

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET,

Plaintiff,

v.

UPMC PRESBYTERIAN and
UNIVERSITY OF PITTSBURGH
PHYSICIANS,

Defendants.

CIVIL DIVISION - MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: GD 11-

COMPLAINT

Filed on behalf of Plaintiff

Counsel of record for Plaintiff:

Harry S. Cohen, Esquire
Pa. ID No.: 30682

Todd D. Bowlus, Esquire
Pa. ID No.: 89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID No.: 813

(412) 281-3000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET,	:	CIVIL DIVISION - MEDICAL
	:	PROFESSIONAL LIABILITY ACTION
Plaintiff,	:	
	:	Case No.: GD 11-
v.	:	
	:	
UPMC PRESBYTERIAN and	:	
UNIVERSITY OF PITTSBURGH	:	
PHYSICIANS,	:	
	:	
Defendants.	:	

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

LAWYER REFERRAL SERVICE

**THE ALLEGHENY COUNTY BAR ASSOCIATION
920 CITY-COUNTY BUILDING - 414 GRANT STREET
PITTSBURGH, PA 15219
(412) 261-5555**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET, : CIVIL DIVISION - MEDICAL
: PROFESSIONAL LIABILITY ACTION
Plaintiff, :
: Case No.: GD 11-
v. :
:
UPMC PRESBYTERIAN and :
UNIVERSITY OF PITTSBURGH :
PHYSICIANS, :
:
Defendants. :

CERTIFICATE OF MERIT AS TO DEFENDANT UPMC PRESBYTERIAN

I, Harry S. Cohen, Esquire, certify that:

an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

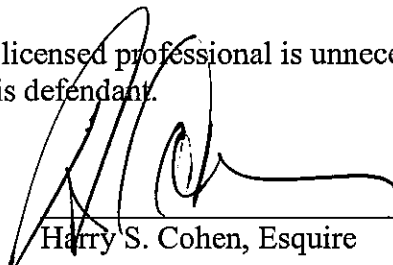
and/or

the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

and/or

_____ expert testimony of an appropriate licensed professional is unnecessary for the prosecution of the claim against this defendant.

September 19, 2011



Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET,

Plaintiff,

v.

UPMC PRESBYTERIAN and
UNIVERSITY OF PITTSBURGH
PHYSICIANS,

Defendants.

: CIVIL DIVISION - MEDICAL
: PROFESSIONAL LIABILITY ACTION

: Case No.: GD 11-

**CERTIFICATE OF MERIT AS TO
DEFENDANT UNIVERSITY OF PITTSBURGH PHYSICIANS**

I, Harry S. Cohen, Esquire, certify that:

✓ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

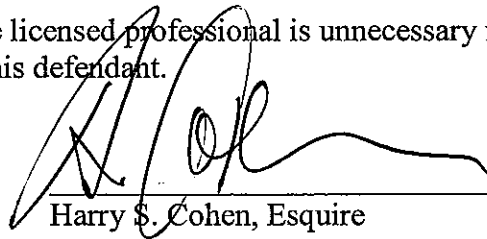
and/or

✓ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

and/or

_____ expert testimony of an appropriate licensed professional is unnecessary for the prosecution of the claim against this defendant.

September 19, 2011



Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET,	:	CIVIL DIVISION - MEDICAL
	:	PROFESSIONAL LIABILITY ACTION
Plaintiff,	:	
	:	Case No.: GD 11-
v.	:	
	:	
UPMC PRESBYTERIAN and	:	
UNIVERSITY OF PITTSBURGH	:	
PHYSICIANS,	:	
	:	
Defendants.	:	

COMPLAINT IN CIVIL ACTION

AND NOW, comes the Plaintiff, Michael J. Yocabet, by and through his attorneys, Harry S. Cohen & Associates, P.C. by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Complaint in Civil Action:

1. Plaintiff Michael J. Yocabet (“Plaintiff” or “Mr. Yocabet”) is an adult individual at all times material hereto residing at 503 5th Street, Mather, Pennsylvania, 15349.

2. Defendant UPMC-Presbyterian (“UPMC” or “UPMC-Presby”) is a Pennsylvania corporation, functioning as a health care facility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, located at 200 Lothrop Street, Pittsburgh, Pennsylvania, 15213. Plaintiff is asserting a professional liability claim against this defendant.

3. Defendant University of Pittsburgh Physicians (“UPP”) is a Pennsylvania corporation, duly organized and existing under the laws of the Commonwealth of Pennsylvania, located at 200 Lothrop Street, Pittsburgh, Pennsylvania, 15213. Plaintiff is asserting a professional liability claim against this defendant.

