

IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY, MISSOURI

ALLEN MOSS, Individually, and as Plaintiff
Ad Litem Pursuant to RSMo 537.021;

Plaintiff.

v.

FOUNTAINBLEAU LODGE OF CAPE
GIRARDEAU, INC d/b/a
FOUNTAINBLEAU LODGE

Serve:
Shafiq Malik
2732 Bloomfield Rd.
Cape Girardeau, MO 63703

and

FOUNTAINBLEAU MANAGEMENT
GROUP, INC.

Serve:
Shafiq Malik
2732 Bloomfield Rd.
Cape Girardeau, MO 63703

SHAFIQ MALIK

Serve:
2732 Bloomfield Rd.
Cape Girardeau, MO 63703

Defendants.

Case No.:

Division:

JURY TRIAL DEMANDED

PETITION FOR DAMAGES

INTRODUCTION

1. Nellie Moss died on April 27, 2017. She was 81 years old.
2. Nellie Moss had a history of dementia, was a fall risk, had epilepsy that resulted in periodic seizures, had esophageal reflux, was unaware of her own safety needs and was unable to use the call light when she needed help. All of this information was known to Defendant when she entered their nursing home facility called Fountainbleau Lodge of Cape Girardeau, Inc. d/b/a Fountainbleau Lodge which is located at 2001 North Kingshighway Rd., Cape Girardeau Missouri

63701.

3. Nellie Moss died under the care of Defendants who were ethically and legally obligated to meet her needs and to protect her from harm.

4. Nellie Moss was a resident at Fountainbleau Lodge from approximately May 27, 2014 until April 27, 2017.

5. Nellie Moss was completely dependent upon Defendants to meet her needs.

6. Nellie Moss was identified as being “immobile” by Defendants in the medical chart they kept on her at Fountainbleau Lodge.

7. In the early morning hours of April 27, 2017, Nellie Moss had a “coughing attack” that resulted in her falling out of bed and striking her head which caused a large gash to her head. Defendants put a bandage on the gash and place her back in bed.

8. Nellie began coughing again after Defendants placed her back in bed which caused her wound to begin bleeding again. She was then taken to St. Francis Hospital where it was determined that she had suffered a significant intercerebral hemorrhage. Nellie Moss died that same day.

9. Nellie Moss’s death certificate reads that her cause of death was intracranial bleed.

THE PARTIES TO THE LAWSUIT

Plaintiff Allen Moss

10. Plaintiff Allen Moss, is a resident of the State of Missouri and is the surviving son of Nellie Moss.

11. As the natural son of Nellie Moss, Plaintiff Allen Moss is a member of the class of individuals authorized to pursue the wrongful death claim involving Nellie Moss pursuant to RSMo § 537.080.

12. Plaintiff Allen Moss also is/will be the appointed Plaintiff ad litem and, as such, is

or will be authorized to bring the alternative cause of action for loss chance of recovery or survival herein under Section 537.021, R.S.Mo.

DEFENDANTS

Fountainbleau Lodge of Cape Girardeau, Inc. d/b/a Fountainbleau Lodge

13. Fountainbleau Lodge of Cape Girardeau, Inc. d/b/a Fountainbleau Lodge (hereinafter "Fountainbleau Lodge") is and was at all times herein mentioned, a Missouri for-profit corporation in good standing licensed to do business in the State of Missouri with its principal place of business at 2001 North Kingshighway, Cape Girardeau, Missouri 63701.

14. At all relevant times Fountainbleau Lodge was licensed by the State of Missouri as and skilled nursing facility and at all pertinent times held itself out to the citizens of Missouri and the general public and to plaintiff, as an institutional healthcare provider and skilled nursing facility with specialized expertise in all aspects of providing care to the elderly.

15. On its website, Fountainbleau Lodge held itself out to the public as providing full nursing care and even stating: "With our skilled care wing, we provide full nursing care to individuals. This range of nursing services provides constant security to our residents."

16. At all relevant times, Fountainbleau Lodge was in business for the care and treatment of persons in need of long-term care and acted by and through its owners, employees, agents and representatives.

17. At all relevant times, Fountainbleau Lodge acted by and through its owners, members, operators, managers, agents, servants, representatives, consultants and employees all of whom acted within the scope of their ownership, agency and employment.

