

FILED
LUCAS COUNTY

ADDITIONAL ATTACHMENT

2019 APR 17 PM 1:58

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURT

IN THE COURT OF COMMON PLEAS OF
LUCAS COUNTY, OHIO

G-4801-CI-0201902137-000

Judge

MICHAEL R. GOULDING

DAVID BORYSIK, Administrator of
the Estate of Sarah J. Draeger, deceased,
4237 Butternut Court
Sylvania, Ohio 43560

) Case No.

) Judge:

Plaintiff,

) **COMPLAINT WITH JURY DEMAND AND**
) **AFFIDAVIT OF MERIT**

vs.

HCRMC-PROMEDICA, JV, LLC, d/b/a
HEARTLAND AT PROMEDICA
c/o CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

) Charles E. Boyk (0000494)
) Kathleen R. Harris (0088079)
) Michael A. Bruno (0033780)
) Charles E. Boyk Law Offices, LLC
) 405 Madison Ave., Suite 1200
) Toledo, Ohio 43604
) Telephone: (419) 241-1395
) Facsimile: (419) 241-8731
) cboyk@charlesboyk-law.com
) kharris@charlesboyk-law.com
) Attorneys for Plaintiffs

and

JOHN DOE I
Name Unknown
Address Unknown

and

JOHN DOE II
Name Unknown
Address Unknown

Defendants.

Plaintiff David Borysiak, Administrator of the Estate of Sarah J. Draeger, deceased, hereby brings this Complaint for wrongful death and personal injuries against Defendant HCRMC-PROMEDICA, JV, LLC d/b/a Heartland at ProMedica ("Heartland"), John Doe I, and John Doe

II arising from a fall Sarah J. Draeger sustained at Defendant Heartland's skilled nursing facility.

In support of his Complaint, Plaintiff states as follows:

THE PARTIES

1. Plaintiff David Borysiak has been appointed by the Lucas County Probate Court as the Administrator of Sarah J. Draeger's Estate.
2. Upon information and belief, Defendant HCRMC-PROMEDICA, JV, LLC d/b/a Heartland at ProMedica ("Heartland") is a limited liability company organized under the laws of the State of Delaware and is in the business of operating a skilled nursing facility known as Heartland at ProMedica, located at 5630 Harroun Road, Sylvania, Lucas County, Ohio.
3. Upon information and belief, Defendant John Doe I was at all relevant times an employee or agent of Defendant Heartland who was responsible for creating a fall risk care plan for Sarah J. Draeger, and/or who was responsible for implementing and adhering to a fall risk care plan, and for otherwise providing care to Sarah J. Draeger at Heartland. John Doe I's real name and address are unknown to the Plaintiff and could not with reasonable diligence have been ascertained prior to the filing of this Complaint.
4. Upon information and belief, Defendant John Doe II was at all relevant times an employee or agent of Defendant Heartland who was responsible for creating a fall risk care plan for Sarah J. Draeger, and/or who was responsible for implementing and adhering to a fall risk care plan, and for otherwise providing care to Sarah J. Draeger at Heartland. John Doe II's real name and address are unknown to the Plaintiff and could not with reasonable diligence have been ascertained prior to the filing of this Complaint.

JURISDICTION AND VENUE

5. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
6. This Court has jurisdiction over this action pursuant to R.C. 2305.01.
7. Venue is proper in this Court pursuant to Civil Rule 3(C)(3) and 3(C)(6), as this is the county in which Defendants conducted activity giving rise to the claims, and the county in which all or part of the claims for relief arose.
8. Pursuant to Civil Rule 8(A), Plaintiff states that this Complaint seeks recovery in excess of Twenty-Five Thousand Dollars (\$25,000.00).

FACTUAL ALLEGATIONS

9. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
10. On or about August 9, 2018, 89-year-old Sarah J. Draeger was a patient at Heartland at ProMedica, having been admitted to Heartland's skilled nursing facility after falling at home in June 2018.
11. Upon Sarah Draeger's admission to Heartland, Defendants were aware that Ms. Draeger was a fall risk and that a care plan addressing such risks was required to ensure her safety at the facility.
12. On or about August 9, 2018, while Sarah J. Draeger was under the exclusive control of the Defendant Heartland individually and/or by and through Heartland's agents, employees, servants, officers, and/or directors, Ms. Draeger suffered a fall in her room at Heartland and was discovered on the floor by the door. She required transport to the hospital and was

diagnosed with an ulnar styloid fracture, a dorsal impacted distal radial fracture, and fractures of her cervical and thoracic spine.