4. At all times material hereto, UPMC acted by and through its agents, ostensible agents, servants and/or employees, including but not limited to Dr. Henkie Tan, Dr. Mark

Sturdevant, Dr. Jennifer L. Steel, Dr. Nirav Shah, Mimi Funovits, its kidney transplant team, its medical staff, surgeons, nursing staff, clerical staff, coordinators, technicians, etc.

5. At all times material hereto, UPMC knew of, devised, allowed, and encouraged the conduct as described herein.

6. At all times material hereto, UPP was a division and/or wholly owned subsidiary and/or actual agent and/or ostensible agent of UPMC and UPMC is vicariously liable and/or liable under the theory of *respondeat superior* for the negligent acts and omissions of UPP, its agents, ostensible agents, servants and/or employees as described herein.

7. At all times material hereto, UPP acted by and through its agents, ostensible agents, servants and/or employees, including but not limited to Dr. Henkie Tan, Dr. Mark Sturdevant, Dr. Jennifer L. Steel, Dr. Nirav Shah, Mimi Funovits, its kidney transplant team, its medical staff, surgeons, nursing staff, clerical staff, coordinators, technicians, etc.

8. At all times material hereto, UPP knew of, devised, allowed, and encouraged the conduct as described herein.

9. The Transplant Selection Committee and/or its members, as described herein, consisted of UPMC and/or UPP agents, ostensible agents, servants and/or employees.

10. UPMC is a \$9 billion global health enterprise with more than 20 hospitals, 400 doctors' offices and outpatient sites, a health insurance services division, and international and commercial services. According to UPMC, its operating revenues grew by \$955 million to \$9 billion, with its operating income up \$166 million to \$406 million for fiscal year 2011; its operating cash flow income of \$801 million is up from \$630 million at the same time in 2010, exceeding \$500 million for the seventh consecutive year.

11. Although UPMC is technically a nonprofit hospital system whose income is largely exempt from taxes, it is actually run like a for-profit company, paying its executives high salaries, with aggressive involvement into new activities, and expanding abroad (the majority of its \$9 billion in annual revenue is exempt from federal and local taxes).

12. The UPMC transplant program is a source of both profits and prestige that UPMC leverages to attract doctors and build its other businesses, including its health insurance division.

13. UPMC charges \$400,000 to \$500,000 for a kidney transplant.

14. UPMC's transplant program alone produces in excess of \$100 million of revenue per year.

15. In this context, in which UPMC placed a high priority on volume and profit, that the within described negligent, reckless, willful, and wanton conduct took place.

16. Mr. Yocabet, then age 50, was on the kidney transplant waiting list at UPMC due to being a type I diabetic and having diabetic nephropathy.

17. Mr. Yocabet's significant other for 21-years and mother of his 18-year old son, Christina Mecannic ("Ms. Mecannic" or "Donor"), volunteered to undergo testing at UPMC to determine if she was a suitable candidate for kidney donation.

18. Potential living kidney donors are required to undergo a thorough screening process before they are determined to be suitable donors.

19. The screening process determines, among other things, whether the kidney donor and recipient are a good match; it evaluates whether the kidney donor is in good enough health to undergo the transplant operation, it ensures that the donor does not have infectious diseases such as human immunodeficiency virus, Hepatitis, and cytomegalovirus, Epstein-Barr virus, and BK virus.

20. It had been established on August 20, 2010 that Mr. Yocabet did not have hepatitis C.

21. As part of her donor evaluation process to determine whether she was a suitable kidney donor for Mr. Yocabet, on January 26, 2011, at UPMC, Ms. Mecannic underwent blood tests to screen for various infectious diseases including Hepatitis C.

22. Ms. Mecannic's January 26, 2011 screening blood tests revealed that she was positive for Hepatitis C and recommended follow-up testing.

23. Despite this potentially fatal test result and despite federal guidelines, hospital policies, and a duty to do so, Defendants failed to order any follow-up testing and failed to advise Ms. Mecannic and/or Mr. Yocabet of the Hepatitis C test results and/or dismiss Ms. Mecannic as a donor.

24. Also on January 26, 2011, Dr. Mark Sturdevant, a UPMC transplant surgeon, documented that he met with Mr. Yocabet and Ms. Mecannic, performed physicals, reviewed lab work, which should have included Ms. Mecannic's positive Hepatitis C lab value, and noted that he considered Ms. Mecannic to be "an excellent candidate for kidney donation."

25. Also on January 26, 2011, UPMC nephrologist Dr. Nirav Shah documented that he reviewed Ms. Mecannic's lab work, which should have included Ms. Mecannic's positive Hepatitis C lab value, and noted that she appeared to be a reasonable donor candidate.

