

2011 WL 11967688 (N.J.Super.L.) (Trial Pleading)
Superior Court of New Jersey, Law Division.
Hudson County

Estate of Mary DWYER, by and through her Administratrix Ad Prosequendum, Henrietta Dwyer, Plaintiff(s),

v.

HARBOR VIEW HEALTH CARE CENTER; Jersey City Healthcare Providers, LLC; Hc Provider Mezz, LLC;
Jersey City Provider Corp; Abc Companies (1-10); Def Partnerships (1-10); John Doe Physicians (1-10);
Jane Doe Nurses (1-20); Jane Moe Technicians, CNAs and Paramedical Employees (1-20), Defendant(s).

No. HUDL481911.
September 13, 2011.

Jury Demand

Complaint

Stark & Stark, Princeton Pike Corporate, 993 Lenox Drive, Building 2, P.O. Box 5315, Princeton, NJ 08543-5315, (609) 896-9060, By: [David R. Cohen](#), Esquire, for: plaintiff, Estate of Mary Dwyer.

DEMAND FOR PRODUCTION OF COMPLETE CERTIFIED COLOR COPY OF MEDICAL CHARTS AND NURSING RECORDS

DEMAND FOR NURSE AIDES' RECORDS

DEMAND FOR PRODUCTION OF POLICIES AND PROCEDURES

DEMAND FOR ANSWERS TO FORM C AND C(3) INTERROGATORIES

DEMAND FOR ANSWERS TO SUPPLEMENTAL INTERROGATORIES AFFIDAVIT OF MERIT

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, residing at 16 62ND Street, West New York, State of New Jersey, by way of Complaint, says:

FACTS COMMON TO ALL COUNTS

1. Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); at all relevant times owned, directed, leased, managed, controlled, supervised and/or otherwise operated a licensed nursing home, long term health care facility and/or a nursing facility of the State of New Jersey as defined by [N.J.S.A. 30:13-2\(c\)](#), [N.J.A.C. 8:39-1.2](#) and [42 C.F.R., Section 483.5](#), respectively, and are/were otherwise subject to the requirements of State and Federal law, with offices/facilities located at 178-198 Ogden Avenue, Jersey City, State of New Jersey; and held themselves out to the public as such.

2. Plaintiffs decedent, MARY DWYER, from on or about October 23, 2009, through on or about February 3, 2010, and at all relevant times, was a resident of Defendant facility commonly known as HARBOR VIEW HEALTH CARE CENTER.

3. On or about said dates and at all relevant times, Defendants, ABC COMPANIES (1-10) and DEF PARTNERSHIPS (1-10); are fictitious designations, representing one or more individuals, sole proprietorships, associations, management companies, limited partnerships, general partnerships, limited liability companies and/or corporations, who are liable for the negligent acts and/or omissions of all of the Defendants named in this Complaint and whose business/corporate entities are presently unknown to the Plaintiff herein, and who provided negligent services and deviated from the accepted standard of care with respect to Plaintiff's decedent, MARY DWYER, causing the damages, losses, and injuries set forth in this complaint.

4. On or about said dates and at all relevant times, Defendants, JOHN DOE PHYSICIANS (1-10), were physicians who are at present unknown to the Plaintiff herein and are thus fictitiously designated, and who provided negligent services and deviated from the accepted standard of care with respect to Plaintiffs decedent, MARY DWYER, causing the damages, losses, and injuries set forth in this Complaint.

5. On or about said dates and at all relevant times, Defendants, JANE DOE NURSES (1-20), were nurses who are at present unknown to the Plaintiff herein and are thus fictitiously designated, and who provided negligent services and deviated from the accepted standard of care with respect to Plaintiffs decedent, MARY DWYER, causing the damages, losses, and injuries set forth in this Complaint.

6. On or about said dates and at all relevant times, Defendants, JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20), were technicians, CNAs, nurse aides and/or paramedical employees who are at present unknown to the Plaintiff herein and are thus fictitiously designated, and who provided negligent services and deviated from the accepted standard of care with respect to Plaintiffs decedent, MARY DWYER, causing the damages, losses, and injuries set forth in this Complaint.

