28, 2000. It is denied that the action is time barred.

19. It is agreed that there is no genuine issue of material fact as to the time within which plaintiff, Connie Ellis, knew or should have known that her alleged injuries were the result of Dr. Aycock's negligence. That time period was May of 1998 when she consulted with Dr. Parsons. Consequently, the two-year time period would begin to run in May of 1998. As this instant action was filed in March of 2000, the two-year time period had not expired.

WHEREFORE, plaintiff requests this Honorable Court to deny the Motion for Summary Judgment.



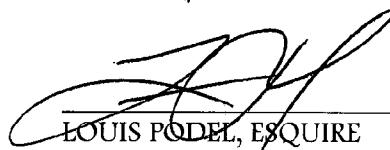
LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the following Answer to Motion for Summary Judgment upon all counsel of record by United States, First-Class Mail, postage prepaid, this 24th day of May, 2001.

Frank J. Hartye, Esquire
Pfaff, McIntyre, Dugas & Hartye
P.O. Box 533
Hollidaysburg, PA 16648-0533

Marian Patchen Schleppy, Esquire
Gaca, Matis, Baum & Rizza
300 Four PPG Place
Pittsburgh, PA 15222-5404



LOUIS PODEL, ESQUIRE
Attorney for Plaintiff

FILED

MAY 29 2001
G 2913cc Atty Bld
William A. Shaw
Prothonotary
26

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,

CIVIL DIVISION

Plaintiff,

No. 00-383-CD

vs.

CLEARFIELD HOSPITAL and
PHILIP J. AYCOCK, M.D.,

PRAECEIPE FOR ARGUMENT LIST

Defendants.

Filed on behalf of Philip J. Aycock,
M.D., Defendant

Counsel of Record for This Party:

Marian Patchen Schleppy, Esquire
PA I.D. # 72880

Elizabeth L. Jenkins, Esquire
PA I.D. 85694

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

JURY TRIAL DEMANDED

FILED

MAY 14 2001
m 8:49 nocc
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,) CIVIL DIVISION
Plaintiff,) No. 00-383-CD
vs.)
CLEARFIELD HOSPITAL and)
PHILIP J. AYCOCK, M.D.,)
Defendants.)

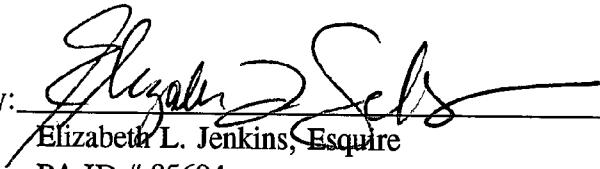
PRAECIPE FOR ARGUMENT LIST

TO: PROTHONOTARY

Please list the Motion for Summary Judgment filed on behalf of defendant, Philip J. Aycock, M.D. on the next available list.

GACA MATIS BAUM & RIZZA

By:


Elizabeth L. Jenkins, Esquire
PA ID # 85694
Attorneys for Philip J. Aycock, M.D.,
Defendant

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

CONNIE ELLIS,

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

No. 00-383 CD

ISSUE:

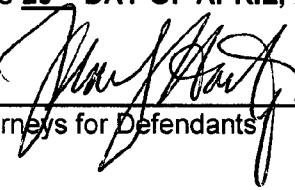
MOTION FOR SUMMARY JUDGMENT

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 26TH DAY OF APRIL, 2001.



Attorneys for Defendants

FILED

APR 27 2001

William A. Shaw
Prothonotary

CONNIE ELLIS, Plaintiff : IN THE COURT OF COMMON PLEAS OF
vs. : CLEARFIELD COUNTY, PA
CLEARFIELD HOSPITAL and PHILIP J. : NO. 00 - 383 CD
AYCOCK, M.D., Defendants :

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Defendant, CLEARFIELD HOSPITAL, by and through its attorneys, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the following Motion for Summary Judgment:

