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From:	Client Matter:	Pages	Date:
Debbie Napoli	23969.0064	(includes cover): 6	3/9/2015 1:04:50 PM

To:	Company:
Robert Wharton	

Phone:	Fax:
	8327671783

Comments:

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March 9, 2015

Tina Morgan Freeman
Caldwell County District Clerk
1703 S. Colorado Street, Box 3
Lockhart, Texas 78644

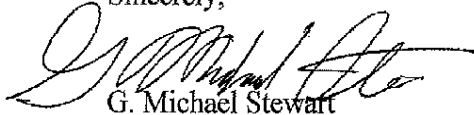
Re: Martha Sherwood, as Next Friend for Natalie Sealy v. Pinnacle Health Facilities XIX, LP d/b/a Parkview Nursing and Rehabilitation Center, Cause No. 15-0-039, 42st District Court, Caldwell County, Texas Our File 23969.0064

Dear Ms. Freeman:

Enclosed please find the original and one copy of the Original Answer and Verified Denial by Pinnacle Health Facilities XIX, LP d/b/a Parkview Nursing and Rehabilitation Center regarding the above-referenced matter. Please file accordingly and return the file-stamped copy in the envelope provided.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,



G. Michael Stewart

GMS/dsn
Enclosures

cc:

Robert M. Wharton *Via Facsimile (832) 767-1783*
McIver Brown Law Firm
712 Main Street, Suite 800
Houston, Texas 77002

CAUSE NO. 15-0-039

MARTHA SHERWOOD, AS NEXT
FRIEND FOR NATALIE SEALY
Plaintiff

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IN THE DISTRICT COURT

vs.

421ST JUDICIAL DISTRICT

PINNACLE HEALTH FACILITIES
XIX, LP D/B/A PARKVIEW NURSING
AND REHABILITATION CENTER
Defendants

CALDWELL COUNTY, TEXAS

ORIGINAL ANSWER AND VERIFIED DENIAL BY PINNACLE HEALTH
FACILITIES XIX, LP D/B/A PARKVIEW NURSING AND REHABILITATION
CENTER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Pinnacle Health Facilities XIX, LP d/b/a Parkview Nursing and Rehabilitation Center, and files and serves its Original Answer and Verified Denial to Plaintiffs' Original Petition, and in support of which would respectfully show unto the Court the following:

1.

General Denial

- a. As allowed by the Texas Rules of Civil Procedure, Defendant denies each and every, all and singular, the material allegations contained in Plaintiffs' Original Petition and all amendments and/or supplements thereto, and demands strict proof thereof under the laws of the State of Texas. By this general denial, Defendant would require Plaintiffs to prove every fact to support the claims in their Original Petition, and any amendments and supplements thereto, by a preponderance of the evidence.

2.

Verified Denial

- a. Pursuant to the Texas Rules of Civil Procedure 93(2), Defendant affirmatively states that Plaintiff is not entitled to recover damages from Defendant in the capacity sued.

3.

Affirmative Defenses

- a. Alternatively, in the event that such should be necessary by virtue of any adverse jury findings, Defendant invokes the limitations of liability set forth in TEX. CIV. PRAC. & REM. CODE ANN. §§74.301, 74.302 and 74.303.
- b. Defendant further alleges that Plaintiffs' claims for recovery of future losses are limited by TEX. CIV. PRAC. & REM. CODE ANN. §§74.501 – 74.507.
- c. Additionally, recovery of medical or health care expenses incurred is limited to the amount actually paid as opposed to the amount that has been billed. TEX. CIV. PRAC. & REM. CODE §41.0105; *see also Mills v. Fletcher*, 229 S.W.3d 765 (Tex. App.--San Antonio 2007, no pet.).
- d. Alternatively, Defendant would show that any injuries, damages, disability, or disabilities complained of by Plaintiffs herein are the result, in whole or in part, of pre-existing conditions and are not the result of any act or omission on the part of this Defendant.
- e. Alternatively, and only in the unlikely event of an adverse jury verdict awarding punitive damages, Defendant hereby invokes the punitive damage cap of TEX. CIV. PRAC. & REM. CODE ANN. §§41.001 – 41.008.
- f. This Defendant further specially denies any act or omission to act under the circumstances involved herein which would justify any claim for exemplary or punitive damages, and any such claims as against this Defendant are made in violation of the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 1, 3, 13 and 19 of the Texas Constitution, in that all of such claims as made are arbitrary, unreasonable, and in violation of this Defendant's rights to due process of law and equal protection of the law in the following respects:
 - i. Due process precludes introduction of and admission of highly prejudicial evidence, such as wealth or net worth of a defendant, which would likely influence or prejudice a jury with regard to its answers to the negligence and gross negligence issues. Due process requires safeguards so that such highly prejudicial evidence cannot be introduced or presented to the jury without adequate instructions and/or protections.
 - ii. Due process requires proof of more than mere negligence in order to constitute gross negligence. Due process requires clear and precise instructions and standards at trial for gross negligence and punitive or exemplary damages.
 - iii. The lack of sufficient safeguards and standards for punitive or exemplary damage awards constitute a violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.
 - iv. The absence of reasonable safeguards, procedures, and trial and appellate standards for an award of punitive or exemplary damage awards constitutes a violation of Article I, §§ 3, 13, and 19 of the Texas Constitution.

