pending preliminiary objections in the nature of a demurrer and a motion for a more specific complaint. Whether undue influence was exerted is at this stage of the litigation an open question. Although we are concerned about potential conflicts and need not wait for it to ripen into a certainty, *Pirillo v. Takiff,* 462 Pa. 511, 341 A.2d 896 (1975), we have no way of properly evaluating the seriousness of the potential for conflict here. It may be remote or non-existant.

Although disqualification and removal is appropriate in cases in which representation of conflicting interests is shown, it is, of course, a serious remedy which must be imposed with an awareness of the important interests of a client in representation by counsel of the client's choice. *Slater v. Rimor, Inc.,* 462 Pa. 138, 338 A.2d 584 (1975). In the case sub judice, each defendant has expressed her desire to be represented by the same counsel. This desire should be given considerable weight. We also recognize the hardship which easy disqualification may cause to Mrs. Diehl. Taking into consideration all of these factors, we decline to enjoin attorney Thomas J. Finucane from representing Hazel M. Gsell Diehl.

ORDER OF COURT

NOW, this 30th day of January 1986, the plaintiffs' petition for injunctive relief is denied.

Exceptions are granted the plaintiffs.

RICHARDSON V. BUNDY, C.P. Franklin County Branch, A.D. 1984-231

*Medical Malpractice - TORT - Implied Warranty in Medical Care*

1. A medical malpractice claim is a tort claim and a second count based on breach of implied warranty is redundant and improper.

*Patrick J. Redding, Esquire,* Counsel for Plaintiffs
*Eugene D. McGurk, Jr., Esquire,* Counsel for Plaintiffs
*James W. Saxton, Esquire,* Counsel for Defendants
*Kevin E. Osborne, Esquire,* Counsel for Defendants

OPINION AND ORDER

EPPINGER, S.J., January 13, 1986:



In deciding motions for more specific pleading, we have been guided for some time by the decision of the court in *Price v. The Pennsylvania Railroad Co.,* 17 D.&C.2d 518 (Dauphin 1958). We think the principles apply in Pennsylvania, a fact pleading state, that plaintiffs should be required to allege facts justifying their allegation of failure to exercise due care under the circumstances.

The hospital's motion to strike and the doctors' demurrer are both based on the claim that the second cause of action, which alleges malpractice as a breach of implied warranty, is redundant and improper. We agree. In Pennsylvania lower courts there are two lines of cases, one represented by *Dillard v. St. Francis General Hospital et al.,* 124 P.L.J. 235 (Allegheny 1976), recognizes the cause of action. The other, represented by *Moten v. Harrisburg Hospital,* 9 D.&C.3d 671 (Dauphin 1979), held that generally a malpractice claim is a tort claim and denied the implied warranty assumpsit claim. At best it is redundant, *Peterman v. Geisinger Medical Center,* 8 D. &C.3d 432 (Mountour 1978), and only succeeds in complicating the final determination of the case. We accept the reasoning of the second line of cases and will sustain the demurrer.

ORDER OF COURT

January 13, 1986, according to the stipulation at argument, subparagraphs (f) and (g) of paragraph 16 are stricken and the motion for more specific pleading as to subparagraph (e) of paragraph 16 is granted. The motion to strike and the demurrer to Count No. 2 and so much of Count No. 3 that alleges an implied warranty are treated as demurrers and are granted.

The plaintiff is given twenty (20) days from this date to file an amended complaint as to paragraph 16 (e).

Alicia Richardson sought the advice of the defendant physicians Thomas W. Bundy and Glenn H. Lytle during 1981 concerning a lump at or near her right breast. She alleges in a complaint that was filed that thereafter the two undertook to treat and advise her concerning the condition. Korangy Radiological Associates undertook to perform diagnostic studies and evaluations and the complaint alleges that Korangy was the agent, servant, and employee of the Chambersburg Hospital.

According to the complaint, on November 5, 1982, Alicia underwent a biopsy and it was determined that she was suffering from carcinoma of the right breast and surrounding area. Stating negligence in the most general terms, the Richardsons' first cause of action sounds in tort. The second cause of action is a claim on a breach of implied warranty that defendants would reasonably and properly provide medical care and treatment and the third count is a claim for the husband, Robert J. Richardson, for loss of consortium.

All of the defendants appeared except Korangy Radiological Associates against whom a default judgment was taken on July 26, 1985.

Preliminary objections were filed to the complaint by all of the defendants except Korangy. The hospital filed a motion for more specific pleading and a motion to strike the second cause of action, while the others filed a demurrer.

