IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

ANTHONY CLARK, Individual and ANTHONY CLARK, as Administrator of the Estate of DAWN CLARK, Deceased,

Plaintiff,

vs.

MONONGAHELA VALLEY HOSPITAL, FRICK HOSPITAL AND MICHAEL PIZZOLA, L.S.W.,

Defendants.

CIVIL ACTION

No. 3056 of 2006

The Honorable Gary P. Caruso

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Filed on behalf of Frick Hospital and Michael Pizzola, L.S.W., two of the defendants.

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BRIEF IN SUPPORT OF
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NOW COME defendants, Frick Hospital (hereinafter "Frick") and Michael Pizzola, L.W.S. (hereinafter "Pizzola"), by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following brief in support of their motion for summary judgment pursuant to Rule 1035.2 of the Pennsylvania Rules of Civil Procedure stating as follows:

I. STATEMENT OF THE CASE AND STATEMENT OF THE ISSUES INVOLVED

A. Procedural History

Plaintiff, Anthony Clark, is the widower of the decedent, Dawn Clark, and is also the administrator of the decedent's estate. Plaintiff initially filed suit on April 17, 2006, against only Monongahela Valley Hospital (hereinafter "Mon Valley Hospital") and Pizzola, a licensed social worker employed by Frick. On May 19, 2006, plaintiff filed an amended complaint in which he amended the caption and the complaint to include a vicarious liability claim against Frick, related to the actions of Pizzola. Neither the original complaint, nor the amended complaint, contained any allegations that Pizzola assumed a duty to notify the State Police of the decedent's involuntary commitment to Mon Valley Hospital. Both complaints simply alleged that the defendants negligently failed to forward notification to the State Police.

The amended complaint was dismissed upon presentation of preliminary objections. Plaintiff subsequently filed a second amended complaint on November 27, 2006. The statute of limitations had expired at that time, inasmuch as the decedent died on June, 11, 2004.

It was only after the statute of limitations expired on June 11, 2006, that plaintiff included an allegation that Pizzola acted as the designated representative of the Westmoreland County Mental Health and Mental Retardation Administrator (hereinafter "County Administrator") in completing the Application for Involuntary Emergency Examination and Treatment. *Second Amended Complaint*,

¶26. Plaintiff also alleged for the first time that Pizzola assumed a duty to notify the Pennsylvania State Police of the decedent's involuntary commitment by signing the Notification of Mental Health Commitment on the line labeled Signature of Notifying Official. *Second Amended Complaint*, ¶27.

The second amended complaint against Frick and Pizzola alleges that Pizzola assumed a duty that is imposed by statute upon only the judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators pursuant to section 7109 of the Pennsylvania Mental Health Procedures Act. The Mental Health Procedures Act provides that judges of the courts of common pleas, mental health review officers and the county mental health and mental retardation administrators are required to notify the Pennsylvania State Police of the identity of any individual who has been involuntarily committed to a mental health facility for inpatient care and treatment.

There is no duty on the part of healthcare providers to notify the Pennsylvania State Police of an involuntary emergency mental health commitment. To the contrary, the Mental Health Procedures Act and the accompanying regulations impose a duty only upon a select few governmental officials.

On April 11, 2007, this Honorable Court issued a decision and order concerning preliminary objections to plaintiff's second amended complaint. A copy of the decision and order is attached to these defendants' motion for summary judgment as "Exhibit 1." This Honorable Court limited the allegations in the second amended complaint to claims that Pizzola, while acting as a representative of the County Administrator, failed to notify the State Police of the decedent's involuntary Commitment. The decision and order states in pertinent part:

> Therefore, the only issues remaining for determination by the finder of fact are:

1. Was Pizzola an agent of Mon Valley Hospital (there appears to be no dispute that he was an agent/employee of Frick);

2. Was Pizzola acting within the scope of his employment or agency when he signed the mental health forms on behalf of the County Administrator;

3. Did Pizzola assume the duty of the County Administrator to notify the Pennsylvania State Police of decedent's commitment; and

