

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Evelyn S Borwick, MD
1524 Trotter Drive
Pittsburgh PA 15227
Plaintiffs

vs

U.P.M.C. Health System
200 Lothrop St. #1043F
Pittsburgh PA 15213-2582
Defendants

CIVIL DIVISION

CASE NUMBER: GD-04-20100

TYPE OF PLEADING:

Complaint

CODE AND CLASSIFICATION:

07

FILED ON BEHALF OF:

Plaintiff

Name of party - Indicate
Plaintiff or Defendant

NAME, ADDRESS AND TELEPHONE

Counsel of Record
 Individual, If Pro Se

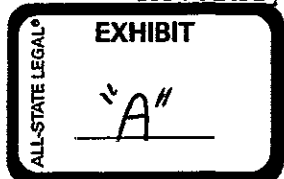
Robert P. Jussey
1524 Trotter Drive
Pittsburgh PA 15227
412 882 8599
or 412 298-5803

Attorney's State ID # _____

Attorney's Firm ID # _____

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GD 04 20100

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

Evelyn D. Bernick, M.D.
1524 Trotter Drive,
Pittsburgh PA 15227

NO. _____

VS.

U.P.M.C. (Montefiore)

Francis Solano, M.D.
200 Lothrop St #1043 F
Pittsburgh PA 15213-2582

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 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 in the complaint or for any other claim or relief requested by the plaintiff. You may lose money, property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
920 City-County Building
414 Grant Street
Pittsburgh, PA 15219

4037 Perrysville Avenue
Pittsburgh, Pennsylvania 15214
(412) 931-2688



1605 Lowry Street
Pittsburgh, Pennsylvania 15212
(412) 322-7677

EVELYN S. BERWICK, M.D.
INTERNAL MEDICINE - FAMILY PRACTICE

8-25-04

Evelyn S. Berwick, M.D. is hereby filing a medical Malpractice Lawsuit against Francis Solano Jr., M.D., the University of Pittsburgh Medical Center and the Montefiore Hospital.

Reason for this suit is: Erroneous Referral of Dr. Berwick to the Physicians' Health Program as an "Impaired Physician" during her inpatient stay at U.P.M.C. (Montefiore) Hospital in August of 2002.

This lawsuit requests damage payment of \$10,000,000.00.

Evelyn S. Berwick MD
EVELYN S. Berwick

ROBERT P. HUSSEY, GENERAL BUSINESS MANAGER

(412) 882-8599 or (412) 298-5803

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

DR. EVELYN S. BERWICK,)	
)	
Plaintiff,)	
)	
v.)	G.D. No. 04-20100
)	
UPMC HEALTH SYSTEM,)	
)	
Defendant.)	

**DEFENDANT’S BRIEF IN SUPPORT
OF PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT**

AND NOW COMES the Defendant, UPMC Health System (“UPMC”), by and through its attorneys, Dickie, McCamey & Chilcote, P.C., and files the following Brief in Support of its Preliminary Objections in the Nature of a Demurrer and in support of which, aver as follows:

ARGUMENT

I. PLAINTIFFS’ COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Plaintiff has failed to set forth sufficient allegations and hence has failed to set forth a cause of action upon which relief may be granted.

Under Pa. R. Civ. P. 1019(a), the material facts upon which a cause of action is based shall be stated in concise and summary form. If a concise and responsive answer cannot be made, the complaint is defective. Mason-Heflin Coal Co. v. Currie, 270 Pa. 221, 113 A. 202 (1921). A complaint may be found insufficient where the allegations of the cause of action are vague, concerned with broad generalities, lack specificity, and contain no reference to time,

place or nature of event of situation against which a purposeful answer could be made. Framlau Corp. v. Delaware County, 223 Pa. Super. 272, 299 A.2d 335 (1972).

