

Mary Heverly et al vs Curwensville Nursing

Opinion/Order/Order

07-738-CD
M. Heverly vs C-ville Nursing al

Current Judge: Fredric Joseph Ammerman

Mary K. Heverly, Lois B. McGill Estates vs. Curwensville Nursing Home, Inc., Guardian Elder Care, Inc., Guardian LTC Management, Inc.

Civil Other-COUNT

| Date | | Judge |
|------------|--|-------------------------|
| 5/10/2007 | New Case Filed. | No Judge |
| | ✓ Filing: Civil Complaint Paid by: Chad Shannon-Robert Pierce & Assoc. Receipt number: 1918960 Dated: 05/10/2007 Amount: \$85.00 (Check) 1CC Atty and 4CC shff. | No Judge |
| | ✓ Certificate of Merit as to Defendant Curwensville Nursing Home Inc. d/b/a Ridgeview Elder Care Rehabilitation Center, filed by s/ Chad P. Shannon Esq. | No Judge |
| | ✓ Certificate of Merit as to Defendant Guardian Elder Care Inc. d/b/a Ridgeview Elder Care Rehabilitation Center, filed by s/ Chad P. Shannon Esq. | No Judge |
| | ✓ Certificate of Merit as to Defendant Guardian LTC Management Inc., filed by s/ Chad P. Shannon Esq. | No Judge |
| 5/24/2007 | ✓ Praeclipe For Entry of Appearance, filed on behalf of Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., Defendants, enter appearance of Alan S. Baum, Esquire, and the law firm of Matis Baum Rizza O'Connor. Filed by s/ Alan S. Baum, Esquire. No CC | No Judge |
| 8/6/2007 | ✓ Answer and New Matter filed. By s/ Alan S. Baum, Esquire. No CC | No Judge |
| 8/13/2007 | ✓ Plaintiff's Reply to New Matter, filed by s/ Chad P. Shannon, Esquire. No CC | No Judge |
| 10/5/2007 | ✓ Sheriff Return, May 15, 2007 at 10:45 am Served the within Complaint on Curwensville Nursing Home Inc. d/b/a Ridgeview Elder Care Rehabilitation Center. May 14, 2007, Sheriff of Jefferson County was deputized. May 24, 2007 at 2:45 pm Served the within Complaint on Guardian Elder Care Inc d/b/a Ridgeview Elder Care Rehabilitation Center. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Peirce \$65.82 Jefferson Co. costs pd by Peirce \$43.46 | No Judge |
| 11/19/2007 | ✓ Plaintiff's First Motion to Compel, filed by Atty. Shannon 2 Cert. to Atty. | No Judge |
| 11/20/2007 | ✓ Order, this 20th day of Nov., 2007, upon consideration of the Plaintiff's First Motion to Compel, it is Ordered that said Motion is Granted. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Shannon | Fredric Joseph Ammerman |
| 3/7/2008 | ✓ Plaintiff's First Motion to Compel, filed by s/ Chad P. Shannon, Esquire. 1CC Atty. Shannon | No Judge |
| 3/11/2008 | ✓ Order of Court AND NOW, this 10 day of March 2008, upon consideration of the foregoing Motion, it is HEREBY ORDERED: 1. A Rule is issued upon respondent to show cause why the moving party is not entitled to the relief requested; 6. An Argument shall be held on April 22, 2008 in Courtroom No 1 of the Clearfield County Courthouse and; 7. Notice of entry of this Order shall be provided to all parties by the moving party. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Atty. Shannon. | Fredric Joseph Ammerman |
| 4/4/2008 | ✓ Notice of Intent to Serve a Subpoena to Produce Documents And Things For Discovery Pursuant to Rule 4009.21, filed by s/Chad P. Shannon, Esquire. 1CC to Atty. | Fredric Joseph Ammerman |

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL ACTION

SUMMONS

**James H. Gilliland, individually,
Plaintiff**

Vs.

NO.: 2008-00881-CD

**Eleanor M. Nixon, individually and as Agent
for all Co-Defendants and Leon C. Carberry,
Hannah R. Slocum, County National Bank,
Trustee for David and Jared McNaul
Selma A. Johnson, Anna M. Martinez, Sally M. Goss
Martha L. McNaul, Richard Gattuso, Virginia McNaul,
David W. McNaul, Patricia M. Bender, George E. Bender,
Michael D. McNaul, Allan A. McNaul, Ann Argo, Ralph Monaco
Ardath Morgan, Sonys Lea McNaul, a/k/a Sonya Lea Hart,
William D. McNaul, Frances A. Gattuso, John M. Derr,
Robert A. Derr, Jenine McNaul Campbell, Richard Peluse,
Kathryn Collord, Barbara J. McNaul, Martha Jane Spinelli,
Michael R. McNaul and Robert G. McNaul**

Defendants

TO: ELEANOR M. NIXON
LEON C. CARBERRY
HANNAH R. SLOCUM
COUNTY NATIONAL BANK
DAVID MCNAUL
JARED MCNAUL
SELMA A. JOHNSON
ANNA M. MARTINEZ
SALLY M. GOSS
MARTHA L. MCNAUL
RICHARD GATTUSO
VIRGINIA MCNAUL
DAVID W. MCNAUL
PATRICIA M. BENDER

Date: 5/20/2008

Time: 03:15 PM

Page 2 of 2

Clearfield County Court of Common Pleas

ROA Report

Case: 2007-00738-CD

User: LMILLER

Current Judge: Fredric Joseph Ammerman

Mary K. Heverly, Lois B. McGill Estatevs.Curwensville Nursing Home, Inc., Guardian Elder Care, Inc., Guardian LTC Management, Inc.

Civil Other-COUNT

| Date | Judge |
|--|-------------------------|
| 4/14/2008 ✓ Objections to Notice of Intent to Serve Subpoena Pursuant to Rule 4009.22, filed by s/ Tara B. Stevens, Esquire. no CC | Fredric Joseph Ammerman |

GEORGE E. BENDER
MICHAEL D. MCNAUL
ALLAN A. MCNAUL
ANN ARGO
RALPH MONACO
ARDATH MORGAN
SONYS LEA MCNAUL a/k/a SONYA LEA HART
WILLIAM D. MCNAUL
FRANCES A. GATTUSO
JOHN M. DERR
ROBERT A. DERR
JENINE MCNAUL CAMPBELL
RICHARD PELUSE
KATHRYN COLLORD
BARBARA J. MCNAUL
MARTHA JANE SPINELLI
MICHAEL R. MCNAUL
ROBERT G. MCNAUL

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you,

Date: 5/12/2008



William A. Shaw
Prothonotary

Issuing Attorney:

John Sughrue
23 North Second Street
Clearfield, PA 16830
814-765-1704

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

COMPLAINT

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

Dated: May 8, 2007

FILED Atty pd. 85.00
MAY 10 2007 1cc Atty
4cc Sheriff
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.:

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice were served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
Telephone: 814-765-2641 - Extension 51

YOU MUST RESPOND TO THIS COMPLAINT WITHIN TWENTY (20) DAYS OR A JUDGMENT FOR THE AMOUNT CLAIMED MAY BE ENTERED AGAINST YOU BEFORE THE HEARING. IF YOU DO NOT APPEAR FOR THE HEARING, THE CASE MAY BE HEARD IMMEDIATELY BEFORE A JUDGE. THERE IS NO RIGHT TO A TRIAL DO NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.:

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

COMPLAINT

AND NOW, comes the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire; Robert F. Daley, Esquire; and the law firm of Robert Peirce and Associates, P.C., and claims damages of the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., and states as follows:

1. The plaintiff, Mary K. Heverly, is the Administratrix of the Estate of Lois B. McGill, and is an adult individual with an address of 135 Heritage Drive, Beloit, Ohio 44609.
2. Lois B. McGill died on June 1, 2005, while a resident of Clearfield County.

3. The plaintiff was appointed Administratrix of the Estate of the decedent, Lois B. McGill, on March 8, 2007 by the Register of Wills of Clearfield County. A copy of the Certificate of Appointment of Administratrix is attached hereto as Exhibit 1.

4. The plaintiff brings this action pursuant to 42 Pa. Cons. Stat. § 8301 and Pa. R.C.P. No. 2202(a), as the personal representative of the decedent, Lois B. McGill, on her own behalf, and on behalf of those entitled by law to recover damages for the wrongful death of the decedent.

5. The names and addresses of all persons legally entitled to recover damages for the death of Lois B. McGill, and their relationship to Lois B. McGill, are as follows:

| Name: | Address: | Relationship |
|-----------------|--|--------------|
| Mary K. Heverly | 135 Heritage Drive Beloit, OH 44609 | Daughter |
| Thomas McGill | 1075 Mill Street Coalport, PA 16627 | Son |

6. Defendant, Curwensville Nursing Home, Inc. is a Pennsylvania Corporation with a principal office address of P.O. Box 372, McNaul Street, Curwensville, Pennsylvania 16833. Curwensville Nursing Home, Inc. does business in Clearfield County, Pennsylvania, under the fictitious name Ridgeview Elder Care Rehabilitation Center (hereinafter referred to as "Ridgeview").

7. Defendant, Guardian Elder Care, Inc. is a Pennsylvania Corporation with an address of 8796 Route 219, P.O. Box 220, Brockway, Jefferson County Pennsylvania 15824. Guardian Elder Care, Inc. does business in Clearfield County, Pennsylvania under the fictitious name Ridgeview Elder Care Rehabilitation Center.

8. Defendant, Guardian LTC Management, Inc. is a Pennsylvania Corporation that has a principal office address of R.D. 2, Box 240, Brockway, Jefferson County Pennsylvania 15284. Guardian LTC Management, Inc. does business in Clearfield County, Pennsylvania under the fictitious name of Guardian Elder Care, Inc. which does business as Ridgeview Elder Care Rehabilitation Center.

9. Collectively, these entities described above will hereinafter be referred to as "the Nursing Home defendants".

10. At all times relative hereto the defendants collectively owned, operated and/or managed Ridgeview Elder Care Rehabilitation Center, and were engaged in the business of providing nursing care services to the general public.

11. At all times relevant hereto, the Nursing Home defendants operated Ridgeview as a "long term care facility" as that term is defined in 35 P.S. § 448.802A. Accordingly the Nursing Home defendants are "licensed professionals" as that term is defined in 40 P.S. § 1303.503, and plaintiff is asserting a professional liability claim against the defendants.

12. At all times relevant hereto, the Nursing Home defendants operated Ridgeview as a "skilled nursing facility" as that term is defined at 42 U.S.C. § 1395I-3.

13. At all times relevant hereto, the Nursing Home defendants were acting independently and by an through their authorized agents, servants and employees then and there acting within the course and scope of their employment.

14. At no time during her life did the decedent bring an action to recover damages for her personal injuries, and no other action has been filed to recover damages for the wrongful death of the decedent, Lois B. McGill.

Facts Common to All Causes of Action

15. Lois B. McGill was a 96 year old woman who was admitted to Ridgeview on April 7, 2005 following a 12 day stay at HealthSouth of Altoona, Pennsylvania.

16. Prior to being admitted to HealthSouth of Altoona, Ms. McGill had been in Altoona Hospital for treatment for lower gastrointestinal bleeding and deconditioning. Upon her discharge from HealthSouth, it was determined that Ms. McGill's rehabilitation potential was found to be good, and her prognosis was deemed to be fair to good.

17. While at HealthSouth, a physical examination of Ms. McGill noted that her safety was in the fair to poor range with potential barriers being her general medical condition, cognition and blindness in her right eye.

18. While at HealthSouth there were safety precautions initiated in order to protect against her confused mental state and deconditioning status.

19. On April 8, 2005, the day after her admission to Ridgeview, a diagnostic code report was signed by a physician listing Ms. McGill's medical diagnoses.

20. The diagnostic code report listed the following diagnoses:

- * Difficulty walking
- * Muscle weakness
- * Anemia
- * Rectal mass
- * Diverticulosis
- * Hemorrhoids
- * Cardiomegaly - borderline

- * Acute coronary syndrome
- * Depression
- * Hypertension
- * Coronary artery disease
- * Congestive heart failure
- * Macular degeneration
- * Right eye blindness
- * Kyphosis
- * S/P gastrointestinal bleeding

21. Of the diagnoses charted on the diagnostic code report of April 8, 2005, the following diagnoses are all well known fall risk factors:

- * Difficulty walking
- * Muscle weakness
- * Anemia
- * Diverticulosis
- * Cardiomegaly - borderline
- * Acute coronary syndrome
- * Depression
- * Hypertension
- * Coronary artery disease
- * Congestive heart failure
- * Macular degeneration

- * Right eye blindness
- * S/P gastrointestinal bleeding

22. On the day of her admission, the physician at Ridgeview ordered the medications Lopressor, Prinvil and Lasix.

23. Additionally, the physician ordered physical, occupational, and speech therapy evaluations for Ms. McGill.

24. Despite issuing these orders, the physician did not make orders for safety precautions, use of a wheelchair, ambulation or mobility status.

25. During Ms. McGill's entire stay, the physician never made orders for safety precautions, use of a wheelchair, ambulation or mobility status.

26. These orders for safety precautions, use of a wheelchair, ambulation and mobility status are orders that are commonly written in the nursing home community.

27. A nursing admission assessment was done for Ms. McGill on the day of her admission, April 7, 2005.

28. However the sections for pulse, temperature, respirations, blood pressure, age and eye color were blank.

29. The fall risk assessment on the nursing admission assessment was completed and a score of 27 was noted for Ms. McGill, with a score of ten or more indicative of a high risk for sustaining a fall.

30. Those areas that were noted to be risk factors for a fall by Ms. McGill included intermittent confusion, chair-bound, requires restraints, requires assists with elimination, legally blind in the right eye, balance problems when standing and walking, decreased muscular

coordination, change in gait patterns while walking through the doorway, jerking or unstable turns, requires the use of assistant device, takes three or four medications listed in the past three to four days, and is noted as having predisposing conditions for falling such as sight, age and decreased ability.

31. A safety awareness assessment was also done on the day of her admission. The findings of this evaluation noted that Ms. McGill was not (Chrissy, She was not any of the following things in this sentence, is this grammatically correct???) alert or oriented, independent with transfers, able to follow directions, independent with the call bell and ambulatory. She also had impaired judgment, impaired vision, a history of non-compliance, no intact safety awareness, impaired bed mobility, impaired trunk control, used bedside rails to increase independence in transfers as well as balance and bed mobility, requested the side rails to be raised and raised while sleeping, had an unawareness of safety boundaries, and was restless in bed.

32. Additionally, this assessment found that she also had impaired judgment, a history of non-compliance with treatment, no intact safety awareness, impaired bed mobility, impaired trunk control, bedside rails to increase independence in transfers/balance/bed mobility, raised side rails when sleeping, impaired vision, unawareness of safety boundaries and restless in bed.

33. All of the clinical findings in the nursing admission and safety awareness assessment increase an individual such as Ms. McGill's fall risk potential.

34. The minimum data set (MDS), a standardized assessment tool used in nursing homes, were completed for Ms. McGill on April 10, 20; May 6 and 16, 2005.

35. The initial MDS completed on April 10, 2005 supported that Ms. McGill had multiple risk factors for falling, including: short and long-term memory problems; moderately

impaired cognitive skills for daily decision making; only sometimes understands; moderately impaired vision with side or peripheral vision problems; extensive assistance of one staff person was needed to transfer, and Ms. McGill was totally dependent on one staff for locomotion on and off the nursing unit; personal physical support was required for standing; activity of daily living function had deteriorated; frequent incontinence of bladder and occasional incontinence of bowel; edema; unsteady gait; medical diagnosis of congestive heart failure/other cardiovascular disease/COPD/anemia/difficulty walking and muscle weakness.

36. On the next MDS completed, April 20, 2005, the assessment findings were essentially the same as the MDS on April 10, 2005, except that she was now usually continent of bowel and occasionally incontinent of bladder. Additionally, it was noted that she was experiencing mild pain was "no less present than daily".

37. The next MDS assessment was completed on May 6, 2005 where the findings were essentially the same as the initial assessment except that extensive assistance for transferring was now required by two staff members and a weight loss was noted.

38. The last MDS that was completed on May 16, 2005, showed findings which remained consistent with the April 10, 2005 MDS.

39. On April 13, 2005 a care conference summary noted that Ms. McGill has difficulty walking and had muscle weakness.

40. An "overall resident profile" dated April 7, 2005, documented seven problems for Ms. McGill, with the first identified problem being a "self care deficit" with "potential for falls/injuries".

41. This profile, essentially a resident care plan, makes no mention of any information regarding her fall risk potential or interventions to prevent her from sustaining a fall.