4. Was the proper form, in fact, forwarded to the Pennsylvania State Police?

These defendants are entitled to summary judgment in their favor as a matter of law because the plaintiff cannot establish a *prima facie* case of negligence, gross negligence or willful misconduct on the part of Pizzola and/or Frick. There is no evidence of record that these defendants assumed a duty imposed upon the County Administrator to notify the State Police of the decedent's commitment. The mere fact that Pizzola incorrectly signed his name on a line on a form used by county officials to notify the Pennsylvania State Police of involuntary commitment does not, in and of itself, amount to the acceptance of a duty, imposed by statute upon the County Administrator's Office. All of the evidence in this case is to the contrary; Pizzola neither accepted, nor was he delegated, any duty of the County Administrator. He merely participated in the documentation of the Application for Involuntary Emergency Examination and Treatment.

B. Factual History

Plaintiff's decedent, Dawn Clark, arrived at Frick's Emergency Department on January 4, 2004, as a result of a suicide attempt. Pizzola, a licensed social worker and case manager, employed by Frick was contacted to assist in the process of applying for an involuntary emergency examination and treatment pursuant to section 302 of the Pennsylvania Mental Health Procedures Act. Pizzola was involved in the documentation necessary to initiate an involuntary commitment, as well as

contacting the delegate of the County Administrator's Office. Pizzola was also involved in locating a facility that would agree to accept the decedent as an inpatient, inasmuch as Frick does not have an inpatient psychiatric facility.

After Pizzola was contacted by the emergency department staff and was advised that the decedent wished to initiate a petition for involuntary examination and treatment (hereinafter "302 petition"), Pizzola initiated the application process. A copy of the Application form is attached hereto as Exhibit "A." Consistent with Frick's policies and procedures concerning 302 petitions and the instructions on the application form, Pizzola obtained a statement from the decedent. *See* page 2 of Exhibit "A." Thereafter, Pizzola called Will Frye, the delegate of the County Administrator, and obtained verbal authorization from Mr. Frye for the examination by a physician. Pizzola documented the authorization he obtained from Mr. Frye on Part III of the Application entitled "warrant."

An examination by a physician occurred and the physician certified the need for emergency treatment. *See* Part VI of the Application at Exhibit "A." Pizzola proceeded with the application process and obtained approval for the decedent to be committed at Mon Valley Hospital. As part of the process, Pizzola documented on the Application form the actions taken prior to transfer of the patient. Pizzola cannot recall whether he spoke with the County Administrator's delegate on more than one occasion.

At issue is the fact that Pizzola incorrectly placed his name on an incomplete form entitled "Notification of Mental Health Commitment." *See* Notification form, part of Exhibit "A." According to Frick's policies and procedures, as well as Pizzola's routine practice, he would fax a copy of the Notification form to the County Administrator's office. He has never sent a copy of the document to the Pennsylvania State Police.

II. ARGUMENT

A. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE NO REASONABLE FACT FINDER COULD CONCLUDE THAT MICHAEL PIZZOLA ASSUMED A DUTY OF THE COUNTY ADMINISTRATOR TO NOTIFY THE STATE POLICE

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions of record and affidavits on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Nationwide Mut. Ins. Co. v. Nixon*, 453 Pa. Super. 70, 682 A.2d 1310, 1313 (1996) *alloc. denied* 693 A.2d 589 (1997). The record and any inferences which can be drawn therefrom must be viewed in the light most favorable to the non-moving party and any doubt must be resolved against the moving party. *Frain v. Keystone Ins. Co.*, 433 Pa. Super. 462, 640 A.2d 1352, 1354 (1994). While the moving party has the burden of proving that a genuine issue of material fact does not exist, the non-moving party may not rest upon averments contained in its pleadings. *Tenos v. State Farm Ins. Co*., 716 A.2d 626, 628 (Pa. Super. 1998). Rather, the non-moving party must present sufficient evidence on an issue essential to his or her case on which he or she bears the burden of proof such that a jury could return a verdict in his or her favor. *Ertel v. The Patriot-News Co.*, 544 Pa. 93, 674 A.2d 1038, 1042 (1996) *cert. denied* 519 U.S. 1008, 117 S. Ct. 512, 136 L.Ed.2d 401 (1996). If the non-moving party fails to satisfy this burden, a genuine issue of material fact does not exist and the moving party is entitled to judgment as a matter of law. *Id.*