In a negligence action, the plaintiff's complaint must set forth all of the facts or circumstances and the defendant's specific acts or omissions on which the assertion of negligence is predicated. Feingold v. Hill, 360 Pa. Super. 539, 521 A.2d 33 (1987). The allegations must be in either direct and positive terms, or by setting out facts from which the fact of negligence can fairly and legally be inferred. Amer v. Sokol, 373 Pa.587, 96 A.2d 854 (1953).

In the instant case, Plaintiff has not set forth any allegations sufficient to allow Defendant to make an intelligent responsive answer. Plaintiff's single sentence of factual allegations contains vague, unspecific references regarding an "erroneous referral" to a physician's health program. See Plaintiff's Complaint at p. 3. Plaintiff has not averred that this defendant owed a duty or that there was a breach of that duty; that the breach was a proximate cause of or a substantial factor in bringing about the harm or how the Plaintiff suffered damages as a direct result of the harm. Therefore, Plaintiff has failed to state a cause of action against UPMC Health System upon which relief may be granted. Accordingly, UPMC Health System respectfully requests that this Honorable Court enter an Order dismissing this Complaint.

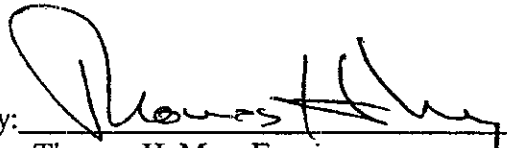
CONCLUSION

Based on the foregoing, Defendant UPMC Health System respectfully requests that this Honorable Court enter an Order dismissing the Complaint because the Plaintiff has failed to state a claim against them upon which relief can be granted. In the alternative, Defendant respectfully

requests that this Honorable Court enter and Order requiring Plaintiff to amend the Complaint in conformity with the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P C.

By: 
Thomas H. May, Esquire
S. Manoj Jegasothy, Esquire

Attorney for Defendant UPMC Health System

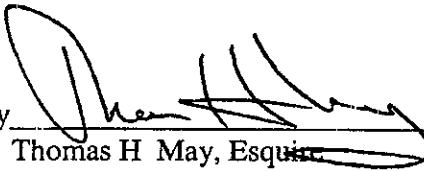
CERTIFICATE OF SERVICE

I, Thomas H May, Esquire, hereby certify that true and correct copies of the foregoing Defendant's Preliminary Objections to Plaintiff's Complaint, Brief in Support of Preliminary Objections and Proposed Order of Court have been served upon the following counsel/parties of record this 8 day of September, 2004, by U.S. first-class mail, certified return receipt requested, postage prepaid, to the following:

Dr. Evelyn S. Berwick
1524 Trotter Drive
Pittsburgh, PA 15227
Plaintiff Pro Se

DICKIE, McCAMEY & CHILCOTE, P.C.

By



Thomas H May, Esquire

Attorneys for Defendant UPMC Health System

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL ACTION**

DR. EVELYN S. BERWICK,)	
)	
Plaintiff,)	
)	
v.)	G.D. No. 04-20100
)	
UPMC HEALTH SYSTEM,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, to wit, this ____ day of _____, 2004, upon consideration of the foregoing Preliminary Objections to Plaintiff's Complaint filed on behalf of the Defendant UPMC Health System, it is hereby ORDERED, ADJUDGED and DECREED that the same are granted and Defendant UPMC Health System is dismissed from this case, with prejudice.

BY THE COURT

_____ J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

DR. EVELYN S. BERWICK,

CIVIL DIVISION

Plaintiff,

G.D. No. 04-20100

v.

Issue No.

UPMC HEALTH SYSTEM,

PRAECIPE FOR ENTRY OF
JUDGMENT OF NON PROS

Defendant.

