

Filing # 134178385 E-Filed 09/08/2021 12:26:50 PM

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

CASE NO.:

LINDA MAY, as Personal Representative of the
Estate of JACOB BOYER,

Plaintiff

vs.

MANOR CARE OF DELRAY BEACH FL, LLC
d/b/a MANORCARE HEALTH SERVICES
DELRAY BEACH; PROMEDICA HEALTH
SYSTEM, INC; and HCR III HEALTHCARE,
LLC;

Defendants.

_____ /

COMPLAINT

COMES NOW, Plaintiff, LINDA MAY, as Personal Representative of the Estate of JACOB BOYER, sues Defendants, MANOR CARE OF DELRAY BEACH FL, LLC d/b/a MANORCARE HEALTH SERVICES DELRAY BEACH (hereinafter referred to as "LICENSEE"); HCR III HEALTHCARE, LLC (hereinafter referred to as "MANAGEMENT") and PROMEDICA HEALTH SYSTEM, INC (hereinafter referred to as "CORPORATE") and further alleges:

GENERAL FACTS

1. The amount in controversy exceeds the sum of Thirty Thousand (\$30,000.00) Dollars exclusive of costs and fees and is within the jurisdiction of this court.

2. At all material times, JACOB BOYER was a resident of Palm Beach County, Florida.

Complaint

3. At all material times, the Plaintiff, LINDA MAY is the daughter of JACOB BOYER and has been, or is in the process of being, appointed as the Personal Representative of the Estate of JACOB BOYER.

4. At all material times, JACOB BOYER sought assisted living care at LICENSEE at 16200 Jog Road, Delray Beach, FL 33446 (hereafter “the assisted living facility” or “the facility”) in Palm Beach County, Florida.

5. At all material times, Defendant, LICENSEE was a limited liability corporation and licensee authorized to do business in the State of Florida and to operate an assisted living facility under the name of ManorCare Health Services Delray Beach in Delray Beach, Florida, Palm Beach County, and is subject to the provisions of Chapter 400.

6. At all material times, Defendant, MANAGEMENT, was a limited liability company that was in the business of owning, managing and controlling a chain of Florida assisted living facilities, including the subject assisted living facility in Palm Beach County.

7. At all material times, Defendant, CORPORATE, was a corporation that was in the business of owning, managing and controlling a chain of Florida assisted living facilities, including the subject assisted living facility in Palm Beach County.

8. Venue is appropriate in this action as the events giving rise to the cause of action occurred in Palm Beach County, Florida, the subject facility is located in Palm Beach County, Florida and one or more of the Defendants operate and do business in Palm Beach County, Florida.

9. All conditions precedent to the filing of this action, including compliance with the notice provisions of Chapter 400, have been met or waived.

10. The undersigned certifies a good faith basis for bringing this action.

Complaint

11. This Complaint is being filed within the applicable statute of limitations period.

FACTS GIVING RISE TO THIS ACTION

12. On or around May 6, 2020, JACOB BOYER was admitted to LICENSEE as a noted fall risk.

13. Upon admission and at all times thereafter, JACOB BOYER required extensive supervision and/or assistance with activities of daily living (ADLs), including but not limited to ambulation, toileting, transferring, bathing, and dressing, among other ADLs.

14. JACOB BOYER, now deceased, was known to be at-risk for falls, and required special fall precautions and supervision for his safety.

15. Despite his high fall risk classification, proper fall precautions were not put in place.

16. During his residency at LICENSEE, JACOB BOYER suffered multiple preventable falls.

17. JACOB BOYER also needed assistance with eating and drinking at all times material.

18. Proper assistance was not given at the facility, causing weight loss, dehydration and malnutrition.

19. Due to his facility acquired injuries, JACOB BOYER's underlying health conditions, both physical and mental, were greatly compromised.

20. JACOB BOYER died shortly thereafter on or around February 4, 2021.

WRONGFUL DEATH DAMAGES

21. JACOB BOYER wrongfully died on February 4, 2021, as a direct and proximate result of the Defendants' negligence, more fully described above and below.