18. At all relevant times, Fountainbleau Lodge exercised part and/or all managerial and operational control for the Fountainbleau Lodge nursing home facility.

19. At all relevant times, Fountainbleau Lodge as well as its owners, operators, managers, agents, servants, consultants and employees were required to act within the standards of care set forth in the federal regulatory rules that apply to skilled nursing home facilities, specifically those found in the Omnibus Budget Reconciliation Act at 42 C.F.R. 483, *et seq.*

20. At all relevant times, Fountainbleau Lodge as well as its owners, operators, managers, agents, servants, consultants and employees were required to act within the standards of care set forth in the Missouri regulations that apply to skilled nursing home facilities, specifically those found at 19 C.S.R. 30, *et seq.*

21. At all relevant times, Fountainbleau Lodge exercised part and/or all managerial and operational control for the Fountainbleau Lodge facility.

22. At all relevant times, Fountainbleau Lodge received money and profited from the operation of the facility.

23. At all relevant times, Fountainbleau Lodge was owned by a combination of individuals and two estates.

24. At all relevant times, Shafiq Malik owned 51.2% of Fountainbleau Lodge.

25. At all relevant times, Ali Malik owned 13.1% of Fountainbleau Lodge.

26. At all relevant times, Tahira Naeem owned 7.2% of Fountainbleau Lodge.

27. At all relevant times, Mohammad Tariq owned 7.1% of Fountainbleau Lodge.

28. At all relevant times, Estate of Mohammad Ali Malik owned 7.1% of Fountainbleau Lodge.

29. At all relevant times, Bilkiss Chaudry owned 7.1% of Fountainbleau Lodge.

30. At all relevant times, Estate of Rahmir Noor owned 7.1% of Fountainbleau Lodge.

31. Fountainbleau Lodge can be served through its registered agent Shafiq Malik, 2732 Bloomfield Rd., Cape Girardeau, Missouri 63703.

Fountainbleau Management Group, Inc.

32. Fountainbleau Management Group, Inc. is a Missouri for-profit corporation in good standing. Fountainbleau Management Group, Inc. was incorporated on or about April 13, 2009 with the owners and initial two members of the Board of Directors being Shafiq Malik and Ali Malik.

33. On or about June 29, 2015, Defendant Fountainbleau Management Group, Inc. filed its Biennial Registration Report with the State of Missouri. That report listed Shafiq M. Malik as President and Secretary and the sole member of the Board of Directors.

34. At all relevant times, Fountainbleau Management Group, Inc. owned, operated, controlled, managed and/or provided services to at least three long term care facilities in Missouri, namely, Fountainbleau Lodge which is located at 2001 North Kingshighway, Cape Girardeau, Missouri 63701, Fountainbleau Nursing Center which is located at 1349 Highway 61, Festus, Missouri 63028 and Riverview at the Park which is located at located at 1100 Progress Parkway, Sainte Genevieve, Missouri 63670.

35. At all relevant times, Fountainbleau Management Group, Inc. held itself out as the Management Company for Fountainbleau Lodge.

36. At all relevant times, Fountainbleau Management Group, Inc. was owned and operated by Shafiq Malik and Ali Malik, both of whom are also partial owners of Fountainbleau Lodge.

37. At all relevant times, Fountainbleau Management Group, Inc. through its owners, members, board of directors, officers, governing body and/or its subsidiary companies, owned and/or controlled (directly or indirectly) the majority of Fountainbleau Lodge.

38. At all relevant times, Fountainbleau Management Group, Inc. provided centralized management and support services to the healthcare facilities it owns, operates and/or manages

including Fountainbleau Lodge. The management and support services include operational support for preparing budgets, accounting, financial services, cash management, training, and other services all of which are provided to the various healthcare facilities by Fountainbleau Management Group, Inc.

39. At all relevant times, Fountainbleau Management Group, Inc. also participated in the daily operation of Fountainbleau Lodge, including but not limited to: providing capital, determining dollar budgets, determining per patient per day (PPD) budgets, hiring and firing staff, determining the number of staff, determining the staffing levels, determining the staff-to-resident ratio, staff training, safety of residents, licensure, auditing resident care, reviewing and approving computer systems, facility maintenance, facility licensing, contracting for services, and other operations controlling resident care.

