

VIRGINIA:

CIRCUIT COURT FOR THE CITY OF RICHMOND

Gordon P. Sloan, Administrator of the Estate of
Marjorie V. Sloan,

Plaintiff

v.

Encompass Home Health of Mid Atlantic, LLC
d/b/a Encompass Health Home Health

and

Encompass Health Corporation
a/k/a Encompass Health Corp.
9001 Liberty Pkwy
Birmingham, AL 35242-7509
Serve: Registered Agent CT Corporation System
4701 Cox Road, Suite 285
Glenn Allen, VA 23060

and

One Heart One Hand LLC
d/b/a One Heart, One Hand
Serve: Registered Agent Vaughn Quash
10241 Epsilon Road
Richmond, VA 23235

Defendants

Law CL19-2153-7

AMENDED COMPLAINT

COMES NOW Plaintiff, Gordon P. Sloan, as Administrator of the Estate of Marjorie Sloan, deceased, and moves this Court for judgment against Defendants Encompass Home Health of Mid Atlantic, LLC, d/b/a Encompass Health Home Health, Encompass Health

Corporation and One Heart One Hand LLC, jointly and severally, and in support thereof, states as follows:

1. Plaintiff brings this action through the Administrator of her Estate on behalf of the Estate and Gordon P. Sloan, who suffered damages and losses. Gordon P. Sloan was appointed as Administrator of the Estate of Marjorie V. Sloan (“Ms. Sloan) on or about June 28, 2018, in the Circuit Court for the City of Richmond.

2. At all relevant times herein, Marjorie V. Sloan was a resident of Heritage Oaks Senior Living, 1100 German School Road, residing in the City of Richmond, Virginia.

3. Defendant Encompass Home Health of Mid Atlantic, LLC, d/b/a Encompass Health Home Health (“Encompass”) is a provider of post-acute healthcare services offering both facility based and home services. At all times relevant herein, Defendant Encompass Home Health of Mid Atlantic, LLC employed the staff who cared for Ms. Sloan.

4. Defendant Encompass Health Corporation is the parent company of Encompass Home Health of Mid Atlantic, LLC.

5. Defendant Encompass Health Corporation participated in the management of the agency at issue by providing supervision, instructions, protocols and written guidelines to assist Encompass Home Health of Mid Atlantic, LLC in the management and operation of their staff.

6. Defendant One Heart One Hand LLC provided non-skilled nurse aides to provide daily ADL care, including, hygiene, feeding assistance and repositioning for Marjorie Sloan. At all relevant times herein, it operated in the City of Richmond, Virginia.

7. Venue is proper in the City of Richmond as Defendants provided services in the City and committed various torts, described herein, within the City.

8. At all relevant times herein, Defendants Encompass Home Health of Mid Atlantic, LLC and Encompass Health Corporation were involved in a joint venture under Virginia law relating to the provision of home care nursing services to Ms. Sloan. By virtue of express and/or implied agreements, each entity had a voice in the operation and/or control of the home services agency and each shared in the profits generated by the company.

9. Prior to filing suit Plaintiff, through his attorney, had highly qualified experts review the records in this case. Prior to service being initiated, these experts certified, in writing that the above Defendants, through their staff, violated standards of care causing injury, harm and death to Marjorie Sloan, as more fully described herein.

Count I
(Negligence/Survivorship)

10. Marjorie Sloan had been a long-term resident of Heritage Oaks Senior Living facility for over a decade.

11. As Ms. Sloan developed dementia and incontinence, she found herself in need of nursing services. Defendant Encompass was hired to provide nursing services, which included providing recommendations and treatment involving skilled services, rehabilitation, preventive wound care and subsequently, treatment of Ms. Sloan's pressure wounds.

12. One Heart One Hand LLC was retained by Ms. Sloan to provide non-skilled home care services, which included ADL, hygiene, wound monitoring and care, and preventive wound care, including repositioning. One Heart One Hand LLC often worked in conjunction with Encompass, which provided some direction to One Heart One Hand's staff.

13. As of September of 2017, Encompass and One Heart One Hand LLC had assumed duties of care for Ms. Sloan. On September 21, 2017, the Encompass staff noted that

Ms. Sloan was incontinent and refusing care at times. She was mobile. No skin breakdown was noted at that time.

14. As of November 15, 2015, Ms. Sloan continued to receive services from Defendants. She had a wound on her left lower extremity.

15. On November 28, 2017, the staff found Ms. Sloan on the floor. She was in need of hydration and had increased confusion. There was a foul odor and signs of a wound infection. She had wounds on both her lower extremities. On November 30, 2017, no wound care was provided because supplies were unavailable.

16. On December 6, 2017, Ms. Sloan was found complaining of pain from her wound. The staff recommended that Ms. Sloan stay in bed, with legs elevated. No recommendations are made relative to pain medications.

17. On December 9, 2017, Ms. Sloan initially refused care and denied pain. However, when the staff went to provide wound care she moaned in pain.

