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| DANIEL KOWALSKI, AS ADMINISTRATOR OF THE ESTATE OF KAREN KOWALSKI, AND DANIEL KOWALSKI, IN HIS OWN RIGHT, | : | IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY |
| PLAINTIFFS | : | |
| v. | : | CIVIL ACTION |
| SCRANTON HOSPITAL COMPANY, LLC D/B/A REGIONAL HOSPITAL OF SCRANTON, COMMUNITY HEALTH SYSTEMS, INC. D/B/A COMMONWEALTH HEALTH SYSTEMS, INC. COMMONWEALTH HEALTH SYSTEMS, AND COMMONWEALTH HEALTH, PHILIP HUFFMAN, M.D., JAMIE STALLMAN, M.D., AND TIMOTHY C. HOU, M.D. | : | NO. 2018-CV-4996 |
| DEFENDANTS | : | |



**MEMORANDUM & ORDER**

## I. Background

Plaintiff Daniel Kowalski ("Plaintiffs"), as the Administrator of the Estate of Karen Kowalski ("Plaintiff's decedent"), and in his own right, filed suit against Defendants Scranton Hospital Company, LLC d/b/a Regional Hospital of Scranton (Regional Hospital); Commonwealth Health Systems, Inc. d/b/a Commonwealth Health Systems and Commonwealth Health ("Commonwealth Health"); Philip Huffman, M.D. ("Huffman"); Jamie Stallman, M.D. ("Stallman"); and Timothy C. Hou, M.D. ("Hou") on September 18, 2018. While multiple defendants filed preliminary objections, Commonwealth Health filed a preliminary objection based upon an Affidavit of Non-Involvement pursuant to 40 P.S. § 1303.506(a). Commonwealth Health argues that Plaintiffs erroneously concluded Commonwealth Health Systems, Inc. was involved in the treatment and in the oversight of Regional Hospital. In fact, Commonwealth Health indicated it is "a fictitious creation used for marketing. It does not own, operate or maintain hospitals, does not employ any health care providers and was not involved in the

treatment of Karen Kowalski." (Docket Entry No. 30, ¶ 4). Furthermore, Commonwealth Health Systems' attorney indicated an inability (1) to identify the correct organization and (2) accept service on behalf of the correct organization. Given these representations, we granted Plaintiffs time to conduct discovery to identify the correct defendant.

In an Amended Complaint, Plaintiffs bring suit against Regional Hospital; Community Health Systems, Inc. d/b/a Commonwealth Health Systems, Commonwealth Health Systems, Inc. and Commonwealth Health ("Community Health"); Huffman; Stallman; and Hou (collectively, "Defendants").[1] Plaintiffs charge Regional Hospital, Community Health, Commonwealth Health, Huffman, Stallman and Hou with the wrongful death of Plaintiff's decedent and claims for survivorship. Plaintiffs charge Huffman, Stallman, and Hou with negligence, individually. Lastly, Plaintiffs allege Regional Hospital, Community Health and Commonwealth Health committed corporate negligence by (1) "fail[ing] to have attending physicians and residents with appropriate training and/or experience to diagnose and treat Karen Kowalski, as well as to make appropriate and timely decisions regarding her care"; (2) "failing to select and retain competent and qualified physicians, residents and nurses capable of recognizing, diagnosing and managing and/or treating Karen Kowalski"; (3) "fail[ing] to formulate, adopt and/or enforce appropriate rules and guidelines, policies and procedures or protocols with respect to the management of patients such as Karen Kowalski"; (4) "failing to oversee all persons who practice medicine within its walls as to patient care to ensure that the physicians, residents and nursing staff involved in the evaluation and treatment of patients such as Karen Kowalski were appropriately and adequately supervised"; and (5) "failing to oversee all

[1] According to the docket, Community Health is represented by a different firm than Commonwealth Health. Thus, although the Amended Complaint seems to group Community Health and Commonwealth Health together, we will consider each individually. Therefore, the Amended Complaint brings claims against Community Health and Commonwealth Health.

persons who practice medicine within its walls as to patient care to ensure that proper assessment, diagnosis, management and treatment of patients such as Karen Kowalski would be enforced." (Amended Complaint, ¶¶ 76(a-e)).

Community Health filed preliminary objections claiming lack of personal jurisdiction, failure to state a legally cognizable claim due to vague or over broad agency allegations and a Motion to Dismiss with an Affidavit of Noninvolvement.[2] Regional Hospital also filed preliminary objections to strike claims of agency and ostensible agency and corporate negligence. In the alternative, Regional Hospital requests the pleading conform to Pa.R.C.P. 1019(a).

## II. Facts

On September 18, 2017, Plaintiff's decedent Karen Kowalski ("Mrs. Kowalski"), presented to the emergency room of Regional Hospital of Scranton. Prior to this visit, Plaintiff's decedent had been diagnosed with Asthma and CHF related to a viral infection. (Complaint, ¶ 21). Mrs. Kowalski suddenly lost her breath when she was walking. *Id.*, ¶ 22. Her chief complaint was shortness of breath as well as complaints of pain in her chest, back, and shoulder. *Id.*, ¶ 21. She rated her pain as a six out of ten. *Id.*

Mrs. Kowalski had received a steroid dose pack on September 17, 2017 for a flu, with coughing up sputum and a fever. *Id.*, ¶ 24. She was seen by Defendant Huffman who recorded her vital signs.[3] *Id.*, ¶ 25. She was given an ECG, which demonstrated sinus tachycardia, a

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[2] Rather than filing a separate Motion, Community Health curtly represents that "Moving Defendants herein files this Motion to Dismiss pursuant to Pa.R.C.P. 1036, Dismissal Upon Affidavit of Non Involvement....Moving Defendant herein files this Motion to Dismiss with accompanying Affidavit of Non-Involvement" (Docket Entry No. 70, ¶ 49).For the sake of conformity, a separate and distinct motion is preferable to a "motion" sandwiched between preliminary objections.

[3] She had a respiratory rate of 26, a pulse rate of 107, a systolic blood pressure of 180, a diastolic blood pressure of 112, and an oxygen saturation of 94%, on room air. *Id.*

possible left atrial enlargement, a t-wave abnormality and possible inferior ischemia. *Id.*, ¶ 26. This ECG was labeled as abnormal and verified by John Lundin, M.D. *Id.* At 14:24, Mrs. Kowalski was given a STAT order "to maintain O2 Sats" of oxygen therapy at l/min; two nasal cannula, 90% titrate. *Id.*, ¶ 27.

Two x-rays were taken of Mrs. Kowalski. *Id.*, ¶ 28. The first was interpreted by Defendant Stallman at 14:44, the second by Defendant Hou at 17:08. *Id.* Both defendants interpreted the x-rays as showing interstitial edema and atelectasis. *Id.* Plaintiffs contend the x-rays were consistent with a diagnosis of pneumonia and the same should have been included in a differential diagnosis by the radiologists who interpreted the studies. *Id.*, ¶ 29

Plaintiff's decedent white blood cell count was 24.4, more than twice normal. *Id.*, ¶ 30. Plaintiffs contend she was demonstrably suffering from hyponatremia. *Id.*, ¶ 31. Her blood sodium level was abnormal at 128; her blood gases demonstrated a high Ph and a low PCO2 and PO1 suggesting an excess of carbon dioxide and hyperventilation. *Id.*, ¶¶ 31-32. Dr. Huffman diagnosed Plaintiff's decedent with asthmatic bronchitis and atrial fibrillation. *Id.*, ¶¶ 33-34. For asthmatic bronchitis Defendant Huffman ordered methylprednisolone IV, 125 mg via IV push, accompanied by bronchodilators which were administered at 14:35. *Id.*, ¶ 33. The same was repeated at 16:52 and 18:26. *Id.*, ¶ 33. Defendant Huffman prescribed Tramadol, 50 mg, Plaintiffs believe, for Plaintiff's decedent pain in the chest, back and shoulder. *Id.*, ¶ 35.

