

2015 WL 3963432 (Pa.Com.Pl.Civil Div.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Civil Division
Montgomery County

Mary REAGAN, by and through her Attorney-in-Fact, Patricia Cook, Plaintiff,

v.

GENESIS HEALTHCARE, LLC ; 227 Evergreen Operations, LLC d/b/a Sanatoga Court, Defendants.

No. 15-13492.
June 16, 2015.

Jury Trial Demanded

This is not An Arbitration Case. Assessment of Damages is Required; Jury Trial Demanded.

Complaint in Civil Action

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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 action within twenty (20) days after this Complaint in Civil Action and Notice to Defend 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 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, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

Montgomery County

THE MONTGOMERY COUNTY BAR ASSOCIATION

100 W Airy Street Norristown, Pennsylvania 19401

Phone (610) 279-9660

COMPLAINT IN CIVIL ACTION

(The Complaint Includes a Medical Professional Liability Action)

Plaintiff, Mary Reagan, by and through her Attorney-in-Fact, Patricia Cook, by and through undersigned counsel, Wilkes & McHugh, P.A., files the instant Complaint in Civil Action, and in support thereof avers the following:

I. PARTIES

A. Plaintiff

1. Mary Reagan, an adult individual, was a resident at the assisted living facility commonly known as Sanatoga Court (the "Facility") for a period of time that ended on November 7, 2014.
2. Patricia Cook, daughter of Mary Reagan, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 1564 Falcon Circle Pottstown, Pennsylvania 19464
3. Patricia Cook was appointed Attorney-in-Fact for Mary Reagan, on March 19, 2013.

B. Defendants, Genesis Healthcare, LLC; 227 Evergreen Road Operations, LLC d/b/a Sanatoga Court

4. Defendant, Genesis Healthcare, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of Delaware, with offices and a place of business located at 101 East State Street Kennett Square, Pennsylvania 19348.
5. Defendant, Genesis Healthcare, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Sanatoga Court, providing healthcare, medical services, therapy, rehabilitation, personal care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Mary Reagan and in the operation of the Facility.
6. Defendant, 227 Evergreen Road Operations, LLC d/b/a Sanatoga Court, is a corporation, duly licensed, organized and existing under and by virtue of the laws of Pennsylvania, with offices and a place of business located at 227 Evergreen Road Pottstown, Pennsylvania 19464.
7. Defendant, 227 Evergreen Road Operations, LLC d/b/a Sanatoga Court, is engaged in the business of owning, operating and/or managing nursing homes, including Sanatoga Court, providing healthcare, medical services, therapy, rehabilitation, personal care, and custodial care to the public in Montgomery County, Pennsylvania; and was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania; and was the employer, supervisor and/or partner of all other Defendants noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful healthcare providers and practitioners of medicine; and which is personally, directly and vicariously liable, among other things for the acts and omissions of itself, its agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care provided to Mary Reagan and in the operation of the Facility.

8. At all times material hereto, Defendants individually and collectively owed duties, some of which were non-delegable, to the residents of the Facility, including to Mary Reagan, such duties being conferred by statute, existing at common law, and/or being voluntarily assumed by each Defendant.

9. At all times material hereto, Defendants individually and collectively, and/or through a joint venture, owned, operated, managed and controlled the Facility, and are individually and collectively engaged in the business of providing healthcare, medical services, therapy, rehabilitation, personal care, and custodial care services to the general public.

II. JURISDICTION AND VENUE

10. Jurisdiction and venue are proper in this Honorable Court in so far as Defendants regularly conduct business in Montgomery County, Pennsylvania and this cause of action arose, at least in part, in this county and/or this action is being brought in any county in which venue may be laid against any Defendant. *See Pa. R.C.P. 1006(a.1)* and 2179.

III. FACTUAL BACKGROUND

A. Conduct of the Defendants

11. Prior to her discharge on November 7, 2014, Mary Reagan was a resident of the Defendants' facility.¹

12. Mary Reagan was incapable of independently providing for all of her daily care and personal needs without reliable assistance. In exchange for financial consideration, she was admitted to Defendants' Facility to obtain such care and protection.

