

2011 WL 10583544 (Pa.Com.Pl.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Bucks County

Joyce E. CROSBY, Executrix of the Estate of Edward C. White, Deceased, Plaintiff,

v.

NORTHERN HEALTH FACILITIES, INC., d/b/a Langhorne Gardens Rehabilitation and Nursing Center; Extendicare Health Facilities, Inc.; Extendicare Health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Holding, Inc.; Extendicare, Inc. Extendicare Reit; Extendicare, L.P., Jennifer Rittler, N.H.A, ST. Mary's Hospital, Inc., d/b/a ST. Mary Medical Center; and Catholic Health East, Defendants.

No. 2010-06783.
October 24, 2011.

Consolidated Per Court Order

[Ruben J. Krisztal](#), Esquire, Identification No.: 202716, Wilkes & McHugh, P.A., 400 Market Street, Suite 1250, Philadelphia, PA 19106, Tel No.: (215) 972-0811, Email: rkrisztal@Avilkesmchugh.com, Attorney for Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased.

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 *in* Civil Action and Notice to Defend are served, by entering a written appearance personally or by 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 Plaintiffs. You may lose money or property or other rights important to you.

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

LAWYER REFERRAL SERVICE

THE BUCKS COUNTY BAR ASSOCIATION

135 East State Street

Doylestown, Pennsylvania 18901

Phone:215-348-9413 • Fax: 215-348-3277

AMENDED COMPLAINT IN CIVIL ACTION

(Medical Professional Liability Action)

Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, by and through her counsel, Wilkes & McHugh, P.A., files the within Amended Complaint in Civil Action as follows:¹

I. PARTIES

1. Edward C. White was an adult individual and patient at St. Mary Medical Center, located at 1201 Langhorne-Newtown Road, Bucks County, Langhorne, Pennsylvania 19047 (hereinafter referred to as “the Hospital”), a hospital, from July 3, 2008 through July 9, 2008, from July 25, 2008 through July 29, 2008, from February 12, 2009 through February 28, 2009, and from March 31, 2009 until April 6, 2009. Thereafter, Edward C. White passed away on April 6, 2009.

2. Dolores M. White is the wife of Edward C. White, deceased, and an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 2304 Brownsville Road, J-1, Langhorne, PA 19053.

3. Joyce E. Crosby is the daughter of Edward C. White, deceased, and an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 75 Loghouse Road, Zionsville, PA 18092.

4. Joyce E. Crosby was appointed Executrix of the Estate of Edward C. White, deceased, on July 27, 2009, by the Register of Wills of Buck County.

5. Defendant, St. Mary's Hospital, d/b/a St. Mary Medical Center (hereinafter “the Hospital”), upon information and belief, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 1201 Langhorne-Newtown Road, Langhorne, Pennsylvania 19047.

6. Defendant, St. Mary's Hospital, d/b/a St. Mary Medical Center, is engaged in the business of owning, operating and/or managing hospitals, including St. Mary Medical Center, providing healthcare, medical services and nursing care to the public in Pennsylvania, and, was at all times material hereto, duly licensed to operate the Hospital, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Hospital, out to the public as competent and skillful healthcare providers and practitioners of medicine and which is directly and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Edward C. White.

7. Defendant, Catholic Health East, upon information and belief, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 3805 W. Chester Pike, Suite 100, Newtown Square, PA 19073.

8. Defendant, Catholic Health East, is engaged in the business of owning, operating and/or managing hospitals, including St. Mary Medical Center, providing healthcare, medical services and nursing care to the public in Pennsylvania, and, was at all times material hereto, duly licensed to operate the Hospital, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Hospital, out to the public as competent and skillful healthcare providers and practitioners of medicine and which is directly and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Edward C. White.

II. JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in this Honorable Court insofar as Defendants regularly conduct business in Bucks County, Pennsylvania, and/or the cause of action arose therein. See [Pa.R.C.P. 1006](#) and [2179](#).

III. FACTUAL BACKGROUND

A. Conduct of the Defendants

10. Edward C. White was first admitted to the care of the Hospital on July 3, 2008, until his transfer to Langhorne Gardens Rehabilitation and Nursing Center on July 9, 2008. He was subsequently readmitted to the Hospital from the Langhorne Gardens Rehabilitation and Nursing Center on July 25, 2008, where he remained in residence until July 29, 2008, and on February 12, 2009 through February 28, 2009. Finally, he was readmitted to the Hospital on March 31, 2009, where he remained until April 2, 2009. Thereafter, Edward C. White passed away on April 6, 2009.

