

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS

MYRTLE JACKSON, as next friend and attorney in fact for Frank Mayweathers,

Plaintiff,

VS.

CENTRAL ARKANSAS NURSING CENTERS, INC., NURSING CONSULTANTS, INC., PARK HEALTH CARE, LLC., and MICHAEL MORTON

Defendants.

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CASE NO. \_\_\_\_\_

**COMPLAINT**

Plaintiff, for her Complaint, states:

1. That she is, and has been at all times relevant to this action, a resident of Jefferson County, Arkansas and is the next friend and attorney in fact for Frank Mayweathers.
2. That the claims asserted herein are for medical malpractice, ordinary negligence, violation of resident's rights, as well as other claims, from actions or inactions of Defendants occurring within Jefferson County, Arkansas.
3. That Defendant Central Arkansas Nursing Centers, Inc., is a corporation doing business within the state of Arkansas. Defendant Central Arkansas Nursing Centers, Inc. owned, operated, managed or provided professional services to White Hall Nursing & Rehabilitation Center.
4. That Defendant Nursing Consultants, Inc. is a corporation doing business within the state of Arkansas. Defendant Nursing Consultants, Inc. owned, operated, managed or provided professional services to White Hall Nursing & Rehabilitation Center.

5. That Defendant Park Health Care, LLC is a limited liability company doing business within the state of Arkansas. Defendant Park Health Care, LLC owned, operated, managed or provided professional services to White Hall Nursing & Rehabilitation Center.

6. Defendant Michael Morton is an Arkansas resident and at all times relevant to the allegations of this complaint was responsible for overseeing the operational functions of White Hall Nursing & Rehabilitation Center.

7. That this Court has jurisdiction over the parties to this matter.

8. That this Court has jurisdiction over the subject matter of this action

9. That venue is proper in this Court.

#### FACTS

10. That Frank Mayweathers was admitted to the White Hall Nursing and Rehabilitation Center on May 11, 2006. In September of 2008, Frank Mayweathers began to develop bedsores.

11. That Defendants were aware of Frank Mayweathers' medical condition and the care he required when they represented that they could adequately care for his needs at the time of his admission to the facility.

12. That in an effort to ensure that Frank Mayweathers and other residents whose care was funded by the government were placed at the facility, Defendants held themselves out to the Arkansas Department of Human Services (DHS) and the public at large as being:

- a. skilled in the performance of nursing, rehabilitative, and other medical support services;
- b. properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;

- c. able to specifically meet the total nursing home, medical and physical therapy needs of Frank Mayweathers and other residents like him; and
- d. licensed by DHS and complying on a continual basis with all rules, regulations, and standards established for nursing homes.

13. That Defendants failed to discharge their obligation of care to Plaintiff with a conscious disregard for his rights of safety.

14. That all times mentioned herein, Defendants, through their corporate officers or administrators, had knowledge of, ratified or otherwise authorized all of the acts or omissions that caused the injuries suffered by Frank Mayweathers, including the hiring and retention of unqualified and untrained nursing staff, as more fully set forth below with each of the respective counts. Defendants knew that this facility was understaffed and that because of the poor staffing, the nursing staff could not provide even the minimum standard of care to the weak and vulnerable residents. As a result, residents like Frank Mayweathers received improper or no care, with the severity of the ongoing negligence inflicted upon Frank Mayweathers while under the care of Defendants accelerating the deterioration of his health and physical condition beyond that caused by the normal aging process and resulting in the physical and emotional trauma including, but not limited to, the following:

- a. allowing him to develop severe bedsores.

15. That these injuries were foreseeable to Defendants and caused Frank Mayweathers to lose personal dignity and to suffer unnecessary pain and suffering, emotional distress, and hospitalizations that would have been unnecessary had it not been for the conduct of Defendants.