1. Plaintiff initiated the within action by filing a Writ of Summons on or about March 28, 2000. Thereafter a Complaint and an Amended Complaint were filed.
2. Clearfield Hospital filed an Answer and New Matter raising, among other things, that the above action is barred by the statute of limitations.
3. Plaintiff's Amended Complaint alleges that she sought care and treatment from Dr. Aycock in August 1997. At that time, she was suffering from a rectovaginal fistula. Plaintiff alleges (paragraph 12 of Amended Complaint) that on August 25, 1997, Dr. Aycock performed an operation at Clearfield Hospital to repair the rectovaginal fistula.
4. Plaintiff alleges that there was no pre-op bowel preparation nor any post-op dietary restrictions (paragraph 13-14). Plaintiff alleges (paragraph 15) that shortly after the surgery she had a bowel movement which disrupted the surgical repair. The patient returned to Dr. Aycock and complained to him about this problem and also various complaints including severe pain. Dr. Aycock advised the patient that she would heal over time (paragraph 16-17).
5. The plaintiff last saw Dr. Aycock in September of 1997 and decided not to see him thereafter. (Deposition page 138-139).

6. Shortly after her last visit to Dr. Aycock, the plaintiff began "leaking" that is she was unable to hold her bowels. (Deposition page 99-102). This leaking continued almost every day and was not present prior to the surgery. (Deposition page 105).

7. In November-December 1997, she began looking for another physician to see why she was not healing and why she had pain. (Deposition page 139-141).

8. In November-December 1997, plaintiff felt that her condition was related to the procedure performed by Dr. Aycock. (Deposition page 143). Plaintiff made arrangements in late December to see another physician about her condition. (Deposition page 143-144). In May 1997, this physician (Dr. Parsons) confirmed that the problem she suffered was as a result of the surgery of Dr. Aycock. (Deposition page 144).

9. Plaintiff's claim against Clearfield Hospital relates to its failure to select and retain only competent physicians and to properly oversee the care and treatment provided by Dr. Aycock to the plaintiff at Clearfield Hospital in August 1997.

10. The two-year statute of limitations applies to this negligence action. 42 Pa. C.S.A. §5524(2).

11. While plaintiff's Complaint alleges that in May of 1998, when she saw Dr. Parsons, she learned for the first time that her physical problems would not heal on their own and that this was the first time she knew or had reason to know that the actions of the defendants were below the standard of care, that is not relevant to the statute of limitations.

12. Plaintiff filed this action more than two years after the surgery of August 25, 1997. The Complaint was filed more than two years after her last visit to Dr. Aycock in late September 1997.

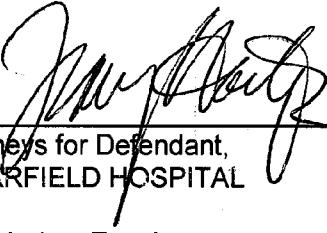
13. By November/December, 1997, the plaintiff had knowledge of her injuries, knowledge of the operative cause of her injury and knowledge of the causative relationship between the injury and the operative conduct, as set forth by the allegations in plaintiff's Complaint and plaintiff's deposition testimony.

14. According to the plaintiff, prior to the surgery performed by Dr. Aycock, she knew he had not performed that type of surgery before (Deposition page 46-48).

15. As a result, plaintiff's claim is barred by the two-year statute of limitations and should be dismissed with prejudice.

Respectfully submitted,

PFAFF, McINTYRE, DUGAS, HARTYE & SCHMITT

By 

Attorneys for Defendant,
CLEARFIELD HOSPITAL

Frank J. Hartye, Esquire
PA I.D. #25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581

FILED

APR 27 2001
M 10 44 1100 C
William A. Shaw
Prothonotary

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

CONNIE ELLIS,

Plaintiff

vs.

CLEARFIELD HOSPITAL and PHILIP J.
AYCOCK, M.D.,

Defendants

No. 00-383 CD

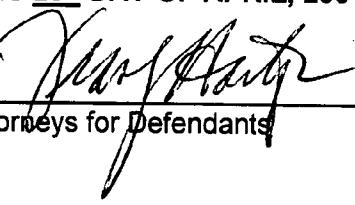
ISSUE:
PRAECIPE FOR ARGUMENT LIST

Filed on Behalf of:
CLEARFIELD HOSPITAL

Counsel of Record for this Party:
FRANK J. HARTYE, ESQUIRE
PA I.D.#: 25568

PFAFF, McINTYRE, DUGAS, HARTYE
& SCHMITT
P.O. Box 533
Hollidaysburg, PA 16648-0533
(814) 696-3581

I HEREBY CERTIFY THAT A TRUE AND
CORRECT COPY OF THE WITHIN WAS
MAILED TO ALL COUNSEL OF RECORD
THIS 26th DAY OF APRIL, 2001.



