



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
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Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
October 4, 2021 23:04

By: ALLEN C. TITTLE 0086590

Confirmation Nbr. 2367656

ESTATE OF CAROL KENNEY

CV 21 953936

vs.

Judge: RICHARD A. BELL

MONTEFIORE HOME, ET AL

Pages Filed: 16

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF CAROL KENNEY
By NICHOLAS LAUDATO,
Administrator of the Estate of Carol
Kenney, Deceased
c/o Tittle & Perlmutter

Plaintiff,

v.

THE MONTEFIORE HOME
c/o Its Statutory Agent, Seth
Vilensky,
1 David N. Myers Parkway
Beachwood, Ohio 44122

and

THE MONTEFIORE FOUNDATION
c/o Its Statutory Agent, Seth
Vilensky,
1 David N. Myers Parkway
Beachwood, Ohio 44122

and

MONTEFIORE OF MENORAH
PARK
1 David N. Myers Parkway
Beachwood, Ohio 44122

and

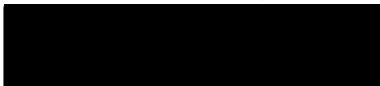
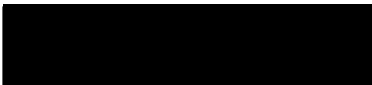
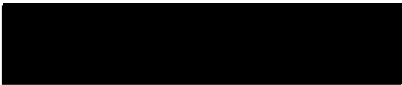
MENORAH PARK FOUNDATION
BET MOSHAV ZEKENIM HADATI

CASE NO.

JUDGE:

**COMPLAINT WITH ATTACHED
AFFIDAVIT OF MERIT**

(Jury Demand Endorsed Hereon)

c/o Its Statutory Agent, Taft Service	)
Solutions Corp.	)
425 Walnut Street, Suite 1800	)
Cincinnati, Ohio 45202	)
and	)
	)
MENORAH PARK CENTER FOR	)
SENIOR LIVING	)
c/o Its Statutory Agent, Taft Service	)
Solutions Corp.	)
425 Walnut Street, Suite 1800	)
Cincinnati, Ohio 45202	)
and	)
	)
ARIEL HYMAN	)
	)
	)
and	)
	)
TINA KING	)
	)
	)
and	)
	)
MARIE GELLE	)
	)
	)
Defendants.	)
	)

The Estate of Carol Kenney, by and through Nicholas Laudato, Administrator of the Estate of Carol Kenney, deceased, states for his Complaint against all Defendants as follows:

INTRODUCTION/PARTIES

1. This is a nursing home abuse, medical malpractice, and wrongful death action involving Carol Kenney's care, or lack thereof, at The Montefiore Home, a

nursing home as defined in O.R.C. 3721.10, which, at all times relevant, was located at 1 David N. Myers Parkway, Beachwood, Ohio 44122 in Cuyahoga County.

2. As a result of the negligence, recklessness, and/or willful/wanton conduct of all Defendants, jointly and/or severally, a COVID-19 outbreak occurred at the nursing home, causing the death of multiple residents/patients, including Carol Kenney.

3. Plaintiff's Decedent, Carol Kenney, was a patient/resident of the nursing home located at 1 David N. Myers Parkway, Beachwood, Ohio since 2017 through the time of her death, November 7, 2020 and was under the care of all Defendants at all times relevant.

4. Nicholas Laudato is the duly-appointed Administrator of the Estate of Carol Kenney, Deceased, currently pending in Cuyahoga County Probate Court, and brings this action on behalf of the Estate of Carol Kenney, and the next of kin of Carol Kenney.

5. At all times material, the nursing home located at 1 David N. Myers Parkway, Beachwood, Ohio 44122, in Cuyahoga County, was owned, operated, and/or managed by Defendants The Montefiore Home, The Montefiore Foundation, Montefiore of Menorah Park, Menorah Park Foundation Bet Moshav Zekenim Hadati, and Menorah Park Center for Senior Living (hereafter collectively referred to as the "Corporate Nursing Home Defendants)." Upon information and belief, this included final decision making on staffing budgets, staff training, and COVID-19 protocols,

including those on prevention and testing.

