

Filing # 116100736 E-Filed 11/03/2020 08:14:48 PM

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION
CASE NO.:

JODI SIEGEL, as Next
Friend of ERNESTINE B. LANDAU,

Plaintiff,

vs.

MANOR CARE OF BOCA RATON FL, LLC. d/b/a
MANORCARE HEALTH SERVICES,

Defendant

COMPLAINT

COMES NOW, the Plaintiff, JODI SIEGEL, as Next Friend of ERNESTINE B. LANDAU, by and through her undersigned counsel, and sues Defendant, MANOR CARE OF BOCA RATON FL, LLC. d/b/a MANORCARE HEALTH SERVICES, and alleges:

1. This action is within the jurisdiction of this court for damages in excess of Thirty Thousand and 00/100 Dollars (\$30,000.00), exclusive of interest and costs.
2. At all times material to this cause of action, ERNESTINE B. LANDAU was an adult resident of Palm Beach County, Florida.
3. At all times material hereto, ERNESTINE B. LANDAU was a person who was suffering from the infirmities of aging to the extent that she was impaired in her ability to adequately provide for her own care and protection.

4. Pursuant to Garcia v. Brookwood Extended Care Center of Homestead, 643 So.2d 715 (3rd DCA 1994), JODI SIEGEL is authorized to pursue this action as next friend on behalf of ERNESTINE B. LANDAU.
5. At all times material hereto, Defendant, MANOR CARE OF BOCA RATON FL, LLC. was licensed and authorized to do business as MANORCARE HEALTH SERVICES, a nursing home in Florida,. The Defendant was in the business of owning, managing and maintaining nursing homes and related healthcare facilities, including MANORCARE HEALTH SERVICES, located in Palm Beach County, Florida.
6. At all times material hereto, Defendant, MANOR CARE OF BOCA RATON FL, LLC., was the licensee and owner of MANCORCARE HEALTH SERVICES.
7. At all times material hereto, Defendant, MANOR CARE OF BOCA RATON FL, LLC., was subject to the provisions of Chapter 400 of Florida Statutes, which sets the standards for operating nursing homes such as MANORCARE HEALTH SERVICES.
8. During ERNESTINE B. LANDAU's residency at MANORCARE HEALTH SERVICES, the staff and employees failed to develop an adequate care plan and properly monitor and supervise the care and treatment provided to ERNESTINE B. LANDAU in order to prevent her from suffering the development and deterioration of infections and sepsis.
9. As a direct result of MANORCARE HEALTH SERVICES's acts and omissions, ERNESTINE B. LANDAU suffered the development and deterioration of infections and sepsis.

10. This is a claim under Florida Statute §400 for violation of ERNESTINE B. LANDAU's resident's rights, based solely on custodial care issues, and any presuit pursuant to Chapter 766 is unnecessary.
11. Plaintiff has complied with the nursing home presuit provisions set forth in Florida Statutes §400.0233.
12. Plaintiff has satisfied all conditions precedent to the filing of this action.
13. Plaintiff's counsel certifies by signing this Complaint that a good faith investigation into the merits of this claim was made.
14. It has been necessary for JODI SIEGEL to retain the undersigned firm of Ford, Dean & Rotundo, P.A., to prosecute this action and has agreed to pay said firm a reasonable fee for its services.

COUNT I

**CHAPTER 400 CLAIM AGAINST DEFENDANT, MANOR CARE OF BOCA RATON
FL, LLC. d/b/a MANORCARE HEALTH SERVICES**

Plaintiff hereby re-alleges paragraphs one (1) through fourteen (14) as if fully stated herein and further alleges:

15. Defendant has a statutorily mandated responsibility to ERNESTINE B. LANDAU to provide her with her nursing home resident's rights, as set forth in Florida Statute §400.022, which responsibility included, but was not limited to, the following:
 - (a) providing adequate and appropriate healthcare and protective and support services;
 - (b) preventing mental and physical abuse of ERNESTINE B. LANDAU;

