

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JANET SWEET, individually and as  
Administratrix of the Estate of SAMUEL  
SWEET, deceased,

Plaintiff,

v.

UPMC PRESBYTERIAN UNIVERSITY  
HOSPITAL; AMIT KAURA; PENNY L.  
SAPPINGTON; RAGHAVAN MURUGAN  
and MATTHEW ROSENGART,

Defendants.

CIVIL ACTION – MEDICAL  
PROFESSIONAL LIABILITY ACTION

G.D. No. 09-19407

Issue No.

**MOTION TO CONTINUE TRIAL DATE  
AND MOTION FOR SANCTIONS**

Code:

Filed on behalf of Defendants,  
UPMC Presbyterian Shadyside, Amit Kaura,  
M.D., Penny L. Sappington, M.D., Raghavan  
Murugan, M.D., and Matthew Rosengart, M.D.

Counsel of record for these parties:

John C. Conti, Esquire  
PA I.D. # 28071

Lisa D. Dauer, Esquire  
PA I.D. # 63274

Howard A. Chajson, Esquire  
PA I.D. # 49491

Justin M. Gottwald, Esquire  
PA I.D. # 92847

DICKIE, McCAMEY & CHILCOTE, P.C.  
Firm #067  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-5402  
(412) 281-7272

**JURY TRIAL DEMANDED**

11 SEP 20 AM 9:39

RECEIVED  
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ALLEGHENY COUNTY  
PA

2011 SEP 19 AM 11:46  
COURT OF COMMON PLEAS  
ALLEGHENY COUNTY

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JANET SWEET, individually and as	)	CIVIL DIVISION
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Plaintiff,	)	
	)	
v.	)	
	)	
UPMC PRESBYTERIAN UNIVERSITY	)	
HOSPITAL; AMIT KAURA; PENNY L.	)	
SAPPINGTON; RAGHAVAN MURUGAN	)	
and MATTHEW ROSENGART,	)	
	)	
Defendants.	)	

**MOTION TO CONTINUE TRIAL DATE AND MOTION FOR SANCTIONS**

AND NOW come the defendants, UPMC Presbyterian Shadyside, Amit Kaura, M.D., Penny L. Sappington, M.D., Raghavan Murugan, M.D., and Matthew Rosengart, M.D., by and through their attorneys, John C. Conti, Esquire, Lisa D. Dauer, Esquire, Howard A. Chajson, Esquire, and Justin M. Gottwald, Esquire, and file the within Motion to Continue Trial Date, and, in support thereof, aver as follows:

1. Plaintiff commenced this medical negligence action on October 23, 2009, thereafter filing an Amended Complaint on December 23, 2009 and a Third Amended Complaint on January 4, 2011. The case arises from care and treatment provided to Mr. Samuel Sweet in May of 2009 and relates to care and management while Mr. Sweet was in the Intensive Care Unit after suffering a subarachnoid hemorrhage. More specifically, the case relates to management of the patient’s airway and decision making in connection with the extubation and reintubation of the patient.

2. Plaintiff’s Third Amended Complaint specifically acknowledges that, for a period of time, Mr. Sweet refused reintubation before ultimately consenting to the procedure.

3. This case is scheduled for jury selection today, Monday, September 19, 2011 and has been so scheduled since February 4, 2011 (copy of Order of Court is attached as Exhibit A).

4. On September 2, 2011, little more than two weeks before trial, plaintiff filed a Motion requesting permission to file yet another Amended Complaint, with this latest proffered amendment to add allegations that assertedly would support a claim for punitive damages.

5. These defendants filed a response in opposition to said Motion setting forth essentially that the Motion failed on both factual and legal grounds and should be denied. Lengthy oral argument was heard before the Court on September 12, 2011 and the Honorable Ronald Folino entered an Order declaring, "the within Motion is denied" (copy of Order of Court is attached as Exhibit B).

6. As the Court denied plaintiff permission to add the requested allegations, they were not part of the pleadings in this case, not properly pled as part of any cause of action, not logically relevant on their face as having occurred after the alleged negligence, they were thus utterly irrelevant to this litigation.