7. On or about said dates and at all relevant times, under New Jersey and Federal laws, regulations and/or administrative codes, Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); its corporate officers, designees, directors, agents, servants and/or employees, were solely responsible for the nursing and medical care and treatment of Plaintiffs decedent, MARY DWYER, and had a non-delegable duty to exercise reasonable care toward her and to comply with accepted standards.

8. In addition to being directly liable for the wrongful acts detailed herein, Plaintiff pleads that Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); are also indirectly liable and responsible for each and every act and omission stated herein and the resulting damages. More specifically, Defendants are indirectly liable and responsible for the wrongful conduct detailed herein under one or more of the following alternative legal theories:

a) Alter Ego: At all times material to this lawsuit, Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); were alter egos of one another. Furthermore, Defendant, HARBOR VIEW HEALTH CARE CENTER, was a subsidiary and the alter ego of the other Defendants. Defendant, HARBOR VIEW HEALTH CARE CENTER, was a mere conduit through which the other Defendants did business and the management and operations of HARBOR VIEW HEALTH CARE CENTER were so assimilated within the other Defendants that HARBOR VIEW HEALTH CARE CENTER was simply a name through which the other Defendants conducted their business. Moreover, Defendants represented to the public that HARBOR VIEW HEALTH CARE CENTER was part of one

single economic enterprise. The other Defendants dominated and controlled the business affairs of HARBOR VIEW HEALTH CARE CENTER such that HARBOR VIEW HEALTH CARE CENTER was organized and operated as a tool of the other Defendants.

b) Agency: At all times material to this lawsuit, Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); acted as agents for one another and ratified or authorized the acts or omissions of one or more of the other Defendants. Defendants held themselves out as being one unified enterprise and operation known as HARBOR VIEW HEALTH CARE CENTER.

c) Joint Enterprise: In the alternative, to the extent that Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); are found to be separate legal entities, Defendants each remain liable for the acts and omissions of each other because the Defendants engaged in a joint venture and enterprise to act in concert in the operation, management, and maintenance of the Defendant facility. Defendants agreed to a common purpose of operating, managing, and maintaining the Defendant facility. Defendants had equal rights to control their venture as a whole, as well as to control the operation and management of Defendant facility.

COUNT ONE

Negligence and Wrongful Death

9. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1-8 of this Complaint as if set forth at length herein.

10. On or about said dates and at all relevant times, the Plaintiffs decedent, MARY DWYER, was under the care of said Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (I - 10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); its corporate officers, designees, directors, agents, servants and/or employees were solely responsible for the nursing and medical care and treatment of Plaintiff's decedent, MARY DWYER, and had a non-delegable duty to exercise reasonable care toward her and to comply with accepted standards.

11. On or about said dates and/or at all other legally compensable times, each and all of the Defendants deviated from the standard of care applicable to them in their respective capacities and each and all of the Defendants were negligent, exercised willful and wanton disregard for the safety and well being of Plaintiff's decedent, MARY DWYER, were grossly negligent, failed to allocate sufficient resources to adequately provide for Plaintiff, and otherwise failed to exercise reasonable care toward the Plaintiffs decedent, MARY DWYER.

12. As a proximate result of the numerous said deviations, carelessness, recklessness, misconduct and negligence by each and all of the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); the Plaintiffs decedent, MARY DWYER, while on the premises and/or under the care of Defendants, suffered, endured, and experienced, including but not limited to: dehydration, malnutrition, weight loss, improper treatments, pressure ulcers requiring hospitalization and surgical intervention, infections, a failure to properly assess wounds, a lack of allocation of resources from the managers and/or owners and/or Administratrixs of the facility, extreme pain and discomfort,

mental and emotional anguish, a significantly decreased quality of life, deprivation of dignity, general **neglect** and lack of care; and has incurred substantial costs and expenses for medical care and treatment; and ultimately suffered a painful and untimely death.

13. The Estate of Plaintiffs decedent, MARY DWYER, was liable for, and in fact paid for funeral and burial expenses and charges for the Plaintiffs decedent, MARY DWYER.