40. Defendant Fountainbleau Management Group, Inc. collected \$196,327 from Fountainbleau Lodge for these services in the year 2017.

41. Defendant Fountainbleau Management Group, Inc. can be served through its registered agent Shafiq Malik, 2732 Bloomfield Rd., Cape Girardeau, Missouri 63703.

Shafiq Malik

42. Shafiq Malik is a Missouri resident.

43. At all relevant times, Shafiq Malik owned, managed and/or controlled – in whole or in part – Fountainbleau Lodge and Fountainbleau Management Group, Inc.

44. Upon information and belief Shafiq Malik owned 51.2% of Fountainbleau Lodge, making him the controlling owner of the facility.

45. Upon information and belief Shafiq Malik is the sole or partial owner of Fountainbleau Management Group, Inc. which collected \$196,327 from Fountainbleau Lodge for these services in the year 2017 purportedly for management services.

46. At all relevant times, Shafiq Malik was the Administrator at Fountainbleau Lodge and was paid \$62,500 in 2017 for his administrative services.

47. At all relevant times Shafiq Malik was the President and Secretary of Fountainbleau Lodge.

48. Shafiq Malik willfully participated in the tortious acts that are the subject of this Petition. Particularly, Shafiq Malik willfully failed to ensure that Fountainbleau Lodge had appropriate policies and procedures for its nursing staff, that residents such as Nellie Moss had adequate individualized care plans to meet their needs and keep them safe, that residents were adequately supervised and monitored to keep them safe, was properly capitalized, funded, staffed and that staff members received adequate training and supervision while Nellie Moss was a resident at Fountainbleau Lodge.

49. Shafiq Malik can be served at his business at 2732 Bloomfield Rd., Cape Girardeau, Missouri 63703.

DEFENDANTS' JOINT ENTERPRISE

50. Defendants were engaged in a joint enterprise in that:

- a. Defendants had an agreement, express and/or implied, among the members of the group to operate Fountainbleau Lodge located at 2001 North Kingshighway Rd., Cape Girardeau, Missouri 63701;
- b. Defendants had a common purpose to operate Fountainbleau Lodge located at 2001 North Kingshighway Rd., Cape Girardeau, Missouri 63701;
- c. Defendants had a community of pecuniary interest in the operation of Fountainbleau Lodge located at 2001 North Kingshighway Rd., Cape Girardeau, Missouri 63701; and
- d. Defendants had an equal right to a voice in the direction of the operation of Fountainbleau Lodge located at 2001 North Kingshighway Rd., Cape Girardeau, Missouri 63701 which gave the Defendants an equal right of control.

51. At all relevant times, there has been a close relationship between the Defendants.

52. As a consequence of the joint enterprise, Defendants owed a joint duty to Nellie Moss to provide for her safety and provide care that met her individual needs.

JURISDICTION AND VENUE

53. Venue is proper in this Court, because the tortious acts complained of occurred in Cape Girardeau County, Missouri.

54. Defendants are Missouri corporations and/or residents and each committed tortious acts in the state of Missouri, thereby making jurisdiction in the Court proper.

55. The damages here greatly exceed the jurisdictional limit of the associate Circuit Court as provided in §517.011.(1) R.S.Mo., and thus jurisdiction is appropriate in the Circuit Court.

AGENCY

56. The acts herein described were performed by the agents, representatives, servants, and employees of Defendants and were performed either with full knowledge and consent of Defendants, and/or were performed by their agents, representatives, servants or employees during the scope of their agency, representation, or employment with the Defendants.

57. Further, the acts hereinafter described as being performed by the agents, representatives, servants or employees of Defendants were performed or were supposed to be performed on behalf of and/or for the benefit of Nellie Moss.

DUTY AND BREACH

58. At all times mentioned herein defendant owed a duty of reasonable care to decedent to use that knowledge, skill and care that is generally used by health care providers under similar circumstances which duty defendant breached in one or more ways, as set forth more fully hereinafter, any one of which was a departure from the accepted standard of care and which

individually, directly caused or directly contributed to cause injury and damages to Nellie Moss and ultimately, her death.