6. At all times material, the Corporate Nursing Home Defendants were licensed to render health care services to patients in the State of Ohio and held themselves out to the public, including Plaintiff's Decedent, Carol Kenney, as having the requisite skilled personnel, staff, and equipment to render quality health care services to the public, including Carol Kenney.

7. Defendant Ariel Hyman was the Nursing Home Administrator, at all times relevant, and was acting in the scope and in furtherance of his employer's/ principal's business at all times relevant to this lawsuit.

8. Defendant Hyman was responsible for the day-to-day operations of the nursing home located at 1 David N. Myers Parkway, Beachwood, Ohio 44122, including direction and management of staff, ranging from administrative staff and housekeeping to kitchen staff, care aides and nurses.

9. Defendant Tina King was the Director of Nursing, at all times relevant, and was acting in the scope and in furtherance of her employer's/ principal's business at all times relevant to this lawsuit.

10. Defendant Marie Gelle was the Assistant Director of Nursing, at all times relevant, and was acting in the scope and in furtherance of her employer's/ principal's business at all times relevant to this lawsuit.

11. Upon information and belief, Defendants King and Gelle were responsible for the collection of COVID-19 testing. Despite this, according to public statements by

representatives from the Corporate Nursing Home Defendants, Defendants King and Gelle falsified tests results, leading to a COVID-19 outbreak at the nursing home.

12. According to public statements from Defendants King and Gelle, these Defendants expressed grave concern about The Corporate Nursing Home Defendants' COVID-19 protocol, including the failure to use The Corporate Nursing Home Defendants' "Point of Care" testing machine, that would allow COVID test results within minutes, instead of days.

13. The Corporate Nursing Home Defendants, as well as Defendant Hyman, refused to allow Defendants King and Gelle to test using the nursing home's own "Point of Care" testing machine fearing, that it would reveal "too many" positive results.

14. Further, according to public statements made by Defendants King and Gelle, each expressed further concern about staffing shortages to their immediate superiors, but the Corporate Nursing Home Defendants, as well as Defendant Hyman, ignored these concerns.

15. Plaintiff's Decedent, Carol Kenney, looked to all Defendants for medical assistance and care.

16. The Corporate Nursing Home Defendants are vicariously liable for the actions of their employees and agents (*respondeat superior* and agency liability) and/or contractors (*Clark v. Southview* agency by estoppel).

17. Pursuant to Civil Rule 10, an Affidavit of Merit is attached hereto as

Exhibit 1.

JURISDICTION AND VENUE

18. This Court has Jurisdiction over all Defendants because, among other things, all Defendants do, and all times relevant, did, reside or have their domicile in the State of Ohio, purposefully avail themselves of the laws of the State of Ohio, and/or commit tortious acts within the State of Ohio.

19. Venue is proper in Cuyahoga County under Civil Rule 3 because the acts and omissions giving rise to this case occurred in Cuyahoga County.

COUNT I

20. Plaintiff hereby re-alleges and re-avers the allegations contained in paragraphs 1 through 19 of his Complaint as if fully rewritten herein.

21. On February 21, 2020, the Centers for Disease Control ("CDC") issued COVID-19 recommendations for health care professionals, which included review of infection prevention and control policies, and CDC recommendations for implementation of precautions.

22. On March 9, 2020, Ohio Governor Michael DeWine issued Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19 and authorizing the Ohio Department of Health and State Agencies to implement procedures to alleviate the public health threat.

