

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF NEWPORT NEWS

HALEY KEFFER,
Personal Representative and
Administratrix of the Estate of
Raven Nichole Keffer, Decedent,

Plaintiff,

v.

At Law No. CL1903772P-11

UNIVERSAL HEALTH SERVICES, INC.,

and

KEYSTONE NEWPORT NEWS, LLC d/b/a
NEWPORT NEWS BEHAVIORAL HEALTH
CENTER,

and

JOHN AND/OR JANE DOES,
Doctors, Nurses, Nursing Assistants, and/or
Other Employees,
NEWPORT NEWS BEHAVIORAL HEALTH CENTER,

Defendants.

FILED
2019 DEC -9 PM 3:24
CLERK OF COURT
GARY S. ANDERSON
CLERK

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW the Defendant Keystone Newport News, LLC d/b/a Newport News Behavioral Health Center ("this Defendant"), by counsel, and for its Answer to the Complaint filed against it, states as follows:

1. Upon information and belief, this Defendant admits that decedent died on June 29, 2018 at the age of seventeen years. Defendant further admits that prior to her death on June 29, 2018, decedent was an admitted resident of Defendant's facility. Any remaining allegations are of Paragraph 1 are denied.

2. This Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 2 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
3. The allegations contained in Paragraph 3 of the Complaint pertain to a Defendant other than Keystone Newport News, LLC d/b/a Newport News Behavioral Health Center and to which no response is therefore required. To the extent a response is deemed necessary, the allegations of Paragraph 3 are denied.
4. The allegations of Paragraph 4 are admitted.
5. Defendant is not advised as to the identity of the "John and/Jane Does" alleged in Paragraph 5 to have been employees/agents of NNBHC. As such, Defendant denies Paragraph 5 in its entirety. Further, Defendant specifically denies that it employed any doctors or nurse practitioners, or that this defendant is in any fashion responsible for the actions of any "John or Jane Doe".
6. Paragraph 6 appears to be a partial synthesis of decedent's personal and familial history, as well as a statement of opinion as to decedent's personality traits, to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 6 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
7. Paragraph 7 appears to be a partial synthesis of decedent's personal and familial history to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit

- or deny the allegations contained in Paragraph 7 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
8. Paragraph 8 appears to be a partial synthesis of decedent's personal and familial history to which no response is required. To the extent a response is deemed necessary this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 8 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
 9. Paragraph 9 appears to be a partial synthesis of decedent's personal and familial history to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 9 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
 10. Paragraph 10 appears to be a partial synthesis of decedent's personal and familial history to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 10 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
 11. Paragraph 11 appears to be a partial synthesis of decedent's personal and employment history to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 11 of the Complaint and, therefore, denies the same and calls for strict proof thereof.
 12. Paragraph 12 appears to be a partial synthesis of decedent's personal/medical history to which no response is required. To the extent a

response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 12 of the Complaint and, therefore, denies the same and calls for strict proof thereof.

13. Paragraph 13 appears to be a partial synthesis of decedent's personal/medical history to which no response is required. To the extent a response is deemed necessary, this Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 13 of the Complaint and, therefore, denies the same and calls for strict proof thereof.

14. Paragraph 14 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 14 are denied.

15. Paragraph 15 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 15 are denied.

16. Paragraph 16 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 16 are denied.

17. Paragraph 17 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 17 are denied.

18. Paragraph 18 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 18 are denied.
19. Paragraph 19 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 19 are denied.
20. Paragraph 20 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 20 are denied.
21. Paragraph 21 appears to be a partial synthesis of decedent's medical history to which Defendant is not advised and to which no response is required. To the extent a response is deemed necessary, the allegations of Paragraph 21 are denied.
22. It is admitted that on June 21, 2018, Vanessa Leeper of the Giles County DSS, contacted this Defendant regarding a potential referral. It is further admitted that Ms. Leeper provided this Defendant with a medical history which stated that there were no major medical issues, but that decedent had issues with gallstones which may require future surgery. She also asserted that the decedent was seen at an Emergency Room in February of 2018 due to drug use and related complications such as a panic attack believed to have been brought on by staying up the night before "speed balling," as well as not being

able to breathe, being sick and throwing up, and was dehydrated attributed to what decedent believed to have been a "bad batch or mixed with something." Decedent was also reported to have been seen at a hospital on June 20, 2018 "due to an increase in heart rate but was fine. [Decedent's] thyroid needs to be rechecked in a month." Decedent had been prescribed Seroquel and Prazosin but had not taken medication since February 2018. Any remaining allegations of Paragraph 21 are denied.

