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MARJORIE M. CHRISTIE, ADMINISTRATRIX OF THE ESTATE
OF CHARLES CHRISTIE, DECEASED,
and MARJORIE M. CHRISTIE, INDIVIDUALLY
AND IN HER OWN RIGHT, Plaintiff,
v. QUINCY UNITED METHODIST HOME;
ROBERT J. TERNES, M.D.; ROBERT F. GOLDMAN, M.D.;
WAYNESBORO INTERNAL MEDICINE ASSOCIATES;
MOHAMMED HAQ, M.D.;
and PRIMARY CARE MEDICAL ASSOCIATES, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2004-759, Jury Trial Demanded

Corporate Negligence; Demurrer

1. Corporate negligence is a doctrine under which a defendant is liable if it fails to uphold the proper standard of care it owes to the patient. This theory of liability creates a nondelegable duty which the defendant owes directly to a patient. Therefore, an injured party does not have to rely on and establish the negligence of a third party.

2. The Pennsylvania appellate courts first developed the theory of corporate negligence in a case concerning a hospital defendant and then extended liability for corporate negligence to Health Maintenance Organizations.

3. No appellate authority has extended the application of the theory of corporate negligence past hospitals and HMOs.

4. No common pleas court has allowed a claim for corporate negligence against a physician group to continue unless it was convinced that the pleadings established that the physician group acted in some way as a hospital and/or HMO and thus owed its patients a heightened standard of care that was breached.

Appearances:

Lisa Benzie, Esq., Counsel for Plaintiff

Hugh O'Neill, Esq., Counsel for Quincy United Methodist Home

Michael Mongiello, Esq., Counsel for Defendant Dr. Ternes, Dr. Goldman and Waynesboro Internal Medicine

Lauralee Baker, Esq., Counsel for Defendants Dr. Mohammed Haq and Primary Care Medical Associates

OPINION

Van Horn, J., July 16, 2004

Factual Background

1. Plaintiff, Marjorie M. Christie, commenced this medical professional liability action by way of Complaint, filed on March 30, 2004, against numerous defendants, including Robert J. Ternes, M.D., Robert F. Goldman, M.D., and Waynesboro Internal Medicine Associates (hereinafter "WIMA").

2. WIMA is a corporate medical practice and Plaintiff claims that at all relevant times WIMA was the employer and master of Dr. Ternes and Dr. Goldman.

3. On or about May 6, 2002, Charles Christie (hereinafter "Christie") was admitted to Quincy United Methodist Home (hereinafter "Quincy") with multiple diagnoses.

4. On or about May 7, 2002, Dr. Goldman visited Christie at Quincy and performed a complete history and physical on Christie.

5. On or about May 8, 2002, Quincy nurses' notes indicating abnormal test results revealing excessive anti-coagulation were faxed to Dr. Goldman at WIMA.

6. On or about May 9, 2002, Dr. Goldman visited Christie at Quincy and reviewed his medical charts.

7. On or about May 10, 2002, Quincy nurses' notes indicate that Christie once again had abnormal test results and the results were faxed to WIMA.

8. On or about May 10, 2002, Dr. Ternes and/or Dr. Goldman received a fax from Quincy indicating abnormal lab results for Christie.

9. On May 11, 2002, Mohammed Haq, M.D. was on call for Dr. Ternes and Dr. Goldman and was notified by Quincy and made aware of Christie's condition, including medical history, current medications and his current condition of bloody loose stools.

10. On May 11, 2002, Dr. Haq discontinued blood-thinning medication that had been ordered by Dr. Goldman.

11. On May 12, 2002, at approximately 4:25 a.m., Christie ceased to breathe.

12. Plaintiff claims WIMA is independently negligent with respect to the care provided to Christie for the following reasons:

a. Failing to have a protocol or method to follow-up on tests ordered and results received;

b. Failing to communicate vital and needed patient information to the physician on call for the practice; and

c. Failing to communicate vital and needed patient information to physicians in the practice.

Procedural Background

1. On April 19, 2004, Dr. Ternes, Dr. Goldman and WIMA filed Preliminary Objections to Plaintiff's Complaint and a brief in support of their Objections.

2. On May 7, 2004, Plaintiffs filed a response to Defendants' Preliminary Objections and a brief in support of their response.