23. On March 11, 2020, the WHO declared COVID-19 a global pandemic.

24. Pursuant to the above on April 3, 2020 the Ohio Department of Health

provided a Pre-Surge Tool Kit to all long-term health care facilities, including the Montefiore facility, that included:

- Patient/Resident Population Assessment Checklist
- Personnel Population Risk Assessment Checklist
- Assessment of COVID-19 + Clinical Level of Severity (NEWS2)
- Scoring Matrix for NEWS2
- COVID-19 Symptom Monitoring Log
- Patient/Resident Transfer Checklist
- Hospital Discharge Criteria Checklist
- Tips for Patient/Resident Social and Emotional Wellbeing
- Tips for Staff Social and Emotional Wellbeing
- Tips for Staff Attire and Personal Protective Equipment (PPE)
- PPE Quick Guide - Contingency Capacity
- PPE Quick Guide - Crisis Capacity
- Tips for Cleaning and Disinfecting Homes and Congregate Care Settings

25. The CDC warned that persons at high risk for severe illness or death from COVID-19 include people 65 years and older, people who live in a nursing home or long-term care facility and people who have a serious underlying medical condition.

26. In response to the COVID-19 Pandemic, upon information and belief, the Corporate Nursing Home Defendants implemented some restrictive protocols, or at least were supposed to do so. The restrictions included, among other items, suspension of all family visitation; suspension of group activities; meals served only in residents' rooms; daily monitoring of COVID symptoms; all employees to wear masks and gloves and to follow strict hand-washing procedures; use of hand sanitizer; all employees to have their temperatures taken and be screened for symptoms prior to each shift.

27. The above stated protocols were issued by the Corporate Nursing Home Defendants in order to protect the health and well-being of nursing home residents and associates, yet they were not followed.

28. Additionally, COVID-19 test results were falsified or improperly ran by all Defendants.

29. The Corporate Nursing Home Defendants, as well as Defendant Hyman, ignored complaints from staff about COVID-19 prevention and treatment protocols.

30. On or about October 12, 2020, the family of Plaintiff's Decedent was permitted to see Ms. Kenney.

31. When taken to her family, Ms. Kenney was visibly and clearly sick, barely able to speak or sit up right. As a result, Plaintiff's Decedent family demanded that she be taken to the hospital.

32. Shortly after arriving to the hospital, Ms. Kenney was diagnosed with COVID-19 and a pressure sore on her Coccyx.

33. As a result of her COVID-19 infection, Ms. Kenney was placed in hospice.

34. On November 7, 2020, Ms. Kenney died as a result of COVID-19.

35. At all times material, the nursing home at issue was on lockdown, such that Plaintiff's Decedent's only exposure to other individuals was with nursing home employees.

36. At all times material, all Defendants failed to follow, or failed to ensure staff followed, infection control mandates per industry standards and the nursing home's own policies and procedures.

37. Upon information and belief, during this time period, employees of the Corporate Nursing Home Defendants, as well as Defendants Hyman, King, and Gelle, either knowingly or at the direction of their employer or principal, submitted falsified

COVID-19 tests. Specifically, test samples were submitted on behalf of patients that were blank, thereby coming back as "negative."

38. All Defendants, jointly and/or severally, were negligent in their care and treatment of Plaintiff's Decedent, *inter alia*: in failing to follow its own policies, as well as other industry mandates; in failing to oversee its employees relating to COVID-19 testing; in submitting falsified COVID-19 testing; in failing to ensure adequate COVID-19 testing procedures were in place; in failing to heed warnings from staff about COVID-19 protocols and staff shortages; in failing to properly assess its ability to provide suitable care for Plaintiff's Decedent; in failing to periodically reassess that ability; in failing to transfer Plaintiff's Decedent to a facility which could provide suitable care; in failing to ensure Plaintiff's Decedent did not develop pressure sores; and in providing negligent services, care, and treatment to her.

39. Plaintiff's Decedent's rights under Ohio's Residents' Bill of Rights, O.R.C. 3721.10 to 3721.17, along with her rights found in 42 C.F.R. Part 483 were violated by the above, and these violations took her life.