11. During the course of his admission, Edward C. White was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for monies, he was admitted to Defendants' Hospital to obtain such care and protection.

12. The Defendants, through advertising, promotional materials and information sheets, held out themselves and the Hospital, as being able to provide the needed medical and nursing care, to **elderly** and frail individuals, including Edward C. White.

13. At all times material hereto, the Defendants held themselves out as capable of providing total healthcare, and assumed responsibility for Edward C. White's total healthcare, including care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

14. At the time of his admission, the Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of Edward C. White and promised that they would adequately care for his needs.

15. The Defendants exercised complete and total control over the healthcare of all patients of the Hospital, such as Edward C. White.

16. Upon information and belief, at all times material hereto, the Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management and quality control of the Hospital.

17. At all times material hereto, the control exercised over the Hospital by the Defendants included, *inter alia*: marketing, human resource management, training, staffing, and the creation and implementation of all policy and procedure manuals used by the Hospital.

18. The Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their Hospitals, including St. Mary Medical Center.

19. As a part of their duties and responsibilities, the Defendants have an obligation to establish policies and procedures that address the needs of the patients of the Hospital, such as Edward C. White, with respect to the recognition and/or treatment of medical conditions, such as those experienced by Edward C. White, so as to ensure that timely and appropriate care will be provided for such conditions whether within the Hospital, or obtained from other medical providers.

20. The Defendants, acting through their administrators, various boards, committees, and individuals, are responsible for the standard of professional practice by members of their management and staff at the Hospital, and to oversee their conduct in the matters set forth herein.

21. The Defendants have an obligation to employ competent, qualified staff so as to ensure that proper treatment is rendered to individuals having medical problems, such as those presented by Edward C. White as set forth herein.

22. As a part of their duties and responsibilities, the Defendants have an obligation to maintain and manage the Hospital with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of medical conditions suffered by patients, such as Edward C. White, whether within the Hospital, or obtained from other medical care providers.

23. The Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care to patients, which demonstrates a failure to comply with the applicable regulations and standards for hospitals.

24. The Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Hospital to be set at a level such that the personnel on duty at any given time could not reasonably tend to the needs of their assigned patients, including Edward C. White.

25. Over the past several years and at all times material hereto, the Defendants agreed to provide care to individuals with complex acuity levels.

26. The Defendants knew that this increase in the acuity care levels of the patient population would substantially increase the need for staff, services, and supplies necessary for the new patient population.

27. The Defendants knew, or should have known, that the acuity needs of the patients in the hospital increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the patients.

28. The Defendants failed to provide resources necessary, including sufficient staff, to meet the needs of the patients, including Edward C. White.

29. The Defendants knowingly established staffing levels that created recklessly high patient to staff ratios, including high patient to nurse ratios.

30. The Defendants knowingly disregarded patient acuity levels while making staffing decisions; and, also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatments.

31. The aforementioned acts directly caused injury to Edward C. White and were known by the Defendants.

32. During the admission of Edward C. White at the Hospital, the Defendants knowingly sacrificed the quality of care received by all patients, including Edward C. White, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Edward C. White, as described herein, which included the development and/or worsening of pressure sores, including a sacral pressure sore.

33. At the time and place of the incidents hereinafter described, the Hospital whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of the Defendants.

34. At all times material hereto, the Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants herein.

35. The aforementioned incidents were caused solely and exclusively by reason of the negligence, carelessness and recklessness of the Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of Edward C. White.

36. The Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/ professional corporations and/or businesses and the Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, is asserting professional liability claims against all of the Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

B. Injuries of Edward C. White

37. At the time of his admission to the care of the Hospital on July 3, 2008, Edward C. White had a past medical history which included Alzheimer's dementia, hypertension, and atrial fibrillation.

38. Upon admission to the Hospital, Edward C. White was dependent upon the staff for his mental, physical and medical needs, requiring total assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

39. Edward C. White was at risk for future illnesses and injuries, including falls, skin integrity issues, infections, malnutrition and dehydration.