18. As of December 12, 2017, Ms. Sloan informed the staff that she had a new wound on her L hip.

19. On December 16, 2017, the Encompass staff was unable to apply Unna boot due to lack of supplies. An Unna boot had been previously ordered by Ms. Sloan's doctor to address her lower extremity wound.

20. On December 17, 2017, two new stage II coccyx ulcers were discovered.

21. On December 20, 2017, the Encompass staff documented that Ms. Sloan was found in bed on December 19, 2017, wearing only her briefs. Her wounds were exposed to the open air.

22. On December 28, 2017, an Encompass nurse found Ms. Sloan is lying in urine soaked brief and bedding, despite the presence of an aide from One Heart One Hand LLC. The nurse aide assisted in changing Ms. Sloan and the Encompass nurse educated her on the importance of changing Ms. Sloan frequently.

23. On January 2, 2018, Ms. Sloan is found lying in a urine-soaked diaper and bedding. The Encompass nurse again educated the One Heart One Hand caregiver on the need to change diapers frequently and to keep the wound covered to prevent further breakdown.

24. On January 17, 2018, the sacral and thigh wound were noted to be getting worse, with foul odor, representing a likely infectious process. No change in Ms. Sloan's plan of care is implemented by the Encompass staff. On January 24, 2018, purulent drainage is noted in the wounds, but no update is made to Ms. Sloan's plan of care.

25. On January 25, 2018, Ms. Sloan is assessed at Chippenham Hospital and was noted to have been found in bed with urine and pus-soaked sheets. She was given IV fluids to address her dehydration.

26. On February 7, 2018, Ms. Sloan undergoes left hip wound debridement at Chippenham Hospital.

27. On February 13, 2018, staff finds that Ms. Sloan had removed her wound vac dressing. Staff at One Heart One Hand, who failed to notify anyone, explained that they "didn't know what to do with her."

28. On or about March 13, 2018, Ms. Sloan is transferred to a skilled nursing facility for treatment of her wounds. She continues to decline until her passing on April 21, 2018.

29. At all times relevant herein, Defendants and their direct care staff who were responsible for the care of Ms. Sloan were aware of her medical condition and history as reflected

in her records. Defendants, through their agents/employees, represented to Ms. Sloan and her family that they could provide needed care to maintain her health and dignity. Even when Ms. Sloan developed pressure wounds and declined in her physical and mental health, Defendants did not recommend discharge to a higher level of care until Ms. Sloan's wounds were effectively lethal.

30. Defendant's staff, including nurses from Encompass and nurse aides from One Heart One Hand, breached applicable standards of care in failing to properly assess, monitor and address Ms. Sloan's worsening pressure wounds. Defendants negligently treated Ms. Sloan when they knew or should have known that she required a higher level of care.

31. Defendants and their staff, operating in the course and scope of their employment and in breach of applicable standards, failed to provide the necessary preventive wound care and wound treatments that Ms. Sloan required. They further breached the standard of care by failing to alert or in some cases timely alert, her physician regarding her declining health and resistance to care.

32. Defendants, Encompass Home Health of Mid Atlantic, LLC, d/b/a Encompass Health Home Health, Encompass Health Corporation and One Heart One Hand LLC, through their staff operating within the course and scope of their employment, negligently allowed Ms. Sloan to decline both physically and mentally and without proper care or nursing interventions. Defendants' negligence includes, but is not limited to, the following:

- a. Failing to adequately assess Ms. Sloan and recommend additional preventive wound care;
- b. Failing to provide necessary supplies to attend to Ms. Sloan's wounds and condition;
- c. Failing to keep Ms. Sloan clean, dry and repositioned to avoid pressure;

- d. Failing to notify a physician of significant changes in condition, including timely notification of the worsening of Ms. Sloan's wounds and signs of infection;
- e. Failing to seek a psychiatric or other referral when Ms. Sloan refused care;
- f. Failing to provide or recommend pain medications to be used when treating or changing Ms. Sloan's wound dressings;
- g. Failing to monitor and provide adequate nutrition and hydration, to aide in wound healing;
- h. Failing to properly monitor and operate equipment, including a wound vac;
- i. Failing to timely reassess the level of care that Ms. Sloan required and make recommendations for a higher level of care;
- j. Failing to timely inform Ms. Sloan's responsible family member of difficulties in her care and changes in her condition; and
- k. Failing to provide sufficiently trained staff to meet the care needs of their high acuity residents, specifically Ms. Sloan.

33. As a direct and proximate result of Defendants' negligence as outlined above, Plaintiff sustained pain, suffering, pressure wounds and a significant decline in her physical and mental condition. Plaintiff also suffered from inconvenience, indignity and general neglect, which adversely impacted her quality of life and caused suffering separate from her physical injuries. Finally, Plaintiff incurred medical bills in an effort to treat her condition

Count II – Wrongful Death

34. Plaintiff repeats and realleges paragraphs one through thirty-two as if fully set forth herein and further avers as follows:

35. As a direct and proximate result of Defendants' negligence as outlined above, Marjorie Sloan expired on or about April 21, 2018. The primary cause of death as reflected on the death certificate was respiratory failure. However, Ms. Sloan's pressure wounds and resulting complications were substantial contributing causes to her death.

