

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

CHRIS GUNTER

and

GINGER GUNTER,**Plaintiffs.**

v.

**NHC HEALTHCARE/MARYLAND
HEIGHTS, LLC d/b/a NHC
HEALTHCARE, MARYLAND HEIGHTS**Serve: Registered Agent
National Registered Agents, Inc.,
120 South Central Avenue
Clayton, MO 63105

and

NHC/OP, LPServe: Registered Agent
National Registered Agents, Inc.,
120 South Central Avenue
Clayton, MO 63105

and

NHC/DELAWARE, INC.Serve: Registered Agent
National Registered Agents, Inc.,
120 South Central Avenue
Clayton, MO 63105

and

**NATIONAL HEALTHCARE
CORPORATION (DELAWARE)**Serve: Registered Agent
National Registered Agents, Inc.,
120 South Central Avenue
Clayton, MO 63105

and

Case No.:**Division:****JURY TRIAL DEMANDED**

NATIONAL HEALTH CORPORATION

Serve: Registered Agent
National Registered Agents, Inc.,
120 South Central Avenue
Clayton, MO 63105

Defendants.

PETITION FOR DAMAGES

PLAINTIFFS

1. Sandra Gunter (“Sandra”) died on December 18, 2023. Prior to her death, Sandra was a resident at NHC Healthcare-Maryland Heights, a Missouri licensed nursing home located at 2920 Fee Fee Road, Maryland Heights, Missouri 63043. She resided at the facility from approximately October 2, 2023 until she left the facility on or about December 2, 2023.

2. Plaintiff Christ Gunter, is a resident of St. Louis County and is a surviving spouse of Sandra Gunter, and therefore, a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080.

3. Plaintiff Ginger Gunter, is a resident of St. Louis County and is a surviving daughter of Sandra Gunter, and therefore, a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080.

DEFENDANTS

NHC Healthcare/Maryland Heights, LLC d/b/a NHC Healthcare, Maryland Heights

4. NHC Healthcare/Maryland Heights, LLC d/b/a NHC Healthcare, Maryland Heights is a Missouri limited liability company.

5. NHC Healthcare/Maryland Heights, LLC d/b/a NHC Healthcare, Maryland Heights owned, operated, and did business as NHC Healthcare, Maryland Heights (hereinafter “NHC Maryland Heights”) which is a Missouri licensed nursing home located at 2920 Fee Fee

Road, Maryland Heights, Missouri 63043.

6. At all relevant times, the individual with managerial control of NHC Maryland Heights was and is Melvin J. Rector.

7. The members of NHC Maryland Heights are NHC/OP, L.P. and NHC/Delaware, Inc.

8. At all relevant times, NHC Maryland Heights was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through its owners, employees, agents and representatives.

9. At all relevant times, NHC Maryland Heights exercised part and/or all managerial and operational control for the NHC Maryland Heights facility.

10. At all relevant times, NHC Maryland Heights received money and profited from the operation of the facility.

11. NHC Maryland Heights can be served through its registered agent National Registered Agents, Inc., located at 120 South Central Avenue, Clayton, MO 63105.

NHC/OP, L.P.

12. NHC/OP, L.P. is a Delaware limited partnership.

13. NHC/OP, L.P. owns part or all of NHC Maryland Heights.

14. NHC/OP, L.P. is a member of NHC Maryland Heights.

15. The general partner of NHC/OP, L.P. is NHC/Delaware, Inc.

16. The limited partners of NHC/OP, L.P. include National Healthcare Corporation (Delaware).

17. At all relevant times, NHC/OP, L.P. was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through its owners, employees, agents and representatives.

18. At all relevant times, NHC/OP, L.P. exercised part and/or all managerial and operational control for NHC Maryland Heights.

19. At all relevant times, NHC/OP, L.P. received money and profited from the operation of the facility.

20. NHC/OP, L.P. can be served through its registered agent National Registered Agents, Inc., located at 120 South Central Avenue Clayton, MO 63105.

NHC/Delaware, Inc.

21. NHC/Delaware, Inc., is a Delaware company.

22. NHC/Delaware, Inc., owns part or all of NHC/OP, L.P.

23. NHC/Delaware, Inc., is a member of Defendant NHC Maryland Heights.

24. NHC/Delaware, Inc., is the general partner of NHC/OP, L.P.

25. At all relevant times, NHC/Delaware, Inc. was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through its owners, employees, agents and representatives.

