

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_\_

WINNEBAGO COUNTY

RODNEY CHRISTIANSON Individually,  
and as Special Administrator of the  
ESTATE OF SARAH CHRISTIANSON,  
1958 Timberline Drive  
Oshkosh, WI 54904,

and

DARYL CHRISTIANSON  
1699 Alcan Drive, No. 210  
Menasha, WI 54952,

and

HOWARD CHRISTIANSON,  
by his Guardian  
Rodney Christianson  
1958 Timberline Drive  
Oshkosh, WI 54904,

Plaintiffs,

vs.

WINNEBAGO COUNTY, a Wisconsin County  
and Quasi Municipal Corporation d/b/a  
Park View Health Center  
725 Butler Avenue  
Oshkosh, WI 54901  
c/o Winnebago County Clerk, Susan Ertmer  
Winnebago County Courthouse  
415 Jackson Street, Room 110  
Oshkosh, WI 54901,

ABC INSURANCE COMPANY,

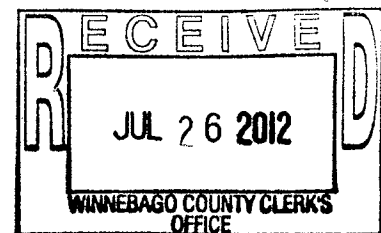
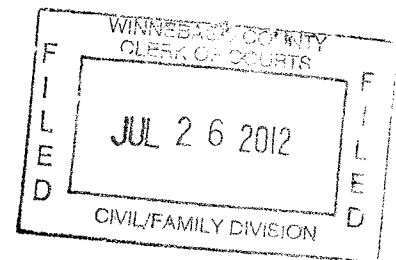
Defendants,

and

SUMMONS

12CV1079 BR6

Case No. 12- CV-\_\_\_\_\_  
Code No. 30105 and 30107



DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, MEDICARE PARTS A AND B  
200 Independence Avenue, S.W.  
Washington, D.C. 20530

and

KATHLEEN SEBELIUS, SECRETARY OF  
HEALTH AND HUMAN SERVICES  
200 Independence Avenue, S.W.  
Washington, D.C. 20530,

Subrogated Defendants.

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To each person named above as a defendant or subrogated defendant:

You are hereby notified the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

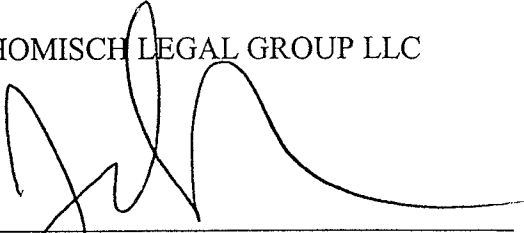
Within 45 days of receiving this Summons, you must respond with a written Answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court, at the following address: Ms. Diane M. Fremgen, Clerk of Circuit Court, Winnebago County Courthouse, 415 Jackson Drive, P.O. Box 2808, Oshkosh, WI 54903-2808, and to plaintiffs' attorney at the following address: John T. Schomisch, Jr., Schomisch Legal Group LLC, 47 Park Place, Suite 250, Appleton, Wisconsin 54914.

You may have an attorney help you or represent you.

If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 25<sup>th</sup> day of July, 2012.

SCHOMISCH LEGAL GROUP LLC



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John T. Schomisch, Jr.  
Attorneys for Plaintiffs  
State Bar No. 1008992

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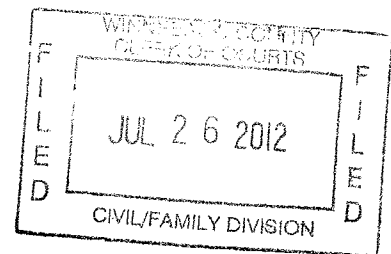
and

COMPLAINT

12CV1079 546

Case No. 12- CV- \_\_\_\_\_

Code No. 30105 and 30107



DEPARTMENT OF HEALTH AND HUMAN  
SERVICES, MEDICARE PARTS A AND B  
200 Independence Avenue, S.W.  
Washington, D.C. 20530

and

KATHLEEN SEBELIUS, SECRETARY OF  
HEALTH AND HUMAN SERVICES  
200 Independence Avenue, S.W.  
Washington, D.C. 20530,

Subrogated Defendants.

