IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT IN AND FOR POLK COUNTY, FLORIDA

CASE NO.
Division:

SHARON HALLADA, in her individual capacity, and in her capacity as PERSONAL REPRESENTATIVE OF THE ESTATE OF MARJORIE MANGIARUCA,

Plaintiff,

vs.

LAKELAND REGIONAL MEDICAL CENTER, INC., a Florida For Profit Corporation and 3011 OAKBRIDGE BOULEVARD OPERATIONS, LLC, d/b/a OAKBRIDGE HEALTHCARE CENTER, a Florida For Profit Corporation

Defendants.
_____/

COMPLAINT

Plaintiff, Sharon Hallada, sues Defendants Lakeland Regional Medical Center, Inc., and 3011 Oakbridge Boulevard Operations, LLC, d/b/a Oakbridge Healthcare Center and alleges:

Jurisdiction and Venue

1. This is an action for injunctive relief and for monetary damages in excess of $15,000.00, exclusive of interest, costs, and attorney's fees.

2. All applicable statutory and other prerequisites and/or conditions precedent to the filing of these causes of action have been met or fulfilled by the Plaintiff, including all statutory requirements of Chapter 766, Florida Statutes, and Chapter 400 of the Florida Statutes.

3. Venue is proper in Polk County, Florida because both Defendants, Lakeland Regional Medical Center, Inc., and 3011 Oakbridge Boulevard Operations, LLC, d/b/a Oakbridge Healthcare Center, have their principal place of business in this county and the causes of action accrued in this county.

Identification of the Parties

4. Plaintiff, Sharon Hallada (hereinafter "Ms. Hallada" or "Plaintiff"), a resident of Polk County, is the daughter of Marjorie Mangiaruca, (hereinafter "Mrs. Mangiaruca" or "Decedent") who was a patient and resident of both Defendants. Before Mrs. Mangiaruca was admitted to Defendant hospital for medical care, she had been living with her daughter for approximately thirty years. She had been diagnosed with Alzheimer's disease and as her disease progressed, Ms. Hallada was the sole care provider for her mother, providing daily care and

love even as her disease grew worse. During this time, Mrs. Mangiaruca always told her daughter that she would not want to have a prolonged death, or to have her life extended by any artificial means, including any medical intervention to unnaturally delay her death. Ms. Hallada promised her mother that she would honor her wishes and ensure that no medical intervention would be allowed to interrupt a natural and quick death. To accomplish these promises, Mrs. Mangiaruca executed a power of attorney which gave her daughter full legal authority to act as her surrogate for all medical decision making. Since Mrs. Mangiaruca's death, Plaintiff has been appointed as the personal representative of the Estate of Marjorie Mangiaruca. Plaintiff asserts claims in this action on her individual behalf, and in her capacity as personal representative of the Estate of Marjorie Mangiaruca.

5. Defendant Lakeland Regional Hospital (hereinafter "Defendant Hospital") is a for profit hospital having its primary place of business in Polk County. At all times material to this Complaint, Defendant Hospital held itself out to the public as a hospital providing healthcare services to the general public.

6. Defendant 3011 Oakbridge Boulevard Operations, LLC, d/b/a Oakbridge Healthcare Center (hereinafter "Defendant Nursing Home") was at all times material to the allegations in this Complaint a for profit corporation

operating as a skilled nursing facility, and having its principal place of business in Polk County, Florida. At all times material to this Complaint, Defendant Nursing Home held itself out to the public as providing skilled nursing care to the general public.

General Allegations

7. On September 29, 2011, Ms. Mangiaruca was transported by ambulance to the to the emergency room department of Defendant Hospital. Ms. Mangiaruca was 90 years of age at the time. She suffered from significant dementia. Her chief complaint at the time of her presentation to the emergency room department was weakness and increased confusion. After evaluation, the emergency room physician admitted Mrs. Mangiaruca to the hospital for treatment of a urinary tract infection.

8. At the time of admission, Plaintiff spoke with the staff of the hospital and with the patient's attending physician, Jose Reinoso, M.D., regarding her mother's end of life care. Plaintiff informed Dr. Reinoso and the hospital staff that that it was her mother's wish not to receive resuscitation, or any other medical treatment to artificially prolong her life, or otherwise interrupt her natural death.

9. To honor her mother's end of life choices, Plaintiff presented to the hospital staff and Dr. Reinoso the durable power of attorney that had previously

been executed by her mother. That durable power of attorney legally authorized Plaintiff to make end of life decisions on behalf of her mother, including the decision to withhold unwanted medical treatment that would interrupt or delay her mother's death.