13. The Defendants, through advertising, marketing campaigns, promotional materials and information sheets, held out themselves and the Facility as being able to provide medical, personal care, rehabilitation, therapy and custodial care services to **elderly** and frail individuals, including Mary Reagan.

14. Defendants assumed responsibility for Mary Reagan's total healthcare, including the provision of nutrition, hydration, activities of daily living, medical, personal care, rehabilitation, and therapy.

15. Defendants further assumed responsibility to provide Mary Reagan with ordinary custodial and hygiene services.

16. Defendants exercised complete and total control over the healthcare of all residents of the Facility, including Mary Reagan.

17. Defendants were vertically integrated organizations that were controlled by their respective members, managers and/or boards of directors, who were responsible for the operation, planning, management and quality control of the Facility.

18. The control exercised over the Facility by the Defendants included, inter alia: cash management; cost control; setting staffing levels; budgeting; marketing; maintaining and increasing census; supervision of the Facility administrator and director of nursing; supervision and oversight of the staff; development and implementation of nursing staff in-services; development and implementation of all pertinent policy and procedures; monitoring customer satisfaction; performing mock surveys; risk management; corporate and regulatory compliance; quality of care assessment; licensure and certification; controlling accounts payable and receivable; development and implementation of reimbursement strategies; retaining contract management, physician, therapy and dietary services; dictating census and payor source quotas for admissions to the facility; and employing the Facility-level, regional and corporate staff who together operated the Facility.

19. Defendants, by and through their respective members, managers, board of directors and corporate officers, utilized survey results and various other reports, including quality indicators, to monitor the care being provided at their nursing homes, including the Facility.

20. Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources for staffing, supplies, and operations of their nursing homes including the Facility.

21. As a part of their duties and responsibilities, Defendants had an obligation to establish policies and procedures that addressed the needs of the residents of the Facility, including Mary Reagan, with respect to the recognition and/or treatment of medical conditions, such as those experienced by Mary Reagan, so as to ensure that timely and appropriate care was provided for such conditions whether within the Facility, or obtained from other medical providers.

22. Defendants, acting through their administrators, members, managers, board of directors and corporate officers, were responsible for supervising the standard of professional practice by the members of their staff at the Facility, including regarding the conduct at issue herein.

23. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper care, treatment and services were rendered to individuals having medical, nursing and/or custodial needs, such as those presented by Mary Reagan as set forth herein.

24. As a part of their duties and responsibilities, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of the medical, nursing and/or custodial needs of the residents, such as Mary Reagan, whether within the Facility, or obtained from other medical care providers.

25. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Mary Reagan.

26. In their efforts to maximize profits, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care to the residents.

27. Despite their knowledge of the likelihood of harm due to insufficient staffing levels, and despite complaints from staff members about insufficient staffing levels, Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet the needs of the Facility's residents, including Mary Reagan.

28. Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical care.

29. Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

30. Defendants knew, or should have known, that the acuity needs of the residents in their nursing homes increased and, therefore, the required resources also increased, including the need for additional nursing staff in order to meet the needs of the residents, including Mary Reagan.

31. Defendants failed to provide the resources necessary, including sufficient staff, to meet the needs of the residents, including Mary Reagan.

32. Defendants knowingly established staffing levels that created recklessly high resident to staff ratios, including high resident to nurse ratios and high resident to nurse aide ratios.

33. Defendants knowingly disregarded patient acuity levels while making staffing decisions, and also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatments.

34. The acts and omissions of the Defendants were motivated by a desire to increase the profits of the nursing homes they own, including the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Mary Reagan.

35. The actions of the Defendants were designed to increase reimbursements by governmental programs, which, upon information and belief, are the primary source of income for the Facility.

36. The aforementioned acts directly caused injury to Mary Reagan and were known by the Defendants.

37. Defendants knowingly sacrificed the quality of care received by all residents, including Mary Reagan, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Mary Reagan, as described herein, which included urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain.

38. At the time and place of the incidents hereinafter described, the Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of the Defendants.

39. At all times material hereto, the Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

40. The aforementioned incidents were caused solely and exclusively by reason of the negligence, carelessness and recklessness of the Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or failure to act on the part of Mary Reagan.

41. Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against them.

42. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial neglect and corporate negligence against the Defendants herein, as each of the entities named as Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

B. Injuries to Mary Reagan at the Facility

43. Plaintiff is not seeking damages for the portions of Mary Reagan's residency that fall outside of the applicable statute of limitations, as ultimately construed by this Court. However, Plaintiff asserts that, pursuant to Pa.R.E. §404(b), evidence of prior injuries and negligence of the Defendants which pre-dates the applicable damages period are still relevant for determining Defendants' knowledge, notice, habit, routine, pattern, practice, and absence of mistake.

44. Upon admission to the Facility and during the relevant time period, Mary Reagan was dependent upon the staff for her physical, mental, psycho-social, medical, nursing and custodial needs, requiring total assistance with activities of daily living, and she had various illnesses and conditions that required evaluation and treatment.

45. Mary Reagan was at risk for future illnesses and injuries, including, falls, infections, fractures and skin tears.

46. Defendants engaged in a pattern of care replete with harmful and injurious commissions, omissions and neglect as described herein.

47. Defendants deprived Mary Reagan of adequate care, treatment, food, water and medicine and caused her to suffer numerous illnesses and injuries, which included urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain.

48. The severity of the negligence inflicted upon Mary Reagan by the Defendants, accelerated the deterioration of her health and physical condition, and resulted in physical and emotional injuries that caused her severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

49. These injuries, as well as the conduct specified herein, caused Mary Reagan to suffer a loss of personal dignity, together with degradation, anguish and emotional trauma.

50. Mary Reagan was diagnosed with a urinary tract infection on December 13, 2013 51. On December 25, 2013 she was admitted to the hospital with hypertensive urgency, syncope and intractable vomiting.

52. Mrs. Reagan was admitted to the hospital on March 2, 2014 with a change in mental status, right middle lobe pneumonia and a possible urinary tract infection.

53. On April 23, 2014 Mrs. Reagan fell at the facility. She suffered a right hip fracture from the fall and was admitted to the hospital on the same day.

54. Mrs. Reagan suffered an unexplained skin tear to her left leg on October 17, 2014.

55. On 11/07/14 the staff attempted to administer medication to Mrs. Reagan. After these were administered Mrs. Reagan grabbed the hearing aid off of her nightstand and put it in her mouth. Mrs. Reagan became agitated when staff told her they were not pills and to take it out of her mouth. Mrs. Reagan ended up swallowing that hearing aid, as well as the second hearing aid, and had to be transferred to the emergency room. She did not return to the facility.

56. Defendants accepted Mary Reagan as a resident fully aware of her medical history and understood the level of nursing care she required.

57. Mary Reagan's chart includes and evidences missing and incomplete documentation.

58. The severity of the negligence inflicted upon Mary Reagan by the Defendants' mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training or supervision of the Facility's employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate care plan; failure to ensure the highest level of physical, mental and psychosocial functioning was attained; failure to provide proper medication; and failure to provide sufficient food and water, causing Mary Reagan to suffer, urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain.

59. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Mary Reagan was caused to suffer serious and permanent injuries as described herein, to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or the accelerated deterioration of her health, physical and mental condition, and a loss of the ordinary pleasures of life, a loss of dignity, humiliation, and more particularly, urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, poor hygiene, and severe pain, along with other body pain and damage, as well as anxiety, reaction and injury to her nerves and nervous system, some or all of which were permanent, together with other medical complications.

IV. COUNT ONE

Mary Reagan, by and through her Attorney-in-Fact, Patricia Cook v. Genesis Healthcare, LLC; 227 Evergreen Road Operations, LLC d/b/a Sanatoga Court

60. Plaintiff incorporates herein by reference the preceding paragraphs as though the same were more fully set forth at length herein.

61. Upon accepting Mary Reagan as a resident at the Facility, Defendants individually and jointly assumed direct, non-delegable duties to Mary Reagan to provide her with adequate and appropriate healthcare, as well as basic custodial and hygiene services, as set forth herein.

62. If Defendants were unable or unwilling to meet the needs of Mary Reagan, they had an affirmative duty and legal obligation to discharge Mary Reagan from the Facility.

63. Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Mary Reagan, were protected.