7. The morning jury selection is to take place that is, today, September 19, 2011, the Pittsburgh Post Gazette published an article (copy attached hereto as Exhibit C) which contains a detailed exposition on plaintiff's allegations of misconduct, including a detailed recitation of the very allegations plaintiffs sought to add to the case just a few weeks ago, but whose request was refused by this Court.

8. A fair reading of the article indicates that plaintiff's counsel was complicit in causing to be published allegations which she knew or reasonably should have known were no


longer relevant to this litigation and which she knew or should have known, if published during the period of jury selection, would render impossible the seating of a fair and impartial jury. This violates Pennsylvania Rule of Professional Conduct 3.6 (a) (“A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.”)

9. Publication of this article on the day of jury selection has, given its inflammatory nature and detailed recitation of irrelevant, stricken, and unfounded allegations, rendered it impossible for defendants to secure a fair and impartial jury.

10. For the above reasons, defendants respectfully request that this matter be continued to the next available trial list. The “passage of time” is an appropriate remedy to “provide a sufficient cooling off period to ameliorate any prejudice suffered due to publicity.” Commonwealth of Pennsylvania v. Lambert, 723 A.2d 684, 692 (Pa. Super. 1998). For the reasons set forth above, defendant further requests that this court enter an Order sanctioning plaintiff’s counsel for conduct necessitating this continuance, and award attorneys’ fees and costs as appropriate.

WHEREFORE, defendants respectfully request that this Honorable Court enter an Order in the form attached hereto.

DICKIE, McCAMEY & CHILCOTE, P.C.

By   
John C. Conti  
Lisa D. Dauer  
Howard A. Chajson  
Justin M. Gottwald

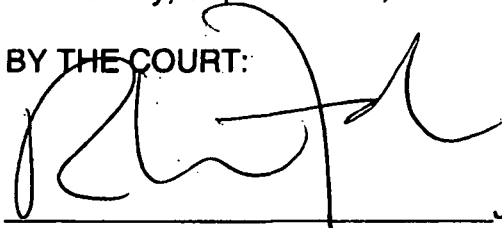
Attorneys for Defendants,  
UPMC Presbyterian Shadyside, Amit Kaura, M.D.,  
Penny L. Sappington, M.D., Raghavan Murugan,  
M.D., and Matthew Rosengart, M.D.

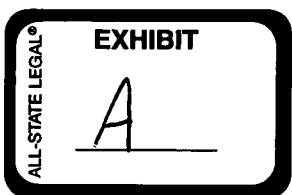
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JANET SWEET, individually and as Administratrix of the Estate of SAMUEL SWEET, deceased,	)	CIVIL DIVISION
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	)	G.D. No. 09-19407
	)	
Plaintiff,	)	
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v.	)	
	)	
UPMC PRESBYTERIAN UNIVERSITY HOSPITAL; AMIT KAURA; PENNY L. SAPPINGTON; RAGHAVAN MURUGAN and MATTHEW ROSENGART,	)	
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, to wit, this 4<sup>th</sup> day of Feb, 2011, upon consideration of the within Motion for Trial Date Certain presented on behalf of UPMC Presbyterian, Amit Kaura, Penny L. Sappington, Raghavan Murugan and Matthew Rosengart, it is hereby ORDERED, ADJUDGED and DECREED that said MOTION is GRANTED and the trial of this matter will begin on Monday, September 19, 2011.

BY THE COURT:  
  
 \_\_\_\_\_ J.

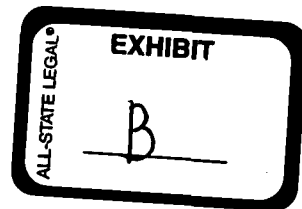


IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JANET SWEET, individually )  
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UPMC PRESBYTERIAN UNIVERSITY )  
HOSPITAL; AMIT KAURA; PENNY L. )  
SAPPINGTON; RAGHAVAN MURUGAN )  
and MATTHEW ROSENGART, )  
 )  
Defendants. )

CIVIL DIVISION

No.: 09-19407



ORDER OF COURT

AND NOW, this 12<sup>th</sup> day of Sept, 2011, upon consideration of the Plaintiff's

Motion and Supporting Brief to Amend Complaint to Seek Punitive Damages, it is hereby

ORDERED, ADJUDGED and DECREED that the ~~Complaint is amended so that the underlined portions are added.~~ with motion IS DENIED.