Complaint

22. As a direct and proximate result of the rights violations outlined above and below, the Estate of JACOB BOYER and the survivors of the Estate, including but not limited to LINDA MAY (daughter) are entitled to all damages recoverable for the wrongful death caused by the Defendants, as alleged above and below, including but not limited to:

- a) Damages for JACOB BOYER's bodily injury, pain and suffering, disability, disfigurement, mental anguish, loss of the capacity for the enjoyment of life, expensive hospitalization, the value of reasonable assisted living facility services and care provided to JACOB BOYER, medical and nursing care and treatment and aggravation of previous existing conditions, from the time of his/her injury until the time of his/her death;
- b) Medical bills and expenses;
- c) Funeral expenses;
- d) Loss of Net Accumulations;
- e) The decedent's survivors, the aforementioned children of the deceased, have suffered mental pain and suffering which will continue for the rest of their life, and they have suffered the loss of services and support of JACOB BOYER, and have incurred medical and funeral expenses as a result of JACOB BOYER's death, and have suffered the loss of JACOB BOYER's love and companionship.

SURVIVAL DAMAGES

23. Alternatively, if these injuries did not cause JACOB BOYER's death, LINDA MAY claims all damages recoverable under a survival action, including but not limited to the non-economic and economic damages of the decedent for bodily injury and resulting pain and

Complaint

suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of JACOB BOYER to the time of his/her death. These survival damages occurred as a direct and proximate result of the negligence of the Defendants' outlined above and below.

COUNT I
CLAIM AGAINST LICENSEE RESULTING IN DEATH

24. Plaintiffs re-allege paragraphs 1 through 22 and further allege:
25. At all material times, LICENSEE was the licensee of the assisted living facility.
26. At all material times, LICENSEE owed a duty to JACOB BOYER to provide reasonable assisted living facility care, pursuant to Fla. Stat. Sec. 400.
27. Defendant, LICENSEE, as the licensee of the facility was responsible and liable for the nurses and/or staff that cared for JACOB BOYER because they employed the nurses and/or staff at the facility.
28. Additionally, or in the alternative, Defendant, LICENSEE, as the licensee of the facility was responsible and liable for the nurses and/or staff at the facility that cared for JACOB BOYER because they had actual control of their actions, and the right to control their actions, and thus those persons were agents of LICENSEE.
29. The negligent conduct of the nurses and/or staff of the facility, as described below, was performed in the course and scope of the employment and/or agency with LICENSEE.
30. Accordingly, LICENSEE is responsible for the negligent conduct of the nurses and/or staff.

Complaint

31. LICENSEE, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to properly assess fall risk;
- b) Failing to appropriately respond to fall risk;
- c) Failing to prevent falls;
- d) Failing to appropriately supervise at-risk residents;
- e) Failing to send to a higher care facility;
- f) Failing to determine appropriateness of residents inside the facility;
- g) Failing to timely react to resident falls;
- h) Failing to keep common areas clean of fall hazards;
- i) Failing to inform family members of serious changes in condition;
- j) Failing to documents the resident's injuries;
- k) Failing to appropriately and timely respond to resident's life-threatening injuries and/or deteriorated condition;
- l) Failing to provide appropriate nutrition and hydration;
- m) Failing to appropriately staff and train employees and agents;
- n) Failing to provide records in accordance with Florida law;
- o) Failing to provide appropriate supervision; and,
- p) Under all circumstances, failing to act reasonably in accordance with the Ch. 400 assisted living facility standard of care.

Complaint

32. As a proximate result of the Defendant's deprivation of and infringement upon JACOB BOYER's Chapter 400 rights as alleged in this Complaint, which includes the above alleged negligence, JACOB BOYER wrongfully died.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER claims all recoverable damages against Defendant, LICENSEE, and demands trial by jury.

COUNT II
CLAIM AGAINST MANAGEMENT RESULTING IN DEATH

33. Plaintiffs re-allege paragraphs 1 through 22 and further allege:

34. At all material times, MANAGEMENT directly operated the subject assisted living facility.

35. At all material times, MANAGEMENT had actual control and the right to control the employees, agents and apparent agents that cared for JACOB BOYER.