23. It is admitted that decedent was admitted to this Defendant's facility on June 22, 2018. The remaining allegations of Paragraph 23 are denied.
24. The allegations set forth in Paragraph 24 are denied as worded.
25. The allegations set forth in Paragraph 25 are denied as worded.
26. The allegations set forth in Paragraph 26 are denied as worded.
27. This Defendant is not advised as to what decedent experienced and therefore denies such allegations and calls for strict proof thereof. The remaining allegations in Paragraph 27 are denied as worded.
28. The allegations set forth in Paragraph 28 are denied as worded.
29. The allegations set forth in Paragraph 29 are incomplete and/or an inaccurate characterization of the decedent's course, care, and treatment. To the extent the allegations set forth in paragraph 29 are different from, or contrary to, the medical records or the testimony of any witness, they are denied.
30. Upon information and belief, it is admitted that a resident of the facility called 911 on June 29, 2018. The remaining allegations of Paragraph 30 are denied.
31. It is admitted that facility staff called 911. The remaining allegations of Paragraph 31 are denied as worded.

32. It is admitted that Defendant's Nursing Daily Progress Notes indicate that the author recorded that he was informed by "the doctor" that decedent was dehydrated and malnourished. It is further admitted that the decedent was reported to have been around the age of seventeen years and one month. This Defendant is not advised as to who was present at the time of decedent's passing or their relation to the decedent and therefore denies the allegations related to the same and calls for strict proof thereof. The remaining allegations of Paragraph 32 appear to be a partial synthesis of decedent's medical record to which no response is required. To the extent a response is deemed necessary, this Defendant admits that it was reported that decedent coded and was revived during transport to Mary Immaculate Hospital. This Defendant further admits that upon arrival at Mary Immaculate Hospital, it is reported that Decedent was intubated in critical condition and noted to have blood in her stomach and a possible brain injury. It is further admitted that the record indicates that resuscitative efforts were ultimately unsuccessful and that the Decedent was pronounced dead at or around 10:33 p.m. Any remaining allegations of Paragraph 32 are denied.
33. It is admitted that Medical Examiner's Report indicates that the author recorded *complications of lymphocytic adrenalitis* as the cause of death. It is further admitted that the report indicates that no illicit drugs were detected. The allegation that the medical examiner stated that Decedent's "death was preventable, had she been treated in time" is an incomplete and/or an inaccurate and overly simplified mischaracterization of the opinion offered in

the VMEDS Case Note and is therefore denied as worded. Any remaining allegations of Paragraph 33 are denied.

34. The allegations set forth in Paragraph 34 seek expert opinion which this Defendant cannot be compelled to provide and therefore do not require a response from this Defendant. To the extent a response is deemed necessary, this Defendant denies the allegations in Paragraph 34 and calls for strict proof thereof.

COUNT I – DEATH BY WRONGFUL ACT

35. The allegations set forth in Paragraph 35 are denied.

36. The allegations set forth in paragraph 36 are denied as worded.

37. This Defendant admits only that it was noted in the Department of Behavioral Health and Developmental Services Corrective Action Plan to be in noncompliance, in part, with Title 12 of the Virginia Administrative Code sections: 35-46-640, 35-46-70, 35-46-700, 35-46-710, 35-46-800, 35-46-810, 35-46-840, and 35-46-920. Any remaining allegations of Paragraph 37 are denied.

38. The allegations set forth in Paragraph 38 are denied.

39. The allegations set forth in Paragraph 39 are denied.

40. This Defendant is not advised as to the identity of the "John and/Jane Does" alleged in Paragraph 40 to have been employees/agents of NNBHC. Further this Defendant denies any negligence or liability in this matter, of any kind. As such, this Defendant denies Paragraph 40 in its entirety.