13. Sarah J. Draeger's condition deteriorated rapidly after her fall and fractures. She was discharged to hospice on August 12, 2018 and died on August 15, 2018. Ms. Draeger's cause of death is listed as a pulmonary embolism due to prolonged immobilization due to fractured vertebrae at C7 and T1. After autopsy, the coroner confirmed that Sarah J. Draeger died of a pulmonary embolism due to prolonged immobilization due to fractured vertebrae at C7 and T1 and stated that her manner of death was an unwitnessed fall at a nursing home.

FIRST CAUSE OF ACTION
(Negligence – Defendant Heartland at ProMedica)

14. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
15. At all relevant times, Defendant Heartland at ProMedica was a skilled nursing facility providing healthcare and rehabilitation services to patients.
16. Defendant Heartland at ProMedica treated patients and provided medical care and rehabilitative services to patients by acts performed by physicians, nurses, and other agents and employees of Defendant Heartland at ProMedica.
17. Defendant Healthcare at ProMedica had a duty to:
 - a. exercise a reasonable degree of skill and competence required of skilled nursing/transitional care facilities and their staff;
 - b. properly train, instruct, and supervise personnel, staff, and other care workers with regard to policies and/or procedures relating to safety;
 - c. properly assess Sarah J. Draeger's fall risk status and implement a fall care plan to protect her from falling while she was a patient at Heartland;

- d. protect Sarah J. Draeger from the dangers that could result from her physical condition, as well as from circumstances particularly within the Defendant's control;
 - e. advise and/or warn Sarah J. Draeger of any dangers or risks to her safety and health; and
 - f. have in force adequate policies, procedures and equipment to safeguard and prevent falls of patients such as Sarah J. Draeger.
18. During Sarah J. Draeger's admission to Heartland at ProMedica, Defendant Heartland at ProMedica either directly and/or by John Doe I, John Doe II, or its other employees/agents/servants, breached one or more of the above-mentioned duties and performed such other negligent acts and omissions that may subsequently be shown, which directly and proximately caused Sarah J. Draeger's fall, and directly and proximately caused her to suffer serious physical personal injuries and death.
19. As a direct and proximate result of Defendant Heartland at ProMedica's negligence and breach of its duties of care, Sarah J. Draeger sustained serious personal injuries including but not limited to fractures to her wrist and her cervical and thoracic spine, and a pulmonary embolism, which required her to undergo hospital and medical care and caused her to incur hospital and medical care costs. Sarah J. Draeger also incurred great pain, suffering, severe mental anguish, and emotional distress as a direct and proximate result of Defendant Heartland at ProMedica's negligence. Ultimately, Sarah J. Draeger died as a direct and proximate result of Defendant Heartland at ProMedica's negligence and breach of its duties of care.

SECOND CAUSE OF ACTION
(Vicarious Liability – Defendant Heartland at ProMedica)

20. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.

21. At all times relevant to this Complaint, Defendants John Doe I and/or John Doe II were acting in the course and scope of their employment with Defendant Heartland at ProMedica.
22. Under the doctrine of respondeat superior, vicarious liability, principal agency and/or agency by estoppel, Defendant Heartland at ProMedica is liable for the negligent acts of its agents and employees, including but not limited to the negligent acts or omissions of Defendants John Doe I and/or John Doe II, or any other employee or agent.
23. Defendants John Doe I, John Doe II, and/or Defendant Heartland at ProMedica's other employees or agents were negligent as set forth in this Complaint, and Defendant Heartland at ProMedica is therefore liable for Sarah J. Draeger's serious personal injuries, death, and all damages set forth at the First Cause of Action.

THIRD CAUSE OF ACTION
(Negligence Against Defendant John Doe I)

24. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully rewritten herein.
25. At all relevant times, Defendant John Doe I was in the course and scope of his employment at Heartland at ProMedica, a skilled nursing facility providing healthcare and rehabilitation services to patients, and provided healthcare and/or rehabilitation services to Sarah J. Draeger.
26. Defendant John Doe I had a duty to:
- a. exercise a reasonable degree of skill and competence required of the staff at a skilled nursing facility;
 - b. properly assess Sarah J. Draeger's fall risk status and implement a fall care plan to protect her from falling while she was a patient at Heartland;