FACTUAL BACKGROUND

59. On or about May 27, 2014 Defendants accepted Nellie Moss as a resident at Fountainbleau Lodge for the purpose of providing skilled nursing services. Upon her admission, Defendants were required to meet her physical and medical needs and to provide her with a safe environment.

60. Upon her admission to Fountainbleau Lodge, Defendants knew that Nellie Moss had suffered a series of strokes that had left her with left-sided weakness, slurred speech and decreased mental alertness. She had to have a PEG [feeding] tube placed to provide her with nutrition since she could no longer safely swallow.

61. During the course of her residency at Fountainbleau Lodge, Defendants prepared and updated an individualized plan of care for Nellie Moss that was designed to provide the care she required to reach her maximum level of improvement. As part of the individualized plan of care Defendants were required to conduct restorative therapy to strengthen her, keep her from contracting and to encourage her to vocalize.

62. Defendants also recognized that Nellie Moss was completely dependent upon Defendants to perform her activities of daily living and that she was at risk for falling since she was unaware of her own safety needs.

63. Defendants exercised substantial control over the operation and management of the Fountainbleau Lodge during Nellie Moss's period of residency therein, including but not limited to the creation, setting, funding and/or implementation of budgets; the hiring and training of staff; the monitoring of resident acuity levels, staffing sufficiency, meeting each resident's needs; control over resident admissions, discharge of residents to and from the facility; the supervision

and monitoring of residents; responding to changes in resident condition, resident safety, creation and implementation of care plans that meet the needs of the residents and the creation and enforcement of written policies and procedures pertaining to the rules that provide for the safety and well-being of residents.

64. Each of these managerial, operational and/or administrative functions had a direct impact on the quality of care delivered to Nellie Moss and other residents at Fountainbleau Lodge and were taken in furtherance of an operational, managerial and/or administrative objective over the facility.

65. At all relevant times, Defendants substantially derived their revenue and profits from the receipt of taxpayer dollars through federally and state funded Medicare and Medicaid programs.

66. Defendants, by and through their common ownership, officers and members arranged for financial transactions to take place transferring money from Fountainbleau Lodge to Fountainbleau Management Group, Inc., Shafiq Malik and other minority owners.

67. The financial transactions between Fountainbleau Lodge and Fountainbleau Management Group, Inc are related party transactions, meaning that there is joint ownership between the two entities.

68. In 2016, Fountainbleau Lodge paid \$196,327 in “management fees” to Defendant Fountainbleau Management Group, Inc. which is a related party transaction.

69. In 2016 Fountainbleau Lodge also paid Shafiq Malik a salary of \$67,650 in his capacity as the Administrator of the Fountainbleau Lodge facility.

70. During Nellie Moss’s period of residency, Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Fountainbleau Lodge was sufficiently staffed to meet her individual needs.

71. Further, Defendants failed to ensure through their operational, budgetary, consultation, and managerial decisions and actions, that employees of Fountainbleau Lodge were properly trained in how to provide the level of supervision and care required by Nellie Moss during her residency.

72. Defendants failed to ensure through their operational, budgetary, consultation and managerial decisions and actions, that employees of Fountainbleau Lodge were properly trained to recognize when a resident required more care than Fountainbleau Lodge could provide and to transfer that resident to a facility that could meet her needs.

73. As part of their duties to Nellie Moss, Fountainbleau Lodge was to report to her physician any significant change in her circumstances.

74. During the latter part of her residency at Fountainbleau Lodge, Nellie Moss was immobile with the exception of her head, right arm and right hand. She was completely dependent upon Defendants to meet her activities of daily living.

75. During the latter part of her residency at Fountainbleau Lodge, Nellie Moss's legs, left arm and left hand are contracted. Despite her individualized care plan requiring therapy to prevent contractions, Defendants failed to perform the therapy services as required.

76. From April 1, 2017 through April 26, 2017 Defendants chart that Nellie Moss has no cough, with the sole exception being April 8, 2017 when it is noted that she has an occasional coughing spell.

77. On April 27, 2017, it is charted in the early morning hours that Nellie Moss had a "coughing attack".

78. Defendants failed to provide any response to or provide any supervision or assistance to Nellie Moss during her "coughing attack".