3. On July 1, 2004, the Court heard oral argument on the Preliminary Objections.

Discussion

This matter is before the Court on Preliminary Objections filed by Defendants Dr. Ternes, Dr. Goldman and WIMA. The issue is whether Plaintiff's claim against WIMA on a theory of corporate negligence is improper under Pennsylvania law. Defendants' Preliminary Objection, while not specifically stated as such, is in the nature of a demurrer. Defendants are essentially asserting that Plaintiff's claim of corporate negligence is legally insufficient. Pa.R.C.P. No. 1028(a)(4).

Initially, we note that in ruling on preliminary objections, in the nature of a demurrer:

> the court must accept as true all well-pleaded, material and relevant facts as well as all reasonable inferences drawn therefrom ... For the court to sustain the preliminary objection, the face of the complaint must reveal that the claim cannot be sustained and that the law will not permit recovery. If any doubt exists, the court must overrule the objection.

Mellon Bank N.A. v. Fabinyi, 650 A.2d 895 (Pa.Super. 1994).

The Supreme Court first developed the theory of corporate negligence in a case concerning a hospital defendant. Thompson v. Nason Hospital, 591 A.2d 703 (Pa. 1991). In developing the theory of

corporate negligence, the Supreme Court stated the following as duties a hospital owes each of its patients:

> (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians; (3) a duty to oversee all persons who practice medicine within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

Id. at 707 (citations omitted). The Supreme Court's adoption of the theory of corporate negligence[1] was based in part upon the Restatement of Torts 2d § 323 (1965) and the "full recognition of the corporate hospital's role in the total health care of its patients." Id. at 708.

The Superior Court has extended liability for corporate negligence to Health Maintenance Organizations (HMOs) on the basis that they too play a "central role ... in the total health care of [their] subscribers." Shannon v. McNulty, 718 A.2d 828, 835 (Pa.Super. 1998); see also McClellan v. Health Maintenance Organization of Pennsylvania, 604 A.2d 1053 (Pa.Super. 1993). In extending corporate negligence liability to HMOs, the Shannon court stated:

> A great deal of today's healthcare is channeled through HMOs with the subscribers being given little or no say so in the stewardship of their care. Specifically, while these providers do not practice medicine, they do involve themselves daily in decisions affecting their subscriber's medical care. These decisions may, among others, limit the length of hospital stays, restrict the use of specialists, prohibit or limit post hospital care, restrict access to therapy, or prevent rendering of emergency room care. While all of these efforts are for the laudatory purpose of containing health care costs, when decisions are made to limit a subscriber's access to treatment, that decision must pass the test of medical reasonableness. To hold otherwise would be to deny the true effect of the provider's actions, namely, dictating and directing the subscriber's medical care.
>
> Where the HMO is providing health care services rather than merely providing money to pay for services their conduct should be subject to scrutiny.

Id. at 835-836.

No appellate authority has extended the application of the theory of corporate negligence past hospitals and HMOs. However, both parties cite and discuss common pleas decisions, as well as several federal decisions, that address the applicability of the theory of corporate negligence to non-hospital and non-HMO entities.[2]

Defendants cite the following decisions in support of their argument that the doctrine of corporate negligence, which has not been extended past hospitals and HMOs by the appellate courts, should not be extended to include WIMA, as WIMA did not act as either a total healthcare provider (hospital) or as a gatekeeper to total healthcare (HMO), and thus should not be held to the same standard of care as are hospitals and HMOs.

In Remshifski v. Kraus, 1845 Civil 1992 (Monroe County C.P.)(September 8, 1995), the plaintiff was treated, while in the hospital, for a toe injury that resulted in his toe having to be amputated, by a physician employed by Coordinated Health Services, Inc. (CHS) and a physician employed by Monroe Emergency Physicians, P.C. (MEP). Id. at 14. The plaintiff claimed CHS and MEP were liable under a theory of corporate negligence. Id. at 15. The court held that the boundaries of corporate negligence did not extend to entities other than hospitals. Id. at 16.

In Dibble v. Penn State Geisinger Clinic, Inc., 42 Pa. D.&C.4th 225 (Lackawanna County C.P. 1999) the plaintiffs sued the Clinic under a theory of corporate negligence because doctors associated with the Clinic did not timely diagnose Mr. Dibble with prostate cancer after tests indicated a potential problem. Id. at 226.