16. That at all times relevant herein, Defendants operated and managed the facility according to a specific plan that would maximize profits by reducing the staffing levels needed to provide care to residents that complied with federal and state regulations governing skilled nursing facilities. Specifically, Defendants intentionally and with knowing and/or reckless disregard for the consequences of their actions caused staffing levels to be set a level where the personnel on duty at any given time could not reasonably tend to the needs of their respective assigned residents and, by way of example, assist with the every day needs of residents such as Frank Mayweathers, with all of these actions and inactions being known to Defendants and their corporate officers and administrators.

17. That the Plaintiff should be allowed to pierce the corporate veil and pursue judgment against Defendant Michael Morton. Defendant Central Arkansas Nursing Centers, Inc., Nursing Consultants, Inc. and Park Health Care, LLC, neither owns substantial assets nor adheres to corporate formalities as required by Arkansas law. These limited liability companies are shell entities as evidenced by the following:

- a. the entities have the same members.
- b. the entities co-mingle funds.
- c. there was siphoning of funds from the entity the Defendants maintain “operate” the facility.
- d. Defendants Central Arkansas Nursing Centers, Inc. Nursing Consultants, Inc. and Park Health Care, LLC are under-funded, under-capitalized and carry a small, inadequate liability insurance policy.

18. In the interest of equity, the Plaintiff should be able to pierce the corporate veil and pursue judgment against the individual Defendant Morton in order to prevent an injustice.

19. That at all times relevant, Frank Mayweathers was under the care, supervision, and treatment of Defendants and that the injuries complained of herein were proximately caused by the act and omissions of Defendants.

20. That Defendants had vicarious liability for the acts and omissions of all persons and entities under their control, either directly or indirectly, including employees, agents, consultants, and independent contractors, causing or contributing to the injuries of Frank Mayweathers.

### **COUNT I – MEDICAL MALPRACTICE**

21. That Plaintiff incorporates the allegations of Paragraphs 1 through 20 above into this Count.

22. That Defendants owed a non-delegable duty to Frank Mayweathers to use reasonable care in treating its residents with the degree and skill of learning ordinarily possessed and used by nursing home facilities in a same or similar locality.

23. That the acts and omissions were motivated by desire to increase the profitability of the Defendant facility by reducing expenditures for needed staff, training, and supervision, which would predictably lead to severe injury.

24. That Defendants owed a nondelegable duty to assist all residents, including Frank Mayweathers, in maintaining the highest level of physical, mental, and psychosocial wellbeing. Defendants had a responsibility to hire sufficient nurses and aides to supervise and to ensure that residents such as Frank Mayweathers attained and maintained his highest level physical, mental, and psychosocial well-being.

25. That Defendants failed to meet the applicable standards of care and violated

their duty to Frank Mayweathers through mistreatment, abuse and neglect. Defendants consciously failed to supervise nurses and aides and failed to hire sufficient nurses and aides. As such, the nurses and aides were not able to provide Frank Mayweathers the requisite care, and as a result the following negligent acts occurred as set forth in this paragraph. The medical negligence of Defendants includes, but is not limited to, one or more of the following acts and omissions:

- a. By failing to provide, implement, and ensure than an adequate nursing care plan for Frank Mayweathers was followed by nursing personnel;
- b. By failing to provide proper treatment and assessment to Frank Mayweathers;
- c. By failing to provide, implement and ensure adequate nursing care plans and modifications as to the needs of Frank Mayweathers;
- d. By failing to adequately and appropriately monitor Frank Mayweathers to recognize significant changes in his health status;
- e. By failing to properly and timely notify the attending physician of significant changes in Frank Mayweathers' physical condition;
- f. By failing to provide adequate transportation and support for Frank Mayweathers to receive proper medical intervention.

26. That a reasonably prudent nursing home, operating under the same or similar conditions, would have not failed to provide the care listed above. Each of the foregoing acts of negligence on the part of Defendants were a proximate cause of Frank Mayweathers' injuries which were all foreseeable to Defendants.

27. That Defendants were negligent and reckless in breaching the duty it owed to

Frank Mayweathers under the Arkansas Medical Malpractice Act for the reasons specifically enumerated in this Complaint.