Mrs. Kowalski was discharged at 18:54 on September 18, 2017 with direction to seek an appointment with a pulmonologist. *Id.*, ¶ 36. Plaintiffs contend Defendant Huffman knew or should have known, when Plaintiff's decedent was discharged at that hour that she would not be able to obtain an appointment for the next day.[4] *Id.*, ¶ 37. At discharge, Mrs. Kowalski's pulse

[4] Plaintiff's decedent was able to make a pulmonologist appointment for two days after she went to the emergency room, Wednesday September 20, 2017. *Id.*, ¶ 41.

was an elevated 101, blood pressure was still elevated at 146/83, and oxygen saturation had improved by 1% to 95%, after approximately four hours of supplemental oxygen therapy. *Id.*, ¶ 38. Plaintiff's decedent was discharged while suffering from shortness of breath, the reason for the emergency room visit. *Id.*, ¶ 39. Plaintiffs posit, given the abnormalities on her vital signs, ECG, x-rays and lab studies, that Mrs. Kowalski should have been admitted to the hospital. *Id.*, ¶ 40.

Plaintiff's decedent returned to the emergency room at 9:00 a.m. on September 20, 2017. *Id.*, 41. Upon arrival, her temperature was 96.1, respiratory rate of 26, her pulse was 116, oxygen saturation was 76% on room air, and her white blood cell count was 4.2. *Id.*, ¶¶ 43-44. On her first visit, her white cell count was two and a half times normal; now it was low. *Id.*, ¶¶ 30, 44. Plaintiff's decedent was diagnosed with pneumonia, sepsis, acute respiratory failure, acute kidney failure, hypernatremia and acidosis. *Id.*, ¶ 45. Due to the shortage of beds, Mrs. Kowalski was transferred to Moses Taylor ICU. *Id.*, ¶ 46. While at Moses Taylor, she was given a nasal swab and diagnosed with MRSA pneumonia. *Id.*, ¶ 47.

On her second day at Moses Taylor, Plaintiff's decedent was paralyzed and placed on a ventilator after efforts to treat her pneumonia with new antibiotic therapy were unavailing. *Id.*, ¶ 48. On September 23, 2017, Plaintiff's decedent continued to deteriorate and she was transferred via helicopter to the Milton S. Hershey Medical Center. *Id.*, ¶ 49. At this time she was given extracorporeal membrane oxygenation (ECMO). *Id.* Unfortunately, while at the Milton S. Hershey Medical Center, Mrs. Kowalski died on September 25, 2017. *Id.*, ¶ 50.

## III. Standard of Review

"Preliminary objections are a device used to test the legal sufficiency of a pleading, its compliance with the Pennsylvania Rules of Civil Procedure or the court's authority to adjudicate a controversy, prior to having to respond to the pleading on the merits." *Sparks v. Fidelity*

*Deposit*, No. 2014-CV-01707, 2014 WL 5789742, at *2 (Pa.Com.Pl. Lackawanna Nov. 6, 2014) (quoting *Pilosi v. Cummings*, No. 2014-CV-02879, 2014 WL 4426119 at *3 (Pa.Com.Pl. Lackawanna Sept. 4, 2014)). A preliminary objection based on a pleading's legal insufficiency is known as a demurrer. Pa.R.Civ.P. 1028(a)(4). As stated by our appellate courts,

> Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

*Denmark ex. rel. Hurst v. Williams*, 117 A.3d 300, 305 (Pa.Super. 2015)(quoting *Durst v. Milroy General Contracting, Inc.*, 52 A.3d 257, 259-260 (Pa.Super. 2012)(citations omitted)).

When considering a demurrer, all well-pleaded material facts and all inferences reasonably deducible therefrom are admitted and, in light of that, the question is whether the law says with certainty that there can be no recovery. *Dean v. Community Medical Center*, 2000 WL 1865337, 46 Pa.D&C 4th 334 (Lacka. Co. 2000) (citations omitted). If a doubt exists as to whether a demurrer should be sustained, that doubt should be resolved in favor of overruling the demurrer. *Id.*, *Estate of Witthoeft v. Kiskaddon*, 557 Pa. 340, 343 n.1, 733 A.2d 623, 624 n.1 (1999).

## IV. Discussion

### a. Regional Hospital and Commonwealth Health Preliminary Objections

#### i. Motion to Strike Vague and Overbroad Agency Allegations

Regional Hospital seeks to strike paragraphs 53(f), 68, 69, 71, 72 and 73 as impermissibly vague. Rule 1019(a) provides that "[t]he material facts on which a cause of action

or defense is based shall be stated in a concise and summary form." Pa.R.C.P.No. 1019(a). "In assessing whether particular paragraphs in a complaint satisfy this requirement, they must be read in context with all other allegations in the complaint to determine whether the defendant has been provided adequate notice of the claim against which it must defend." *Yacoub v. Lehigh Valley Medical Associates*, 805 A.2d 579, 589 (Pa.Super. 2002).

While a complainant need not plead the various details of an alleged agency relationship, at a minimum, the complainant must plead facts which: "(1) identify the agent by name or appropriate description; and (2) set forth the agent's authority, and how the tortious acts of the agent either fall within the scope of that authority, or if unauthorized, were ratified by the principal." *Alumni Association v. Sullivan*, 535 A.2d 1095, 1100 n. 2 (1987). "In order to withstand a challenge for lack of specificity, the pleading must contain averments of all the facts that the plaintiff will eventually have to prove in order to recover and must be sufficiently specific so as to enable the defendant to prepare a defense and responsive pleading." *Loff v. Granville*, 51 Pa. D. & C.4th 563, 575-76 (2001) (citing *Baker v. Rangos*, 324 A.2d 489, 505-06 (Pa.Super. 1974)).

Regional Hospital presents the oft-repeated argument in these medical negligence cases when it contends that numerous paragraphs in the Amended Complaint improperly contain the phrase "other medical professionals in [Plaintiff's decedent]'s medical records who participated in the care of [Mrs. Kowalski] on September 18, 2017, at Regional/CHSI," as well as, "attending staff." [5] According to Regional Hospital, the above paragraphs do not elaborate on which alleged

[5] It should be noted that paragraph 53(f) does not contain the phrases "other medical professionals in [Mrs. Kowalski]'s medical records who participated in the care of [Plaintiff's decedent] on September 18, 2017, at Regional/CHSI," or "attending staff." Instead, Paragraph 53(f) reads

> "As a result of the aforesaid negligence, carelessness and failure to comport with the acceptable medical standards of care, as more particularly described hereinafter, resulting in the death of Karen Kowalski, Plaintiff claims damages from the Defendants herein for,

agents performed acts of alleged negligence and thus prevents Regional Hospital from properly evaluating and formulating a defense.