The court held that "[b]ecause a clinic is not a comprehensive medical care facility, but instead is a primary care facility this court believes Thompson, *supra*, does not apply." Id. at 233-234. "A clinic, while it plays a critical primary role, albeit limited, in providing health care it cannot be considered to be a central role ... in the total health care of its subscribers." Id. at 234.

In Dowhouer v. Judson, 45 Pa. D.&C.4th 172 (Dauphin County C.P. 2000), the court held that the doctrine of corporate negligence did not extend past hospitals and HMOs to include physician groups. Id. at 179. The court stated, "the basis for the creation of such a doctrine was due to the corporate entity's

role in the delivery of total health care to the patient. A physician's group which is exclusively devoted to the practice of cardiovascular surgery does not deliver total health care to its patients." Id. at 181.

In O'Donnell v. Melnick et al., 1999-00662 (Lebanon County C.P.)(March 3, 2000) Dr. Melnick had performed surgery on Mrs. O'Donnell's sinuses in a hospital. Id. at 1. Problems during the surgery resulted in Mrs. O'Donnell's permanent brain injury for which the plaintiffs sought to hold Howard Melnick, M.D., P.C., liable under a theory of corporate negligence. Id. at 2.

The court determined that Melnick, as a corporation, could not be held liable because "there [was] no indication that Melnick, as a corporation, played any role in the administration of total health care to Mrs. O'Donnell which functions [were] the same or similar to those provided by a hospital or HMO upon which a claim for corporate liability could be based." Id. at 6.

In Johnson v. Wiseman et al., 98 CV 000393 (Bradford County C.P.)(December 22, 1998), the plaintiffs filed a complaint against Guthrie Clinic, Ltd., alleging that the Clinic was corporately liable for the death of their child only hours after his birth due to the defendants lack of proper medical procedures. Id. at 96.

The court held that "the doctrine of corporate negligence is not applicable to doctors' offices and physician practice groups." Id. at 98. The court said, "it appears that the Guthrie group is not a comprehensive health center coordinating the total care of patients. Nor does it appear that it is an entity, separate from its physician members, that controls a patient's total medical care." Id.

The Johnson court referred to and relied upon Milan v. American Vision Center, 34 F. Supp. 2d 279 (E.D. Pa. 1998) in which the plaintiff sued an optometrist practice for corporate negligence and preliminary objections dismissing the claim were granted. The court reasoned that the patient was free to obtain treatment elsewhere and the optometrist office did not play a gatekeeping role in the care of the patient. Id. at 282.

In Paul v. Barton et al., 2000-530 (Franklin County C.P.)(May 16, 2000), the plaintiff claimed that Cumberland Valley Emergency Associates (CVEA) was corporately liable for the death of Mrs. Bowman after a physician who was associated with CVEA saw her in the hospital and discharged her.

The court reviewed, in brief, all the above cases, and sustained CVEA's demurrer after finding "compelling the reasoning articulated by the majority of the courts." Id. at 6. The court "decline[d] to extend corporate liability to a professional medical corporation such as Defendant CVEA." Id.

In all of the above cases, the courts refused to allow a claim for corporate negligence to go forward against physician groups that acted within the scope of their duties as physician groups. The courts were unwilling to extend a theory addressed to entities that were not acting in any way as hospitals or HMOs do in that hospitals provide total healthcare and HMOs act as gatekeepers to a patient's total healthcare.

Plaintiff claims that the factual situations presented in the above cases are different then the present situation and argues the following in support of said claim.

Plaintiff claims that unlike the facts in O'Donnell, *supra*, in which the physician was only caring for one aspect of the patient's health, her sinus problems, and in Dowhouer, *supra*, in which the physician group was exclusively devoted to the practice of cardiovascular surgery, in this case the physicians were involved in the treatment of all Christie's medical conditions. This seems to be an assumption based, in part, on the fact that the physicians associated with WIMA practice internal medicine, which is defined as follows:

> 1. "A medical specialty dedicated to the diagnosis and medical treatment of adults." Webster's New World Medical Dictionary 2nd Edition (January 2003); and
>
> 2. "The medical specialty concerned with the overall health and well being of adults. The internist uses the tools of history taking, physical examination, and diagnostic testing to diagnose and prevent disease. Patient education, lifestyle modification, psychological counseling, use of medications, inpatient medical acre, and referral to other specialists are responsibilities of internists." Taber's Cyclopedic Medical Dictionary (2001).

