

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF BROWN

FIFTH JUDICIAL DISTRICT
CASE TYPE: WRONGFUL DEATH

Eric J. Whitman, trustee for the
next-of-kin of Karen A. Whitman,

Court File No. _____

Plaintiff,

COMPLAINT

v.

Highland Manor, Inc., d/b/a Oak Hills
Living Center, a Minnesota corporation,

Defendant.

Plaintiff, for his Complaint and cause of action against Defendant Highland
Manor, Inc., d/b/a Oak Hills Living Center, states and alleges as follows:

THE PARTIES

I.

Plaintiff Eric J. Whitman resides in Chaska, Minnesota. On March 19, 2014,
Plaintiff was appointed trustee by Order of the Brown County District Court, file
number CV-14-258, to prosecute an action for the wrongful death of his mother, Karen
A. Whitman.

II.

Upon information and belief, Oak Hills Living Center (hereinafter "Oak Hills), is
a skilled nursing facility in Brown County, Minnesota, located at 1314 8th North Street
in New Ulm. Oak Hills employs the services of doctors, nurses, and other professional

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and non-professional health care providers, and held itself out and warranted itself to the public as competent and experienced in the care and treatment of patients.

III.

At all relevant times herein, Amber Hibbard, was a licensed practical nurse licensed to practice nursing and held herself out and warranted herself to the public as competent, careful and experienced in the practice of nursing.

IV.

At all relevant times herein, Amber Hibbard, LPN, was a principal, agent, employee, shareholder, and/or partner of Defendant Oak Hills and acted within the scope of her authority.

V.

Defendant Oak Hills is vicariously and/or contractually liable for the actions of its principals, agents, employees, shareholders, and/or partners, including Amber Hibbard, LPN.

VI.

Upon information and belief, Highland Manor, Inc., is a Minnesota corporation that owns and operates Oak Hills Living Center. Highland Manor, Inc., has a reported registered office address of 1314 8th North Street in New Ulm, Minnesota.

VII.

Upon information and belief, at all relevant times discussed herein, Candas Schouvieller was the Administrator of Oak Hills Living Center.

VIII.

Upon information and belief, at all relevant time discussed herein, Candace Schouvieller was the President of Defendant Highland Manor, Inc.

FACTUAL BACKGROUND

IX.

On or about July 16, 2013, Karen Whitman was admitted to the short-term rehab unit at Oak Hills. Upon admission, Mrs. Whitman completed a Provider Orders for Life Sustaining Treatment ("POLST"). The document states, "FIRST follow these orders, THEN contact the patient's provider." Section A addresses cardiopulmonary resuscitation (CPR). Mrs. Whitman gave the directive to provide "CPR/Attempt Resuscitation" if she had no pulse or was not breathing. The POLST was signed by Mrs. Whitman and her treating physician, Dr. Ann Vogel, on July 17 and 18, 2013, respectively. At no point in time after admission did Mrs. Whitman revoke or change her POLST.

X.

On August 18, 2013, a nursing assistant discovered Mrs. Whitman to have irregular breathing when the nursing assistant walked by Mrs. Whitman's room. The nursing assistant immediately informed Nurse Amber Hibbard of Mrs. Whitman's irregular breathing. Nurse Amber Hibbard then entered the room and recorded in Mrs. Whitman's medical record that Mrs. Whitman "took one last breath and writer [Nurse Amber Hibbard] could not get a response from resident, no pulse, no breathing noted and no signs of life were present at 0235."

XI.

Nurse Amber Hibbard did not initiate CPR, despite Mrs. Whitman's signed order requiring the initiation of life sustaining treatment should Mrs. Whitman be pulseless or not breathing.

XII.

The CPR policy at Oak Hills states that "the policy is to initiate cardiopulmonary resuscitation for any residence who suffers a cardiopulmonary arrest, unless a decision to NOT initiate CPR has been previously made and properly recorded as a physician's order."

XIII.

As a result of Nurse Amber Hibbard not attempting to give Mrs. Whitman CPR when she was unresponsive and not able to obtain any vital signs, Mrs. Whitman died. Mrs. Whitman's immediate cause of death as documented on her death certificate is cardiac arrest.