Attorneys for Defendants


COPY

FILED

APR 27 2001

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,

CIVIL DIVISION

Plaintiff,

No. 00-383-CD

vs.

CLEARFIELD HOSPITAL and
PHILIP J. AYCOCK, M.D.,

**MOTION FOR SUMMARY
JUDGMENT**

Defendants.

Filed on behalf of Philip J. Aycock,
M.D., Defendant

Counsel of Record for This Party:

Marian Patchen Schleppy, Esquire
PA I.D. # 72880

Elizabeth L. Jenkins, Esquire
PA I.D. ## 85694

GACA MATIS BAUM & RIZZA
Firm #983
300 Four PPG Place
Pittsburgh, PA 15222-5404

(412) 338-4750

FILED

MAY 14 2001
m1849 JCC atly
William A. Shaw
Prothonotary

gjt

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,)	CIVIL DIVISION
)	
Plaintiff,)	No. 00-383-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL and)	
PHILIP J. AYCOCK, M.D.,)	
)	
Defendants.)	

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Philip J. Aycock, M.D., one of the defendants, by and through his attorneys, Gaca Matis Baum & Rizza, and Elizabeth L. Jenkins, Esquire, and moves for summary judgment in his favor and against all other parties, and in support thereof avers the following:

1. The plaintiff, Connie Ellis commenced the instant action by filing a Praecept to Issue a Writ of Summons in the Court of Common Pleas of Clearfield County on March 28, 2000.
2. In her Amended Complaint, plaintiff alleges that she came under the care of Defendant Aycock on or about August 4, 1997.
3. On or about August 25, 1997 Defendant Aycock performed surgery on Plaintiff to repair a rectovaginal fistula.
4. Plaintiff's Amended Complaint alleges Defendant Aycock breached his duty to plaintiff by committing negligent acts or omissions which allegedly caused injuries to the Plaintiff including fecal incontinence, breakdown of the vaginal fistula repair, injury to the

rectal sphincter; and in addition severe physical and emotional injuries and injuries to her nerves and nervous system.

5. Plaintiff, in her deposition stated that in November and December of 1997, after experiencing the fecal incontinence she began looking for another doctor. (Plaintiff's deposition pg. 140, lines 14-25.)

6. Plaintiff believed her injury to be different in nature from the injury for which she was initially treated, and related the onset of the injury to just after the last time she treated with Dr. Aycock. (Plaintiff's deposition pg. 100, line 2-15.)

7. Plaintiff further testified at her deposition that she began to consider searching for a new physician for treatment of these injuries as early as the Fall of 1997. (Plaintiff's deposition p. 138-140).

8. Plaintiff also testifies at her deposition that she even discussed her contemplating finding a new doctor with her family members in the late Fall of 1997. (Plaintiff's deposition p. 141)

9. Plaintiff, therefore, knew of the injuries complained of in her Amended Complaint as early as September, 1997.

10. Further, based on her own testimony, plaintiff felt, as early as November to December of 1997 that Defendant Dr. Aycock caused the injuries about which plaintiff complained.

11. The statute of limitations applicable to a medical malpractice action is governed by 42 Pa.C.S.A. § 5524(2), which provides that "An action to recover damages for injuries to the person ... caused by the wrongful action or negligence of unlawful violence or negligence of

"another" must be brought within two years from the date of the alleged occurrence. 42 Pa.C.S.A. § 5524(2).

12. Generally the statute of limitations will begin to run on the date the injury is sustained.

13. Under the discovery rule exception, however, the statutory limitation period will be tolled until the plaintiff knows, or by exercise of reasonable diligence, should have known that she has been injured and that her injury has been caused by another's conduct.

14. Plaintiff Ellis was aware of her condition, which she associated with Dr. Aycock's surgery within one month of her last visit with defendant Dr. Aycock, and testified that she considered a new doctor for treatment of the condition as to the Fall of 1997.

15. Plaintiff Ellis was also aware that the alleged condition was a result of the alleged "negligent acts or omissions" on the part of Dr. Aycock.