Furthermore, pursuant to Pennsylvania Rule of Civil Procedure 1035.2(2), summary judgment is appropriate if the non-moving party has failed to produce evidence essential to support his or her claim. The note to this Rule makes it clear that in order to defeat a motion for summary judgment, the non-moving party must come forward with evidence demonstrating the existence of facts which would support its claim.

The Pennsylvania Mental Health Procedures Act, 50 P.S. §7101, *et seq.* specifically addresses the issue of reporting involuntary commitments to the Pennsylvania State Police. *See* 50 P.S. §7109(d). The Act provides that,

> not withstanding any statute to the contrary, **judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators shall notify the Pennsylvania State Police** on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntary committed to a mental institution for inpatient care and treatment under this Act or who has been involuntarily treated as described under 18 Pa.C.S. §6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). **The notification shall be transmitted by the judge, mental health review officer or county mental health and mental retardation administrator within seven days of the adjudication, commitment or treatment**.

50 P.S. §7109(d)*(emphasis added)*. There is no provision in the Mental Health Procedures Act that requires any healthcare provider to provide notice of involuntary commitment to the Pennsylvania State Police.

The Pennsylvania Uniform Firearms Act of 1995, 18 Pa.C.S. §6101, *et seq.*, is the law that prohibits certain persons from purchasing or possessing firearms. *See*,18 Pa.C.S. §6105(a)(1). The Pennsylvania Uniform Firearms Act contains a specific section entitled "Pennsylvania State Police" and specifically contains a subsection entitled "Notification of Mental Health Commitment." 18 Pa.C.S. §6111.1(f). Like the Mental Health Procedures Act, the Pennsylvania Uniform Firearms Act provides that:

> notwithstanding any statute to the contrary, judges of the court of common pleas shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntarily committed to a mental health institution for inpatient care or treatment under the Act of July 9, 1976 (P.L. 817 No. 143), known as the Mental Health Procedures Act. … The notification shall

> be transmitted by the judge to the Pennsylvania State Police within seven days of the adjudication, commitment or treatment.

18 Pa.C.S. §6111.1(f).

The Pennsylvania Uniform Firearms Act also provides for review by the court of common pleas. The Act provides

> (1) Upon receipt of a copy of the order of a court of competent jurisdiction which vacates a final order or an involuntary certification issued by a mental health review officer, the Pennsylvania State Police shall expunge all records of the involuntary treatment received under subsection (f).
>
> (2) A person who is involuntarily committed pursuant to Section 302 of the Mental Health Procedures Act may petition the court to review the sufficiency of the evidence upon which the commitment was based. If the court determines that the evidence upon which the involuntary commitment was based was insufficient, the court shall order that the record of the commitment submitted to the Pennsylvania State Police be expunged. A petition filed under this section shall toll the sixty day period set forth in section 6105(a)(2).
>
> (3) The Pennsylvania State Police shall expunge all records of an involuntary commitment of an individual who is discharged from a mental health facility based upon the initial review by the physician occurring within two hours of arrival under Section 302(b) of the Mental Health Procedures Act and the physician's determination that no severe mental disability existed pursuant to Section 302(b) of the Mental Health Procedures Act. The physician shall provide signed confirmation of the determination of the lack of severe mental disability following the initial examination under Section 302(b) of the Mental Health Procedures Act to the state police.

18 Pa.C.S. §6111.1(g). There is no other provision of the Pennsylvania Uniform Firearms Act that imposes any obligation on the part of a physician or any other healthcare provider to provide any notification of an involuntary commitment to the Pennsylvania State Police.