40. Over the course of the admission of Edward C. White at the Hospital, Defendants engaged in a pattern of care replete with harmful and injurious commissions, omissions and neglect as described herein.

41. The severity of the recurrent negligence inflicted upon Edward C. White while in the care of the Defendants during his admission at the Hospital, accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

42. These injuries, as well as the conduct specified herein, caused Edward C. White to suffer a loss of personal dignity, together with degradation, anguish and emotional trauma.

43. On July 3, 2008, Edward C. White came to the Hospital from home for evaluation after being found on the floor by his bed after an unwitnessed fall and remained hospitalized until July 9, 2008.

44. On July 9, 2008, Edward C. White was transferred to Langhorne Gardens Rehabilitation and Nursing center, where he remained until transfer back to St. Mary Medical Center.

45. On July 25, 2008, Edward C. White was transferred back to St. Mary Medical Center ER from Langhorne Gardens Rehabilitation and Nursing Center, and admitted for fever, urinary tract infection and altered mental status.

46. Upon admission to the St. Mary Medical Center emergency room on July 25, 2008, Edward C. White weighed 215.9 pounds, and his skin was intact. His blood cultures grew *E. coli* and *Staphylococcus simulans*.

47. After myocardial infarction was ruled out, Edward C. White was diuresed and discharged back to Langhorne Gardens on July 29, 2008 with orders for a cardiac soft diet and a diagnosis of dementia, mental status changes, and congestive heart failure.

48. On February 12, 2009, Edward C. White was admitted to St. Mary Medical Center with the diagnosis of left leg deep vein thrombosis and foul-smelling, necrotic Stage III infected left heel ulcer (cultures grew out *Protean mirabilis*, *Citrobacter braakii*, methicillin resistant *Staphylococcus aureus* and Vancomycin-resistant Enterococci) which measured 3 inches and required surgical debridement. He also had a Stage II ulcer to his left buttock. Left heel x-rays were negative for osteomyelitis.

49. At the time of admission, Defendant St. Mary's Hospital knew that Mr. White was at a high risk for pressure ulcers.

50. On February 13, 2009, a care plan was prepared for the ischium, which addressed applying hydrogel and dressing to the sacrum daily, to the left buttocks and ischium twice a day and as needed.

51. On February 16, 2009, the left heel wound was surgically debrided of fibrotic and necrotic tissue, and the wound measured 8 x 6 cm post debridement. Very little bleeding or healthy tissue was noted during the procedure, and gangrenous necrosis and suppurative inflammation was noted in the pathology report of the debridement.

52. On February 16, 2009, Edward C. White was evaluated for possible PVD (peripheral vascular disease). Local wound care was recommended.

53. On February 16, 2009, Edward C. White developed a sore to his right Achilles tendon from his heel boot.

54. On February 20, 2009, and each day through February 26, 2009, the left gluteal was noted as a Stage ulcer.

55. On February 23, 2009, Podiatry noted 30% necrotic tissue to the left heel. Wound cultures grew out *Proteus mirabilis*, *Citrobacter braakii*, MRSA, and VRE. An MRSA nasal screen was positive. Blood culture results from his PICC line were positive for coagulase negative *Staphylococcus*.

56. On February 27, 2009, Edward C. White was discharged back to Langhorne Gardens Rehabilitation and Nursing Center.

57. At the time Mr. White was transferred back to Langhorne Gardens Rehabilitation Center, per their own transfer form, Mr. White had a left heel infected pressure ulcer, as well as, a pressure ulcer of the coccyx. Per the nursing assessment at Langhorne Gardens at the time of readmission to that facility, Mr. White was admitted with a Stage III coccyx pressure ulcer.

58. On March 31, 2009, Edward C. White was readmitted to St. Mary Medical Center for evaluation of congestion (rhonchi and rales to his lung fields), wound infection, poor oral intake and decreased responsiveness. He tested positive for urinary tract infection. Nursing assessed him with Stage IV wounds to his buttocks and left heel and noted multiple skin tears to arms and legs. His sacral wound was necrotic and foul smelling with a large amount of serosanguineous drainage.

59. On April 2, 2009, a wound consult noted that Edward C. White had 100% liquefying eschar to the sacral wound with pockets or cavities beneath the slough with large amounts of brown malodorous drainage. The left heel had a large malodorous, draining wound. Dakins dressing changes were ordered for unstageable wounds to his sacrum and left heel. The right heel was unstageable with a small area of black/brown eschar. Pain was noted with wound care. A protective dressing was placed on his right heel, and treatments rendered to left elbow skin tears.