42. Nursing notes indicated that Ms. McGill used a wheelchair for most of her time in Ridgeview.

43. A nutritional assessment was completed on April 12, 2005, by the registered dietician, Megan P. Patrick.

44. Ms. Patrick noted that Ms. McGill required 1475 to 1770 calories a day, as well as 47 to 59 grams of protein.

45. Ms. Patrick's goal was to prevent further weight loss by Ms. McGill.

46. However the only intervention she initiated was to provide fortified foods and shakes, although the specific quantity and frequency of these were not mentioned in her assessment.

47. Within one week past her admission, the physician at Ridgeview noted that Ms. McGill was confused, even to the point where the physician could not obtain a medical history from her on April 13, 2005.

48. On April 19, 2005, a second assessment performed by the dietary staff noted that Ms. McGill had sustained additional weight loss attributable to poor food consumption.

49. Despite the weight loss and poor food consumption there were no other recommendations made to increase Ms. McGill's weight.

50. On May 5, 2005, the nutritional staff noted a nine pound weight loss from the time of Ms. McGill's admission, which they indicated may have been attributed to poor oral intake and the use of a diuretic.

51. Despite the additional weight loss from the admission date and the second assessment done on April 19, 2005, no additional interventions were recommended to increase Ms. McGill's food intake.

52. On May 10, 2005, the physician noted that Ms. McGill continued to be withdrawn and depressed. Additionally, he noted that she required help with all activities of daily living.

53. On May 14, 2005, Ms. Patrick assessed Ms. McGill's nutritional status again, and noted that she was only consuming 25 to 50 percent of the meals offered to her at that time.

54. Despite the continued recognition that Ms. McGill was not consuming her meals, Ms. Patrick did not make any additional recommendations at the May 14, 2005 consultation.

55. On May 23, 2005 an occupational therapy evaluations was requested because Ms. McGill was sliding down in her wheelchair.

56. Victoria B. Walb, the occupational therapist noted on that day that "OT requests order to evaluate and TXD/T potential for injury".

57. In an undated note, Ms. Walb indicates that Ms. McGill: "continues to place her lower legs/feet behind/over footboard. It appears bruises on her legs are related to injuries from W/C. OT is indicted 3X/WK x 2 WKS. To provide safe WC positioning. It also appears that res may tend to slide in W/C partially D/T fatigue."

58. The occupational therapy plan of treatment reaffirmed the reason for referral was because of increased weakness and unsafe posture in the wheelchair.

59. On May 24, 2005, the nursing staff noted that Ms. McGill was bradycardic the day before.

60. Additionally on May 24, 2005, the nursing staff took vital signs and recorded pulse ranges of Ms. McGill from 40 to 64.

61. On May 25, 2005, the last dietary review was performed on Ms. McGill and noted that she weighed 118 pounds, which represented an 11 pound weight loss from the time of her admission on April 7, 2005.

62. The dietary staff also noted on May 25, 2005, that she had an oral intake of zero to 25 percent of meals offered.

63. Despite the 11 pound weight loss and the low oral intake, the only recommendation made was for the staff to encourage oral intake and continued fortified foods and shakes.

64. On May 31, 2005, the physician noted that Ms. McGill continued to be lethargic from poor oral intake and poor exercise tolerance. He also noted that she slept most of the day.

65. Further, he noted that she had bruising on her lower legs.

66. On June 1, 2005, at about 8:30 in the morning, a halter monitor was applied to assess Ms. McGill's cardiac status related to her low pulse rate.

67. About 45 minutes later, at 9:15 a.m., Ms. McGill was found on the floor, having fallen from her wheelchair.

68. She was transferred to Clearfield Hospital for evaluation and treatment of a head injury.

69. A hospital nursing admission assessment dated June 1, 2005 at 6:20 p.m. noted a pulse rate of 47.

70. The nursing admission assessment states that the reason for the hospitalization was a closed head injury, bradycardia, and a slow pulse rate.

71. Upon admission to the hospital, a physical examination was performed which noted that Ms. McGill's pulse was recorded at 59 beats per minutes. Further, she was able to open her eyes to verbal commands, but could not follow them.

72. Within a few minutes, Ms. McGill had become non-responsive.

73. Ms. McGill died at 8:55 p.m. on June 1, 2005.

74. Laboratory tests confirmed that Ms. McGill had anemia, an abnormal urinalysis indicative of a urinary tract infection, and elevated blood urea nitrogen and creatinine level.

75. Laboratory tests further confirmed that Ms. McGill had a decreased visceral protein stores, consistent with protein malnutrition.

76. On the history section of the medical discharge summary following her death it was noted that Ms. McGill's pulse had reached a low of 34 beats per minute while at the nursing home on May 24, 2005.

COUNT I

Wrongful Death - Negligence

77. The preceding paragraphs of this Complaint are incorporated herein as if set forth more fully at length.

78. At all times material and relevant hereto, the Nursing Home defendants acted by and through their agents, servants and/or employees.

79. The Nursing Home defendants, as well as their employees and agents, had a duty to act prudently, and had a duty to provide ordinary and reasonable care and care services to Ms. McGill.

80. The Nursing Home defendants, as well as their employees and agents, had a duty to ensure that all persons providing care within Ridgeview were competent to provide that care.

81. The Nursing Home defendants, as well as their employees and agents, had a duty to formulate, adopt and enforce adequate rule and policies to ensure quality care for residents such as Ms. McGill.

82. The Nursing Home defendants, as well as their employees and agents, negligently breached these duties owed to Ms. McGill in the following particulars:

- a. By failing to recognize the clinical fall risk factors relevant to Ms. McGill;
- b. By failing to provide a safe environment and protect her from harm and physical injury;
- c. By failing to implement safety measures to prevent her from falling from her wheelchair and sustaining physical injury, knowing that she was sliding down on this device;
- d. By failing to prevent multiple bruising to her lower extremities;
- e. By failing to develop a resident care plan that addressed Ms. McGill's risk for falling;
- f. By failing to prevent Ms. McGill from falling;
- g. By failing to implement interventions and strategies to minimize Ms. McGill's risk of falling;
- h. By failing to take adequate precautions, and to implement policies and procedures to prevent the above practices and omissions regarding Ms. McGill's falling episodes;
- i. By failing to adequately assess Ms. McGill's risk for falls upon admission, and when her condition changed;
- j. By failing to complete a comprehensive physical assessment when Ms. McGill was known to have fallen, and to properly monitor her health care status post fall.

- k. By failing to follow Ridgeview's own policy and procedures for assisting with activities of daily living and/or transfer;
- l. By failing to have qualified and adequately trained staff to meet Ms. McGill's needs for protection, safety and a secure environment;
- m. By failing to provide Ms. McGill with the care and care services she required, specifically with respect to her need for assistance with daily activities and with transfer;
- n. By failing to accurately assess Ms. McGill's care needs;
- o. By failing to prevent accidents;
- p. By failing to prevent a decline in Ms. McGill's pulse over the course of her stay at Ridgeview;
- q. By failing to recognize and treat a significant change in condition;
- r. By failing to ensure that Ms. McGill's physician was promptly notified of changes in her medical condition;
- s. By failing to prevent malnutrition of Ms. McGill;
- t. By failing to adequately assess Ms. McGill's risk for malnutrition upon admission to the facility, and when her condition changed;
- u. By failing to complete an accurate nutritional risk assessment;
- v. By failing to follow their own policy for completing accurate nutritional risk assessment;
- w. By failing to complete a comprehensive physical assessment was Ms. McGill was known to have become malnourished, and to properly monitor her nutritional and healthcare status;
- x. By failing to report abnormal lab values for Ms. McGill to a physician;
- y. By failing to promptly Ms. McGill to a hospital when it was needed;

- z. By failing to properly assess and monitor Ms. McGill's medical condition;
- aa. By failing to ensure that Ms. McGill was treated with consideration, dignity and respect;
- bb. By failing to provide medical attention for Ms. McGill in a prompt fashion;
- cc. By failing to ensure that Ms. McGill's family was promptly informed of changes in her medical condition;
- dd. By failing to adequately maintain and document medical records and charts with regard to Ms. McGill;
- ee. By failing to comply with state and federal reporting requirements with regard to Ms. McGill;
- ff. By failing to properly supervise the nursing staff;
- gg. By failing to adequately train the nursing staff; and,
- hh. In negligently hiring and/or retaining staff that they knew, or should have known, were incompetent to care for persons such as Ms. McGill.

83. At all times material hereto, the Nursing Home defendants, as well as their employees and agents, had a duty not to violate the legal rights of any resident, and had a duty to comply with all provisions of Title 28 of the Pennsylvania Administrative Code, Chapters 201 and 211, and Title 42 of the Code of Federal Regulations, § 483, *et seq.* Additionally, the above-referenced sections are part of the standard of care required of skilled nursing facilities.

84. The above noted regulations are designed and intended to protect the interests of persons such as Ms. McGill who are residing in facilities such as Ridgeview.

85. The above noted regulations are designed and intended to protect persons such as Ms. McGill against the neglect she encountered and the harm she suffered while residing at Ridgeview.

86. The Nursing Home defendants, their agents and employees, negligently violated the above-regulations in the following ways:

- a. By failing to meet minimum standards for operation of a long term care facility, in violation of 28 Pa. Code. § 201.14(a);
- b. By failing to adopt and enforce effective rules for the health, care and safety of the residents, as well as the general operation of the facility, , in violation of 28 Pa. Code. § 201.18(b);
- c. By failing to provide appropriate training and educational programs for the Ridgeview staff, in violation of 28 Pa. Code. § 201.20;
- d. By failing to establish appropriate written policies regarding the rights and responsibilities of residents, and by failing to develop and adhere to written policies and procedures that did exist, in violation of 28 Pa. Code. § 201.29(a);
- e. By failing to treat Lois B. McGill with consideration, respect and full recognition of dignity in individuality, including privacy in treatment and care, for necessary personal and social needs , in violation of 28 Pa. Code. § 201.29(j);
- f. By failing to maintain clinical records of Lois B. McGill, as required by 28 Pa. Code §211.5;
- g. By failing to prepare an adequate resident care policy for Lois B. McGill, and in particular, by failing to prepare a resident care policy for Lois B. McGill to ensure that she was protected from accident, injury, dehydration and infection, as required by 28 Pa. Code. §211.10;
- h. By failing to prepare an adequate resident care plan for Lois B. McGill, as required by 28 Pa. Code §211.11;

- i. By failing to prepare an adequate resident care plan for the nursing personnel caring Ms. McGill, as required by 28 Pa. Code §211.11;
- j. By failing to provide a sufficient number of personnel on a 24 hour basis to adequately care for Lois B. McGill, as required by 28 Pa. Code § 211.12;
- k. By failing to provide appropriate minimum staffing ratios, as required by 28 Pa. Code § 211.12;
- l. By failing to provide at least 2.7 hours of direct nursing care daily to Lois B. McGill, as required by 28 Pa. Code § 211.12;
- m. By failing to provide appropriate standards of accepted nursing practice, nursing policy and procedure manuals, and methods for coordination of nursing services with other resident services, as required by 28 Pa. Code § 211.12;
- n. By failing to provide general supervision, guidance and assistance for residents such as Lois B. McGill, in implementing the resident's personal health program to assure that preventative measures, treatments, medications, diet and other health services prescribed are properly carried out and recorded, as required by 28 Pa. Code § 211.12;
- o. By failing to provide Lois B. McGill her rights, including the right to a dignified existence, as required by 42 C.F.R. § 483.10;
- p. By failing to promptly notify Lois B. McGill's family and her physician of Mrs. Hartman's falls or significant changes in her physical, mental and psychosocial status, as required by 42 C.F.R. § 483.10(b)(11);
- q. By failing to develop and implement written policies and procedures that prohibited the mistreatment, neglect and abuse of residents such as Lois B. McGill, as required by 42 C.F.R. § 483.13(c);
- r. By failing to prevent the occurrence of mistreatment, neglect and abuse of residents such as Lois McGill, as required by 42 C.F.R. § 483.13(c);

- s. By failing to care for Lois B. McGill in a manner that promoted maintenance or enhancement of her life, as required by 42 C.F.R. § 483.15;
- t. By failing to ensure that Lois B. McGill's needs were accommodated, as required by 42 C.F.R. § 483.15;
- u. By failing to develop a comprehensive care plan for Lois B. McGill, as required by 42 C.F.R. § 483.20;
- v. By failing to update a comprehensive care plan for Lois B. McGill, as required by 42 C.F.R. § 483.20;
- w. By failing to conduct, initially and periodically, a comprehensive and accurate assessment of Lois B. McGill's functional capacity, as required by 42 C.F.R. § 483.20;
- x. By failing to provide Lois B. McGill the necessary care and services to allow her to attain or maintain the highest, practicable, physical, mental, and psychosocial wellbeing, as required by 42 C.F.R. § 483.25;
- y. By failing to provide Lois B. McGill the appropriate treatment and services to allow her to maintain or improve her ability to toilet, bathe, dress, groom, and ambulate, as required by 42 C.F.R. § 483.25;
- z. By failing to assure that Lois B. McGill's environment remained as free of accident hazards as possible, as required by 42 C.F.R. § 483.25;
- aa. By failing to ensure that Lois B. McGill received adequate supervision, assistance and assistant devices to maintain safety and prevent accidents, such as falls, as required by 42 C.F.R. § 483.25;
- bb. By failing to ensure that Ridgeview had sufficient nursing staff to provide nursing and related services that would allow Lois B. McGill to attain or maintain the highest practicable, physical, mental and psychosocial wellbeing, as required by 42 C.F.R. § 483.30;
- cc. By failing to provide appropriate physical and occupational therapies, as required by 42 C.F.R. § 483.45;

- dd. By failing to ensure that Ridgeview was administered in a manner that enabled it to use its resources effectively and efficiently to allow Lois B. McGill to maintain or attain the highest, practicable level of physical, mental and psychosocial wellbeing, as required by 42 C.F.R. § 483.75; and,
- ee. By failing to maintain clinical records on Ms. McGill, in accordance with accepted professional standards and practices, and as required by 42 C.F.R. § 283.75.

87. The actions that caused the injuries and contributed to the ultimate death sustained by Ms. McGill would not have happened but for the negligent conduct of the Nursing Home defendants, in that:

- a. The injuries suffered by Ms. McGill would not have normally occurred without the absence of the Nursing Home defendants' negligent acts; and,
- b. The injuries and death suffered by Ms. McGill did not result from any voluntary action or contribution on the part of Ms. McGill.

88. Solely as a result of the negligent conduct of the Nursing Home defendants as aforesaid, the plaintiff, Mary K. Heverly, on behalf of those persons entitled by law to recover for the wrongful death of Lois B. McGill, has suffered the following injuries and damages:

- a. Money expended for funeral and estate expenses because of the death of Lois B. McGill;
- b. Denial and permanent loss of the services, assistance, guidance, counseling, companionship and society of Lois B. McGill;
- c. Deprival of the financial support and all pecuniary benefits which they would have received from Lois B. McGill;
- d. Expenses incurred in the administration of Ms. McGill's estate; and,

- e. Any hospital, medical and nursing expenses attendant to the treatment and death of Lois McGill.

WHEREFORE, the plaintiff, Mary K. Heverly, on behalf of those entitled by law to recover for the wrongful death of Lois B. McGill, demands compensatory and consequential damages from the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest, costs of the suit and attorneys' fees.

COUNT II

Survival - Negligence

89. The preceding paragraphs of this Complaint are incorporated herein as if set forth more fully at length.

90. As a direct and proximate result of the defendants' conduct as set forth above, Ms. McGill was injured and experienced conscious pain, suffering, and loss of enjoyment of life in the extreme, before dying on June 1, 2005.

91. As a result of the previously described negligent conduct of the Nursing Home defendants, the plaintiff, Mary K. Heverly, on behalf of the Estate of Lois B. McGill, seeks damages for the following items:

- a. Money expended for medical services and supplies incident to the treatment and subsequent death of the decedent, Lois B. McGill;
- b. Pain, suffering, inconvenience, anxiety, loss of enjoyment of life, and nervousness of Lois B. McGill until the time of her death;
- c. Any and all hospital, medical, surgical and nursing expenses incurred on behalf of Lois B. McGill not attendant to her death; and,

d. Other losses and damages permitted by law.