- (c) complying with regulations for the operation of nursing homes promulgated by the Department of Health and Rehabilitative Services and contained in the Florida Administrative Code 59A-4; and
 - (d) treating residents courteously, fairly, and with the fullest measure of dignity.
- 16. That Defendant's responsibilities to ERNESTINE B. LANDAU, as outlined in Florida Statutes §400.022, are non-delegable and such that Defendant had direct liability for violations, deprivations and infringements by any person or entity under Defendant's control, direct or indirect, including their employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools, or caused by Defendant's policies, and procedures, whether written or unwritten, or common practices.
- 17. That in addition to Defendant's direct responsibility under Florida Statute §400.022 and as alleged in the preceding paragraph, Defendant had vicarious liability for the acts and omissions of all persons or entities under Defendant's control either direct or indirect including its employees, agents, consultants and independent contractors, whether in-house or outside entities, individuals, agencies or pools causing any deprivations or infringements of ERNESTINE B. LANDAU resident's rights as set forth in Florida Statutes §400.022.
- 18. That the duty alleged in the immediately preceding paragraphs include, but are not limited to, proper training and supervision; proper hiring, background and referral checks; and proper retaining and dismissing of employees, agents, consultants and independent contractors, as well as providing adequate staffing.

19. That notwithstanding the responsibility of Defendant to provide ERNESTINE B. LANDAU with her statutorily mandated nursing home resident's rights, ERNESTINE B. LANDAU was deprived of such rights by the acts or omissions of Defendant's agents and employees which include, but are not limited to, the following:

- a) failing to properly supervise ERNESTINE B. LANDAU;
- b) failing to provide adequate and appropriate protective and support services to ERNESTINE B. LANDAU;
- c) failing to develop, implement, and update an adequate and appropriate resident care plans to meet the custodial needs of ERNESTINE B. LANDAU;
- d) failing to maintain records which contain sufficient and accurate information to justify the diagnosis and treatment and to document the results, including at a minimum documented evidence of assessments of the needs of the resident, of establishment of appropriate plans of care and treatment, and of the care and services provided;
- e) failing to appropriately monitor ERNESTINE B. LANDAU and recognize significant signs and symptoms of change in her health condition, such as ERNESTINE B. LANDAU suffering the development and deterioration of infections and sepsis;
- f) failing to properly notify the family and physicians of ERNESTINE B. LANDAU of significant changes in her health status, such as ERNESTINE B. LANDAU suffering the development and deterioration of infections and sepsis;
- g) failing to protect ERNESTINE B. LANDAU from foreseeable harm, including but not limited to ERNESTINE B. LANDAU suffering the development and deterioration of infections and sepsis;
- h) failing to properly supervise staff;
- i) failing to properly train staff;
- j) improper retention of staff;
- k) Inadequate staffing;

- l) failing to protect the dignity of ERNESTINE B. LANDAU;
- m) failing to protect the privacy of ERNESTINE B. LANDAU;
- n) failing to follow physician orders;
- o) failing to properly chart on the resident pursuant to Florida Statute §400, F.A.C. 59-A; and 42 C.F.R. 483; and,
- p) failure to timely transfer the resident to the hospital.

20. As a direct and proximate result of the failure of the Defendant to comply with the requirements of Florida Statute §400.022, and to provide adequate and appropriate and protective support services, ERNESTINE B. LANDAU suffered damages, including loss of dignity; humiliation; bodily injury; pain and suffering, disability, physical impairment; disfigurement; mental anguish, inconvenience; loss of capacity to enjoy life; discomfort; aggravation of existing diseases or physical defect; medical, hospital and nursing expenses.

WHEREFORE, Plaintiff, JODI SIEGEL, as Next friend of of ERNESTINE B. LANDAU, demands judgment against Defendant, MANOR CARE OF BOCA RATON FL, LLC. d/b/a MANOR CARE HEALTH SERVICES for all compensatory damages allowed by law for the deprivation of ERNESTINE B. LANDAU's rights as stated above, and further demands prejudgment interest and a trial by jury on all issues triable as a matter of right. Plaintiff reserves the right to amend to allege a cause of action for punitive damages at a later date.

DEMAND FOR JURY TRIAL

Plaintiff, hereby demands trial by jury of all issues so triable as of right.

DATED this 2nd day of November, 2020.

FORD, DEAN & ROTUNDO, P.A.
Attorneys for Plaintiff
3323 NE 163rd Street, Suite 605
North Miami Beach, FL 33160
Tel: (305) 670-2000/Fax: (305) 670-1353
Bill@forddean.com

Jill@forddean.com
Service@forddean.com

By: _____
WILLIAM A. DEAN, B.C.S.
FBN: 118354

NOT A CERTIFIED COPY