60. That on April 6, 2009, Edward C. White died.

61. The Hospital accepted Edward C. White as a patient fully aware of his medical history and understood the level of nursing care required to maintain the integrity of his skin in order to preclude him from suffering any further breakdown and to provide sufficient food and water to preclude malnutrition and dehydration.

62. The Defendants deprived Edward C. White of adequate and appropriate healthcare as a result of mismanagement, understaffing of the Hospital and lack of training of the Hospital employees, in that they failed to provide adequate and appropriate health care; failed to develop an appropriate therapeutic care plan; failed to prevent skin breakdown or provide the treatment and services required to promote healing once skin breakdown occurred, failed to develop and or/enforce policies and procedures; and failed to ensure the highest level of physical, mental and psychosocial functioning was attained.

63. The severity of the recurrent negligence inflicted upon Edward C. White while in the Defendants' care consisted of mismanagement, understaffing of the Hospital and lack of training of the Hospital employees, in that they failed to provide adequate and appropriate health care; failed to develop an appropriate therapeutic care plan; failed to prevent skin breakdown or provide the treatment and services required to promote healing once skin breakdown occurred, failed to develop and/or enforce policies and procedures; and failed to ensure the highest level of physical, mental and psychosocial functioning was attained.

64. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Edward C. White was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, but without limitations, pressure sores, and other body pain and damage, and anxiety reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

I. COUNT ONE

Joyce E. Crosby, Executrix of the Estate of Edward C. White, Deceased v. St. Mary's Hospital, Inc., d/b/a St. Mary Medical Center and Catholic Health East

65. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

66. At all times material hereto, Defendants were acting through their agents, servants and employees, including Jim Glessner, Alice Jose, Chukwudi Ogbenna, Crystal M. Crosley, Harriet M. Glenn, Julie Saksa, Raju B. Pilla, Debra J. Gray, Cindy Spector, Jane Diiorio, Jessy George, Karen M. Bauer, Natalie R. Grady, Stephanie F. Loeper, Teresita T. Rabago, Zahra Eshaghi, Zandra M. Lester, Wendy Dershaw, and all Department Heads, the names of which are in Defendants' possession, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

67. At all times material hereto, Defendants had the ultimate responsibility of ensuring that the rights of the patients, including Edward C. White, were protected.

68. At all times material hereto, Defendants owed a non-delegable duty to provide adequate and appropriate care and supervision to Edward C. White and other patients, such as reasonable caregivers would provide under similar circumstances.

69. At all times material hereto, Defendants owed a non-delegable duty to Edward C. White and other patients to hire, train, and supervise employees, so as to deliver healthcare and services to patients in a safe and reasonable manner.

70. At all times material hereto, Defendants, by and through their agents, employees, and/or servants including Jim Glessner, Alice Jose, Chukwudi Ogbenna, Crystal M. Crosley, Harriet M. Glenn, Julie Saksa, Raju B. Pilla, Debra J. Gray, Cindy Spector, Jane Diiorio, Jessy George, Karen M. Bauer, Natalie R. Grady, Stephanie F. Loeper, Teresita T. Rabago, Zahra Eshaghi, Zandra M. Lester, Wendy Dershaw, and all Department Heads, the names of which are in Defendants' possession, owed a duty of care to Edward C. White to exercise the appropriate skill and care of licensed physicians, nurses, directors of nursing, and/or administrators.

71. At all times material hereto, Defendants owed a duty and responsibility to furnish Edward C. White with appropriate and competent medical, nursing and/or total healthcare.

72. Plaintiff believes, and therefore avers, that the administrator, director of nursing, and/or other staff members of the Hospital, sent frequent written reports to the Defendants detailing the number and types of injuries, illnesses, and infections sustained by Edward C. White and the patients of the Hospital.

73. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the patients of the Hospital, including those suffered by Edward C. White, the Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

74. The Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Edward C. White, as they were placed on actual and/or constructive notice of said problems, including through governmental/state surveys.

75. The Defendants, as the corporate owners, board members and/or managers of the Hospital, breached their duty and were, therefore, negligent, careless and reckless in their obligations to Edward C. White.