The Pennsylvania Code contains regulations concerning notification of mental health commitment. *See* 37 Pa. Code §33.120. The code provides in pertinent part:

> (a) The notification of mental health commitment and adjudication of incompetence shall be consistent in form and format throughout this Commonwealth. **The notification form and format shall be prescribed by the State Police and used by the judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators for notifying the State Police of individuals who have been adjudicated as an incompetent or who have been involuntarily committed to a mental institution for inpatient care and treatment under Section 302, 303 or 304 of the Mental Health Procedures Act (50 P.S. §§7102, 7103 and 7104).** Following a notification submitted to the State Police that inpatient care was necessary for a person or that a person was committable, if an examining physician subsequently determines that no severe mental disability existed pursuant to Section 302(b) of the Mental Health Procedures Act, that examining physician shall utilize the form and format to provide notice to the State Police to expunge the previously submitted notification in accordance with Section 6111.1(g)(3) of the Act (relating to Pennsylvania State Police).
>
> (b) It is the responsibility of the judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators to ensure the notification provides complete and accurate information. … **The notification shall be made to the state police by the judges of the courts of common pleas, mental health review officers and mental health and mental retardation administrators within seven days of the adjudication, commitment or treatment, or determination by an examining physician of the lack of severe mental disability following the initial commitment as set forth in subsection (a) by the form and format prescribed by the state police**.

37 Pa. Code §33.120 *(emphasis added)*.

Clearly, there is no duty on the part of healthcare providers to notify the State Police of involuntary commitments. As a result, plaintiff has alleged that Pizzola was acting as an authorized representative of the County Administrator, or that Pizzola somehow assumed the notification duty held by the County Administrator.

In plaintiff's second amended complaint, plaintiff alleges that Pizzola was acting as the County Administrator's "designated representative" and that in this capacity, Pizzola assumed the

duty to notify the Pennsylvania State Police of the decedent's involuntary commitment "by signing" the Notification of Mental Health Commitment on the line labeled "Signature of Notifying Official." *Second Amended Complaint*, ¶27.

A negligence claim cannot be based upon facts on which "the law does not impose a duty upon the defendant in favor of the plaintiff." *Boyce v. U.S. Steel Corp.*, 285 A.2d 459 (Pa. 1971). While plaintiff does not set forth the legal basis of any duty on the part of Pizzola to notify the State Police of the decedent's commitment, it is presumed that plaintiff's assertion of an "assumed" duty is based upon §323 of the Restatement Second of Torts which provides,

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.

Boyce, 285 A.2d at 461, *quoting* Restatement Second of Torts. *See also Shaw v. Kirschbaum*, 653 A.2d 12, 16 (Pa. Super 1994); *Morin v. Traveler's Rest Motel, Inc.*, 704 A.2d 1085, 1089 (Pa. Super. 1997).

"A breach of a legal duty is a condition precedent to a finding of negligence." *Shaw*, *supra*., 653 A.2d at 15. "Section 323 [of the Restatement Second of Torts] does not obviate the traditional components of a *prima facie* case sounding in negligence, but rather substitutes a gratuitous undertaking for an element of duty." *Id*. at 16. Moreover, Section 323 of the Restatement Second of Torts "cannot be invoked to provide a duty or undertaking which does not exist." *Boyce*, *supra.*, 285 A.2d at 461.

In *Shaw v. Kirschbaum*, the plaintiff attempted to impose liability for failing to obtain informed consent on a physician who did not perform surgery. Plaintiff claimed that the physicians "advocacy of surgery" was tantamount to an assumption of a duty on the part of the physician to obtain informed consent. *Shaw*, 653 A. 2d at 16-17. The physician had communicated to the patient that he recommended that she have surgery. The physician communicated his belief that the patient would die without surgery and assisted her with travel and financial arrangements. The Superior Court held that the doctor's actions did not amount to an express or implied undertaking of a duty to obtain informed consent. The Court pointed out that the doctor did not undertake to obtain informed consent to surgery that he did not perform.

The evidence of record in this case could not more clearly establish that Pizzola never acted with authority of, or on behalf of, the County Administrator with respect to his involvement in the involuntary commitment of the decedent. The evidence clearly establishes that he never accepted any duty to notify the Pennsylvania State Police of the decedent's involuntary commitment and he did not in any way "undertake" the obligation of the County Administrator to notify the State Police.