40. As a direct and proximate result of the negligence of all Defendants, jointly and/or severally, Defendants caused Plaintiff's Decedent to develop COVID-19, which ultimately led to her death.

41. The Corporate Nursing Home Defendants, themselves or through their employees, failed to properly provide medical services, failed to have proper protocols and policies in place, and failed to take appropriate measures at a time when such

medical care, treatment, and attention was required.

42. The Corporate Nursing Home Defendants, as well as Defendant Hyman, failed to provide appropriate and adequate staffing to its nursing home facility.

43. The Corporate Nursing Home Defendants, as well as Defendant Hyman, made budgetary and administrative decisions that had a detrimental effect on the ability of the nursing home to provide safe, adequate, and essential care to the residents, including Carol Kenney.

44. The decisions and directives of the Corporate Nursing Home Defendants, as well as Defendant Hyman, as to staffing and census, in addition to COVID-19 testing, were determined by the financial needs and goals of the Corporate Nursing Home Defendants, not the medical and nursing needs of the residents of the nursing home.

45. The Corporate Nursing Home Defendants entered into a continuing course of negligent and/or reckless conduct, implementing and enforcing dangerous policies relating to COVID-19 testing and operational budgets at the nursing home, which deprived residents, including Carol Kenney, of the adequate COVID-19 testing and staffing necessary to meet their custodial needs, including the monitoring and care of Carol Kenney so as to avoid the injuries set forth more fully above.

46. At all times relevant, the Corporate Nursing Home Defendants, as well as Defendant Hyman, had a duty to responsibly allocate resources and exercise fiscal policies with reasonable care, so as to prevent the infliction of harm on residents of the

nursing home.

47. The Corporate Nursing Home Defendants, as well as Defendant Hyman, breached their duty by failing to allocate sufficient resources to the nursing home, thereby causing harm to Carol Kenney, as discussed herein.

48. Additionally, The Corporate Nursing Home Defendants, as well as Defendant Hyman, failed to employ individuals who could and would treat Plaintiff's Decedent, Carol Kenney, in accordance with accepted practices of nursing homes.

49. Furthermore, The Corporate Nursing Home Defendants, as well as Defendant Hyman, failed to establish appropriate standards for nurses, aids, and other employees using and/or employed at their facilities.

COUNT II

50. Plaintiff hereby re-alleges and re-avers the allegations contained in paragraphs 1 through 49 of his Complaint as if fully rewritten herein.

51. At all times material herein, the aforementioned conduct of all Defendants constituted a reckless disregard for the consequences so as to affect the life or health of Carol Kenney and other residents of the nursing home at issue.

52. At all times material herein, all Defendants engaged in conduct with heedless indifference to the consequences, that thereby created a substantial and unjustifiable risk of injury, death, or loss to person or property to others, including Carol Kenney.

53. At all times material herein, the aforementioned conduct of all Defendants constituted intentional misconduct or willful or wanton misconduct.

COUNT III

54. Plaintiff hereby re-alleges and re-avers the allegations contained in paragraphs 1 through 53 of his Complaint as if fully rewritten herein.

55. As a direct and proximate result of the wrongful conduct of all Defendants, jointly and/or severally, whether negligent, reckless, intentional, willful or wanton, Carol Kenney suffered severe physical injuries.

56. As a further direct and proximate result of the wrongful conduct of all Defendants, jointly and/or severally, whether negligent, reckless, intentional, willful or wanton, Carol Kenney incurred significant pain and suffering, severe mental anguish, loss of enjoyment of life, and reasonable medical expenses.

COUNT IV

57. Plaintiff hereby re-alleges and re-avers the allegations contained in paragraphs 1 through 56 of his Complaint as if fully rewritten herein.

58. Plaintiff brings this cause of action pursuant to Ohio Revised Code §2125.02 for the benefit of the next of kin of the decedent.