76. The corporate conduct of the Defendants was independent of the negligent conduct of the employees of the Hospital, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the patients, including Edward C. White.

77. At all times material hereto, Defendants owed and failed to fulfill the following duties to Edward C. White: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and supervise all persons who practiced medical, nursing and/or skilled healthcare within the Hospital; and, formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all patients.

78. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of the Defendants, individually, vicariously and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff including Jim Glessner, Alice Jose, Chukwudi Ogbenna, Crystal M. Crosley, Harriet M. Glenn, Julie Saksa, Raju B. Pilla, Debra J. Gray, Cindy Spector, Jane Diiorio, Jessie George, Karen M. Bauer, Natalie R. Grady, Stephanie F. Loeper, Teresita T. Rabago, Zalira Eshaghi, Zandra M. Lester, Wendy Dershaw, and all Department Heads, the names of which are in Defendants' possession, who examined, treated and/or communicated the condition of Edward C. White, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of the Defendants consisted of the following acts and omissions in the care and treatment of Edward C. White:

a. failure to train staff or hire appropriately trained staff, or supervise staff, who failed to provide adequate preventative skin care allowing for the development and progression of pressure sores, failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent development and progression of pressure sores, and failed to provide adequate assessments of Edward C. White following a change in condition;

b. knowingly allowing and/or encouraging unskilled and untrained individuals to care for Edward C. White who failed to provide adequate preventative skin care allowing for the development and progression of pressure sores, failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent development and progression of pressure sores, and failed to provide adequate assessments of Edward C. White following a change in condition;

c. failure to provide adequate preventative skin care allowing for the development and progression of pressure wounds by failing to obtain and administer preventative pressure-relieving measures, failing to timely and consistently administer turning and

repositioning Edward C. White every two hours while in bed, and failing to properly follow wound care specialist instructions and administer wound care cleaning; obtain, order and administer preventative measures, including failing to provide proper hygiene to Edward C. White;

d. failure to provide Edward C. White with proper skin care, and allowing him to suffer therefrom as described herein;

e. failure to ensure that Edward C. White did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, but without limitations, when he experienced progression of pressure sores, when Defendants knew or should have known that he was at risk for the same;

f. failure to respond in a timely manner with appropriate medical care when Edward C. White was injured, including when he experienced pressure sores, when Defendants knew or should have known that she was at risk for the same;

g. failure to provide adequate and appropriate health care by failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate, preventative skin care, failing to provide adequate hygiene, failing to provide adequate nutrition impacting wound healing ability, failing to provide appropriate treatment and services to prevent development and progression of pressure sores, and failing to administer ordered medications and treatments;

h. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well being;

i. failure to ensure that each patient receives and that the Hospital provides the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;

j. failure to ensure that based on the comprehensive assessment of a patient, the a patient who enters the Hospital without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable, and that a patient having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing and progressing;

k. failure to ensure that the Hospital uses the results of the assessment to develop, review and revise the patient's comprehensive plan of care, developing a comprehensive care plan for each patient that includes measurable objectives and timetables to meet a patient's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the patient's highest practicable physical, mental, and psychosocial well-being, per the acceptable standards of care and federal regulations;

l. failure to ensure that the Hospital has sufficient staff to provide medical, nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each patient, as determined by the patient assessments and individual plans of care, providing services by sufficient number of each of the required types of personnel on a twenty-four hour basis to provide care to all patients in accordance with patient care plans;

m. failure of the Hospital to provide a safe, functional, sanitary, and comfortable environment for patients, staff, and the public;

n. failure of the Hospital to develop and implement written policies and procedures that prohibit mistreatment, neglect, and **abuse** of patients;

