

STATE OF INDIANA) MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

PATRICIA SMYTHE, as Special)
Administrator of the ESTATE OF)
PATRICIA NEWNUM, and)
RONALD NEWNUM,)
)
Plaintiffs,)

v.)

JURY TRIAL DEMANDED

INN H EMP, LLC, d/b/a)
CommuniCare Family of)
Companies, HEALTH CARE)
FACILITY MANAGEMENT, LLC,)
d/b/a CommuniCare Family of)
Companies, COMMUNICARE,)
INC., MANOJ BERRY, and)
ADAMS COUNTY MEMORIAL)
HOSPITAL,)
)
Defendants.)

COMPLAINT FOR DAMAGES

Patricia Smythe, as Special Administrator of the Estate Patricia Newnum, and Ronald Newnum, by counsel, for their Complaint for Wrongful Death and Damages against Defendants INN H EMP, LLC, d/b/a CommuniCare Family of Companies, Health Care Facility Management, LLC, d/b/a CommuniCare Family of Companies, CommuniCare, Inc., Manoj Berry, and Adams County Memorial Hospital, respectfully allege and state as follows:

1. The facts of this action are particularly heinous: On or about February 2, 2022, Patricia Newnum, a hospice patient in a severely compromised physical state, was sexually assaulted, raped, and murdered while in the care of Defendants

at Homestead Healthcare Center, located at or near 7465 Madison Avenue, in Indianapolis, Indiana.

2. It was a horrendous crime that was the direct and proximate result of the acts of the Defendants, as described herein, and that should never have been allowed to happen.

3. Nevertheless, it was the inevitable result of the Defendants' years of egregious mismanagement and conscious allowing of rampant criminality, assaults, and alcohol/drug abuse to be omnipresent at Homestead Healthcare Center.

Parties

4. INNH EMP, LLC is an Ohio limited liability company.

5. INNH EMP, LLC's registered agent for service in the state of Indiana is C T Corporation System located at 334 North Senate Avenue, Indianapolis, IN 46204.

6. In the State of Indiana, INNH EMP, LLC has held and operated under the assumed business name CommuniCare Family of Companies since at least March 6, 2019.

7. On or about February 2, 2022, INNH EMP, LLC operated, managed, staffed, and/or supervised the medical and other operations at Homestead Healthcare Center.

8. INNH EMP, LLC is a correct legal entity to defend the allegations of this Complaint.

9. INNH EMP, LLC is not a “qualified provider” as that term is defined in Indiana Code § 34-18-2-24.5.

10. Health Care Facility Management, LLC is an Ohio limited liability company.

11. Health Care Facility Management, LLC’s registered agent for service in the state of Indiana is C T Corporation System located at 334 North Senate Avenue, Indianapolis, IN 46204.

12. In the State of Ohio, Health Care Facility Management, LLC has held itself out as and operated under the assumed business name CommuniCare Family of Companies since at least September 7, 2005.

13. On or about February 2, 2022, Health Care Facility Management, LLC operated, managed, staffed, and/or supervised the medical and other operations at Homestead Healthcare Center.

14. Health Care Facility Management, LLC is a correct legal entity to defend the allegations of this Complaint.

15. Health Care Facility Management, LLC is not a “qualified provider” as that term is defined in Indiana Code § 34-18-2-24.5.

16. CommuniCare, Inc. is an Ohio for-profit corporation.

17. CommuniCare, Inc.’s registered agent for service in the state of Ohio is ACFB Incorporated located at 200 Public Square, Suite 2300, Cleveland, OH 44114.

18. CommuniCare, Inc. is a correct legal entity to defend the allegations of this Complaint.

19. On or about February 2, 2022, CommuniCare, Inc. operated, managed, staffed, and/or supervised the medical and other operations at Homestead Healthcare Center.

