

IN THE CIRCUIT COURT OF THE 6TH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY

CASE NO.:

PETER MCMASTER, Personal Representative
to the Estate of LORETTA MCMASTER,

Plaintiff,

vs.

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

Defendant(s).

COMPLAINT

COMES NOW the Plaintiff, PETER MCMASTER, Personal Representative to the Estate of LORETTA MCMASTER, by and through undersigned counsel, and sues the Defendants, MANOR CARE OF DUNEDIN FL, LLC d/b/a MANORCARE HEALTH SERVICES DUNEDIN (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 alleges:

GENERAL JURISDICTIONAL ALLEGATIONS

1. This is a cause of action for damages, which exceeds Thirty Thousand Dollars (\$30,000.00), exclusive of costs, interest, and attorney's fees, and is being filed within the applicable statute of limitations.

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

3. This action is being brought by the Plaintiff for violations of Chapter 400 against LICENSEE, MANAGEMENT, and CORPORATE while LORETTA MCMASTER (hereinafter referred to as “RESIDENT”) was a resident at the Defendants’ nursing home located in Pinellas County, Florida (hereafter “the nursing home” or “the facility”).

4. At all times material, RESIDENT was a resident of Florida.

5. At all times material, Peter McMaster is the son of RESIDENT.

6. At all times material, Peter McMaster is appointed as the Personal Representative of the Estate of RESIDENT and is the proper party to bring this action. *See Exhibit “A”, Order Appointing Personal Representative.*

7. At all times material, LICENSEE, was a company doing business in the county in which the subject nursing home is located.

8. LICENSEE committed tortious acts against RESIDENT in the State of Florida. Each tortious act is specifically alleged in the subsequent counts. Accordingly, LICENSEE is subject to the jurisdiction of the courts of the State of Florida.

9. At all times material, MANAGEMENT, was a company doing business in the county in which the subject nursing home is located.

10. MANAGEMENT committed tortious acts against RESIDENT in the State of Florida. Each tortious act is specifically alleged in the subsequent counts. Accordingly, MANAGEMENT is subject to the jurisdiction of the courts of the State of Florida.

11. At all times material, CORPORATE, was a company doing business in the county in which the subject nursing home is located.

12. CORPORATE committed tortious acts against RESIDENT in the State of Florida. Each tortious act is specifically alleged in the subsequent counts. Accordingly, CORPORATE is subject to the jurisdiction of the courts of the State of Florida.

13. Venue is appropriate in this action as the events giving rise to the cause of action occurred in the county where the subject nursing home is located, one or more of the Defendant(s) operates and does business in the county where the subject nursing home is located, and the Plaintiff resides in the county where the subject nursing home is located.

14. At all times material hereto, the Defendant facility was subject to the provisions of Chapter 400 of Florida Statutes, Titles 10 and 59 of the Florida Administrative Code, and OBRA 1987, which set the standards for operating nursing homes such as this facility

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

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

ALLEGATIONS AGAINST LICENSEE

17. At all times material hereto, the Defendant, LICENSEE, was the licensee of the nursing home facility, which was authorized to do business in the State of Florida and to operate the subject nursing home and is subject to the provisions of Florida Statutes Chapter 400.

18. At all times material hereto, the Defendant, LICENSEE employed the nurses and caretakers at the facility and is therefore responsible for their tortious conduct.

19. At all times material hereto, the Defendant, LICENSEE, was operating the subject facility and/or had a non-delegable duty to ensure reasonable operation of the facility and reasonable care to residents, as the licensee of the facility, licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

20. At all times material hereto, the Defendant, LICENSEE, owed a duty to its residents to exercise reasonable care in its operation of the subject nursing home according to §400.023(3), Florida Statutes

ALLEGATIONS AGAINST MANAGEMENT

21. At all times material, MANAGEMENT, was a “management or consulting company” of the nursing home as defined under Chapter 400.023 of the Florida Statutes.

22. At all times material hereto the Defendant, MANAGEMENT, was in the business of owning, managing, and/or maintaining nursing and convalescent homes and related health care facilities, including the subject facility.

23. At all times material hereto, the Defendant, MANAGEMENT, was the management company for the subject facility, which was licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

24. At all times material hereto, the Defendant, MANAGEMENT, controlled, or had the ability to control, the budget at LICENSEE.

25. At all times material hereto, the Defendant, MANAGEMENT, controlled, or had the ability to control, staffing levels at LICENSEE.

26. At all times material hereto, the Defendant, MANAGEMENT, controlled, or had the ability to control, the hiring and firing of the administrator of LICENSEE.

27. At all times material hereto, the Defendant, MANAGEMENT, controlled, or had the ability to control, the policies and procedures at LICENSEE.

28. At all times material hereto, the Defendant, MANAGEMENT, was operating the Defendants’ facility and/or had a non-delegable duty to ensure reasonable operation of the facility

and reasonable care to residents, as the management company for the facility, which was licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

29. At all times material hereto, MANAGEMENT owed a duty to its residents to exercise reasonable care in its operation of the subject nursing home according to §400.023(3), Florida Statutes.

ALLEGATIONS AGAINST CORPORATE

30. At all times material, CORPORATE, was a “management or consulting company” of the nursing home as defined under Chapter 400.023 of the Florida Statutes.

31. At all times material hereto the Defendant, CORPORATE, was in the business of actively owning, managing, and/or maintaining nursing and convalescent homes and related health care facilities, including the subject facility.

32. At all times material hereto, the Defendant, CORPORATE, was actively operating the subject facility, which was licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

33. At all times material hereto, the Defendant, CORPORATE, controlled, or had the ability to control, the budget at LICENSEE.

34. At all times material hereto, the Defendant, CORPORATE, controlled, or had the ability to control, staffing levels at LICENSEE.

35. At all times material hereto, the Defendant, CORPORATE, controlled, or had the ability to control, the hiring and firing of the administrator of LICENSEE.

36. At all times material hereto, the Defendant, CORPORATE, controlled, or had the ability to control, the policies and procedures at LICENSEE.

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