59. As a direct and proximate result of the wrongful conduct of all Defendants, jointly and/or severally, whether negligent, reckless, intentional, willful or wanton, Carol Kenney died.

60. As a further direct and proximate result of the wrongful conduct of all Defendants, jointly and/or severally, whether negligent, reckless, intentional, willful or wanton, Carol Kenney's next of kin have suffered pecuniary and non-pecuniary losses and

have suffered mental anguish.

61. As a further direct and proximate result of the wrongful conduct of all Defendants, jointly and/or severally, whether negligent, reckless, intentional, willful or wanton, Decedent's estate has incurred reasonable burial and funeral expenses on behalf of the Decedent.

COUNT V

62. Plaintiff hereby re-alleges and re-avers the allegations contained in paragraphs 1 through 61 of his Complaint as if fully rewritten herein.

63. The wrongful conduct of all Defendants was malicious in that it demonstrated a conscious disregard for the rights and safety of the residents of the nursing home at issue including Carol Kenney and had a great probability of causing substantial harm, thus justifying the award of punitive damages.

WHEREFORE, Plaintiff demands judgment against all Defendants, jointly and/or severally, for compensatory and wrongful death damages in amounts exceeding \$25,000.00;

Plaintiff further demands judgment against all Defendants, jointly and/or severally, for punitive damages in an amount exceeding \$25,000.00; for Prejudgment and Post-Judgment Interest; for Costs and attorneys' fees expended herein; and for such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Allen C. Tittle

ALLEN C. TITTLE (0086590)

KATHLEEN R. HARRIS (0088079)

TITTLE & PERLMTUER

4106 Bridge Ave.,

Cleveland, Ohio 44113

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Fax: 888-604-9299

Email: tittle@tittlelawfirm.com

katie@tittlelawfirm.com

Attorneys for Plaintiff

JURY DEMAND

A jury pursuant to Civil Rule 38(B) is hereby demanded for all issues.

/s/ Allen C. Tittle

Allen C. Tittle (0086590)

TO THE CLERK

PLEASE SERVE DEFENDANTS WITH THIS COMPLAINT AND THE ATTACHED AFFIDAVIT OF MERIT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT THE ADDRESSES LISTED IN THE CAPTION OF THE COMPLAINT.

/s/ Allen C. Tittle

Allen C. Tittle (0086590)

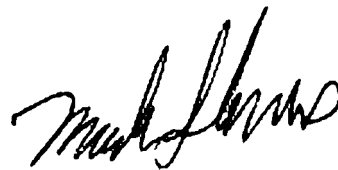
STATE OF
COUNTY OF

)
) SS. AFFIDAVIT
)

Now comes Affiant, Mark Shoag, M.D., being first duly sworn, and having knowledge of the facts contained herein, states that:

1. I am a physician licensed to practice medicine in the state of Ohio and devote at least 50% of my professional time to the active clinical practice of medicine.
2. I have specialized knowledge, skill, experience, training, and education and specialize my practice in the field of internal medicine.
3. I have reviewed all medical records of Carol Kenney reasonably available to the ~~Plaintiff~~ concerning the allegations contained in the Complaint.
4. I am familiar with the applicable standard of care in treating patients like Carol Kenney.
5. Based on my review of the records it is my opinion that all Defendants to this action breached the standard of care, and that breach caused injury and death to Carol Kenney.
6. My opinion is based on reliable medical information, my experience, training and education.

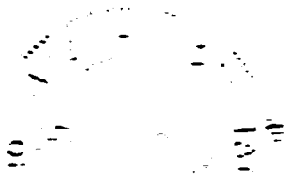
AFFIANT FURTHER SAYETH NAUGHT.



MARK SHOAG, M.D.

SWORN TO AND SUBSCRIBED BEFORE ME and subscribed in my presence

this 20 day of 2021 September





Notary Public

Patricia Davis
My Commission Expires 12/31/2023
Present to RL 8/14/23