26. A few days later, on January 31, 2011, after reviewing Ms. Mecannic's records, which should have included Ms. Mecannic's positive Hepatitis C lab value, Dr. Jennifer L. Steel also documented that she approved Ms. Mecannic as a living donor and found no contraindications for donation.

27. On February 17, 2011, a UPMC Transplant Selection Committee meeting took place in which the transplant at issue was discussed.

28. Ms. Mecannic's qualifications were presented to the Committee and a discussion was held about her test results, which should have included Ms. Mecannic's positive Hepatitis C lab value, and candidacy for donation.

29. During this Committee meeting, in clear disregard of federal guidelines and hospital policies, Defendants recklessly ignored the Hepatitis C test results and approved Ms. Mecannic as a donor.

30. On the UPMC Renal Living Donor Selection Outcome form, the box listed under "Contraindications" for Hepatitis C was negligently and recklessly left blank.

31. With blatant disregard for Ms. Mecannic's contraindicated lab results, the UPMC Transplant Selection Committee gave its approval for Ms. Mecannic to be the donor to Mr. Yocabet's kidney transplant surgery pending the results of a breast biopsy.

32. On March 23, 2011, a second Transplant Selection Committee meeting took place in which the transplant at issue was again discussed and again Ms. Mecannic's qualifications to be a donor and her test results, which should have included Ms. Mecannic's positive Hepatitis C lab value, were at issue.

33. Again, in clear disregard of federal guidelines and hospital policies, Defendants again recklessly ignored the Hepatitis C test results and again approved Ms. Mecannic as a donor.

34. Ms. Mecannic's breast biopsy was determined to be benign and Ms. Mecannic was cleared for donation surgery.

35. Had anybody from UPMC's transplant program, whether it be a physician, nurse, coordinator, technician, assistant, etc., followed standard federal guidelines and/or hospital policies at numerous different junctures along the way, Ms. Mecannic's Hepatitis C test result would have been obvious (it should have been "flagged") and Ms. Mecannic would not have been approved as a suitable candidate.

36. Instead, on March 24, 2011, Mr. Yocabet was contacted and told that Ms. Mecannic was a match for donation and determined to be a suitable candidate.

37. The same day, Ms. Mecannic received a letter from Nurse Mimi Funovitis, UPMC's Transplant Coordinator, which stated "*After review of your evaluation test results and interviews with the living donor team, we are pleased to inform you that you have been medically approved to be a living kidney donor.*"

38. Five days later, on March 29, 2011, Ms. Mecannic underwent further blood testing which again included screening for Hepatitis C; it is documented that this further blood testing was ordered by surgeon Dr. Henkie Tan and that the results were to be faxed to Nurse Funovitis's attention.

39. On March 30, 2011, the lab results ordered by Dr. Tan were noted not to be performed due to insufficient quantity; and it was documented by Nurse Funovitis "*Sorry! We should re-draw.*" The repeat testing that included Hepatitis C was never redrawn.

40. On April 1, 2011, Ms. Mecannic had a final pre-op visit with Dr. Tan and Nurse Funovitis; there was no discussion concerning Ms. Mecannic's positive Hepatitis C status.

41. Also on April 1, 2011, Dr. Tan, the lead surgeon for the transplant at issue, completed a "Transplant Surgery Consultation" note which negligently and recklessly noted that

Ms. Mecannic was a suitable candidate for donation, ignoring Ms. Mecannic's positive Hepatitis C results.

42. On April 6, 2011, the Defendants proceeded to negligently and recklessly remove Ms. Mecannic's Hepatitis C infected left kidney.

43. The Defendants thereafter proceeded to recklessly transplant Ms. Mecannic's Hepatitis C kidney into Mr. Yocabet.

44. On April 8, 2011, Ms. Mecannic was discharged from UPMC.

45. On April 9, 2011, Mr. Yocabet was discharged from UPMC.

46. At some point after the transplant surgery, Defendants became aware that they had implanted a Hepatitis C infected kidney into Mr. Yocabet; however, Defendants intentionally failed to document when it was discovered.

47. Following Ms. Mecannic's and Mr. Yocabet's discharge on April 8 and 9, respectively, Defendants requested that they return to UPMC for what was characterized for them as routine blood work following a transplant surgery.

48. On April 22, 2011, test results again confirmed that Ms. Mecannic was Hepatitis C positive and unbeknownst to Ms. Mecannic, Defendants also performed blood analysis to determine the level of her Hepatitis C.

