

NO. 20-CI-001763

JEFFERSON CIRCUIT COURT

DIVISION THREE (3)

HONORABLE MITCH PERRY

**\*\*ELECTRONICALLY FILED\*\***

DIANNE HOLBROOK, as Executrix and Personal Representative  
of the Estate of RALPH D. HOLBROOK AND  
DIANNE HOLBROOK, Individually

PLAINTIFF

v.

**PLAINTIFF'S TRIAL MEMORANDUM**

LAKE FOREST POST ACUTE, LLC d/b/a  
VALHALLA POST ACUTE, et. al.

DEFENDANTS

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Comes the Plaintiff, by counsel, and for her Trial Memorandum, states as follows:

Ralph and Dianne Holbrook were married 40 years and lived on a 25 acre farm between Taylorsville and Shelbyville before he underwent knee replacement surgery on February 27, 2019, went to Valhalla Post Acute thereafter, and suffered a fall resulting in a hip fracture on March 17, 2019, while performing a balloon toss activity under the direct care and supervision of a Valhalla physical therapy assistant. The hip fracture required another immediate surgery, extensive rehab, and it set in motion a downward spiral of Ralph's health that ended in his death on May 12, 2021.

Taking care of the farm had become difficult for Ralph, so he presented to Dr. Gary Bloemer, who recommended and performed the knee replacement at Audubon Hospital on February 27, 2019. Ralph was cleared for surgery, and it was a success. He went from Audubon Hospital to Valhalla Post Acute for rehab therapy with a "Good" discharge prognosis and plans to return home. Ralph's therapy began on March 7, and it ended on March 17, when he sustained the fall and broken hip. Dr. Joshua Christensen implanted an artificial hip at Audubon Hospital on March 19, 2019.

From Audobon, Ralph went to the Nazareth Home for rehab. After the hip surgery, Ralph did not eat. For the first time in his life, he required a feeding tube, which was inserted during a presentation to Norton Audubon Hospital in early April, 2019. Dianne Holbrook will present evidence this likely was due to undergoing two major joint replacement surgeries, with anesthetic intubation, close in time without giving his body a chance to recover. Ralph continued his rehab at Signature Health Care. He ultimately was discharged home and required in-home care until his death. At home, he received therapy for mobility issues, as well as feeding and basic life essentials. In short, Ralph's life post-hip surgery was much different than before his knee surgery. He underwent multiple hospital presentations and suffered a loss of mobility and multiple problems. Dianne Holbrook, through expert testimony, will show that Ralph's fall and resulting hip fracture was a substantial factor in causing and contributing to his downward spiral of health that ultimately resulted in Ralph's death on May 12, 2021.

### **The Fall**

Valhalla therapist Kevin Schoenfeld performed an initial physical therapy evaluation and established a plan of care for Ralph on March 7, 2019. Ralph had multiple sessions of therapy, twice a day, except he only had one session of therapy on weekends. During the course of that therapy, Ralph showed some improvement, but always was a high falls risk. His assistance level was either contact guard, meaning someone touching him, or standby assist, meaning someone close enough to get to him instantly if he needed stability.

On March 17, a Sunday, in what was Ralph's longest physical therapy session by far, physical therapist assistant Eric Henry was performing a "balloon toss," activity with Ralph.

According to Ralph, Eric's instructions were that Eric would bat the balloon to Ralph; Ralph should bat it back; and the object was to not let it hit the ground. In the process of batting the balloon, Ralph leaned over to reach it and down he went onto his left hip. Defendants deny Eric told Ralph not to let the balloon hit the ground. According to PTA Eric Henry, Ralph leaned over to retrieve a dropped balloon off of the ground. Eric moved toward him, and as Eric was moving back, Ralph leaned over again and fell down and broke his hip.

There is no dispute that the fall caused the hip fracture. There are many additional details that the parties will argue about during trial, such as Ralph's level of progress, his gait and balance at certain times, whether activities occurred that are not documented, whether appropriate assessments and care planning occurred, whether billing and profitability motivations were a factor in his treatment, and Ralph's overall health condition. Both sides have disclosed multiple experts to address therapy standards of practice, therapy administration, and billing practices.<sup>1</sup>

In short, Plaintiff's experts will opine that the balloon toss activity was not suitable for Ralph at that point in his therapy, and if undertaken, should have been undertaken with proper safety precautions for Ralph, a high fall risk patient. The Defendants' experts will say the opposite, and that Valhalla did everything right.

Plaintiff will represent Rajeev Kumar, M.D., an expert geriatrician, who will explain that Ralph's hip fracture set in motion a downward spiral of events that caused multiple problems and hospitalizations and ultimately resulted in Ralph's death. Defendants will present opposing

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<sup>1</sup> The parties agree that therapy billing was governed by rules established by the Medicare Reimbursement System which required a certain number of minutes or care to reach certain therapy and reimbursement levels. The parties will disagree about the extent to which achieving those minutes and reimbursement levels played a role in Ralph's care.

experts. Dr. Kumar will testify that the hip fracture substantially caused or contributed to Ralph's problems and medical expenses of approximately \$565,000.00.

#### Anticipated Legal Issues

1. Liability of Lake Forest Post Acute, LLC d/b/a Valhalla Post Acute, Providence Group, Inc., Eric Henry, Kevin Schoenfield, Evangeline Burch, Jeff Baxter, and Donna Cantwell for negligence, breach of contract, and violations of resident's rights.
2. Liability for punitive conduct for these Defendants.
3. Recoverable damages.
4. Motions in Limine.
5. Evidentiary issues.

Respectfully submitted,

/s/ Chadwick N. Gardner  
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COUNSEL FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing was served via electronic mail this 4<sup>th</sup> day of May, 2022, to the following:

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