

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

MICHAEL ZUBROD, As Special
Administrator for the Estate of
REYNOLD ZUBROD, Deceased,

Plaintiff,

v.

HILLCREST HEALTH SYSTEMS,
INC. d/b/a HILLCREST COUNTRY
ESTATES; HILLCREST
DEVELOPMENT COMPANY, LLC,
d/b/a HILLCREST COUNTRY
ESTATES, and HILLCREST
PROPERTIES, INC., d/b/a
HILLCREST COUNTRY ESTATES,

Defendants.

CASE NO.:

0112-67

COMPLAINT

Carol M. ...
CLERK DISTRICT COURT

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FILED
SARPY COUNTY
DISTRICT COURT

COMES NOW Michael Zubrod, Special Administrator of the Estate of Reynold Zubrod, hereinafter referred to as the "Plaintiff", and for his causes of action against the Defendants, states and alleges as follows:

FIRST CAUSE OF ACTION

1. On August 16, 2010, after proceedings duly had and taken in the County Court of Douglas County, Nebraska, the Plaintiff was duly appointed by Order of that Court, Special Administrator of the Estate of Reynold Zubrod, deceased, and the Plaintiff thereafter qualified, thereupon became, ever since having been and is the duly appointed, qualified and acting special Administrator of the Estate of Reynold Zubrod.

2. Reynold Zubrod left surviving as his heirs at law: Michael Zubrod, Debra Wiley, Randall Zubrod, Donna Zubrod, Kerry Zubrod and Rhonda Driver. This action is brought by the Plaintiff, as Special Administrator, for the exclusive benefit of such heirs at law.

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3. At all relevant times herein, the Defendant, Hillcrest Health Systems, Inc., doing business as "Hillcrest Country Estates" (hereinafter referred to as "Hillcrest" or "the facility") was a corporation, incorporated under and pursuant to the laws of the State of Nebraska, maintaining its principal place of business in Papillion, Sarpy County, Nebraska, holding itself out to the public as a corporation furnishing skilled nursing treatment, care and attention to patients for a fee, while assuming a duty of exercising reasonable care towards its patients in the rendering of its services.

4. At all relevant times herein, the Defendant, Hillcrest Development Company, LLC, doing business as "Hillcrest Country Estates" was a corporation, incorporated under and pursuant to the laws of the State of Nebraska, maintaining its principal place of business in Papillion, Sarpy County, Nebraska, holding itself out to the public as a corporation furnishing skilled nursing treatment, care and attention to patients for a fee, while assuming a duty of exercising reasonable care towards its patients in the rendering of its services.

5. At all relevant times herein, the Defendant, Hillcrest Properties, Inc., doing business as "Hillcrest Country Estates" was a corporation, incorporated under and pursuant to the laws of the State of Nebraska, maintaining its principal place of business in Papillion, Sarpy County, Nebraska, holding itself out to the public as a corporation furnishing skilled nursing treatment, care and attention to patients for a fee, while assuming a duty of exercising reasonable care towards its patients in the rendering of its services.

6. At all relevant times, Reynold Zubrod was a resident of Hillcrest Country Estates in Papillion, Sarpy County, Nebraska.

7. At all times hereinafter mentioned, Defendants were acting by and through their employees, authorized agents, apparent agents, and/or representatives, who were acting within the scope and course of their employment with Defendants.

8. Plaintiff believes that some or all of the Defendants may not be properly qualified under the Nebraska Hospital-Medical Liability Act, N.R.S. Section 44-2801-

Section 44-2855 and were not so qualified during the time that one or more of the Defendants provided medical treatment to Reynold Zubrod.

9. Plaintiff has affirmatively waived the right to a Panel Review of his allegations against any of the Defendants registered under the Nebraska Hospital-Medical Liability Act (N.R.S. Section 44-2801, et seq) at any time pertinent hereto and has notified the Director of Insurance of the State of Nebraska of such waiver by serving a copy of this Complaint upon him or her by certified mail at the time of filing hereof.