49. Defendants testing of Ms. Mecannic's Hepatitis C and its levels was not standard testing following transplant surgery.

50. On April 29, 2011, Mr. Yocabet appeared for a follow-up appointment scheduled with Dr. Tan. During this appointment, neither Dr. Tan nor any other agent of Defendants told Mr. Yocabet anything about Ms. Mecannic's Hepatitis C test results, his Hepatitis C test results,

the reason that Defendants were performing additional blood tests on both Mr. Yocabet and Ms. Mecannic, and/or that Defendants had implanted a Hepatitis C infected kidney in him.

51. On May 6, 2011, Ms. Mecannic appeared as requested for an appointment at UPMC.

52. Ms. Mecannic was not told the purpose of the meeting.

53. During this May 6, 2011 meeting, a UPMC/UPP surgeon met with Ms. Mecannic; the first thing that the surgeon asked her was whether she had been sexually unfaithful to or “cheated on” Mr. Yocabet. Ms. Mecannic was deeply offended by this comment.

54. It is in this context that the surgeon then told Ms. Mecannic that she tested positive for Hepatitis C.

55. It is in this context that the surgeon offered the option to Ms. Mecannic of not telling Mr. Yocabet about the Hepatitis C test result.

56. Not believing what she was hearing, Ms. Mecannic told the surgeon that she had not been unfaithful to Mr. Yocabet and that she was certainly going to tell Mr. Yocabet about what had happened since it significantly affected his health and success of the kidney transplant.

57. The surgeon then asked Ms. Mecannic whether she could have tested positive for Hepatitis C from cocaine use. Never having used cocaine, Ms. Mecannic was deeply offended by this suggestion.

58. When Ms. Mecannic persisted to tell the surgeon that Mr. Yocabet needed to know of this error, the surgeon said that he had just learned of the error two days previous and apologized profusely for the mistake.

59. Later, the surgeon and Ms. Mecannic met with Mr. Yocabet; the surgeon explained the error to Mr. Yocabet, but at the same time, suggested numerous ways that Mr. Yocabet could have acquired Hepatitis C virus other than from the transplant surgery.

60. The surgeon suggested that Mr. Yocabet could have acquired Hepatitis C from his kidney dialysis; however, genotype sequencing testing performed on May 6, 2011, confirmed that Mr. Yocabet had been infected by Hepatitis C virus from Ms. Mecannic.

61. Ms. Mecannic and Mr. Yocabet then met with an infectious disease doctor who informed Mr. Yocabet that the Hepatitis treatment would eventually shut down his kidneys and result in his death.

62. As a result of the reckless, gross, and wanton conduct as described herein, the United Network for Organ Sharing (“UNOS”), the agency that administers the national transplant program for the federal government, conducted a federal investigation into UPMC’s transplant program.

63. As a result of the reckless, gross, and wanton conduct as described herein, The Centers for Medicare and Medicaid Services (“CMS”), the federal agency which administers Medicare, Medicaid, and the Children's Health Insurance Program, also conducted a federal investigation into UPMC’s transplant program.

64. The result of UNOS’s and CMS’s investigations was that the Defendants had a minimum of six chances to review the test results and stop the transplant; however, none of the health care providers at UPMC followed standard federal guidelines and/or hospital policies to ensure the safety of its patients.

65. UNOS’s investigation also revealed that the within described reckless conduct was the result of “human error”.

66. CMS's investigation also revealed multiple "condition" level violations (the most serious level), multiple "standard" level violations, and multiple "element" level violations.

67. As a result of the reckless, gross, and wanton conduct as described herein, UPMC's transplant program was shut down on May 6, 2011, the same day that Ms. Mecannic and Mr. Yocabet were informed of the error.

68. UPMC either had no checks and balances in place to catch this mistake and/or recklessly shuffled patients through the process so quickly that its checks and balances were essentially useless.

69. On May 10, 2011, Ms. Steel called Ms. Mecannic and asked her if she had read the newspaper about UPMC's Transplant Program being shut down.

70. In response, Ms. Mecannic said that she did not receive that newspaper.

71. Ms. Steel then insinuated that Ms. Mecannic, Mr. Yocabet, or some family member or friend had gone to the media with this information.

72. To the contrary, Ms. Mecannic and Mr. Yocabet were very upset that the media had somehow gotten information about this very personal and possibly fatal matter because they wanted to keep this matter confidential. Ms. Mecannic and Mr. Yocabet were deeply offended by the insinuation against them.

73. On May 11, 2011, Ms. Mecannic received a call from Nurse Funovitis inquiring whether she, Mr. Yocabet or a family member leaked information to the media. Again, Ms. Mecannic and Mr. Yocabet were deeply offended by the insinuation.