Plaintiffs argue that Regional Hospital, not Plaintiffs, is in the best position to identify the "other medical professionals in [Mrs. Kowalski's] medical records who participated in the care of [Mrs. Kowalski]." Consequently, "at the time the suit is filed, the defendants are in far more control of the information than the plaintiff...and the physicians and hospital staff are far less likely to volunteer information to the plaintiff absent formal depositions." *Johnson v. Patel*, 19 D. & C. 4th 305, 308 (Lacka. Co. 1993). Our Superior Court has held references to "agents, ostensible agents, servants, workmen and/or employees" were not lacking in sufficient specificity to call into question the hospital's conduct through its radiology department, when the Complaint was read in its entirety. *Yacoub*, 805 A.2d at 588-89.

As the hospital, Regional Hospital can access the medical charts and other documents to quickly identify those medical professionals identified in the Amended Complaint. Therefore, Regional Hospital has been provided sufficient notice. We will overrule this preliminary objection.

**ii. Demurrer to Corporate Negligence**

Under the theory of corporate negligence, a hospital has a duty to (1) "use reasonable care in the maintenance of safe and adequate facilities and equipment"; (2) "to select and retain only competent physicians"; (3) "to oversee all persons who practice medicine within its walls as to patient care"; and (4) "to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients." *Thompson v. Nason Hosp.*, 591 A.2d 703, 707 (Pa. 1991). To

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and on behalf of, her husband and children pursuant to the Pennsylvania Wrongful Death Act, 42 Pa.C.S.A. §§ 8301, *et seq.* as follows:

...

(f) For other losses and expenses caused by said tortious conduct."

(Amended Complaint, ¶ 53).

establish a *prima facie* case of corporate negligence, a plaintiff must demonstrate (1) the hospital acted in deviation from the standard of care; (2) it had actual or constructive notice of the defects or procedures that created the harm; and (3) the conduct in question was a substantial factor in bringing about the harm. *Rauch v. Mike-Mayer*, 783 A.2d 815, 824 (Pa.Super. 2001) (citations omitted). The Pennsylvania Supreme Court has held a *prima facie* case of corporate negligence may be established by an expert who opines that "the hospital's nurses must have known there was a problem but failed to act on that knowledge." See *Welsh v. Bulger*, 698 A.2d 581, 586 (Pa. 1997).

Regional Hospital contends that Plaintiffs fail to plead facts necessary to support a *prima facie* claim of corporate negligence. Specifically, Plaintiffs fail to plead the hospital had "actual or constructive notice of the defects or procedures which created the harm" to Plaintiff's decedent. *Id.* at 815. Further, Plaintiffs fail to plead Regional Hospital's deviation from the standard of care. As a result, the claim for corporate negligence must fail.

Plaintiffs recite three paragraphs from the Amended Complaint which allege that Regional Hospital "fail[ed] to supervise and monitor the medical care and treatment rendered to [Plaintiff's decedent] when it knew or should have known that individuals who were engaged with and responsible for [Plaintiff's decedent]'s care did not possess the requisite medical and/or professional training, skill and knowledge to properly care for [Plaintiff's decedent]...", "knew or should have known that it did not have adequate policies and procedures and/or that those medical professionals who were responsible for Karen Kowalski's care were not familiar with or failed to follow Regional Hospital's...policies and procedures [when treating Plaintiff's decedent]", and "did not supervise the attending staff with respect to the proper, evaluation, diagnosis, management and treatment of a patient..." (Docket Entry No. 86, p. 18).

Here, read in the context of the Complaint, the references to the medical professionals engaged in the medical care of Plaintiff's decedent are not lacking in sufficient specificity to support corporate negligence claims against the hospital. We will therefore overrule this preliminary objection.

**b. Community Health's Preliminary Objections**

**i. Lack of Personal Jurisdiction[6]**

"A defendant's activities in the forum [s]tate may give rise to either specific or personal jurisdiction." *Mendel v. Williams*, 53 A.3d 810, 817 (Pa.Super. 2012). "Personal jurisdiction is a fact-specific inquiry." *Amp Inc v. Methode Electronics Inc.*, 823 F.Supp. 259, 261 (M.D. Pa. 1993). The focus is on the relationship among the defendant, the forum state and the litigation." *Id.* (citing *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 298 (3d Cir. 1985)) In *Deyarmin v. Consolidated Rail Corp.*, 931 A.2d 1, 9 (Pa. Super. 2007), the Superior Court observed that where the defendant contested jurisdiction by filing preliminary objections:

> [t]he moving party has the burden of supporting its objections to the court's jurisdiction. Once the plaintiff has produced some evidence to support jurisdiction, the defendant must come forward with some evidence of his own to dispel or rebut the plaintiff's evidence. The moving party may not sit back and, by the bare allegations as set forth in the preliminary objections, place the burden upon the plaintiff to negate those allegations. It is only when the moving party properly raises the jurisdictional issue that the burden of proving jurisdiction is upon the party asserting it. If an issue of fact is raised, the court shall take evidence by deposition or otherwise. The court may not reach a determination based upon its view of the controverted facts, but must resolve the dispute by receiving evidence thereon through interrogatories,

[6] Community Health provided numerous Pennsylvania decisions where the court dismissed the case for want of jurisdiction. See *Valley Advanced v. Northampton Hosp. Corp. et al.*, No. 2011-5985 (Luzerne Co. May 26, 2015); Szczupski v. *Kish, D.O., et al.*, No. 2014-00708 (Luzerne Co. Oct. 1, 2014); *Tracy v. Scranton Hospital Company, LLC, et al.*, 2015-CV-6136 (Lacka. Co. March 18, 2016); *Butterfield v. Phoenixville Hospital Company, LLC, et al.*, No. 2017-03000 (Phila. Co. Sept. 20, 2017); *Montefusco v. Cmty. Health Sys., Inc.*, No, 2013-3263 (Phila. Co. March 11, 2014); *Tammaro v. Cmty. Health Sys., Inc.*, No. 2015-01353 (Chester Co. Aug. 20, 2015); and *Ford v. Wilkes-Barre Hospital Co., LLC*, No. 11792-2016 (Luzerne Co. Jan. 25, 2019). We have considered these cases and do not find them instructive under these circumstances.

> depositions, or an evidentiary hearing. Where an essential factual issue arises from the pleadings as to the scope of a defendant's activities within the Commonwealth, the plaintiff has the right to depose defendant as to his activities within the Commonwealth, and the court must permit the taking of the deposition before ruling on the preliminary objections. Where neither party presents evidence by which the court can properly resolve the issue, it is appropriate to remand with directions that an order be entered allowing the parties a reasonable period of time in which to present evidence by deposition, interrogatories or otherwise.

*Deyarmin*, 931 A.2d at 9 (quoting *Schmitt v. Seaspray–Sharkline, Inc.*, 531 A.2d 801, 803-04 (Pa. Super. 1987)).

When a defendant challenges the court's assertion of personal jurisdiction, that defendant bears the burden of supporting such objections to jurisdiction by presenting evidence. *Trexler v. McDonald's Corp.*, 118 A.3d 408, 412 (Pa. Super. 2015). The burden to support a court's assertion of personal jurisdiction only shifts to the plaintiff after the defendant has presented affidavits or other evidence in support of its preliminary objections challenging jurisdiction. *Id.* Thus, once the moving party supports its objections to personal jurisdiction, the burden of proving personal jurisdiction is upon the party asserting it. *N.T. ex rel. K.R.T. v. F.F.*, 118 A.3d 1130, 1134 (Pa. Super. 2015); *Sulkava v. Glaston Finland Oy*, 54 A.3d 884, 889 (Pa. Super. 2012). In reviewing such determination of the trial court, the appellate court reviews the record and accepts as true all of the facts as set forth therein. *Temtex Products, Inc. v. Kramer,* 479 A.2d 500, 503 (Pa. Super. 1984).

