

2013 WL 3766781 (Pa.Com.Pl.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Lancaster County

George Eli ROBERTS, by and through his Attorney-In-Fact, Joseph Butler, Plaintiff,

v.

GGNSC LANCASTER LP, d/b/a Golden Livingcenter-Lancaster; GGNSC Lancaster GP, LLC;
GNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings,
LLC; GGNSC Administrative Services, LLC; and GGNSC Clinical Services, LLC., Defendants.

No. CI-13-01633.
July 10, 2013.

(Medical Professional Liability Action)

Complaint in Civil Action

Wilkes & McHugh, P.A., [Ian T. Norris](#), Esquire, Attorney Identification No. 207566, 1601 Cherry Street, Suite 1300, Philadelphia, PA 19102, Tel No. (215) 972-0811, Email: inorris@wilkesmchugh.com, This is not An Arbitration Case; An Assessment of Damages is Required; Jury Trial Demanded, Attorney for Plaintiff, [George Eli Roberts](#) by and through his Attorney-In-Fact, Joseph Butler.

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

THE LANCASTER COUNTY BAR ASSOCIATION

28 East Orange Street

Lancaster, PA 17602

Phone: 717-393-0737

Plaintiff, George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler, by and through counsel, Wilkes & McHugh, P.A., files the within Complaint in Civil Action as follows:

I. PARTIES

A. Plaintiff

1. George Roberts is an adult individual and was a resident of Golden LivingCenter - Lancaster, located at 425 North Duke Street, Lancaster, PA 17602, beginning in April 1, 2005, and has remained there since, with the exception of hospitalizations.
2. Joseph Butler is the step-grandson, and Power of Attorney, of George Roberts and an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 320 S. Queen St., Lancaster, PA 17603.
3. This action was commenced by Writ of Summons on February 21, 2013.

B. Defendants, GGNSC Lancaster LP, d/b/a Golden LivingCenter - Lancaster; GGNSC Lancaster GP, LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; GGNSC Administrative Services, LLC, and GGNSC Clinical Services, LLC (“Defendants”)

4. Defendant, GGNSC Lancaster LP, d/b/a Golden Living Center - Lancaster, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 425 North Duke Street, Lancaster, PA 17602.
5. Defendant, GGNSC Lancaster LP, d/b/a Golden Living Center - Lancaster, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.
6. Defendant, GGNSC Lancaster GP, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.
7. Defendant, GGNSC Lancaster GP, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.
8. Defendant, GGNSC Holdings, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

9. Defendant, GGNSC Holdings, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.

10. Defendant, Golden Gate National Senior Care, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

11. Defendant, Golden Gate National Senior Care, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.

12. Defendant, GGNSC Equity Holdings, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

13. Defendant, GGNSC Equity Holdings, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.

14. Defendant, GGNSC Administrative Services, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

15. Defendant, GGNSC Administrative Services, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the

acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.

16. Defendant, GGNSC Clinical Services, LLC, is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 7160 Dallas Parkway, Suite 400, Plano, Texas 75024.

17. Defendant, GGNSC Clinical Services, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including Golden LivingCenter - Lancaster (“the Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster 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 Golden Living 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 long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Golden Living Defendants, all of whom played a role in the care of George Roberts.

18. Upon present information and belief, at all times material hereto, Defendants individually and collectively, and/or through a joint venture, owned, operated, licensed and/or managed the Facility, and are individually and collectively engaged in the business of providing nursing care and assisted living/personal care services to the general public, which services are akin to the services that hospitals provide.

II. JURISDICTION AND VENUE

19. Jurisdiction and venue are proper in this Honorable Court in Lancaster County, Pennsylvania, insofar as Defendants regularly conduct business in this county, the cause of action arose in this county and/or the action is being brought in any county which venue may be laid against any defendant. *See* Pa.R.C.P. 1006 and 2179.

