

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

**JANET BURKE and JERRY
BURKE, Husband and Wife,**

Plaintiffs,

v.

**HILLCREST HEALTH SYSTEMS,
INC. d/b/a HILLCREST HEALTH
AND REHAB; RED OAK HEALTH
SERVICES, INC. a/b/a
HILLCREST HEALTH AND
REHAB, JOLENE MATHISON-
ROBERTS and JOHN DOES 1-10,
Real Names Unknown,**

Defendants.

CASE NO. _____

COMPLAINT

COMES NOW, the Plaintiffs, Janet and Jerry Burke, and for their causes of action against Defendants, alleges and state as follows:

PRELIMINARY STATEMENT

1. This is a civil action to recover damages as a result of acts and omissions, which the Plaintiffs claim constitute negligence resulting in injuries.

JURISDICTION, AND VENUE

2. The Court has jurisdiction and venue over the parties of this action as the negligent acts occurred in Bellevue, Sarpy County, Nebraska.

PARTIES

3. At all relevant times, Janet Burke was a resident of Hillcrest Health and Rehab, a skilled nursing facility located at 1702 Hillcrest Drive, Bellevue, Sarpy County, in Nebraska.

4. At all relevant times, Jerry Burke was a resident of Bellevue, Sarpy

County, Nebraska.

5. At all relevant times Janet Burke was married to Jerry Burke.

6. At all relevant times, Defendant Hillcrest Health Systems, Inc. (hereinafter referred to as "Defendant Hillcrest") owns and manages Hillcrest Health and Rehab (hereinafter referred to as "HHR" and "the Facility"). Defendant Hillcrest is incorporated pursuant to the laws of the state of Nebraska, with its principal place of business at 1804 Hillcrest Drive, Bellevue, Nebraska, 68005. Defendant Hillcrest and its subsidiary HHR represent to the public that they provide skilled nursing care to patients for a fee, while exercising reasonable care in the rendering of its services.

7. At all relevant times, Defendant Red Oak Health Services, Inc. (hereinafter referred to as "Red Oak") owns and manages Hillcrest Health and Rehab (hereinafter referred to as "HHR" and "the Facility"). Defendant Red Oak is incorporated pursuant to the laws of the state of Nebraska, with its principal place of business at 1804 Hillcrest Drive, Bellevue, Nebraska, 68005. Defendant Red Oak and its subsidiary HHR represent to the public that they provide skilled nursing care to patients for a fee, while exercising reasonable care in the rendering of its services.

8. Defendant Jolene Matheson-Roberts (hereinafter referred to as "Roberts") is the president and chief executive officer of Defendants Hillcrest and Red Oak. Defendant Roberts is highly trained and experienced in the management of skilled nursing care facilities with the following degrees and certification: Master social worker, mental health practitioner, and nursing home administrator.

9. The authority exercised by Defendants Hillcrest, Red Oak, and Mathison-Roberts over HHR includes, but is not limited to, hiring, training, and assignment of skilled nursing staff; developing and implementing policy and procedures documents; federal, state, Medicare and Medicaid reimbursement; quality care assessment and compliance, licensure and certification; financial accounting control, and the marketing of HHR to the general public, including the

plaintiffs.

10. Defendants John Does 1-5 (whose real names are unknown) are Administrators, Directors of Nursing, contractors, subcontractors, employees and temporary employees hired by the Defendant to provide skilled nursing care services at the Facility during Mrs. Burke's residency at the Facility.

11. Defendants John Does 6-10 (whose real names are unknown) are owners, operators and managers of the Facility during Mrs. Burke's residency at the Facility.

COMMON VENTURE

12. The aforementioned Defendants controlled the operation, planning, management and quality control of the Facility.

13. The authority exercised by the aforementioned Defendants over the Facility included, but was not limited to, control of the marketing, human resources management, training, staffing, creation and implementation of Policy & Procedure manuals used by the nursing home Facility, Federal and State Medicare and Medicaid reimbursement, quality care assessment and compliance, licensure and certification, legal services, financial tax and accounting control through fiscal policies established by the aforementioned Defendants.