64. Defendants owed a non-delegable duty to provide adequate and appropriate medical, personal care, rehabilitation, therapy and custodial care services and supervision to Mary Reagan and other residents, such as reasonable caregivers would provide under similar circumstances.

65. Defendants each owed a non-delegable duty to the Facility's residents, including Mary Reagan, to hire, train, and supervise their employees so as to ensure that the Facility was operated and services were provided to Defendants' residents in a safe and reasonable manner.

66. Defendants, by and through their agents, employees, and/or servants each owed a duty of care to Mary Reagan to exercise the appropriate skill and care of licensed physicians, nurses, nurse aides, directors of nursing, and/or nursing home administrators.

67. Defendants each owed a duty and responsibility to furnish Mary Reagan with appropriate and competent medical, personal care, rehabilitation, therapy and custodial care services.

68. Defendants each owed and failed to fulfill the following duties to Mary Reagan: the duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; to select, train and retain only competent staff; to oversee and supervise all persons who practiced nursing, medical and/or personal care within the Facility; to staff the facility with personnel sufficient both in number and in training to provide the care and services required by the Facility's residents; to ensure that the Facility's residents were treated with dignity and respect; to maintain sufficient funding, staffing and resources for the Facility so that its residents were provided with the care and services they required; to formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents, and to update the same as required by the applicable standards of care; to take adequate measures to rectify known problems in the delivery of hygiene and custodial services as well as in the delivery of medical, personal care, rehabilitation, and therapy care; to warn residents, their family and/or representatives of the

Defendants' inability to provide adequate care and services when Defendants knew or should have known of their deficiencies in providing such care and services; to refuse admission to residents to whom they knew or should have known they could not provide reasonable care and services; to not admit more residents than to whom Defendants could safely provide adequate care and services; to keep the Facility's residents free from physical and mental **abuse** and neglect; to provide a safe, decent and clean living environment for the Facility's residents; and to assist the residents in retaining and exercising all of the Constitutional, civil and legal rights to which they are entitled as citizens of the United States and of the Commonwealth of Pennsylvania.

69. In addition to the direct acts and omissions of the corporate Defendants, the Defendants also acted through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

70. Defendants each authored, produced and/or received frequent reports detailing the number and types of injuries, illnesses, and infections sustained by Mary Reagan and the residents in the Facility.

71. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Mary Reagan, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

72. The Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Mary Reagan, as they were placed on actual and/or constructive notice of said problems, through Defendants' own reports and through governmental/state surveys.

73. Defendants, as the corporate members, managers, owners, and/or directors of the Facility, breached their duties and were, therefore, negligent, careless and reckless in their obligations to Mary Reagan.

74. The corporate conduct of the Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Mary Reagan.

75. The breaches of duties, general negligence, professional negligence, corporate negligence, carelessness and recklessness of the Defendants, individually, vicariously and/or acting by and through their officers, directors, members, managers, physicians, physicians' assistants, nurses, nurses aides, regional and corporate staff who examined, treated and/or communicated the condition of Mary Reagan, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of the Defendants were exhibited in the following acts and omissions in the care and treatment of Mary Reagan:

- a. failure to hire, utilize, train and retain sufficient staff to meet the residents' needs, including those of Mary Reagan, which caused Mary Reagan to suffer urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- b. failure to provide adequate hygiene to prevent infection, to keep Mary Reagan clean and to preserve her dignity;
- c. failure to turn and reposition Mary Reagan at least once every two hours, and more often if and when required;
- d. failure to consistently provide Mary Reagan with adequate pressure-relieving assistive devices, including special mattresses, beds, and seat cushions;
- e. failure to keep Mary Reagan free from falls and accidents;