A court may exercise personal jurisdiction over a non-resident defendant only if: (a) Pennsylvania's Long-Arm Statute authorizes personal jurisdiction, and (b) the exercise of personal jurisdiction comports with Constitutional Due Process. See *Schiavone v. Aveta*, 41 A.3d 861, 866 (Pa. Super. 2012). As the parties note, the two types of personal jurisdiction that a court may exercise over out-of-state defendants are: (1) specific jurisdiction, pursuant to 42 Pa. C.S.A.

§ 5322, which is based upon the specific acts of the defendant which gave rise to the cause of action; and (2) general personal jurisdiction, pursuant to 42 Pa. C.S.A. § 5301, which based upon a defendant's general activity within the forum state. See *BNSF Ry. Co. v. Tyrell*, 137 S.Ct. 1549, 1558 (2017); *Kubik v. Letteri*, 614 A.2d 1110, 1114 (1992).

**1. Specific Personal Jurisdiction**

"A foreign defendant who does not have sufficient contacts with Pennsylvania to establish general jurisdiction may nevertheless be subject to specific jurisdiction in Pennsylvania pursuant to the Pennsylvania Long–Arm Statute, 42 Pa.C.S.A. § 5322." *Mendel*, 53 A.3d at 820. "Section 5322(a) contains ten paragraphs that specify particular types of contact with Pennsylvania deemed sufficient to warrant the exercise of specific jurisdiction." *Id.* (citing *Scoggins v. Scoggins*, 555 A.2d 1314, 1318 (Pa. Super. 1989); 42 Pa.C.S.A. § 5322(a)). Regardless, if a defendant's activities in Pennsylvania only give rise to jurisdiction under section 5322(a) or (b), the plaintiff's cause of action is limited to those activities which formed the basis of jurisdiction. *See* 42 Pa.C.S.A. § 5322(c).

**a. Long-Arm Statute**

In addition, section 5322(b) operates as a "catchall" provision that jurisdiction may be exercised over persons who do not fall within the express provisions of section 5322(a) to the fullest extent permitted by the Due Process Clause of the United States Constitution. *Id.* (citing *Scoggins*, 555 A.2d at 1318; 42 Pa.C.S.A. § 5322(b)). Therefore, Pennsylvania courts may exercise jurisdiction over the acts specified in 42 Pa.C.S. § 5322(a) as well as under the long-arm statute which confers jurisdiction to "the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." See 42 Pa.C.S. § 5322(b).

Consequently, a Pennsylvania court may exercise jurisdiction over a non-resident corporation if: (1) the corporation qualifies as a foreign corporation under the laws of the Commonwealth; (2) the corporation consents to jurisdiction; or (3) the corporation carries on a continuous and systemic part of its business under the laws of the Commonwealth. *Pappert v. TAP Pharm. Prod. Inc.*, 868 A.2d 624, 628 (Pa.Cmwlth. 2005). Pennsylvania could not, however, exercise personal jurisdiction over a foreign corporation if the subsidiary and parent corporation maintain bona fide separate and distinct corporate existence. *Botwinick v. Credit Exch., Inc.*, 213 A.2d 349 (1965).

> While agency-based theories such as instrumentality, piercing the corporate veil, and alter ego are typically utilized to exercise general jurisdiction, there is neither an express bar nor conceptual restraint that precludes applying those principles to specific jurisdiction...Regardless of the name given the test to determine specific personal jurisdiction, the relevant jurisdictional principles of minimum contacts, fair play, and substantial justice remain static.

*Williams by Williams v. OAO Severstal*, 2019 WL 4888570, at *4 (Pa. Super. Ct. Oct. 3, 2019) (citing Jennifer A. Schwartz, PIERCING THE CORPORATE VEIL OF AN ALIEN PARENT FOR JURISDICTIONAL PURPOSES: A PROPOSAL FOR A STANDARD THAT COMPORTS WITH DUE PROCESS, 96 Cal. L. Rev. 731, 735 (2008) (advocating for "jurisdictional veil-piercing jurisprudence related to alien parents of U.S. subsidiary corporations in the context of specific jurisdiction.")). "To the extent that the certified record demonstrates that the parent and subsidiary are so intertwined that the subsidiary is the instrumentality of the parent corporation, then the parent may be considered to be doing business within the state under the facade of the subsidiary." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In *Botwinick v. Credit Exch., Inc.*, 213 A.2d 349 (Pa. 1965), our Supreme Court addressed whether a parent company was "doing business" through its subsidiaries for purposes of determining personal jurisdiction.

> Neither the similarity of names between the parent and subsidiary corporation nor the total ownership of the stock of the subsidiary by the parent nor the fact that a single individual is the active chief executive of both corporations will *per se* justify a court in piercing the corporate veil if each corporation maintains a *bona fide* separate and distinct corporate existence.

*Id.* at 353-54. As part of this inquiry, courts often consider the following discrete factors:

> (1) ownership of all or most of the stock of the subsidiary; (2) common officers and directors; (3) a common marketing image; (4) common use of a trademark or logo; (5) common use of employees; (6) an integrated sales system; (7) interchange of managerial and supervisory personnel; (8) performance of business functions by the subsidiary which the principal corporation would normally conduct through its own agents or departments; (9) marketing by the subsidiary on behalf of the principal corporation, or as the principal's exclusive distributor; and (10) receipt by the officers of the subsidiary corporation of instruction from the principal corporation.... These factors are best viewed as a non-exclusive guide to help resolve the broader issue of whether the companies have a "single functional and organic identity."

*Williams by Williams v. OAO Severstal*, 938 WDA 2017, 2019 WL 4888570, at *5–6 (Pa. Super. Ct. Oct. 3, 2019) (citing *Simeone ex rel. Estate Of Albert Francis Simeone, Jr. v. Bombardier-Rotax GmbH*, 360 F.Supp.2d 665, 675-76 (E.D. Pa. 2005)).

As noted above, the burden to contest jurisdiction rests with Community Health. See *Deyarmin,* 931 A.2d at 9. Once Community Health has provided proof of its objections, the burden then shifts to Plaintiffs to adduce evidence demonstrating that there is a basis for asserting specific jurisdiction over Community Health's actions relative to the alleged negligence in the health care provided to Plaintiff's decedent. *Id.* We will resolve the question of personal jurisdiction based on the circumstances of this particular case. See *Amp Inc.*, 823 F.Supp at 261.

In support of its preliminary objection, Community Health provided an affidavit from Justin Pitt (Pitt) the Senior Vice President and Chief Litigation Counsel for CHSPSC, LLC. (Docket Entry No. 70, Exhibit B at ¶ 2). In his position, Pitt provides consulting services to Community Health and has "personal knowledge regarding the corporate status and activities of Community Health..." *Id.* In pertinent part, Pitt contends that Community Health "does not transact business in Pennsylvania...is not registered to do business in Pennsylvania...has not appointed an agent for service of process in Pennsylvania...has no office or place of business in Pennsylvania, and has no real property, clients or employees in Pennsylvania." *Id.* at ¶ 10.