COUNT II – BREACH OF CONTRACT

41. The allegations set forth in Paragraph 41 contain conclusions of law, not allegations of fact, and as such, do not require a response from this Defendant. To the extent a response is deemed necessary, this Defendant denies the allegations set forth in Paragraph 41 and calls for strict proof thereof.

CLAIM FOR RELIEF

42. The *ad damnum* paragraph and jury trial demand do not require a response from this Defendant. This Defendant specifically denies that that Plaintiff is entitled to seek punitive damages in this wrongful death action.

AFFIRMATIVE DEFENSES

43. This Defendant denies any and all allegations not specifically admitted herein.

44. This Defendant denies that it is indebted to the Plaintiff in any amount or in any event.

45. This Defendant denies that the decedent was injured in the manner or to the extent alleged in the Complaint.

46. This Defendant denies all allegations of negligence and/or wrongdoing asserted against it.

47. This Defendant reserves the right to amend its Answer to rely upon any and all affirmative defenses, including contributory negligence and assumption of the risk that are supported by any evidence that arises prior to or incident to trial. This Defendant further reserves its right to raise the statute of limitations as a defense should the facts so support.

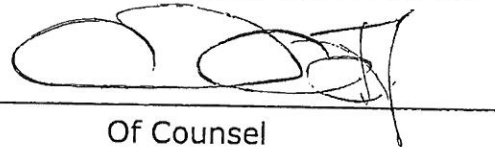
48. Moreover, by way of affirmative defenses, this Defendant states that these claims arise out of alleged medical malpractice, and therefore, the provisions in Virginia Code § 8.01-581.1 et seq. apply and Plaintiff is not entitled to collect an amount, including pre-judgment interest, in excess of the cap on recovery set forth in Virginia Code 8.01-581.15, and this Defendant requests a Reply and calls for strict proof.

49. This Defendant reserves the right to expand, alter, enlarge or amend its Answer at any time it may be so advised, so as to rely upon defenses disclosed prior to or incident to trial.

WHEREFORE, this Defendant demands judgment in its favor and costs on its behalf expended, together with such other and further relief as the Court may deem just and proper.

**KEYSTONE NEWPORT NEWS, LLC d/b/a
NEWPORT NEWS BEHAVIORAL HEALTH
CENTER**

By _____

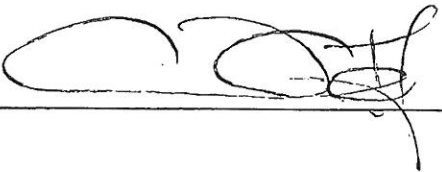


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent via first class mail to all counsel of record this 9th day of December 2019.



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GARY S. ANDERSON
CITY OF NEWPORT NEWS, VA

DEMURRER

COMES NOW the Defendant Keystone Newport News, LLC d/b/a Newport News Behavioral Health Center ("this Defendant"), by counsel, pursuant to Virginia Code §8.01-273, and Demurrers to (A) Count II of Plaintiff's Complaint, to (B) Plaintiff's claims against John and/or Jane Doe, and to (C) Plaintiff's claim for punitive damages, and in support of which states as follows:

A. COUNT II (Breach of Contract)

1. Count II of Plaintiff's Complaint fails to state a cause of action against this Defendant for breach of contract.

2. This action arises out of the Medical Malpractice Act, which applies to any claim for “malpractice.” Malpractice, according to the Act, “means any tort action **or breach of contract action** for personal injuries **or wrongful death**, based on health care or professional services rendered . . . by a health care provider, to a patient.” Va. Code § 8.01-581.1 (emphasis added).

3. Moreover, in 2005, the legislature specifically added the words “breach of contract action” to the above quoted definition of malpractice, clearly demonstrating that a malpractice claim may proceed on a cause of action whether it sounds in tort or breach of contract.

4. The “contract” alleged by Plaintiff in this case is “to provide adequate medical care” to the decedent. “That alleged ‘contract’ is nothing more than the duty of care which would be owed to the [decedent] by a health care provider.” Rancke v. Belt, 47 Va. Cir. 499, 501 (Arlington Cty. 1998). And, “[f]ailure to comply with the standard of care is actionable and is ‘malpractice’ because it is ‘any tort based on healthcare,’ within the meaning of the Act.” Id. (quoting Va. Code § 8.01-581.1).