- o. failure of the Hospital to ensure that each patient receives adequate supervision and assistance devices to prevent accidents;
- p. failure to ensure that the patient's right to reside and receive services in the Hospital with reasonable accommodations of individual needs and preferences except when the health or safety of the individual or other patients would be endangered;
- q. failure to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- r. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for patients by failing to: provide adequate and appropriate health care to prevent development and progression of pressure sores, properly notify physicians in a timely manner, provide safe transfers, follow physician orders, develop and revise appropriate care plans, provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent development and progression of pressure sores;
- s. acting in a grossly negligent manner, with reckless indifference to the rights and safety of Edward C. White;
- t. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change of Edward C. White;
- u. failure to refer Edward C. White to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated Edward C. White's condition due to failure to notify treating physicians and follow up on physicians instructions;
- v. grossly understaffing the Hospital;
- w. failure to take appropriate steps to remedy continuing problems at the Hospital that Defendants knew were occurring with Edward C. White's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve patient care;
- x. failure to evaluate the quality of patient care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- y. failure to set in place a functional table of organization with standards of accountability and hold department heads accountable for the performance of their respective departments;
- z. failure to maintain open lines of communication with the governing body, department heads, Hospital staff and its patients to assure resources are properly allocated and that patient care is maintained at a high level;
- aa. failure to maintain compliance with governmental regulations and assure that the nondiscriminatory policy and policy on patient rights of the Hospital are available for inspection by the public;
- bb. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality patient care;
- cc. failure to coordinate training programs to improve employee skills and to enhance employee performance; and
- dd. failure to provide adequate assessment following a change in the medical condition of Edward C. White.

79. Upon information and belief, the corporate officers of the Defendants were made aware of the governmental/state survey results and placed on notice of the status of their Hospitals, including St. Mary Medical Center.

80. Upon information and belief, the Defendants were aware that they had previously been cited for deficiencies by governmental units regarding St. Mary Medical Center, including failure to ensure that the number of patients admitted to any area of the Hospital did not exceed the number for which the area is designed, equipped, and staffed; failure to ensure that solutions used for surgical irrigation were stored and used in accordance with manufacturer's recommendations for safe patient use; failure to ensure that parenteral injection sites were accurately documented; failure to ensure that the primary operating surgeon documented the identification of each surgical patient after the patient had been placed on the operating table; failure to develop and implement a policy for performing quality control testing to minimize all health hazards in the hospital; failure to ensure that a safe environment was provided; failure to follow established administrative policy for surgical site identification; and, failure to ensure that the Clinical Decision Unit was utilized appropriately for patient use.

81. Furthermore, Defendants were aware that they had previously been cited for deficiencies by governmental units regarding St. Mary Medical Center, in that they failed to ensure each registered nurse completed competency education programs; failed to assign care commensurate with the specialized qualifications and competence of each nursing staff member; and, failed to ensure that each patient's skin integrity was not compromised by providing a safe setting.

82. As a direct and proximate result of the Defendants' acts and/or omissions, and their breach of duty of care, negligence, carelessness and recklessness, Edward C. White suffered (a) severe permanent physical injuries resulting in pain, suffering, and disfigurement, (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, and (d) expense of otherwise unnecessary hospitalization, medical care and admission at the Hospital.

83. In causing the aforementioned injuries, the Defendants knew, or should have known, that Edward C. White would suffer such harm.

84. The conduct of the Defendants was outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Edward C. White.

85. The conduct of the Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, respectfully requests that judgment be entered in her favor, and against all Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00) whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

**III. COUNT TWO NEGLIGENCE PER SE FOR VIOLATIONS OF
NEGLECT OF CARE-DEPENDENT PERSON, [18 Pa.C.S.A. §2713](#)**

**Joyce E. Crosby, Executrix of the Estate of Edward C. White, Deceased v. St.
Mary's Hospital, Inc., d/b/a St. Mary Medical Center and Catholic Health East**

86. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if the same was more fully set forth herein.

87. At all times pertinent hereto, there was in full force and effect [18 Pa.C.S.A. §2713](#) "Neglect of Care Dependent Person," which set forth penal consequences for neglect of a care-dependent person.

88. 18 Pa.C.S.A. §2713 “Neglect of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be **abused** or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such **abuse** or neglect causes injury, either physical or mental, then such conduct is actionable.

89. At all times pertinent hereto, Edward C. White was a care dependent patient of the Defendants' Hospital, St. Mary Medical Center, and thus fell within the class of persons 18 Pa.C.S.A. §2713 “Neglect of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. §2713 “Neglect of Care Dependent Person” as the standard of care for measuring the Defendants' conduct.

90. Additionally, 18 Pa.C.S.A. §2713 “Neglect of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Edward C. White sustained.