16. At the very latest, therefore, Plaintiff Ellis knew or should have known as of December, 1997 that she had an injury which may have been caused by the conduct of another.

17. Therefore, Plaintiff Ellis, had until December of 1999 to bring an action against Defendant Dr. Aycock.

18. As the instant action was not commenced by plaintiff until March 28, 2000, this action is time barred pursuant to Pennsylvania's two year statute of limitations governing medical malpractice actions.

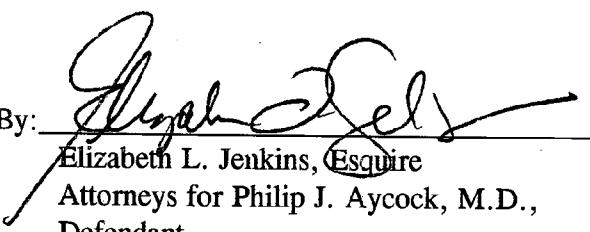
19. There exists no genuine issue of material fact as to the time within which Plaintiff Ellis knew or should have known that her alleged injuries were the result of the alleged

negligence, carelessness and improper treatment by Dr. Aycock and, nonetheless, waited to file this instant action until March 28, 2000, following the expiration of the applicable statutory limitation period, Dr. Aycock is therefore entitled to a judgment as a matter of law.

WHEREFORE, Dr. Philip Aycock, one of the defendants, requests this Honorable Court to enter judgment in its favor as a matter of law.

JURY TRIAL DEMANDED.

GACA MATIS BAUM & RIZZA

By: 

Elizabeth L. Jenkins, Esquire
Attorneys for Philip J. Aycock, M.D.,
Defendant

1 September of '97?

2 A. After the operation is when it,
3 occurred. I never had that problem
4 before.)

5 Q. But my question, and I might
6 not have been clear, I'm just trying
7 to understand were you experiencing
8 this difficulty holding your bowels
9 during the period that you were being
10 seen by Doctor Aycock following the
11 surgery, or was this something that
12 started after the last time you'd
13 seen him?)

14 A. No, it started right after,)
15 yeah.)

16 Q. All right. So ---.

17 A. I mean, it came on me --- when
18 I had to go to the bathroom, I wasn't
19 able to hold it. I'd have to run to
20 the bathroom.

21 Q. Did you report that to Doctor
22 Aycock?

23 A. Yes.

24 Q. And just so I'm not confused.
25 I mean on the one hand you said that

1 Q. Okay. Things like that?

2 A. Right.

3 Q. All right. I won't review all
4 the various follow-up visits that you
5 had with the doctor, that's Doctor
6 Aycock, through September. But as I
7 recollect your testimony, the anal
8 area had broken down and blood had
9 come from there. And then
10 periodically with bowel movements
11 during this month or so, you would
12 have some bleeding; is that right?

13 A. Uh-huh (yes). Yes.

14 Q. And you had pain?

15 A. Yes, very much pain. I can't
16 stress that enough how painful it
17 was.

18 Q. When did that pain, that great
19 deal of pain that you're just talking
20 about, when did that eventually go
21 away?

22 A. A couple months.

23 Q. It took a couple months?

24 A. Yes, it did.

25 Q. So then by the end of



1 September, Doctor Aycock indicated to you to return to him as necessary.
2 You make the appointment, come in if
3 you need to; correct?

4 A. Uh-huh (yes). Yes.

5 Q. And you chose not to go back
6 to him for the reasons that you said?

7 A. Right.

8 Q. So then you saw Doctor Parsons
9 in May. We're talking six, seven,
10 eight months or so after you stopped
11 seeing Doctor Aycock; is that about
12 right?

13 A. Right.

14 Q. And you indicated because of
15 insurance purposes, it took you a
16 little while to find Doctor Parsons
17 and to set up arrangements to see him
18 in May?

19 A. That's correct.

20 Q. Could you tell me when it was
21 that you decided that you needed to
22 see a doctor and started looking for
23 a different doctor other than Doctor
24 Aycock?