26. At all relevant times, NHC/Delaware, Inc., exercised part and/or all managerial and operational control for NHC Maryland Heights.

27. At all relevant times, NHC/Delaware, Inc. received money and profited from the operation of the facility.

28. NHC/Delaware, Inc., can be served through its registered agent National Registered Agents, Inc., located at 120 South Central Avenue Clayton, MO 63105.

National Healthcare Corporation (Delaware)

29. National Healthcare Corporation (Delaware) is a Delaware company.

30. National Healthcare Corporation (Delaware) owns part or all of NHC/Delaware, Inc.

31. National Healthcare Corporation (Delaware) is a limited partner of NHC/OP, L.P.

32. National Healthcare Corporation (Delaware) provides centralized management and support services to the healthcare facilities it operates and manages, including NHC Maryland Heights. The management and support services include operational support through the use of regional vice presidents and regional nurses, accounting and financial services, cash management, data processing, legal, consulting and services in the area of rehabilitative care.

33. At all relevant times, National Healthcare Corporation (Delaware) exercised part and/or all managerial and operational control for NHC Maryland Heights.

34. At all relevant times, National Healthcare Corporation (Delaware) received money and profited from the operation of the NHC Maryland Heights facility.

35. National Healthcare Corporation can be served through its registered agent National Registered Agents, Inc., located at 120 South Central Avenue Clayton, MO 63105.

National Health Corporation

36. National Health Corporation is a Tennessee for profit company.

37. National Health Corporation personnel are employed by an administrative services affiliate, National Health Corporation, which is also responsible for overall services in the area of personnel, loss control, health insurance, education and training.

38. Upon information and belief National Healthcare Corporation reimburses National Health Corporation by paying all the costs of personnel employed for its benefit as well as a fee.

39. National Health Corporation is wholly owned by National Healthcare Corporation.

40. All of the personnel conducting National Healthcare Corporation business, including the executive management team, are employees of National Health Corporation.

41. At all relevant times, National Health Corporation exercised part and/or all managerial and operational control for NHC Maryland Heights.

42. At all relevant times, National Health Corporation received money and profited from the operation of the NHC Maryland Heights facility.

43. National Health Corporation can be served through its registered agent National Registered Agents, Inc., located at 120 South Central Avenue Clayton, MO 63105.

DEFENDANTS' JOINT ENTERPRISE

44. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

45. NHC Maryland Heights; NHC/OP, L.P.; NHC/Delaware, Inc.; National Healthcare Corporation (Delaware); and National Health Corporation 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 NHC Maryland Heights located at 2920 Fee Fee Road, Maryland Heights, Missouri 63043;
- b. Defendants had a common purpose to operate NHC Maryland Heights located at 2920 Fee Fee Road, Maryland Heights, Missouri 63043;
- c. Defendants had a community of pecuniary interest in the operation of NHC Maryland Heights located at 2920 Fee Fee Road, Maryland Heights, Missouri 63043; and
- d. Defendants had an equal right to a voice in the direction of the operation of NHC Maryland Heights located at 2920 Fee Fee Road, Maryland Heights, Missouri 63043 which gave the NHC Defendants an equal right of control.

46. There has been a close relationship between the Defendants at all times relevant.

47. As a consequence of the joint enterprise, Defendants owed a joint duty to Sandra to use reasonable care for her safety while under their care and supervision at NHC Maryland Heights.

JURISDICTION AND VENUE

48. Venue is proper in this Court, because the tortious acts complained of occurred in St. Louis County, Missouri.

49. NHC Maryland Heights is a Missouri corporation who committed tortious acts in the state of Missouri, thereby making jurisdiction in this Court proper.

50. Pursuant to RSMo § 506.500.1(3), NHC/OP, LP.; NHC/Delaware, Inc.; National Healthcare Corporation (Delaware); and National Health Corporation purposely availed themselves of the protections and/or benefits of the laws in Missouri by committing tortious acts within the state including, but not limited to, failing to ensure that NHC Maryland Heights had appropriate policies and procedures for its nursing staff; failing to properly capitalize and fund the NHC Maryland Heights facility; failing to adequately staff the NHC Maryland Heights facility; and failing to ensure that staff received adequate training and supervision, thereby making jurisdiction proper in this Court.