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NOW COME the above named plaintiffs, Estate of Sarah Christianson by special administrator Rodney Christianson, Rodney Christianson, Daryl Christianson and Howard Christianson, by their attorneys, Schomisch Legal Group LLC, by John T. Schomisch, Jr., and as and for their Complaint against the defendants and subrogated defendant(s), allege and show to the Court as follows:

1. The plaintiff, Sarah Christianson, a widow, formerly of 5300 Ann Street, No. 109, Larsen, Wisconsin, was an adult resident of the State of Wisconsin and at all times material hereto, a resident at Park View Health Center (hereinafter "Park View") who was negligently injured on December 10, 2010 while a resident at Park View and died at Park View on January 11, 2011 as a result of those injuries.
2. Rodney Christianson was named the Special of Administrator of the Estate of Sarah Christianson on April 21, 2011 and the Estate is open and pending in Winnebago County, Wisconsin under Case No. 2011 PR 000103.
3. The plaintiff, Rodney Christianson, is an adult resident of the State of Wisconsin, residing at 1958 Timberline Drive, Oshkosh, Wisconsin, 54904, and at all times material hereto was

the unestranged son of Sarah Christianson, and is a proper party to this claim pursuant to Wis. Stats. § 895.04.

4. The plaintiff, Daryl Christianson, is an adult resident of the State of Wisconsin, residing at 1699 Alcan Drive, No. 210, Menasha, Wisconsin, 54952, and at all times material hereto was the unestranged son of Sarah Christianson, and is a proper party to this claim pursuant to Wis. Stats. § 895.04.

5. The plaintiff, Howard Christianson, is an adult resident of the State of Wisconsin, residing at 1958 Timberline Drive, Oshkosh, Wisconsin, 54904, and at all times material hereto was the unestranged son of Sarah Christianson, and is a proper party to this claim pursuant to Wis. Stats. § 895.04. Howard Christianson is a disabled person, and the claim on his behalf is brought by his guardian, Rodney Christianson.

6. The defendant, Winnebago County, is the owner and operator of Park View.

7. The defendant, Park View, is located at 725 Butler Avenue, Oshkosh, Wisconsin, 54901, and was at all times material hereto a nursing home within the meaning of Wisconsin Statutes, regulations, and codes, as well as Federal Law.

8. Upon information and belief the defendant, ABC Insurance Company was, at all times material hereto, the liability insurer of defendant, Park View and/or Winnebago County and/or their employees, and further, that ABC Insurance Company is a proper party defendant pursuant to the provisions of Wis. Stat. § 803.04(2) and is, by the terms of its policy and the laws of the State of Wisconsin, directly liable to plaintiffs for the negligence of its insured, Park View in Winnebago County as alleged below. Said insurance corporation is being named herein by a fictitious name as provided for in Wis. Stat. § 807.12.

9. Medicare Defendant, Kathleen Sebelius is the Secretary of the Department of Health and Human Services which department is a division of the government of the United States of America and is in the business of administering Medicare health insurance coverage pursuant to the statutes of the United States of America. Said defendant maintains a business office at 200 Independence Avenue, S.W., Washington, D.C.

10. Defendant Department of Health and Human Services is a division of the government of the United States of America and is in the business of administering Medicare health insurance coverage pursuant to the statutes of the United States of America. Said defendant maintains a business office at 200 Independence Avenue, S.W., Washington, D.C.

11. At all times material hereto, defendant Department of Health and Human Services, Medicare Parts A and B, provided health insurance coverage to Sarah Christianson, as a result of which said defendant has paid certain medical insurance claims on her behalf, and by virtue of Wis. Stat. § 803.03, said defendant is impleaded herein because it may have a claim arising by subrogation, derivation or assignment. In the event said subrogated defendant fails to answer, plaintiffs ask that an order for default judgment and dismissal with prejudice be entered against defendant Department of Health and Human Services, Medicare Parts A and B without any further notice.

12. Park View held itself out as a specialist in the field of skilled nursing care with expertise necessary to maintain the health and safety of nursing home residents and persons unable to inadequately care for themselves.

13. Park View had a duty to provide health care and related services to plaintiff, Sarah Christianson, to attain and maintain the highest physical, mental and psycho-social well-being and level of functioning for Sarah.

14. At all times material hereto, Sarah Christianson was a resident of Park View pursuant to the terms of an Admission Agreement, and as such, was under the exclusive control and care of Park View and its employees, representatives, agents, consultants, officers and servants.

15. Park View and its employees, representatives, agents, consultants, officers and servants failed, neglected and refused to provide health care and related services to and for Sarah Christianson to attain and maintain the highest physical, mental and psycho-social well-being level of functioning and safety for Sarah Christianson who was unable to attend to her own health and safety.

16. At all times material hereto, Park View was subject to the requirements of 42 U.S.C. § 139, 6r (1990) et. seq, as amended by the Omnibus Budget Reconciliation Act of 1987 in OBRA.

17. At all times material hereto, Park View was subject to regulations of Volume 42, C.F.R. Part 483, effective October 1, 1990.