- c. protect Sarah J. Draeger from the dangers that could result from her physical condition, as well as from circumstances particularly within the Defendant's control; and
 - d. advise and/or warn Sarah J. Draeger of any dangers or risks to her safety and health.
27. During Sarah J. Draeger's admission to Heartland at ProMedica, Defendant John Doe I breached one or more of the above-mentioned duties owed to Sarah J. Draeger, and performed such other negligent acts and omissions that may subsequently be shown, which directly caused Sarah J. Draeger's fall at the facility, and directly and proximately caused her to suffer serious physical personal injuries, death, and other damages.
28. As a direct and proximate result of Defendant John Doe I's negligence and breach of his duties of care, Sarah J. Draeger sustained serious personal injuries including but not limited to fractures to her wrist and cervical and thoracic spine, and a pulmonary embolism, which required her to undergo hospital and medical care. Sarah J. Draeger also incurred hospital and medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Sarah J. Draeger died as a result of these injuries.

FOURTH CAUSE OF ACTION
(Negligence Against Defendant John Doe II)

29. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully rewritten herein.
30. At all relevant times, Defendant John Doe II was in the course and scope of his employment at Heartland at ProMedica, a skilled nursing facility providing healthcare and rehabilitation services to patients, and provided healthcare and/or rehabilitation services to Sarah J. Draeger.
31. Defendant John Doe II had a duty to:

- a. exercise a reasonable degree of skill and competence required of the staff at a skilled nursing facility;
 - b. properly assess Sarah J. Draeger's fall risk status and implement a fall care plan to protect her from falling while she was a patient at Heartland;
 - c. protect Sarah J. Draeger from the dangers that could result from her physical condition, as well as from circumstances particularly within the Defendant's control; and
 - d. advise and/or warn Sarah J. Draeger of any dangers or risks to her safety and health.
32. During Sarah J. Draeger's admission to Heartland at ProMedica, Defendant John Doe II breached one or more of the above-mentioned duties owed to Sarah J. Draeger, and performed such other negligent acts and omissions that may subsequently be shown, which directly caused Sarah J. Draeger's fall at the facility, and directly and proximately caused her to suffer serious physical personal injuries, death, and other damages.
33. As a direct and proximate result of Defendant John Doe II's negligence and breach of his duties of care, Sarah J. Draeger sustained serious personal injuries including but not limited to fractures to her wrist and cervical and thoracic spine, and a pulmonary embolism, which required her to undergo hospital and medical care. Sarah J. Draeger also incurred hospital and medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Sarah J. Draeger died as a result of these injuries.

FIFTH CAUSE OF ACTION
(Wrongful Death – All Defendants)

34. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
35. Defendants Heartland at ProMedica, John Doe I, and John Doe II, jointly and severally, failed to adhere to and deviated from the requisite standards of care set forth in the previous causes of action.

36. Such failures and deviations directly caused and/or contributed to cause Sarah J. Draeger to be put in peril and ultimately die.
37. As a direct and proximate result of the above failures and deviations, Sarah's next of kin sustained pecuniary loss including, but not limited to, medical, funeral, burial, internment, and estate expenses.
38. As a direct and proximate result of Defendants' joint and several negligence, Sarah J. Draeger's next of kin sustained injuries and damages related to the loss of Sarah's services and society.

SIXTH CAUSE OF ACTION
(Survival Action – All Defendants)

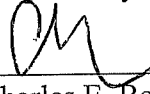
39. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully rewritten herein.
40. Defendants Heartland at ProMedica, John Doe I, and John Doe II, jointly and severally, failed to adhere to and deviated from the requisite standard of care set forth in the preceding causes of action.
41. Such failures and deviations directly and proximately caused and/or contributed to cause Sarah J. Draeger significant pain and suffering and fear of death, and caused her to sustain serious personal injuries including but not limited to fractures to her wrist and cervical and thoracic spine, and a pulmonary embolism, which required her to undergo hospital and medical care. Sarah J. Draeger also incurred hospital and medical care costs, and she incurred great pain, suffering, severe mental anguish, and emotional distress. Further, Sarah J. Draeger died as a result of these injuries.

AFFIDAVIT OF MERIT

42. Attached to Plaintiff's Complaint as Exhibit 1 is an Affidavit of Merit in support of Plaintiff's claim of negligence, signed by Theodore Homa, M.D. in compliance with the requirements of Civil Rule 10(D)(2).