WHEREFORE, the plaintiff, Mary K. Heverly, on behalf of the Estate of Lois B. McGill, demands compensatory and consequential damages from the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest, costs of the suit and attorneys' fees.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

SHORT CERTIFICATE – Letters Of Administration - CTA**Certificate of Appointment of Administratrix CTA**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

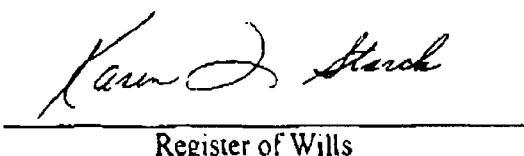
} ss:

The undersigned, Register for the Probate of Wills and granting Letters of Administration in and for the County of Clearfield, in the Commonwealth of Pennsylvania.

DO HEREBY CERTIFY and make known, that on 8th day of March, 2007 Letters Of Administration - CTA on the Estate of LOIS B. MCGILL, deceased, were granted unto MARY KAY HEVERLY, Administratrix CTA having first given security well and truly to administer the same. I further certify that said letters are in full force and effect at the present time, and entitled to full faith and credit.

Date of Death: June 1, 2005
File #: 1705-0359
Social Security No.: 209-32-3104

Given under my hand and seal of office this 8th
day of March in the year of our Lord, 2007



Karen D. Storch
Register of Wills

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT
CURWENSVILLE NURSING HOME, INC.**

d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER

I, CHAD P. SHANNON, ESQUIRE, certify that:

✓ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

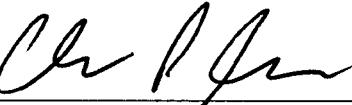
✓ The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

By: 

CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738 CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT
GUARDIAN ELDER CARE, INC.**

d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER

I, CHAD P. SHANNON, ESQUIRE, certify that:

✓ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

✓ The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

_____ Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF MERIT AS TO DEFENDANT
GUARDIAN LTC MANAGEMENT, INC.

I, CHAD P. SHANNON, ESQUIRE, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

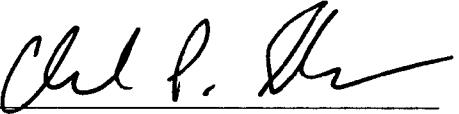
The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

— Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

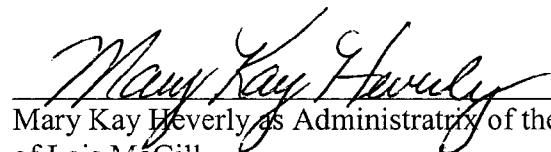
By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

VERIFICATION

I verify that the averments of fact made in the foregoing Complaint are true and correct and based on my personal knowledge, information or belief.

4-7-07

Dated



Mary Kay Heverly, as Administratrix of the Estate
of Lois McGill

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix
of the Estate of Lois B. McGill,
Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME,
INC., d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC., d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CIVIL DIVISION

07-738-CD

Code:

Issue No:

PRAECIPE FOR APPEARANCE

Filed on behalf of Curwensville
Nursing Home, Inc., d/b/a Ridgeview
Elder Care Rehabilitation Center;
Guardian Elder Care, Inc., d/b/a
Ridgeview Elder Care Rehabilitation
Center; and Guardian LTC
Management, Inc., Defendants

Counsel of Record for This Party:

Alan S. Baum, Esquire
PA I.D. 32729

MATIS BAUM RIZZA O'CONNOR
Firm #983
Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222

(412) 338-4750

JURY TRIAL DEMANDED

FILED
MAY 24 2007
NOCC
6K

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix) CIVIL DIVISION
of the Estate of Lois B. McGill,)
Deceased,) 07-738-CD
)
 Plaintiff,)
)
 vs.)
)
 CURWENSVILLE NURSING HOME,)
 INC., d/b/a RIDGEVIEW ELDER CARE)
 REHABILITATION CENTER; GUARDIAN)
 ELDER CARE, INC., d/b/a RIDGEVIEW)
 ELDER CARE REHABILITATION)
 CENTER; and GUARDIAN LTC)
 MANAGEMENT, INC.,)
)
 Defendants.

PRAECIPE FOR APPEARANCE

To: Prothonotary

Kindly enter our appearance on behalf of Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., Defendants, in the above captioned case.

This case will be handled by Alan S. Baum, Esquire.

JURY TRIAL DEMANDED

MATIS BAUM RIZZA O'CONNOR

By: 

Alan S. Baum, Esquire
PA ID 32729
Attorneys for Curwensville Nursing Home,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; Guardian Elder Care,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; and Guardian LTC
Management, Inc., Defendants

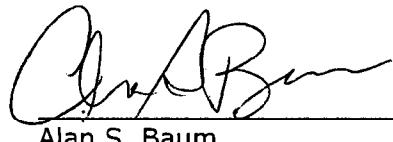
Four Gateway Center
444 Liberty Avenue
Suite 300
Pittsburgh, PA 15222
(412) 338-4750

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Praeclipe for Appearance upon all counsel of record by United States, First-class mail, postage prepaid, this 22nd day of May, 2007.

Chad P. Shannon, Esquire
Robert Peirce & Associates, PC
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

MATIS BAUM RIZZA O'CONNOR



Alan S. Baum

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix
of the Estate of Lois B. McGill,
Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME,
INC., d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC., d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CIVIL DIVISION

07-738-CD

Code:

Issue No:

ANSWER AND NEW MATTER

Filed on behalf of Curwensville
Nursing Home, Inc., d/b/a Ridgeview
Elder Care Rehabilitation Center;
Guardian Elder Care, Inc., d/b/a
Ridgeview Elder Care Rehabilitation
Center; and Guardian LTC
Management, Inc. , Defendants

Counsel of Record for This Party:

Alan S. Baum, Esquire
PA I.D. 32729

MATIS BAUM RIZZA O'CONNOR
Firm #983
Four Gateway Center
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222

(412) 338-4750

JURY TRIAL DEMANDED

FILED
M 12 5 2007
AUG 06 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

No CC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|------------------------------------|---|----------------|
| MARY K. HEVERLY, as Administratrix |) | CIVIL DIVISION |
| of the Estate of Lois B. McGill, |) | |
| Deceased, |) | 07-738-CD |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| CURWENSVILLE NURSING HOME, |) | |
| INC., d/b/a RIDGEVIEW ELDER CARE |) | |
| REHABILITATION CENTER; GUARDIAN |) | |
| ELDER CARE, INC., d/b/a RIDGEVIEW |) | |
| ELDER CARE REHABILITATION |) | |
| CENTER; and GUARDIAN LTC |) | |
| MANAGEMENT, INC., |) | |
| |) | |
| Defendants. |) | |

ANSWER AND NEW MATTER

AND NOW, come the Defendants, by and through their Attorneys, Matis Baum Rizza O'Connor, and Alan S. Baum, Esquire, and in response to the Complaint, Answer and otherwise plead as follows:

1. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.
2. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.
3. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.
4. Paragraph 4 sets forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is denied that the Decedent's death was "wrongful," and that anyone is entitled by law to recover for said death.

5. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted in part and denied in part. It is admitted that Guardian LTC Management, Inc. is a Pennsylvania corporation that has an office at the address set forth. It is denied that Guardian LTC Management, Inc. does business in Clearfield County, Pennsylvania, and it is denied that Guardian LTC Management, Inc. is a fictitious name. To the contrary, Guardian Elder Care, Inc. is a Pennsylvania corporation that does not do business in Clearfield County, and has no involvement in the business of Ridgeview Elder Care Rehabilitation Center.

9. Paragraph 9 sets forth a statement to which no response is required.

10. Paragraph 10 is denied as stated. To the contrary, Guardian Elder Care, Inc. did not own, operate, or management Ridgeview Elder Care Rehabilitation Center. It is further denied that Ridgeview Elder Care Rehabilitation Center provided nursing care services to the general public. To the contrary Guardian Elder Care, Inc. was not involved in the business of Ridgeview Elder Care Rehabilitation Center. Further, the nursing care services provided by Ridgeview Elder Care Rehabilitation Center were provided to those persons whose admission to the facility was accepted following an application process.

11. Paragraph 11 sets forth conclusions of law to which no response is required. Said averments are, therefore, deemed denied. Although it is admitted that Plaintiff is asserting a professional liability claim against the Defendants, it is denied that such claims have any merit.

12. Paragraph 12 sets forth conclusions of law to which no response is required. To the extent that a response is deemed necessary, it is again denied that Defendant

Guardian LTC Management, Inc. was involved in the operation of Ridgeview Elder Care Rehabilitation Center.

13. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the identity of the agents, servants, and employees to whom Plaintiff refers, and the acts in which such unidentified persons allegedly engaged.

14. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

15. Paragraph 15 is denied as stated. It is admitted that Lois B. McGill was a 96-year old woman who was admitted to Ridgeview on April 7, 2005, following a March 25, 2005 admission to Healthsouth Rehabilitation Hospital of Altoona.

16. Paragraph 16 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

17. Paragraph 17 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

18. Paragraph 18 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

19. Paragraph 19 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

20. Paragraph 20 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

21. Paragraph 21 is denied.
22. Paragraph 22 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
23. Paragraph 23 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
24. Paragraph 24 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
25. Paragraph 25 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
26. Paragraph 26 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
27. Paragraph 27 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
28. Paragraph 28 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.
29. Paragraph 29 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

30 Paragraph 30 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

31. Paragraph 31 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

32. Paragraph 32 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

33. Paragraph 33 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

34. Paragraph 34 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

35. Paragraph 35 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

36. Paragraph 36 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

37. Paragraph 37 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

38. Paragraph 38 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

39. Paragraph 39 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

40. Paragraph 40 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

41. Paragraph 41 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

42. Paragraph 42 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

43. Paragraph 43 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

44. Paragraph 44 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

45. Paragraph 45 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

46. Paragraph 46 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

47. Paragraph 47 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

48. Paragraph 48 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

49. Paragraph 49 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

50. Paragraph 50 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

51. Paragraph 51 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

52. Paragraph 52 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

53. Paragraph 53 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

54. Paragraph 54 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

55. Paragraph 55 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

56. Paragraph 56 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

57. Paragraph 57 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

58. Paragraph 58 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

59. Paragraph 59 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

60. Paragraph 60 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

61. Paragraph 61 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

62. Paragraph 62 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

63. Paragraph 63 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

64. Paragraph 64 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

65. Paragraph 65 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

66. Paragraph 66 is denied as stated for the reason that it incompletely, inaccurately, and/or misleadingly describes events which occurred, and does not reflect the context in which the records of care and treatment were made.

67. Paragraph 67 is denied as stated. It is admitted only that at approximately 9:15 A.M., Mrs. McGill was found on the floor in front of her wheelchair.

68. Paragraph 68 is admitted.

69. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

70. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

71. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

72. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

73. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

74. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

75. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

76. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments. Said averments are, therefore, deemed denied.

COUNT 1

Wrongful Death-Negligence

77. The preceding paragraphs of this pleading are incorporated herein by reference as if fully set forth.

78. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the identity of the agents, servants, and employees to whom Plaintiff refers, and the acts in which such unidentified persons allegedly engaged.

79. Paragraph 79 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

80. Paragraph 80 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

81. Paragraph 81 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

82. Defendants deny paragraph 82 and all sub-parts thereof. It is specifically denied that these Defendants were negligent in any manner whatsoever. To the contrary, Defendants acted in a reasonable and prudent manner at all relevant times.

83. Paragraph 83 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

84. Paragraph 84 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

85. Paragraph 85 sets forth conclusions of law to which no response is required. Said averment are, therefore, deemed denied.

86. Defendants deny paragraph 86 and all sub-parts thereof. It is specifically denied that these Defendants were negligent in any manner whatsoever. To the contrary, Defendants acted in a reasonable and prudent manner at all relevant times.

87. Defendants deny paragraph 87 and all sub-parts thereof. It is specifically denied that these Defendants were negligent in any manner whatsoever. To the contrary, Defendants acted in a reasonable and prudent manner at all relevant times.

88. Defendants deny paragraph 88 and all sub-parts thereof. It is specifically denied that these Defendants were negligent in any manner whatsoever. To the contrary, Defendants acted in a reasonable and prudent manner at all relevant times.

WHEREFORE, Plaintiff's Complaint should be dismissed and judgment should be entered in favor of the Defendants.

COUNT II

Survival-Negligence

89. The preceding paragraphs of this Pleading are incorporated herein by reference as if fully set forth.

90. Paragraph 90 sets forth conclusions of law to which no response is required. Said averments are, therefore, deemed denied. It is specifically denied that the Defendants engaged in any conduct that directly and proximately caused any harm to the Plaintiff or the Decedent.

91. Paragraph 91 sets forth conclusions of law to which no response is required. Said averments are, therefore, deemed denied. It is specifically denied that the Defendants engaged in any conduct that directly and proximately caused any harm to the Plaintiff or the Decedent.

92. All averments and allegations in the Complaint that have not been specifically admitted or otherwise fully and completely answered above are denied.

WHEREFORE, Plaintiff's Complaint should be dismissed and judgment should be entered in favor of the Defendants.

NEW MATTER

93. Plaintiff's Complaint fails to state a claim against these Defendants upon which relief may be granted under Pennsylvania law.

94. Plaintiff's claims are barred due to a lack of any causal relationship between the alleged acts or omissions of these Defendants and any losses or damages allegedly sustained by the Plaintiff or Decedent.

WHEREFORE, Plaintiff's Complaint should be dismissed and judgment should be entered in favor of the Defendants.

JURY TRIAL DEMANDED

MATIS BAUM RIZZA O'CONNOR

By: 

Alan S. Baum, Esquire
PA ID 32729
Attorneys for Defendants Curwensville
Nursing Home, Inc., d/b/a Ridgeview Elder
Care Rehabilitation Center; Guardian Elder
Care, Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; and Guardian LTC
Management, Inc.

Matis Baum Rizza O'Connor
Four Gateway Center
444 Liberty Avenue
Suite 300
Pittsburgh, PA 15222
(412) 338-4750

412-28101

VERIFICATION

I, Kathy Gillespie, have read the foregoing Answer and New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this verification because of my position as Administrator.

Kathy Gillespie
Kathy Gillespie
Date: 7/27/07

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Answer and New Matter upon all counsel of record by United States, First-class mail, postage prepaid, this 26 day of August, 2007.

Chad P. Shannon, Esquire
Robert Peirce & Associates, PC
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

MATIS BAUM RIZZA O'CONNOR



Alan S. Baum

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

No.: 07-738-CD

PLAINTIFF'S REPLY TO NEW MATTER
CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION CENTER;
and GUARDIAN LTC MANAGEMENT, INC.

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

Dated: August 8, 2007

FILED NO CC
M 11:14 2007
AUG 13 2007
©

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**PLAINTIFF'S REPLY TO NEW MATTER OF DEFENDANTS, CURWENSVILLE
NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE REHABILITATION
CENTER; GUARDIAN ELDER CARE, INC. d/b/a RIDGEVIEW ELDER
CARE REHABILITATION CENTER; and GUARDIAN LTC MANAGEMENT, INC.**

AND NOW, comes the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire and the law firm of Robert Peirce and Associates, Inc., and replies to the New Matter of the defendants, as follows:

93. Paragraph 93 of the defendants' New Matter states conclusions of law to which no response is required.

94. Paragraph 94 of the defendants' New Matter states conclusions of law to which no response is required.

WHEREFORE, the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, demands judgment in her favor and against the defendants in an amount in excess of Twenty-Five Thousand Dollars (\$25,000.00), plus any relief this Honorable Court finds just, to recover which this suit is brought.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PLAINTIFF'S REPLY TO NEW
MATTER CURWENSVILLE NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN ELDER CARE, INC. d/b/a RIDGEVIEW ELDER
CARE REHABILITATION CENTER; and GUARDIAN LTC MANAGEMENT, INC. was served
by first class United States mail, postage prepaid, this 8 day of August, 2007,
upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: Chad P. Shannon
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102783
NO: 07-738-CD
SERVICE # 1 OF 3
COMPLAINT

PLAINTIFF: MARY K. HEVERLY as Admx. of Estate of Lois B. McGill, Deceased
vs.

DEFENDANT: CURWENSVILLE NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER al

SHERIFF RETURN

NOW, May 15, 2007 AT 10:45 AM SERVED THE WITHIN COMPLAINT ON CURWENSVILLE NURSING HOME, INC. dba RIDGEVIEW ELDER CARE REHABILITATION CENTER DEFENDANT AT MCNAUL ST., CURWENSVILLE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MEGAN PATRICK, PERSON IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED
03/09/01
OCT 05 2007
WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102783
NO: 07-738-CD
SERVICE # 2 OF 3
COMPLAINT

PLAINTIFF: MARY K. HEVERLY as Admx. of Estate of Lois B. McGill, Deceased
vs.