20. CommuniCare, Inc. is not a “qualified provider” as that term is defined in Indiana Code § 34-18-2-24.5.

21. On or about February 2, 2022, Manoj Berry was the Administrator for Homestead Healthcare Center.

22. Manoj Berry began in the position of Administrator for Homestead Healthcare Center on or about August 26, 2021.

23. On information and belief, Manoj Berry is a citizen of Indiana.

24. Manoj Berry is not a “qualified provider” as that term is defined in Indiana Code § 34-18-2-24.5.

25. INNH EMP, LLC, Health Care Facility Management, LLC, CommuniCare, Inc., and Manoj Berry are collectively referred to herein as “CommuniCare Defendants.”

26. At the time of her death and the time of the circumstances giving rise to this action, Patricia Newnum was a citizen and resident of the state of Indiana.

27. The Estate of Patricia Newnum (the “Estate”) was opened and is administered by the Marion Superior Court, Probate Division under cause number 49D08-2204-EU-10907, and Patricia Smythe is the duly appointed Special Administrator of the Estate.

28. At all times relevant to this action, Ronald Newnum was the husband of Patricia Newnum.

29. At all times relevant, Ronald Newnum is and was a citizen and resident of the state of Indiana.

Jurisdiction & Preferred Venue

30. This Court has jurisdiction over the Plaintiffs because the decedent, the Estate, and Ronald Newnum were and are subject to the general jurisdiction of Indiana state courts, and the Plaintiffs otherwise consent to jurisdiction of Indiana state courts.

31. This Court has jurisdiction over INNH EMP, LLC because it is registered with the Indiana Secretary of State to do business in Indiana.

32. This Court has jurisdiction over Health Care Facility Management, LLC because it is registered with the Indiana Secretary of State to do business in Indiana.

33. This Court has jurisdiction over Manoj Berry because the individual conducts business in Indiana out of which these claims arose and, on information and belief, the individual is a citizen of Indiana.

34. This Court has jurisdiction over Adams County Memorial Hospital because it is an Indiana municipal corporation in accordance with Ind. Code § 16-22-8-6.

35. Preferred venue is proper in this Court in accordance with Ind. Trial Rule 75(A)(4) because the office of Defendants INNH EMP, LLC and Health Care

Facility Management, LLC out of which these claims arose is located in Marion County, Indiana.

36. Preferred venue is also proper in this Court in accordance with Ind. Trial Rule 75(A)(5) because the office of Defendants Adams County Memorial Hospital out of which these claims arose is located in Marion County, Indiana.

37. On information and belief, preferred venue is also proper in this Court in accordance with Ind. Trial Rule 75(A)(1) because the greater percentage of Defendants reside in Marion County, Indiana.

Factual Background

38. On or about February 2, 2022, Patricia Newnum was a resident and patient of the Homestead Healthcare Center.

39. On or about February 2, 2022, Patricia Newnum was sexually assaulted, raped, and murdered in her room at the Homestead Healthcare Center.

40. The sexual assault, rape, and murder were committed by Dwayne Freeman, who was also a resident and patient of the Homestead Healthcare Center.

41. The Homestead Healthcare Center is owned by Adams County Memorial Hospital.

42. The Homestead Healthcare Center is operated and administered by Adams County Memorial Hospital and the CommuniCare Defendants.

43. On or about February 2, 2022, at approximately 5:00 a.m., a qualified medical assistant employed at Homestead Healthcare Center entered Patricia Newnum's room.

44. That employee discovered a motorized scooter in the room—Patricia Newnum did not possess or use a motorized scooter—and observed another resident later identified as Dwayne Freeman.

45. Freeman was on top of Patricia Newnum, holding a pillow over her face.

46. Freeman sexually assaulted and raped Patricia Newnum.

47. Freeman smothered and killed Patricia Newnum.

48. Freeman had with him a bottle of alcohol and, on information and belief, had consumed substantial amounts of alcohol.

49. On or about February 2, 2022, prior to the assault, rape, and murder of her, Patricia Newnum's speech was limited and she could not move on her own.

50. Freeman had a criminal history and a history of alcohol abuse prior to February 2, 2022.

51. Freeman was not supervised or otherwise prevented from accessing Patricia Newnum on the morning of February 2, 2022.

52. Patricia Newnum was completely incapable of protecting herself from Freeman's sexual assault, rape, and murder of her.