28. That as a direct and proximate result of said negligence, which may also be characterized as willful, wanton, reckless, malicious, and, in some cases, intentional conduct, Frank Mayweathers suffered injuries entitling him to assert a claim for judgment for all compensatory and punitive damages against Defendants Central Arkansas Nursing Centers, Inc., Nursing Consultants, Inc., Park Health, LLC and Michael Morton, including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and all other elements of damage recoverable under Arkansas law in an amount in excess of that necessary to confer subject matter jurisdiction in federal court in diversity of citizenship cases.

#### **COUNT II – NEGLIGENCE**

29. That Plaintiff incorporates the allegations of Paragraphs 1 through 28 above into this Count.

30. That Defendants owed a nondelegable duty to residents, including Frank Mayweathers, to provide adequate and appropriate custodial care and supervision, which a reasonable and careful person would provide under similar circumstances.

31. That Defendants owed a nondelegable duty to residents, including Frank Mayweathers, to exercise reasonable care in providing care and services in a safe and beneficial manner.

32. That Defendants breached this duty by failing to deliver care and services that a reasonably careful nursing home would have provided under similar circumstances and by failing to prevent the mistreatment, abuse, and neglect of Frank Mayweathers.

33. That Defendants owed a nondelegable duty to assist all residents, including Frank

Mayweathers, in attaining and maintaining the highest level of physical, mental and psychosocial wellbeing.

34. That Defendants owed a nondelegable duty to residents, including Frank Mayweathers, to hire, train, and supervise employees so that such employees deliver care and services to residents in a safe and beneficial manner.

35. That Defendants had a responsibility to hire sufficient nurses and aides to supervise and ensure that all nurses and staff were meeting the needs of its residents and providing appropriate nursing care to all of its residents, including Frank Mayweathers.

36. That the negligence of Defendants includes, but is not limited to, the following acts and omissions;

- a. the failure to provide the minimum number of staff necessary to assist Frank Mayweathers with his needs;
- b. the failure to provide sufficient numbers of nursing personnel to ensure that Frank Mayweathers received timely and accurate care assessments, as well as proper treatment, supervision, and timely nursing and medical intervention due to a significant change of condition;
- c. the failure to ensure the Frank Mayweathers attained and maintained the highest level of physical, mental and psychosocial wellbeing;
- d. the failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Frank Mayweathers received appropriate nursing care in accordance with policies and procedures of the Arkansas Department of Health Services, the Office of Long Term Care, and in accordance with Defendants' own policies and procedures;
- e. the failure to take reasonable steps to prevent, eliminate, and correct



deficiencies and problems in resident care;

f. the failure by Defendants to discharge a legal and lawful obligation to ensure that the rules and regulations designed to protect the health and safety of residents, such as Frank Mayweathers, as promulgated by the Arkansas Department of Health and Human Services and the Arkansas Office of Long Term Care were consistently complied with on an ongoing basis;

g. the failure to ensure that resident care policies for Frank Mayweathers were consistently complied with on an ongoing basis;

h. the failure to ensure that appropriate corrective measures were implemented to correct problems concerning inadequate resident care;

i. the failure to properly notify the family of Frank Mayweathers of significant changes in his health status;

j. the failure to properly and timely notify the attending physician of Frank Mayweathers of significant changes in his physical condition;

k. the failure to provide adequate transportation and support for Frank Mayweathers to receive proper medical intervention.

37. That a reasonably careful nursing home operating under similar circumstances would perceive that failure to provide the ordinary care listed above would result in devastating injuries to Frank Mayweathers.

38. That as a direct and proximate result of said negligence, which may also be characterized as willful, wanton, reckless, malicious, and, in some cases, intentional conduct, Frank Mayweathers suffered injuries entitling him to assert a claim for judgment for all compensatory and punitive damages against Defendants Central Arkansas Nursing Centers, Inc.,

Nursing Consultants, Inc., Park Health Care, LLC and Michael Morton, including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and all other elements of damage recoverable under Arkansas law in an amount in excess of that necessary to confer subject matter jurisdiction in federal court in diversity of citizenship cases.