Simply because a physician specializes in the area of internal medicine, this cannot make the physician group to which he belongs, above all other specialty groups, automatically susceptible to liability under the theory of corporate negligence. One cannot automatically bring a claim for corporate negligence against a group of internists claiming the group was responsible for a patient's total healthcare because an internist's specialty is defined as a "medical specialty concerned with the overall health and well being of adults."

Plaintiff does try to support her claim that WIMA acted as a total healthcare provider and "performed similar functions to that of a hospital by dictating and directing Charles Christie's medical care and limiting healthcare services" by making certain assertions. Plaintiff claims that Dr. Goldman performed a complete physical on Christie, provided orders and prescribed prescriptions. The above duties performed by Dr. Goldman are duties any physician in a physician group would perform and in no way makes the physician group seem more like a hospital or HMO than a physician group.

Plaintiff further claims that the WIMA physicians were the only ones caring for Christie during this time. Again, that alone or combined with the above assertion, is not enough to say that WIMA was providing for Christie's total healthcare.

Next Plaintiff asserts that Christie's healthcare services were limited in the following two ways: (1) by WIMA not having a protocol procedure in place for receiving test results that were ordered by their own physicians, and (2) because Christie was an ill man residing in a nursing home who did not have access to healthcare providers other than WIMA or the ability to turn elsewhere for medical treatment during the time frame at issue. As to Plaintiff's first assertion, a claim for corporate liability based on limiting healthcare has always been made against an HMO for its gatekeeping functions by which the HMO would limit healthcare by, for example, limiting the length of time allowed in a hospital or limiting the treatments permitted. In saying that WIMA limited healthcare by not having a specific protocol in place is in no way similar to any claim made in any of the cases cited by either side.

As to Plaintiff's second assertion, the relevant issue is not whether Christie was self-limited in his choice of health care providers, but whether WIMA placed any limitations on Christie in regards to choosing a health care provider. No such assertions are pled.

The above two assertions of WIMA's breaches are irrelevant if Plaintiff fails to establish that WIMA owed Christie a heightened duty of care to which our appellate courts have thus far only held hospitals and HMOs.[3]

As well as trying to differentiate the cases set forth by WIMA to support a dismissal of the corporate negligence claim, Plaintiff cites numerous cases in which the theory of corporate liability was expanded to entities other than hospitals and HMOs. However, as described below, every factual situation is distinguishable from the case at hand and each court that expanded the theory gave specific reasons for doing so. None of the specific reasons given apply in the present case.

In Oven v. Pascucci, 46 Pa. D.&C.4th 506 (Lackawanna County C.P. 2000), the plaintiff alleged that Northeastern Eye Institute Inc. (NEI) "failed to properly maintain the surgical equipment used and neglected to implement appropriate protocols for LASIK procedures performed at it is outpatient surgical facility" and thus may be corporately liable. Id. at 508.

The court determined that where a professional corporation owned and operated enterprises where on-site surgery was performed, including plaintiff's surgery, plaintiff's complaint may have set forth a violation of the Thompson duties.[4]

The facts in Oven differ significantly from the facts in the present situation. In Oven, the plaintiff convinced the court that the physician group was similar to and thus owed the same duties to its patients as a hospital because the physician group owned and operated a surgical facility. Plaintiff, in the current situation, has not adequately presented any such similarity. Furthermore, the plaintiff in Oven pled specific facts that went towards a violation of the Thompson duties, which Plaintiff did not do in the present case.

Again in Irvin v. Fierer, 49 Pa. D.&C.4th 225 (Dauphin County C.P. 2000), the court dealt with a physician practice, Kandra Fierer & Kuskin Associates Ltd (KFKA) that performed surgical operations on plaintiff in its offices. Id. at 230.

The court stated that KFKA would be held liable under a theory of corporate negligence because "the corporate entity KFKA made a conscious decision to expand its role as not just an office that practiced internal medicine but a facility that now provides many surgical and invasive procedures" and along with that decision came the responsibility for their "negligent acts which take place during such operations." Id. at 230-231.

