

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

JANE DOE INDIVIDUALLY)
and on BEHALF OF)
THE CLASS OF PERSONS)
DESIGNATED BY §537.080,)
)
Plaintiff,)
)
vs.)
)
DEFENDANT COMPANY,)
)
Defendant)

Case Number *****

FIRST AMENDED PETITION FOR DAMAGES

COME NOW, Plaintiffs, by and through their attorneys of record, O'Reilly, Jensen, & Preston, LLC, and for their cause of action against Defendant state, allege, and otherwise aver as follows:

GENERAL FACTS APPLICABLE TO ALL COUNTS

1. Jane Doe and her siblings are the natural sons and daughter of Mother.
2. On or about March 16, 2007, Mother, who at the time was approximately 87, was accepted and admitted as a resident and patient of Defendant in Springfield, Missouri.
3. Mother was hospitalized on or about March 5, 2009, and died on March 7, 2009.
4. Defendant is a Delaware Limited Liability Company registered in the State of Missouri as a foreign entity and doing business under the fictitious registration of facility.
5. Defendant Insurance company (hereinafter referred to as "Insurance") is a Missouri corporation authorized to do business in the State of Missouri.
6. At all times relevant herein, Defendants (collectively referred to as "the corporate Defendants") jointly operated, managed, and controlled the business of a skilled nursing facility known as Facility located in Springfield, Greene County, Missouri.

7. In the alternative and upon information and belief, Defendant Insurance, at all times relevant herein, controlled and/or owned part or all of Defendant.

8. Defendant Nurse 1 is an individual, who can be served as referenced above, and who upon information and belief, was the licensed practical nurse (LPN) responsible for the care and supervision of Mother on the date of the choking incident referenced herein.

9. Defendant Nurse 2 is an individual, who can be served as referenced above, and who upon information and belief was the registered dietician and/or dietary manager responsible for the dietary care and supervision of Mother on the date of the choking incident referenced herein.

10. Venue and jurisdiction are proper in this Court in that corporate Defendants do business and have an office located at *****, Greene County, Missouri, the actions and omissions which give rise to this cause of action occurred in Greene County, Missouri, and the amount in controversy exceeds Twenty Five Thousand Dollars (\$25,000.00).

COUNT I - WRONGFUL DEATH and NEGLIGENCE

COME NOW Plaintiffs, and for their cause of action against the corporate Defendants, state as follows:

11. Plaintiffs hereby incorporate by reference each and every previously pled paragraph, as if set forth fully herein.

12. Plaintiffs are the sons and daughter of Mother, and are in such class of individuals authorized to pursue a wrongful death claim against the corporate Defendants.

13. The corporate Defendants, through the operation of public skilled nursing facility, held Facility out as skilled in the performance of nursing and other medical support services and

as a resident care facility being properly equipped and staffed to care for residents in need of nursing, medical support, care, and attention.

14. The corporate Defendants and their agents, servants, and employees had a duty to possess and use that degree of skill, care, and learning ordinarily used in the same or similar circumstances by members of their profession in the treatment of Mother.

15. On reliance of these apparent skills the Plaintiffs and the deceased Mother employed and engaged the services of the corporate Defendants' facility to support Mother with a variety of medical conditions that required treatments, medications, monitoring, supervision, and dietary control as a resident suffering from Parkinson's disease, neuropathies, dysphasia, dyspnea, arthritis, mini-strokes, high blood pressure, hypothyroidism, chronic anemia and reflux.

16. Mother over time had various nutritional requirements and dietary needs and given her condition on or about June 11, 2008, she was prescribed a mechanical soft food diet by Doctor.

17. By virtue of the acceptance of Mother by the corporate Defendants as a resident, the corporate Defendants owed decedent a duty to furnish her the knowledge, skill, and care that is used in similar cases and circumstances by resident care facilities having similar nursing and medical standards.

18. Despite her prescribed dietary requirements, on March 5, 2009, Mother was fed a flour tortilla with meat wrapped inside at lunch. The food choked her and the department head nurse gave medical attention, as the registered nurse was off the premises. Mother received emergency paramedic attention while being immediately transported to Cox Medical Center South. Upon arrival at Cox medical Center "a piece of taco which was a large amount with some cheese around it," was removed from her throat, as stated in the Death Summary of Mother,

attached hereto as Exhibit “A,” and incorporated by reference. Mother was in acute respiratory failure secondary to choking and died within 48 hours on March 7, 2009.