91. The Defendants, in accepting the responsibility for caring for Edward C. White as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. §2713 “Neglect of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Edward C. White for whom they were responsible to provide care as specifically set forth in this Complaint;

92. As a direct result of the aforesaid negligence “per se” of the Defendants, Edward C. White was caused to sustain serious personal injuries and damages as aforesaid.

93. The conduct of the Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, respectfully requests that judgment be entered in her favor, and against the Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

**IV. COUNT THREE NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA
OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. §10225.101, et seq.**

**Joyce E. Crosby, Executrix of the Estate of Edward C. White, Deceased V. St.
Mary's Hospital, Inc., d/b/a St. Mary Medical Center and Catholic Health East**

94. Plaintiff incorporates herein by reference each and every preceding paragraph of this Complaint as if the same was more fully set forth herein.

95. At all times pertinent hereto, there was in full force and effect 35 P.S. §10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for **abuse** of a care-dependent person.

96. 35 P.S. §10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

- ...older adults who lack the capacity to protect themselves and are at imminent risk of **abuse**, neglect, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of

incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from **abuse**, neglect, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of **abuse**, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

97. At all times pertinent hereto, Edward C. White was an older person who was a patient of Defendants' Hospital, St. Mary Medical Center, who lacked the capacity to protect himself and thus fell within the class of persons 35 P.S. §10225.101, *et seq.* was intended to protect, thus entitling Plaintiff to adopt 35 P.S. §10225.101, *et seq.* as the standard of care for measuring the Defendants' conduct.

98. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Edward C. White sustained.

99. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the Defendants, in accepting the responsibility for caring for Edward C. White as aforesaid, were negligent "per se" and violated 35 P.S. §10225.101, *et seq.* in that they had reasonable cause to suspect that Edward C. White was the victim of **abuse** and neglect and failed to report said **abuse** and neglect to the appropriate agency and law enforcement officials.

100. As a direct result of the aforesaid negligence "per se" of the Defendants, Edward C. White was caused to sustain serious personal injuries and damages as aforesaid.

101. The conduct of Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, respectfully requests that judgment be entered in her favor, and against the Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

V. COUNT FOUR

Joyce E. Crosby, Executrix of the Estate of Edward C. White, Deceased v. St. Mary's Hospital, Inc., d/b/a St. Mary Medical Center and Catholic Health East

102. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

103. Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, brings this action on behalf of the decedent's estate under and by virtue of the Pennsylvania Judiciary Act 42 Pa.C.S. 8302, known as the Survival Statute, to recover all damages legally appropriate thereunder.

104. The following persons are entitled to share under this cause of action in the estate of said decedent, Edward C. White: Dolores M. White (wife), Joyce E. Crosby (daughter), Edward White, Jr. (son), Marianne White (daughter), Sharon Taylor (daughter), Delores M. Linder (daughter) and Nancy Doyle (daughter).

105. Plaintiff's decedent, Edward C. White, did not bring any action during his lifetime, nor has any other action been commenced on behalf of plaintiff's decedent, Edward C. White, against the Defendants herein.

106. Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, claims damages for the conscious pain and suffering including mental and physical pain, suffering and inconvenience, loss of life's pleasures and aggravation of pre-existing medical conditions, and expense of otherwise unnecessary hospitalizations undergone by Edward C. White, up to and including the time of his death, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

107. Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, claim damages for the fright and mental suffering attributable to the peril leading to the physical manifestation of mental injuries, physical injuries, the development and worsening of pressure sores, and severe pain occurring to Edward C. White, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

108. In causing the aforementioned injuries, the Defendants knew, or should have known, that Edward C. White would suffer such harm.

109. The conduct of the Defendants was intentional, outrageous, willful and wanton and exhibited a reckless indifference to the health and well-being of Edward C. White.

110. The conduct of the Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased, respectfully requests that judgment be entered in her favor, and against all Defendants, in an amount in excess of the compulsory arbitration limits and/ or Fifty Thousand Dollars (\$50,000.00) whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

WILKES & McHUGH, P.A.

<<signature>>

RUBEN J. KRISZTAL, ESQUIRE

Attorney for Plaintiff, Joyce E. Crosby, Executrix of the Estate of Edward C. White, deceased

Date: 10/24/2011

Footnotes

- 1 Pursuant to Court Order issued by the Honorable Robert J. Mellon, this Case Number is based on Consolidation Order attached hereto and marked as Exhibit "A".