**i. Department of State Filing**

Plaintiffs note articles of incorporation from the Pennsylvania Department of State. (Docket Entry No. 157, Exhibit 3). The Articles of Incorporation – Nonprofit identifies "Community Health Systems Inc" as a nonprofit licensed to do business within Pennsylvania. *Id.* Community Health Systems Inc's purpose is to provide "management support services for community health providers serving uninsured and underinsured patients." Importantly, the corporations registered office in the Commonwealth is "211 South St #133, Philadelphia Pennsylvania 19147".

Thomas Aaron ("Aaron"), the Executive Vice President and Chief Financial Officer of Community Health, was deposed on October 31, 2019. (Docket Entry No. 155, p. 2). At his deposition, Aaron was questioned about Community Health's involvement with Community Health Systems Inc. (Docket Entry No. 155, Exhibit A). He was unable to identify the corporation, denied knowledge of the articles of incorporation, noticed a difference in punctuation between the companies and commented that Community Health is a for-profit

corporation while Community Health Systems Inc is a nonprofit, non-stock company.[7] (Aaron Dep. 23:22-26:2, Oct. 31, 2019).

Pitt submitted a supplemental affidavit to address Community Health Systems Inc's alleged relation to Community Health. (Docket Entry No. 108, Exhibit 1). Pitt states Community Health "is not registered to do business in Pennsylvania, has never incorporated in Pennsylvania and has never had a principal place of business in Pennsylvania. *Id.* at ¶ 4. Specifically, [Community Health] has never done business at 211 South South St #133, Philadelphia, Pennsylvania. [Community Health] is not a non-profit corporation."[8] *Id.*

**ii. Retirement Benefits**

To further support specific jurisdiction, Plaintiffs proffer Community Health's involvement in Regional Hospital's employees' 401(k) Plans. According to Plaintiff, the "CHS/Community Health Systems, Inc. Standard 401(k) Plan" (the "Plan") instructs Regional Hospital employees to list Community Health as their employer and Community Health identifies itself as the employer of Regional Hospital employees. Community Health's counter-argument is two-fold. First, the Plan is actually provided by CHS/Community Health Systems, Inc. rather than Community Health. Second, Plaintiffs failed to allege any facts or elements for this to support a jurisdictional argument. For the first argument, Community Health notes that CHS/Community Health Systems, Inc. is a "wholly-owned subsidiary" of Community Health. Yet, the 2017 Security and Exchange Commission ("SEC") 2017 Form 10-K Filing ("Form 10-

[7] Community Health is punctuated "Community Health Systems, Inc." whereas the other is punctuated "Community Health Systems Inc". (emphasis added). (Aaron Dep. 24:25-25-5).

[8] There is no averment that Community Health does business at 211 South South St. #133, Philadelphia, Pennsylvania. Instead, the articles of incorporation for Community Health Systems Inc list 211 South Street #133, Philadelphia, Pennsylvania as a corporate address.

K") states "[t]he Company maintains various benefit plans....The CHS/Community Health Systems, Inc. Standard 401(k) Plan..." (Docket Entry No. 91, Exhibit B at p. 146).

After a thorough investigation of the voluminous exhibits, we understand the nuts and bolts of the Plan as follows: the filing states that Community Health maintains a retirement plan for the employees of certain subsidiaries. The retirement plan available to these employees is called "The CHS/Community Health Systems, Inc. Standard 401(k) Plan." The confusion stems from the name of the Plan. Ultimately, the Plan is not run by the subsidiary CHS/Community Health Systems, Inc., but is confusingly named after the subsidiary, "*CHS/Community Health Systems, Inc.*, **Standard 401(k) Plan**" (emphasis added).[9] Consequently, Community Health could have named the Plan anything because the name of a retirement plan need not automatically identify the sponsor of the Plan.

Turning to the second argument, Plaintiffs contend the shared retirement plan confers jurisdiction over Community Health. Community Health cites four cases to support its position that a shared retirement plan does not grant a court jurisdiction over a non-resident parent corporation. See *Fisher Banking Co. v. Continental Banking Corp.*, 238 F.Supp. 322, 326 (D. Utah 1965); *Ames v. Whitman's Chocolates Div. of Pet Inc.*, 1991 WL 281798 (E.D. Pa. Dec. 30, 1991); *Prakash v. Altadias U.S.A. Inc.*, 2012 WL 1109918 (N.D. Oh. 2012); *Johnson v. Verizon Communications, Inc.*, 2011 WL 1343390 (N.D. Tex. 2011).[10] At most, three of these cases *may* be persuasive, but are not binding on this court. The fourth case, *Ames*, misses the mark entirely. 1991 WL 281798 (E.D. Pa. Dec. 30, 1991). In *Ames v. Whitman's Chocolates Div. of Pet Inc.*, 1991 WL 281798 (E.D. Pa. Dec. 30, 1991), the court analyzed whether it had jurisdiction over a

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[9] The italic portion represents, only, the name of the Plan; the bold portion represents the type of the Plan.

[10] In *Fisher Banking Co.*, the court was focused on venue and improper service. *Fisher Banking Co. v. Continental Banking Corp.*, 238 F.Supp. 322, 326 (D. Utah 1965).

non-resident parent corporation whose subsidiary employees participate in a parent corporation stock ownership plan.

### iii. Community Health's SEC Form 10-K

The record contains Community Health's Form 10-K. This form begins with "Item 1. *Business of Community Health [ ]*" and an overview of "Our Company." (Docket Entry No. 91, Exhibit B, at p. 1). Within that section Community Health represents that "we are one of the largest publicly-traded hospital companies in the United States...who provide[s] healthcare services through the hospitals that we own and operate." *Id.* "As of December 31, 2017, we employed approximately 2,000 physicians and an additional 1,000 licensed healthcare practitioners." *Id.* "Through our management and operations of these businesses, we provide standardization and centralization of operations across key business areas; strategic assistance to expand and improve services and facilities; implementation of patient safety and quality of care improvement programs and assistance in the recruitment of additional physicians and licensed healthcare practitioners." *Id.*

Relevant to this litigation, listed under "Item 2. *Properties*", Community Health identifies two types of properties: Corporate Headquarters and Hospitals. *Id.* at p. 42. Regarding hospitals, it states

> Our hospitals are general care hospitals offering a wide range of inpatient and outpatient medical services. These services generally include general acute care, emergency room, general and specialty surgery, critical care, internal medicine, obstetrics, diagnostic, psychiatric and rehabilitative services. In addition, some of our hospitals provide skilled nursing and home care services based on individual community needs.

*Id.* Community Health further lists Regional Hospital of Scranton as an owned property, acquired in May 2011. *Id.* at p. 45.

Only after reading the accomplishments and reach of Community Health is one privy to the following language:

> Throughout this Form 10-K, we refer to Community Health [ ], or the Parent Company, and its consolidated subsidiaries in a simplified manner and on a collective basis, using words like "we," "our," "us" and the "company." This drafting style is suggested by the Securities and Exchange Commission or SEC, and is not meant to indicate that the publicly-traded Parent Company or any particular subsidiary of the Parent Company owns or operates any asset, business or property. The hospitals, operations and businesses described in this filing are owned and operated, and management services provided, by distinct and indirect subsidiaries of Community Health [ ].

*Id.*

Community Health wants to market itself to current/potential investors about the expansive reach of the corporation in one breath and then disclaim any relationship with hospitals it owns in the next, and call it simply, a drafting suggestion. (Docket Entry No. 70, Exhibit B at ¶ 2).