14. The Plaintiffs decedent, MARY DWYER, left multiple family members, including but not limited to, her daughter, HENRIETTA DWYER, who by reason of Plaintiffs decedent's wrongful death, have suffered. Prior to the death of Plaintiffs decedent, MARY DWYER, and subsequent thereto, HENRIETTA DWYER was deprived of the society and companionship of Plaintiff's decedent, MARY DWYER.

15. Plaintiff brings this action pursuant to the provision of the New Jersey Wrongful Death Act, [N.J.S.A. 2A:31-1, et seq.](#), for the benefit of the next of kin of the Plaintiffs decedent, MARY DWYER, and pursuant to N.J.S.A. 2A-15-3.

16. This action is commenced within two (2) years of the death of Plaintiffs decedent, which occurred on or about February 27, 2010.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for damages generally against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, together with attorney's fees, interest, and costs of suit.

COUNT TWO

Negligence Per Se

17. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1-16 of this Complaint as if set forth at length herein.

18. In addition to the aforementioned negligent acts contained in Count One of this Complaint, the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); violated the Omnibus Budget Reconciliation Act (O.B.R.A.) (1987), as well as New Jersey regulations which established the minimum standards of care to be followed by Defendants, including but not limited to the following:

a. Pursuant to [42 C.F.R., Section 483.10](#), the Defendants and their staff had a duty to assure that residents' rights were followed and to assure that each resident, including Plaintiffs decedent, MARY DWYER, had a dignified existence and the right to exercise her rights as a resident and citizen of the United States.

b. Pursuant to [42 C.F.R., Section 483.13\(c\)](#) the Defendants and their staff had a duty to develop and implement written policies and procedures that prohibit resident **neglect**.

c. Pursuant to [42 C.F.R., Section 483.15\(a\)](#), the facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of her or her individuality.

- d. Pursuant to 42 C.F.R., Section 483.25(c), the facility must ensure that a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sore from developing.
- e. Pursuant to 42 C.F.R., Section 483.30, the Defendants and their staff had a duty to provide sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident's assessment and individual plans of care.
- f. Pursuant to 42 C.F.R., Section 483.75, the Defendants and their staff had a duty to administer the nursing home in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident. The facility is further required to operate and provide services and compliance with all applicable federal, state and local laws, regulations, and codes with accepted professional standards.
- g. Pursuant to N.J.A.C. 8:39-4.1(a)(1), a resident has a right "to live in safe, decent, and clean conditions in a nursing home that does not admit more residents than it can accommodate while providing adequate nursing care."
- h. Pursuant to N.J.A.C 8:39-5.1(a), "the facility shall comply with applicable federal, state, and local laws, rules and regulations."
- i. Pursuant to N.J.A.C. 8:39-27.1(a), "the facility shall provide and ensure that each resident receives all care and services needed to enable the resident to attain and maintain the highest practicable level of physical (including pain management), emotional and social well-being, in accordance with individual assessments and care plans."
- j. Pursuant to N.J.A.C. 8:39-4.1(a)(12), a resident has a right "to be treated with courtesy, consideration, and respect for the resident's dignity and individuality."
- k. Pursuant to N.J.A.C. 8:43-4.14, a resident's family will be notified if there is any significant change in a resident's physical status, and if there is an incident which occurs that results in serious harm or injury.
- l. Pursuant to any other State or Federal regulations as may be defined in discovery.

19. Each and all of the Defendants deviated from the aforementioned standard of care applicable to them in their respective capacities and each and all of the Defendants were negligent and failed to exercise reasonable care toward the Plaintiffs decedent, MARY DWYER.

20. The aforesaid acts of negligence were due solely to the negligence and carelessness of the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); and acting as aforesaid, and were due in no manner whatsoever to any act or failure to act on the part of the Plaintiffs decedent, MARY DWYER.

21. Plaintiff's decedent, MARY DWYER, is amongst the class of persons the aforementioned State and Federal administrative codes and/or regulations were designed to protect. As such, Plaintiff asserts that they are entitled to adopt such as the standard of care governing Defendants' conduct in this matter. Thus, Plaintiff asserts that as a matter of law, Defendants' alleged conduct amounted to negligence *per se*.