III. FACTUAL BACKGROUND

A. Conduct of the Defendants

20. On April 1, 2005, George Roberts was admitted to the care of the Facility.¹

21. During the relevant residency period, George Roberts was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for monies, he was admitted to Defendants' Facility to obtain such care and protection.

22. The Defendants, through advertising, promotional materials and information sheets, held out themselves and the Facility, as being able to provide skilled nursing and personal care to sick, elderly and frail individuals, including George Roberts.

23. At all times material hereto, the Defendants held themselves out as capable of being able to provide the requisite care, including total health care, to the sick, elderly, and frail individuals, like George Roberts, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

24. At the time of his admission, the Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of George Roberts, and promised that they would adequately care for his needs.

25. Defendants exercised complete and total control over the health care of all residents of the Facility, such as George Roberts.
26. Upon information and belief, at all times hereto, Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management, and quality control of the Facility.
27. At all times material hereto, the control exercised by Defendants included, inter alia: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policy and procedural manuals used by the Facility.
28. Defendants also exercised control over reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax, and accounting issues.
29. Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their personal care homes/residential health care/skilled nursing facilities, including the Facility.
30. Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources to their Facility.
31. 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, such as George Roberts, with respect to the recognition and/or treatment of medical and/or nursing conditions, such as those experienced by George Roberts, so as to ensure that timely and appropriate care would be provided for such conditions whether within the Facility, or obtained from other medical providers.
32. Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standard of professional practice by members of their staff at the Facility, and to oversee their conduct in the matters set forth herein.
33. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper treatment was rendered to individuals having medical and nursing problems, such as those presented by George Roberts as set forth herein.
34. 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 medical conditions suffered by residents, such as George Roberts, whether within the Facility, or obtained from other medical care providers.
35. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits and/or excess revenues at the expense of the care required to be provided to its residents, including George Roberts.
36. In their effort to maximize profits and/or excess revenues, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care and supervision to the residents, which demonstrated a failure to comply with the applicable regulations and standards for personal care homes/skilled nursing facilities.
37. 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 George Roberts's needs.
38. Over the past several years, and at all times material hereto, Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care.

39. 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.

40. Defendants knew, or should have known, that the acuity needs of the residents in their Facility increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the residents.

41. Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including George Roberts.

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

43. 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 treatment.

44. The acts and omissions of Defendants were motivated by a desire to increase profits and/or excess revenues of 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 George Roberts.

45. The actions of Defendants were designed to increase reimbursement by governmental programs.

46. Defendants' financial motives were evidenced by the fact that George Roberts was not transferred to the appropriate medical facility and/or facility with the appropriate level of health care when Defendants knew, or should have known, that they could not meet needs of George Roberts.

47. The aforementioned acts directly caused injury to George Roberts and were known by Defendants.

48. Defendants knowingly sacrificed the quality of care received by all residents, including George Roberts, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by George Roberts, as described herein, which included developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain.

49. At the time and place of the incidents herein 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 Defendants.

50. At all times material hereto, 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 Defendants herein.

51. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of George Roberts.

52. 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 Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

53. 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 of George Roberts at the Facility

54. At the time of his admission to the Facility, George Roberts had a past medical history including paraplegia, peripheral vascular disease, anemia, esophageal reflux, Suprapubic catheter and colostomy.

55. During the relevant admission period at the Facility, George Roberts was dependent upon the staff for his mental, physical and medical needs, requiring assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

56. Defendants knew or should have known that George Roberts was at risk for developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain.

57. The Defendants deprived George Roberts of adequate care, treatment, food, water and medicine and caused him to suffer numerous illnesses and injuries, which upon information and belief, included developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain.

58. The severity of the negligence inflicted upon George Roberts by the Defendants accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

59. These injuries, as well as the conduct specified herein, caused George Roberts, to suffer a loss of personal dignity, together with degradation, anguish, emotional trauma, pain and suffering.

60. During his admission, George Roberts required assistance in care with his activities of daily living.

61. During the relevant residency period, he suffered the following:

Skin Integrity

62. On 1/07/11, Mr. Roberts was noted to have right thigh wound, which later worsened to Stage III and divided by 02/25/11. Additionally, he was noted with a Stage II sacral wound.