- v. Recovery of punitive or exemplary damages constitutes a violation of Article XVI, § 26 of the Texas Constitution.
- vi. Each special issue or question which pertains to an award of punitive or exemplary damages must be based upon a unanimous jury verdict.
- vii. A trial in which punitive or exemplary damages are sought must be bifurcated to preserve each defendant's due process rights under the Texas and United States Constitutions.
- g. Defendant would further show that the claims of the Plaintiffs for exemplary damages are unconstitutionally vague and, accordingly, any claims of Plaintiffs against Defendant should be proved beyond a reasonable doubt under the Sixth Amendment of the United States Constitution as opposed to a mere preponderance of the evidence. Alternatively, the burden of proof should at least require no less than the Plaintiffs proving their case by clear and convincing evidence that Defendant acted with requisite culpability.
- h. Defendant further alleges that Plaintiffs' claims for prejudgment interest are barred by TEX. FIN. CODE ANN. §304.1045.
- i. Defendant further alleges that Plaintiffs' claims for post-judgment interest are limited by TEX. FIN. CODE ANN. §304.003(c).

3.

a. Defendant respectfully requests that this cause of action be placed upon the Jury Docket of this Court, and has verified that the required jury fee has been paid in this cause. This request is not and should not be construed as a request for a specific setting.

WHEREFORE, PREMISES CONSIDERED, Defendant prays judgment of the Court that Plaintiff take nothing by this suit, for costs, and for such other and further relief, at law or in equity, to which Defendant may show itself to be justly entitled.

Respectfully submitted,

GODWIN LEWIS, PC

By: 
G. MICHAEL STEWART

Michael.Stewart@GodwinLewis.com

State Bar No. 00788471

JENNIFER M. OWENS

Jennifer.Owens@GodwinLewis.com

State Bar No. 50511938

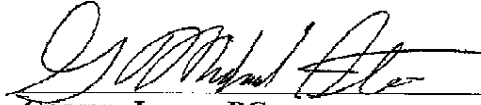
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Dallas, Texas 75270-2084
(214) 939-4400
(214) 760-7332 - facsimile

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon all known counsel of record pursuant to the Texas Rules of Civil Procedure on this 9th day of March 2015.

Via Facsimile (832) 767-1783
Robert M. Wharton
McIver Brown Law Firm
JP Morgan Chase Bank Building
712 Main Street, Suite 800
Houston, Texas 77002


GODWIN LEWIS, PC

VERIFICATION

STATE OF TEXAS

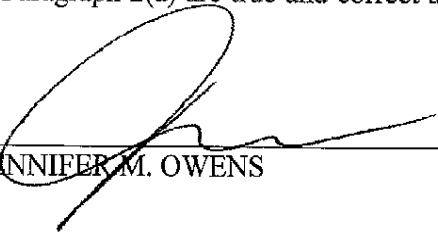
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COUNTY OF DALLAS

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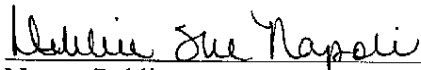
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BEFORE ME, the undersigned authority, on this day personally appeared Jennifer M. Owens, who being by me first duly sworn on her oath deposed and said that she is an authorized Representative of Defendant Pinnacle Health Facilities XIX, LP d/b/a Parkview Nursing and Rehabilitation Center, in the above-entitled and numbered cause and she is authorized to make this affidavit on behalf of said Defendant; that she has read the above and foregoing Original Answer, and that the allegations contained in Paragraph 2(a) are true and correct and within her personal knowledge.



JENNIFER M. OWENS

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the 9th day of March 2015, to certify which witness my hand and official seal of office.



Notary Public
In and for the State of Texas

My commission expires:

