

MARYLAND:

THE CIRCUIT COURT OF MONTGOMERY COUNTY

Nadia Raikin
As Personal Representative of the
Estate of Ekaterina Ioffe

Leonid Igudesman

Plaintiffs,

v.

Hebrew Home of Greater Washington
6121 Montrose Road
Rockville, MD 20852
Serve Registered Agent:
CSC-Lawyers Incorporation Service Company
7 St. Paul St, Suite 820
Baltimore, MD 21202

Charles E. Smith Life Communities
6121 Montrose Road
Rockville, MD 20852
Serve Registered Agent:
CSC-Lawyers Incorporation Service Company
7 St. Paul St, Suite 820
Baltimore, MD 21202

Mina Fazli, MD
6121 Montrose Road
Rockville, MD 20852

Defendants.

Law No. 47SD067-V

RECEIVED

NOV 06 2019

Clerk of the Circuit Court
Montgomery County, Md.

COMPLAINT

COMES NOW the Plaintiffs, Nadia Raikin, Individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, by counsel, and move this Court for judgment against the Defendants, Hebrew Home of Greater Washington, Charles E. Smith Life Communities and Mina Fazli, MD, on the grounds and in the amounts as hereafter set forth:

INTRODUCTION

- 1. The Hebrew Home of Greater Washington ("Hebrew Home") is a skilled care facility operating at 6121 Montrose Road, Rockville Maryland. It employed the staff who cared for Ekaterina Ioffe.**
- 2. Charles E. Smith Life Communities ("Charles E. Smith") at all pertinent times herein, was the management company who participated in the operation of the Hebrew Home.**
- 3. Doctor Mina Fazli was at all pertinent times a medical doctor on the team of physicians who cared for patients at the Hebrew Home. At all pertinent times herein, she was employed by Charles E. Smith Life Communities.**
- 4. Nadia Raikin and Leonid Igudesman are adult children of Ekaterina Ioffe. After Ms. Ioffe's death, Nadia Raikin was appointed as her lawful personal representative of the Estate on October 9, 2018. Prior to filing this action, Plaintiffs filed this claim in the Health Care Alternative Dispute Resolution Office and obtained a transfer order to this Court on October 22, 2019, after filing reports and certificates of merit from qualified experts.**
- 5. At all times pertinent herein, Ekaterina Ioffe was a resident of the Hebrew Home, in their skilled care section.**
- 6. Ms. Ioffe was a long-term care resident who suffered from various conditions that made her a high fall risk. She had dementia and limited mobility.**

7. By May of 2018, Ms. Ioffe was totally dependent on the staff for cleaning, toileting and transfers. On May 25, 2018, while being cleaned by a nurse aide, Ms. Ioffe fell off her bed. This fall resulted from the negligence of the nurse aide, who failed to secure Ms. Ioffe while providing care at the side of her bed, without the bed-rails up.

8. As a result of her fall, Ms. Ioffe suffered a head injury and was bleeding from her nose. Soon after falling, she suffered respiratory distress and expired within several minutes after sustaining the traumatic injuries.

9. On the same day of her fall, a death certificate was completed by Dr. Mina Fazli, MD. Dr. Fazli wrongfully reported that the immediate cause of death was dementia. She also reported that the manner of death was natural.

COUNT I – Hebrew Home and Charles E. Smith
(Negligence – Survivorship)

Plaintiffs repeats and realleges each and every allegation set forth in foregoing paragraphs one through nine of their Complaint, as if fully set forth herein, and further state as follows:

10. At all times mentioned herein, Defendants' direct staff who cared for Ms. Ioffe were aware of her medical condition and history.

11. Defendants, through their employees, represented to Ms. Ioffe and her family, and to the State of Maryland that they could adequately care for Ms. Ioffe in providing nursing, rehabilitative and medical care, that they could adequately monitor her medical needs at a skilled level, and that they could provide a staff of a sufficient number, properly supervised, trained and equipped to meet the total care and needs of the nursing home residents, and specifically those of Ms. Ioffe.

12. Given Ms. Ioffe's dementia, Defendants had a duty to provide accurate health information to her family members, including Nadia Raikin and Leonid Igudesman.