AGENCY

51. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

52. The acts hereinafter described were performed by the agents, representatives, servants, and employees of defendants and were performed either with the 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.

53. Furthermore, 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 Sandra.

FACTUAL BACKGROUND

Defendants' Management of NHC Maryland Heights

54. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

55. Defendants exercised substantial control over significant aspects of the operation and management of the NHC Maryland Heights facility during Sandra Gunter's residency, including but not limited to the creation, setting, funding and/or implementation of budgets; the hiring and training of staff; the staffing levels at NHC Maryland Heights, staffing sufficiency to meet each resident's needs; the monitoring of resident acuity levels; control over resident admissions and discharge to and from the facility; and the creation and enforcement of written policies and procedures pertaining to the rules that provide for the safety and well-being of residents.

56. Each of these managerial and operational functions had a direct impact on the staffing levels, staff training and resident safety at NHC Maryland Heights.

57. Each of these managerial and operational functions had a direct impact on the quality of care delivered to Sandra Gunter and other residents at NHC Maryland Heights.

58. Defendants failed to ensure that the NHC Maryland Heights nursing home was sufficiently staffed to meet Sandra Gunter's individual and safety needs during her residency.

59. In fact, defendants failed to ensure that Sandra Gunter received the very basic and necessary services and supervision to prevent the six falls she experienced which resulted in injuries and death.

60. Sandra Gunter became a resident at NHC Maryland Heights on or about October 2, 2023. She remained a resident at the facility from then until approximately December 2, 2023.

Upon her admission to the facility, defendants knew that she was a high fall risk and were required to implement fall prevention measures to keep her safe.

61. Four days after her admission, on October 6, 2023, Sandra Gunter fell in the dining room and was found face down on the floor.

62. On October 8, 2023, NHC Maryland Heights noted that Sandra Gunter required “substantial/maximal” assistance of facility staff with moving from a sitting position to a lying position, from a lying position to a sitting position and was completely dependent on facility staff when moving from a sitting position to a standing position and moving from a chair /bed to chair transfer. She was also completely unable to walk on her own.

Section GG - Functional Abilities and Goals - Admission			
GG0170. Mobility (Assessment period is the first 3 days of the stay) Complete column 1 when A0310A = 01. Complete columns 1 and 2 when A0310B = 01. When A0310B = 01, the stay begins on A2400B. When A0310B = 99, the stay begins on A1600.			
Code the resident's usual performance at the start of the stay (admission) for each activity using the 6-point scale. If activity was not attempted at the start of the stay (admission), code the reason. Code the resident's end of SNF PPS stay (discharge) goal(s) using the 6-point scale. Use of codes 07, 09, 10, or 88 is permissible to code end of SNF PPS stay (discharge) goal(s).			
Coding: Safety and Quality of Performance - If helper assistance is required because resident's performance is unsafe or of poor quality, score according to amount of assistance provided. Activities may be completed with or without assistive devices. 06. Independent - Resident completes the activity by themselves with no assistance from a helper. 05. Setup or clean-up assistance - Helper sets up or cleans up; resident completes activity. Helper assists only prior to or following the activity. 04. Supervision or touching assistance - Helper provides verbal cues and/or touching/steadying and/or contact guard assistance as resident completes activity. Assistance may be provided throughout the activity or intermittently. 03. Partial/moderate assistance - Helper does LESS THAN HALF the effort. Helper lifts, holds, or supports trunk or limbs, but provides less than half the effort. 02. Substantial/maximal assistance - Helper does MORE THAN HALF the effort. Helper lifts or holds trunk or limbs and provides more than half the effort. 01. Dependent - Helper does ALL of the effort. Resident does none of the effort to complete the activity. Or, the assistance of 2 or more helpers is required for the resident to complete the activity.			
If activity was not attempted, code reason: 07. Resident refused 09. Not applicable - Not attempted and the resident did not perform this activity prior to the current illness, exacerbation, or injury. 10. Not attempted due to environmental limitations (e.g., lack of equipment, weather constraints) 88. Not attempted due to medical condition or safety concerns			
1. Admission Performance	2. Discharge Goal		
Enter Codes in Boxes			
0 3	-	A. Roll left and right: The ability to roll from lying on back to left and right side, and return to lying on back on the bed.	
0 2	-	B. Sit to lying: The ability to move from sitting on side of bed to lying flat on the bed.	
0 2	-	C. Lying to sitting on side of bed: The ability to move from lying on the back to sitting on the side of the bed and with no back support.	
0 1	-	D. Sit to stand: The ability to come to a standing position from sitting in a chair, wheelchair, or on the side of the bed.	
0 1	0 3	E. Chair/bed-to-chair transfer: The ability to transfer to and from a bed to a chair (or wheelchair).	
8 8	-	F. Toilet transfer: The ability to get on and off a toilet or commode.	
-	-	FF. Tub/shower transfer: The ability to get in and out of a tub/shower.	
8 8	-	G. Car transfer: The ability to transfer in and out of a car or van on the passenger side. Does not include the ability to open/close door or fasten seat belt.	
8 8	-	I. Walk 10 feet: Once standing, the ability to walk at least 10 feet in a room, corridor, or similar space. If admission performance is coded 07, 09, 10, or 88 → Skip to GG0170M, 1 step (curb)	
-	-	J. Walk 50 feet with two turns: Once standing, the ability to walk at least 50 feet and make two turns.	
-	-	K. Walk 150 feet: Once standing, the ability to walk at least 150 feet in a corridor or similar space.	