DEFENDANT: CURWENSVILLE NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER al

SHERIFF RETURN

NOW, May 14, 2007, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF
OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON GUARDIAN ELDER CARE, INC. dba
RIDGEVIEW ELDER CARE REHABILITATION CENTER.

NOW, May 24, 2007 AT 2:45 PM SERVED THE WITHIN COMPLAINT ON GUARDIAN ELDER CARE, INC. dba
RIDGEVIEW ELDER CARE REHABILITATION CENTER, DEFENDANT. THE RETURN OF JEFFERSON COUNTY IS
HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102783
NO: 07-738-CD
SERVICE # 3 OF 3
COMPLAINT

PLAINTIFF: MARY K. HEVERLY as Admx. of Estate of Lois B. McGill, Deceased
vs.

DEFENDANT: CURWENSVILLE NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER a1

SHERIFF RETURN

NOW, May 14, 2007, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON GUARDIAN LTC MANAGEMENT INC. dba GUARDIAN ELDER CARE, INC..

NOW, May 24, 2007 AT 2:45 PM SERVED THE WITHIN COMPLAINT ON GUARDIAN LTC MANAGEMENT INC. dba GUARDIAN ELDER CARE, INC., DEFENDANT. THE RETURN OF JEFFERSON COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102783
NO: 07-738-CD
SERVICES 3
COMPLAINT

PLAINTIFF: MARY K. HEVERLY as Admx. of Estate of Lois B. McGill, Deceased
vs.

DEFENDANT: CURWENSVILLE NURSING HOME, INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER al

SHERIFF RETURN

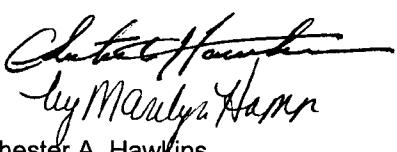
RETURN COSTS

| Description | Paid By | CHECK # | AMOUNT |
|-----------------|---------|---------|--------|
| SURCHARGE | PEIRCE | 82134 | 30.00 |
| SHERIFF HAWKINS | PEIRCE | 82134 | 35.82 |
| JEFFERSON CO. | PEIRCE | 82133 | 43.46 |

Sworn to Before Me This

So Answers,

____ Day of _____ 2007


Chester A. Hawkins
Sheriff

No. 07-738 C.D.

Personally appeared before me, Harry Dunkle, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on May 24, 2007 at 2:45 o'clock P.M. served the Notice and Complaint upon GUARDIAN ELDER CARE, INC. and GUARDIAN LTC MANAGEMENT, INC., Defendants, at the address of 8796 Rte. 219, Brockway, Township of Snyder, County of Jefferson, State of Pennsylvania, by handing to James Chishock, CEO and adult person in charge at time of service, two true copies of the Notice and Complaint and by making known to him the contents thereof.

| | |
|-------------------------|---------------|
| Advance Costs Received: | \$125.00 |
| My Costs: | \$ 41.46 Paid |
| Proth'y: | \$ 2.00 |
| Total Costs: | \$ 43.46 |
| Refunded: | \$ 81.54 |

Sworn and subscribed
to before me on the 30th
day of May in 2007
By Deputy Sheriff

My Commission Expires the
1st Monday, January 2010

So Answers,

Harry Dunkle Deputy
Thomas A. Demko Sheriff
JEFFERSON COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

COMPLAINT

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

Dated: May 8, 2007

MAY 10 2007

Attest.

William L. Bane
Prothonotary/
Clerk of Courts

Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
Telephone: 814-765-2641 - Extension 51

YOU MUST RESPOND TO THIS COMPLAINT WITHIN TWENTY (20) DAYS OR A JUDGMENT FOR THE AMOUNT CLAIMED MAY BE ENTERED AGAINST YOU BEFORE THE HEARING. IF YOU DO NOT APPEAR FOR THE HEARING, THE CASE MAY BE HEARD IMMEDIATELY BEFORE A JUDGE. THERE IS NO RIGHT TO A TRIAL DO NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.:

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

COMPLAINT

AND NOW, comes the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire; Robert F. Daley, Esquire; and the law firm of Robert Peirce and Associates, P.C., and claims damages of the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., and states as follows:

1. The plaintiff, Mary K. Heverly, is the Administratrix of the Estate of Lois B. McGill, and is an adult individual with an address of 135 Heritage Drive, Beloit, Ohio 44609.
2. Lois B. McGill died on June 1, 2005, while a resident of Clearfield County.

3. The plaintiff was appointed Administratrix of the Estate of the decedent, Lois B. McGill, on March 8, 2007 by the Register of Wills of Clearfield County. A copy of the Certificate of Appointment of Administratrix is attached hereto as Exhibit 1.

4. The plaintiff brings this action pursuant to 42 Pa. Cons. Stat. § 8301 and Pa. R.C.P. No. 2202(a), as the personal representative of the decedent, Lois B. McGill, on her own behalf, and on behalf of those entitled by law to recover damages for the wrongful death of the decedent.

5. The names and addresses of all persons legally entitled to recover damages for the death of Lois B. McGill, and their relationship to Lois B. McGill, are as follows:

| Name: | Address: | Relationship |
|-----------------|--|--------------|
| Mary K. Heverly | 135 Heritage Drive Beloit, OH 44609 | Daughter |
| Thomas McGill | 1075 Mill Street Coalport, PA 16627 | Son |

6. Defendant, Curwensville Nursing Home, Inc. is a Pennsylvania Corporation with a principal office address of P.O. Box 372, McNaul Street, Curwensville, Pennsylvania 16833. Curwensville Nursing Home, Inc. does business in Clearfield County, Pennsylvania, under the fictitious name Ridgeview Elder Care Rehabilitation Center (hereinafter referred to as "Ridgeview").

7. Defendant, Guardian Elder Care, Inc. is a Pennsylvania Corporation with an address of 8796 Route 219, P.O. Box 220, Brockway, Jefferson County Pennsylvania 15824. Guardian Elder Care, Inc. does business in Clearfield County, Pennsylvania under the fictitious name Ridgeview Elder Care Rehabilitation Center.

8. Defendant, Guardian LTC Management, Inc. is a Pennsylvania Corporation that has a principal office address of R.D. 2, Box 240, Brockway, Jefferson County Pennsylvania 15284. Guardian LTC Management, Inc. does business in Clearfield County, Pennsylvania under the fictitious name of Guardian Elder Care, Inc. which does business as Ridgeview Elder Care Rehabilitation Center.

9. Collectively, these entities described above will hereinafter be referred to as "the Nursing Home defendants".

10. At all times relative hereto the defendants collectively owned, operated and/or managed Ridgeview Elder Care Rehabilitation Center, and were engaged in the business of providing nursing care services to the general public.

11. At all times relevant hereto, the Nursing Home defendants operated Ridgeview as a "long term care facility" as that term is defined in 35 P.S. § 448.802A. Accordingly the Nursing Home defendants are "licensed professionals" as that term is defined in 40 P.S. § 1303.503, and plaintiff is asserting a professional liability claim against the defendants.

12. At all times relevant hereto, the Nursing Home defendants operated Ridgeview as a "skilled nursing facility" as that term is defined at 42 U.S.C. § 1395I-3.

13. At all times relevant hereto, the Nursing Home defendants were acting independently and by an through their authorized agents, servants and employees then and there acting within the course and scope of their employment.

14. At no time during her life did the decedent bring an action to recover damages for her personal injuries, and no other action has been filed to recover damages for the wrongful death of the decedent, Lois B. McGill.

Facts Common to All Causes of Action

15. Lois B. McGill was a 96 year old woman who was admitted to Ridgeview on April 7, 2005 following a 12 day stay at HealthSouth of Altoona, Pennsylvania.

16. Prior to being admitted to HealthSouth of Altoona, Ms. McGill had been in Altoona Hospital for treatment for lower gastrointestinal bleeding and deconditioning. Upon her discharge from HealthSouth, it was determined that Ms. McGill's rehabilitation potential was found to be good, and her prognosis was deemed to be fair to good.

17. While at HealthSouth, a physical examination of Ms. McGill noted that her safety was in the fair to poor range with potential barriers being her general medical condition, cognition and blindness in her right eye.

18. While at HealthSouth there were safety precautions initiated in order to protect against her confused mental state and deconditioning status.

19. On April 8, 2005, the day after her admission to Ridgeview, a diagnostic code report was signed by a physician listing Ms. McGill's medical diagnoses.

20. The diagnostic code report listed the following diagnoses:

- * Difficulty walking
- * Muscle weakness
- * Anemia
- * Rectal mass
- * Diverticulosis
- * Hemorrhoids
- * Cardiomegaly - borderline

- * Acute coronary syndrome
- * Depression
- * Hypertension
- * Coronary artery disease
- * Congestive heart failure
- * Macular degeneration
- * Right eye blindness
- * Kyphosis
- * S/P gastrointestinal bleeding

21. Of the diagnoses charted on the diagnostic code report of April 8, 2005, the following diagnoses are all well known fall risk factors:

- * Difficulty walking
- * Muscle weakness
- * Anemia
- * Diverticulosis
- * Cardiomegaly - borderline
- * Acute coronary syndrome
- * Depression
- * Hypertension
- * Coronary artery disease
- * Congestive heart failure
- * Macular degeneration

- * Right eye blindness
- * S/P gastrointestinal bleeding

22. On the day of her admission, the physician at Ridgeview ordered the medications Lopressor, Prinvil and Lasix.

23. Additionally, the physician ordered physical, occupational, and speech therapy evaluations for Ms. McGill.

24. Despite issuing these orders, the physician did not make orders for safety precautions, use of a wheelchair, ambulation or mobility status.

25. During Ms. McGill's entire stay, the physician never made orders for safety precautions, use of a wheelchair, ambulation or mobility status.

26. These orders for safety precautions, use of a wheelchair, ambulation and mobility status are orders that are commonly written in the nursing home community.

27. A nursing admission assessment was done for Ms. McGill on the day of her admission, April 7, 2005.

28. However the sections for pulse, temperature, respirations, blood pressure, age and eye color were blank.

29. The fall risk assessment on the nursing admission assessment was completed and a score of 27 was noted for Ms. McGill, with a score of ten or more indicative of a high risk for sustaining a fall.

30. Those areas that were noted to be risk factors for a fall by Ms. McGill included intermittent confusion, chair-bound, requires restraints, requires assists with elimination, legally blind in the right eye, balance problems when standing and walking, decreased muscular

coordination, change in gait patterns while walking through the doorway, jerking or unstable turns, requires the use of assistant device, takes three or four medications listed in the past three to four days, and is noted as having predisposing conditions for falling such as sight, age and decreased ability.

31. A safety awareness assessment was also done on the day of her admission. The findings of this evaluation noted that Ms. McGill was not (Chrissy, She was not any of the following things in this sentence, is this grammatically correct???) alert or oriented, independent with transfers, able to follow directions, independent with the call bell and ambulatory. She also had impaired judgment, impaired vision, a history of non-compliance, no intact safety awareness, impaired bed mobility, impaired trunk control, used bedside rails to increase independence in transfers as well as balance and bed mobility, requested the side rails to be raised and raised while sleeping, had an unawareness of safety boundaries, and was restless in bed.

32. Additionally, this assessment found that she also had impaired judgment, a history of non-compliance with treatment, no intact safety awareness, impaired bed mobility, impaired trunk control, bedside rails to increase independence in transfers/balance/bed mobility, raised side rails when sleeping, impaired vision, unawareness of safety boundaries and restless in bed.

33. All of the clinical findings in the nursing admission and safety awareness assessment increase an individual such as Ms. McGill's fall risk potential.

34. The minimum data set (MDS), a standardized assessment tool used in nursing homes, were completed for Ms. McGill on April 10, 20; May 6 and 16, 2005.

35. The initial MDS completed on April 10, 2005 supported that Ms. McGill had multiple risk factors for falling, including: short and long-term memory problems; moderately

impaired cognitive skills for daily decision making; only sometimes understands; moderately impaired vision with side or peripheral vision problems; extensive assistance of one staff person was needed to transfer, and Ms. McGill was totally dependent on one staff for locomotion on and off the nursing unit; personal physical support was required for standing; activity of daily living function had deteriorated; frequent incontinence of bladder and occasional incontinence of bowel; edema; unsteady gait; medical diagnosis of congestive heart failure/other cardiovascular disease/COPD/anemia/difficulty walking and muscle weakness.

36. On the next MDS completed, April 20, 2005, the assessment findings were essentially the same as the MDS on April 10, 2005, except that she was now usually continent of bowel and occasionally incontinent of bladder. Additionally, it was noted that she was experiencing mild pain was "no less present than daily".

37. The next MDS assessment was completed on May 6, 2005 where the findings were essentially the same as the initial assessment except that extensive assistance for transferring was now required by two staff members and a weight loss was noted.

38. The last MDS that was completed on May 16, 2005, showed findings which remained consistent with the April 10, 2005 MDS.

39. On April 13, 2005 a care conference summary noted that Ms. McGill has difficulty walking and had muscle weakness.

40. An "overall resident profile" dated April 7, 2005, documented seven problems for Ms. McGill, with the first identified problem being a "self care deficit" with "potential for falls/injuries".

41. This profile, essentially a resident care plan, makes no mention of any information regarding her fall risk potential or interventions to prevent her from sustaining a fall.

42. Nursing notes indicated that Ms. McGill used a wheelchair for most of her time in Ridgeview.

43. A nutritional assessment was completed on April 12, 2005, by the registered dietician, Megan P. Patrick.

44. Ms. Patrick noted that Ms. McGill required 1475 to 1770 calories a day, as well as 47 to 59 grams of protein.

45. Ms. Patrick's goal was to prevent further weight loss by Ms. McGill.

46. However the only intervention she initiated was to provide fortified foods and shakes, although the specific quantity and frequency of these were not mentioned in her assessment.

47. Within one week past her admission, the physician at Ridgeview noted that Ms. McGill was confused, even to the point where the physician could not obtain a medical history from her on April 13, 2005.

48. On April 19, 2005, a second assessment performed by the dietary staff noted that Ms. McGill had sustained additional weight loss attributable to poor food consumption.

49. Despite the weight loss and poor food consumption there were no other recommendations made to increase Ms. McGill's weight.

50. On May 5, 2005, the nutritional staff noted a nine pound weight loss from the time of Ms. McGill's admission, which they indicated may have been attributed to poor oral intake and the use of a diuretic.

51. Despite the additional weight loss from the admission date and the second assessment done on April 19, 2005, no additional interventions were recommended to increase Ms. McGill's food intake.

52. On May 10, 2005, the physician noted that Ms. McGill continued to be withdrawn and depressed. Additionally, he noted that she required help with all activities of daily living.

53. On May 14, 2005, Ms. Patrick assessed Ms. McGill's nutritional status again, and noted that she was only consuming 25 to 50 percent of the meals offered to her at that time.

54. Despite the continued recognition that Ms. McGill was not consuming her meals, Ms. Patrick did not make any additional recommendations at the May 14, 2005 consultation.

55. On May 23, 2005 an occupational therapy evaluations was requested because Ms. McGill was sliding down in her wheelchair.

56. Victoria B. Walb, the occupational therapist noted on that day that "OT requests order to evaluate and TXD/T potential for injury".

57. In an undated note, Ms. Walb indicates that Ms. McGill: "continues to place her lower legs/feet behind/over footboard. It appears bruises on her legs are related to injuries from W/C. OT is indicted 3X/WK x 2 WKS. To provide safe WC positioning. It also appears that res may tend to slide in W/C partially D/T fatigue."

58. The occupational therapy plan of treatment reaffirmed the reason for referral was because of increased weakness and unsafe posture in the wheelchair.

59. On May 24, 2005, the nursing staff noted that Ms. McGill was bradycardic the day before.

60. Additionally on May 24, 2005, the nursing staff took vital signs and recorded pulse ranges of Ms. McGill from 40 to 64.

61. On May 25, 2005, the last dietary review was performed on Ms. McGill and noted that she weighed 118 pounds, which represented an 11 pound weight loss from the time of her admission on April 7, 2005.

62. The dietary staff also noted on May 25, 2005, that she had an oral intake of zero to 25 percent of meals offered.

63. Despite the 11 pound weight loss and the low oral intake, the only recommendation made was for the staff to encourage oral intake and continued fortified foods and shakes.

64. On May 31, 2005, the physician noted that Ms. McGill continued to be lethargic from poor oral intake and poor exercise tolerance. He also noted that she slept most of the day.

65. Further, he noted that she had bruising on her lower legs.

66. On June 1, 2005, at about 8:30 in the morning, a halter monitor was applied to assess Ms. McGill's cardiac status related to her low pulse rate.