79. According to Defendants' charting, the "coughing attack" suffered by Nellie Moss on April 27, 2017 was severe enough that it caused her to fall out of bed. During this fall, Nellie Moss hit her head and suffered a gash to her head.

80. After Nellie Moss fell out of bed from the "coughing attack" on April 27, 2017 and hit her head hard enough that it caused her to suffer a gash to her head that bled, Defendants did not call 911 or an ambulance.

81. After Nellie Moss fell out of bed from the "coughing attack" on April 27, 2017 and hit her head hard enough that it caused her to suffer a gash to her head that bled, Defendants did not call her physician.

82. After Nellie Moss fell out of bed from the "coughing attack" on April 27, 2017 and hit her head hard enough that it caused her to suffer a gash to her head that bled, Defendants did not call her son.

83. Instead, after falling out of bed from the "coughing attack" on April 27, 2017 and hitting her head and suffering a gash to her head that bled, Defendants picked Nellie Moss up and put her back into her bed.

84. After Nellie Moss began coughing again on April 27, 2017, the gash on her head began bleeding again. Only at this point, was she was taken to St. Francis Hospital where it was determined that she had suffered a significant intercerebral hemorrhage.

85. Nellie Moss died that same day, April 27, 2017, as a result of an intercerebral bleed that was directly caused by the fall she suffered at Fountainbleau Lodge.

COUNT I – WRONGFUL DEATH

86. Plaintiff incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

87. At all times material hereto, Nellie Moss was in a defenseless condition, dependent upon Defendants to provide for her safety, protection, care and treatment.

88. At all relevant times, Defendants had a duty to act in accordance with the standards of care required of those owning, operating, managing, administering, maintaining, and/or controlling a skilled nursing facility.

89. These duties required Defendants to implement and enforce policies and procedures to ensure resident safety, the proper care for, and treatment of, residents such as Nellie Moss.

90. These duties required defendants to have sufficient and qualified staff at Fountainbleau Lodge to ensure that residents of the nursing home receive proper care, supervision, monitoring, treatment and compliance with care plan requirements.

91. These duties required defendants to ensure that Fountainbleau Lodge nurses and other staff provided the care required by the individualized care plan, met the needs of the residents and obtained additional medical care for Nellie Moss and other residents when they experience a change of condition.

92. These duties required Defendants to ensure that Fountainbleau Lodge nurses and other staff were educated and trained to provide proper supervision, care and treatment for the residents like Nellie Moss.

93. These duties required Defendants to ensure that Fountainbleau Lodge was properly capitalized to ensure that the staff members were properly trained and that residents received proper supervision, care and treatment.

94. These duties required Defendants to ensure that Fountainbleau Lodge was properly capitalized to ensure that there were enough staff members so residents received proper supervision, care and treatment.

95. These duties required Defendants to ensure that Fountainbleau Lodge employees knew how to obtain proper medical care for residents undergoing significant changes in their condition.

96. These duties required Defendants to notify Nellie Moss's physician with significant changes in her condition and to modify her individualized care plan to meet her ongoing needs.

97. These duties required Defendants to get residents like Nellie Moss emergency medical care when they have suffered a severe injury.

98. Specifically, with respect to Nellie Moss, defendants and their agents, servants and/or employees breached their duties and were guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standard of due care, skill, and practice ordinarily exercised by members of their profession under the same or similar circumstances, including:

- a. By failing to enact, modify and carry out an adequate individualized care plan in regard to Nellie's medical needs;
- b. By failing to follow the requirements of Nellie Moss's individualized care plan related to preventing contractures;
- c. By failing to adequately recognize that Nellie Moss was experiencing a significant change of condition in the early morning hours of April 27, 2017;
- d. By failing to adequately assess Nellie Moss's change of condition on April 27, 2017;
- e. By failing to adequately assess the risk of injury and physical decline to Nellie Moss by not obtaining necessary medical care in a timely manner;
- f. By failing to timely report to a physician changes in Nellie Moss's condition which affected her medical condition;
- g. By failing to properly assess and implement an individualized care plan to prevent Nellie Moss from falling;
- h. By failing to provide Nellie Moss with proper supervision;