WHEREFORE, Plaintiff seeks judgment against the Defendants, jointly and severally, for an award of damages exceeding the sum of Twenty-Five Thousand Dollars (\$25,000.00), for reasonable attorney fees, costs, and prejudgment interest, along with such other and further relief as the Court deems just, equitable, and proper.

Respectfully submitted,



Charles E. Boyk
Kathleen R. Harris
Attorneys for Plaintiff

JURY DEMAND

Now comes Plaintiff by and through counsel and hereby demands a jury trial on all issues triable by right herein.



Charles E. Boyk
Kathleen R. Harris
Attorney for Plaintiff

PRAECIPE

TO THE CLERK:

Please serve summons and complaint upon Defendant HCRMC-PROMEDICA, JV, LLC, d/b/a HEARTLAND AT PROMEDICA by certified mail, return receipt requested, at that Defendant's address listed on the caption.

Please serve John Does I and II by personal service as follows:

John Doe I
Name Unknown
Address Unknown

John Doe II
Name Unknown
Address Unknown



Charles E. Boyk
Kathleen R. Harris
Attorney for Plaintiffs

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Judge

MICHAEL R. GOULDING

DAVID BORYSIK, Administrator of
the Estate of Sarah J. Draeger, deceased,

Plaintiff,

vs.

HCRMC-PROMEDICA, JV, LLC, d/b/a
HEARTLAND AT PROMEDICA

Defendant.

) Case No.

) Judge:

) **AFFIDAVIT OF THEODORE M. HOMA, M.D.,**
) **C.M.D.**

) Charles E. Boyk (0000494)
) Kathleen R. Harris (0088079)
) Michael A. Bruno (0033780)
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) 405 Madison Ave., Suite 1200
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) Attorneys for Plaintiffs

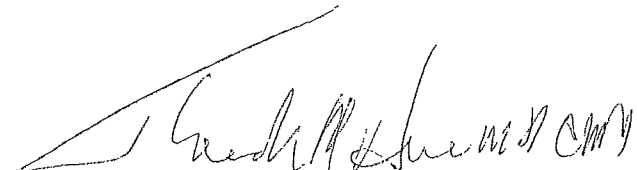
STATE OF ILLINOIS)
) ss
COUNTY OF LAKE)

Theodore M. Homa, M.D., C.M.D., being first duly sworn, states the following:

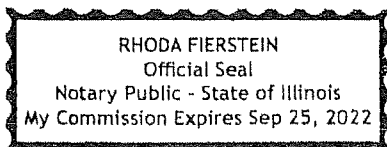
1. I am a Board Certified Internal Medicine Physician, licensed to practice medicine in the State of Illinois, and I spend over 50% of my time in the active clinical practice of medicine. I am also Board Certified in Medical Direction through the American Board of Post-Acute and Long-Term Medicine (“ABPLM”).
2. I have extensive experience serving as Medical Director for skilled nursing home facilities for the aged including advising and teaching nursing and medical staff in the principles of patient assessment and responsibility, developing geriatric care programs, and developing a dementia care unit.

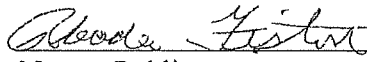
3. I have reviewed all of the medical records reasonably available concerning the allegations contained in the Complaint. In particular, I have reviewed records for Sarah J. Draeger's medical treatment from 06/23/2018 to 08/12/2018 from the following providers:
 - a. Flower Hospital;
 - b. Lakes of Sylvania;
 - c. Heartland at ProMedica;
 - d. Flower Hospital; and
 - e. Toledo Hospital.
4. I have also reviewed the Amended Death Certificate and Coroner's Report for Sarah J. Draeger.
5. I am familiar with the applicable standard of care as it involves the Defendant nursing facility in question and its employees.
6. It is my opinion that the Defendant nursing facility Heartland at ProMedica and its employees breached the standard of care in this matter with respect to Sarah J. Draeger.
7. It is further my opinion that as a direct result of this breach of the standard of care, Sarah J. Draeger suffered a fall that caused fractures to her wrist and cervical and thoracic spine, and that, as a direct result of prolonged immobilization due to the cervical and thoracic spine fractures, Sarah J. Draeger suffered a pulmonary embolism that caused her death.
8. It is my opinion that the breach of the standard of care by Heartland at ProMedica and its employees did cause Sarah J. Draeger's death.

Further affiant sayeth naught.


Theodore M. Homa, M.D., C.M.D.

Sworn to before me and subscribed in my presence this 9 day of April, 2019.




Notary Public