The court in Irvin, as in Oven, saw the physician group as acting beyond its duties as a physician group and acting more like a hospital in offering procedures generally performed by a hospital. The same cannot be said in the present situation as WIMA, made up of internists, did not make a conscious decision to expand its role past that of an office to perform surgical and invasive procedures. Therefore, Irvin can easily be distinguished from the current situation.

In Risser v. Pepper, 31 Pa. D.&C.4th 7 (Dauphin County C.P. 1996), the plaintiff sued a three-dentist partnership, CPOMS, claiming the partnership was negligent in actively soliciting plaintiff and others to have surgical procedures performed by one of the three doctors, Dr. Pepper, when the partnership knew or should have known that Dr. Pepper was not competent to perform such procedures as he was not certified to do so. Id. at 9.

The court determined that "the now well-established duty of a hospital to select and retain only competent physicians and to oversee all persons who practice medicine within its walls" set forth in Thompson could apply to CPOMS as Thompson was not necessarily limited to hospitals. Id. at 12.

As already clearly stated above, common pleas courts seem to accept that a physician group is acting more like a hospital when it takes on the responsibility of performing surgical procedures.[5] Such a factual scenario can be easily differentiated from the present case. Furthermore, the factual scenario in Risser is especially egregious and simply does not compare to what happened in our situation.[6] Again, in Risser, the plaintiff was able to state and establish a breach of a duty set forth in Thompson, whereas, in the present situation, plaintiff has not done so.

The court in Rivera v. Lawrence, No. 4325 Civil 1998 (Monroe County C.P.), set forth the standard that was met in Risser as the court said a plaintiff "may sustain a cause of action against defendants so long as they show that defendants breached the duties enunciated in Thompson." Id. at 7.

In Raspaldo v. Sacred Heart Hospital, 54 Pa. D.&C.4th 432 (Lehigh County C.P. 2000), the plaintiff filed a complaint averring medical negligence in the obstetrical care of Amy L. Raspaldo which resulted in the death of Alexa Marie Raspaldo minutes after her birth. Id. at 433. The complaint set forth a claim, based upon corporate negligence, against Sacred Heart Ob/Gyn Associates. Id.

The court said that while it believed the appellate courts, in Thompson and Shannon, did not intend to extend corporate negligence responsibility to physician practice groups, the court determined that "because the allegations of the complaint describe Ob/Gyn as more akin to a hospital than a physician group practice, the claim for corporate negligence against Ob/Gyn survives the demurrer." Id. at 436-437.

The court went on to say it would allow discovery to take place to determine if Ob/Gyn was "a typical physician group practice limiting itself to medical care and treatment related to obstetrics and gynecology" or if Ob/Gyn played a "gatekeeping role" by requiring plaintiff to commit to a single corporate health care provider or that other factors distinguish Ob/Gyn from other physician group practices. Id.

The court clarifies that it is not "concluding that theories of corporate negligence can properly be stated against physician group practices." Id. Rather the demurrer was denied "so that the plaintiffs have their opportunity to demonstrate that there is something unusual about defendant, Ob/Gyn, which has characteristics closer to a hospital or HMO than a private physician group practice." Id.

The court in Raspaldo allowed the claim to go forward so that discovery could occur because the court believed "the allegations of the complaint describe Ob/Gyn as more akin to a hospital than a physician group practice." Plaintiff, in the present case, is asking this Court for a chance to proceed to discovery believing that she can show that WIMA acted more like a hospital or HMO than a private physician group practice. However, this Court will not even consider an expansion of the theory of corporate negligence in this case because the pleadings, even if accepted as true, do not state a claim for corporate negligence. The only way corporate negligence could possibly apply in this case is if facts were pled which established that WIMA acted more like a hospital and/or HMO than a physician practice and also established a breach of the heightened standard of care associated with hospitals and HMOs. No such facts have been pled.

Conclusion

No court has allowed a claim for corporate negligence against a physician group to continue unless it was convinced that the pleadings established that the physician group acted in some way as a hospital and/or HMO and thus owed its patients a heightened standard of care that was breached. This Court determines that the facts pled, accepted as true, do not give rise to a cause of action for corporate negligence against WIMA as the facts to not establish that WIMA acted as anything but a typical physician group. Thus, the Court will not expand the theory of corporate liability to allow a claim against WIMA.