63. On October 22, 2023, Sandra Gunter suffered a second fall at NHC Maryland Heights which was unwitnessed by staff. She was found lying on the floor next to her wheelchair. Her Care Plan was not changed as a result of this fall.

64. Sandra Gunter suffered another unwitnessed fall on October 26, 2023 and was found sitting on the floor of her room next to her bed. Her Care Plan was not changed as a result of this fall.

65. Sandra Gunter suffered a fourth fall on November 3, 2023 that was unwitnessed by NHC Maryland Heights staff members. She was found lying on the floor mattress by a nursing assistant. Her Care Plan was not changed as a result of this fall.

66. Sandra Gunter suffered a fifth fall on November 26, 2023 that was unwitnessed by NHC Maryland Heights staff members. She was found on the floor of her bathroom. Her Care Plan was not changed as a result of this fall.

67. On December 1, 2023 it was noted that Sandra Gunter was unable to follow one or two step directions, her left leg was weak, required cues for hand and foot placement and that her gait was unstable.

68. On December 2, 2023 the Minimum Data Set (MDS) documented Sandra Gunter required partial/moderate assistance to move from a seated to a standing position, with transfers, with toilet transfers, and with walking 10, 50, and 150 feet.

69. That same day, Sandra Gunter suffered her sixth fall at NHC Maryland Heights. It was noted that she was found on the floor next to her bed with swelling to the right side of her face and bruising under her right eye. She was also bleeding from her mouth. She was barefoot.

70. She was transferred to a local hospital where she was noted to have a large facial hematoma and laceration of her lower lip. A CT scan showed acute right 6-9 rib fractures and an acute left subdural hematoma with a left-to-right midline shift.

71. That same day, Sandra Gunter underwent an emergency left-sided craniotomy for evacuation of the subdural hematoma. The surgeon described an acute left-sided subdural hematoma with brain compression and edema and uncal herniation.

72. Sandra Gunter died on December 14, 2022 as a result of the subdural hematoma and head trauma she suffered at NHC Maryland Heights due to the negligence of defendants.

73. Staff members of NHC Maryland Heights are required to anticipate the needs of the residents so they can be proactive and/or react quickly to meet the needs of the residents.

74. While holding NHC Maryland Heights out to Sandra Gunter and other members of the public as providing excellent care, Defendants and their related party entities, extracted considerable profit through the management and operation of NHC Maryland Heights by paying management, administration and consulting fees and costs to the defendants named herein and other related entities from funds which should have been utilized to hire, train and retain sufficient numbers of qualified staff to provide sufficient supervision of Sandra and to meet her needs.

COUNT I – WRONGFUL DEATH

75. Plaintiffs incorporate by reference all of the foregoing allegations in this Petition as though fully set forth herein.