10. As a result of his conversation with Plaintiff, Dr. Reinoso signed a DO NOT RESUSCITATE ORDER, dated 9/30/11, on Florida's Department of Health Form 1896. As stated on the Department of Health's website, a Do Not Resuscitate Order on DOH Form 1896, is a "form or patient identification device developed by the Department of Health to identify people who do not wish to be resuscitated in the event of respiratory or cardiac arrest." See www.doh.state.fl.us/depo/trauma/DNRO.html. This form is legally authorized by section 64J-2.018 of the Florida Administrative Code, so that individuals can make the decision to die without unwanted medical intervention and interference, and to avoid being subjected to unwanted medical treatment during the final moments of their life.

11. Specifically, this form stated:

> I, the undersigned, a physician licensed pursuant to Chapter 458 or 459, F.S., am the physician of the patient named above. I hereby direct the withholding or withdrawing of cardiopulmonary resuscitation (artificial ventilation, cardiac compression, endotracheal intubation and defibrillation) from

> the patient in the event of the patient's cardiac or respiratory arrest.

So that patients' end of life choices are honored and respected, section 64J-2 states that "An emergency medical technician or paramedic *shall withhold or withdraw* cardiopulmonary resuscitation: (a) Upon the presentation of an original or a completed copy of DH Form 1896, Florida Do Not Resuscitate Order Form…."

12. Form 1896 is designed so that a portion of the form can detach to create a wrist band so that the patient's DNR ("do not resuscitate") status can be easily recognized and identified by health care providers and emergency medical services personnel, who might otherwise initiate medical intervention to halt the natural dying process.

13. In addition to signing Form 1896, Dr. Reinoso also wrote "DNR" (Do Not Resuscitate") in the patient's chart on September 29th, 2011, at 11:25 a.m.

14. Defendant Hospital discharged Plaintiff's mother on October 10, 2011, for admission to Defendant Nursing Home. The staff of Defendant Hospital assumed responsibility for transporting and transferring the patient to this facility.

15. In making arrangements for the transfer, Defendant Hospital's staff failed to transfer with the patient a copy of the DNR order or Form 1896, so as to inform the staff of Defendant Nursing Home of the patient's DNR status.

Defendant Hospital's staff did not take any other action to identify Plaintiff's mother as a DNR patient, such as using the wrist band available on Form 1896

16. Defendant Nursing Home admitted the patient to its facility at 9:30 p.m. on October 6, 2011, a Thursday. However, the records of the facility show that the staff of the facility failed to assess the patient's end of life care needs, wishes and directives. Based on the record of care kept by this Defendant, no effort whatsoever was made to determine the end of life wishes for this seriously ill, extremely elderly patient.

17. On October 10, at approximately 10:00 p.m., a staff member at the Defendant Nursing Home noted that the patient had phlegm coming out of her mouth, and that her lips were blue and that she was gasping for air. One of the nurses at the facility stuck her fingers down the patient's mouth to try to get her to breathe.

18. Defendant Nursing Home's staff then contacted 911. The EMT's arrived at 10:28 p.m. and found the patient unresponsive, breathing with shallow slow respirations, and with blood and mucus coming from her mouth. They further noted trauma to her lips with bleeding, specifically a busted top lip.

19. The EMT's proceeded with immediate transport back to Defendant Hospital. While in transit, the EMT's first attempted to establish an airway but

they were unable to do so as a result of the patient resisting. After the patient's heart completely stopped, the EMT's pulled to the side of the road and began administering CPR (cardio-pulmonary resuscitation).

20. When the CPR failed to revive the patient, the EMT's performed a tracheostomy by puncturing a hole in the patient's neck and inserting an airway tube. During this resuscitation, the EMT's injected the patient with drugs designed to re-start the patient's heart. They also injected her with drugs designed to paralyze the muscles of her body to make her unable to resist medical intervention. The EMT's then delivered the patient to the emergency room staff of Defendant Hospital.

21. Upon re-admission to Defendant Hospital, the emergency department physician assessed the patient as obtunded and without spontaneous respiratory or neurologic activity. Defendant Hospital's physician removed the tracheostomy inserted by the EMT's, and replaced it with an endotracheal tube, which he inserted down the patient's throat. Defendant Hospital's staff then connected the endotracheal tube to an artificial respiration machine that forced air into Decedent's lungs to breathe for her.

22. After the endotracheal tube was placed in the patient's trachea, Defendant Hospital then inserted a nasogastric tube through her mouth and down

her esophagus into her stomach. After the staff of Defendant Hospital completed this treatment, they admitted the patient to a medical intensive care unit.

23. At the time of the patient's discharge from the emergency department, the emergency room physician was unable to determine if the patient's unresponsiveness was due to the paralytic drugs administered by the EMT's, or due to being deprived of oxygen during the resuscitation efforts. The emergency room physician diagnosed the patient has having suffered a cardiac arrest (heart attack).