53. Patricia Newnum was not monitored or otherwise protected from attacks by third persons, such as Freeman.

54. The sexual assault, rape, and murder of Patricia Newnum was the tragic culmination of constant, horrendous conditions and conduct at the Homestead Healthcare Center.

55. Medicare.gov reveals an abysmal rating:

Health inspections rating



Much below average

The health inspection star rating is based on each nursing home's current health inspection and 2 prior inspections, as well as findings from the most recent 3 years of complaint inspections and 3 years of infection control inspections.

available at <https://www.medicare.gov/care-compare/details/nursing-home/155780?id=9768979a-6fe4-4e7b-a45a-f433e176f240&city=Indianapolis&state=IN&zipcode=46204&measure=nursing-home-health-inspections#ProviderDetailsDetailsContainer>

56. In the last 3 years, Homestead Healthcare Center has received at least 26 health citations.

57. The national average for health citations in that same span is 8.1.

58. In 2021 alone, Homestead Healthcare Center was fined in excess of \$100,000.

59. Homestead Healthcare Center has long been plagued by poor staffing and supervision.

60. A culture of crime, drugs, alcohol abuse, and poor treatment of residents and patients has been permitted to fester at Homestead Healthcare Center.

61. A former employee of the facility, remarking on Homestead Healthcare Center regarding the sexual assault, rape, and murder of Patricia Newnum, told IndyStar, "That doesn't surprise me."

62. A former employee of the facility, remarking on Homestead Healthcare Center regarding the sexual assault, rape, and murder of Patricia Newnum, told IndyStar, “I knew something like that was going to happen because the type of residents they had in there — either they were going to end up hurting a nurse . . . or one of the residents was going to kill another resident.”

63. A former employee of the facility, remarking on Homestead Healthcare Center regarding the sexual assault, rape, and murder of Patricia Newnum, told IndyStar, “They had no control over this place.”

64. A former employee of the facility, remarking on Homestead Healthcare Center regarding the sexual assault, rape and murder of Patricia Newnum, told IndyStar, “This place was just a walking time bomb.”

65. James Lough was a resident at Homestead Healthcare Center in 2021 and told IndyStar that the conditions in that facility were “horrifying, just absolutely horrifying.”

66. James Lough also told IndyStar that “he didn't receive the treatment or medication he needed for his lymphedema and was left lying in his own urine and feces for up to seven hours.”

67. Homestead Healthcare Center is one of the most poorly staffed nursing homes in the United States.

68. For facilities that reported staffing data to the federal government, Homestead Healthcare Center ranks in the bottom 5% nationwide for total nurse

staffing hours after federal adjustments for the needs of residents, an IndyStar analysis found.

69. Homestead Healthcare Center ranks even more poorly when it comes to turnover.

70. Homestead Healthcare Center’s nursing staff turnover rate was about 79%, according to the most recent government data. It was even worse among registered nurses — nearly 92%. The U.S. average is about 50%.

71. Such poor levels of staffing put residents and patients in danger.

72. Since January 2021, Indianapolis Metropolitan Police (“IMPD”) have responded to Homestead Healthcare Center at least 30 times for thefts, assaults, narcotics investigations and other problems.

73. Illegal narcotics were rampant at Homestead Healthcare Center.

74. Drug abuse became so pervasive that Homestead Healthcare Center residents were issued Narcan, an emergency medication that reverses the effects of opioid overdoses, according to Beverly Fabricius, whose husband was a resident of Homestead Healthcare Center for seven years.

75. Indiana state health department inspections show multiple violations at Homestead Healthcare Center, with three fines totaling \$117,334 in the last year.

76. In one case, a resident died after Homestead Healthcare Center failed to monitor an IV in the resident’s arm for more than a week.

77. Residents and former staff told IndyStar that problems at Homestead Healthcare Center grew even worse after residents were transferred from another troubled facility that closed in 2021.

78. Since January 2021, IMPD has made more runs to Homestead Healthcare Center than to the four nearest Marion County nursing homes combined.

79. At least three times police have investigated thefts of residents' medications, including hydrocodone, Xanax, and oxycodone, resulting in charges against two nurses.