13. At the time of her last fall, Ms. Ioffe was a high fall risk who required staff assistance with all her ADLs. In a monthly summary from April 2018, the staff noted that she was a fall risk who required frequent monitoring to prevent injury.

14. Defendants and their agents/employees owed Ms. Ioffe a duty to provide reasonable care and to properly monitor, assess, treat, maintain, protect, and rehabilitate her. Defendants further had a duty to meet Ms. Ioffe's needs and treat her with dignity. Further, the duty to provide care, maintenance, and protection to Ms. Ioffe was a non-delegable duty; hence, Defendants are responsible for the conduct of the employees, agents, and/or servants to whom they delegated that duty.

15. The Hebrew Home had a duty to provide staffing, including nurses, CNAs, and various specialists as needed, in sufficient number and with sufficient training, to meet the needs of the residents, including Ms. Ioffe.

16. The Hebrew Home staff breached applicable standards of care in allowing Ms. Ioffe to fall on May 25, 2018. Given Ms. Ioffe's dementia, confusion and high fall risk, the nurse aide should have secured Ms. Ioffe safely in bed, with bed rails up, before attempting to clean or remove the sheets. This negligence proximately caused her fall and resulting death, several minutes later.

17. In addition to the acts described above, Defendants, through their agents/employees, during the course of a continued patient relationship, and acting within the scope of their employment, subjected Ms. Ioffe to additional forms of substandard care, which violated accepted standards of care as, more fully set forth below:

a. Defendants and their agents/employees violated the applicable standards of care, as well as state and federal laws, including the Omnibus Budget Reconciliation Act ("OBRA") of 1987 (otherwise known as the federal Nursing Home Reform Act) and related nursing home regulations, which were enacted to protect the class of nursing home residents, including Ms. Ioffe;

b. Defendants and their agents/staff violated Ms. Ioffe's rights which apply to residents of long-term care nursing home facilities, including the right to have accurate information included in the chart;

c. Defendants and their agents/staff negligently failed to provide an adequate care plan to maintain the highest practicable mental, physical, and psych-social health of Ms. Ioffe;

d. Defendants and their agents/staff negligently failed to provide Ms. Ioffe with adequate assistance in her acts of daily living, including assistance with cleaning and toileting;

e. Defendants and their agents/staff negligently failed to adequately staff the facility in a manner responsive to the needs of residents, in particular, to the needs of Ms. Ioffe. Defendants' staff was not properly trained to meet the care needs of their residents and specifically, the needs of Ms. Ioffe.

f. Defendants and their staff failed to provide timely or accurate reporting of the May 25, 2018 fall, including reporting the incident to the medical examiner and licensing authority;

g. Defendants, specifically their management staff, breached applicable standards of care in attempting to cover up the true circumstances of this incident by

referring the matter to a physician that Defendants believed would provide a favorable cause of death opinion (one that did not attribute death to the fall), as opposed to referring the case to the medical examiner;

h. Defendants failed to follow the care directive of the children of Ms. Ioffe; and

i. Defendants and their staff, through the Administrator/Executive Director, Director of Nurses, and corporate management staff, violated various administrative and managerial standards, including standards relating to staff training, supervision and the protection of resident's rights, including the right to be provided accurate information regarding the resident's health status and cause of death.

18. As a direct and proximate result of the aforesaid negligence and acts of neglect, Ms. Ioffe sustained personal injuries, including but not limited to a head injury, injured nose, physical pain and mental suffering, distress and related expenses.

WHEREFORE, Plaintiffs Nadia Raikin individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, move this Court for judgment against Defendants, Hebrew Home of Greater Washington and Charles E. Smith Life Communities, jointly and severally, for compensatory damages in excess of \$30,000 as compensation for Ekaterina Ioffe's injuries, pain, suffering, and medical expenses, along with any interest, costs or fees that this Court deems appropriate.

**Count II - Hebrew Home and Charles E. Smith
(Wrongful Death)**

Plaintiffs incorporate paragraphs one through eighteen, as if fully set forth herein, and further state as follows:

19. As a direct and proximate result of the aforesaid acts and omissions of Defendants and their agents/employees as described above, Ms. Ioffe died on May 25, 2018.