- i. By failing to transfer Nellie Moss to a hospital in a timely manner after she demonstrated a change in her condition that threatened her medical condition;
- j. By failing to transfer Nellie Moss to a hospital in a timely manner after she fell out of bed and suffered an injury to her head;
- k. By failing to timely transfer Nellie Moss to a facility that could provide her adequate care;
- l. By failing to provide adequate staff to ensure Nellie Moss's 24-hour protective oversight, supervision and care;
- m. By failing to properly supervise and train the employees, agents and/or servants of defendants who were responsible for the care and treatment of Nellie Moss;
- n. By failing to have and/or implement appropriate policies and procedures regarding how to properly respond to a resident demonstrating a significant change in condition;
- o. By failing to ensure that Nellie Moss received proper care and treatment to prevent the injury and death; and
- p. By failing to properly capitalize the facility so it could have enough staff members to provide Nellie with the supervision she required.

99. Defendants, as the owners, operators, managers and/or administrators of this skilled nursing care nursing facility licensed by the State of Missouri and accepting Medicare and Medicaid funds, were subject to regulatory rules promulgated by the Missouri Division of Social Services and under the Social Security Act.

100. While providing care and treatment to Nellie Moss, Defendants and their agents, servants and/or employees breached their duty to Nellie Moss and were guilty of acts of negligence and in violating regulatory rules governing skilled care facilities including but not limited to the following:

- a. 19 C.S.R. 30-85.042(3). The operator shall be responsible to assure compliance with all applicable laws and rules. The administrator shall be fully authorized and empowered to make decisions regarding the operation of the facility and shall be held responsible for the actions of all employees. The

administrator's responsibilities shall include the oversight of residents to assure that they receive appropriate nursing and medical care;

- b. 19 C.S.R. 30-85.042(6). The facility shall not knowingly admit or continue to care for residents whose needs cannot be met by the facility directly or in cooperation with outside resources;
- c. 19 C.S.R. 30-85.042(12). A supervising physician shall be available to assist the facility in coordinating the overall program of medical care offered in the facility;
- d. 19 C.S.R. 30-85.042(13). The facility shall develop policies and procedures applicable to its operation to insure the residents' health and safety and to meet the residents' needs. At a minimum there shall be policies covering personnel practices, admission, discharge, payment, medical emergency treatment procedures, nursing practices, pharmaceutical services, social services, activities, dietary, housekeeping, infection control, disaster and accident prevention, residents' rights and handling residents' property;
- e. 19 C.S.R. 30-85.042(15). All personnel shall be fully informed of the policies of the facility and of their duties;
- f. 19 C.S.R. 30-85-14.042(16). All persons who have any contact with the residents in the facility shall not knowingly act or omit any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident;
- g. 19 C.S.R. 30-85.042(20). The facility shall develop and offer an in-service orientation and continuing educational program for the development and improvement of skills of all the facility's personnel, appropriate for their job function;
- h. 19 C.S.R. 30-85.042(22). The facility must ensure there is a system of in-service training for nursing personnel which identifies training needs related to problems, needs, and care of residents and sufficient to ensure staff's continuing competency;
- i. 19 C.S.R. 30-85.042(37). All facilities shall employ nursing personnel in sufficient numbers and with sufficient qualifications to provide nursing and related services which enable each resident to attain or maintain the highest practicable level of physical, mental and psychosocial well-being;
- j. 19 C.S.R. 30-85.042(44). The facility shall ensure that the resident's private physician, the physician's designee, the facility's supervising physician or an alternate physician shall examine the resident at least annually, and shall examine the resident as often as necessary to ensure proper medical care;

- k. 19 C.S.R. 30-85.14.042(66). Each resident shall receive twenty-four (24)-hour protective oversight and supervision;
- l. 19 C.S.R. 30-85.042(67). Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice;
- m. 19 C.S.R. 30-85.042(79). In the event of accident, injury or significant change in the resident's condition, facility staff shall notify the resident's physician in accordance with the facility's emergency treatment policies which have been approved by the supervising physician;
- n. 19 C.S.R. 30-85.042(81). Staff shall inform the administrator of accidents, injuries or unusual occurrences which adversely affect, or could adversely affect the resident. The facility shall develop and implement responsive plans of action; and
- o. 19 C.S.R. 30-85.042(100). Facilities shall ensure that the resident's clinical record must contain progress notes that include, but are not limited to: (A) Response to care and treatment; (B) Change(s) in physical, mental and psychosocial condition...".