The hospital's contention is that the allegations of paragraph 16, subparagraphs (e), (f), and (g) fail to inform the defendants with the required accuracy and completeness of the plaintiff's basis for recovery. Paragraph 16 and the pertinent subparagraphs state:

> The defendant, and each of them, were negligent, careless, reckless, wanton and grossly negligent, in the following particular respects, among others:
>
> (e) failure to exercise due care under the circumstances;
> (f) negligent at law;
> (g) such other acts of negligence as may be disclosed in the course of discovery of the matter pursuant to the Pennsylvania Rules of Civil Procedure.

At the argument on this matter, the plaintiff's attorney agreed that subparagraphs (f) and (g) should be stricken and we will so order. Subparagraph (e) does not meet the standards required for fact pleading. It is impossible for the defendants to know how they failed to exercise due care under the circumstances under this allegation. The urgency of defendant's filing a preliminary objection as here is underscored by the decision in *Conner v. Allegheny,* 501 Pa. 306, 311, 461 A.2d 600, 602 (1983), footnote number 3 where the court said:

ALL THAT CERTAIN following described real estate, together with the improvements thereon erected, lying and being situate in Greene Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at the Southeast corner of the intersection of Kenny Avenue and Johnson Drive in the subdivision of Lee L. Johnson and wife; thence along said Johnson Drive, north 79 degrees 2 minutes east, 150 feet to an iron pin at the corner of lands of M.F. Gibbons; thence along said lands of J.F. Gibbons, south 24 degrees 3 minutes east, 82 feet to an iron pin at the corner of Lot No. 3, Section A, Lee L. Johnson Subdivision; thence along said Lot No. 3, Section A of said subdivision, south 75 degrees 23 minutes west 150.5 feet to an iron pin along the eastern edge of said Kenny Avenue; thence along said Kenny Avenue north 23 degrees 50 minutes west 81.7 feet to an iron pin, the place of beginning. Being Lot No. 4, Section A of a subdivision laid out for Lee L. and C. Mae Johnson by William L. Arrowood R.E., dated November 23, 1961, and recorded in the office of the recorder of Deeds of Franklin County in Plan Drawer 8.

BEING the same premises which Floyd E. Swanger and Delores J. Swanger, formerly husband and wife, dated May 23, 1983 and recorded May 25, 1983, in the Recorder's Office, Franklin County In Record Book 880, Page 367, granted and conveyed unto Billy R. Kirby and Donna O. Kirby.

KNOWN as 2683 Johnson Drive, Chambersburg, PA.

BEING sold as the property of Billy R. Kirby and Donna O. Kirby, Writ No. AD 1986-322.

**TERMS**

**As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.**

**The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, May 4, 1987 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, May 8, 1987 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.**

RAYMOND Z. HUSSACK, SHERIFF
Franklin County, Chambersburg, PA

"If appellant did not know how it 'otherwise failed to use due care and caution under the circumstances', it could have filed a preliminary objection in the nature of a request for a more specific pleading or it could have moved to strike that portion of appellant's complaint.

## PENNSYLVANIA LIQUOR CONTROL BOARD v. FULTON OVERSEAS VETERANS ASSOCIATION, INC., C.P. Fulton County Branch, No. 1 of 1985-MCP

*Liquor License - Private Club - Suspension of License*

1. A proceeding to suspend or revoke a liquor license under the liquor laws is civil and administrative in nature and not criminal.

2. Proof of a liquor licensee's intent to violate the Liquor Code is not required to justify a sanction for the violation.

3. Where the licensee has an automatic locking mechanism on the door to prevent unauthorized entry but the door is left open, the licensee cannot blaim an expectation of privacy requiring a liquor control board agent to secure a search warrant.

*Walter A. Criste, Esquire,* Attorney for Pennsylvania Liquor Control Board
*Gary D. Wilt, Esquire,* Attorney for Appellant

### OPINION AND ORDER

KELLER, P.J., September 11, 1986:

The appellant is a non-profit corporation which holds license number CC-5010, issued by the Pennsylvania Liquor Control Board (hereinafter the Board). On May 9, 1984, the Board issued a citation to show cause why the license should not be revoked and the bond forfeited. A hearing was held on September 13, 1984, before a Board examiner. On March 6, 1985, the Board filed an Opinion and Order containing the following finding of fact:

A. The licensed organization, by its servants, agents or employees sold liquor and/or malt or brewed beverages on the licensed premises to a non-member without prior arrangement for such services on March 23, 1984.