- (1) in Paragraph 40: "All of the resultant injuries and damages to and the ultimate death of the Decedent were the direct and proximate result of some or all of the following negligent, willful, wanton and/or reckless acts of this defendant and its agents, ostensible agents, servants, representatives and/or employees ...";
- (2) in the ad damnum clause following Paragraph 41: "WHEREFORE, the Plaintiff demands all damages whatsoever in nature, including but not limited to compensatory and punitive damages, to which the Plaintiff is entitled under the laws of Pennsylvania governing wrongful death actions ...";
- (3) in Paragraph 49: "All of the resultant injuries and damages to and the ultimate death of the Decedent were the direct and proximate result of some or all of the following negligent, willful, wanton and/or reckless acts of this Defendant and his agents, ostensible agents, servants, representatives and/or employees ..."; and
- (4) in the ad damnum clause following Paragraph 50: "WHEREFORE, the Plaintiff demands all damages whatsoever, including but not limited to compensatory and punitive damages, to which the Plaintiff is entitled under the laws of Pennsylvania governing wrongful death actions ...."

By the Court:  
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## Trial to begin in wrongful death claim

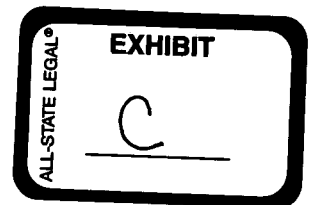
Monday, September 19, 2011

By Sean D. Hamill, Pittsburgh Post-Gazette



A family photo of Samuel Sweet fishing a few years ago on the Allegheny River.

TI SAYS:  
CONCERNED  
PHYSICIAN  
(REVERSE)



As far as Samuel Sweet was concerned, he only had a headache. It was a bad one, but nothing more, maybe something his chiropractor could fix with a little adjustment.

But three days after being admitted to UPMC Presbyterian for what his family was told was a treatable amount of bleeding on the brain, and six hours after his family saw him laughing and chatting about the Penguins' playoff chances, early in the morning of May 16, 2009, Mr. Sweet died unexpectedly.

Why he died is the subject of a civil case his family filed a few months later that is set to be heard by a jury as early as today in Allegheny County Common Pleas Court.

In the lawsuit, they allege a series of mistakes were made by his doctors and nurses. In particular, they claim that a doctor who knew Mr. Sweet was difficult to intubate -- that is, placing a tube into his lungs to help him breathe -- did not tell succeeding doctors. In addition, the lawsuit alleges while Mr. Sweet was in respiratory distress, a nurse improperly gave him a tranquilizer to calm him down, but it also stopped his breathing.



But in addition to the medical errors, through their attorney, Deborah Maliver, they also allege that after he died, hospital staff tried to cover up what happened by altering his electronic medical record. That's a serious claim that, if proven, could result in state sanctions against the staff members beyond any award in the civil case.

"Not only did the doctors fail at every step, but you dig deeper and there's more still," Mr. Sweet's son, Bill, 34, who is an operating room coordinator at UPMC Shadyside, said recently in an interview.

Instead of acknowledging their own mistakes in the case about Mr. Sweet's intubation problems and improperly giving him a tranquilizer, the lawsuit alleges the doctors and nurses later wrote notes that say Mr. Sweet refused intubation until it was too late, at one point slapping away a nurse's efforts.

"They're trying to blame this man; that he died because he refused intubation," Ms. Maliver said.

UPMC's lead attorney in the case, John Conti, said the claims of altering records are "repugnant" and untrue.

"The facts don't fit with the conspiracy theories as their lawyer puts forward," Mr. Conti said. "These doctors and nurses are people who tried to do their very best at the hospital."