24. On October 12, at the direction of Plaintiff, who was forced into the duty to make a decision she should never have had to make, the staff of Defendant Hospital removed the endotracheal tube from the patient, and disconnected her from the ventilator. Defendant Hospital transferred the patient out of the intensive care unit and into a palliative care unit. Mrs. Mangiaruca died five days later at 1:20 p.m., October 17, 2011. Plaintiff was with her mother everyday of this protracted dying process, aware that her mother's wishes had not been honored despite her efforts to ensure that they would be.

25. Following Decedent's death, Defendant Hospital submitted bills for the expenses of the medical care they provided to Decedent upon her re-admission, and demanded payment for the medical care they provided to Decedent following

her resuscitation. Plaintiff had to pay these expenses to prevent them from becoming a charge on her mother's estate. Defendant never apologized to Plaintiff, even though they knew that Decedent's DNR status, as recorded by them, had not been properly communicated or honored, indeed had been violated, robbing the patient of a relatively quick and painless death and forcing a much more prolonged and painful death upon her, and forcing her daughter to witness her wishes being ignored, her death prolonged, and forcing upon her the need to direct withdrawal of the ventilator.

COUNT I - Decedent's Claim for Negligence
(Defendant Hospital)

26. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 above.

27. Defendant Hospital was at all times under a duty of reasonable care to assess, determine and effectuate end of life planning requirements of its patients. This duty of care included the responsibility to ensure that a patient's end of life choices, as expressed through end of life planning documents such as powers of attorney, living wills, healthcare surrogate forms, and DOH Forms 1896, are honored, respected, and complied with by its own staff, and by all medical personnel who might foreseeably encounter the patient.

28. The Decedent was a patient admitted to the Defendant Hospital, and the Hospital owed this duty of care to her.

29. Defendant breached its duty of care to the Decedent by:

a. Failing to ensure that the DOH Form 1896 was transferred with the patient and her medical records to the nursing home facility;

b. Failing to ensure that other medical records with Decedent's attending physician's DNR orders were transferred with the patient and her medical records to the nursing home facility;

c. Failing to properly identify the Decedent as a DNR patient;

d. Failing to alert the medical personnel transporting Decedent that she was a DNR patient;

e. Failing to alert the receiving nursing home facility that Decedent was a DNR patient;

f. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning documents are properly transported with the patient.

30. As a direct and proximate result of the negligence of Defendant Hospital, Decedent suffered unwanted medical interference at the end of her life, in violation of her expressed wishes to die without being subjected to such unwanted medical treatment. Additionally, Decedent suffered an artificially prolonged death which was repugnant to her values and wishes regarding how she wanted to die. Decedent was forced to endure violent and painful medical interventions, including

having her lip busted, having a hole cut in her throat, receiving paralyzing drugs, having tubes inserted into her throat and her stomach, and having air forced into her lungs.

31. But for the negligence of Defendant Hospital, Decedent would have experienced a quick and natural death, as she desired. However, due to the negligence of Defendant Hospital, Decedent was robbed of her natural death and instead suffered from prolonged dying in a manner that was contrary and repugnant to her expressed wishes.

WHEREFORE, Plaintiff, in her capacity as Personal Representative of the Estate of Decedent, demands a judgment for all damages suffered by Decedent, including, but not limited to, damages for her pain and suffering, for the violation of her rights as a patient, for costs of this action, for attorney's fees as allowable by law, and for all other reliefs as this court deems just and equitable.

COUNT II - Decedent's Claim for Negligence
(Defendant Nursing Home)

32. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 above.

33. Defendant Nursing Home was at all times under a duty of reasonable care to assess, determine and effectuate end of life planning requirements of its

patients. This duty of care included the responsibility to ensure that a patient's end of life choices, as expressed through end of life planning documents such as powers of attorney, living wills, healthcare surrogate forms, and DOH Forms 1896, are honored, respected, and complied with by its own staff, and by all medical personnel who might foreseeably encounter the patient.

34. Decedent was a patient admitted to the Defendant Nursing Home, and Defendant Nursing Home owed this duty of care to her.

35. Defendant Nursing Home breached its duty of care to Decedent by:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

36. As a direct and proximate result of the negligence of Defendant Nursing Home, Decedent suffered unwanted medical interference at the end of her life in violation of her expressed wishes to die without being subjected to such

unwanted medical treatment. Additionally, Decedent suffered an artificially prolonged death in a manner that was repugnant to her values and wishes regarding how she wanted to die. Decedent was forced to endure violent and painful medical interventions, including having her lip busted, having a hole cut in her throat, receiving paralyzing drugs, having tubes inserted into her throat and her stomach, and having air forced into her lungs.