80. In one of those cases, police found a resident's prescribed opioids in the front seat of a nurse's car.

81. Staff of Homestead Healthcare Center told investigators the nurse was "nodding off" while counting medication and a detective reported she was "too intoxicated to give a voluntary statement."

82. Despite the string of thefts, the facility failed to adequately secure medications, according to a state inspection in August 2021.

83. Homestead Healthcare Center was cited for leaving a medication cart "unlocked with no staff within sight" and the nursing director said there was no policy for securing the carts.

84. The drug problems at Homestead Healthcare Center extended beyond stolen medications.

85. Opioid abuse, overdoses, and marijuana use by patients were prevalent at Homestead Healthcare Center.

86. Things got worse after many younger residents were transferred to Homestead Healthcare Center from Eagle Creek Healthcare Center, which closed in May 2021 following state health department citations for physical and sexual abuse.

87. Beverly Fabricius moved her husband to a different nursing home in October 2021 because Homestead Healthcare Center staff did not give him his medicine on time.

88. Police reports support the accounts of former Homestead Healthcare Center residents and staff.

89. Violence and threats also permeated Homestead Healthcare Center.

90. In 2021, at least five other assaults or threats of violence were reported to IMPD.

91. Perhaps most startling: A resident reportedly threatened staff with a knife on at least three occasions in 2021.

92. A state inspection report found Homestead Healthcare Center neglected to confiscate the 7- inch knife, even though the man had “exhibited a behavior of homicidal threats towards staff.”

93. Police took the man to a hospital for a psychological evaluation.

94. When the man returned to Homestead Healthcare Center, he was able to get the knife back, the report said.

95. IndyStar reported: “‘If you ever decide to kill yourself,’ the resident told a staffer, according to the report, ‘let me know because I want to be there so I can help.’”

96. Indiana state inspection reports indicate Homestead Healthcare Center on many occasions failed to address the healthcare needs and emotional well-being of its residents and patients.

97. In 2021, the facility was cited for failing “to ensure residents were treated with respect and dignity.”

98. That inspection report shows at least five residents felt they had been “disrespected and not treated like human beings.”

99. Residents also told inspectors their call lights were sometimes never answered.

100. One woman told inspectors she was tired of being treated “like a dog.”

101. State inspectors observed similar concerns first-hand: One watched two nurses ignore call lights for more than 10 minutes as they sat at their computers talking and eating fruit snacks.

102. Another incident highlights the dangers of high turnover. In 2021, state inspectors also found an aide took the wrong man to an eye center for surgery. The aide was told the patient had a white beard, but she was new and unfamiliar with residents. She took the wrong bearded man. The mix-up was only discovered when the patient's daughter met them at the surgery center.

103. Inattention proved fatal for another patient, who died one year to the day before Patricia Newnum was sexually assaulted, raped, and murdered.

104. A state inspection report said an IV inserted into a man’s arm went unattended for eight days — causing him to go into septic shock and die.

105. In an interview, the facility’s nursing director told an inspector the facility had no plan for the “assessment, care, and/or maintenance” of the IV line. Hospital records described the IV dressing as “heavily soiled.”

106. State health officials fined Homestead \$87,334 on the day the report was filed.

107. The dangerous environment, understaffing, turnover, lack of supervision, and other failures of management and staff at Homestead all caused and contributed to the circumstances of Patricia Newnum’s rape and murder by a fellow, intoxicated, resident.

Causes of Action

108. The following is a non-exhaustive list of causes of action supported by the facts of this case. *ARC Constr. Mgmt., LLC v. Zelenak*, 962 N.E.2d 692, 697 (Ind. Ct. App. 2012) (“Under Indiana’s notice pleading system, a pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case.”). These causes of action shall not in any way limit the legal bases for liability or recovery in this case.

109. At this time, Plaintiffs do not bring state-law claims against Adams County Memorial Hospital pending a response to a properly issued Tort Claim Notice sent to that governmental entity on April 12, 2022.

COUNT I – Wrongful Death

110. This Count is brought on behalf of the Estate of Patricia Newnum against the CommuniCare Defendants.

111. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

112. As a person on the premises of Homestead Healthcare Center, each CommuniCare Defendant owed Patricia Newnum duties of reasonable care to protect her from criminal acts by third persons.