19. The agents, servants, and employees of the corporate Defendants during the course of their treatment of Mother, breached their duty and were guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standards of due care, skill, and practice ordinarily exercised by members of their profession under the same or similar circumstances, to-wit:

- a. Failed to consistently monitor and assess Mother’ condition;
- b. Failed to properly implement and execute doctor’s orders of mechanical soft diet for Mother;
- c. Failed to properly prepare the food according to prescribed diet for Mother;
- d. Failed to supervise, monitor, and assess the actual food consumption by Mother;
- e. Failed to place Mother on aspiration precautions appropriate for her condition and history;
- f. Failed to consistently check and appropriately monitor Mother during meal times to ensure her safety;
- g. Failed to prevent choking while caring for Mother;
- h. Failed to carry out the instructions of Mother’ physician;
- i. Failed to properly monitor and supervise the corporate Defendants’ employees so as to prevent Mother from choking;
- j. Failed to properly train and supervise the agents, employees, and servants of the corporate Defendants who were responsible for the treatment and care of Mother; and

- k. Failed to provide proper hydration and nutrition to Mother.
20. The following state regulations concerning the care and treatment of Mother, establish a standard of care for her treatment while living at Defendants facility:
- a. 19 CSR 30-86.047(10) The [skilled nursing] facility shall not admit or continue to care for residents whose needs cannot be met. If necessary services cannot be obtained in or by the facility, the resident shall be promptly referred to appropriate outside resources or discharged from the facility.
 - b. 19 CSR 30-86.047(6) Residents shall receive proper care as defined in the individualized service plan.
 - c. 19 CSR 30-86.047(61)(A) The facility shall have an adequate number and type of personnel for the proper care of residents, the residents social well being, protective oversight of residents and upkeep of the facility.
 - d. 19 CSR 30-86.052(1) that each resident [of a skilled nursing facility] shall be served food prepared and served under safe, sanitary conditions that is prepared consistent with the preferences of the resident and in accordance with attending physicians orders. The nutritional needs of the residents shall be met. Balanced nutritious meals using a variety of foods shall be served. Consideration shall be given to the food habits, preferences, medical needs and physical abilities of the residents.
 - e. 19 C.S.R. 30-86.052(8) If a physician prescribes in writing a modified diet for a resident, the resident may be accepted or remain in the facility if:
 - a. The physician monitors the resident's condition on a regular periodic basis and at least quarterly;

- b. The diet, food preparation and serving is reviewed at least quarterly by a consulting nutritionist, dietician, registered nurse or physician and there is a written documentation of the review;
 - c. The modified diet is posted in the kitchen and includes portions to be served;
 - d. The facility has entered into a written agreement for dietary consultation with a nutritionist, dietician registered nurse or physician.
- f. 19 C.S.R. 30-86.052(9)(B) In assisted living facilities, if the resident's eating and dining preferences have a potential health risk, staff shall inform the resident or his or her legally authorized representative of the potential health risks and document this in his or her individualized service plan.
- g. 19 C.S.R. 30-86.0472(12) All persons who have any contact with the residents in the facility shall not knowingly act or omit any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident.

21. Mother is not claiming negligence per se, only that these regulations establish a minimum standard of care for professionals employed by Defendants under these regulations.

22. As a direct and proximate result of the negligence of the corporate Defendants, Mother died on March 7, 2009, and suffered severe pain, mental distress and incurred additional medical and funeral bills. The Plaintiffs have suffered losses because of Mother's death for the loss of services, companionship, comfort, instruction, guidance, counsel, training and support.

23. The negligence of the corporate Defendants was outrageous and constituted gross negligence and demonstrated a conscious and reckless disregard for the rights and safety of

Mother constituting aggravated circumstances, and therefore the imposition of punitive damages is appropriate.

WHEREFORE, Plaintiffs pray pursuant to Missouri Law for damages against the corporate Defendants, jointly and severally, in an amount deemed fair and reasonable by a jury, for their costs, actual damages, punitive damages, and any other and further relief that this Court deems just and proper.

COUNT II – WRONGFUL DEATH AND NEGLIGENCE

COME NOW Plaintiffs, and for their cause of action against Defendant Nurse 1, state as follows:

24. Plaintiffs hereby incorporate by reference each and every previously pled paragraph, as if set forth fully herein.

25. Upon information and belief, Defendant Nurse 1 was the licensed practical nurse (LPN) responsible for the care and supervision of Mother on the date of the choking incident referenced herein.