74. Ms. Mecannic again accurately told this person that they had not given any information to the media or to any family or friends.

75. As a result of the reckless, gross and wanton conduct as described herein, Mr. Yocabet unknowingly subjected himself to the risks of receiving a kidney from a donor that should not have been qualified to be a donor.

76. The within described conduct was the result of a reckless and systematic breakdown by the UPMC transplant program in its failure to follow federal guidelines and hospital policies as a result of financial pressure to have donors approved in order to perform more transplants which in turn increases profits and prestige for UPMC.

77. As a direct and proximate result of the negligence and reckless indifference to Mr. Yocabet as described herein, he has and will incur the following injuries and damages:

- a. Hepatitis C;
- b. Increased risk of death;
- c. Decreased life expectancy;
- d. Need for IV antibiotics.
- e. Need to undergo continuing medical treatment and/or testing;
- f. Pain and suffering;
- g. Loss of enjoyment of life;
- h. Loss of income and impairment of earning power;
- i. Need to expend large sums of money on medical care;
- j. Embarrassment and humiliation;
- k. Emotional distress; and
- l. The need to expend large sums of money for medical, therapeutic, and rehabilitative services.

COUNT I – Professional Negligence

Michael J. Yocabet v. UPMC-Presbyterian

78. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

79. Defendant UPMC, by and through its employees, agents, and ostensible agents, was negligent and showed reckless indifference to Plaintiff in the following particulars:

- a. Creating an environment that jeopardized patient safety;
- b. Allowing an environment that jeopardized patient safety;
- c. Creating an environment that encouraged volume at the expense of patient safety;
- d. Allowing an environment that encouraged volume at the expense of patient safety;
- e. Proceeding with Plaintiff's kidney transplant surgery on April 6, 2011;
- f. Failing to disqualify the kidney donor based on the donor's Hepatitis C test results;
- g. Failing to follow federal guidelines;
- h. Failing to follow hospital guidelines;
- i. Failing to document that required organ and blood matches were performed before surgery;
- j. Failing to document that Plaintiff was advised of the possible health risks associated with surgery;
- k. Failing to ensure that the transplant team reviewed the donor's blood/lab test results prior to surgery;
- l. Failing to properly address the kidney donor surgery after discovering the donor's Hepatitis C; and
- m. Failing to review preoperative testing results.

80. The negligence and recklessness of UPMC as described herein was the “legal cause” of Plaintiff’s injuries and damages, as described herein.

81. The negligence and recklessness of UPMC as described herein increased the risk that Plaintiff would suffer the injuries and damages as described herein.

82. As a direct and proximate result of the negligence and recklessness of UPMC as described herein, UPMC is liable to Plaintiff for the within described injuries and damages.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT II – Professional Negligence

Michael J. Yocabet v. University of Pittsburgh Physicians

83. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

84. Defendant UPP, by and through its employees, agents, and ostensible agents, was negligent and showed reckless indifference to Plaintiff in the following particulars:

- a. Creating an environment that jeopardized patient safety;
- b. Allowing an environment that jeopardized patient safety;
- c. Creating an environment that encouraged volume at the expense of patient safety;
- d. Allowing an environment that encouraged volume at the expense of patient safety;
- e. Proceeding with Plaintiff’s kidney transplant surgery on April 6, 2011;

- f. Failing to disqualify the kidney donor based on the donor's Hepatitis C test results;
- g. Failing to follow federal guidelines;
- h. Failing to follow hospital guidelines;
- i. Failing to document that required organ and blood matches were performed before surgery;
- j. Failing to document that Plaintiff was advised of the possible health risks associated with surgery;
- k. Failing to ensure that the transplant team reviewed the donor's blood/lab test results prior to surgery;
- l. Failing to properly address the kidney donor surgery after discovering the donor's Hepatitis C; and
- m. Failing to review preoperative testing results.

85. The negligence and recklessness of UPP as described herein was the "legal cause" of Plaintiff's injuries and damages, as described herein.

86. The negligence and recklessness of UPP as described herein increased the risk that Plaintiff would suffer the injuries and damages as described herein.