63. On 4/22/11, he was still documented with a stage III right thigh wound and a Stage II sacral wound.

64. On 6/24/11, his sacral pressure ulcer was still a stage II.

65. On 7/22/11, he is documented with three furuncles noted to his left axilla area.

66. On 8/12/11, new skin breakdown was noted to his right thigh.

67. On 10/21/11, the underside of his scrotum was noted to be open.

68. 11/10/11, he is documented with a stage II perineal wound and a left hip wound, which worsened to a Stage II by 11/17/11.

69. On 3/30/12, he was documented with a right hip wound, described as a stage II.

70. On 5/22/12, he sustained a skin tear to his right shin, measuring 7 x 0.3 cm, after he was being transferred on the mechanical lift

71. By 8/24/12, his right hip wound worsened, became infected, and was foul smelling.

Infections

72. On 11/22/10, he was positive for MRSA.

73. On 1/20/11, he developed a urinary tract infection.

74. On 7/22/11, Mr. Roberts had three furuncles in left axilla area, and required antibiotics.

75. On 7/19/12, he had developed another urinary tract infection.

76. On 8/29/12, he was given Bactrim for his infected right hip wound.

77. On 9/13/12, his worsening gluteal wounds were treated with Bactrim DS.

78. On 1/23/13, he was on isolation for MRSA of wounds.

79. By 1/25/13, he developed another urinary tract infection.

80. 2/4/13, Mr. Roberts was still on Bactrim DS for MRSA in his right hip wound and for a urinary tract infection.

81. The Facility accepted George Roberts as a resident fully aware of his medical history and understood the level of nursing care required to prevent the occurrence of his serious injuries.

82. George Roberts's chart includes and evidences missing and incomplete documentation, including Activities of Daily Living sheets, medication administration records, treatment administration records, and controlled medication utilization record.

83. The severity of the negligence inflicted upon George Roberts by the Defendants consisted of mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training of the Facility employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate therapeutic care plan; failure to provide proper medication; and failure to provide sufficient food and water to preclude developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain; and failure to ensure that the highest level of physical, mental and psychosocial functioning was attained.

84. As a result of the negligence, carelessness and recklessness of the Defendants herein described, George Roberts was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, and other body pain and damage, and anxiety reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

COUNT ONE

George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler

GGNSC Lancaster LP, d/b/a Golden LivingCenter - Lancaster; GGNSC Lancaste GP, LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; GGNSC Administrative Services, LLC, and GGNSC Clinical Services, LLC

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

86. At all times material hereto, Defendants were acting 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.

87. At all times material hereto, Defendants had the ultimate responsibility of ensuring that the rights of the residents, including George Roberts, were protected.

88. At all times material hereto, Defendants owed a non-delegable duty to provide adequate and appropriate custodial care and supervision to George Roberts, and other residents, such as reasonable caregivers would provide under similar circumstances.

89. At all times material hereto, Defendants owed a non-delegable duty to George Roberts, and other residents to hire, train, and supervise employees, so as to deliver healthcare and services to residents in a safe and reasonable manner.

90. At all times material hereto, Defendants, by and through their agents, employees, and/or servants, owed a duty of care to George Roberts to exercise the appropriate skill and care of licensed physicians, nurses, directors of nursing, and/or nursing home administrators.

91. At all times material hereto, Defendants owed a duty and responsibility to furnish George Roberts with appropriate and competent nursing and/or total healthcare.

92. 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 George Roberts, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

93. Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of George Roberts, as they were placed on actual and/or constructive notice of said problems.

94. Defendants, as the corporate owners, board members and/or managers of the Facility, breached their duty and were, therefore, negligent, careless and reckless in their obligations to George Roberts.