10. Notwithstanding any filings herein by any of the Defendants for special benefits, privileges and protections of the Nebraska Hospital-Medical Liability Act, Plaintiff alleges that such Act is unconstitutional in whole or in part, because it does not promote the health, safety, or general welfare of the public and serves no public purpose, and that these Statutes limit the amount of monetary recovery available to claimants such as the Plaintiff, without any reasonable basis or relationship to injuries and damages sustained by the Plaintiff, and serve no legitimate State interest. Plaintiff alleges such Act is unconstitutional in whole or in part, because it violates the Constitution of the United States, and the Constitution of the State of Nebraska.

11. Defendants were engaged in a common venture/enterprise during Mr. Zubrod's residency at Hillcrest. Each Defendant had a shared community of interest in the object and purpose of the undertaking for which the nursing home known as Hillcrest Country Estates was being operated and/or used. Each Defendant had an equal right to share in the control of the operation of the nursing home during Mr. Zubrod's residency, regardless of whether such right was actually exercised.

12. The 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 Mr. Zubrod'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.

18. Reynold Zubrod was a resident of Hillcrest from February 24, 2010 to March 31, 2010. He was 77 years old at the time of his admission.

19. The Defendants were well aware of Mr. Zubrod's needs and claimed understanding of the care he required when they admitted him and represented to his family that they could adequately provide for his needs.

20. In an effort to ensure that Reynold Zubrod, and other patients in similar circumstances, whose care was partially funded by the State of Nebraska and the United States government, were placed at Hillcrest, Defendants held themselves out to the Nebraska Department of Health and Human Services (DHHS) and to the public at large as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised and equipped to meet the total needs of its nursing home patients;
- c. Able to specifically meet the total nursing home, medical and physical therapy needs of Reynold Zubrod, as well as other patients like him; and
- d. Licensed by the DHHS and in compliance on a continual basis with all rules, regulations and standards established for nursing homes under Neb. Rev. Stat. §71-401 et seq., skilled nursing homes under Neb. Rev. Stat. § 71-429 et seq. and Neb. Rev. Stat. § 71-6001 et seq. and all applicable administrative regulations.

21. During his residency at Hillcrest, Mr. Zubrod became malnourished, dehydrated, suffered significant weight loss and developed multiple decubitus ulcers, deep vein thrombosis and Clostridium Difficile infection.

22. As a result of his injuries, he died on April 20, 2010.

23. At the time of his death, Mr. Zubrod was 78 years old.

24. At all relevant times, Defendants owed a duty to Mr. Zubrod:

- a. to use ordinary and reasonable care in providing medical and/or nursing treatment by using that knowledge, skill and care that is generally used in similar cases and circumstances by healthcare providers and/or nursing homes engaged in a similar practice and in similar localities;
- b. to perform medical and/or nursing procedures lawfully and in accord with standard medical and/or nursing practices;
- c. to ensure that all medical and/or nursing personnel are qualified to perform the medical procedures undertaken;
- d. to ensure that all medical and/or nursing personnel are properly trained and supervised;
- e. to ensure that a sufficient number of staff was available to address Mr. Zubrod's many medical needs; and

- f. to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws.

25. Defendants failed to exercise reasonable and ordinary care, skill and diligence, and departed from the generally accepted and recognized standard of care in the community in the treatment of Reynold Zubrod and was therefore negligent in performing their duties in one or more of the following particulars:

- (a) Failing to conduct adequate and appropriate assessments;
- (b) Failing to develop and amend care plans as needed;
- (c) Failing to provide a safe environment;
- (d) Failing to prevent loss of quality of life;
- (e) Failing to prevent infections;
- (f) Failing to prevent delays of treatment;
- (g) Failing to provide care, treatment and medication in accordance with physician orders;
- (h) Failing to provide Mr. Zubrod with proper nutrition;
- (i) Failing to provide Mr. Zubrod with proper hydration;
- (j) Failing to routinely monitor Mr. Zubrod;
- (k) Failing to recognize and treat injuries and illnesses sustained by Mr. Zubrod in a timely and appropriate manner;
- (l) Failing to prevent skin breakdown and to provide proper care to skin wounds;
- (m) Failing to maintain sufficient staffing to meet the significant needs of Mr. Zubrod and all residents;

- (n) Failing to timely notify Mr. Zubrod's physician and family of significant changes in his condition;
- (o) Failing to adequately instruct, train and supervise staff;
- (p) Failing to require strict compliance with their own standards, bylaws, rules and regulations for assessment and care of patients with significant care needs, like Mr. Zubrod;
- (q) Failing to require strict compliance with the Regulations of the Nebraska Department of Health and Human Services and Nebraska State Laws; and
- (r) Failing to maintain Mr. Zubrod's medical records in accordance with accepted professional standards and practice.