14. The aforementioned Defendants operated as a common venture and/or enterprise for the purpose of streamlining and furthering their similar business interests, as all entities were ultimately controlled by the same corporation.

15. At all relevant times mentioned herein, the aforementioned Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants or employees in the operation of the facility.

16. Because the aforementioned Defendants were engaged in a common venture and/or enterprise before and throughout Mrs. Burke's residency at the facility, the acts and omissions of each participant in the common

venture/enterprise are imputable to all other participants.

17. The actions of the Defendants and each of their servants, agents and employees as set forth herein are imputed to each of the Defendants, jointly and severally.

FIRST CAUSE OF ACTION – NEGLIGENCE

18. Janet Burke was a resident of the Facility and under their care from on or about April 4, 2012 to May 19, 2012. She was 67 years old at the time of her admission.

19. At all relevant times, Defendants owed a duty of care to Janet Burke to act as a reasonably careful skilled nursing facility would, under similar circumstances.

20. Defendants also failed to exercise that degree of care, skill, diligence and knowledge, ordinarily exercised and possessed by skilled nursing facilities in the community where the Facility is located or in similar communities.

21. The negligence of the Defendants includes, but is not limited to, the following acts and omissions:

- a. Failure to conduct adequate and appropriate assessments;
- b. Failure to develop and amend care plans as needed;
- c. Failure to provide a safe environment;
- d. Failure to prevent loss of quality of life;
- e. Failure to prevent infections;
- f. Failure to prevent delay of treatment;
- g. Failure to provide care, treatment and medication in accordance with physician orders;
- h. Failure to prevent falls;
- i. Failure to routinely monitor Janet Burke;
- j. Failure to timely notify Mrs. Burke's physician and husband of significant changes in his condition;
- k. Failure to adequately instruct, train and supervise

employees;

- l. Failure to properly transfer Mrs. Burke;
- m. Failure to provide Mrs. Burke with the necessary care and services to attain, and maintain, the highest practicable physical, mental and psychological well-being;
- n. Failure to provide and maintain a sufficient number of staff;
- o. Failure to require strict compliance with their own standards, bylaws, rules and regulations for assessment and care of patients with significant care needs, like Janet Burke;
- p. Failure to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws;
- q. Failure to maintain Mrs. Burke's medical records in accordance with accepted professional standards and practice;
- r. Failure to recognize and treat injuries and/or illnesses sustained by Mrs. Burke in a timely and appropriate manner; and
- s. Failure to prevent the physical and emotional abuse of Mrs. Burke by staff members.

22. As a direct and proximate result of the aforementioned negligence, Mrs. Burke suffered skin tears, a torn toe nail, acute patella dislocation and torn ligaments which required surgery to repair.

23. As a direct and proximate result of the Defendants' negligence, Janet Burke suffered mental anguish and physical pain and suffering.

24. As a direct and proximate result of the Defendants' negligence, the Plaintiff's incurred medical expenses for medical care necessitated by the Defendants' negligence.

25. The Defendants have vicarious liability for the acts and omissions of

all persons or entities under their control, either directly or indirectly, including employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing or contributing to Mrs. Burke's aforementioned injuries.

SECOND CAUSE OF ACTION – LOSS OF CONSORTIUM

26. Paragraphs 1-25 are incorporated in this second cause of action as if fully set forth herein.

27. At all relevant times, Jerry Burke was married to the Plaintiff Janet Burke.

28. As a direct and proximate result of the Defendants' negligence, Jerry Burke suffered a loss of consortium.

WHEREFORE, the Plaintiff prays for a judgment against Defendants for Mrs. Burke's past medical expenses, physical pain, mental suffering; for Jerry Burke's resulting loss of consortium and for such other and further relief as the Court deems appropriate.

DATED this 11th day of April, 2014.

**JANET BURKE and JERRY
BURKE, Plaintiffs,**

By: /s/ Shayla M. Reed
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