5. Plaintiff has not alleged any sort of “special” contract between the decedent and this Defendant that would or could give rise to a separate cause of action outside the scope of the Medical Malpractice Act.

6. Accordingly, Count II of Plaintiff’s Complaint should be dismissed.

B. JOHN/JANE DOE CLAIMS

7. “In Virginia, there is no statutory basis for ‘John Doe’ actions other than Code § 38.2-2206, which applies exclusively to certain actions involving uninsured motorists. The Virginia legislature has not spoken to nor provided a statutory basis

for further or other "John Doe" actions." Kovatch Mobile Equip. Corp. v. Frederick County Maint. Dep't, 62 Va. Cir. 52, 56 (Roanoke 2003) (quoting Williams v. John Doe, 48 Va. Cir. 52, 53 (Norfolk 1999)); see also 1-5 BRYSON ON VIRGINIA CIVIL PROCEDURE § 5.02[4] ("As a general rule . . . an unknown person cannot be made a party in a personal action.").

8. Virginia does not recognize a cause of action against a Jane/John Doe in a case such as the present action. The case at bar did not involve automobiles and accordingly is not within the purview of Virginia Code § 38.2-2206(E).

9. To the extent Plaintiff attempted to allege a claim against this Defendant premised on the actions of Jane/John Doe, such claim plainly cannot survive under Virginia law.

10. The Plaintiff has not, and cannot under Virginia law, plead a cause of action upon which judgment can be granted against Jane/John Doe or for the vicarious liability of any such defendant.

11. Accordingly, the Jane/John Doe claims should be dismissed with prejudice from this case, and any claims against this Defendant for the alleged actions of Jane/John Doe should likewise be dismissed with prejudice.

C. PUNITIVE DAMAGES

12. There is no basis for recovery of punitive damages in a wrongful death case in Virginia.

13. The Virginia Supreme Court has held that:

in an action for wrongful death the personal representative of the deceased sues primarily as trustee for certain statutory beneficiaries and not for the general benefit of the decedent's estate.... The object of the statute is to compensate these

beneficiaries for their loss occasioned by the decedent's death... In order to compensate a decedent's statutory beneficiaries in an action for wrongful death the General Assembly has provided in § 8-636 that a jury may award "such damages as to it may seem fair and just"....

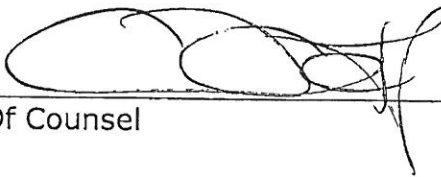
The right of action for damages for personal injuries, including punitive damages, if any, expires upon the death of the injured person. Our death by wrongful act statute does not cause to survive this right of action, but it creates in the decedent's personal representative a new right of action to compensate decedent's statutory beneficiaries for their loss. Its purpose was not to punish the wrongdoer. In an unbroken line of decisions this court has interpreted Code, § 8-636 and its predecessors to mean that damages which to the jury "may seem fair and just" are the damages suffered by the statutory beneficiaries. If the General Assembly had intended that punitive damages might be recovered, it could have specifically provided for such damages as some other states have done.... **[W]e hold that there can be no recovery of punitive damages in an action for wrongful death under our statute.**

Wilson v. Whittaker 207 Va. 1032, 1035-38 (1967) (citations omitted) (emphasis added). See also Cassady v. Martin, 220 Va. 1093 (1980).

14. Accordingly, any claim for punitive damages should be dismissed and stricken from the Complaint.

WHEREFORE Defendant Keystone Newport News, LLC d/b/a Newport News Behavioral Health Center respectfully moves this Court for an entry of an Order sustaining its Demurrer and dismissing Count II of Plaintiff's Complaint, dismissing the Jane/John Doe defendants and any and all claims against this Defendant for the alleged actions of Jane/John Doe, and dismissing Plaintiff's claim for punitive damages, together with any and such other and further relief as the Court may deem just and proper.

**KEYSTONE NEWPORT NEWS, LLC d/b/a
NEWPORT NEWS BEHAVIORAL HEALTH
CENTER**

By: 
Of Counsel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Demurrer was sent via first class mail to all counsel of record this 9th day of December 2019.