26. The joint and several negligence of the Defendants and each of them, as set forth above, was the direct and proximate cause of the wrongful death of Reynold Zubrod on April 20, 2010, and the immediate surviving next of kin of Reynold Zubrod have been deprived of the comfort of his society and companionship, his services and earnings, as well as other pleasures and rights having a pecuniary value, which attend to immediate family relationships; and/or the joint and several negligence of the Defendants and each of them as set forth above constituted a substantial factor in causing the death of Reynold Zubrod on April 20, 2010, and in the immediate surviving next of kin of Reynold Zubrod, being deprived of the comfort of his society and companionship, his services and earnings, as well as each others pleasures and rights, having a pecuniary value, which attend to immediate family relationships.

27. Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiff prays for judgment on this first cause of action for the wrongful death of the decedent against Defendants and each of them jointly and severally for such damages as are reasonable, with interest thereon, together with his costs and attorney fees as permitted by Nebraska Revised Statute, Section 44-2834(2) and such other relief as may be allowed by the laws of the State of Nebraska.

SECOND CAUSE OF ACTION

28. Paragraphs 1-27 are incorporated in this second cause of action as if fully set forth herein.

29. As a direct and proximate result of the joint and several negligence of Defendants and/or each of them as set forth above, Reynold Zubrod sustained multiple decubitus ulcers, including one on his sacrum which became infected, foul smelling and required surgical debridement, malnutrition, dehydration, acute bilateral deep vein thrombosis, Clostridium Difficile infection, sepsis with hypovolemia and shock, anemia and ultimately death. Mr. Zubrod sustained unnecessary painful physical discomfort, mental agony, and permanent disability between February 24, 2010 and the date of his death on April 20, 2010, and was placed in great apprehension and fear of death; and/or the joint and several negligence of the Defendants, and each of them as set forth above, constituted a substantial factor in causing Reynold Zubrod to sustain the aforementioned injuries and to sustain unnecessary painful physical discomfort, mental agony, and permanent disability between February 24, 2010 and the date of his death on April 20, 2010, and was placed in great apprehension and fear of death.

30. Reynold Zubrod, during his lifetime, had a cause of action against Defendants for his injuries, pain, disability, mental anguish and fear of death, which he experienced before his death, which cause of action survives his death and inures to the benefit of his estate, in accordance with Nebraska Revised Statutes Section 25-1401, et seq, and the common law of the State of Nebraska.

WHEREFORE, Plaintiff prays for judgment on this second cause of action against Defendants and each of them jointly and severally for such damages as are reasonable, with interest thereon, together with his costs and attorney fees allowed by Nebraska Revised Statute Section 44-2834(2) and such other relief as may be allowed by the laws of the State of Nebraska.

THIRD CAUSE OF ACTION

31. Paragraphs 1-30 are incorporated in this third cause of action as if fully set forth herein.

32. As a direct and proximate result of the joint and several negligence of the Defendants and each of them as set forth above, Reynold Zubrod's estate incurred fair and reasonable expenses for his funeral and burial; and/or the joint and several negligence of the Defendants and each of them, as set forth above, constituted a substantial factor in causing Decedent's estate to incur fair and reasonable expenses for his funeral and burial.

WHEREFORE, Plaintiff prays for judgment on this third cause of action against Defendants and each of them, jointly and severally for such damages as are reasonable, with interest thereon together with his costs and attorney fees as allowed by Nebraska Revised Statute Section 44-2834(2), and such other relief as may be allowed by the laws of the State of Nebraska.

**MICHAEL ZUBROD, As Special
Administrator for the Estate of
REYNOLD ZUBROD, Deceased,
Plaintiff,**

By:



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