On July 7, 2007, the parties to this action recorded the deposition testimony of Will Frye, the Delegate of the County Administrator. Mr. Frye has been employed by Westmoreland County and has been the emergency/court committee coordinator for 20 years. *Frye Deposition*, p.8. A copy of Will Frye's deposition transcript is attached as Exhibit "B." Mr. Frye is an employee of Westmoreland County. *Id*. The County Administrator -- Kathleen Wohlgemuth -- is also an employee of the County and is appointed to the position by the County Commissioners. *Id*. at 9. A mental health delegate, such as Mr. Frye, is an employee of Westmoreland County who is appointed by the County Administrator to act on behalf of the County Administrator in approving or denying petitions for emergency involuntary examinations and treatment pursuant to the Pennsylvania Mental

Health Procedures Act. *Id*. In Westmoreland County all six of the delegates are on the staff of the County Administrator's office. *Id*. at 9-10.

Mr. Frye is the chief delegate and is the primary contact at the County Administrator's office with respect to 302 petitions for involuntary mental health commitments. *Frye Deposition*, p.10. He is on-call 24 hours per day, 7 days per week, as are all of the other county delegates. *Id*. at 11. Mr. Frye maintains contact with hospitals concerning the processing of 302 petitions. *Id*.

According to Mr. Frye, hospitals in Westmoreland County have a roster of delegates and their contact information either at home or through a pager. Frye Deposition, p.12. Mr. Frye testified about the process in the following way:

> Q. Am I correct, sir, that if a social worker at Frick Hospital obtains information from someone that they want to petition for a 302 commitment of another person, that the social worker will contact you to get your authorization based upon whatever is contained in the 302 petition?
>
> A. Me or someone representing the office will be contacted, yes.
>
> Q. And those people representing the office, are they all employees of the county?
>
> A. Yeah, they are delegates, yes, in our office.

Frye Deposition, p. 13.

Mr. Frye testified that he has known Pizzola for 15-20 year. Mr. Frye testified

> Q. Has Michael Pizzola ever been a mental health delegate of the county as far as you are aware?
>
> A. No, I am sure of that.
>
> Q. You're sure of that, okay. Have you ever authorized Michael Pizzola to act on behalf of the county with respect to any part of the 302 process?
>
> A. Only in that he might be the person at the other end of the phone that's carrying out the 302. That's not a formal

> designation, that's I'm talking to him or I'm talking to one of the nurses or I'm talking to the doctor. They are the other person that's writing down things for me, but not formally.
>
> Q. Have you ever given him any authority to do anything in terms of notifying anyone about the 302 process?
>
> A. No.
>
> Q. As far as you know, did Michael Pizzola have any authority to act as a representative of the county in terms if notifying the State Police of any 302 petitions?
>
> A. No.
>
> Q. As far as you know, did Michael Pizzola back in 2004 have any authority to issue warrants to have patients examined on an involuntary basis?
>
> A. No, he did not.

Frye Deposition, P. 14-15. …

> Q. And have you ever given him your authorization over the phone to have a patient examined by a physician for purposes of a 302 petition based upon whatever the 302 petition said?
>
> A. I have.
>
> Q. And when you would give telephone authorization to Mike Pizzola over the phone to issue a warrant to have the person examined during the 302 petition, do you then go to the hospital and fill out any of the paperwork yourself?
>
> A. Very rarely. Our policy is to do the majority of authorizations by phone.

Frye Deposition, p. 16.

With respect to this particular case, Mr. Frye does not recall any conversations with Pizzola about the decedent. He testified about the 302 petition involved in this case in pertinent part:

> Q. If you look at page three, the warrant, under signature of the county administrator or representative, it says Will Frye: Telephone Authorization, Mike Pizzola. Have you ever seen

any warrants like this filled out by Michael Pizzola in this manner?