67. About 45 minutes later, at 9:15 a.m., Ms. McGill was found on the floor, having fallen from her wheelchair.

68. She was transferred to Clearfield Hospital for evaluation and treatment of a head injury.

69. A hospital nursing admission assessment dated June 1, 2005 at 6:20 p.m. noted a pulse rate of 47.

70. The nursing admission assessment states that the reason for the hospitalization was a closed head injury, bradycardia, and a slow pulse rate.

71. Upon admission to the hospital, a physical examination was performed which noted that Ms. McGill's pulse was recorded at 59 beats per minutes. Further, she was able to open her eyes to verbal commands, but could not follow them.

72. Within a few minutes, Ms. McGill had become non-responsive.

73. Ms. McGill died at 8:55 p.m. on June 1, 2005.

74. Laboratory tests confirmed that Ms. McGill had anemia, an abnormal urinalysis indicative of a urinary tract infection, and elevated blood urea nitrogen and creatinine level.

75. Laboratory tests further confirmed that Ms. McGill had a decreased visceral protein stores, consistent with protein malnutrition.

76. On the history section of the medical discharge summary following her death it was noted that Ms. McGill's pulse had reached a low of 34 beats per minute while at the nursing home on May 24, 2005.

COUNT I

Wrongful Death - Negligence

77. The preceding paragraphs of this Complaint are incorporated herein as if set forth more fully at length.

78. At all times material and relevant hereto, the Nursing Home defendants acted by and through their agents, servants and/or employees.

79. The Nursing Home defendants, as well as their employees and agents, had a duty to act prudently, and had a duty to provide ordinary and reasonable care and care services to Ms. McGill.

80. The Nursing Home defendants, as well as their employees and agents, had a duty to ensure that all persons providing care within Ridgeview were competent to provide that care.

81. The Nursing Home defendants, as well as their employees and agents, had a duty to formulate, adopt and enforce adequate rule and policies to ensure quality care for residents such as

Ms. McGill.

82. The Nursing Home defendants, as well as their employees and agents, negligently breached these duties owed to Ms. McGill in the following particulars:

- a. By failing to recognize the clinical fall risk factors relevant to Ms. McGill;
- b. By failing to provide a safe environment and protect her from harm and physical injury;
- c. By failing to implement safety measures to prevent her from falling from her wheelchair and sustaining physical injury, knowing that she was sliding down on this device;
- d. By failing to prevent multiple bruising to her lower extremities;
- e. By failing to develop a resident care plan that addressed Ms. McGill's risk for falling;
- f. By failing to prevent Ms. McGill from falling;
- g. By failing to implement interventions and strategies to minimize Ms. McGill's risk of falling;
- h. By failing to take adequate precautions, and to implement policies and procedures to prevent the above practices and omissions regarding Ms. McGill's falling episodes;
- i. By failing to adequately assess Ms. McGill's risk for falls upon admission, and when her condition changed;
- j. By failing to complete a comprehensive physical assessment when Ms. McGill was known to have fallen, and to properly monitor her health care status post fall.

- k. By failing to follow Ridgeview's own policy and procedures for assisting with activities of daily living and/or transfer;
- l. By failing to have qualified and adequately trained staff to meet Ms. McGill's needs for protection, safety and a secure environment;
- m. By failing to provide Ms. McGill with the care and care services she required, specifically with respect to her need for assistance with daily activities and with transfer;
- n. By failing to accurately assess Ms. McGill's care needs;
- o. By failing to prevent accidents;
- p. By failing to prevent a decline in Ms. McGill's pulse over the course of her stay at Ridgeview;
- q. By failing to recognize and treat a significant change in condition;
- r. By failing to ensure that Ms. McGill's physician was promptly notified of changes in her medical condition;
- s. By failing to prevent malnutrition of Ms. McGill;
- t. By failing to adequately assess Ms. McGill's risk for malnutrition upon admission to the facility, and when her condition changed;
- u. By failing to complete an accurate nutritional risk assessment;
- v. By failing to follow their own policy for completing accurate nutritional risk assessment;
- w. By failing to complete a comprehensive physical assessment was Ms. McGill was known to have become malnourished, and to properly monitor her nutritional and healthcare status;
- x. By failing to report abnormal lab values for Ms. McGill to a physician;
- y. By failing to promptly Ms. McGill to a hospital when it was needed;

- z. By failing to properly assess and monitor Ms. McGill's medical condition;
- aa. By failing to ensure that Ms. McGill was treated with consideration, dignity and respect;
- bb. By failing to provide medical attention for Ms. McGill in a prompt fashion;
- cc. By failing to ensure that Ms. McGill's family was promptly informed of changes in her medical condition;
- dd. By failing to adequately maintain and document medical records and charts with regard to Ms. McGill;
- ee. By failing to comply with state and federal reporting requirements with regard to Ms. McGill;
- ff. By failing to properly supervise the nursing staff;
- gg. By failing to adequately train the nursing staff; and,
- hh. In negligently hiring and/or retaining staff that they knew, or should have known, were incompetent to care for persons such as Ms. McGill.

83. At all times material hereto, the Nursing Home defendants, as well as their employees and agents, had a duty not to violate the legal rights of any resident, and had a duty to comply with all provisions of Title 28 of the Pennsylvania Administrative Code, Chapters 201 and 211, and Title 42 of the Code of Federal Regulations, § 483, *et seq.* Additionally, the above-referenced sections are part of the standard of care required of skilled nursing facilities.

84. The above noted regulations are designed and intended to protect the interests of persons such as Ms. McGill who are residing in facilities such as Ridgeview.

85. The above noted regulations are designed and intended to protect persons such as Ms. McGill against the neglect she encountered and the harm she suffered while residing at Ridgeview.

86. The Nursing Home defendants, their agents and employees, negligently violated the above-regulations in the following ways:

- a. By failing to meet minimum standards for operation of a long term care facility, in violation of 28 Pa. Code. § 201.14(a);
- b. By failing to adopt and enforce effective rules for the health, care and safety of the residents, as well as the general operation of the facility, , in violation of 28 Pa. Code. § 201.18(b);
- c. By failing to provide appropriate training and educational programs for the Ridgeview staff, in violation of 28 Pa. Code. § 201.20;
- d. By failing to establish appropriate written policies regarding the rights and responsibilities of residents, and by failing to develop and adhere to written policies and procedures that did exist, in violation of 28 Pa. Code. § 201.29(a);
- e. By failing to treat Lois B. McGill with consideration, respect and full recognition of dignity in individuality, including privacy in treatment and care, for necessary personal and social needs , in violation of 28 Pa. Code. § 201.29(j);
- f. By failing to maintain clinical records of Lois B. McGill, as required by 28 Pa. Code §211.5;
- g. By failing to prepare an adequate resident care policy for Lois B. McGill, and in particular, by failing to prepare a resident care policy for Lois B. McGill to ensure that she was protected from accident, injury, dehydration and infection, as required by 28 Pa. Code. §211.10;
- h. By failing to prepare an adequate resident care plan for Lois B. McGill, as required by 28 Pa. Code §211.11;

- i. By failing to prepare an adequate resident care plan for the nursing personnel caring Ms. McGill, as required by 28 Pa. Code §211.11;
- j. By failing to provide a sufficient number of personnel on a 24 hour basis to adequately care for Lois B. McGill, as required by 28 Pa. Code § 211.12;
-
- k. ~~By failing to provide appropriate minimum staffing ratios, as required by 28 Pa. Code § 211.12;~~
- l. By failing to provide at least 2.7 hours of direct nursing care daily to Lois B. McGill, as required by 28 Pa. Code § 211.12;
- m. By failing to provide appropriate standards of accepted nursing practice, nursing policy and procedure manuals, and methods for coordination of nursing services with other resident services, as required by 28 Pa. Code § 211.12;
- n. By failing to provide general supervision, guidance and assistance for residents such as Lois B. McGill, in implementing the resident's personal health program to assure that preventative measures, treatments, medications, diet and other health services prescribed are properly carried out and recorded, as required by 28 Pa. Code § 211.12;
- o. By failing to provide Lois B. McGill her rights, including the right to a dignified existence, as required by 42 C.F.R. § 483.10;
- p. By failing to promptly notify Lois B. McGill's family and her physician of Mrs. Hartman's falls or significant changes in her physical, mental and psychosocial status, as required by 42 C.F.R. § 483.10(b)(11);
- q. By failing to develop and implement written policies and procedures that prohibited the mistreatment, neglect and abuse of residents such as Lois B. McGill, as required by 42 C.F.R. § 483.13(c);
- r. By failing to prevent the occurrence of mistreatment, neglect and abuse of residents such as Lois McGill, as required by 42 C.F.R. § 483.13(c);

- s. By failing to care for Lois B. McGill in a manner that promoted maintenance or enhancement of her life, as required by 42 C.F.R. § 483.15;
- t. By failing to ensure that Lois B. McGill's needs were accommodated, as required by 42 C.F.R. § 483.15;
- u. By failing to develop a comprehensive care plan for Lois B. McGill, as required by 42 C.F.R. § 483.20;
- v. By failing to update a comprehensive care plan for Lois B. McGill, as required by 42 C.F.R. § 483.20;
- w. By failing to conduct, initially and periodically, a comprehensive and accurate assessment of Lois B. McGill's functional capacity, as required by 42 C.F.R. § 483.20;
- x. By failing to provide Lois B. McGill the necessary care and services to allow her to attain or maintain the highest, practicable, physical, mental, and psychosocial wellbeing, as required by 42 C.F.R. § 483.25;
- y. By failing to provide Lois B. McGill the appropriate treatment and services to allow her to maintain or improve her ability to toilet, bathe, dress, groom, and ambulate, as required by 42 C.F.R. § 483.25;
- z. By failing to assure that Lois B. McGill's environment remained as free of accident hazards as possible, as required by 42 C.F.R. § 483.25;
- aa. By failing to ensure that Lois B. McGill received adequate supervision, assistance and assistant devices to maintain safety and prevent accidents, such as falls, as required by 42 C.F.R. § 483.25;
- bb. By failing to ensure that Ridgeview had sufficient nursing staff to provide nursing and related services that would allow Lois B. McGill to attain or maintain the highest practicable, physical, mental and psychosocial wellbeing, as required by 42 C.F.R. § 483.30;
- cc. By failing to provide appropriate physical and occupational therapies, as required by 42 C.F.R. § 483.45;

- dd. By failing to ensure that Ridgeview was administered in a manner that enabled it to use its resources effectively and efficiently to allow Lois B. McGill to maintain or attain the highest, practicable level of physical, mental and psychosocial wellbeing, as required by 42 C.F.R. § 483.75; and,
- ee. By failing to maintain clinical records on Ms. McGill, in accordance with accepted professional standards and practices, and as required by 42 C.F.R. § 283.75.

87. The actions that caused the injuries and contributed to the ultimate death sustained by Ms. McGill would not have happened but for the negligent conduct of the Nursing Home defendants, in that:

- a. The injuries suffered by Ms. McGill would not have normally occurred without the absence of the Nursing Home defendants' negligent acts; and,
- b. The injuries and death suffered by Ms. McGill did not result from any voluntary action or contribution on the part of Ms. McGill.

88. Solely as a result of the negligent conduct of the Nursing Home defendants as aforesaid, the plaintiff, Mary K. Heverly, on behalf of those persons entitled by law to recover for the wrongful death of Lois B. McGill, has suffered the following injuries and damages:

- a. Money expended for funeral and estate expenses because of the death of Lois B. McGill;
- b. Denial and permanent loss of the services, assistance, guidance, counseling, companionship and society of Lois B. McGill;
- c. Deprival of the financial support and all pecuniary benefits which they would have received from Lois B. McGill;
- d. Expenses incurred in the administration of Ms. McGill's estate; and,

- e. Any hospital, medical and nursing expenses attendant to the treatment and death of Lois McGill.

WHEREFORE, the plaintiff, Mary K. Heverly, on behalf of those entitled by law to recover for the wrongful death of Lois B. McGill, demands compensatory and consequential damages from the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest, costs of the suit and attorneys' fees.

COUNT II

Survival - Negligence

89. The preceding paragraphs of this Complaint are incorporated herein as if set forth more fully at length.

90. As a direct and proximate result of the defendants' conduct as set forth above, Ms. McGill was injured and experienced conscious pain, suffering, and loss of enjoyment of life in the extreme, before dying on June 1, 2005.

91. As a result of the previously described negligent conduct of the Nursing Home defendants, the plaintiff, Mary K. Heverly, on behalf of the Estate of Lois B. McGill, seeks damages for the following items:

- a. Money expended for medical services and supplies incident to the treatment and subsequent death of the decedent, Lois B. McGill;
- b. Pain, suffering, inconvenience, anxiety, loss of enjoyment of life, and nervousness of Lois B. McGill until the time of her death;
- c. Any and all hospital, medical, surgical and nursing expenses incurred on behalf of Lois B. McGill not attendant to her death; and,

d. Other losses and damages permitted by law.

WHEREFORE, the plaintiff, Mary K. Heverly, on behalf of the Estate of Lois B. McGill, demands compensatory and consequential damages from the defendants, Curwensville Nursing Home, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc. d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc., in excess of Twenty-five Thousand Dollars (\$25,000.00), plus interest, costs of the suit and attorneys' fees.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

SHORT CERTIFICATE – Letters Of Administration - CTA**Certificate of Appointment of Administratrix CTA**

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

ss:

The undersigned, Register for the Probate of Wills and granting Letters of Administration in and for the County of Clearfield, in the Commonwealth of Pennsylvania.

DO HEREBY CERTIFY and made known, that on 8th day of March, 2007 Letters Of Administration - CTA on the Estate of LOIS B. MCGILL, deceased, were granted unto MARY KAY HEVERLY, Administratrix CTA having first given security well and truly to administer the same. I further certify that said letters are in full force and effect at the present time, and entitled to full faith and credit.

Date of Death: June 1, 2005
File #: 1705-0359
Social Security No.: 209-32-3104

Given under my hand and seal of office this 8th
day of March in the year of our Lord, 2007

_____
Register of Wills

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT
CURWENSVILLE NURSING HOME, INC.**

d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER

I, CHAD P. SHANNON, ESQUIRE, certify that:

✓ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

✓ The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

— Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

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d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT
GUARDIAN ELDER CARE, INC.**

d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER

I, CHAD P. SHANNON, ESQUIRE, certify that:

✓ An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

✓ The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

— Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

By: 

CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

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d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**CERTIFICATE OF MERIT AS TO DEFENDANT
GUARDIAN LTC MANAGEMENT, INC.**

I, CHAD P. SHANNON, ESQUIRE, certify that:

An appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the defendant in the treatment, practice or work that is the subject of the original Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about harm;

And

The claim that defendant deviated from an acceptable professional standard is based solely or in part on allegations that other licensed professionals for whom the defendant is responsible deviated from an acceptable professional standard, and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

Or

____ Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against the defendant.

Respectfully submitted,

PEIRCE, RAIMOND & COULTER, PC

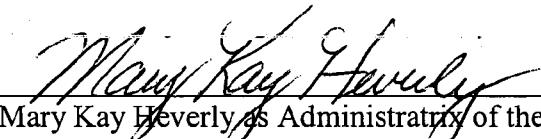
By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

VERIFICATION

I verify that the averments of fact made in the foregoing Complaint are true and correct and based on my personal knowledge, information or belief.

4-7-07

Dated


Mary Kay Heverly as Administrator of the Estate
of Lois McGill

11A
FILED

NOV 19 2007

11:10 AM

William A. Shaw

Prothonotary/Clerk of Courts

2 CFT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

PLAINTIFF'S FIRST MOTION TO COMPEL

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

Dated: November 12, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

PLAINTIFF'S FIRST MOTION TO COMPEL

AND NOW comes the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire; Robert F. Daley, Esquire; and the law firm of Robert Peirce & Associates, P.C., and files the above-referenced Motion, and in support thereof, avers as follows:

1. On or about September 5, 2007, Requests for Production of Documents and Interrogatories were served upon each of the defendants in this matter.
2. According to Pennsylvania Rules of Civil Procedure 4009.12 and 4006, responses to these discovery requests were due on or about October 5, 2007.
3. The due date passed without any responses being served upon the plaintiff.

4. On October 11, 2007, plaintiff's counsel, Robert F. Daley, sent a letter to defense counsel requesting the discovery and/or notification of when each of the defendants anticipated serving discovery responses upon the plaintiff.

5. To date, the plaintiff has yet to receive discovery responses nor any notification of when discovery will be served from any of the defendants.

6. As a result, the defendants are in violation of Pennsylvania Rules of Civil Procedure 4009.12, as well as Pennsylvania Rule of Civil Procedure 4006, as their responses are overdue.