18. At all times material hereto, Park View was subject to licensing and regulatory statutes, administrative code and rules of the State of Wisconsin.

19. Prior to and after December 10, 2010, Park View was aware, had knowledge of and was notified that Park View engaged in a pattern of negligent, inadequate and substandard hiring practices, training of employees, supervising of employees, management, administration and care, including but not limited to, injury prevention.

20. Prior to and after December 10, 2010, Park View was aware, had knowledge of and was notified that Park View provided inadequate and substandard staffing levels, hiring practices, training of staff, administration, management and failed to develop, maintain, implement and supervise policies and procedures and standards of care.

21. Prior to and after December 10, 2010, Park View failed to control the quality of care and services provided to residents of Park View and failed to provide the necessary care and services



to attain and maintain the highest physical, mental, and psycho-social well-being and level of functioning for Sarah Christianson.

22. Prior to and after December 10, 2010, Park View failed to control the quality of care and services provided to residents of Park View to provide the necessary care and services to attain and maintain the highest physical, mental, and psychosocial well-being and level of functioning of Sarah Christianson and other residents.

23. On December 10, 2010, Sarah Christianson was checked into Park View in Room No. Woodside 405-1S by Park View employees and/or agents. Park View knew that Sarah Christianson was at a high risk for falls. Within a few hours of being checked into Park View, Sarah Christianson fell to the floor of her room and suffered a broken hip. Sarah was treated at Mercy Medical Center for multiple hip fractures and later readmitted to Park View where she died on January 11, 2011 due to complications from her broken hip. The broken hip and injuries caused pain, suffering, emotional distress, disability, and Sarah's death. Rodney, Daryl and Howard Christianson lost the society and companionship of their mother.

#### **FIRST CAUSE OF ACTION - BREACH OF CONTRACT**

24. Plaintiffs reallege and incorporate by reference paragraphs 1 through 23.

25. Park View was under contractual duty to provide health care and related services to plaintiff, Sarah Christianson, and to attain and maintain the highest physical, mental, and psychosocial well-being and level of functioning for Sarah Christianson.

26. Park View and its employees, representatives, consultants, agents, servants, directors and officers did not provide and ensure that Sarah Christianson received the necessary care and services to attain and maintain the highest physical, mental, and psychosocial well-being, level of functioning and safety.

27. The acts and omissions of Park View and its employees, representatives, consultants, agents, servants, directors and officers directly threatened the health, safety and welfare of Sarah Christianson and caused significant pain, suffering, emotional distress, disability and death of Sarah Christianson.

28. Park View and its employees, representatives, consultants, agents, directors, officers and servants failed, neglected, omitted and refused to perform the duties necessary and required pursuant to the contract with Sarah Christianson to provide health care and related services to and for Sarah Christianson who was unable to attend to her own health and safety.

29. Park View and its employees, representatives, consultants, agents, directors, officers and servant's acts and omissions were a substantial factor in causing the pain, suffering, emotional distress, disability and death of Sarah Christianson and her sons' loss of society and companionship..

30. As a direct and proximate result of the Park View's acts, omissions and statutory, regulatory and code violations, Sarah Christianson and her Estate incurred past and future pain and suffering, emotional distress, disability, medical and out-of- pocket expenses and funeral expenses. The plaintiffs, Rodney, Daryl and Howard Christianson lost the society and companionship of their mother, Sarah Christianson.

## **SECOND CAUSE OF ACTION - NEGLIGENCE**

31. Plaintiffs reallege and incorporate by reference paragraphs 1 through 30.

32. Park View, through its employees, representatives, consultants, agents, directors, officers and servants, engaged in a continuum and pattern of negligent care, assessment, documentation, planning, supervision, management, administration, assistance and treatment to Sarah Christianson during the period of her residency within the course and scope of their employment and agency and in furtherance of the Park View's business.

33. Park View, through its employees, representatives, consultants, agents, directors, officers and servants, failed to provide necessary care, assessments, planning, supervision, management, documentation, administration, assistance, treatment, injury prevention and services to Sarah Christianson, including but not limited to:

- a. Failing to monitor, assess, and ensure that Sarah Christianson received the necessary services to keep her safe;
- b. Failing to employ appropriate nursing care and services;
- c. Failing to use reasonable force and restraint;
- d. Failing to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses and nurse assistants, to meet the total needs of Sarah Christianson;
- e. Failing to hire qualified employees;
- f. Failing to employ and implement appropriate and necessary nursing care and services; failing to provide adequate supervision, training and instruction to the nursing staff to ensure that Sarah Christianson received proper and safe care; and
- g. The failure by the members of the governing body or bodies of Park View to discharge their legal and lawful obligations by ensuring that the rules and regulations designed to protect the health and safety of residents, such as Sarah Christianson were consistently complied with on an ongoing basis and ensuring appropriate corrective measures were implemented to correct problems concerning inadequate resident care.
- h. Failing to ensure that Sarah Christianson was safe from falls;
- i. Failing to provide care consistent with the individual care plan.