Throughout the country Plaintiffs have attempted to assert personal jurisdiction over Community Health based on the same Security and Exchange Commission filings. See *E.E.O.C. v. Vicksburg Healthcare, LLC*, 2014 WL 4715463 (S.D. Miss. Sept. 22, 2014); *Hoagland v. Cmty. Health Sys., Inc., et al.*, CV No. 2013-02390 (N.M. Dist.); and *Quimbey v. Cmty. Health Sys., Inc., et al.*, 2015 WL 13651236 (D. N.M. Sept. 22, 2015). In each instance, the court found the disclosure language included in the SEC filings was sufficient to alert the reader that Community Health may utilize "we" to describe Community Health's interactions with subsidiaries or actions taken solely by the subsidiaries. *Id.* These cases are informative but not dispositive.

Community Health contends it utilizes "we," "our," "us," and the "company" (""we"") to facilitate an easier understanding of the prospectus. It asserts that the drafting style is suggested

by the SEC. Interestingly, the SEC adopted "plain English principles" for the presentation of information in a prospectus. 17 C.F.R. § 230.421. It seems contrary to the spirit of the regulation for additional confusion to arise out of a simplistic writing style. Ultimately, Community Health's use of "we" is arguably less about clarity and more about the control it exerts over its subsidiaries.

### iv. Community Health's Extensive Control Over Hospitals

Plaintiffs contend the Community Health maintains extensive control over Regional Hospital. First, Plaintiffs direct our attention to *Norfolk Cty. Ret. Sys. V. Cmty. Health Sys., Inc.*, 877 F.3d 678 (6th Cir. 2017). In this case, shareholders of Community Health brought a putative class action against Community Health for securities fraud. The shareholders alleged the value of Community Health stock fell immediately after a competitor "publicly disclosed expert analyses and other information suggesting that Community's profits depended largely on Medicare fraud." *Id.* at 689. The district court found this theory implausible and dismissed the case. *Id.* The shareholders appealed. *Id.* As the case was at the pleading stage, the Sixth Circuit adopted the allegations in the amended complaint as true. *Id.*

Relevant to the present action are the actions underlying the fraud allegation. In essence, Community Health's competitor claimed that Community Health's hospitals used a Community-created classification, the Blue Book, to determine whether a person needs inpatient or outpatient care - this was in contrast to over seventy-five percent of hospitals around the country that utilized one of two systems developed by independent companies "with no financial interest in admitting more inpatients than outpatients." *Id.* at 690. In 2011, Community Health ran 131 hospitals in the United States with revenues of $13.6 billion. *Id.* at 689. The shareholders alleged

that thirty percent of Community Health's profits from 2006-2011 were attributable to reimbursement from Medicare due to classifications from the Blue Book. *Id.*

The argument then follows that since Community Health and/or its subsidiaries purchased Regional Hospital in May 2011, it would have been subjected to the same level of control noted in *Norfolk*. Furthermore, Plaintiffs rely on *Norfolk* to suggest another court held that Community Health has significant control over subsidiary hospitals.

However, as the Sixth Circuit dutifully noted, the case was before the court on a Motion to Dismiss. Thus, allegations in the amended complaint were taken as true. *Id.* at 689. Any factual averments in the opinion were solely based on the shareholder's Complaint rather than a factual determination.

Second, as contained in a press release, Community Health acknowledged the acquisition of Regional Hospital. (Docket Entry 157, pp. 21-22). It should be noted, the announcement stated "[Community Health's] subsidiaries have acquired substantially all of the assets." *Id.* at p. 21. Yet in the next paragraph, Wayne T. Smith ("Smith"), the Chairman, President and Chief Executive Officer stated

> As we build upon our commitment to provide health services for Pennsylvania communities, we are excited about the opportunity to provide health services for medical staffs and employees of these fine hospitals. We look forward to implementing our proven operational strategies, including capital investment and physician recruitment, to support and enhance the rich tradition of quality care these hospitals have proudly provided for over a century.

*Id.* at p. 22. Again, Community Health touts its control over local hospitals, including the ability to implement Community Health's proven operational strategies. Consequently, while Regional Hospital may be owned by subsidiaries, the issue of whether the hospital is controlled by Community Health is not clear and free from doubt.

### v. Admissions in *Ottaviani v. Callahan*, 2013-CV-5408

In 2013, Julie Ottaviani ("Ottaviani") initiated a lawsuit against Thomas Callahan, Wilkes Barre Hospital, LLC d/b/a Wilkes Barre General Hospital and Community Health (collectively, "Defendants"). (Docket Entry No. 91, Exhibit F). In the Complaint, Ottaviani claimed in paragraph four that "Defendant, Community Health Systems, Inc. is a Tennessee corporation registered to do business in the Commonwealth of Pennsylvania with corporate headquarters and principle place of business located at 4000 Meridian Boulevard, Franklin, Tennessee, 37067" ("paragraph four"). *Id.* at ¶ 4. Attorney Adam Share ("Attorney Share") entered his appearance and filed an Answer to the Complaint. (*Ottaviani v. Callahan, et al.*, 2013-CV-5408, Docket Entry No. 4). Relying upon the Verification of Peter Welgus, Attorney Share admitted paragraph four of the Complaint.[11] (Docket Entry No. 91, Exhibit F at pp. 9-14). In 2018, the Defendants filed a Notice of Proposed Termination of Court Case and the case was terminated by Order of Court on April 26, 2019. *Ottaviani v. Callahan, et al.*, 2013-CV-5408, Docket Entry No. 9).

Community Health proffers two arguments to the admission. First, Community Health filed a Supplemental Affidavit of Pitt in which he states Community Health "has never employed Peter Welgus." (Docket Entry No. 108, Exhibit 1 at ¶ 4). As such, the "unilateral activity of

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[11] The verification was as follows:

> I, Peter Welgus, am authorized to make this Verification on behalf of Answering Defendants Community Health Systems and Wilkes Barre Hospital Company, and hereby verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.
>
> /s/
> Peter Welgus
> Dated: November 11, 2013

(Docket Entry No. 91, Exhibit F at p. 12).

another party of a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum state to justify an assertion of jurisdiction." *Helicopteros Nationales de Columbia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). Second, the affidavit continues, Community Health "is not registered to do business in Pennsylvania, has never been incorporated in Pennsylvania and has never had a principal place of business in Pennsylvania." (Docket Entry No. 108, Exhibit 1 at ¶ 4).

"Statements of facts by one party in pleadings, stipulations, testimony, and the like, made for that party's benefit, are termed judicial admissions and are binding on the party." *Cogley v. Duncan*, 32 A.3d 1288, 1292 (Pa. Super. 2011) (citing *John B. Conomos, Inc. v. Sun Co.*, 831 A.2d 696, 712-13 (Pa.Super.2003)). "Such pleadings are conclusive in the cause of action in which they are filed." *Dale Mfg. Co. v. Bressi*, 421 A.2d 653 (Pa. 1980). To determine if judicial estoppel is appropriate, the court must determine (1) whether the statements are "inconsistent" and (2) was this contention "successfully maintained". The Supreme Court of Pennsylvania noted "'I am the father' and 'I am not the father' are clearly two 'directly conflicting statements about purely factual matters,' akin to... [whether there was] a green light or a red light." *In re Adoption of S.A.J.*, 575 Pa. 624, 633-34 (2003).

Community Health claimed in *Ottaviani*, that it was licensed to business in Pennsylvania; here, Community Health claims it is not licensed to do business in Pennsylvania. As a single company cannot be licensed and not licensed to do business in Pennsylvania, these are two inconsistent statements. When provided an opportunity to proffer a reason to overcome the inconsistent statements Community Health contends that the verifier of the Answer did not work for Community Health at the time and thereby was not entitled to answer on its behalf. Given we

find that the underlying action was not successfully maintained, we need not further analyze Community Health's assertion that it did not employ Peter Welgus.