22. As a direct and proximate result of the aforesaid negligence and breaches in the standard of care, Plaintiffs decedent, MARY DWYER, suffered, endured, and experienced, including but not limited to: dehydration, malnutrition, weight loss, improper treatments, pressure ulcers requiring hospitalization and surgical intervention, infections, a failure to properly assess wounds, a lack of allocation of resources from the managers and/or owners and/or Administratrixes of the facility, extreme pain and

discomfort, mental and emotional anguish, a significantly decreased quality of life, deprivation of dignity, general **neglect** and lack of care; and has incurred substantial costs and expenses for medical care and treatment; and ultimately suffered a painful and untimely death.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for damages generally against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, together with attorney's fees, interest, and costs of suit.

COUNT THREE

New Jersey Nursing Home and Rights of Residents Act

23. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1- 22 of this Complaint as if set forth at length herein.

24. At all relevant times, Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); operated “nursing home[s]” as defined by [N.J.S.A. 30:13-2\(c\)](#).

25. At all relevant times, Plaintiff's decedent, MARY DWYER, was a “resident” of Defendants' nursing homes as defined by [N.J.S.A. 30:13-2\(e\)](#).

26. Pursuant to [N.J.S.A. 30:13-1, et seq.](#), Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); were at all times required to comply with the New Jersey Nursing Home Responsibilities and Rights of Residents Act.

27. Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); failed to ensure, preserve and/or otherwise provide for the rights of Plaintiff's decedent, MARY DWYER, as enumerated in [N.J.S.A. 30:13-1, et seq.](#) and New Jersey Common Law.

28. As a direct and proximate result of the violations of [N.J.S.A. 30:13-1, et seq.](#), Plaintiff's decedent, MARY DWYER, suffered, endured, and experienced, including but not limited to: dehydration, malnutrition, weight loss, improper treatments, pressure ulcers requiring hospitalization and surgical intervention, infections, a failure to properly assess wounds, a lack of allocation of resources from the managers and/or owners and/or Administratrixs of the facility, extreme pain and discomfort, mental and emotional anguish, a significantly decreased quality of life, deprivation of dignity, general **neglect** and lack of care; and has incurred substantial costs and expenses for medical care and treatment; and ultimately suffered a painful and untimely death.

29. The acts and omissions of Defendants, referenced in this Count in violation of [N.J.S.A. 30:13-1, et seq.](#), including [N.J.S.A. 30:13-5\(a-m\)](#), are sufficient under New Jersey Common Law, Federal Law, and under [N.J.S.A. 30:13-4.2](#) and [N.J.S.A. 30:13-8](#), to constitute a claim for general damages, compensatory damages, punitive damages, attorney's fees, interest, and costs of suit.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for general, compensatory and punitive damages, against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, together with attorney's fees, interest, and costs of suit.

COUNT FOUR

Consumer Fraud

30. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1-29 of this Complaint as if set forth at length herein.

31. The actions of the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); and their representations and misrepresentations regarding the level of care to be delivered by their facilities to Plaintiffs decedent, MARY DWYER, were in fact known to be false by the Defendants at the time they were so made.

32. At all times relevant times, Defendants falsely, fraudulently, and with intent to defraud, represented to Plaintiffs decedent, MARY DWYER, and her family, that Defendants would provide an excellent quality of care and follow the accepted standards of care related to the care and treatment of a long term care nursing home resident.

33. Plaintiff reasonably relied and acted upon the representations made by the Defendants.

34. As a result of the Defendants' deliberate and knowing misrepresentations and omissions concerning the quality of care to be delivered to Plaintiff's decedent, MARY DWYER, by Defendants' facilities, Plaintiff suffered damages.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); for compensatory and punitive damages, together with interest, costs of suit, attorney's fees, and any such other additional relief as this Court may deem necessary and proper.

COUNT FIVE

Negligent Supervision

35. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1-34 of this Complaint as if set forth at length herein.

36. At all relevant times hereto, Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); knew or should have known that their residents were **elderly** and/or disabled and in need of particular care and supervision.

37. Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); failed to exercise adequate care in the supervision of their **elderly** and/or disabled residents, such as the Plaintiffs decedent, MARY DWYER, to whom they owed such a duty.