**COUNT III**  
**VIOLATIONS OF THE ARKANSAS LONG TERM CARE**  
**RESIDENTS' RIGHTS STATUTE PURSUANT TO**  
**ARK. CODE ANN. §20-10-1201, ET. SEQ.**

39. That Plaintiff incorporates the allegations of Paragraphs 1 through 38 above into this Count.

40. That Defendants had a statutorily mandated responsibility to provide Frank Mayweathers nursing home residents' rights as set forth in Ark. Code Ann. §20-10-1201, et. seq.

41. That Defendants' responsibilities to Frank Mayweathers under these statutes are nondelegable in that Defendants are directly liable for deprivations, and infringements by any person or entity under Defendants' control, direct or indirect, including their employees, agents, consultants, and independent contractors, whether in house or outside entities, individuals, agencies, that were caused by Defendants' policies, whether written or unwritten, or common practices.

42. That the duty alleged in the immediately preceding paragraph includes, but is not limited to, proper training and supervision, proper hiring, background and referral checks, and proper retaining and dismissing of employees, agents, consultants, and independent contractors.

43. That notwithstanding the responsibility of Defendants to provide Frank Mayweathers his statutorily mandated nursing home residents' rights, Frank Mayweathers was deprived of such rights by Defendants' failure to provide adequate and appropriate healthcare

and protective support services, including therapeutic and rehabilitative services consistent with her resident care plan. These failures include, but are not limited to, the following:

- a. failure to provide adequate and appropriate health care, protective, and support services;
- b. failure to provide adequate and appropriate therapeutic and rehabilitative services;
- c. failure to prevent falls;
- d. failure to provide adequate and appropriate supervision and protection;
- e. failure to develop, implement, and update an adequate and appropriate resident care plan;
- f. failure to maintain adequate medical and/or critical records that contain sufficient information to justify the diagnosis and treatment and to accurately document the results, including, at a minimum, documented evidence and assessments of the needs of the resident, of an establishment of appropriate plans of care and treatment, and of the care and services provided;
- g. failure to appropriately monitor Frank Mayweathers and recognize significant signs and symptoms of change in his health condition;
- h. failure to properly notify the family of Frank Mayweathers of significant changes in his health status;
- i. failure to supervise staff;
- j. failure to properly train staff;
- k. failure to treat Frank Mayweathers courteously, fairly, and with the fullest measure of dignity;

1. failure to provide an environment free from hazards.

44. As a result of the aforementioned violations of Ark. Code Ann. §20-10-1201, et. seq., Plaintiff, pursuant to Ark. Code Ann. §20-10-1209(a)(4), is entitled to recover actual damages in an amount exceeding that necessary to confer subject matter jurisdiction in Federal District Court in diversity of citizenship cases, because the aforementioned violations are the result of employees and/or agents of Defendants failing to do that which a reasonable and careful nursing home would do under circumstances similar to those shown by the evidence in this case, which caused injuries suffered by Frank Mayweathers as more specifically described in this Complaint.

45. That the aforementioned violations of the Arkansas Residents' Rights statute were the result of the conduct of employees and/or agents of Defendants, and said conduct was intentional, willful, and Defendants knew, or ought to have known, in light of the surrounding circumstances, that their conduct would naturally and probably result in injury or damage and yet it continued the conduct and reckless disregard of the consequences from which malice can be inferred, therefore entitling Plaintiff to punitive damages from Defendants.

**COUNT IV**  
**NEGLIGENCE – NURSING CONSULTANTS, INC.**

46. That Plaintiff incorporates the allegations of Paragraphs 1 through 45 above into this Count.

47. That Defendant Nursing Centers, Inc. owed a nondelegable duty to residents, including Frank Mayweathers, to provide adequate and appropriate nursing consultation services, which a reasonable and careful company would provide under similar circumstances.