87. As a direct and proximate result of the negligence and recklessness of UPP as described herein, UPP is liable to Plaintiff for the within described injuries and damages.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT III – Corporate Negligence

Michael J. Yocabet v. UPMC-Presbyterian

88. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

89. Defendant UPMC was negligent and showed reckless indifference to Plaintiff in the following particulars:

- a. Creating an environment that jeopardized patient safety;
- b. Allowing an environment that jeopardized patient safety;
- c. Creating an environment that encouraged volume at the expense of patient safety;
- d. Allowing an environment that encouraged volume at the expense of patient safety;
- e. In failing to promulgate and/or enforce rules, regulations, procedures and standards to ensure that kidney transplants are only performed with suitable patients;
- b. By placing financial gain over the safety of its patients;
- c. In failing to provide adequate safeguards to ensure that kidney transplant recipients do not receive kidneys from a donor that is positive for Hepatitis C;
- d. In having a medical records system in place that fails to properly alert its transplant team of an unsuitable donor;
- e. In having a medical records system in place that fails to properly alert its transplant team of an abnormal test results;
- f. In failing to ensure that the medical personnel are properly trained to recognize patients that are not a proper candidates to be kidney donors;
- g. In failing to properly supervise their staff that provided care to Plaintiff during his admission; and
- h. In failing to assure that staff are properly trained and/or supervised in interpreting testing results.

90. As a direct and proximate result of the negligence and recklessness of Defendant UPMC as set forth herein, Plaintiff has incurred the injuries and damages described herein.

91. The negligence and recklessness of Defendant UPMC as described herein was the “legal cause” of Plaintiff’s injuries and damages, as described herein.

92. The negligence and recklessness of Defendant UPMC as described herein increased the risk that Plaintiff would suffer the injuries and damages as described herein.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT IV – Corporate Negligence

Michael J. Yocabet v. University of Pittsburgh Physicians

93. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

94. Defendant UPP was negligent and showed reckless indifference to Plaintiff in the following particulars:

- a. Creating an environment that jeopardized patient safety;
- b. Allowing an environment that jeopardized patient safety;
- c. Creating an environment that encouraged volume at the expense of patient safety;
- d. Allowing an environment that encouraged volume at the expense of patient safety;
- e. In failing to promulgate and/or enforce rules, regulations, procedures and standards to ensure that kidney transplants are only performed with suitable patients;

- f. By placing financial gain over the safety of its patients;
- g. In failing to provide adequate safeguards to ensure that kidney transplant recipients to do not receive kidneys from a donor that is positive for Hepatitis C;
- h. In having a medical records system in place that fails to properly alert its transplant team of an unsuitable donor;
- i. In having a medical records system in place that fails to properly alert its transplant team of an abnormal test results;
- j. In failing to ensure that the medical personnel are properly trained to recognize patients that are not a proper candidates to be kidney donors;
- k. In failing to properly supervise their staff that provided care to Plaintiff during his admission; and
- l. In failing to assure that staff are properly trained and/or supervised in interpreting testing results.

95. As a direct and proximate result of the negligence and recklessness of Defendant UPP as set forth herein, Plaintiff has incurred the injuries and damages described herein.

96. The negligence and recklessness of Defendant UPP as described herein was the “legal cause” of Plaintiff’s injuries and damages, as described herein.

97. The negligence and recklessness of Defendant UPP as described herein increased the risk that Plaintiff would suffer the injuries and damages as described herein.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT V – Intentional Misrepresentation/Nondisclosure

Michael J. Yocabet v. UPMC-Presbyterian

98. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

99. Through intentional misrepresentations of facts and/or intentional nondisclosure of material facts, Defendant UPMC, by and through its employees, agents, and ostensible agents, UPMC:

- a. Failed to tell Plaintiff of the negligence and recklessness as described herein until May 6, 2011;
- b. Suggested that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- c. Suggested that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness; and
- d. Giving the option to Ms. Mecannic of not telling Plaintiff about her Hepatitis C test results in an attempt to cover-up the within described negligence and recklessness.

100. Defendant intentionally acted and/or intentionally failed to act with knowledge of falsity and/or recklessness.

101. Defendant intentionally acted and/or intentionally failed to act with an evil motive and with the intent of misleading Plaintiff.

102. Plaintiff justifiably relied on Defendant's intentional misrepresentations of facts and/or intentional nondisclosure of material facts.

103. As a proximate cause of the intentional misrepresentations of facts and/or intentional nondisclosure of material facts, Plaintiff suffered the herein described injuries.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in

an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT VI – Intentional Misrepresentation/Nondisclosure

Michael J. Yocabet v. University of Pittsburgh Physicians

104. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

105. Through intentional misrepresentations of facts and/or intentional nondisclosure of material facts, Defendant UPP, by and through its employees, agents, and ostensible agents, UPP:

- a. Failed to tell Plaintiff of the negligence and recklessness as described herein until May 6, 2011;
- b. Suggested that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- c. Suggested that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness; and
- d. Giving the option to Ms. Mecannic of not telling Plaintiff about her Hepatitis C test results in an attempt to cover-up the within described negligence and recklessness.