20. Ms. Ioffe is survived by statutory beneficiaries including her children Leonid Igudesman and Nadia Raikin.

21. As a direct and proximate result of Defendants' negligence and Ms. Ioffe's resulting death, her statutory beneficiaries sustained non-economic damages, which took the form of mental anguish, emotional pain, loss of society, loss of companionship, loss of advice and loss of attention. The non-economic damages continue into the future.

WHEREFORE, these and other premises considered, Plaintiffs Nadia Raikin individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, move this Court to enter judgment against Defendants Hebrew Home of Greater Washington and Charles E. Smith Life Communities, jointly and severally, for compensatory damages in excess of \$30,000, as compensation for, among other things, mental anguish, loss of society, loss of companionship, loss of comfort, loss of attention, loss of advice, attorney's fees, court costs, litigation costs, and interest, along with any other appropriate relief that this Court may determine is warranted.

Count III

(Negligence/Malpractice – Mina Fazli & Charles E. Smith)

Plaintiffs incorporate paragraphs one through twenty-one as if fully set forth herein, and further allege as follows:

22. At all pertinent times herein, Dr. Mina Fazli was acting in the capacity of a treating physician for Ekaterina Ioffe, operating as an agent/employee of Charles E. Smith.

23. As treating physician, Dr. Fazli had a duty to accurately disclose information in her records and accurately complete Ms. Ioffe's death certificate.

24. In Maryland, a death certificate is a permanent, vital record which must be completed accurately. Where a cause of death is to be assessed by the treating physician, that physician must accurately and truthfully record the known and immediate cause(s) of death with an etiologic and specific diagnosis explaining the sequence of events leading to death. The reporting physician must include the immediate cause of death, which is the final insult or disease that causes death. Where the cause of death is unknown or is not capable of being ascertained, or if the physician has a conflict of interest, she must refer the cause of death analysis to a medical examiner.

25. Dr. Fazli breached applicable standards of care by purposely failing to record an accurate cause of death for Ms. Ioffe. In an effort to protect Hebrew Home from liability for their negligence, Dr. Fazli concealed that Ms. Ioffe died from a fall, reporting that she expired from natural causes, specifically dementia.

26. As an internal medicine physician, Dr. Fazli knew or should have known that applicable standards required that the immediate cause of death accurately reflect the final insult or injury that caused the patient's death. Dr. Fazli knew that Ms. Ioffe died within minutes of sustaining a traumatic fall in which she suffered a head injury, with significant bleeding from her nose. Dr. Fazli breached community and regulatory standards by failing to include the fall as an immediate and/or contributing cause of death for Ms. Ioffe.

27. As a direct and proximate result of these fraudulent recordations, Plaintiffs suffered harm including mental anguish, distress, inconvenience, along with a corresponding violation of Ms. Ioffe's rights. The Estate and statutory beneficiaries were injured to the extent that proving

the actual cause of death became more complicated and expensive. Defendants will likely rely upon the fraudulent death certificate to defend the case on causation grounds, further harming the Plaintiffs' ability to enforce their legal rights of recovery.

WHEREFORE, these and other premises considered, Claimants Nadia Raikin, individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, move this Court to enter judgment against Respondents Charles E. Smith Life Communities and Mina Fazli, MD, jointly and severally, for compensatory damages in excess of \$30,000, as compensation for all harm caused by Respondents to Claimants, along with any additional relief this Court finds proper.

Count IV
(Negligent Misrepresentation – Mina Fazli, MD & Charles E. Smith)

Plaintiffs repeat and reallege paragraphs one through twenty-seven, as if fully set forth herein and further allege as follows:

28. As treating physician and individual responsible for completing decedent's death certificate, Dr. Fazli had a special relationship with Ms. Ioffe.

29. Dr. Fazli intentionally or negligently misrepresented that Ms. Ioffe died from natural causes, specifically dementia. At the time Dr. Fazli made these false representations that Ms. Ioffe died from a natural cause, she either knew or should have known that Ms. Ioffe had suffered a recent head injury, which led directly to her death minutes later

30. Dr. Fazli made the material misrepresentations knowing that both the decedent's heirs and the State of Maryland would likely rely on such information in determining the cause of death.