37. But for the negligence of Defendant Nursing Home, Decedent would have experienced a quick and natural death, as she desired. However, due to the negligence of Defendant Hospital, Decedent was robbed of her natural death and instead suffered from prolonged dying in a manner that was contrary and repugnant to her expressed wishes.

WHEREFORE, Plaintiff, in her capacity as Personal Representative of the Estate of Decedent, demands a judgment against Defendant Nursing Home, for all damages suffered by Decedent, including, but not limited to, damages for her pain and suffering, for the violation of her rights as a patient, for costs of this action, for attorney's fees as allowable by law, and for all other reliefs as this court deems just and equitable.

COUNT III - Plaintiff's Individual Claim for Negligent Infliction of Emotional Distress
(Defendant Hospital)

38. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 above.

39. Defendant Hospital was at all times under a duty of reasonable care to assess, determine and effectuate end of life planning requirements of its patients. This duty of care included the responsibility to ensure that a patient's end of life choices, as expressed through end of life planning documents such as powers of attorney, living wills, healthcare surrogate forms, and DOH Forms 1896, are honored, respected, and complied with by its own staff, and by all medical personnel who might foreseeably encounter the patient.

40. Decedent was a patient admitted to the Defendant Hospital, and the Hospital owed this duty of care to her. Defendant Hospital also owed a duty of care to Plaintiff, as Decedent's daughter and surrogate medical decision-maker, who would be foreseeably harmed if Defendant failed to take action to ensure that her mother's end of life wishes were respected and effectuated. Such a duty is owed to Plaintiff individually because Defendant Hospital's conduct in failing to honor and effectuate end of life decisions, such as those made by Decedent, creates

an unreasonable risk of causing emotional distress to close family members who may suffer from witnessing their loved ones suffer from the imposition of unwanted medical intervention, and from a prolonged and torturous dying process due to unwanted medical intervention.

41. Defendant Hospital breached its duty of care to Plaintiff by:

a. Failing to ensure that the DOH form 1896 was transferred with the patient and her medical records to the nursing home facility;

b. Failing to ensure that other medical records with Decedent's attending physician's DNR orders were transferred with the patient and her medical records to the nursing home facility;

c. Failing to take steps to identify Decedent as a DNR patient;

d. Failing to alert the medical personnel transporting Decedent that she was a DNR patient;

e. Failing to alert the receiving nursing home facility that Decedent was a DNR patient;

f. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning documents are properly transported with the patient.

42. As a direct and proximate result of the negligence of Defendant Hospital, Ms. Hallada suffered damages. Sharon was present with her mother every day after her resuscitation, during the prolonged dying process, and at the moment of natural death. Following the forbidden and unwanted resuscitative

efforts of medical personnel to halt Decedent's natural death, Sharon was forced to endure the unnatural and unwanted prolonging of her mother's dying process. Plaintiff suffered grievous emotional distress knowing that her mother's desire for a quick and natural death without medical intervention had not been honored or respected. Plaintiff suffered greatly when she observed the medical interference that had been inflicted upon her mother's body, including the puncturing of a hole in her throat and the insertion of tubes into her body. Furthermore, Plaintiff was forced into the unbearable position of having Defendant Hospital request that she decide whether to withhold mechanical and medical interventions, after they had caused them to be administered. Thus, to honor her mother's decisions regarding her end of life, Plaintiff was forced to be responsible for inflicting a second death upon her own mother. As a result of Defendant Hospital's negligent acts and omissions, Plaintiff suffered extreme emotional pain, distress and suffering.

WHEREFORE, Plaintiff, in her individual capacity, demands a judgment for all damages suffered by Plaintiff, including, but not limited to, damages for her pain and suffering, for costs of this action, for attorneys' fees as allowable by law, and for all other relief as this court deems just and equitable.

COUNT IV – Plaintiff's Individual Claim for Negligent Infliction Emotional Distress
(Defendant Nursing Home)

43. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 above.

44. Defendant Nursing Home was at all times under a duty of reasonable care to assess, determine and effectuate end of life planning requirements of its patients. This duty of care included the responsibility to ensure that a patient's end of life choices, as expressed through end of life planning documents such as powers of attorney, living wills, healthcare surrogate forms, and DOH Forms 1896, are honored, respected, and complied with by its own staff, and by all medical personnel who might foreseeably encounter the patient.

45. Decedent was a patient admitted to the Defendant Nursing Home, and Defendant Nursing Home owed this duty of care to her. Defendant Nursing home also owed a duty of care to Plaintiff, as Decedent's daughter, who would be foreseeably harmed if Defendant failed to take action to ensure that her mother's end of life choices were respected and effectuated. Such a duty is owed to Plaintiff individually because Defendant Nursing Home's conduct in failing to honor and effectuate end of life decisions, such as those made by Decedent, creates an unreasonable risk of causing emotional distress to close family members who may

suffer from witnessing their loved ones suffer as a result of unwanted medical intervention, and from an artificially prolonged dying process due to unwanted medical intervention.