76. At all times material hereto, Sandra Gunter was in a defenseless and dependent condition.

77. As a result of her defenseless and dependent condition, Sandra Gunter relied upon defendants to provide for her safety, protection, care and treatment.

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

79. These duties required defendants to implement and enforce policies and procedures to ensure the proper care for, and treatment of, residents such as Sandra.

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

81. These duties required defendants to ensure that NHC Maryland Heights' nurses and other staff provided the care required by the resident care plan, met the needs of the residents and obtained additional medical care for the residents when they undergo a change of condition.

82. These duties required defendants to ensure that NHC Maryland Heights' nurses and other staff were educated and trained to provide proper supervision, care and treatment for the residents, like Sandra.

83. These duties required defendants to ensure that NHC Maryland Heights was properly capitalized to ensure that the staff members were properly trained and that residents received proper supervision, care and treatment.

84. Specifically, with respect to Sandra Gunter, 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 adequately assess Sandra Gunter's change of condition;
- b. By failing to adequately assess the risk of injury and physical decline to Sandra by not obtaining necessary medical care in a timely manner;
- c. By failing to enact and carry out an adequate care plan in regard to Sandra Gunter's medical needs;
- d. By failing to provide Sandra Gunter with proper supervision;

- e. By failing to timely transfer Sandra Gunter to a facility that could provide her adequate care;
- f. By failing to provide adequate staff to ensure Sandra Gunter's 24-hour protective oversight, supervision and care;
- g. By failing to properly supervise and train the employees, agents and/or servants of defendants who were responsible for the care and treatment of Sandra Gunter;
- h. By failing to have and/or implement appropriate policies and procedures regarding how to properly supervise a high fall risk resident, such as Sandra Gunter;
- i. By failing to ensure that Sandra Gunter received proper care and treatment to prevent the injury and death; and
- j. By failing to properly capitalize the facility so it could have enough staff members to provide Sandra Gunter with the supervision she required.

85. Defendants, as the owners, operators, and/or managers of skilled care nursing facilities licensed by the State of Missouri and accepting Medicare and Medicaid funds, were subject to regulations promulgated by the Missouri Division of Social Services and under the Social Security Act.

86. While providing care and treatment to Sandra, defendants and their agents, servants and/or employees breached their duty to Sandra and were guilty of acts of negligence and negligence, *per se*, in violating regulations governing residential 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. Facilities which retain residents needing skilled nursing care shall provide licensed nurses for these procedures;

- 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(15). All personnel shall be fully informed of the policies of the facility and of their duties;
- e. 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;
- f. 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;
- g. 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;
- h. 19 C.S.R. 30-85.042(26). All authorized personnel shall have access to the legal name of each resident, name and telephone number of physician and next of kin or responsible party of each resident to contact in the event of emergency
- 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; and

- 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.

87. Sandra Gunter was a member of the class of persons intended to be protected by the enactment of the aforementioned regulations.

88. The physical injuries Sandra Gunter incurred were the type of injuries that the regulations were enacted to prevent.

89. As a direct and proximate result of the individual and collective acts of negligence of defendants as described above, Sandra Gunter suffered severe pain, anxiety, mental distress, and death.

90. As a direct and proximate result of the individual and collective acts of negligence of all defendants as described above, Plaintiffs suffered damages including, but not limited to, loss of companionship, loss of comfort, loss of guidance, loss of counsel and loss of instruction, pain, suffering, bereavement and mental anguish.

91. At the time defendants failed to provide proper medical care for Sandra Gunter they knew that their conscious disregard to provide adequate staff, to properly capitalize NHC Maryland Heights, to not follow the required care plan and to not train, and/or supervise their agents, servants and/or employees created a high degree of probability of injury to residents, and consciously disregarded the safety of all residents, including Sandra.

92. As a direct and proximate result of defendants' negligence, and complete indifference to, or conscious disregard, for the safety of the residents of NHC Maryland Heights, Sandra Gunter was harmed and suffered damages, including but not limited to pain, suffering, mental anguish, disability, disfigurement, and death.

WHEREFORE, Plaintiffs in their capacity as a members of the wrongful death class of claimants pursuant to RSMO § 537.080, prays for judgment against all defendants in an amount a

jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, the costs of this action, and for such other and further relief as the Court deems just and proper.

TERRY LAW FIRM, LLC

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