"It's just unfair of their lawyers to try to create this aura of suspicion on the eve of trial," he said.

Mr. Sweet, who was from Cheswick, was 62 when he died, leaving behind his wife of 41 years, Janet, two adult sons and two grandchildren at the time. A former Marine who served in Vietnam, he spent the last 23 years of his life working as a mechanic for the Army Corps of Engineers in the Pittsburgh area, keeping the decades-old locks running.

"He was pretty much the center of our family," his son, Bill, said.

He loved to fish on the Allegheny River, work in his yard, attend Bible study at his church, and spend time with his family and friends, many of them people he worked with at the Army Corps, which placed its flags at half-staff.

Though he had been diagnosed with type 2 diabetes and hyperthyroidism in earlier years, they were being controlled with treatment, and he had lived a largely healthy life until 2009.

But on Monday, May 11, 2009 he woke up with a horrible headache that he thought was really the result of pain in his neck from sleeping awkwardly.

He went to work, but called his wife later in the day to tell her, "Man, this is killing me," and asking her to set up an appointment with his chiropractor.

The adjustment didn't work and on Wednesday of that week he went to the Veterans Affairs Hospital in Oakland and then was transferred to UPMC Presbyterian in May 2009. Tests showed he had a subarachnoid hemorrhage, or bleeding on his brain. An angiogram was performed to determine where the injury occurred in his brain and determine the underlying cause, such as if there was an aneurysm. But none was found and doctors told the family they could treat Mr. Sweet in the hospital with medication and he should be able to go home shortly.

To perform an angiogram at UPMC Presbyterian Mr. Sweet had to be intubated for surgery. During the intubation, the anesthesiologist quickly discovered that because of Mr. Sweet's short neck, being overweight, and having a small jaw, he was difficult to intubate. Special equipment would have to be used to get a tube properly down his throat to help him breath, equipment that allowed the anesthesiologist to do it without being able to see into his throat as you can with most people.

The anesthesiologist told Mr. Sweet's attending doctor, Raghavan Murugan, as well as Mr. Sweet's family, that he was difficult to intubate. But, according to the lawsuit, no one put that in his electronic medical record. And Dr. Murugan did not tell the critical care doctor on call, Penny Sappington, or the doctor who would oversee Mr. Sweet's care later, Amit Kaura. All three are named defendants in the lawsuit, along with Matthew Rosengart, a doctor who later tried to create an airway surgically. UPMC Presbyterian also is named as a defendant.

Not telling people that he was difficult to intubate meant that later in the week, after the tube had been taken out, when he began having trouble breathing because of pulmonary edema -- fluid buildup in his lungs -- that the doctors did not immediately call for specialized equipment and a special airway team for people like Mr. Sweet, the lawsuit says.

That's also the reason that Bill Sweet, who used to work at Johns Hopkins Hospital in Baltimore, where difficult intubation patients are immediately given green bracelets so everyone knows their situation: "If he was [at Hopkins] this wouldn't have happened."

When his family visited Mr. Sweet on the evening of Friday, May 15, he was chipper, talkative and happy. But five hours after they left, Mr. Sweet's breathing became increasingly difficult.

Dr. Kaura had authorized a nurse, Mary Bennington, to give him a tranquilizer if he got agitated. But, he later said in a deposition, he didn't mean for her to give it to Mr. Sweet if his breathing became an issue.

According to the official timeline the hospital gave the Sweets, Mr. Sweet stopped breathing at 1:18 a.m. At that point, doctors -- unaware that he was difficult to intubate, the lawsuit says -- worked on him for more than an hour trying to establish an airway without the necessary specialized equipment or personnel. By the time they were able to establish an airway, Mr. Sweet was brain dead.

But Ms. Maliver said UPMC's timeline came into question in early August 2011, when UPMC finally turned over -- after two years of discovery -- 1,200 pages of "results detail sheets" which show not only when something was written in Mr. Sweet's electronic chart, but who wrote it and how.