113. As a hospice patient who could not move around on her own due to her weakened physical state, each CommuniCare Defendant owed Patricia Newnum duties of reasonable care to protect her from criminal acts by third persons.

114. The criminal acts perpetrated on Patricia Newnum described above, which caused her death, were foreseeable

115. The conduct of the CommuniCare Defendants directly and proximately caused the death of Patricia Newnum.

116. At the time of Patricia Newnum's death, she was the lawful spouse of Ronald Newnum.

117. In accordance with the Indiana General Wrongful Death Statute, codified at Ind. Code § 34-23-1-1, the Estate of Patricia Newnum is entitled to recover damages in such an amount as may be determined by the jury, including, but not limited to: loss of services, love, care, and affection; reasonable medical, hospital, funeral and burial expenses; and lost earnings of such deceased person resulting from said wrongful act or omission.

118. As a direct and proximate result of the circumstances described herein, Ronald Newnum, as Patricia Newnum's surviving spouse, has suffered the loss of services, love, care, and affection of Patricia Newnum.

119. As a direct and proximate result of the circumstances described herein, Ronald Newnum and the Estate of Patricia Newnum have suffered medical, hospital, funeral, and burial expenses.

120. As a direct and proximate result of the circumstances described herein, the Estate of Patricia Newnum has incurred costs and expenses of administration, including attorney fees.

COUNT II – Pre-Death Loss of Consortium

121. This Count is brought on behalf of Ronald Newnum against the CommuniCare Defendants.

122. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

123. At all relevant times, Patricia Newnum was the lawful spouse of Ronald Newnum.

124. On information and belief, the attack on Patricia Newnum did not cause the instantaneous death of Patricia Newnum.

125. As a person on the premises of Homestead Healthcare Center, each CommuniCare Defendant owed Patricia Newnum duties of reasonable care to protect her from criminal acts by third persons.

126. As a hospice patient who could not move around on her own and who was otherwise in a weakened physical state, each CommuniCare Defendant owed Patricia Newnum duties of reasonable care to protect her from criminal acts by third persons.

127. The conduct of the CommuniCare Defendants described above directly and proximately caused Ronald Newnum to suffer the pre-death loss of Patricia Newnum's consortium, society, companionship, and services. *See, e.g., Estate of Spates v. Crizer*, No. 2:18-CV-1-TLS, 2019 U.S. Dist. LEXIS 140513, at *11–13, 2019 WL 3935347 (N.D. Ind. Aug. 19, 2019) (Springmann, C.J.).

128. The conduct of each CommuniCare Defendant both individually and collectively amounted to willful and/or wanton misconduct.

129. Moreover, the conduct of each CommuniCare Defendant both individually and collectively was malicious, fraudulent, oppressive, and/or constituted gross negligence that was not the result of a mistake of fact, an honest error of judgment, ordinary negligence, or other human failing.

130. Plaintiff Ronald Newnum is entitled to recover damages for pre-death loss of consortium, society, companionship, and services of Patricia Newnum.

131. Plaintiff Ronald Newnum is entitled to recover punitive and/or exemplary damages against the CommuniCare Defendants for the conduct described above. *See, e.g., Hendrixson v. Cassens Transp.*, No. 3:12-CV-770-JD-CAN, 2013 U.S. Dist. LEXIS 91878, 2013 WL 3322036 (N.D. Ind. June 28, 2013) (DeGuilio, J.).

COUNT III – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

132. This Count is brought on behalf of Ronald Newnum against the CommuniCare Defendants.

133. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

134. At all relevant times, Patricia Newnum was the lawful spouse of Ronald Newnum.

135. On or about February 2, 2022, Patricia Newnum was a hospice patient who could not move around on her own as she was in a weakened physical state.

136. The CommuniCare Defendants assumed responsibilities as caretakers for Patricia Newnum.

137. The CommuniCare Defendants owed a duty of care to Ronald Newnum for the caretaking of Patricia Newnum, which included without limitation to monitor her well-being and to take reasonable steps to protect her from harm by other residents.