46. Defendant Nursing Home breached its duty of care to the Decedent by:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

47. As a direct and proximate result of the negligence of Defendant Hospital, Plaintiff suffered damages. Plaintiff was present with her mother every day after her resuscitation she was present at the moment of her natural death. Following the resuscitative efforts of medical personnel to halt Decedent's death, Plaintiff was forced to endure the unnatural and unwanted prolonging of her mother's dying process. Plaintiff suffered grievous emotional distress and

suffering, knowing that her mother's desire for a quick and natural death without medical intervention had not been honored or respected. Plaintiff suffered greatly when she observed the medical interference that had been inflicted upon her mother's body, including the puncturing of a hole in her throat and the insertion of tubes into her body. Furthermore, Plaintiff was forced into the unbearable position of having Defendant Hospital request that she decide whether to withhold mechanical and medical interventions, after they had caused them to be administered. Thus, to honor her mother's decisions regarding her end of life, Plaintiff was forced to be responsible for inflicting a second death upon her own mother. As a result of Defendant Nursing Home's negligent acts and omissions, Plaintiff suffered extreme emotional pain, distress and suffering.

WHEREFORE, Plaintiff, in her individual capacity, demands a judgment against Defendant Nursing Home, for all damages suffered by Decedent, including, but not limited to, damages for her pain and suffering, for costs of this action, for attorney's fees as allowable by law, and for all other reliefs as this court deems just and equitable.

COUNT V – Decedent's Claim for Breach of Fiduciary Duty
(Defendant Hospital)

48. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25, and 30, above.

49. Decedent, as a patient admitted to Defendant Hospital's facility, was entirely dependent upon its staff and employees for her care and well-being. Defendant Hospital housed and fed Decedent and provided to her all of her daily needs and care. All of Decedent's personal needs were under the control of Defendant, and because she was a patient receiving medical care, this included the manner in which Decedent would die. As a result of this dependent relationship, relation of trust and confidence existed between Decedent and Defendant Hospital, such that confidence was reposed by Decedent and trust was accepted by Defendant Hospital.

50. As a result of such trust and confidence, a fiduciary relationship existed between Decedent and Defendant Hospital. That fiduciary relationship placed the obligation on Defendant Hospital to honor, respect and effectuate Decedent's end of life choices, including the choice expressed in the DOH Form 1896, that medical intervention and resuscitative efforts should not be inflicted upon Decedent during the final moments of her life.

51. Defendant Hospital breached its fiduciary duty to Decedent by:

a. Failing to ensure that the DOH Form 1896 was transferred with the patient and her medical records to the nursing home facility;

b. Failing to ensure that other medical records with Decedent's attending physician's DNR orders were transferred with the patient and her medical records to the nursing home facility;

c. Failing to identify Decedent as a DNR patient;

d. Failing to alert the medical personnel transporting Decedent that she was a DNR patient;

e. Failing to alert the receiving nursing home facility that Decedent was a DNR patient;

f. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning documents are properly transported with the patient.

52. In breaching its fiduciary duty to the patient, Defendant Hospital placed its own interests above that of its patient, the Decedent. Defendant Hospital was more concerned with delivering healthcare to patients, so as to enhance and maximize its profits, rather than respecting end of life decisions by patients such as Decedent who wished to die without intrusive, invasive, and painful prolongation of life through medical intervention.

53. Defendant Hospital's breach of its fiduciary duty to Decedent was the proximate cause of damages that were subsequently inflicted upon the Decedent by third parties and by Defendant Hospital, as alleged in this Complaint.

WHEREFORE, Plaintiffs demand judgment against Defendant Hospital for compensatory damages, costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT VI – Decedent's Claim for Breach of Fiduciary Duty
(Defendant Nursing Home)

54. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25, and 30, above.

55. Decedent, as a patient admitted to Defendant Nursing Home's facility, was entirely dependent upon them for her care and well-being. Defendant Nursing Home housed and fed Decedent and provided to her all of her daily needs and care. All of Decedent's personal needs were under the control of Defendant, and because she was a patient receiving medical care, this included the manner in which Decedent would die. As a result of this dependent relationship, a relationship of trust and confidence existed between Decedent and Defendant Nursing Home, such that confidence was reposed by Decedent and trust was accepted by Defendant Home.