7. Accordingly, the plaintiff is prejudiced in the prosecution of her case.

WHEREFORE, the plaintiff respectfully requests that this Honorable Court enter an Order compelling each of the defendants to provide Answers to Interrogatories, as well as Responses to Requests for Production of Documents, within twenty (20) days of the date of the Order.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PLAINTIFF'S FIRST MOTION TO
COMPEL was served by first class United States mail, postage prepaid, this 13th day of
November, 2007, upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: *Chad P. Shannon*
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

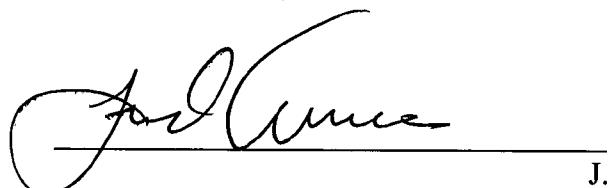
CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

ORDER OF COURT

AND NOW to wit, this 20 day of November, 2007, upon consideration
of the Plaintiff's First Motion to Compel, it is HEREBY ORDERED, ADJUDGED and DECREED
that said Motion is GRANTED and each of the defendants is compelled to provide Answers to
Interrogatories and Responses to Requests for Production of Documents to plaintiff's counsel within
twenty (20) days of the date of this Order.

BY THE COURT:



J. J. Curme

FILED ^{cc}
01/15/2007 Atty Shannon
NOV 20 2007
(AK)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

ORDER OF COURT

AND NOW to wit, this _____ day of _____, 2007, upon consideration
of the Plaintiff's First Motion to Compel, it is HEREBY ORDERED, ADJUDGED and DECREED
that this Court shall hear oral argument at _____ on
_____, the _____ day of _____, 2007 at _____ m.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

No.: 07-738-CD

PLAINTIFF'S FIRST MOTION TO COMPEL

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

FILED
M 11/06/08 10C
MAR 07 2008 Atty Shannon
GP
William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF CONFERENCE AND CONCURRENCE

I, Chad P. Shannon, Esquire, hereby state that I attempted to confer with defense counsel regarding the discovery issues in this matter; however, my attempt to confer was unsuccessful.

Additionally, when it became apparent that the Motion was necessary, I sought concurrence from defense counsel regarding the same. My attempt was unsuccessful.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

PLAINTIFF'S FIRST MOTION TO COMPEL

AND NOW comes the plaintiff, Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire; Robert F. Daley, Esquire; and the law firm of Robert Peirce & Associates, P.C., and files the above-referenced Motion, and in support thereof, avers as follows:

1. The Plaintiff served discovery Interrogatories and Request for Production of Documents upon the Defendants on September 5, 2007, which were finally answered on December 11, 2007. However, many of the Interrogatories and Request for Production of Documents were met with generalized objections.

2. To begin, in response to Interrogatory Nos. 13 and 14, the Defendants objects based upon over breadth and state that "...such information, if applicable, can be found in the

resident's chart." However, the Defendants reference to the resident's chart is entirely too vague, and essentially avoids a response to these Interrogatories. Defendants response in both Interrogatory 13 and 14 is improper because what is asked for is not only what was documented in the medical records, but also that which was done as a matter of practice, even if not contained in a formal document. For instance, some nursing homes place a red sticker outside the door of those individuals requiring turning and repositioning in bed, even though this practice is not memorialized. Accordingly, Plaintiff asks these questions to discuss whether such unwritten policies and procedures occurred during the relevant time. Therefore, Defendants reference to the resident's chart is improper, unless they contend that if a task is not documented in the resident's chart it was not done. If the "not charted/not done" concept is used at this facility, then the Defendants should respond accordingly.

3. Like Interrogatories Nos. 13 and 14, the Defendants evade the call of the question in Interrogatory 17 by again simply referring to the resident's chart. This Interrogatory seeks to discover not only those precautions which were formally implemented to protect the Plaintiff Decedent from falling, but also those practices and procedures (which may be informal) that were also utilized to prevent the same. Therefore, Defendants reference to the resident's chart is an improper response, unless the Defendants contend that if a task is not documented in the resident's chart, it was not done. Moreover, if the Defendants response is that tasks not documented are considered not done, then they should answer as such. Otherwise, the Defendants must supply a complete answer to Plaintiff's Interrogatory.

4. The Defendants answer Interrogatory No. 19, through reference to the Decedent Plaintiff's medical records. The information sought by Plaintiff is a list of those doctors who

were authorized to treat patients/residents at their facility. The Defendants are well aware of which physicians were authorized, granted privileges to practice, or otherwise contracted to administer treatment at their facility. Defendants answer assumes that all those who were granted privileges in their facility signed the chart. However, the Plaintiff is seeking a list of all the physicians who were granted privileges, and not just those who actually signed the chart, since there may have been physicians who provided care, but did not sign the chart.

5. The Defendants continue to use broad strokes in their objection to Interrogatory No. 22, stating that the Interrogatory is over broad and unduly burdensome, while referring the Plaintiff to the chart once again. Like the information sought in Interrogatories 13 and 14, the information requested in this Interrogatory is not unduly burdensome or overly broad, because the information sought is the type typically kept in the ordinary course of business and available at a moments notice. The Plaintiff would expect this information to be contained within receipts, invoices, purchase orders and accounts payable. Moreover, the request is time specific, to the period when the Decedent Plaintiff was a resident at the defendant's facility. Additionally, the Plaintiff is seeking not only information that appears in the record, but also those devices which may be utilized at the facility but not formally documented. If the Defendants contend that only those devices that appear in the record were utilized for the Plaintiff Decedent, the Defendants should answer as accordingly.

6. With respect to Interrogatory No. 24, the Plaintiff is simply asking for documents utilized in answering the Interrogatories. The Defendants assert that “[t]he documents include, but are not limited to decedent's facility chart, time sheets and policy procedure manuals.” However, this is only partially responsive, since the Plaintiff is asking for the defendants to

identify "...all documents used, related to, or referred to in connection with preparation of, or Answers to, these Interrogatories..." Clearly, the Defendants are aware of what information was used to prepare their Answers, and as such could identify ALL of the documents to Plaintiff's counsel without leaving doubt as to what they referred to.

7. Defendants answer to Interrogatory Nos. 30 and 31 are only partially responsive. The Plaintiff has asked if the Defendants, or anyone on their behalf, conducted an investigation, to which the Defendants again refer to the decedent's chart. While the chart does, in fact, contain incident reports, the Defendants do not state if these are the only people who investigated the incidents on their behalf. If the Defendants contend that these reports are the exhaustive list of those who conducted any investigation into the Decedent's incidents, then they should answer as such.

8. The Defendants object to Request for the Production of Documents No. 2; stating that this request is overly broad and unduly burdensome, and will necessitate an oppressive and unreasonable investigation. However, the documents sought are those advertisements, brochures, or other documentation containing representations made to the public for roughly a two month period (April 7, 2005 through June 1, 2005). These documents are likely kept in the ordinary course of business (possibly in an electronic form) in Defendant's marketing department, or with the individual directly responsible for marketing. As such, locating and retrieving these marketing documents would not necessitate an unreasonable investigation. Moreover, these marketing documents will likely be relatively small in number. Should the requested documents be voluminous, the Plaintiff is willing to inspect and select the relevant

pages or portions of the documents to be copied. Therefore, the Plaintiff is entitled to these documents, as this Request is not overly broad and/or unduly burdensome.

9. For Requests for the Production of Documents Nos. 4, 7, 8 and 9, the Defendants have objected based on over breadth. The Defendants have already provided some of the requested documents, and are willing to make the other documents available to Plaintiff counsel for inspection and copying. In the interest of time, and to ensure that those documents provided are comprehensive, Plaintiff would like to see copies of the table of contents or other indices for Defendant's the administrative, nursing, dietary, and resident care policies. This will also aid the Plaintiff in determining what records are relevant, prior to traveling to the Defendant's facility for copying.

10. Additionally, by letter dated January 16, 2008, plaintiff's counsel requested deposition dates for the following witnesses Timothy J. Lovenduski, Dawn Moore and Sue Carley.

11. However, despite allowing for six weeks of time to provide said dates for deposition, the defendant has failed to produce them and/or any information regarding the same.

12. The plaintiff has been prejudiced in her prosecution of the case by the defendant's insufficient discovery responses and failure to provide deposition dates.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an Order compelling each of the Defendants to provide full and complete Answers to Interrogatories, Responses to Requests for Production of Documents, and deposition dates for Timothy J. Lovenduski, Dawn Moore and Sue Carley within twenty (20) days of the date of the Order.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

LOCAL RULE 208.3(a)(1)(F) STATEMENT OF COUNSEL

In compliance with Local Rule 208.3, I hereby attest that I have read the Motion, and to
the best of my knowledge, information and belief, the within Motion contains good grounds to
support this Motion and is not interposed merely for delay.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PLAINTIFF'S FIRST MOTION TO
COMPEL was served by first class United States mail, postage prepaid, this 4 day of
March, 2008, upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: Chad P. Shannon
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

ORDER OF COURT

AND NOW, this 10 day of March, 2008, upon consideration of
the foregoing Motion, it is HEREBY ORDERED that:

(1) A Rule is issued upon the respondent to show cause why the moving party is not
entitled to the relief requested;

2. Respondent shall file an Answer to the Motion within _____ days of the date;

3. The Motion shall be decided under Pa. R.C.P. 206.7;

4. Depositions and all other discovery shall be completed within _____ day of
this date;

FILED
03/11/2008
MAR 11 2008
Atty Shannon

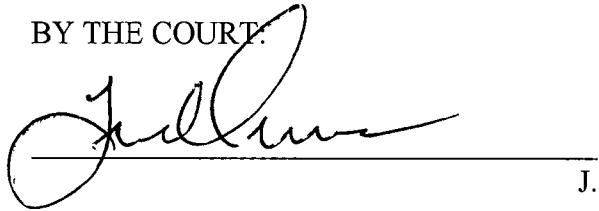
William A. Shaw
Prothonotary/Clerk of Courts

5. An evidentiary hearing on disputed issues of material fact shall be held on _____ in the Clearfield County Courthouse, Clearfield County, Pennsylvania, in Courtroom No.: _____;

6. An Argument shall be held on April 22, 2008, in Courtroom No. 1 of the Clearfield County Courthouse; and,

7. Notice of the entry of this Order shall be provided to all parties by the moving party.

BY THE COURT:



J. Miller

J.

FILED

4PR 04 2008
M 12:05/wn
William A. Shaw
Prothonotary/Clerk of Courts
L (ENT. ATTY
(6K)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

No.: 07-738-CD

NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

Dated: April 2, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND
THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

DATE: 4/2/08



Attorneys for Plaintiffs:

Chad P. Shannon, Esquire
PA I.D. No. 91212
Robert Peirce & Associates, P.C.
Firm I.D. No. 839
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219-1918
(412) 281-7229

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Mary K. Heverly

*

Lois B. McGill Estate

Plaintiff(s)

*

Vs.

No. 2007-00738-CD

Curwensville Nursing Home, Inc.

*

Guardian Elder Care, Inc.

Guardian LTC Management, Inc.

Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Division of Nursing Care Facilities, Attn: Director and/or Assistant Director
TO: Bureau of Facility Licensure and Certification, PA Dept. of Health
P. O. Box 90 (Name of Person or Entity) Harrisburg, PA 17108

Within twenty (20) days after service of this subpoena, you are ordered by the Court to
produce the following documents or things:

See Exhibit A attached hereto.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty
(20) days after its service, the party serving this subpoena may seek a court order compelling you
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

Chad P. Shannon, Esquire

NAME: Robert Peirce & Associates

ADDRESS: 2500 Gulf Tower, 707 Grant Street

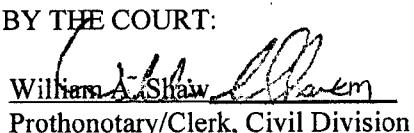
Pittsburgh, PA 15219-1918

TELEPHONE: 412-281-7229

SUPREME COURT ID # 91212

ATTORNEY FOR: PLAINTIFF

BY THE COURT:


William A. Shaw, Chancery
Prothonotary/Clerk, Civil Division

DATE: Monday, March 31, 2008

Seal of the Court

Deputy

EXHIBIT A

Records custodian of the Pennsylvania Department of Health shall bring:

1. A complete, unredacted copy of any documents whatsoever, regarding Lois B. McGill, who was a resident of Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center from approximately April 7, 2005 through June 1, 2005, and whose date of birth was August 27, 1908 and whose social security number was 209-32-3104.
2. A complete copy of any documents whatsoever, including H.C.F.A. Form 2567, regarding the Medicare/Medicaid Recertification Survey, State Licensure Survey, Civil Rights Compliance Survey at Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center that was conducted at any time during the following dates: April 7, 2005 through June 1, 2005.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.21 was served by first class United States mail, postage prepaid, this 2 day of
April, 2008, upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix
of the Estate of Lois B. McGill,
Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME,
INC., d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC., d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CIVIL DIVISION

07-738-CD

Code:

Issue No:

OBJECTIONS TO NOTICE OF INTENT
TO SERVE SUBPOENA PURSUANT TO
RULE 4009.22

Filed on behalf of Curwensville
Nursing Home, Inc., d/b/a Ridgeview
Elder Care Rehabilitation Center;
Guardian Elder Care, Inc., d/b/a
Ridgeview Elder Care Rehabilitation
Center; and Guardian LTC
Management, Inc. , Defendants

Counsel of Record for This Party:

Alan S. Baum, Esquire
PA I.D. 32729

MATIS BAUM RIZZA O'CONNOR
Firm #983
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222
(412) 338-4750

JURY TRIAL DEMANDED

FILED NO CC
APR 14 2008 GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|------------------------------------|---|----------------|
| MARY K. HEVERLY, as Administratrix |) | CIVIL DIVISION |
| of the Estate of Lois B. McGill, |) | |
| Deceased, |) | 07-738-CD |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| CURWENSVILLE NURSING HOME, |) | |
| INC., d/b/a RIDGEVIEW ELDER CARE |) | |
| REHABILITATION CENTER; GUARDIAN |) | |
| ELDER CARE, INC., d/b/a RIDGEVIEW |) | |
| ELDER CARE REHABILITATION |) | |
| CENTER; and GUARDIAN LTC |) | |
| MANAGEMENT, INC., |) | |
| |) | |
| Defendants. |) | |

**OBJECTIONS TO NOTICE OF INTENT
TO SERVE SUBPOENA PURSUANT TO RULE 4009.22**

AND NOW, come the Defendants, CURWENSVILLE NURSING HOME, INC., d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER; GUARDIAN ELDER CARE, INC., d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER; and GUARDIAN LTC MANAGEMENT, INC., by and through their attorneys, Matis Baum Rizza O'Connor, and file the within Objections to Plaintiff's Notice of Intent to Serve Subpoena to produce documents or things for discovery pursuant to Rule 4009.22, for the following reasons:

1. Plaintiff proposes to serve a subpoena upon the Pennsylvania Department of Health requesting:
 - (1) A complete, unredacted copy of any documents whatsoever, regarding Lois B. McGill, who was a resident of Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center from approximately April 7, 2005, through June 1, 2005, and whose date of birth was August 27, 1908 and whose Social Security No. was 209-32-3104.
 - (2) A complete copy of any documents whatsoever, including H.C.F.A. Form 2567, regarding the Medicare/Medicaid Recertification Survey, State Licensure Survey, Civil Rights Compliance Survey at Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center that was conducted any time during the following dates: April 7, 2005 through June 1, 2005. (See Exhibit "A" attached.)

2. Paragraph (1) of the Subpoena requests unredacted copies of any document regarding Lois B. McGill. Such documents include all investigation materials which may contain privileged and confidential information, including, but not limited to, residents' names not involved in this litigation. The requested documents may also contain information protected by the Peer Review Protection Act.

3. Paragraph (2) requests a complete copy of any document whatsoever produced anytime during Ms. McGill's admission. This is an over broad request and will most certainly contain documents and information regarding other residents and other incidents unrelated to the instant action.

4. Pursuant to HIPAA, the Department of Health should not and cannot be obligated to disclose requested private and protected healthcare information regarding other residents of Ridgeview Elder Care without their authorization.