48. That Defendant Nursing Centers, Inc. owed a nondelegable duty to residents,

including Frank Mayweathers, to exercise reasonable care in providing professional nursing care and services in a safe and beneficial manner.

49. That Defendant Nursing Centers, Inc. breached this duty by failing to deliver care and services that a reasonably careful company would have provided under similar circumstances and by failing to prevent the mistreatment, abuse, and neglect of Frank Mayweathers.

50. That Defendant Nursing Centers, Inc. owed a nondelegable duty to assist all residents, including Frank Mayweathers, in attaining and maintaining the highest level of physical, mental and psychosocial wellbeing.

51. That Defendant Nursing Centers, Inc. owed a nondelegable duty to residents, including Frank Mayweathers, to train and supervise employees of White Hall Nursing & Rehabilitation Center so that said employees could deliver care and services to residents in a safe and beneficial manner.

52. That Defendant Nursing Centers, Inc. had a responsibility to assure that White Hall Nursing & Rehabilitation Center hired sufficient nurses and aides to supervise and meet the needs of residents and provide appropriate nursing care to all of its residents, including Frank Mayweathers.

53. That the negligence of Defendant Nursing Centers, Inc. includes, but is not limited to, the following acts and omissions;

a. the failure to properly assess staffing levels at White Hall Nursing & Rehabilitation Center;

b. the failure to ensure that staff at White Hall Nursing & Rehabilitation Center conducted timely and accurate care assessments, as well as proper treatment, supervision, and timely nursing and medical intervention due to a significant change of condition;

c. the failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Frank Mayweathers received appropriate nursing care in accordance with policies and procedures of the Arkansas Department of Health Services, the Office of Long Term Care;

d. the failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

e. the failure to discharge a legal and lawful obligation to ensure that the rules and regulations designed to protect the health and safety of residents, such as Frank Mayweathers, as promulgated by the Arkansas Department of Health and Human Services and the Arkansas Office of Long Term Care were consistently complied with on an ongoing basis;

f. the failure to ensure that resident care policies for Frank Mayweathers were consistently complied with on an ongoing basis;

g. the failure to ensure that appropriate corrective measures were implemented to correct problems concerning inadequate resident care;

h. the failure to provide adequate pressure ulcer prevention and treatment training.

54. That a reasonably careful consulting company operating under similar circumstances would perceive that failure to provide the ordinary care listed above would result in devastating injuries to Frank Mayweathers.

55. That as a direct and proximate result of said negligence, which may also

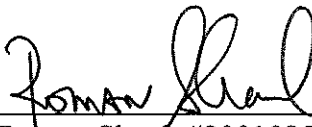
be characterized as willful, wanton, reckless, malicious, and, in some cases, intentional conduct, Frank Mayweathers suffered injuries entitling him to assert a claim for judgment for all compensatory and punitive damages against Defendant Nursing Consultants, Inc. including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and all other elements of damage recoverable under Arkansas law in an amount in excess of that necessary to confer subject matter jurisdiction in federal court in diversity of citizenship cases.

### DAMAGES

The Plaintiff claims compensatory and punitive damages against Defendants, including but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and all other elements of damages recoverable under Arkansas law in an amount in excess of that necessary to confer subject matter jurisdiction in Federal Court in diversity of citizenship cases.

### DEMAND FOR JURY TRIAL

Myrtle Jackson, pursuant to Rule 38 of the Arkansas Rules of Civil Procedure, demands right of trial by jury as to all issues herein.

By:   
Roman Shaul #2001085  
Attorney for Plaintiff

J. P. Sawyer  
**BEASLEY, ALLEN, CROW, METHVIN,  
PORTIS & MILES, P.C.**  
218 Commerce Street  
Montgomery, Alabama 36104  
(334) 269-2343 telephone  
(334) 954-7555 facsimile

#### OF COUNSEL:

Robert M. Sexton  
**RAINWATER, HOLT & SEXTON, P.A.**  
Post Office Box 17250  
Little Rock, Arkansas 72222-7250  
(501) 868-2500 telephone  
(501) 868-2505 facsimile