138. The CommuniCare Defendants allowed Patricia Newnum to be sexually assaulted, raped, and murdered.

139. It is with irrefutable certainty that Patricia Newnum was sexually assaulted, raped, and murdered while in the care of the CommuniCare Defendants.

140. This heinous act was the direct and proximate result of the Defendants' negligence, as described throughout this Complaint.

141. The sexual assault, rape, and murder of Patricia Newnum has severely impacted Ronald Newnum's emotional health.

COUNT IV – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

142. This Count is brought on behalf of Ronald Newnum against the CommuniCare Defendants.

143. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

144. At all relevant times, Patricia Newnum was the lawful spouse of Ronald Newnum.

145. The conduct of the CommuniCare Defendants described above constitutes extreme and outrageous conduct.

146. The CommuniCare Defendants acted with reckless disregard of a high degree of probability that their conduct would result in emotional distress to Plaintiff Ronald Newnum.

147. The CommuniCare Defendants conduct directly and proximately caused severe emotional distress to Plaintiff Ronald Newnum.

COUNT V – CommuniCare Defendants’ Violations of the FNHRA

148. This Count is brought on behalf of the Estate of Patricia Newnum against the CommuniCare Defendants.

149. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

150. The Federal Nursing Home Reform Act (FNHRA), 42 U.S.C. §§ 1396r *et seq.*, “establishes the minimum standards of care to which nursing-home facilities must adhere in order to receive federal funds in the Medicaid program, 42 U.S.C. §

1396 *et seq.* In addition to specifying rules for the facilities, it also includes ‘[r]equirements relating to residents’ rights.’ *Id.* §§ 1395i-3(c); 1396r(c).” *Talevski v. Health & Hosp. Corp.*, 6 F.4th 713, 715 (7th Cir. 2021).

151. The rights conferred on patients by the FNHRA are enforceable in accordance with 42 U.S.C §§ 1983 & 1988. *Talevski v. Health & Hosp. Corp.*, 6 F.4th 713 (7th Cir. 2021); *Anderson v. Ghaly*, 930 F.3d 1066 (9th Cir. 2019); *Grammer v. John J. Kane Reg’l Ctrs.-Glen Hazel*, 570 F.3d 520 (3d Cir. 2009).

152. “The FNHRA are replete with rights-creating language. The amendments confer upon residents of such facilities the right to choose their personal attending physicians, to be fully informed about and to participate in care and treatment, to be free from physical or mental abuse, to voice grievances and to enjoy privacy and confidentiality. 42 U.S.C. § 1396r(c)(1)(A). Nursing homes are required to care for residents in a manner promoting quality of life, provide services and activities to maintain the highest practicable physical, mental and psychosocial well-being of residents, and conduct comprehensive assessments of their functional abilities. 42 U.S.C. § 1396r(b)(1), (2) & (3). Further, the statute specifically guarantees nursing home residents the right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for the purposes of discipline or convenience and not required to treat their medical symptoms. 42 U.S.C. § 1396r(b)(1)(A)(ii).” *Grammer v. John J. Kane Reg’l Ctrs.-Glen Hazel*, 570 F.3d 520, 529 (3d Cir. 2009).

153. Through the conduct described above, Patricia Newnum was deprived of the rights secured to her by the FNHRA including, without limitation: (i) the provision of care in such a manner and in such an environment as will promote maintenance or enhancement of the quality of her life, 42 U.S.C. §§ 1395i-3(b)(1)(A) & 1396r(b)(1)(A); (ii) the right to be free from physical and mental abuse, 42 U.S.C. §§ 1395i-3(c)(1)(A)(ii) & 1396r(c)(1)(A)(ii); and (iii) the right to reside and receive services with reasonable accommodation of individual needs, 42 U.S.C. §§ 1395i-3(c)(1)(A)(v) & 1396r(c)(1)(A)(v).