106. Defendant intentionally acted and/or intentionally failed to act with knowledge of falsity and/or recklessness.

107. Defendant intentionally acted and/or intentionally failed to act with an evil motive and with the intent of misleading Plaintiff.

108. Plaintiff justifiably relied on Defendant's intentional misrepresentations of facts and/or intentional nondisclosure of material facts.

109. As a proximate cause of the intentional misrepresentations of facts and/or intentional nondisclosure of material facts, Plaintiff suffered the herein described injuries.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT VII – Negligent Misrepresentation/Nondisclosure

Michael J. Yocabet v. UPMC-Presbyterian

110. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

111. Through negligent misrepresentations of facts and/or negligent nondisclosure of material facts, Defendant UPMC, by and through its employees, agents, and ostensible agents, advised Plaintiff that his donor was a suitable candidate to be a live kidney donor.

112. Defendant's negligent misrepresentations of facts and/or negligent nondisclosure of material facts were material to Plaintiff's decision to go through with the surgery.

113. Defendant knew of the misrepresentations, made the misrepresentations without knowledge as to its truth or falsity, and/or made the representations under circumstances in which they ought to have known of its falsity.

114. Defendant negligently acted and/or negligently failed to act with the intent to induce Plaintiff to go through with the surgery.

115. Plaintiff justifiably relied on Defendant's negligent misrepresentations of facts and/or negligent nondisclosure of material facts.

116. As a proximate cause of the negligent misrepresentations of facts and/or negligent nondisclosure of material facts, Plaintiff suffered the herein described injuries.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT VIII – Negligent Misrepresentation/Nondisclosure

Michael J. Yocabet v. University of Pittsburgh Physicians

117. The foregoing paragraphs are incorporated herein by reference as though fully set forth below at length.

118. Through negligent misrepresentations of facts and/or negligent nondisclosure of material facts, Defendant UPP, by and through its employees, agents, and ostensible agents, advised Plaintiff that his donor was a suitable candidate to be a live kidney donor.

119. Defendant's negligent misrepresentations of facts and/or negligent nondisclosure of material facts were material to Plaintiff's decision to go through with the surgery.

120. Defendant knew of the misrepresentations, made the misrepresentations without knowledge as to its truth or falsity, and/or made the representations under circumstances in which they ought to have known of its falsity.

121. Defendant negligently acted and/or negligently failed to act with the intent to induce Plaintiff to go through with the surgery.

122. Plaintiff justifiably relied on Defendant's negligent misrepresentations of facts and/or negligent nondisclosure of material facts.

123. As a proximate cause of the negligent misrepresentations of facts and/or negligent nondisclosure of material facts, Plaintiff suffered the herein described injuries.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT IX – Intentional Infliction of Emotional Distress

Michael J. Yocabet v. UPMC-Presbyterian

124. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

125. Defendant UPMC, by and through its employees, agents, and ostensible agents, recklessly caused severe emotional distress to Mr. Yocabet by the extreme and outrageous conduct as described herein.

126. UPMC had a duty to tell Plaintiff of the within described negligence and recklessness immediately upon learning of it.

127. UPMC intentionally breached this duty by:

- (a) Failing to tell Plaintiff until May 6, 2011;
- (b) Suggesting that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- (c) Suggesting that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness;
- (d) Giving the option to Ms. Mecannic of not telling Plaintiff about her Hepatitis C test results in an attempt to cover-up the within described negligence and recklessness; and

- (e) In an intimidating manner under the circumstances, insinuating that Plaintiff, Ms. Mecanic, or a friend or family member “leaked” information to the media as though it was a crime, when even if they had conveyed information to the press, which they had not, would not have been doing anything wrong.

128. The recklessness and extreme and outrageous conduct of UPMC as described herein was the “legal cause” of Plaintiff’s severe emotional distress.

129. The recklessness and extreme and outrageous conduct of UPMC as described herein increased the risk that Plaintiff would suffer severe emotional distress.

130. As a direct and proximate result of the recklessness and extreme and outrageous conduct of UPMC as described herein, UPMC is liable to Plaintiff for the severe emotional distress.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT X – Intentional Infliction of Emotional Distress

Michael J. Yocabet v. University of Pittsburgh Physicians

131. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

132. Defendant UPP, by and through its employees, agents, and ostensible agents, recklessly caused severe emotional distress to Mr. Yocabet by the extreme and outrageous conduct as described herein.

133. UPP had a duty to tell Plaintiff of the within described negligence and recklessness immediately upon learning of it.