56. As a result of such trust and confidence, a fiduciary relationship existed between Decedent and Defendant Nursing Home. That fiduciary relationship placed the obligation on Defendant Nursing Home to honor, respect and effectuate Decedent's end of life choices, including the choice expressed in the DOH Form 1896, that medical intervention and resuscitative efforts should not be inflicted upon Decedent during the final moments of her life.

57. Defendant Nursing Home breached its fiduciary duty to the Decedent by:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

58. In breaching its fiduciary duty to the patient, Defendant Nursing Home placed its own interests above that of its patient, the Decedent. Defendant Nursing Home was more concerned with delivering healthcare to patients, so as to

enhance and maximize its profits, rather than respecting end of life decisions by patients such as Decedent who wished to die without intrusive, invasive, and painful prolongation of life through medical intervention.

59. Defendant Nursing Home's breach of its fiduciary duty to Decedent was the proximate cause of damages that were subsequently inflicted upon the Decedent by third parties and by Defendant Nursing Home, as alleged in this Complaint.

WHEREFORE, Plaintiff demand judgment against Defendant Nursing Home for compensatory damages, costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT VII – Plaintiff's Individual Claim for Breach of Fiduciary Duty
(Defendant Hospital)

60. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25, and 42 above.

61. Plaintiff, as Decedent daughter and her legal attorney in fact, was responsible for the care of her mentally incompetent mother. By admitting her mother to Defendant hospital care facility, Plaintiff became entirely dependent upon them for her mother's care and well-being. Defendant Hospital housed and fed Decedent and provided to her all of her daily needs and care. All of

Decedent's personal needs were under the control of Defendant, and because she was a patient receiving medical care, this included the manner in which Decedent would die. As a result of this dependent relationship, relation of trust and confidence existed between Plaintiff and Defendant Hospital, such that confidence was reposed by Plaintiff and trust was accepted by Defendant Hospital.

62. Plaintiff, as the daughter of Decedent who was responsible for communicating her mother's end of life choices, was entirely dependent upon Defendant Hospital to effectuate those end of life choices and to take steps to ensure that they were carried out. In fact, Defendant Hospital assumed the responsibility of assessing, documenting, communicating, and otherwise effectuating Decedent's end of life choices, such that Plaintiff reasonably assumed that this responsibility would be carried out by Defendant Hospital. As a result of this dependent relationship, a relationship of trust and confidence existed between Plaintiff and Defendant Hospital, such that confidence was reposed by Plaintiff and trust was accepted by Defendant Hospital.

63. As a result of such trust and confidence, a fiduciary relationship existed between Plaintiff and Defendant Hospital. That fiduciary relationship placed the obligation on Defendant Hospital to honor, respect and effectuate Decedent's end of life choices, as they were communicated to it by Plaintiff. This

included the choice expressed in the DOH Form 1896, that medical intervention and resuscitative efforts should not be inflicted upon Decedent during the final moments of her life.

64. Defendant Hospital breached its fiduciary duty to the Plaintiff by:

a. Failing to ensure that the DOH Form 1896 was transferred with the patient and her medical records to the nursing home facility;

b. Failing to ensure that other medical records with Decedent's attending physician's DNR orders were transferred with the patient and her medical records to the nursing home facility;

c. Failing to properly identify Decedent as a DNR patient;

d. Failing to alert the medical personnel transporting Decedent that she was a DNR patient;

e. Failing to alert the receiving nursing home facility that Decedent was a DNR patient;

f. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning documents are properly transported with the patient.

65. In breaching its fiduciary duty to Plaintiff, Defendant Hospital placed its own interests above that of its patient and her family, specifically Plaintiff. Defendant Hospital was more concerned with rendering healthcare to patients, whether or not it was wanted, rather than respecting end of life decisions by patients such as Decedent.

66. Defendant Hospital's breach of its fiduciary duty to Plaintiff was the proximate cause of damages suffered by Plaintiff, as alleged in this Complaint.

WHEREFORE, Plaintiffs demand judgment against Defendant Hospital for compensatory damages, costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT VIII – Plaintiff's Individual Claim for Breach of Fiduciary Duty (Defendant Nursing Home)

67. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 and 42 above.

68. Plaintiff, as Decedent's daughter and her legal attorney in fact, was responsible for the care of her mentally incompetent mother. By admitting her mother to Defendant's Nursing Home facility, Plaintiff became entirely dependent upon them for her mother's care and well-being. Defendant Nursing Home housed and fed Decedent and provided to her all of her daily needs and care. All of Decedent's personal needs were under the control of Defendant, and because she was a patient receiving medical care, this included the manner in which Decedent would die. As a result of this dependent relationship, a relationship of trust and confidence existed between Plaintiff and Defendant Nursing Home, such that confidence was reposed by Plaintiff and trust was accepted by Defendant Home.