- f. failure to provide Mary Reagan with adequate supervision and assistive devices to prevent falls and accidents;
- g. failure to develop, implement and administer to Mary Reagan appropriate infection control policies, procedures and techniques;
- h. failure to ensure that Mary Reagan did not needlessly suffer from preventable and treatable pain;
- i. failure to ensure that Mary Reagan received her physician-ordered medications in accordance with her physicians' orders;
- j. failure to ensure that Mary Reagan received her physician-ordered treatments in accordance with her physicians' orders;
- k. failure to timely and appropriately notify Mary Reagan's physician(s) and consulting specialists when she experienced significant changes in her condition, contributing to Mary Reagan's injuries and illnesses, including urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- l. failure to obtain new or modified physician orders when Mary Reagan's changes in condition required the same;
- m. failure to timely and appropriately notify Mary Reagan's family and personal representatives when she experienced significant changes in her condition, contributing to Mary Reagan's injuries and illnesses, including urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- n. failure to provide adequate and appropriate nutrition and hydration to prevent Mary Reagan from suffering from weight loss and malnutrition;
- o. failure to accurately and consistently document Mary Reagan's needs and the care and services provided to her in response to such needs;
- p. failure to prevent fraudulent documentation and allowing the Defendants' staff to chart that they provided care to Mary Reagan on non-existent days, on days when the charting staff member was not actually at work, and/or on days when Mary Reagan was not even in Defendants' Facility;
- q. failure to ensure that Mary Reagan did not develop serious and permanent injuries to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or accelerated the deterioration of her health, physical and mental condition, and more particularly, when she suffered urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- r. failure to respond in a timely manner with appropriate medical, nursing and custodial care when Mary Reagan was injured, including when she experienced urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain, when Defendants knew or should have known that Mary Reagan was at risk for the same;
- s. failure to ensure that each resident, including Mary Reagan, received, and that the Facility provided, the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;
- t. failure to ensure that the Defendants used the results of its assessments to develop, review and revise Mary Reagan's comprehensive plan of care;

- u. failure to develop, implement and administer to Mary Reagan an appropriate, comprehensive and individualized care plan that included measurable objectives and timetables to meet her medical, nursing, custodial, mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that were to be furnished to attain or maintain her highest practicable physical, mental, and psychosocial well-being, causing Mary Reagan to suffer urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- v. failure to ensure that the Facility had sufficient nursing staff to provide nursing and custodial care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, including Mary Reagan, as determined by the residents' assessments and individual plans of care, and the failure to provide services by sufficient number of each of the required types of personnel on a twenty-four hour basis to provide nursing care to all residents, including Mary Reagan, in accordance with the residents' care plans;
- w. failure to administer the Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- x. failure to ensure that the services provided or arranged by the Facility were provided by qualified persons in accordance with each resident's written plan of care;
- y. failure to oversee and supervise all persons who practiced nursing and/or personal care in the Facility who failed to provide adequate and appropriate health care to prevent Mary Reagan from suffering from urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- z. failure to formulate, adopt and enforce adequate rules, procedures and policies to prevent Mary Reagan from suffering urinary tract infections, right middle lobe pneumonia, a right hip fracture, a skin tear to the right leg, ingestion of hearing aids, poor hygiene, and severe pain;
- aa. failure to refer Mary Reagan to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated her condition;
- bb. failure to provide Mary Reagan with the necessary care and services to allow her to attain or maintain the highest practicable physical, mental and psychological well-being;
- cc. failure to implement a budget that properly funded the Facility and allowed the Facility to provide adequate and appropriate healthcare to Mary Reagan, including adequate staff and supplies;
- dd. grossly understaffing the Facility;
- ee. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with Mary Reagan's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;
- ff. failure to maintain compliance with the governmental regulations to which Defendants' delivery of care is compared as part of the annual and complaint state survey process performed by the Pennsylvania Department of Health; and,
- gg. in committing the acts and omissions herein, acting in a grossly negligent manner, with reckless indifference to the rights and safety of Mary Reagan.

76. Upon information and belief, Defendants' owners, officers, directors, partners, members and managers were made aware of governmental/state survey results and placed on notice of the status of their nursing homes, including the Facility.