A. I don't recall directly, but I'm sure I have.

Q. Does this indicate to you that you gave Michael Pizzola your authorization to proceed with an examination of Dawn Clark on January 4th of 2004?

A. Yes. It's documentation that the hospital did, in fact, receive authorization from the County administrator to proceed.

Q. And this would simply be documentation that you authorized on behalf of the county, the examination of the patient?

A. That's correct.

Frye Deposition, p.18.

The practice of the County Administrator's office regarding notice of involuntary commitments is that the County Administrator's office notifies the Pennsylvania State Police of a 302 commitment. After the County Administrator's office receives the notification form from the hospital, the County Administrator's office takes the information provided by the hospital and types it onto the County Administrator's own form. The form created by the County Administrator's office is then signed by the County Administrator as the notifying official and then forwarded to the Pennsylvania State Police by the County Administrator's office. *Frye Deposition*, pp. 19-20.

Plaintiff's entire claim is based upon the fact that Pizzola happened to erroneously sign his name on the form that the County Administrator recreates and sends to the State Police. However, as Mr. Frye testified, it makes no difference to the County Administrator's office whose name, if any name, appears on the form before it is recreated by the County Administrator's office. Mr. Frye testified that any name that may appear on the form when it is sent to the County Administrator's office has no bearing on the County Administrator's actions. Mr. Frye receives some forms that aren't signed at all and some that are signed by social workers, nurses, physicians and clerks in

inpatient units. Mr. Frye does not expect that the person who signed the notification form at the hospital will notify the State Police. Moreover, Mr. Frye has never given Pizzola authority to notify the State Police on behalf of the County Administrator's office. *Frye Deposition*, pp 21-22.

According to Mr. Frye, all that the hospital staff does is "they document that I was consulted." *Id*. at p. 32. It is the County Administrator's office that notifies the state police of involuntary commitments pursuant to the Mental Health Procedures Act, not the hospital or the healthcare worker who completes the 302 petition at the healthcare facility.

Notably, Mr. Frye testified that the County Administrator's office had in its file the 302 petition related to the decedent. *Id*. at 33. The 302 petition form was faxed to the County Administrator's office by the hospital. *Id*. at 34-35.

Plaintiff's counsel recorded the deposition of Pizzola on November 20, 2007. Pizzola testified that he is employed as social worker at Frick Hospital. His official title is Case Manager. *Pizzola Deposition*, p.8. A copy of Pizzola's deposition transcript is attached hereto as Exhibit "C." Pizzola explained that he is often involved in the 302 petition process at Frick Hospital.

Pizzola explained the process of completing the paperwork involved in a 302 petition. He explained that once a statement is obtained from a petitioner, he contacts the county mental health delegate by phone for authorization to proceed. *Id*. at 21-22.

Pizzola explained that in the decedent's case, he spoke with Will Frye at the County Administrator's office and obtained Mr. Frye's telephone authorization to have the decedent examined involuntarily. *Pizzola Deposition*, pp. 37-38. Pizzola cannot recall how many times he spoke with Mr. Frye concerning the decedent, however, he knows that he spoke with Mr. Frye at least once. *Id*. at 43.

With respect to the notification form, entitled Notification of Mental Health Commitment, Pizzola testified that he completes part of the form and then the form is faxed to the county mental health delegate. *Id*. at 28, 46-47. Pizzola was asked specifically about the notification form. He testified that he signed the form in this case and that the form is faxed, as a matter of routine, to the County Administrator's office. *Id*. at 34, 46-47. According to Pizzola, the original petition and notification form went to Mon Valley Hospital with the patient. *Id*. at 47. Pizzola does not routinely receive any documentation confirming the form was received by the County Administrator after it is faxed. *Id*. at 35. Pizzola has no specific recollection of faxing, or not faxing, the form to the county delegate in this particular case.

The allegations in plaintiff's second amended complaint against Frick and Pizzola relate solely to an alleged duty on the part of Pizzola to notify the State Police of plaintiff's mental health commitment. As was stated above, neither Pizzola, nor Frick, had any duty to notify the State Police. The only persons with a duty to notify the State Police are the government officials specifically identified in the Mental Health Procedures Act and the applicable regulations.