69. Plaintiff, as the daughter of Decedent and surrogate medical decision maker, was entirely dependent upon Defendant Nursing Home to effectuate those end of life choices and to take steps to ensure that they were carried out. As a result of this dependent relationship, relation of trust and confidence existed between Plaintiff and Defendant Nursing Home, such that confidence was reposed by Plaintiff and trust was accepted by Defendant Nursing Home.

70. As a result of such trust and confidence, a fiduciary relationship existed between Plaintiff and Defendant Nursing Home. That fiduciary relationship placed the obligation on Defendant Nursing Home to assess, honor, respect, and effectuate Decedent's end of life choices, as they were communicated to it by Plaintiff. This included the choice expressed in the DOH Form 1896, that medical intervention and resuscitative efforts should not be inflicted upon Decedent during the final moments of her life.

71. Defendant Nursing Home breached its fiduciary duty to Plaintiff by:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

72. In breaching its fiduciary duty to Plaintiff, Defendant Nursing Home placed its own interests above that the patient's family, specifically, Plaintiff. Defendant Nursing Home was more concerned with rendering healthcare to patients, whether or not it was wanted, rather than respecting end of life decisions by patients such as Decedent.

73. Defendant Nursing Home's breach of its fiduciary duty to Plaintiff was the proximate cause of damages suffered by her, as alleged in this Complaint.

WHEREFORE, Plaintiff demands judgment against Defendant Nursing Home for compensatory damages costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT IX – Decedent's Statutory Claim under Section 415.1111, Florida Statutes – Neglect of a Vulnerable Adult
(Defendant Hospital)

74. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25, and 30 above.

75. Section 415.1111, of the Florida Statutes, provides a civil cause of action to a vulnerable adult who has been abused, neglected, or exploited, to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult.

76. Decedent was, at all times during her admission to Defendant Hospital a "vulnerable adult," as defined in Section 415.102(27), of the Florida Statutes. At all times during her hospitalization, Decedent's ability to perform the normal activities of daily living and to provide for her own care, including her ability to communicate her end of life choices, was impaired due to long-term physical and cognitive disability or dysfunction, and the infirmities of aging.

77. The following acts and omissions of Defendant constituted "Neglect," as defined in Section 415.102(16), of the Florida Statutes:

a. Failing to ensure that the DOH Form 1896 was transferred with the patient and her medical records to the nursing home facility;

b. Failing to ensure that other medical records with Decedent's attending physician's DNR orders were transferred with the patient and her medical records to the nursing home facility;

c. Failing to properly identify Decedent as a DNR patient;

d. Failing to alert the medical personnel transporting Decedent that she was a DNR patient;

e. Failing to alert the receiving nursing home facility that Decedent was a DNR patient;

f. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning documents are properly transported with the patient.

78. That as a direct and proximate result of the foregoing neglect of Defendant Hospital, the Decedent suffered damages, as alleged herein.

79. As the personal representative of Decedent's estate, Plaintiff is entitled to pursue this claim on behalf of the Decedent.

80. Plaintiff has retained the services of the undersigned attorney and has agreed to pay a reasonable attorneys fee to prosecute this claim for damages. Section 415.1111, of the Florida Statutes, entitles Plaintiff to an award of attorney's fees and costs incurred in prosecuting a civil action for neglect and/or abuse of a vulnerable adult.

WHEREFORE, Plaintiff demands judgment against Defendant Hospital for compensatory damages, attorneys' fees and costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT X – Decedent's Statutory Claim under Section 415.1111, Florida Statutes – Neglect of a Vulnerable Adult
(Defendant Nursing Home)

81. Plaintiff re-alleges and incorporates herein the allegations of paragraphs counts 1 through 25, and 30 above.

82. Section 415.1111, of the Florida Statutes provides a civil cause of action to a vulnerable adult who has been abused, neglected, or exploited, to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable adult.

83. Decedent was, at all times during her admission to Defendant Nursing Home a "vulnerable adult," as defined in Section 415.102(27), of the Florida Statutes. At all times during her admission, Decedent's ability to perform the normal activities of daily living and to provide for her own care, including her ability to communicate her end of life choices, was impaired due to long-term physical disability or dysfunction, and the infirmities of aging.

84. The following acts and omissions of Defendant constituted "Neglect," as defined in Section 415.102(16), of the Florida Statutes:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

85. That as a direct and proximate result of the foregoing neglect of Defendant Hospital, the Decedent suffered damages, as alleged herein.

86. As the personal representative of Decedent's estate, Plaintiff is entitled to pursue this claim on behalf of the Decedent.

87. Plaintiff has retained the services of the undersigned attorney and has agreed to pay a reasonable attorneys fee to prosecute this claim for damages. Section 415.1111, of the Florida Statutes, entitles Plaintiff to an award of attorney's fees and costs incurred in prosecuting a civil action for neglect and/or abuse of a vulnerable adult.