In the end, Plaintiffs provided five arguments to support a finding of specific personal jurisdiction over Community Health: (1) the Department of State filing, (2) the Retirement Plan, (3) the Security and Exchange Commission Form 10-K from 2017, (4) Widespread Control over Regional Hospital as outlined in *Norfolk Cty. Ret. Sys.*, 877 F.3d 678, and (5) an admission in another Lackawanna County case. According to Plaintiffs, these evidence Community Health's purposeful contact with Pennsylvania.

Here, we have evidence from Community Health that it maintains significant control over the hospitals it owns, including Regional Hospital. We find the control of retirement benefits, the requirement that employees list Community Health as their employer, and the statement provided by Smith on behalf of Community Health, instrumental in this determination. While other courts have found the Form 10-K filings are not evidence of Community Health's control over its subsidiaries, we are slower to reach the same conclusion. As discussed above, the use of "we" is not exculpatory or utilized for the ease of the reader. Instead, it complicates, confuses and compounds any understanding of the role Community Health plays within its company structure. Further, Community Health's control of Regional Health is directly related to the allegations of wrongful death and corporate negligence.

**b. Constitutional Due Process**

"The Due Process Clause of the Fourteenth Amendment to the United States Constitution limits the authority of a state to exercise *in personam* jurisdiction over non-resident defendants." *Mendel v. Williams*, 53 A.3d 810, 816 (Pa. Super. 2012) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985)). In *Hammonds v. Ethicon, Inc.*, 190 A.3d 1248,

1262 (Pa.Super. 2018), the Superior Court discussed the Due Process requirements of the exercise of specific jurisdiction as follows:

> There are three requirements for the exercise of specific jurisdiction. First, the defendant must have "purposefully availed itself of the privilege of conducting activities within the forum State or have purposefully directed its conduct into the forum State." [citation omitted] Second, the plaintiff's claim must "arise out of or relate to" the defendant's activities in the forum state. Third, jurisdiction must be fair and reasonable so as not to offend tradition notions of fair play and substantial justice. The fairness factors in the third requirement that a court will consider are "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies."

*Hammonds*, 190 A.3d at 1262. "The extent to which jurisdiction is proscribed by the Due Process Clause is dependent upon the nature and quality of the defendant's contacts with the forum state." *Mendel*, 53 A.3d at 816 (citing *Burger King*, 471 U.S. at 471-72; *Kubik*, 614 A.2d at 1114. "Where a defendant 'has established no meaningful contacts, ties or relations' with the forum, the Due Process Clause prohibits the exercise of personal jurisdiction." *Id.* (quoting *Burger King*, 471 U.S. at 472). "However, where a defendant has 'purposefully directed' his activities at the residents of the forum, he is presumed to have 'fair warning' that he may be called to suit there." *Id.* Whether specific jurisdiction is proper under the Due Process Clause requires a two-part analysis: first, the plaintiff must demonstrate that the defendant purposefully established minimum contacts with the forum state; and second, the maintenance of the suit must not offend "traditional notions of fair play and substantial justice." *Schiavone,* 41 A.3d 869 (quoting *Burger King*, 471 U.S. at 474).

**i. Minimum Contacts.**

A defendant purposefully establishes minimum contacts with the forum state when its contacts are

> such that the defendant could reasonably anticipate being called to defend itself in the forum.... Random, fortuitous, and attenuated contacts cannot reasonably notify a party that it may be called to defend itself in a foreign forum and, thus, cannot support the exercise of personal jurisdiction. That is, the defendant must have purposefully directed its activities to the forum and conducted itself in a manner indicating that it has availed itself of the forum's privileges and benefits such that it should be subjected to the forum state's laws and regulations.

*Aventis Pasteur, Inc. v. Alden Surgical Co., Inc.*, 848 A.2d 996, 1000 (Pa.Super.2004).

Community Health contends Plaintiffs rely on baseless and conclusory allegations that Community Health "maintains and operates" the Hospital and "held itself out to the public" as the "owner and operator" of the Hospital. (Docket Entry No. 108, p. 13). However, as the record indicates, Community Health willingly submitted itself to the jurisdiction of Pennsylvania.

In February 2005, Community Health acquired Chestnut Hill Hospital, a nonprofit organization. (Docket Entry No. 91, p. 20 and Docket Entry No. 91, Exhibit B, at p. 45). Since Community Health is a self-proclaimed for-profit business, the Orphans' Court needed to approve the transfer of charitable and non-charitable assets of Chestnut Hill Hospital. To that end, Senior Vice President of Operations for Community Health and corporate designee, Gary Newsome ("Newsome"), testified before the Philadelphia County Orphans' Court. When asked if Community Health owns and operates other hospitals in Pennsylvania, Newsome replied

> We do. We currently have seven hospitals in Pennsylvania. All of these hospitals are run under the Attorney General's review process and also the Orphans' Court approval process. Berkwick Hospital and a retirement center was acquired in 1999; in 2001 we acquired Brandywine Hospital, Easton Hospital, and Jennersville Hospital. And in 2002 we acquired Lockhaven Hospital; in 2003 was Pottstown Memorial Medical Center, and in 2004, Phoenixville Hospital.

*See In Re: Chestnut Hill Healthcare,* Orphans' Court Division, No. 3041 NP of 1985, Petition to Approve Proposed Sale of Assets and Transfer of Charitable Funds, and for Determination Under 15 Pa.C.S. § 5547 That Such Proposed Transactions are not Diversions of Property Committed to Charitable Purposes (Phila. Co.). Newsome acknowledged that Community Health routinely submitted to continuous review by the Attorney General of Pennsylvania. Furthermore, Community Health's relationship with the Commonwealth is premised on transacting business and creating a continuous revenue stream. These contacts are not "random or fortuitous" but "purposefully directed" acquisition of hospitals and profits in the Commonwealth. *Aventis Pasteur, Inc.*, 848 A.2d at 1000. Given the record, Community Health has minimum contacts with Pennsylvania.

**ii. Fair and Reasonable**

If the defendant has purposefully established minimum contacts in the forum state, these contacts must be considered on a case-by-case basis to determine whether they "are such as to make it reasonable and fair to require him to conduct his defense in the state." *Kubik*, 614 A.2d at 1114.

> Factors to be considered include (1) the burden on the defendant, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies and (5) the shared interest of the several states in furthering fundamental substantive social policies.

*Id.* "When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the most serious burdens placed on the alien defendant." *O'Connor v. Sandy Lane Hotel Co., Ltd.,* 496 F.3d 312, 325 (3d Cir. 2007) (citing *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987)). "Pennsylvania has a 'manifest interest in providing effective means of redress' when a foreign corporation reaches

into the state and solicits its citizens." *Id.* (citing *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957).

As discussed facts have been presented to demonstrate that, Community Health (1) maintains control over its subsidiaries hospitals and (2) is registered to do business within the Commonwealth. Since Community Health maintains control over hospitals within Pennsylvania, including Regional Hospital, the burden on Community Health would be slight. While Community Health has a principal place of business in Tennessee and is incorporated in Delaware, the burden still remains slight. In the instant matter, Plaintiffs claim arises from actions which arose at Regional Hospital in Scranton, Lackawanna County, Pennsylvania. Pennsylvania has an interest in adjudicating medical malpractice disputes that occur in a hospital in Pennsylvania, controlled by a non-resident corporation. Based upon the record, our exercise of specific personal jurisdiction over Community Health is permitted by the laws of the Commonwealth and the Constitution of the United States. Thus, this preliminary objection will be overruled. We shall not address our ability to assert general personal jurisdiction over Community Health.