36. At all material times MANAGEMENT owed a duty to JACOB BOYER to provide reasonable assisted living facility care, pursuant to Fla. Stat. Sec. 400.

37. Defendant, MANAGEMENT, was responsible and liable for the nurses and/or staff that cared for JACOB BOYER because they employed the nurses and/or staff at the facility.

38. Additionally, or in the alternative, Defendant, MANAGEMENT was responsible and liable for the nurses and/or staff at the facility that cared for JACOB BOYER because they had actual control of their actions, and the right to control their actions, and thus those persons were agents of MANAGEMENT.

39. The negligent conduct of the nurses and/or staff of the facility, as described below, was performed in the course and scope of the employment and/or agency with MANAGEMENT.

Complaint

40. Accordingly, MANAGEMENT is responsible for the negligent conduct of the nurses and/or staff.

41. MANAGEMENT, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to budget the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- b) Failing to appropriately staff the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- c) Failing to appropriately react to complaints of understaffing and underbudgeting in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- d) Failing to institute and ensure compliance with proper policies and procedures at the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- e) Deliberately siphoning funds meant for medical treatment of residents, including Mr. Boyer, away from the facility; and
- f) Failing to follow state and federal regulations to protect assisted living facility residents like JACOB BOYER.

Complaint

42. As a proximate result of the Defendant's deprivation of and infringement upon JACOB BOYER's Chapter 400 rights as alleged in this Complaint, which includes the above alleged negligence, JACOB BOYER wrongfully died.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER claims all recoverable damages against Defendant, MANAGEMENT, and demands trial by jury.

COUNT III
CLAIM AGAINST CORPORATE RESULTING IN DEATH

43. Plaintiffs re-allege paragraphs 1 through 22 and further allege:

44. At all material times, CORPORATE directly operated the subject assisted living facility.

45. At all material times, CORPORATE had actual control and the right to control the employees, agents and apparent agents that cared for JACOB BOYER.

46. At all material times CORPORATE owed a duty to JACOB BOYER to provide reasonable assisted living facility care, pursuant to Fla. Stat. Sec. 400.

47. Defendant, CORPORATE, was responsible and liable for the nurses and/or staff that cared for JACOB BOYER because they employed the nurses and/or staff at the facility.

48. Additionally, or in the alternative, Defendant, CORPORATE was responsible and liable for the nurses and/or staff at the facility that cared for JACOB BOYER because they had actual control of their actions, and the right to control their actions, and thus those persons were agents of CORPORATE.

49. The negligent conduct of the nurses and/or staff of the facility, as described below, was performed in the course and scope of the employment and/or agency with CORPORATE.

Complaint

50. Accordingly, CORPORATE is responsible for the negligent conduct of the nurses and/or staff.

51. CORPORATE, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to budget the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- b) Failing to appropriately staff the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- c) Failing to appropriately react to complaints of understaffing and underbudgeting in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- d) Failing to institute and ensure compliance with proper policies and procedures at the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- e) Deliberately siphoning funds meant for medical treatment of residents, including Mr. Boyer, away from the facility; and
- f) Failing to follow state and federal regulations to protect assisted living facility residents like JACOB BOYER.

Complaint

52. As a proximate result of the Defendant's deprivation of and infringement upon JACOB BOYER's Chapter 400 rights as alleged in this Complaint, which includes the above alleged negligence, JACOB BOYER wrongfully died.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER claims all recoverable damages against Defendant, CORPORATE, and demands trial by jury.