31. Under Maryland law, a healthcare provider certifying death must notify the Medical Examiner's office where a fall contributes to the death. As the death was determined to

be from "natural causes," no investigation was undertaken by the Maryland Medical Examiner's office, as contemplated by Maryland law, as no notice was provided to the Medical Examiner's office under Md Health-Gen Code § 4-212 (7).

32. Until the decedent's records were obtained through counsel, decedent's heirs were provided limited information regarding Ms. Ioffe's condition at the time of her death.

Unfamiliar with the process for death certifications, decedent's heirs initially relied upon the death certificate findings in not seeking a review by a 3rd party medical examiner.

33. Based on Dr. Fazli's misrepresentations, made within the scope of her employment with Charles E. Smith Life Communities, Plaintiffs suffered harm including mental anguish, distress, inconvenience, along with a corresponding violation of Ms. Ioffe's rights. The Estate and statutory beneficiaries were injured to the extent that proving the actual cause of death became more complicated and expensive. Given Dr. Fazli's misrepresentations, Plaintiffs were further injured because they were effectively prevented from timely obtaining an objective, third party autopsy from the Maryland Medical Examiner's Office.

WHEREFORE, these and other premises considered, Plaintiffs Nadia Raikin, individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, move this Court to enter judgment against Defendants Charles E. Smith Life Communities and Mina Fazli, MD, jointly and severally, for compensatory damages in excess of \$30,000, as compensation for all harm caused by Defendants to Plaintiffs, along with any additional relief this Court finds proper.

Count V
(Civil Conspiracy- Hebrew Home and Mina Fazli, MD)

Plaintiffs incorporate paragraphs one through thirty-three, as if fully set forth herein, and

further allege as follows:

34. Defendants, most notably Doctor Fazli and Hebrew Home management personnel, conspired together to record fraudulent and inaccurate information in Ms. Ioffe's record.

35. Defendant Hebrew Home, through their management staff, including their Director of Nurses, was aware that they were liable for the negligent conduct of their nursing aide, who allowed Ms. Ioffe to fall during a routine cleaning. Defendant Hebrew Home had a duty to assure that patients who die in the nursing home were provided with accurate cause of death certifications. Where patients suffer a traumatic fall contributing to death, the Hebrew Home is obligated to notify the Maryland Medical Examiner's Office.

36. In an effort to avoid liability, Defendants, including Dr. Fazli and the Director of Nurses for the Hebrew Home, agreed that Dr. Fazli would complete the death certificate. This agreement, along with the completion and submission of a fraudulent death certificate, were overt, unlawful acts in furtherance of the conspiracy to conceal the true cause of Ms. Ioffe's death. Defendants knew at the time of their agreement that Dr. Fazli would attribute Ms. Ioffe's death to causes other than the fall.

37. Having caused tortious injury to Ms. Ioffe by allowing her to fall, Defendant Hebrew Home, through their management staff and Dr. Fazli, in violation of Maryland law, acted in concert to conceal her true cause of death.

38. As a direct and proximate result of the Defendants' commission of this civil conspiracy, Plaintiffs suffered harm including mental anguish, distress, inconvenience, along with a corresponding violation of Ms. Ioffe's rights. The Estate and statutory beneficiaries were further

injured to the extent that proving the actual cause of death became more complicated and expensive.

WHEREFORE, these and other premises considered, Plaintiffs Nadia Raikin, individually and as Executor and Personal Representative of the Estate of Ekaterina Ioffe, along with Leonid Igudesman, move this Court to enter judgment against Defendants Hebrew Home of Greater Washington and Mina Fazli, MD, jointly and severally, for compensatory damages in excess of \$30,000, as compensation for all harm caused by Defendants to Plaintiffs, along with any additional relief this Court finds proper.

MD Rule-1-313 Certification

Counsel for claimant, Jeffrey J. Downey, hereby certifies that he is a currently a member in good standing with the Bar of Maryland.

November 1, 2019

Respectfully submitted, Claimant, by counsel



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