Plaintiff's entire case rests upon the fact that Pizzola incorrectly signed his name on a line designated for the signature of the County Administrator. The evidence clearly establishes that Pizzola did not assume or undertake in any way any duty of the County Administrator's office when he signed the Notification form that was part of the 302 petition papers that are faxed, as a matter of course and hospital policy, to the County Administrator's office. The evidence clearly establishes that the County Administrator's office never authorized Pizzola to notify the State Police of the decedent's commitment, nor did the County Administrator's office expect Pizzola to notify the State Police.

The simple fact of the matter is that policies and procedures at Frick provide for the completion of the 302 petition, followed by the faxing of the petition forms to the County Administrator's office. The County Administrator's office had its own policies and procedures for taking the information received from the healthcare facility and using that information to create its own form that it sends to the State Police, consistent with the provisions of the Mental Health Procedures Act.

There is no evidence Pizzola was authorized to do anything on behalf of the County Administrator and there is also no evidence that Pizzola assumed any duties or obligations of the County Administrator. To the contrary, the evidence establishes that Pizzola did nothing other than complete the 302 petition consistent with hospital policy. Pizzola contacted the county mental health delegate to obtain the delegate's verbal authorization to proceed with the involuntary examination of the decedent because Pizzola had no authority to make such a decision. All Pizzola did in this case is document events that occurred on forms available at the hospital. He did exactly what healthcare providers do every day. He documented events that occurred. The completion of a 302 petition, alone, cannot be deemed synonymous with the undertaking of a statutory notification duty held by a government official. If this were the case, any time a healthcare provider signed his name on the wrong line on a form, or completes a form he need not complete, he would be undertaking a duty he otherwise did not have. This would be an unfair and absurd result. Accordingly, there is no genuine issue of material fact and the defendants are entitled to summary judgment.

B. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED AS THEY ARE IMMUNE FROM CIVIL LIABILITY, ABSENT WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, UNDER THE PENNSYLVANIA MENTAL HEALTH PROCEDURES ACT, 50 Pa.C.S.A. §7101, *et seq*.

Pursuant to the terms of the Pennsylvania Mental Health Procedures Act (hereinafter "PMHPA"), 50 Pa.C.S.A. §7101, *et seq*., specifically §7114, entitled "*Immunity From Civil and Criminal Liability*,"

> **In the absence of willful misconduct or gross negligence**, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person who participates in a decision that a person be examined or treated under this Act, or that a person be discharged, or placed under partial hospitalization, or outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for voluntary treatment or for involuntary emergency examination and treatment, **shall not be civilly or criminally liable for such decision or for any of its consequences**.

50 Pa.C.S.A. §7114(a) *(emphasis added)*. The PMHPA defines a "facility" as including a hospital "that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons, whether as outpatients or inpatients." 50 Pa.C.S.A. §7103.

In light of the applicability of the PMHPA, and more specifically §7114, plaintiff must show evidence that Pizzola and/or Frick engaged in willful misconduct or acted with gross negligence. The Pennsylvania Supreme Court has explained the meaning of "gross negligence" required to waive the immunity provided under the PMHPA §7114. *Albright v. Abington Memorial Hosp*., 548 Pa. 268, 696 A.2d 1159, 1164 (1997). Gross negligence for purposes of the PMHPA is "a form of negligence where the facts support substantially more than ordinary carelessness, inadvertence, laxity or indifference. The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care." *Id*., *quoting Bloom v. Dubois Reg. Med. Ctr.*, 409 Pa. Super 83, 98-99, 597 A.2d 671, 679 (1991). In *Albright*, the administrator of the estate of a mental health patient who had been treated in a hospital on several occasions during involuntary commitments under the Mental Health

Procedures Act, filed suit against the hospital related to the death of the patient. Following one of the commitments, during which the patient's condition had improved, the Court of Common Pleas of Montgomery County ordered the patient to undergo a 90-day regime of involuntary outpatient care. *Albright*, 696 A.2d at 1161. The court order stated that if the patient failed to comply, she would be returned to the hospital for ongoing involuntary treatment. *Id*. The patient attended the first two treatment sessions and reported that she was not taking her medication due to the cost. *Id*. Towards the end of the 90-day treatment, the patient's husband advised the hospital that his wife was not taking her medication and that she was losing touch with reality. Thereafter, the hospital declined to recommit the patient. Within days, the patient died in a fire at home that was suspected to have been caused by her careless smoking. *Id*. at 1162-1163.