36. At the time of her death Marjorie Sloan was survived by her only son, Gordon Sloan.

37. As a direct and proximate result of Marjorie Sloan's death through the negligence of Defendants and their staff, Gordon Sloan suffered damages including, *inter alia*, sorrow, mental anguish, loss of solace, loss of society, loss of comfort along with medical and funeral expenses.

Count III – Punitive Damages

38. Plaintiff incorporates paragraphs one through thirty-seven as if fully set forth herein and further alleges as follows:

39. As Marjorie Sloan suffered from dementia and confusion which affected her ability to understand, she was completely vulnerable and trusted Defendants to take care of her total care needs. Defendants intentionally misrepresented the nature of available services to Plaintiff and her son in an effort to convince them to retain their services.

40. Once Plaintiff had retained Defendants' services, Defendants' staff failed to consistently provide those services despite knowing that such failures would put Plaintiff at increased risk of harm and/or death.

44. Even as Ms. Sloan's wounds worsened, Defendants' failed to provide basic care and supplies, fully aware that such neglect could lead to Ms. Sloan's wounds becoming infected.

45. Defendants and their agents/employees, who were operating within the course and scope of their employment, took advantage of Ms. Sloan's inability to advocate for herself by failing to provide her with the services, assistance and care necessary to maintain her well-being. Defendants failed to timely inform Plaintiff's responsible party of problems with her care, including her refusals to accept care, which put Ms. Sloan at additional risk.

46. Defendants also knew that their failure to report changes in condition to a treating physician, would put Ms. Sloan at further risk of injury or death. Despite worsening wounds and signs of infection, Defendants recklessly disregarded the rights of Plaintiff by failing to recommend a higher level of care or contact her treating physician. By the time Encompass staff recommended a higher level of care, Ms. Sloan's wounds were too severe to be effectively treated.

47. Gordon Sloan, Ms. Sloan's son, was making medical decision for his mother. Defendants' staff intentionally mislead Gordon Sloan regarding their ability to provide proper wound care for Marjorie Sloan. Even after Ms. Sloan developed significant pressure wounds on Defendants' watch, they continued to suggest that they could handle the wound when, in fact, they were unable to provide the proper care that Ms. Sloan required.

48. Defendants knew that the failure to provide sufficient staffing, including a staff with necessary training to care for a high acuity patient, would likely cause injury to residents like Ms. Sloan, who required significant pressure off-loading and ongoing incontinence care.

49. Given Defendants' pattern of non-compliance with basic nursing standards, Defendants' management staff knew or should have known that the Encompass staff was not suited for residents with high acuity or who had behavioral problems. Defendants' management, in an effort to generate increased revenues and profits, intentionally sought to recruit high acuity

residents who were beyond the care abilities of their staff. Such recruitment practices, designed to increase revenue, recklessly sacrificed the resident's safety rights for increased profits.

50. Even after Defendants' staff became aware of the progression of Ms. Sloan's pressure wounds, they continued to neglect her needs despite their knowledge that such failures would lead to the further decline of Ms. Sloan. They failed to timely notify her attending physician of the worsening of her wounds and signs of infection. They failed to assure needed supplies were available when treating Ms. Sloan's wounds.

51. Defendant One Hearth One Hand LLC committed additional acts of willful and wanton conduct by refusing to produce their own records and chart reflecting the care (or lack thereof) provided to Ms. Sloan. This was an intentional act designed to cover-up their misconduct and neglect of Ms. Sloan.

52. Defendants ratified their employees/agents' conduct by condoning it and by failing to correct repeated prior incidences of neglect of their residents in ways that were substantially similar to the neglect experienced by Ms. Sloan. Defendants also ratified the conduct of their staff by intentionally and/or recklessly staffing its agency without a sufficient number of properly trained staff. As Defendant's management staff was aware of these standards of care violations and/or their staff's inability to meet the needs of their patients, including Ms. Sloan, and directly participated in the neglect and willful conduct described above, the management staff ratified the acts of its agents and employees, rendering the corporate Defendants liable for punitive damages.

53. As a direct and proximate result of the aforesaid willful and wanton negligence, Ms. Sloan sustained personal injuries including pressure wounds, a serious decline in her physical and mental health, significant dehydration, suffered great pain of body and mind, suffered emotional distress, and incurred medical and out-of-pocket expenses, costs, and attorney's fees.

Wherefore, these and other premises considered, Plaintiff moves this Court for judgment against Defendants, Encompass Home Health of Mid Atlantic, LLC, d/b/a Encompass Health Home Health, Encompass Health Corporation and One Heart One Hand LLC, jointly and severally, as follows:

- a. An award of compensatory damages of \$1.8 million, plus costs and pre-judgment interest from April 21, 2018;
- b. An award of punitive damages of \$400,000, plus costs, interest and fees;
- c. Prejudgment interest to be determined by the trier of fact; and
- d. Any other relief that this Court determines is appropriate.

Jury Demand

Plaintiff requests that a jury resolve all issues of liability and damages in this case.

Date: August 27, 2019

Respectfully submitted, Plaintiff, by counsel

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