XIV.

Immediately following Mrs. Whitman's death, her son, Eric Whitman, was contacted by Nurse Amber Hibbard and informed that Mrs. Whitman died unexpectedly.

XV.

Upon information and belief, approximately three days after Mrs. Whitman's death, Eric Whitman was again contacted by a representative from Oak Hills to discuss

his mother's death. At that time the representative from Oak Hills informed Eric Whitman that his mother was experiencing shortness of breath moments before her death, and that Nurse Amber Hibbard was present at the time Mrs. Whitman was experiencing shortness of breath but failed to initiate CPR or any other life sustaining treatment.

XVI.

Following Mrs. Whitman's death, the Minnesota Department of Health conducted an investigation at Oak Hills Living Center on or around September 9, 2013, to learn the facts leading up to and following Mrs. Whitman's death. A copy of the Minnesota Department of Health's investigative report is attached to this Complaint.

XVII.

The Minnesota Department of Health completed its investigation to determine if, "a resident's [Karen Whitman's] rights were violated when his/her POLST 'full code' status was not followed. A licensed practical nurse (LPN) witnessed the resident take his/her last two breaths and did not initiate CPR."

XVIII.

The Minnesota Department of Health's investigation concluded, "[b]ased on a preponderance of evidence, the allegation of neglect is substantiated. Neglect occurred when cardiopulmonary resuscitation (CPR) was not performed on a resident who had a Provider Order for Life Sustaining Treatment (POLST) that indicated the resident wanted CPR to be initiated."

NEGLIGENCE

XIX.

The Defendant was negligent in the care and treatment rendered to Karen Whitman. Such negligence includes, but is not limited to, the following:

- A. Negligent failure to perform CPR when Karen Whitman was found to have irregular breathing despite her POLST indicating Mrs. Whitman wanted CPR to be initiated;
- B. Negligent failure to maintain medical records in accordance with professional standards; and

Defendant was negligent in other ways in the care and treatment of Karen Whitman.

COUNT TWO

(Oak Hills' Negligence)

XX.

Plaintiff realleges each of the preceding paragraphs.

XXI.

Upon information and belief, the above-described death was the direct result of the negligence, carelessness, and unlawful conduct of Defendant Oak Hills Living Center with respect to its hiring, control and supervision of Amber Hibbard.

Illustrations of said conduct, cited by way of example but not limitation, are as follows:

- A. Defendant Oak Hills Living Center knew or should have known that Amber Hibbard posed a danger to patients, in part due to the fact that

Amber Hibbard had no education/training on Oak Hills' CPR policy or the code status of Karen Whitman;

- B. Defendant Oak Hills Living Center failed and neglected to exercise the required safeguards pertaining to the instruction, supervision and assigned responsibilities of its employee or agent Amber Hibbard;
- C. Defendant Oak Hills Living Center failed and neglected to ensure CPR training in accordance with applicable law;
- D. Defendant Oak Hills negligently hired Amber Hibbard as a licensed practical nurse and negligently entrusted the care of Karen Whitman with her; and
- E. Defendant Oak Hills was negligent with respect to its hiring, control and supervision of Amber Hibbard in other ways too numerous to mention herein.

The direct result of the negligence of Defendant Oak Hills are the damages described herein.

XXII.

Defendant's negligence was a direct and substantial cause of death of Karen Whitman.

XXIII.

As a direct and proximate cause of Defendant's negligence, Karen Whitman's next-of-kin have suffered a permanent personal and pecuniary loss, including the loss

of the advice, counsel, comfort, protection, support, and companionship of the decedent, all to their damage in the sum in excess of Fifty Thousand Dollars (\$50,000).

XXIV.

As a further direct and proximate result of the negligence of Defendant, the next-of-kin of Karen Whitman have incurred funeral and burial expenses in the presently-estimated sum of Seven Thousand Dollars (\$7,000).

WHEREFORE, Plaintiff Eric Whitman prays for damages against the Defendant in a sum presently estimated to be in excess of Fifty Thousand Dollars (\$50,000), together with costs, disbursements, interest, and such other and further relief as the Court shall deem appropriate.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Dated: _____

8-13-2014

By: _____



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