5. Additionally, the information sought is irrelevant, overly broad and is seeking privileged information.

MATIS BAUM RIZZA O'CONNOR

By: 

Alan S. Baum, Esquire
PA I.D. 32729
Tara B. Stevens, Esquire
PA I.D. 203705
Attorneys for Curwensville Nursing Home,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; Guardian Elder Care,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; and Guardian LTC
Management, Inc. , Defendants

Matis Baum Rizza O'Connor
Four Gateway Center
444 Liberty Avenue
Suite 300
Pittsburgh, PA 15222
(412) 338-4750

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

No.: 07-738-CD

NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS
AND THINGS FOR DISCOVERY
PURSUANT TO RULE 4009.21

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

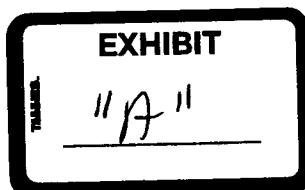
Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

Dated: April 2, 2008



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND
THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiff intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

DATE: 4/21/08

Chad P. Shannon

Attorneys for Plaintiffs:

Chad P. Shannon, Esquire
PA I.D. No. 91212
Robert Peirce & Associates, P.C.
Firm I.D. No. 839
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219-1918
(412) 281-7229

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Mary K. Heverly
Lois B. McGill Estate
Plaintiff(s)

Vs.

*

No. 2007-00738-CD

Curwensville Nursing Home, Inc.
Guardian Elder Care, Inc.
Guardian LTC Management, Inc.
Defendant(s)

*

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Division of Nursing Care Facilities, Attn: Director and/or Assistant Director
Bureau of Facility Licensure and Certification, PA Dept. of Health
P. O. Box 90 (Name of Person or Entity) Harrisburg, PA 17108

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

See Exhibit A attached hereto.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

Chad P. Shannon, Esquire
NAME: Robert Peirce & Associates
ADDRESS: 2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219-1918
TELEPHONE: 412-281-7229
SUPREME COURT ID # 91212
ATTORNEY FOR: PLAINTIFF

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, March 31, 2008
Seal of the Court

Deputy

EXHIBIT A

Records custodian of the Pennsylvania Department of Health shall bring:

1. A complete, unredacted copy of any documents whatsoever, regarding Lois B. McGill, who was a resident of Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center from approximately April 7, 2005 through June 1, 2005, and whose date of birth was August 27, 1908 and whose social security number was 209-32-3104.
2. A complete copy of any documents whatsoever, including H.C.F.A. Form 2567, regarding the Medicare/Medicaid Recertification Survey, State Licensure Survey, Civil Rights Compliance Survey at Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center that was conducted at any time during the following dates: April 7, 2005 through June 1, 2005.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the NOTICE OF INTENT TO SERVE A
SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.21 was served by first class United States mail, postage prepaid, this 2 day of
April, 2008, upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

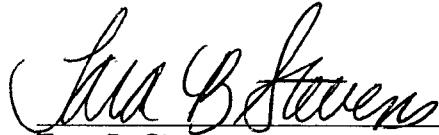
By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing
OBJECTIONS TO NOTICE OF INTENT TO SERVE SUBPOENA PURSUANT TO RULE 4009.22 upon
all counsel of record by United States, First-class mail, postage prepaid, this 10 day of
April, 2008.

Chad P. Shannon, Esquire
Robert Peirce & Associates, PC
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

MATIS BAUM RIZZA O'CONNOR



Tara B. Stevens

FILED

MAY 20 2008
03:50 PM

William A. Shaw
Prothonotary/Clerk of Courts
Clerk to

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ATTY'S C. SHANNOV

CIVIL DIVISION

A. BANK

+
T. STEVENS

MARY K. HEVERLY, as Administratrix of the Estate of Lois B. McGill, Deceased
VS. NO. 07-738-CD
CURWENSVILLE NURSING HOME, INC., d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER; GUARDIAN ELDER CARE, INC., d/b/a RIDGEVIEW ELDER CARE REHABILITATION CENTER; and GUARDIAN LTC MANAGEMENT, INC.

ORDER

May 5/08

AND NOW, this 20th day of ~~April~~, 2008, following argument on the Plaintiff's Motion to Compel and relative Defendant's Objections to Serve Subpoena, it is the ORDER of this Court as follows:

1. The Motion to Compel is dismissed as to Interrogatories 13 and 14;
2. The Motion to Compel is granted in regard to Interrogatory 22. Defendant shall have no more than forty-five (45) days to supplement his answer;
3. the Motion to compel is granted in regard to Interrogatory 24 only insomuch as the Defendant shall have no more than thirty (30) days from this date in which to supplement its answer in regard to the provisions of the current answer which state "are not limited to";

4. The Motion to Compel is granted in regard to Interrogatories 30 and 31 in that the Defendant shall have no more than thirty (30) days from this date in which to supplement his answer in the event there are any further investigations other than which may be listed on the decedent's chart;

5. the Motion to Compel in regard to Interrogatories 17 and 19 are dismissed in that the Defendant has certified that the information being requested is contained in the decedent's medical records. The Court notes that Defendant shall have an ongoing obligation to supplement discovery if the Defendant should learn otherwise;

6. The Court notes that the Plaintiff has withdrawn its Request for Production of Document No. 2;

7. In regard to the Request for Production of Document 4, Plaintiff shall be permitted to copy the entire manual at Plaintiff's expense; specifically, the Defendant shall, within a reasonable period of time, copy the manual and provide the copy of the same to the Plaintiff upon payment of reasonable expenses;

8. Plaintiff's Request for Production of Document 7 is dismissed. However, the Plaintiff shall have the right following the making of appropriate arrangements to go to Ridgeview Elder Care facility and review all documents and policies, books and other items in question and request that copies of the relevant portions of the same be made, again at

Plaintiff's expense;

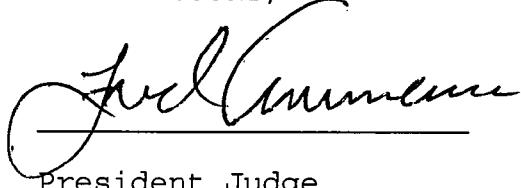
9. Plaintiff's Request for Production of Documents 8 and 9 are dismissed in that the Court believes that the Plaintiff will receive copies of requested documents, if they exist, through the procedures as set forth relative Plaintiff's Request for Production of Documents 4 and 7 above;

10. The depositions of Dawn Moore and Sue Carley shall be completed within no more than ninety (90) days from this date;

11. In regard to the Defendant's Objections to Serve Subpoena, the objection to the information requested in Paragraph 1(1) is dismissed with the exception that the document to be provided by the Department of Health shall be redacted.

12. The objection to subpoena requesting the information in Paragraph 1(2) is granted. However, the Plaintiff shall be at liberty to file a further petition with the Court requesting that a subpoena be issued and attaching information from appropriate and relevant information from the Department of Health's website concerning these issues.

BY THE COURT,



A handwritten signature in black ink, appearing to read "Fred L. Gammie". The signature is fluid and cursive, with a prominent "F" at the beginning.

President Judge

FILED
M 10:43a.m. 06
JUN 19 2008 NO CC

William A. Shaw
Prothonotary/Clerk of Courts 06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix
of the Estate of Lois B. McGill,
Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME,
INC., d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC., d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CIVIL DIVISION
07-738-CD
Code:
Issue No:

NOTICE OF SERVICE

Filed on behalf of Curwensville
Nursing Home, Inc., d/b/a Ridgeview
Elder Care Rehabilitation Center;
Guardian Elder Care, Inc., d/b/a
Ridgeview Elder Care Rehabilitation
Center; and Guardian LTC
Management, Inc. , Defendants

Counsel of Record for This Party:

Alan S. Baum, Esquire
PA I.D. 32729
Tara B. Stevens, Esquire
PA I.D. 203705

MATIS BAUM RIZZA O'CONNOR
Firm #983
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222
(412) 338-4750

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix) CIVIL DIVISION
of the Estate of Lois B. McGill,)
Deceased,) 07-738-CD
Plaintiff,)
vs.)
CURWENSVILLE NURSING HOME,)
INC., d/b/a RIDGEVIEW ELDER CARE)
REHABILITATION CENTER; GUARDIAN)
ELDER CARE, INC., d/b/a RIDGEVIEW)
ELDER CARE REHABILITATION)
CENTER; and GUARDIAN LTC)
MANAGEMENT, INC.,)
Defendants.

NOTICE OF SERVICE OF ANSWERS TO INTERROGATORIES
AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Please take notice that on the 17th day of June, 2008, we served Answers to Plaintiff's Interrogatories and Responses to Request for Production of Documents upon Mary K. Heverly, Plaintiff, through her attorney, Chad P. Shannon, Esquire.

MATIS BAUM RIZZA O'CONNOR

By:



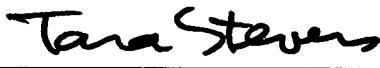
Alan S. Baum, Esquire
Tara B. Stevens, Esquire
Attorneys for Curwensville Nursing Home,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; Guardian Elder Care,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; and Guardian LTC
Management, Inc. , Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Notice of Service upon all counsel of record by United States, First-class mail, postage prepaid, this 17th day of June, 2008.

Chad P. Shannon, Esquire
Robert Peirce & Associates, PC
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

MATIS BAUM RIZZA O'CONNOR



Tara B. Stevens, Esquire

FILED

At 11:50 a.m. 6K
AUG 06 2008

ICC Amy Stevens

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARY K. HEVERLY, as Administratrix
of the Estate of Lois B. McGill,
Deceased,

Plaintiff,

vs.

CURWENSVILLE NURSING HOME,
INC., d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC., d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CIVIL DIVISION

07-738-CD

Code:

Issue No:

NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFF

Filed on behalf of Curwensville
Nursing Home, Inc., d/b/a Ridgeview
Elder Care Rehabilitation Center;
Guardian Elder Care, Inc., d/b/a
Ridgeview Elder Care Rehabilitation
Center; and Guardian LTC
Management, Inc. , Defendants

Counsel of Record for This Party:

Alan S. Baum, Esquire
PA I.D. 32729
Tara B. Stevens, Esquire
PA I.D. 203705

MATIS BAUM RIZZA O'CONNOR
Firm #983
444 Liberty Avenue, Suite 300
Pittsburgh, PA 15222
(412) 338-4750

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

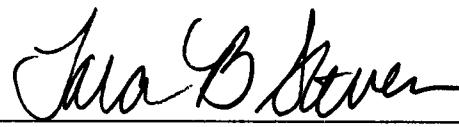
MARY K. HEVERLY, as Administratrix) CIVIL DIVISION
of the Estate of Lois B. McGill,)
Deceased,) 07-738-CD
)
 Plaintiff,)
)
 vs.)
)
 CURWENSVILLE NURSING HOME,)
 INC., d/b/a RIDGEVIEW ELDER CARE)
 REHABILITATION CENTER; GUARDIAN)
 ELDER CARE, INC., d/b/a RIDGEVIEW)
 ELDER CARE REHABILITATION)
 CENTER; and GUARDIAN LTC)
 MANAGEMENT, INC.,)
)
 Defendants.)
)

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF**

TO: PROTHONOTARY OF Clearfield COUNTY

Please take notice that on the 4th day of August, 2008, we served Interrogatories and Request for Production of Documents upon Mary K. Heverly, Plaintiff, through her attorney, Chad P. Shannon, Esquire.

MATIS BAUM RIZZA O'CONNOR

By: 

Alan S. Baum, Esquire
Tara B. Stevens, Esquire
Attorneys for Curwensville Nursing Home,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; Guardian Elder Care,
Inc., d/b/a Ridgeview Elder Care
Rehabilitation Center; and Guardian LTC
Management, Inc. , Defendants

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the foregoing Notice of Service upon all counsel of record by United States, First-class mail, postage prepaid, this 4th day of August, 2008.

Chad P. Shannon, Esquire
Robert Peirce & Associates, PC
2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219

MATIS BAUM RIZZA O'CONNOR



Tara B. Stevens

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

PETITION FOR APPROVAL OF
SETTLEMENT AND DISTRIBUTION OF
WRONGFUL DEATH AND SURVIVAL
ACTIONS

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

FILED 2cc
M 10/3/2009 Atty Shannon
APR 8 3 2009
5

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

**PETITION FOR APPROVAL OF SETTLEMENT
AND DISTRIBUTION OF WRONGFUL DEATH AND SURVIVAL ACTIONS**

AND NOW, comes the Plaintiff/Petitioner, Mary K. Heverly as Administratrix of the Estate of Lois B. McGill, Deceased, by and through her undersigned counsel, Chad P. Shannon, Esquire and the law firm of Robert Peirce and Associates, P.C., and files the following Petition for Approval of Settlement and Distribution of Wrongful Death and Survival Actions, pursuant to Rule of Civil Procedure § 2206(b)(1):

1. This action was commenced in the Court of Common Pleas of Clearfield County, Pennsylvania on behalf of the Plaintiff/Petitioner to recover damages for the negligent medical care and subsequent death suffered by her mother, Lois B. McGill, while she was in the care of the Defendant.

2. The Estate of Lois B. McGill alleged that while she was in the care of the Defendant, and because of the negligence of the Defendant, she was allowed to suffer poor nursing care, which eventually led to her death on June 1, 2005.

3. The Defendant vigorously contested these allegations, and asserted various defenses to the claims made on behalf of Mrs. McGill's Estate.

4. Mary K. Heverly was appointed as Administratrix of the Estate of Lois B. McGill on March 8, 2007, by the Register of Wills of Clearfield County, Pennsylvania. Attached hereto as Exhibit A is a Short Certified dated March 8, 2007.

5. Lois B. McGill was survived by the following wrongful death beneficiaries: Mary K. Heverly, daughter; Thomas McGill, son.

6. Plaintiff/Petitioner has entered into a settlement agreement with the Defendant and its insurance company to settle this action pursuant to the Wrongful Death Statute, subject to the approval of the settlement pursuant to Pennsylvania Rule of Civil Procedure § 2206(b)(1) and 42 Pa. C.S.A. § 8301.

7. The total amount of the proposed settlement is \$30,000.00. A copy of the proposed Release is attached hereto as Exhibit B.

8. After reduction for attorneys' fees and costs, the Plaintiff/Petitioner proposes that \$3,218.95 be distributed to each of the two wrongful death beneficiaries identified above.

9. There is an estate lien held on the case by Medicare, which must be reimbursed in the amount of \$367.44.

10. The funds owed to any lien holder will be placed in Robert Peirce and Associates' IOLTA Escrow Account until these matters can be administratively processed with those entities.

Should there be a reduction in the amount of any lien owed, counsel for Plaintiff/Petitioner will distribute the funds in accordance with the allocation proposed in this Petition.

11. The strength of this case was in the wrongful death count, as the death certificate of Lois B. McGill lists a contributing cause of death as closed head trauma, an injury that was caused by the defendant allowing Ms. McGill to fall. Lois McGill's death certificate is attached hereto as Exhibit C.

12. Plaintiff's counsel has contacted all known potential lien holders, including Medicare, the Pennsylvania Department of Public Welfare, and any private insurers known to plaintiff's counsel through the client for medical bills related to this matter.

13. Because this settlement was achieved in large part based on the strength of the wrongful death count, and because the means are limited in this matter, the Plaintiff/Petitioner proposes that the allocation of funds between the wrongful death and survival counts is fair and reasonable and appropriate.

14. On March 19, 2009 the Pennsylvania Department of Revenue issued an approval letter of the allocation of settlement funds as per this Petition for Approval of Settlement and Distribution of Wrongful Death and Survival Actions. A copy of that letter is attached hereto as Exhibit D.

15. Chad P. Shannon and the law firm of Robert Peirce & Associates, P.C., counsel for the Plaintiff/Petitioner, hereby requests counsel fees in the amount of \$9,000.00, (reduced from 40% to 30%) which, in counsel's opinion is reasonable.

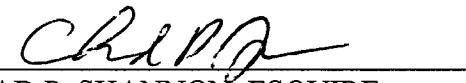
16. Counsel also requests reimbursement for costs or disbursements in the amount of \$4,537.81.

17. Based on the foregoing, Plaintiff/Petitioner represents that the proposed settlement distribution of wrongful death and survival actions is fair and reasonable.

WHEREFORE, the Plaintiff/Petitioner respectfully requests that this Honorable Court enter an Order approving the settlement and distribution of decedent's wrongful death and survival claims as outlined above, and in the proposed Order of Court attached hereto.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER; GUARDIAN
ELDER CARE, INC. d/b/a RIDGEVIEW
ELDER CARE REHABILITATION
CENTER; and GUARDIAN LTC
MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PETITION FOR APPROVAL OF
SETTLEMENT AND DISTRIBUTION OF WRONGFUL DEATH AND SURVIVAL ACTIONS
was served by first class United States mail, postage prepaid, this 1 day of April,
2009, upon the following:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: 
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff

SHORT CERTIFICATE – Letters Of Administration - CTA

Certificate of Appointment of Administratrix CTA

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

} ss:

The undersigned, Register for the Probate of Wills and granting Letters of Administration in and for the County of Clearfield, in the Commonwealth of Pennsylvania.