ORDER OF COURT

And now this 16th day of July, 2004, upon consideration of the Preliminary Objection filed by Defendants Robert J. Ternes, M.D., Robert F. Goldman, M.D. and Waynesboro Internal Medicine Associates, briefs submitted by counsel, oral argument, and relevant case law, it is hereby ordered that Defendants'

Preliminary Objection in the nature of a demurrer to Plaintiff's claim of corporate negligence is sustained. Plaintiff's claim of corporate negligence against Waynesboro Internal Medicine Associates is dismissed with prejudice.

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[1] Corporate negligence is a doctrine under which

> [a defendant] is liable if it fails to uphold the proper standard of care [it owes to] the patient . . . This theory of liability creates a nondelegable duty which the [defendant] owes directly to a patient. Therefore, an injured party does not have to rely on and establish the negligence of a third party.

Id. at 707 (citation omitted).

[2] See *Remshifski v. Kraus,* 1845 Civil 1992 (Monroe County C.P.)(September 8, 1995); *Dibble v. Penn State Geisinger Clinic, Inc.,* 42 Pa. D.&C.4th 225 (Lackawanna County C.P. 1999); *O'Donnell v. Melnick et al.,* 1999-00662 (Lebanon County C.P.)(March 3, 2000); *Johnson v. Wiseman et al.,* 98 CV 000393 (Bradford County C.P.)(December 22, 1998); *Paul v. Barton et al.,* 2000-530 (Franklin County C.P.)(May 16, 2000); *Rivera v. Lawrence,* No. 4325 Civil 1998 (Monroe County C.P.); *Risser v. Pepper,* 31 Pa. D.&C.4th 7 (Dauphin County C.P. 1996); *Patel v. Himalayan Int'l Inst. of Yoga Science and Philosophy,* CV-94-1118 (M.D. Pa. Sept. 30, 1996); *Raspaldo v. Sacred Heart Hospital,* 54 Pa. D.&C.4th 432 (Lehigh County C.P. 2000); *Oven v. Pascucci,* 46 Pa. D.&C.4th 506 (Lackawanna County C.P. 2000), *Dowhouer v. Judson,* 45 Pa. D.&C.4th 172 (Dauphin County C.P. 2000); *Irvin v. Fierer,* 49 Pa. D.&C.4th 225 (Dauphin County C.P. 2000); *Milan v. American Vision Center*, 34 F. Supp. 2d 279 (E.D. Pa. 1998).

[3] Even if Plaintiff could establish that WIMA should be held to the same standard of care as hospitals and HMOs, the breach of which WIMA is being accused, which is not entirely clear, is insufficiently pled.

In the Complaint, plaintiff claims that the Defendant physicians received a fax on Friday, May 10, 2002, from Quincy, indicating abnormal lab results for Christie. In their brief they go on to say that the results were not seen by a physician in the practice until Monday, May 13, 2002, and say Christie's death could have been prevented if "Waynesboro had a protocol or method to follow up on tests ordered and results received, if vital and needed patient information had been communicated to the physician on call for the practice in a timely manner or as it was received, or if vital and needed patient information had been communicated to the physicians within the practice in a timely manner or as it was received." Plaintiff's Brief.

Plaintiffs seem to be saying that the Defendant physicians received a fax but did not review it or if they did review it, they did not pass on the information contained within it to the physician on call for the weekend. The Court fails to see how the physicians' actions or inactions in this regard are the corporation's independent responsibility.

[4] In *Oven* the plaintiff stated specific allegations in regards to the *Thompson* duties and the court responds by saying the following:

> Based upon Oven's allegations, it is conceivable that NEI violated the first duty articulated in *Thompson* by neglecting to properly calibrate and maintain the suction ring, microkeratome or excimer laser used during

Oven's LASIK procedure, as a result of which an improper "shallow and thin cut" was made.

Additionally, Oven submits that NEI failed to retain adequately trained personnel to perform the procedure and neglected to implement appropriate protocols for LASIK surgery and post-operative treatment.

Id. at 520.

[5] In this case, the first was performed by Dr. Pepper in a medical center and the subsequent procedure was performed in his office. *Id.* at 8.

[6] The factual scenario in *Patel v. Himalayan Int'l Inst. of Yoga Science and Philosophy,* CV-94-1118 (M.D. Pa. Sept. 30, 1996), is similarly egregious as the leader of holistic health program was involved in sexual misconduct for a number of years against numerous victims.