**ii. Affidavit of Non-Involvement**

In Pennsylvania, Dismissal upon Affidavit of Non-Involvement may be utilized to dismiss "an action for negligence against a construction design professional and...a medical professional liability action naming a health care provider as a defendant." Pa.R.C.P. 1036.

> Any health care provider named as a defendant in a medical professional liability action may cause the action against that provider to be dismissed upon the filing of an affidavit of noninvolvement with the court. The affidavit of noninvolvement shall set forth with particularity the facts which demonstrate that the provider was misidentified or otherwise not involved, individually or through its servants or employees, in the care and treatment of the claimant and was not obligated, either individually or through its servants or employees, to provide for the care and treatment of the claimant.

40 P.S. § 1303.506(a).

Pennsylvania Rules of Civil Procedure Rule 1036 outlines the appropriate steps for seeking to dismiss a "medical professional liability action naming a health care provider as a defendant." Pa.R.C.P. No. 1036.

> (b) Any party seeking dismissal of the action shall file a motion to dismiss which shall have attached thereto the affidavit of noninvolvement.
> (c) Any party opposing the motion may file a response.
> (d) Upon reviewing the motion and any response thereto and determining the existence of a prima facie case for dismissal of the action as to a party, the court shall enter an order
>
> (1) allowing any party opposing the motion
>
> (i) to conduct limited discovery directed solely to the issue of involvement of any party seeking dismissal and
> (ii) prior to the disposition of the motion, to file affidavits, depositions and such other evidentiary materials as would permit a jury to find that any party seeking dismissal was involved in any activities upon which the claim is based, and
>
> (2) scheduling an argument to decide the motion.
> (e) The argument shall be limited to the sole issue of whether any party opposing the motion has produced evidence which, when considered in a light most favorable to that party, would require the issue of the involvement of any party seeking dismissal to be submitted to a jury.

Pa.R.C.P. No. 1036.

We held oral argument on the preliminary objections and affidavit of non-involvement on March 29, 2019. On August 14, 2019, we granted the parties sixty (60) days to conduct discovery relevant to the issue of personal jurisdiction of Community Health and twenty (20) days thereafter to submit supplemental briefs on the same. Evidentiary support of whether this court has personal jurisdiction over Community Health overlaps with the necessary evidence for a Dismissal upon an Affidavit of Non-Involvement. Therefore, this matter is ripe for review.

Community Health's motion includes an affidavit of Justin D. Pitt (hereinafter "Pitt"), the Senior Vice President and Chief Litigation Counsel for CHSPSC, LLC. Based upon information

within his personal knowledge, Pitt avers that Community Health has "indirect subsidiaries that own or lease 110 hospitals nationwide. Community Health [ ] does not operate any of the hospitals that its indirect subsidiaries own or lease." (Docket Entry No. 70, Exhibit B at ¶ 2).[12] Essentially, the affidavit represents that Community Health does not conduct business in Pennsylvania, has no employees or agents in Pennsylvania, is an indirect owner of Regional Hospital, and is not involved in the bylaws, clinical decisions, nor in control of treatment or care of patients at Regional Scranton.

As noted above, in 2011 Community Health "look[ed] forward to implementing [its] proven operational strategies, including capital investment and physician recruitment, to support and enhance the rich tradition of quality care these hospitals…" (Docket Entry No. 157, p. 22). Essentially, Community Health contended it was involved, at some level, in the recruitment of physicians at Regional Hospital. Plaintiffs have sued physicians employed at Regional Hospital. As such, Community Health, through its servants or employees, was obligated to provide the care and treatment of Plaintiff's decedent. This Motion based on an Affidavit of Non-Involvement will be denied because we are satisfied that sufficient evidence has been presented so that the issue of Community Health's involvement may be submitted to a jury.

**iii. Motion to Strike Vague and Overbroad Agency Allegations**

Community Health seeks to strike paragraphs 13-16, 18-20, 53, 55, and 66-76 of the Amended Complaint. Community Health maintains that, through the same, Plaintiffs attempt to impose liability upon Community Health for "the alleged acts or omissions of certain individuals." (Docket Entry No. 70, ¶ 57).

[12] CHSPSC, LLC provides consulting services to Community Health. (Docket Entry No. 70, Exhibit B at ¶ 2).

Plaintiffs contend the Complaint attempted, in so far as possible, "by description of actions and inactions taken, [attempted] to identify individuals who are unnamed in the available records, but who were involved in the treatment of and the decision making for [Plaintiff's decedent.]" (Docket Entry No. 91, p. 28).

"At the time the suit is filed, the defendants are in far more control of the information than the plaintiff...and the physicians and hospitals are far less likely to volunteer information to the plaintiff absent formal depositions." *Johnson*, 19 D. &. C. 4th at 308. Read in the entirety, Community Health is put on sufficient notice to defend the claims asserted against it in the enumerated paragraphs. Therefore, we will overrule this preliminary objection.

An appropriate Order follows.

| | | |
|---|---|---|
| DANIEL KOWALSKI, AS ADMINISTRATOR OF THE ESTATE OF KAREN KOWALSKI, AND DANIEL KOWALSKI, IN HIS OWN RIGHT, | : | IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY |
| PLAINTIFFS | : | |
| v. | : | CIVIL ACTION |
| SCRANTON HOSPITAL COMPANY, LLC D/B/A REGIONAL HOSPITAL OF SCRANTON, COMMUNITY HEALTH SYSTEMS, INC. D/B/A COMMONWEALTH HEALTH SYSTEMS, INC. COMMONWEALTH HEALTH SYSTEMS, AND COMMONWEALTH HEALTH, PHILIP HUFFMAN, M.D., JAMIE STALLMAN, M.D., AND TIMOTHY C. HOU, M.D. | : | NO. 2018-CV-4996 |
| DEFENDANTS | : | |

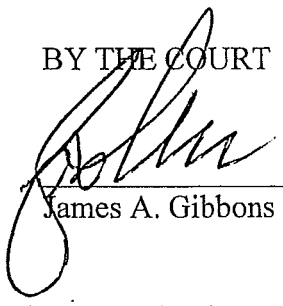
**ORDER**

A N D N O W, this 17th day of February, 2020, upon consideration of the Defendant Regional Hospital's Preliminary Objections, Defendant Community Health's Preliminary Objections and Motion to Dismiss based on an Affidavit of Non-Involvement, and arguments and submissions of the parties, it is hereby ORDERED that:

1. Defendant Regional Hospital's preliminary objections are **OVERRULED**;
2. Defendant Community Health's preliminary objection based on lack of personal jurisdiction is **OVERRULED**;
3. Defendant Community Health's Motion to Dismiss based on an Affidavit of Non-Involvement is **DENIED**;
4. Defendant Community Health's preliminary objection based on vague and overbroad agency allegations is **OVERRULED**; and

5. Defendants are directed to file an Answer to Plaintiffs' Amended Complaint within twenty (20) days from the date of this Order.

BY THE COURT



_____, J.
James A. Gibbons

cc: Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa.R.C.P. 236(a) and (d) by mailing or e-mailing time-stamped copies to:

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