1 A. Within a couple months. /

2 Q. Now, that's a couple of months
3 from when you last saw him? /

4 A. Right. When it wasn't
5 healing. /

6 Q. And in October --.

7 ATTORNEY SCHLEPPY:

8 I'm sorry. You said
9 from a couple months you last
10 saw him. Did you mean Doctor
11 Aycock? /

12 A. Yes. /

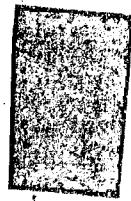
13 BY ATTORNEY HARTYE:

14 Q. So you figure sometime in
15 October you started having some
16 leakage. And so do you figure by
17 perhaps sometime in November or any
18 time around the holidays you would
19 have started the process of looking? /

20 A. I think around the holidays is
21 when I started looking. /

22 Q. All right. So November,
23 December of '97 you would have been
24 looking for another doctor? /

25 A. I was starting to get very /



1 worried.]

2 Q. And would you get together
3 with family and talk about the
4 problems you've had ---

5 A. Right.

6 Q. --- and they kind of
7 encouraged you to follow up?

8 A. To follow up on it.

9 Q. Did any of your family members
10 indicate to you what they felt may be
11 your problem or what the problem had
12 been or anything like that?

13 A. Not really, no.

14 Q. And at this point, being
15 around the holidays, what is it that
16 you were going to line up a doctor to
17 talk about? What is it that you
18 wanted?

19 A. To see why this wasn't
20 healing.

21 Q. Was there pain at that point?

22 A. Yes.

23 Q. And was there leakage at that
24 point?

25 A. Yes.

1 then, you made arrangements in late
2 December to see another doctor about
3 that?

4 A. Yes.

5 Q. And then when you finally saw
6 the doctor in May, he actually
7 confirmed what you felt several
8 months before, that this problem was
9 different; correct?

10 A. Uh-huh (yes). Yes.

11 Q. And it was a result of the
12 surgery by Doctor Aycock?

13 A. Yes.

14 Q. Once again, in your own mind
15 you felt it was that way, even by the
16 holidays?

17 A. Right. Exactly.

18 Q. And that's the holidays of
19 1997; correct?

20 A. Yes.

21 Q. I think the only other thing I
22 just wanted to check with you, in the
23 year 2000, you started having some
24 back problems?

25 A. Yes, I did.

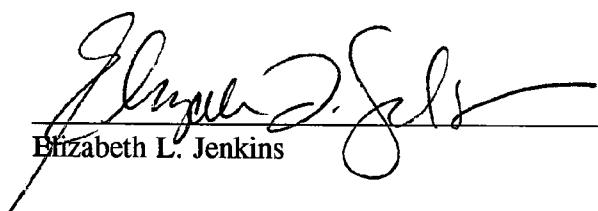
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Motion for Summary Judgment upon all counsel of record by United States, First-class mail, postage prepaid, this 10 day of May, 2001.

Louis Podel, Esquire
2401 Pennsylvania Avenue
Suite 1C44
Philadelphia, PA 19130

Frank J. Hartye, Esquire
Pfaff, McIntyre, Dugas & Hartye
P.O. Box 533
Hollidaysburg, PA 16648-0533

GACA MATIS BAUM & RIZZA


Elizabeth L. Jenkins

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CONNIE ELLIS,)	CIVIL DIVISION
)	
Plaintiff,)	No. 00-383-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL and)	
PHILIP J. AYCOCK, M.D.,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2001, Defendant, Philip J. Aycock, M.D.'s Motion for Summary Judgment is hereby granted and judgment is entered in favor of defendant, Philip J. Aycock, M.D. as a matter of law.

BY THE COURT:

J.

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

CONNIE ELLIS,

Plaintiff

v.

No. 00-383-C.D.

PHILIP J. AYCOCK

and CLEARFIELD HOSPITAL,

Defendants

FILED

JUL 30 2001

William A. Shaw
Prothonotary

OPINION AND ORDER

Plaintiff, Connie Ellis, came under the care of Defendant, Dr. Philip Aycock (hereinafter "Defendant Aycock"), on or about August 4, 1997. Plaintiff was referred to Defendant Aycock by her then treating physician, Dr. Carnavelle for evaluation of a right breast mass and recto-vaginal fistula.

Defendant Aycock performed a biopsy of the right breast mass, which was not cancerous. He also performed surgery on August 25, 1997 on the recto-vaginal fistula repair without incident and saw the patient one-week later.