DO HEREBY CERTIFY and make known, that on 8th day of March, 2007 Letters Of Administration - CTA on the Estate of LOIS B. MCGILL, deceased, were granted unto MARY KAY HEVERLY, Administratrix CTA having first given security well and truly to administer the same. I further certify that said letters are in full force and effect at the present time, and entitled to full faith and credit.

Date of Death: June 1, 2005
File #: 1705-0359
Social Security No.: 209-32-3104

Given under my hand and seal of office this 8th
day of March in the year of our Lord, 2007

Karen D. Storch

Register of Wills

MY COMMISSION EXPIRES
FIRST MONDAY IN JANUARY 2008



FULL AND FINAL RELEASE

FOR AND IN CONSIDERATION of the sum of Thirty Thousand Dollars (\$30,000.00), paid by or on or behalf of *Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc.*, receipt of which is hereby acknowledged, I, *Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased* (hereinafter "Releasor") do hereby fully and forever release, acquit and discharge *Curwensville Nursing Home, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; Guardian Elder Care, Inc., d/b/a Ridgeview Elder Care Rehabilitation Center; and Guardian LTC Management, Inc.*, and any and all other persons, corporations and/or other entities which are or might be claimed to be liable to me, to the Estate, or to any beneficiary, together with all agents, employees, heirs, administrators, executors, successors, assigns and insurers of each of them (hereinafter collectively referred to as "Releasees"), from any and all actions, causes of action, claims or demands, of whatever kind or nature, for any known or unknown injuries, losses or damages allegedly sustained by me, the *Estate of Lois B. McGill*, or any beneficiary of *Lois B. McGill*, and related in any way to *Lois B. McGill's* death and/or illnesses which preceded her death, including those injuries, losses or damages for which I, or *Lois B. McGill*, or the *Estate of Lois B. McGill* did or could have commenced an action in the Court of Common Pleas of Clearfield County, Pennsylvania, at Docket No. 07-738-CD, or at any other number or in any other Court.

I fully understand and agree to the following:

1. The acceptance of said sum is in full accord and satisfaction of a disputed claim and the payment of said sum is not an admission of any liability.
2. This release and settlement is intended to cover and does cover not only all now known injuries, losses or damages, but any future injuries, losses or damages not now known or anticipated, but which may later develop or be discovered, including all the effects and consequences thereof.
3. The amount stated in this release is the sole consideration of this release and I voluntarily accept said sum for the purpose of making a full and final compromise, adjustment and settlement of all claims that I, or any beneficiary of the *Estate of Lois B. McGill* might now or in the future have for any injuries, losses or damages.

EXHIBIT

B

4. This is the complete release agreement, and there are no written or oral understandings or agreements, directly or indirectly connected with this release and settlement that are not incorporated herein.

5. I hereby agree, on my behalf, on behalf of the Estate and beneficiaries of *Lois B. McGill* and on behalf of all of the heirs, successors and/or assigns, to indemnify and save forever harmless the Releasees named in this document from and against any and all claims, demands or actions, known or unknown, made against the Releasees by any person or entity on account of, or in any manner related to the injuries, losses and/or damages covered by this Release.

6. This settlement is conditioned upon my undertaking all necessary action to obtain any required court approval for the settlement, compromise or resolution of this claim. If this settlement is ever determined by any court to be without effect because some necessary court approval was not obtained, or if any Releasee is subjected to further legal action or claim which could not have been instituted or presented had proper court approval been obtained by me, I agree on behalf of the Estate and beneficiaries of *Lois B. McGill* to indemnify the Releasees for any future loss, costs, or expense, including but not limited to, reasonable attorney's fees for defending, litigating and settling any such claim or action, and for any judgment resulting from any such claim or action.

IT IS FURTHER UNDERSTOOD AND AGREED BY ME AND MY ATTORNEYS THAT I, MY FAMILY, ALL BENEFICIARIES OF *LOIS B. MCGILL* AND THE ATTORNEYS AND OTHERS REPRESENTING ME AND THE ESTATE OF *LOIS B. MCGILL*, SHALL DECLINE COMMENT ON ANY ASPECT OF THIS CASE OR SETTLEMENT TO ANY PERSON, OR TO ANY MEMBER OF THE NEWS MEDIA, AND SHALL NOT EITHER DIRECTLY OR INDIRECTLY DISCLOSE OR REVEAL TO ANY PERSON, OR IN ANY WAY PUBLICIZE OR CAUSE TO BE PUBLICIZED IN ANY NEWS OR COMMUNICATIONS MEDIA, INCLUDING BUT NOT LIMITED TO NEWSPAPERS, MAGAZINES, JOURNALS, RADIO OR TELEVISION, THE FACTS OF THIS CASE, THE EXISTENCE OF THIS SETTLEMENT, OR THE TERMS AND CONDITIONS OF THIS SETTLEMENT. IF I, MY FAMILY, REPRESENTATIVE(S) OR ATTORNEYS(S) FILE ANY COURT DOCUMENTS(S) IDENTIFYING THE TERMS AND/OR CONDITIONS OF THIS SETTLEMENT, (e.g. PETITION FOR APPROVAL OF SETTLEMENT OF WRONGFUL DEATH ACTION, APPROVAL OF ESTATE AUDIT OR ACCOUNTING, ETC.), I WILL REQUEST THE COURT TO SEAL SUCH DOCUMENT(S) AND TAKE WHATEVER STEPS ARE NECESSARY TO ASSURE SUCH DOCUMENT(S) ARE NOT ACCESSIBLE OR DISCLOSED TO ANYONE. THIS PARAGRAPH IS INTENDED TO BECOME PART OF THE CONSIDERATION FOR SETTLEMENT OF THIS CLAIM.

This agreement shall be construed that wherever applicable, the use of the singular number shall include the plural number.

Each party shall bear their own costs.

This agreement shall be binding upon and inure to the successors, assigns, heirs, executors, administrators, and legal representatives of all parties.

I represent that 1) I am the duly appointed Administratrix of the Estate of *Lois B. McGill* and that either 2) there are no asserted or potential claims or liens against *Lois B. McGill*, the Estate of *Lois B. McGill*, or the assets of *Lois B. McGill* by any third-party payor, including but not limited to Medicare, Medicaid, the Pennsylvania Department of Public Welfare, Pennsylvania Blue Shield, Blue Cross of Western Pennsylvania and Champus, or 3) any such asserted or potential claim or lien has been or will be settled or satisfied from the funds received from this settlement. I agree on behalf of myself, the Estate of *Lois B. McGill* and all beneficiaries of the Estate of *Lois B. McGill* to indemnify and hold harmless the Releasees, their attorneys and insurers, from and against any and all losses, claims, liens, charges, fees, costs (including reasonable attorney's fees), interest or other sums incurred

as a result of any third-party payor asserting, imposing or enforcing a claim or lien related in any way to the injuries or damages for which Releasees are making payment to me under the terms of this Release.

I hereby declare that I have read all of the terms of this agreement; have discussed them with our legal counsel; fully understand them and do accept them for the express purposes of settling the above-described claim and for precluding forever any further or additional legal action arising out of that claim.

IN WITNESS WHEREOF, I have set my hand and seal this _____ day of
_____, 2009.

Witness

*Mary K. Heverly, as Administratrix of the
Estate of Lois B. McGill, Deceased*

I am counsel for the plaintiff, *Mary K. Heverly, as Administratrix of the Estate of Lois B. McGill, Deceased*, and I have reviewed the terms of the foregoing settlement. I agree on behalf of myself and the other attorneys and employees of my law firm, to be bound to the terms of the settlement relating to non-disclosure of the existence and/or terms of this settlement as set forth in the underlined paragraph above.

Chad P. Shannon, Esquire

LOCAL REGISTRAR'S CERTIFICATION OF DEATH



CERT. NO. T 5913298

June 4, 2005

Date of Issue of This Certification

| | | | | | |
|--|--|-------------------------------|-------------------------|----------------------------|---------------------------|
| Name of Decedent | LOIS | | B. | MC GILL | |
| Sex | Female | First | 209 - 32 - 3104 | Middle | Last |
| Date of Birth | August 27, 1908 | | Glen Hope, Pennsylvania | Date of Death June 1, 2005 | |
| Place of Death | Clearfield Hospital | Facility Name | Clearfield | Clearfield Boro | Pennsylvan |
| Race | White | Occupation | School Teacher | County | City, Borough or Township |
| Marital Status | Widowed | Decedent's Mailing Address | 80 Thomas C. Mc Gill | Street | State Coalport PA 1662 |
| Informant | Funeral Director | | Daniel J. Gibbons | | |
| Name and Address of Funeral Establishment | Gibbons Funeral Home, 1085 Main Street, Coalport, PA 16627 | | | | |

Part I: Immediate Cause

(a) Cardiac Arrest

Interval Between
Onset and Death

5 min.

(b) Congestive Heart Failure

12 hours

(c)

(d)

Part II: Other Significant Conditions

Manner of Death

Describe how injury occurred:

Natural Homicide

Accident Pending Investigation

Suicide Could not be Determined

Name and Title of Certifier

Scott R. Strauss, D.O.

(M.D., D.O., Coroner, M.I.)

Address

531-A Hannah Street, Clearfield, PA 16830

This is to certify that the information here given is correctly copied from an original certificate of death duly filed with me as Local Registrar. The original certificate will be forwarded to the State Vital Records Office for permanent filing.

Robert L. Garrison
Local Registrar of Vital Records

17-180

District No.

June 4, 2005

639 Union Street

Coalport 16627

City, Borough Township

Date Received by Local Registrar

Street Address





COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
BUREAU OF INDIVIDUAL TAXES
PO Box 280601
HARRISBURG, PA 17128-0601

March 19, 2009

Chad P. Shannon
Robert Peirce & Associates, P.C.
2500 Gulf Tower
707 Grant Street
Pittsburgh, PA 15219-1918

Re: Estate of Lois B. McGill
File Number 1705-0359
Court of Common Pleas Clearfield County

Dear Mr. Shannon:

The Department of Revenue has received the Petition for Approval of Settlement Claim to be filed on behalf of the above-referenced Estate in regard to a wrongful death and survival action. It has been forwarded to this Bureau for the Commonwealth's approval of the allocation of the proceeds paid to settle the actions.

Pursuant to the Petition, the 96 year old decedent died as a result of negligence. Decedent is survived by her two adult children.

Please be advised that, based upon these facts and for inheritance tax purposes only, this Department has no objection to the proposed allocation of the net proceeds of this action, \$6,437.90 to the wrongful death claim and \$ 9,656.85 to the survival claim. Proceeds of a survival action are an asset included in the decedent's estate and are subject to the imposition of Pennsylvania inheritance tax. 42 Pa.C.S.A. §8302; 72 P.S. §9106, 9107. Costs and fees must be deducted in the same percentages as the proceeds are allocated. In re Estate of Merryman, 669 A.2d 1059 (Pa. Cmwlth. 1995).

I trust that this letter is a sufficient representation of the Department's position on this matter. As the Department has no objections to the Petition, an attorney from the Department of Revenue will not be attending any hearing regarding it. Please contact me if you or the Court has any questions or requires anything additional from this Bureau.

Sincerely,

Shannon E. Baker
Trust Valuation Specialist
Inheritance Tax Division
Bureau of Individual Taxes

PHONE: 717-783-5824 • FAX: 717-783-3467 • EMAIL: shabaker@state.pa.us

EXHIBIT

tabbed

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. EVERLY, as Administratrix
of the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

FILED 200
04/06/09 Atty
APR 06 2009 Shannon

S William A. Shaw
Prothonotary/Clerk of Courts (GL)

CURWENSVILLE NURSING HOME,
INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT,
INC.,

Defendants.

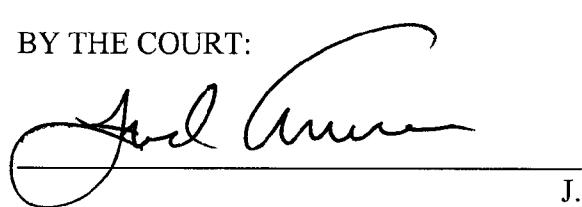
ORDER OF COURT

AND NOW, to-wit, this 6th day of April, 2009, upon consideration of the
foregoing Petition for Approval of Settlement and Distribution of Wrongful Death and Survival
Actions, it is hereby ORDERED, ADJUDGED and DECREED that said Petition is GRANTED,
and Chad P. Shannon, Esquire and the law firm of Robert Peirce & Associates, P.C., are hereby
instructed to distribute the settlement funds of \$30,000.00 as follows:

| | | |
|---|----|----------|
| Robert Peirce & Associates, P.C. Attorneys' Fees: | \$ | 9,000.00 |
| Robert Peirce & Associates, P.C. Reimbursement of Costs: | \$ | 4,537.81 |
| Medicare: Reimbursement of Medical Payments: | \$ | 367.44 |

| | | |
|--|----|----------|
| Mary K. Heverly Wrongful Death Beneficiary: | \$ | 3,218.95 |
| Thomas McGill Wrongful Death Beneficiary: | \$ | 3,218.95 |
| Estate of Lois B. McGill Survival Action Beneficiary: | \$ | 9,656.85 |

BY THE COURT:



A handwritten signature in black ink, appearing to read "Jud. Anna", is written over a horizontal line. The line starts with a small circle on the left and ends with a small circle on the right, enclosing the signature.

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME,
INC. d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

PRAECIPE FOR SETTLEMENT AND
DISCONTINUANCE

Filed on behalf of: Plaintiff, Mary K. Heverly,
as Administratrix of the Estate of Lois B.
McGill, Deceased

Counsel of Record for this Party:

CHAD P. SHANNON, ESQUIRE
Pa. I.D. No.: 91212

ROBERT PEIRCE & ASSOCIATES, PC
Firm I.D. 839

2500 Gulf Tower, 707 Grant Street
Pittsburgh, PA 15219
(412) 281-7229

FILED NO CC
MAY 08 2009
APR 29 2009
S (60)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

TO: THE PROTHONOTARY:

Please settle and discontinue the above-captioned case and mark it off the docket, or
satisfy Verdict, Award or Judgment. There are no matters to be decided with regard to the
additional defendant.

Carl P. Jr.
ATTORNEY FOR PLAINTIFF

| | |
|---|--|
| <input checked="" type="checkbox"/> Attorney for Plaintiff | <input type="checkbox"/> Attorney for Defendant |
| <input type="checkbox"/> Attorney for Crossclaim | <input type="checkbox"/> Sheriff Due |
| <input type="checkbox"/> Secretary of Commonwealth | <input type="checkbox"/> Sheriff Mileage |
| <input checked="" type="checkbox"/> Prothonotary S&D with Issue Costs | <input type="checkbox"/> County Verdict |
| <input type="checkbox"/> Orders | <input type="checkbox"/> Awards from Arbitration |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Equity |
| <input type="checkbox"/> Case & Counterclaim or Crossclaim | <input type="checkbox"/> Plaintiff's Bill |
| <input type="checkbox"/> Witness Bill | <input type="checkbox"/> Judgment on Verdict |
| <input type="checkbox"/> M.L. | <input type="checkbox"/> D.S.B. |
| <input type="checkbox"/> Execution-Sat. or S&D | <input type="checkbox"/> Garnishes Fee |

DATE: Apr. 1 24, 2009

PRO. COSTS:

Sworn to and subscribed before me this 23rd day of April, 2009.

NOTARY PUBLIC **COMMONWEALTH OF PENNSYLVANIA**

Notarial Seal
Anna Marie Cubbage, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires June 20, 2010

Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Civil Division

MARY K. HEVERLY, as Administratrix of
the Estate of Lois B. McGill, Deceased,

Plaintiff,

vs.

No.: 07-738-CD

CURWENSVILLE NURSING HOME, INC.
d/b/a RIDGEVIEW ELDER CARE
REHABILITATION CENTER;
GUARDIAN ELDER CARE, INC. d/b/a
RIDGEVIEW ELDER CARE
REHABILITATION CENTER; and
GUARDIAN LTC MANAGEMENT, INC.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praeclipe to Settle and Discontinue was served this 24 day of April, 2009, by first class United States mail, postage prepaid, addressed as follows:

Alan S. Baum, Esquire
Matis Baum Rizza O'Connor
Four Gateway Center, Suite 300
444 Liberty Avenue
Pittsburgh, PA 15222

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES, P.C.

By: *Chad P. Shannon*
CHAD P. SHANNON, ESQUIRE
Counsel for Plaintiff