38. As a direct and proximate result of the aforesaid carelessness, recklessness and negligence of the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); the Plaintiffs decedent, MARY DWYER, sustained severe personal injuries of both a permanent and temporary nature, was forced to endure great pain and suffering, was forced to incur medical expenses for the care and treatment of said injuries, and ultimately suffered a painful and untimely death.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for general, compensatory and punitive damages, against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, together with attorney's fees, interest, and costs of suit.

COUNT SIX

Negligent Hiring

39. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1- 38 of this Complaint as if set forth at length herein.

40. Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); are responsible for hiring competent Administratrixs, supervisors, managers, nurses, CNAs and any other personnel necessary to oversee and monitor the treatment at HARBOR VIEW HEALTH CARE CENTER, respectively, of its residents such as Plaintiff's decedent, MARY DWYER.

41. The Administratrixs, managers, supervisors, nurses, CNAs and other personnel hired by Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); failed to exercise due care in monitoring the residents therein.

42. Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); is/are liable for the negligence, carelessness and recklessness of its employees and agents under the doctrine of *Respondeat Superior*.

43. As a direct and proximate result of the aforesaid negligence, carelessness and recklessness of Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); the Plaintiff's decedent, MARY DWYER, sustained severe personal injuries of both a permanent and temporary nature, was forced to endure great pain and suffering, was forced to incur medical expenses for her care and treatment of her injuries, and ultimately suffered a painful and untimely death.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for general, compensatory and punitive damages, against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, together with attorney's fees, interest, and costs of suit.

COUNT SEVEN

Breach of Contract

44. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1- 43 of this Complaint as if set forth at length herein.

45. At the time of admission, Plaintiffs decedent, MARY DWYER, entered into a contract with Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20). By virtue of this contract, Defendants agreed to provide reasonable and safe care for Plaintiffs decedent, MARY DWYER. Pursuant to the contractual agreement, and by operation of law, Defendants agreed to and were obligated to provide skilled nursing home care to Plaintiffs decedent, MARY DWYER, including but not limited to adequate nursing, rehabilitative, dietary, custodial and psychosocial care.

46. Furthermore, the contract, by operation of law, required the facility to comply with all State and Federal regulations covering long term care facilities. Thus, Defendants were required to comply with the provisions of [42 C.F.R., Section 483.10 et seq.](#), [42 U.S.C., Section 1396 et seq.](#), N.J.A.C. 8:39 et seq., and [N.J.S.A. 30:13-1 et seq.](#) as part of its contract with Plaintiffs decedent, MARY DWYER.

47. In consideration for these services described above, Plaintiff agreed to pay and did pay a daily rate to the Defendants and further agreed to pay for additional services, charges, medications and equipment.

48. The Defendants, by virtue of the acts described above, breached the above-referenced contract by failing to provide Plaintiff's decedent, MARY DWYER, with a safe and secure residence, by failing to provide proper and adequate nursing and related care, by failing to provide promised goods and services, and by failing to prevent Plaintiffs decedent, MARY DWYER, from suffering injury and damages.

49. As a direct and proximate result of the aforesaid breach of contract, the Plaintiffs decedent, MARY DWYER, sustained monetary damages in the form of monies paid to Defendants and pursuant to the contract, sustained additional consequential damages arising out of the breach of contract including additional expenses incurred for the care and treatment of Plaintiff's decedent, MARY DWYER, and sustained attorney's fees, costs and other out-of-pocket expenses.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for compensatory damages, attorney's fees, interest, and costs of suit against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, and for such other and further relief as the Court may deem equitable, appropriate and just.

COUNT EIGHT

Punitive Damages

50. Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby incorporates each and every allegation contained in paragraphs 1- 49 of this Complaint as if set forth at length herein.

51. The aforementioned acts of the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); were outrageous and performed willfully, wantonly and with complete disregard for the rights of the Plaintiffs decedent, MARY DWYER, and in reckless indifference to the rights of others, specifically, Plaintiffs decedent, MARY DWYER, and her family, and those acts further shocked the conscience of the community.

52. As a direct and proximate result of the aforesaid outrageous, willful and wanton acts, and complete disregard for Plaintiffs decedent, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); sustained severe personal injuries of both a permanent and temporary nature, was forced to endure great pain and suffering, was forced to incur medical expenses for her care and treatment for her injuries, and ultimately suffered a painful and untimely death.