The decedent's estate filed suit against the hospital claiming negligence. The hospital raised the defense of immunity pursuant to the PMHPA §7114. *Id*. at 1163. The trial court granted summary judgment in favor of the hospital because the plaintiff had not shown evidence of gross negligence. The Pennsylvania Superior Court and Supreme Courts affirmed the trial court's decision. *Id*.

The Pennsylvania Supreme Court explained the meaning of gross negligence pursuant to the PMHPA, which is set forth above. *Albright*, 696 A.2d at 1163-1164. The court also addressed the issue of when it is appropriate for a court to rule as a matter of law that the plaintiff has not established gross negligence. The *Albright* court explained that "the determination of whether an act or failure to act constitutes gross negligence is for the jury, but may be removed from consideration by a jury and decided as a matter of law only where the case is entirely free from doubt and there is no possibility that a reasonable jury could find gross negligence." *Id*. at 1165. The Court went on to state that:

> to require mental health employees and their employers to defend jury trials on the issue of gross negligence where the trial judge finds as a matter of law that, at best, only ordinary negligence has been established, would gut the limited immunity provision of the Act of any meaning and unfairly subject the employees and facilities to protracted and expensive litigation.

Id. (*emphasis added*).

The *Albright* court held that the trial court did not abuse its discretion when it ruled as a matter of law that the plaintiff had not established gross negligence. The court further stated:

> At worst, the hospital staff exercised poor judgment. We cannot expect those covered by the Act to be soothsayers, and the limited immunity provision of the Act recognizes this understanding. The granting of summary judgment is particularly appropriate here in light of the intent of the Act to provide limited immunity from civil and criminal liability to mental health personnel and their employers in rendering treatment in this 'unscientific and inexact field.' *Farago v. Sacred Heart General Hospital*, 522 Pa. 410, 417, 562 A.2d 300, 304 (1989). The purpose of the Act's immunity provision is to insulate mental health employees and their employers from liability for the very determinations made by the Hospital here.

Albright, 696 A.2d 1167. *See also Downey v. Crozer-Chester Medical Center*, 817 A.2d 517, (Pa. Super. 2003), *appeal denied*, 577 Pa. 672, 842 A.2d 406 (2004).

There is simply no evidence in this case that Pizzola or Frick acted with "gross negligence" as defined in *Albright*. There is no evidence of behavior on the part of the defendants that was flagrant and grossly deviating from the ordinary standard of care as defined in *Albright*. In fact, plaintiff has no evidence of any negligence on the part of the defendants, let alone gross negligence. As Pizzola did not act with gross negligence or willful misconduct, and there is no evidence of such, he is guaranteed the protection afforded by the PMHPA.

III. CONCLUSION

Pizzola has never been an employee or agent of Mon Valley Hospital. Pizzola did not sign any documents or take any actions "on behalf of" the County Administrator's office. The County

Administrator's office did not authorize Pizzola to do anything on its behalf and Pizzola did nothing to assume or undertake the duties of the County Administrator to notify the State Police of the decedent's involuntary commitment to Mon Valley Hospital. There is simply no genuine issue of material fact for the jury to decide in this case and the defendants are clearly entitled to summary judgment as a matter of law.

The plaintiff in this case has failed to produce any evidence of gross negligence required to destroy the immunity granted these defendants under the PMHPA § 7114. As a matter of law, there is no issue of fact as to whether these defendants acted with gross negligence and the defendants are entitled to judgment in their favor as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within document was served by U.S. first class, postage prepaid mail this _____ day of _____, 2008, upon the following:

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