134. UPP intentionally breached this duty by:

- (a) Failing to tell Plaintiff until May 6, 2011;
- (b) Suggesting that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- (c) Suggesting that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness;
- (d) Giving the option to Ms. Mecannic of not telling Plaintiff about her Hepatitis C test results in an attempt to cover-up the within described negligence and recklessness; and
- (e) In an intimidating manner under the circumstances, insinuating that Plaintiff, Ms. Mecannic, or a friend or family member “leaked” information to the media as though it was a crime, when even if they had conveyed information to the press, which they had not, would not have been doing anything wrong.

135. The recklessness and extreme and outrageous conduct of UPP as described herein was the “legal cause” of Plaintiff’s severe emotional distress.

136. The recklessness and extreme and outrageous conduct of UPP as described herein increased the risk that Plaintiff would suffer severe emotional distress.

137. As a direct and proximate result of the recklessness and extreme and outrageous conduct of UPP as described herein, UPP is liable to Plaintiff for the severe emotional distress.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT XI – Negligent Infliction of Emotional Distress

Michael J. Yocabet v. UPMC-Presbyterian

138. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

139. UPMC had a duty to tell Plaintiff of the within described negligence and recklessness immediately upon learning of it.

140. UPMC negligently breached this duty by:

- (a) Failing to tell Plaintiff until May 6, 2011;
- (b) Suggesting that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- (c) Suggesting that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness;
- (d) Giving the option to Ms. Mecannic of not telling Plaintiff about him receiving a Hepatitis C kidney in an attempt to cover-up the within described negligence and recklessness; and
- (e) In an intimidating manner under the circumstances, insinuating that Plaintiff, Ms. Mecannic, or a friend or family member “leaked” information to the media as though it was a crime, when even if they had conveyed information to the press, which they had not, would not have been doing anything wrong.

141. As a result of this negligence as described herein, Plaintiff suffered severe emotional distress.

142. The negligence of UPMC as described herein was the “legal cause” of Plaintiff’s severe emotional distress.

143. The negligence of UPMC as described herein increased the risk that Plaintiff would suffer severe emotional distress.

144. As a direct and proximate result of the negligence of UPMC as described herein, UPMC is liable to Plaintiff for severe emotional distress.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

COUNT XII – Negligent Infliction of Emotional Distress

Michael J. Yocabet v. University of Pittsburgh Physicians

145. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

146. UPP had a duty to tell Plaintiff of the within described negligence and recklessness immediately upon learning of it.

147. UPP negligently breached this duty by:

- (a) Failing to tell Plaintiff until May 6, 2011;
- (b) Suggesting that Ms. Mecannic was unfaithful to Plaintiff in an attempt to cover-up the within described negligence and recklessness;
- (c) Suggesting that Ms. Mecannic was a drug user in an attempt to cover-up the within described negligence and recklessness;
- (d) Giving the option to Ms. Mecannic of not telling Plaintiff about him receiving a Hepatitis C kidney in an attempt to cover-up the within described negligence and recklessness; and
- (e) In an intimidating manner under the circumstances, insinuating that Plaintiff, Ms. Mecannic, or a friend or family member “leaked” information to the media as though it was a crime, when even if they had conveyed information to the press, which they had not, would not have been doing anything wrong.

148. As a result of this negligence as described herein, Mr. Yocabet suffered severe emotional distress.

149. The negligence of UPP as described herein was the “legal cause” of Plaintiff’s severe emotional distress.

150. The negligence of UPP as described herein increased the risk that Plaintiff would suffer severe emotional distress.

151. As a direct and proximate result of the negligence of UPP as described herein, UPP is liable to Plaintiff for severe emotional distress.

WHEREFORE, Plaintiff demands judgment, along with compensatory and punitive damages, in his favor and against Defendants jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, P.C.

By: 

Harry S. Cohen, Esquire

Todd D. Bowlus, Esquire

Attorneys for Plaintiff

Two Chatham Center, Suite 985

Pittsburgh, PA 15219

(412) 281-3000

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MICHAEL J. YOCABET,	:	CIVIL DIVISION - MEDICAL
	:	PROFESSIONAL LIABILITY ACTION
Plaintiff,	:	
	:	Case No.: GD 11-
v.	:	
	:	
UPMC PRESBYTERIAN and	:	
UNIVERSITY OF PITTSBURGH	:	
PHYSICIANS,	:	
	:	
Defendants.	:	

VERIFICATION

I verify that the averments contained in the foregoing **COMPLAINT** are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

9-19-2011
Date

By: Michael J. Yocabet
Michael J. Yocabet