Plaintiff had approximately three (3) post-operative visits with Defendant Aycock who informed her that her surgery was healing normally. Defendant Aycock last saw

Plaintiff on September 26, 1997. Plaintiff claims that subsequent to her last visit to Defendant Aycock in September of 1997, she began to suffer from the following symptoms: fecal incontinence; breakdown of the recto-vaginal fistula repair; injury of the rectal sphincter; and additional severe physical and emotional injuries.

Plaintiff began seeking the counsel of another physician in November and December of 1997 to see why she was still having problems and why she was experiencing anal leakage.

In May, 1998, Plaintiff met with Dr. Parsons who confirmed what Plaintiff had felt months before: that the problems she was experiencing were different from those which she experienced prior to the surgery.

Subsequently, Plaintiff began treating with Dr. Marquox who suggested corrective surgeries to remedy the injuries to Plaintiff's sphincter muscle allegedly caused by Defendant Aycock.

On March 28, 2000, nearly thirty (30) months after Plaintiff's final visit with Defendant Aycock, Plaintiff commenced this action by Writ of Summons against Defendant Aycock and Co-Defendant Clearfield Hospital.

On or about May 22, 2000, Plaintiff filed her Complaint. Soon after, Plaintiff filed an Amended Complaint and alleged that Co-Defendant Clearfield Hospital failed to select and retain only competent physicians. Plaintiff also alleged Co-Defendant Clearfield Hospital failed to oversee the care and treatment provided by Defendant Aycock while Plaintiff was at the hospital in August of 1997.

Both Defendant Aycock and Co-Defendant Clearfield Hospital filed Motions for Summary Judgment and requested that this Court dismiss Plaintiff's action

with prejudice for Plaintiff's failure to commence her action within the applicable Statute of

Limitations.

The issue before this Court is whether the claim of the Plaintiff is barred by the two (2) year statute of limitations.

The law as to the granting of Summary Judgment is well established. An entry of Summary Judgment may be granted only in cases where the right is clear and free from doubt. Thompson Coal Co. v. Pike Coal Co., 488 Pa. 198, 412 A.2d 466 (1979).

Summary Judgment should be granted only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 158, 507 A.2d 323 (1986)

The statute of limitations applicable to a medical malpractice action is also well established. Pursuant to 42 Pa. C. S. A. Section 5524 (b), the statute of limitations is a period of two (2) years from the date of the alleged injury. However, "in the circumstances where the plaintiff cannot reasonably be expected to be aware of the injury or of its cause, the discovery rule may apply to toll the running of the [statutory period]."

Bradley v. Ragheb, 429 Pa Super 616, 633 A.2d 192 (1993). Thus, the statutory limitations period in Pennsylvania will be tolled until a plaintiff knows, or in the exercise of reasonable diligence should know that he has been injured and that his injury was caused by another's conduct.

The facts in Bradley are somewhat similar as to those in the case at bar. In Bradley, supra., a patient brought a medical malpractice action against her physician alleging that he had failed to promptly diagnose her breast cancer.

Bradley had been concerned about a suspicious lump that she found in her breast.

Thereafter, she sought medical advice in July of 1998 and the defendant physician advised her that it was not a serious matter. Six months thereafter, in December of 1988, Bradley again questioned the defendant doctor about the lump. At this time the defendant physician ordered a biopsy and at the end of January 1989 Bradley was informed that the lump was malignant.

As such, in January 1989, Bradley was aware that the defendant physician had failed to correctly diagnose the lump back in July 1988.

Bradley brought a medical malpractice action against defendant physician on or about February 27, 1991. Shortly thereafter, the court granted summary judgment in favor of defendant doctor on the basis that the statute of limitations had run with respect to the patient's action against her former doctor. The Superior Court affirmed the trial court's decision. The Superior Court held that "appellant possessed the requisite knowledge to commence the running of the statutory period; she knew or reasonably should have known that Dr. Ragheb had failed previously to diagnose her cancer when she first brought the lump to his attention in July of 1988." Id. at 195.

The Superior Court further held that the crux of the rule of discovery in Pennsylvania "is not a patient's actual acquisition of knowledge but whether the information, through the exercise of due diligence, was knowable to the plaintiff...failure to make inquiry when information is available is a failure to exercise reasonable diligence as a matter of law. Id. at 196.