154. Adams County Memorial Hospital is a municipal corporation under Ind. Code § 16-22-8-6.

155. Adams County Memorial Hospital is a state actor that, at all times relevant hereto, acted under color of state law.

156. Adams County Memorial Hospital delegated, in whole or in part, its duties for the provision of nursing-care services at Homestead Healthcare Center to the CommuniCare Defendants.

157. As it pertains to the care and treatment of Patricia Newnum at the Homestead Healthcare Center, each of the CommuniCare Defendants acted under color of law.

158. Each of the CommuniCare Defendants possessed final policy-making authority at the time Patricia Newnum was sexually assaulted, raped, and murdered.

159. At the time Patricia Newnum was sexually assaulted, raped, and murdered, the CommuniCare Defendants either did not have or did not implement policies to prevent intoxication of residents, to prevent criminal conduct of residents, to prevent batteries by residents on other residents, to prevent sexual assaults by residents on other residents, or to safeguard vulnerable and immobile residents from the predations of other residents. The sexual assault, rape, and murder of Patricia Newnum was the highly predictable consequence of the CommuniCare Defendants either not having these policies at all or failing to implement these policies.

160. The CommuniCare Defendants did not enact or did not implement policies to comport with their obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

161. Moreover, the CommuniCare Defendants created and allowed to persist a culture and customs of criminal behavior, intoxication, as well as sexual and other physical assaults.

162. The CommuniCare Defendants permitted a culture and custom of violating their obligations under the FNHRA and the rights of residents secured by the FNHRA.

163. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of the CommuniCare Defendants' failures to enact and/or implement policies to carry out their obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

164. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of the CommuniCare Defendants permitting a culture and custom of violating their obligations under the FNHRA and the rights of residents secured by the FNHRA.

165. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of the CommuniCare Defendants' actions and were foreseeable to the CommuniCare Defendants.

166. The CommuniCare Defendants failed to enact and/or implement policies to carry out their obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

167. Patricia Newnum was conscious and aware of the sexual assault and rape, and that she was being murdered.

168. Patricia Newnum's suffered immensely as a direct and proximate result of the conduct of the CommuniCare Defendants.

169. For these deprivations of Patricia Newnum's rights the Estate and the beneficiaries thereof are entitled to recover: monetary costs and expenses; damages for the loss of Patricia Newnum's love, care, society, companionship, and affection; damages for Patricia Newnum's loss of life, conscious pain, and suffering experienced prior to death; and exemplary and/or punitive damages.

COUNT V – Adams County Memorial Hospital Violations of the FNHRA

170. This Count is brought on behalf of the Estate of Patricia Newnum against Adams County Memorial Hospital.

171. Plaintiffs incorporate by reference all allegations in this Complaint as if fully set forth below.

172. The Federal Nursing Home Reform Act (FNHRA), 42 U.S.C. §§ 1396r *et seq.*, “establishes the minimum standards of care to which nursing-home facilities must adhere in order to receive federal funds in the Medicaid program, 42 U.S.C. § 1396 *et seq.* In addition to specifying rules for the facilities, it also includes ‘[r]equirements relating to residents’ rights.’ *Id.* §§ 1395i-3(c); 1396r(c).” *Talevski v. Health & Hosp. Corp.*, 6 F.4th 713, 715 (7th Cir. 2021).

173. The rights conferred on patients by the FNHRA are enforceable in accordance with 42 U.S.C §§ 1983 & 1988. *Talevski v. Health & Hosp. Corp.*, 6 F.4th 713 (7th Cir. 2021); *Anderson v. Ghaly*, 930 F.3d 1066 (9th Cir. 2019); *Grammer v. John J. Kane Reg’l Ctrs.-Glen Hazel*, 570 F.3d 520 (3d Cir. 2009).

174. “The FNHRA are replete with rights-creating language. The amendments confer upon residents of such facilities the right to choose their personal attending physicians, to be fully informed about and to participate in care and treatment, to be free from physical or mental abuse, to voice grievances and to enjoy privacy and confidentiality. 42 U.S.C. § 1396r(c)(1)(A). Nursing homes are required to care for residents in a manner promoting quality of life, provide services and activities to maintain the highest practicable physical, mental and psychosocial well-being of residents, and conduct comprehensive assessments of their functional abilities. 42 U.S.C. § 1396r(b)(1), (2) & (3). Further, the statute specifically guarantees nursing home residents the right to be free from physical or mental

abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for the purposes of discipline or convenience and not required to treat their medical symptoms. 42 U.S.C. § 1396r(b)(1)(A)(ii).” *Grammer v. John J. Kane Reg’l Ctrs.-Glen Hazel*, 570 F.3d 520, 529 (3d Cir. 2009).