95. The corporate conduct of 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 George Roberts.

96. At all times material hereto, Defendants owed and failed to fulfill the following duties to George Roberts: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and supervise all persons who practiced nursing and/or skilled healthcare within the Facility; and, formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

97. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of Defendants individually and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff who examined, treated and/or communicated the condition of George Roberts, 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 Defendants, consisted of the following acts and omissions in the care and treatment of George Roberts:

a. failure to hire appropriately trained staff and/or train, select and retain competent staff, and knowingly allowing and/or encouraging unskilled and untrained individuals to care for George Roberts who failed to prevent dehydration failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, and failed to provide adequate assessments of George Roberts following a change in condition, increasing his risk of harm;

b. failure to prevent and engage in incomplete, inconsistent and/or fraudulent documentation by failing to consistently complete Activities of Daily Living sheets, failing to document administration of medications and failing to update MDS with significant changes in conditions, and failing to consistently document Treatment Record;

c. failure to provide adequate pain management;

d. failure to ensure that George Roberts did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, when he experienced developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, when the Defendants knew or should have known that he was at risk for the same;

e. failure to respond in a timely manner with appropriate medical care when George Roberts was injured, including when he experienced developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, when Defendants knew or should have known that he was at risk for the same;

f. failure to provide adequate and appropriate health care by failing to keep George Roberts free from infection, failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate hygiene, failing to provide adequate hydration, failing to provide appropriate treatment and services to prevent developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, and failing to administer ordered medications and treatments;

g. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well-being;

h. failure to ensure that each resident 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;

i. failure to ensure that the Facility used the results of the assessment to develop, review and revise the resident's comprehensive plan of care, developing a comprehensive care plan for each resident that included measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;

- j. failure to ensure that the Facility had sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident assessments and individual plans of care, providing 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 in accordance with resident care plans;
- k. 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;
- l. failure to develop and implement written policies and procedures that prohibit mistreatment, neglect, and **abuse** of residents and misappropriation of the resident's property;
- m. 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;
- n. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to prevent developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain;
- o. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for residents by failing to: provide adequate and appropriate health care to prevent developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain, and provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent developing and/or worsening of multiple pressure ulcers, MRSA, urinary tract infections, fall, poor hygiene, and severe pain;
- p. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change in the condition of George Roberts;
- q. failure to refer George Roberts to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated George Roberts's condition due to failure to notify treating physicians and follow up on physicians instructions;
- r. failure to provide George Roberts with the necessary care and services to allow him to attain or maintain the highest practicable physical, mental and psychological well-being;
- s. failure to ensure that the Facility was properly funded;
- t. failure to implement a budget that would allow the Facility to provide adequate and appropriate healthcare to George Roberts including adequate staff and supplies;
- u. grossly understaffing the Facility;
- v. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with George Roberts'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;
- w. failure to evaluate the quality of resident care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- x. failure to maintain open lines of communication with the governing body, department heads, Facility staff and its residents to ensure that resources were properly allocated and that resident care was maintained at a high level;

- y. failure to maintain compliance with governmental regulations;
- z. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality resident care;
- aa. failure to coordinate training programs to improve employee skills and to enhance employee performance;
- bb. failure to develop a budget with an objective of the delivery of quality care; and,
- cc. acting in a grossly negligent manner, with reckless indifference to the rights and safety of George Roberts.

99. Upon information and belief, the corporate officers of the Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at their Facility.

100. Upon information and belief, the Defendants were aware that there were numerous problems at the Facility, and that they had been cited by the Pennsylvania Department of Health for failures at the Facility.