77. Upon information and belief, the Defendants, including their owners, officers, directors, partners, members, managers and employees, knew that they had been cited by governmental units, including the Department of Public Welfare, regarding Sanatoga Court on June 7, 2013 for failure to have a fire safe area for evacuation of residents during a fire drill; on March 28, 2014 for failure to maintain an annual fire drill conducted by a fire safety expert, failure to properly store prescription medications and OTC medications, failure to implement procedures for having medication on site when prescribed to a resident, failure to document and notify the prescriber when a resident refuses to take a prescribed medication, failure to follow the directions of the prescriber, and failure to document that the resident and the resident's designated person have not objected to the resident's admission or transfer to the secured dementia care unit; on July 30, 2014 for failure to develop and implement procedures for the safe storage, access, security, distribution, and use of medications, and failure to follow directions of the prescriber, on November 25 and 26, 2014 for failure to immediately report suspected **abuse** of a resident served in the home in accordance with the Older Adults Protective Services Act and [6 Pa. Code Sections 15.21-15.27](#); and on March 24, 2015 for failure to have contracts signed by the resident and the payer, if different from the resident, and cosigned by the resident's designated person, if any, failure to have a statement signed by the resident and the resident's designated person acknowledging receipt of a copy of the resident rights and complaint procedures, failure to properly destroy medications that are discontinued, expired, or for residents who are no longer served at the home, failure to properly and timely document and record medication administration to residents at the time the medication, failure to follow the directions of the prescriber, and failure to have documentation that the resident and resident's designated person have not objected to the resident's admission or transfer to the secured dementia care unit

78. As a direct and proximate result of the Defendants' acts and omissions, and their breach of the duty of care, negligence, carelessness and recklessness, Mary Reagan suffered (a) severe permanent physical injuries resulting in pain, suffering, disfigurement, (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, and (d) expense of otherwise unnecessary hospitalizations and medical care.

79. In causing the aforementioned injuries, the Defendants knew, or should have known, that Mary Reagan would suffer such harm.

80. At all times pertinent hereto, there was in full force and effect [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person," which set forth penal consequences for neglect of a care-dependent person.

81. [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person" expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be **abused** or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such **abuse** or neglect causes injury, either physical or mental, then such conduct is actionable.

82. At all times pertinent hereto, Mary Reagan was a care dependent resident of the Defendants' Facility, Sanatoga Court, and thus fell within the class of persons [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person" was intended to protect, thus entitling Plaintiff to adopt [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person" as the standard of care for measuring the Defendants' conduct.

83. Additionally, [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person" is directed, at least in part, to obviate the specific kind of harm which Mary Reagan sustained.

84. The Defendants, in accepting the responsibility for caring for Mary Reagan as aforesaid, were negligent "per se" and violated [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person" in that they:

a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Mary Reagan for whom they were responsible to provide care as specifically set forth in this Complaint;

85. At all times pertinent hereto, there was in full force and effect 35 P.S. §10225.101, *et seq.*, “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for **abuse** of a care-dependent person.

86. 35 P.S. §10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of **abuse**, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from **abuse**, neglect, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of **abuse**, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

87. At all times pertinent hereto, Mary Reagan was an older person who was a resident of Defendants' Facility, Sanatoga Court, who lacked the capacity to protect herself and thus fell within the class of persons 35 P.S. §10225.101, *et seq.* was intended to protect, thus entitling Plaintiff to adopt 35 P.S. §10225.101, *et seq.* as the standard of care for measuring the Defendants' conduct.

88. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Mary Reagan sustained.

89. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the Defendants, in accepting the responsibility for caring for Mary Reagan as aforesaid, were negligent “per se” and violated 35 P.S. §10225.101, *et seq.* in that they had reasonable cause to suspect that Mary Reagan was the victim of **abuse** or neglect and failed to report said **abuse** and neglect to the appropriate agency and law enforcement officials.

90. As a direct result of the aforesaid negligence “per se” of the Defendants, Mary Reagan was caused to sustain serious personal injuries and damages as aforesaid.

91. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Mary Reagan.

92. The conduct of the Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Mary Reagan, by and through her Attorney-in-Fact, Patricia Cook, respectfully requests that judgment be entered in her favor, and against Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00) whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

Respectfully Submitted,

WILKES & McHUGH, P.A.

Dated: 6/16/15

BY:

Matthew T. Stone, Esquire

Attorneys for Plaintiff, Mary Reagan, by and through her Attorney-in-Fact, Patricia Cook

Footnotes

- 1 Plaintiff is not bringing any claims pursuant to [62 P.S. §1407\(c\)](#) and nothing in the Complaint in Civil Action should be interpreted as an attempt to recover damages pursuant to that Statute.

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