In the case at bar, Plaintiff, by her own testimony at deposition stated that she knew that she was injured and knew that the injury was caused by Defendant Aycock:

"Q: All right. I won't review all the various follow-up visits that you had with the doctor, that's Doctor Aycock, through September. But as I recollect your testimony, the anal area had broken down and blood had come from there. And then periodically with bowel movements during this month or so, you would have some bleeding; is that right?

A: Uh-huh (yes). Yes.

Q: And you had pain?

A: Yes, very much pain. I can't stress that enough how painful it was.

Q: When did that pain that great deal of pain that you're just talking about, when did that eventually go away?

A: A couple months.

Q: It took a couple months?

A: Yes, it did.

Q: So then by end of September, Doctor Aycock indicated to you to return to him as necessary, you make the appointment, come in if you need to, correct?

A: Uh-huh (yes). Yes.

Q: And you chose not to go back to him for the reasons that you said?

A: Right.

Q: So then you saw Doctor Parsons in May. We're talking six, seven, eight months or so after you stopped seeing Doctor Aycock; is that about right?

A: Right.

Q: And you indicated because of insurance purposes, it took you a little while to find Dr. Parsons and set up arrangements to see him in May?

A: That's correct.

Q: Could you tell me when it was that you decided that you needed to see a doctor and started looking for a different doctor other than Dr. Aycock?

A: Within a couple months.

Q: Now, that's a couple of months from when you last saw him?

A: Right. When it wasn't healing.

Q: And in October ---.

ATTORNEY SCHLEPPY

I'm sorry, you said from a couple of months you last saw him. Do you mean Doctor Aycock?

A: Yes.

ATTORNEY HARTYE:

Q: So you figure sometime in October you started having some leakage. And so do you figure by perhaps sometime in November or any time around the holidays you would have started the process of looking?

A: I think around the holidays is when I started looking.

Q: All right. So November, December of '97 you would have been looking for another doctor?

A: I was starting to get very worried.

Q: And then when you finally saw the doctor in May, he actually confirmed what you felt several months before, that this problem was different; correct?

A: Uh-huh (yes). Yes.

Q: And it was a result of the surgery by Doctor Aycock?

A: Yes.

(Deposition of Connie Ellis at pages 138-141, 144)

An injured party must sue when "he learns of the injury and cause." Murray v.

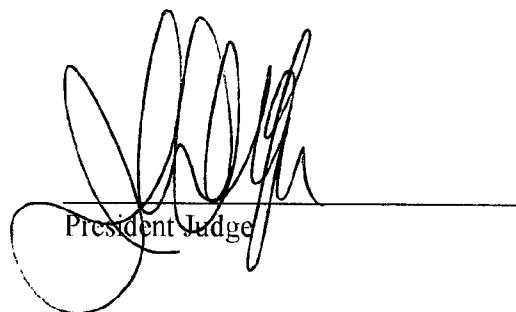
Hamot Medical Center of the City of Erie and Regional Clinical Laboratories of North Eastern Pennsylvania, 429 Pa. Super. 625, 633 A.2d 196 (1993). As such, it is clear that in the case at bar, the statute of limitations began to run when Plaintiff discovered her injury and discovered that the injury was a result of the surgery performed by Defendant Aycock. By her own admission, this occurred, at the latest in December 1997. Plaintiff had until December 1999 to file the instant action. However, she failed to do so until March of 2000.

Since this Court is granting the Motion for Summary Judgment in favor of Defendant Aycock, there can be no recovery against Co-Defendant Clearfield Hospital based upon the actions of Defendant Aycock.

THEREFORE, this Court enters the following:

ORDER

NOW, this 30th day of July, 2001, Defendants' Motion for Summary Judgment is hereby GRANTED in accordance with the foregoing opinion.



A handwritten signature in black ink, appearing to read "President Judge", is written over a stylized, abstract drawing that looks like a flower or a series of peaks. The signature is positioned below the drawing.

FILED

JUL 30 2001

William A. Shaw
Prothonotary

4cc

as
1-Atty Mixsell
1-Rodel
1-Hartge
1-Schleppy