WHEREFORE, Plaintiff demands judgment against Defendant Nursing Home for compensatory damages, attorney's fees and costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT XI – Decedent's Statutory Claim under Section 400.23, Florida Statutes for Violation of Rights
(Defendant Nursing Home)

88. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25, and 30 above.

89. Section 400.23 of the Florida Statutes provides a civil cause of action for the violation of rights of a resident in any nursing home facility.

90. Decedent was a resident in the nursing home facility owned and operated by Defendant Nursing Home.

91. As a resident in Defendant's Nursing Home's facility, Decedent was endowed with statutory rights pursuant to section 400.022, of the Florida Statutes. Such rights included:

a. The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decision, which will not be infringed upon , and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these rights (Section 400.022(1)(a), Florida Statutes);

b. The right to participate in the planning of all medical treatment, including the right to refuse medication and treatment (Section 400.022(1)(j), Florida Statutes);

c. The right refuse medication or treatment and to be informed of the consequences of those decisions (Section 400.022(1)(k), Florida Statutes);

d. The right to be treated courteously, fairly, and with the fullest measure of dignity (Section 400.022(n), Florida Statutes);

e. The right to be free from mental and physical abuse (Section 400.022(1)(o), Florida Statutes).

92. Defendant Nursing Home was under a duty to respect these rights and to take actions to respect and honor them. Furthermore, section 400.22(2) of the Florida Statutes required Defendant Nursing Home to prepare a written plan and provide appropriate staff training to implement the protection and enforcement of the above enumerated rights.

93. Defendant Nursing Home breached its duty to Decedent and violated Decedent's rights, as enumerated above, by committing the following acts and omissions:

a. Failing to perform an assessment of Decedent at the time of her admission to determine her end of life decisions and planning;

b. Failing to communicate with Defendant Hospital to determine Decedent's end of life decisions and planning;

c. Failing to communicate with Plaintiff to determine Decedent's end of life decisions and planning;

d. Failing to properly train its staff and employees to take reasonable steps to ensure that end of life planning decisions are properly assessed, determined, documented and effectuated, so as to prevent the administration of unnecessary and unwanted medical treatment at the end of life.

94. Defendant's breach of its duty to honor and respect Decedent's rights is the substantial and proximate cause of damage to Decedent, as alleged in this Complaint.

WHEREFORE, Plaintiffs demand judgment against Defendant Nursing Home for compensatory damages, attorney's fees and costs of this action, and all other relief to which the Decedent is entitled to under the law.

COUNT XII – Injunctive Relief
(Defendants Hospital and Nursing Home)

95. Plaintiff re-alleges and incorporates herein the allegations of paragraphs 1 through 25 above.

96. Under Florida law, injunctive relief is available to prevent a threatened harm under circumstances where there is a reasonable well-grounded probability that a harmful course of conduct will continue in the future.

97. Plaintiff and Decedent were grievously injured as a result of Defendants' neglect and disregard of Decedent's significant right to die in a manner of her own choosing, free of unwanted medical interference and intrusive medical treatment.

98. Defendants took little or no action to respect, protect, preserve and enforce Decedent's right.

99. Upon knowledge and belief, Defendants failure to take action to respect the rights of patient's such as Decedent is a pattern of institutional practice and behavior. It is believed that such disregard has occurred in the past, and will continue to occur unless Defendants are ordered to take such action as is necessary to ensure that the rights of patients with regard to the manner in which they die are respected.

100. There is no adequate remedy at law to prevent such ongoing violations of patient's rights and this court's powers of equity are needed to prevent future harm to other patients.

101. Plaintiff seeks the equitable powers of this court to issue an injunction to Defendants, which orders them to:

a. Train and educate its staff regarding the rights of patient's under DNR orders;

b. Train and educate its staff regarding the transmission of DRN orders and other documentation relating to a patient's end of life choices, including the choice to die without medical interference;

c. Implement protocols and procedures to conspicuously identify patients who have DNR orders and who have made end of life choices to die free of medical interference;

d. To improve their procedures regarding the transmission of DRN orders and other documentation relating to a patient's end of life choices, including the choice to die without medical interference.

102. Section 400.023, Florida Statutes, provides that any resident who prevails in seeking injunctive relief is entitled to a reasonable attorney's fee, not to exceed $25,000.00.

WHEREFORE, Plaintiffs demand judgment against Defendant Hospital and Defendant Nursing Home for injunctive relief, attorney's fees allowable by law, costs of this action, and all other relief to which the Plaintiff is entitled to under principals of equity and fairness.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues so triable by law.

Respectfully submitted,

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