175. Through the conduct described above, Patricia Newnum was deprived of the rights secured to her by the FNHRA including, without limitation: (i) the provision of care in such a manner and in such an environment as will promote maintenance or enhancement of the quality of her life, 42 U.S.C. §§ 1395i-3(b)(1)(A) & 1396r(b)(1)(A); (ii) the right to be free from physical and mental abuse, 42 U.S.C. §§ 1395i-3(c)(1)(A)(ii) & 1396r(c)(1)(A)(ii); and (iii) the right to reside and receive services with reasonable accommodation of individual needs, 42 U.S.C. §§ 1395i-3(c)(1)(A)(v) & 1396r(c)(1)(A)(v).

176. Adams County Memorial Hospital is a municipal corporation under Ind. Code § 16-22-8-6.

177. Adams County Memorial Hospital is a state actor that, at all times relevant hereto, acted under color of state law.

178. As it pertains to the care and treatment of Patricia Newnum at the Homestead Healthcare Center, each of the CommuniCare Defendants acted under color of law. Adams County Memorial Hospital possessed final policy-making authority at the time Patricia Newnum was sexually assaulted, raped, and murdered.

179. At the time Patricia Newnum was sexually assaulted, raped, and murdered, Adams County Memorial Hospital either did not have or did not implement policies to prevent intoxication of residents, to prevent criminal conduct of residents, to prevent batteries by residents on other residents, to prevent sexual assaults by residents on other residents, or to safeguard vulnerable and immobile residents from the predations of other residents. The sexual assault, rape, and murder of Patricia Newnum were the highly predictable consequence of the Adams County Memorial Hospital either not having these policies at all or failing to implement these policies.

180. Adams County Memorial Hospital did not enact or did not implement policies to comport with its obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

181. Moreover, Adams County Memorial Hospital created and allowed to persist a culture and customs of criminal behavior, intoxication, as well as sexual and other physical assaults.

182. Adams County Memorial Hospital permitted a culture and custom of violating its obligations under the FNHRA and the rights of residents secured by the FNHRA.

183. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of Adams County Memorial Hospital's failures to enact and/or implement policies to carry out its obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

184. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of Adams County Memorial Hospital permitting a culture and custom of violating its obligations under the FNHRA and the rights of residents secured by the FNHRA.

185. The sexual assault, rape, and murder of Patricia Newnum were the direct and proximate result of Adams County Memorial Hospital's failures and were foreseeable to Adams County Memorial Hospital.

186. Adams County Memorial Hospital's failed to enact and/or implement policies to carry out its obligations under the FNHRA and to protect the rights of residents secured by the FNHRA.

187. Patricia Newnum was conscious and aware of the sexual assault and rape, and that she was being murdered.

188. Patricia Newnum's suffered immensely as a direct and proximate result of the conduct of Adams County Memorial Hospital.

189. For these deprivations of Patricia Newnum's rights the Estate and the beneficiaries thereof are entitled to recover: monetary costs and expenses; damages for the loss of Patricia Newnum's love, care, society, companionship, and affection; damages for Patricia Newnum's loss of life, conscious pain, and suffering experienced prior to death; and exemplary and/or punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Patricia Smythe, as Special Administrator of the Estate of Patricia Newnum, and Ronald Newnum, pray for judgment against all Defendants in

an amount that will fairly compensate for the losses and damages they have and will sustain as a result of Defendants' actions, for attorneys' fees and costs, for exemplary and/or punitive damages, and for all other just and proper relief.

DEMAND FOR JURY TRIAL

The Plaintiffs respectfully demand a jury trial on all claims.

Respectfully submitted,

/s/ Eric S. Pavlack

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