WHEREFORE, Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, demands judgment for compensatory damages, attorney's fees, interest, and costs of suit against the Defendants, HARBOR VIEW HEALTH CARE CENTER; JERSEY CITY HEALTHCARE PROVIDERS, LLC; HC PROVIDER MEZZ, LLC; JERSEY CITY PROVIDER CORP; ABC COMPANIES (1-10); DEF PARTNERSHIPS (1-10); JOHN DOE PHYSICIANS (1-10); JANE DOE NURSES (1-20); JANE MOE TECHNICIANS, CNAs AND PARAMEDICAL EMPLOYEES (1-20); individually, jointly, severally, or in the alternative, and for such other and further relief as the Court may deem equitable, appropriate and just.

STARK & STARK

A Professional Corporation

Attorneys for Plaintiff

By: <<signature>>

David R. Cohen, Esq.

Dated: September 12, 2011

JURY DEMAND

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands a trial by jury as to all issues.

CERTIFICATION

Pursuant to the provisions of Rule 4:5-1, the undersigned attorneys certify that this matter is not the subject of any other action pending in any court or arbitration proceeding, nor is any other action or arbitration proceeding contemplated, and all known necessary parties have been joined in this action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4 the Court is advised that David R. Cohen, Esq. is hereby designated as trial counsel.

***DEMAND FOR PRODUCTION OF COMPLETE CERTIFIED COLOR COPY
OF MEDICAL CHARTS AND NURSING RECORDS OF MARY DWYER***

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands a certified, colored copy of Defendant's entire and complete medical records and chart, incident reports, adverse event reports, and color photographs, for MARY DWYER, *be produced as they are kept in the usual course of business pursuant to R4:18-1 (b)(1) and within the time period set out in Rule 4:18-1(b).*

DEMAND FOR PRODUCTION OF CERTIFIED COPY OF NURSE AIDES' RECORDS

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands a certified, complete copy of all nurse aide flow sheets and/or any documents completed and/or signed by nurse aides pertaining to care and treatment of MARY DWYER during her time at defendant's facility. *The records shall be produced as they are kept in the usual course of business pursuant to R4:18-1(b)(1) and within the time period set out in Rule 4:18- (b).*

DEMAND FOR PRODUCTION OF ALL POLICIES AND PROCEDURES

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands a copy of all applicable Policies and Procedures relating to resident care and monitoring for all facilities, from 2008 through 2010.

DEMAND FOR ANSWERS TO FORM C and C(3)INTERROGATORIES

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands answers to Form C Interrogatories in accordance with R4:17(b)(2). Plaintiff further demands complete answers to all interrogatories pursuant to R4:17(b)(4).

DEMAND FOR ANSWERS TO SUPPLEMENTAL INTERROGATORIES

Plaintiff, ESTATE OF MARY DWYER, by and through her Administratrix Ad Prosequendum, HENRIETTA DWYER, hereby demands answers to the following Supplemental Interrogatories in accordance with R4:17(b)(1):

1. Please provide typewritten, legible, complete names of every physician, physicians assistant, RN, LPN, advanced nurse practitioner, nurse aide, and any other employee and/or agency nurse who signed the chart relating to MARY DWYER. Additionally, indicate whether each individual is an employee of defendant facility and if not provide their last known address, telephone number and social security number.
2. Please identify the name of the current Administratrix and director of nursing at defendant facility. Additionally, please identify the name(s) of the Administratrix(s) and director(s) of nursing at defendant facility during the time in which MARY DWYER was a resident.
3. If answering defendant has ever been a named defendant in any other litigation, please provide: date(s) of filing of complaint(s); name of plaintiffs attorney; case caption to include docket number, state and county of venue; and names of all defense attorneys.
4. Please provide any and all electronic mail (e-mail), electronically stored communications, and/or electronically stored information, regarding MARY DWYER.

STARK & STARK

A Professional Corporation

Attorneys for Plaintiff

By:<<signature>>

David R. Cohen, Esq.

Dated: September 12, 2011

End of Document

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