26. Defendant Nurse 1 had a duty to possess and use that degree of skill, care, and learning ordinarily used in the same or similar circumstances by members of her profession in the treatment of Mother.

27. Defendant Nurse 1, during the course of her treatment of Mother, breached her duty and was guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standards of due care, skill, and practice ordinarily exercised by members of her profession under the same or similar circumstances, to-wit:

- a. Failed to consistently monitor and assess Mother’ condition;
- b. Failed to properly implement and execute doctor's orders of mechanical soft diet

for Mother;

- c. Failed to supervise, monitor, and assess the actual food consumption by Mother;
- d. Failed to place Mother on aspiration precautions appropriate for her condition and history;
- e. Failed to consistently check and appropriately monitor Mother during meal times to ensure her safety;
- f. Failed to prevent choking while caring for Mother;
- g. Failed to carry out the instructions of Mother' physician;
- h. Failed to provide proper hydration and nutrition to Mother; and
- i. Failed to timely take emergency actions upon finding Mother choking.

28. As a direct and proximate result of the negligence of Defendant Nurse 1, Mother died on March 7, 2009, and suffered severe pain, mental distress and incurred additional medical and funeral bills. The Plaintiffs have suffered losses because of Mother' death for the loss of services, companionship, comfort, instruction, guidance, counsel, training and support.

29. The negligence of Defendant Nurse 1 was outrageous and constituted gross negligence and demonstrated a conscious and reckless disregard for the rights and safety of Mother constituting aggravated circumstances, and therefore the imposition of punitive damages is appropriate.

WHEREFORE, Plaintiffs pray pursuant to Missouri Law for damages against Defendant Nurse 1, in an amount deemed fair and reasonable by a jury, for their costs, actual damages, punitive damages, and any other relief that this Court deems just and proper.

COUNT III – WRONGFUL DEATH AND NEGLIGENCE

COME NOW Plaintiffs, and for their cause of action against Defendant Nurse 2, state as follows:

30. Plaintiffs hereby incorporate by reference each and every previously pled paragraph, as if set forth fully herein.

31. Upon information and belief, Defendant Nurse 2 was the registered dietician and/or dietary manager responsible for the dietary care and supervision of Mother on the date of the choking incident referenced herein.

32. Defendant Nurse 2 had a duty to possess and use that degree of skill, care, and learning ordinarily used in the same or similar circumstances by members of her profession in the treatment of Mother.

33. Defendant Nurse 2, during the course of her treatment and dietary care of Mother, breached her duty and was guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standards of due care, skill, and practice ordinarily exercised by members of her profession under the same or similar circumstances, to-wit:

- a. Failed to consistently monitor and assess Mother' dietary needs;
- b. Failed to properly implement and execute doctor's orders of mechanical soft diet for Mother;
- c. Failed to properly prepare the food according to prescribed diet for Mother;
- d. Failed to supervise, monitor, and assess the food preparation by employees of the corporate Defendants responsible for said food preparation, on behalf of Mother;
- e. Failed to place Mother on aspiration precautions appropriate for her condition and history;
- f. Failed to consistently check and appropriately monitor Mother during meal times

to ensure her safety;

- g. Failed to prevent choking while caring for Mother' dietary needs;
- h. Failed to carry out the dietary instructions of Mother' physician;
- i. Failed to properly monitor and supervise the corporate Defendants' employees so as to prevent Mother from choking; and
- j. Failed to provide proper hydration and nutrition to Mother.

34. As a direct and proximate result of the negligence of Defendant Nurse 2, Mother died on March 7, 2009, and suffered severe pain, mental distress and incurred additional medical and funeral bills. The Plaintiffs have suffered losses because of Mother' death for the loss of services, companionship, comfort, instruction, guidance, counsel, training and support.

35. The negligence of Defendant Nurse 2 was outrageous and constituted gross negligence and demonstrated a conscious and reckless disregard for the rights and safety of Mother constituting aggravated circumstances, and therefore the imposition of punitive damages is appropriate.

WHEREFORE, Plaintiffs pray pursuant to Missouri Law for damages against Defendant Nurse 2, in an amount deemed fair and reasonable by a jury, for their costs, actual damages, punitive damages, and any other relief that this Court deems just and proper.

O'REILLY, JENSEN, & PRESTON, LLC

By _____
ERIC JENSEN
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