101. Nellie Moss was a member of the class of persons intended to be protected by the enactment of the aforementioned regulatory rules.

102. The physical injuries Nellie Moss incurred were the type of injuries that these regulatory rules were enacted to prevent.

103. As a direct and proximate result of the individual and collective negligent and careless conduct of Defendants as described above, Nellie Moss suffered contractures, severe pain, severe injuries to her brain, increased lethargy and confusion and death.

104. As a direct and proximate result of the individual and collective negligent and careless conduct of the Defendants as described above, Plaintiff suffered damages including, but not limited to, decedent's pain and suffering, loss of companionship, loss of comfort, loss of guidance, loss of counsel and loss of instruction, and bereavement.

105. The actions of Defendants were malicious, wanton, grossly negligent and reckless, and performed in reckless disregard of the welfare and safety of Nellie Moss and others, such

that, in addition to damages for pain and suffering, defendants are liable for punitive and exemplary damages for their grossly negligent care of Nellie Moss.

106. At the time Defendants failed to provide proper medical care for Nellie Moss they knew that their conscious disregard to provide an adequate number of staff members, to properly capitalize Fountainbleau Lodge, to recognize and react to Nellie's significant change in condition, to prepare, modify and follow a care plan that met Nellie's needs, to provide timely medical attention to Nellie Moss, to timely send Nellie Moss to a hospital for her medical injuries and to train, and/or supervise their agents, servants and/or employees created a high degree of probability of injury to Nellie Moss and other residents like her.

107. As a result of their failures, Defendants and consciously disregarded the safety of all residents at Fountainbleau Lodge, including Nellie Moss.

108. Defendants showed a complete indifference to, or conscious disregard, for the safety of others, including Nellie Moss, which warrants punitive and/or exemplary damages be assessed against Defendants in an amount that is fair and reasonable and will punish Defendants and deter them and others from similar conduct.

109. As a direct and proximate result of Defendants' negligence, and complete indifference to, or conscious disregard, for the safety of others, Nellie Moss was harmed and suffered damages, including but not limited to pain, suffering, mental anguish, disability, disfigurement, and loss of enjoyment of life and death.

WHEREFORE, for the reasons set forth above, Plaintiff prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

COUNT II - NEGLIGENCE

110. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

111. Defendants owed Nellie Moss a duty to use reasonable care to protect her from unreasonable risk of harm and/or death.

112. Defendants owed a duty to ensure that Nellie Moss remained free from mental and physical abuse and negligent conduct that would cause her mental and physical harm.

113. Defendants had a duty to ensure that Nellie Moss was treated with consideration, respect and full recognition of her dignity and individuality.

114. During the course of her residency at Fountainbleau Lodge, Nellie Moss was dependent upon Defendants for her daily needs, safety, protection, care and treatment.

115. Defendants were aware of Nellie Moss's health status and care needs upon her admission to the facility and throughout her residency.

116. The danger of injury and death for failing to recognize the seriousness of her change in condition and the failure to obtain additional medical assistance for Nellie Moss was predictable and foreseeable.

117. Defendants failed to provide Nellie Moss with the proper care, treatment and supervision required to meet her needs.

118. Defendants failed to provide a sufficient number of staff members and sufficiently trained staff members to prevent the injuries sustained by Nellie Moss, including death.

119. The negligence of defendants was willful, wanton, malicious and directly caused or contributed to cause the injuries and death of Nellie Moss, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

WHEREFORE, for the reasons set forth above, Plaintiff prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

COUNT III – NEGLIGENCE PER SE

120. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

121. As health care providers, owners, operators and/or managers to residents in skilled nursing care facilities licensed by the State of Missouri and accepting Medicare and Medicaid funds Defendants were subject to regulatory rules promulgated by the Missouri Division of Social Services and other laws.

122. While providing care to Nellie Moss, Defendants breached their duties to Nellie Moss and were guilty of acts of violating the state regulatory rules governing skilled nursing facilities including, but not limited to those identified above and incorporated here.

123. Nellie Moss was a member of the class that the state regulatory rules identified above and incorporated here intended to protect.