COUNT IV
SURVIVAL ACTION AGAINST LICENSEE

53. Plaintiffs re-allege paragraphs 1 through 19 and 23 and further allege:

54. This survival action is made in the alternative to the above wrongful death claim.

55. LICENSEE, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to properly assess fall risk;
- b) Failing to appropriately respond to fall risk;
- c) Failing to prevent falls;
- d) Failing to appropriately supervise at-risk residents;
- e) Failing to send to a higher care facility;
- f) Failing to determine appropriateness of residents inside the facility;
- g) Failing to timely react to resident falls;
- h) Failing to keep common areas clean of fall hazards;
- i) Failing to inform family members of serious changes in condition;
- j) Failing to documents the resident's injuries;

Complaint

- k) Failing to appropriately and timely respond to resident's life-threatening injuries and/or deteriorated condition;
- l) Failing to provide appropriate nutrition and hydration;
- m) Failing to appropriately staff and train employees and agents;
- n) Failing to provide records in accordance with Florida law;
- o) Failing to provide appropriate supervision; and,
- p) Under all circumstances, failing to act reasonably in accordance with the Ch. 400 assisted living facility standard of care.

56. As a direct and proximate result of the above negligence, JACOB BOYER fell and seriously injured himself.

57. If these fall(s) and neglect related injuries did not cause the death of JACOB BOYER, the Plaintiff alleges all damages recoverable under a survival action, including but not limited to the non-economic damages of decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of JACOB BOYER to the time of his/her death.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER, claims all recoverable damages against Defendant, LICENSEE, and demands trial by jury.

COUNT V
SURVIVAL ACTION AGAINST MANAGEMENT

58. Plaintiff re-alleges paragraphs 1 through 19 and 23 and further allege:

59. This survival action is made in the alternative to the above wrongful death claim.

Complaint

60. MANAGEMENT, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to budget the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- b) Failing to appropriately staff the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- c) Failing to appropriately react to complaints of understaffing and underbudgeting in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- d) Failing to institute and ensure compliance with proper policies and procedures at the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- e) Deliberately siphoning funds meant for medical treatment of residents, including Mr. Boyer, away from the facility; and
- f) Failing to follow state and federal regulations to protect assisted living facility residents like JACOB BOYER.

61. As a direct and proximate result of the above negligence, JACOB BOYER fell and seriously injured himself.

62. If these fall(s) and neglect related injuries did not cause the death of JACOB BOYER, the Plaintiff alleges all damages recoverable under a survival action, including but not

Complaint

limited to the non-economic damages of decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of JACOB BOYER to the time of his/her death.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER, claims all recoverable damages against Defendant, MANAGEMENT, and demands trial by jury.

COUNT VI
SURVIVAL ACTION AGAINST CORPORATE

63. Plaintiff re-alleges paragraphs 1 through 19 and 23 and further allege:

64. This survival action is made in the alternative to the above wrongful death claim.

65. CORPORATE, through its employees, agents and apparent agents, including but not limited to its R.N.s, L.P.N.s, C.N.A.s and other personnel violated JACOB BOYER's rights protected under Chapter 400 for Assisted living facility residents by providing negligent and substandard assisted living facility care as follows:

- a) Failing to budget the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- b) Failing to appropriately staff the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- c) Failing to appropriately react to complaints of understaffing and underbudgeting in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;

Complaint

- d) Failing to institute and ensure compliance with proper policies and procedures at the Facility in order to provide appropriate care to the residents of the Facility, resulting in Mr. Boyer's injuries;
- e) Deliberately siphoning funds meant for medical treatment of residents, including Mr. Boyer, away from the facility; and
- f) Failing to follow state and federal regulations to protect assisted living facility residents like JACOB BOYER.

66. As a direct and proximate result of the above negligence, JACOB BOYER fell and seriously injured himself.

67. If these fall(s) and neglect related injuries did not cause the death of JACOB BOYER, the Plaintiff alleges all damages recoverable under a survival action, including but not limited to the non-economic damages of decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of JACOB BOYER to the time of his/her death.

WHEREFORE LINDA MAY, as Personal Representative of the Estate of JACOB BOYER, claims all recoverable damages against Defendant, CORPORATE, and demands trial by jury.

DATED this 8th day of September, 2021.

Complaint

/s/ David J. Brevda

DAVID J. BREVDA

Florida Bar No.: 1008373

Senior Justice Law Firm

7700 Congress Ave., Suite 3216

Boca Raton, Florida 33487

Phone: (561) 717-0813

Fax: (561) 708-6781

Email: eservice@SeniorJustice.com

Attorney for Plaintiff

NOT A CERTIFIED COPY