101. Upon information and belief, the Defendants were aware that they had been cited by governmental units regarding additional failures at the Facility on: 2/8/08 for failing to follow physician's orders, failing to maintain dignity, and failing to document regular assessments of wound status and response to treatment; 1/23/09 for failing to immediately report an allegation of **abuse** to the local aging agency; 2/27/09 failing to position call lights within reach of residents, failing to follow physician's orders for medication administration and/or wound treatments, failing to implement infection control measures to prevent spread of infection, failing to meet professional standards of quality regarding administration of medications for two residents, failing to document medication administration, failing to implement the plan of care to adequately address the need for an alternating mattress to maintain skin integrity, failing to investigate an allegation of physical **abuse**, and failing to sign and certify that an assessment was completed on 4/23/09 for failing to follow physician's orders, and failing to implement infection control measures to prevent the spread of infection and disease; on 8/26/09 for failing to provide the supervision to prevent the elopement of on resident assessed at risk for wandering; and on 2/24/10 for failing to report an allegation of neglect to the state survey agency, and failing to update care plans; on 3/9/10, failure to maintain effective housekeeping services in order to maintain a sanitary environment for residents; 12/3/10, failure to assure proper management and assessment of a resident; on 3/7/11, failure to follow physician's orders for bowel parameters, failure to ensure adequate preventive measures were in place to prevent the development of pressure ulcers, failure to ensure fall prevention devices were in place, failure to ensure adequately complete neurological checks following a fall and ensure adequate supervision for a resident with feeding difficulty; failure to meet professional standards of quality regarding administration of medications; and on 3/14/11, failure to report to the State Department of Aging an allegation of neglect as required in accordance with the Older Adults Protective Services Act.

102. Upon information and belief, the corporate officers of the Defendants had been made aware in the past that the Facility had been cited for the failures mentioned in the preceding paragraph.

103. Defendants knew that the violations described in the paragraphs above were not isolated events and were, at times, described as repeat deficiencies, which placed them on notice of failures to provide proper care and treatment to residents, including George Roberts.

104. As a direct and proximate result of the Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, George Roberts suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity,

(c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility, and (e) aggravation of his pre-existing medical conditions.

105. In causing the aforementioned injuries, Defendants knew, or should have known, that George Roberts, would suffer such harm.

106. The conduct of Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of George Roberts.

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

WHEREFORE, Plaintiff, George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler, respectfully requests that judgment be entered in his favor, and against the 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.

COUNT TWO

NEGLIGENCE *PER SE* FOR VIOLATIONS OF NEGLECT OF A CARE-DEPENDENT PERSON, 18 Pa.C.S.A. § 2713

George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler v. GGNSC Lancaster LP, d/b/a Golden LivingCenter - Lancaster; GGNSC Lancaster GP, LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; GGNSC Administrative Services, LLC, and GGNSC Clinical Services, LLC

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

109. 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.

110. 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.

111. At all times pertinent hereto, George Roberts was a care dependent resident of the Defendants' Facility, 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.

112. 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 George Roberts sustained.

113. The Defendants, in accepting the responsibility for caring for George Roberts 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 George Roberts for whom they were responsible to provide care as specifically set forth in this Complaint;

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

115. The conduct of the Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler, respectfully requests that judgment be entered in his favor, and against the 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.

COUNT THREE

NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. § 10225.101, et seq.

George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler v. GGNSC Lancaster LP, d/b/a Golden LivingCenter - Lancaster; GGNSC Lancaster GP, LLC; GGNSC Holdings, LLC; Golden Gate National Senior Care, LLC; GGNSC Equity Holdings, LLC; GGNSC Administrative Services, LLC, and GGNSC Clinical Services, LLC

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

117. 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.

118. 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.

119. At all times pertinent hereto, George Roberts was an older person who was a resident of Defendants' Facility who lacked the capacity to protect himself 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.

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

121. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the Defendants, in accepting the responsibility for caring for George Roberts as aforesaid, were negligent “per se” and violated 35 P.S. § 10225.101,

et seq. in that they had reasonable cause to suspect that George Roberts was the victim of **abuse** or neglect and failed to report said **abuse** and neglect to the appropriate agency and law enforcement officials.

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

123. The conduct of Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, George Eli Roberts, by and through his Attorney-in-Fact, Joseph Butler, respectfully requests that judgment be entered in his favor, and against the 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.

Ian T. Norris, Esquire

Attorney for Plaintiff

Date: 7-10-13

Footnotes

- 1 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.