Code:

Filed on behalf of:
UPMC HEALTH SYSTEM, Defendant

Counsel of record for this party:

Thomas H. May, Esquire
Pa. I.D. #25953

S. Manoj Jegasothy, Esq.
Pa. I.D. #80084

DICKIE, McCAMEY & CHILCOTE, P.C
Firm #067
Two PPG Place, Suite 400
Pittsburgh, PA 15222-5402


(412) 281-7272 Validate Check OPS\$LAURIE@1

JURY TRIAL DEMANDED

10-26-2004 09:25:56

60-04-020100

ALLEGHENY COUNTY
FILED
OCT 25 PM 3:55

NM
10-26-04


PRAECIPE FOR ENTRY OF JUDGMENT OF NON PROS

TO THE PROTHONOTARY:

Kindly enter judgment of non pros against Dr Evelyn S Berwick, Plaintiff in the within medical malpractice claim against UPMC Health System, Defendant in the above-captioned matter.

I, the undersigned, certify that the Plaintiff named above have asserted a medical malpractice claim against the Defendant named above, that no Certificate of Merit has been filed within the time required by Pa.R C.P. 1042.3, and that there is no motion to extend the time for filing the Certificate pending before the Court.

DICKIE, McCAMEY & CHILCOTE, P.C.

By 

Thomas H. May, Esquire
S. Manoj Jegasothy, Esquire

Attorneys for Defendant UPMC Health System

You can use your browser **BACK** button to return to previous page.

[\[New Case Number\]](#) [\[Docket Report\]](#) [\[Account Information\]](#) [\[Home\]](#)

GD-97-002353

CASE CONSOLIDATED AT GD-96-016681

Filing Date:	02/14/1997	Case Type:	Medical/Hospital Liability
Filing Time:	15:26:08	Court Type:	General Docket
Related Cases:	GD-96-016681,	Current Status:	Settled and Discontinued
Judge:	No Judge	Jury Requested:	No
Amount In Dispute:	\$ 25000.00		

*Click on PartyID hyperlink to see Alternative name for the party.

Parties							
-- Litigants --							
ID	LName	FName	MI	Type	Address	Phone	Attorney
@604957	Estate of Linda M. Depaoli	---	---	Plaintiff	No Default Address Available	--	--
@604956	Depaoli	Louis	M	Executor	2628 California Avenue Pittsburgh PA 15212	--	--
@10779	Berwick M D	Evelyn	S	Defendant	4037 Perrysville Avenue Pittsburgh PA 15214-1546	--	--

-- Attorney --							
ID	LName	FName	MI	Type	Address	Phone	
26076	Cox	Allan	M	Plaintiff's Attorney	304 Pitt Bldg 213 Smithfield Street Pittsburgh PA 15219	()3914990	
29923	Klym	Edward	D	Defendant's Attorney	180 Fort Couch Road Suite 265 Pittsburgh PA 15241	(412)8354020	

-- Non Litigants --							
ID	LName	FName	MI	Type	Address	Phone	
SHRF02	Sheriff - Allegheny County	---	---	Sheriff	Courthouse Room 111 Pittsburgh PA 15219	--	

*Click on DocketType hyperlink to see Judgments for that Docket.

Docket Entries				
Filing Date	Docket Type	Docket Text	Filing Party	Document
11/19/1999	Settled and Discontinued	As to plaintiff's case ONLY, costs paid as per praecipe filed.	Estate of Linda M Depaoli	No Image
04/14/1997	Order of Court	Dated 04/11/97 Wettick J. Original docketed at GD-96-016681.	Estate of Linda M. Depaoli	No Image
04/10/1997	Praecipe for Appearance	Filed by Edward Klym Esq	Berwick M D Evelyn S	No Image
04/02/1997	Sheriff Return	Evelyn Berwick served with Reinstated Notice of Suit & Complaint on 3/27/97.	Sheriff - Allegheny County	No Image
03/21/1997	Sheriff Return	Def. attempted service with a complaint but not served.	Sheriff - Allegheny County	No Image
03/19/1997	Praecipe to	Returnable 4-18-97	Estate of Linda M	No Image