124. The injuries Nellie Moss sustained that are identified herein were of the kind of injuries the state regulatory rules identified above and incorporated herein were designed to prevent.

125. Defendants' violations of the state regulatory rules identified above and incorporated herein were the proximate cause of the injuries Nellie Moss sustained during her residency at Fountainbleau Lodge.

126. The danger of injury and death for failing to recognize the seriousness of her change in condition and the failure to obtain additional medical assistance for Nellie Moss was predictable and foreseeable.

127. The negligence of Defendants was willful, wanton, malicious and directly caused or contributed to cause the injuries and death of Nellie Moss, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

WHEREFORE, for the reasons set forth above, Plaintiffs prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

COUNT IV – NEGLIGENT SUPERVISION

128. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

129. Defendants had a duty to supervise the agents and employees that provided care to Nellie Moss.

130. The actions and omissions taken by Defendants with respect to Nellie Moss's care were within the area of Defendants' duty to supervise.

131. Defendants failed to use ordinary care in performing their duties to supervise the agents and employees that were providing care and services to Nellie Moss.

132. It was foreseeable to Defendants that its failure to supervise their agents and employees would result in the type of damages incurred by Nellie Moss all as identified above and incorporated herein.

133. Defendants' failure to supervise amounted to negligence that directly caused Nellie Moss's injuries.

134. As a direct and proximate result of Defendants' wrongful acts and omissions while Nellie Moss was a resident at Fountainbleau Lodge, Nellie Moss suffered contractures, severe pain, severe injuries to her brain, increased lethargy and confusion and death.

135. The deprivations Nellie Moss suffered were the result of actions or omissions by the defendants all of which caused Nellie Moss's physical pain, suffering and death.

136. As a further, direct and proximate cause of the negligence of defendants, Plaintiff has sustained losses because of Nellie Moss's death in the nature of loss of services, companionship, comfort, instruction, guidance, counsel, training and support.

137. The negligence of defendants was willful, wanton, malicious and directly caused or contributed to cause the injuries and death of Nellie Moss, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

WHEREFORE, for the reasons set forth above, Plaintiffs prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

COUNT V – LOSS CHANCE OF RECOVERY OR SURVIVAL

138. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

139. Count V is alleged in the alternative to Counts I, II, III and IV and brought by Plaintiff Allen Moss as Plaintiff *ad litem* in accordance with RSMo 537.021.1(1).

140. During the course of her medical care and treatment, as stated above and incorporated herein, and as a direct result of the negligence and careless of Defendants in failing to render appropriate treatment as set forth above, Nellie Moss had a material chance of survival

and/or recovery and through the negligent acts or omissions of Defendants, Nellie Moss was caused to suffer the loss of a material, significant and substantial chance of recovery.

141. Nellie Moss's loss of a chance of survival and/or recovery was the direct and proximate result of the negligence and carelessness of Defendants as set forth more fully above and incorporated herein, and such negligence directly caused or directly contributed to cause Nellie Moss to lose all or a material part of such chance of survival or recovery.

WHEREFORE, Plaintiff Allen Moss as Plaintiff *ad litem* for the reasons set forth above, prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

COUNT VI – RES IPSA LOQUITUR

142. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

143. On or about April 27, 2017 Nellie Moss sustained an intercerebral hemorrhage during her residency at Fountainbleau Lodge.

144. Nellie Moss's intercerebral hemorrhage is a direct result of the actions by individuals employed by Defendants.

145. The events surrounding the injuries suffered by Nellie Moss were such that does not ordinarily happen if the Defendants had used due care and not been negligent.

146. The Defendants employed, managed, and/or controlled the individuals involved in the events surrounding the injuries suffered by Nellie Moss.

147. Further, the Defendants possess superior knowledge as to the cause of the injuries suffered by Nellie Moss.

148. The circumstances that resulted in the severe and permanent injuries to Nellie Moss, up to and including death, is the kind of injury that ordinarily occurs due to someone's negligent conduct.

149. Defendants actions and omissions were wanton, willful, reckless and in conscious disregard to the health and well-being of Nellie Moss and her safety, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

WHEREFORE, for the reasons set forth above, Plaintiffs prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, punitive and/or exemplary damages, the costs for this action and for such other relief as this Court deems just and proper.

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