So, for example, Ms. Maliver alleges that the results detail sheets show that during the 21 minutes before Mr. Sweet was said to stop breathing, none of the information in his chart is straight from the computer monitors that would tell what his vital signs were during that period.

But the results detail sheets also show something more troubling, Ms. Maliver said.

She said she found evidence that three days after Mr. Sweet died, Richard Simmons, UPMC Presbyterian's head of quality assurance, tried to put a "Diff Intub" red-letter warning on Mr. Sweet's electronic medical record. That effort showed up on the results details sheets, according to Ms. Maliver.

Such a warning would tell anyone who opened the record that Mr. Sweet was difficult to intubate.

Dr. Simmons wasn't trying to alter the record, Mr. Conti said; instead he was in Mr. Sweet's medical record as part of the "peer review" process, assessing what happened in Mr. Sweet's case.

As part of that, he was in the medical record three days after Mr. Sweet died trying to figure out how one would create a warning about a patient's difficult intubation, Mr. Conti said. Moreover, Mr. Conti said, such a warning was irrelevant because "Dr. Kaura said he understood Mr. Sweet was a difficult airway just by looking at him."

Allegations that anyone at UPMC tried to alter the record after the fact "are entirely a fantasy of [Ms. Maliver's] imagination."

The day after Mr. Sweet stopped breathing and was declared brain dead, his family, abiding by his wishes, pulled him off the ventilator that had been keeping him alive and let him die.

Essentially the case will come down to two versions of what happened to Mr. Sweet and when, and who knew what and when about his condition.

"All I'm going to be asking is for a jury to decide what the truth is," Ms. Maliver said.

Sean D. Hamill: [shamill@post-gazette.com](mailto:shamill@post-gazette.com) or 412-263-2579.

First published on September 19, 2011 at 12:00 am

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[The First Man to Be Cured of AIDS: An Update on the Amazing Story \(TheBody.com\)](#)

[RA and Heart Attacks: 10 Ways to Protect Your Heart \(Health.com\)](#)

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**CERTIFICATE OF SERVICE**

I, Justin M. Gottwald, Esquire, hereby certify that a true and correct copy of the foregoing Motion to Continue Trial Date and Motion for Sanctions has been served this 19<sup>th</sup> day of September, 2011, by hand delivery, to counsel of record listed below:

Deborah S. Maliver, M.D., J.D.  
Biancheria & Maliver, P.C.  
Arrott Building, Suite 1600  
401 Wood Street  
Pittsburgh, PA 15222  
(Counsel for Plaintiff)

DICKIE, MCCAMEY & CHILCOTE, P.C.

By Justin M. Gottwald  
Justin M. Gottwald

Attorneys for Defendants,  
UPMC Presbyterian Shadyside, Amit  
Kaura, M.D., Penny L. Sappington,  
M.D., Raghavan Murugan, M.D., and  
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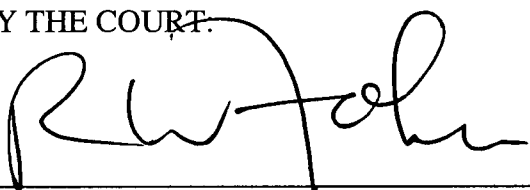
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SAPPINGTON; RAGHAVAN MURUGAN	)	
and MATTHEW ROSENGART,	)	
	)	
Defendants.	)	

**ORDER OF COURT**

AND NOW, to wit, this 19<sup>th</sup> day of September, 2011, upon consideration of the Motion to Continue Trial Date and Motion for Sanctions filed on behalf of the defendants, it is hereby ORDERED, ADJUDGED AND DECREED that the defendants' Motion to Continue Trial Date is GRANTED and this case is continued to the next available trial list. ~~Defendants' Motion for Sancations is GRANTED and plaintiff's counsel will be required to reimburse defendants for any and all attorneys' fees and costs related to trial preparation. The Court shall set a hearing date for argument on the amount of attorneys' fees and costs that will be awarded as part of the Motion for Sanctions.~~

BY THE COURT.

  
 \_\_\_\_\_ J.