34. Park View's continuum and pattern of negligence of its employees, agents, representatives, consultants, servants, directors and officers, was a substantial factor in causing, Sarah Christianson's injuries on December 10, 2010 and death on January 11, 2011, and causing

plaintiffs, Rodney, Daryl and Howard Christianson loss of the society and companionship of their mother, Sarah Christianson.

35. As a direct and proximate result of the Park View's acts, omissions and statutory, regulatory and code violations, Sarah Christianson incurred past and future pain, suffering, emotional distress, disability and medical and out of pocket expenses and her estate incurred funeral expenses. Plaintiffs, Rodney, Daryl and Howard Christianson lost the society and companionship of their mother Sarah Christianson.

### **THIRD CAUSE OF ACTION NEGLIGENCE PER SE**

36. Plaintiffs reallege and incorporate by reference paragraphs 1 through 35.

37. Park View, through its employees, representatives, consultants, agents, directors, officers and servants, violated the OBRA regulations which establish the minimum standard of care to be followed by Park View. The OBRA regulations were enacted to protect nursing home residents such as Sarah Christianson.

38. Park View, by violating these federal rules and regulations, breached a duty of care owed to Sarah Christianson who was a member of the class of citizens these rights were intended and enacted to protect and as a direct result and proximate cause Sarah Christianson experienced pain, suffering, emotional distress and disability.

39. Park View is subject to the provisions contained in Wis. Stat. §50.09, "Rights of Residents in Certain Facilities" and Chapter HFS 132 Nursing Homes. These laws were enacted to protect nursing home residents such as Sarah Christianson.

40. Park View failed to provide Sarah Christianson with a safe and convenient living environment in violation of Chapter 50 of the Wisconsin statutes.

41. Park View violated Sarah Christianson's rights, including but not limited to, being treated at all times with courtesy, respect, and full recognition of his dignity and individuality, in violation of Chapter 50 and HFS 132.

42. Park View failed to provide treatment, services and nursing care and other ancillary services to Sarah Christianson in violation of Federal and Wisconsin statutes, codes and regulations.

43. As a direct result and proximate cause of Park View's violation of Wisconsin and Federal laws, rules and regulations and codes, Sarah Christianson's rights were violated and Sarah Christianson suffered a loss of dignity, severe pain, suffering and disability, mental anguish, emotional distress and death. Plaintiffs, Rodney, Daryl and Howard Christianson lost the society and companionship of their mother, Sarah Christianson.

44. Park View and its employees', representatives', consultants', agents', servants', directors' and officers', acts and omissions were a substantial factor in causing the harm and damages suffered by Sarah Christianson, and causing plaintiffs, Rodney, Daryl and Howard Christiansons' loss of the society and companionship of their mother, Sarah Christianson.

45. As a direct and proximate result of the Park View's acts, omissions and statutory, regulatory and code violations, the plaintiff incurred past and future pain, suffering, emotional distress, disability, and medical and out-of-pocket expenses and funeral expenses. Plaintiffs, Rodney, Daryl and Howard Christianson lost the society and companionship of their mother, Sarah Christianson.

#### **FOURTH CAUSE OF ACTION - VIOLATION OF PATIENTS RIGHTS**

46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 45.

47. Park View is subject to the provisions contained in Wis. Stat. §51.61, "Patients Rights." These laws were enacted to protect individuals with a mental illness in a treatment facility (Park View) such as Sarah Christianson.

48. Park View failed to treat Sarah Christianson with respect and recognition of her dignity in violation of Chapter 51 of the Wisconsin Statutes.

49. Park View violated Sarah Christianson's rights, including but not limited to, being treated with respect and recognition of dignity and individuality, in violation of Chapter 51.

50. Park View failed to provide prompt and adequate treatment, rehabilitative services, services and nursing care and other ancillary services to Sarah Christianson in violation of Wisconsin statutes.

51. As a direct result and proximate cause of Park View's violation of Wisconsin and Federal laws, rules and regulations and codes, Sarah Christianson's rights were violated and Sarah Christianson suffered a loss of dignity, severe pain, suffering and disability, mental anguish, emotional distress and death. Plaintiffs, Rodney, Daryl and Howard Christianson lost the society and companionship of their mother, Sarah Christianson.

52. Park View and its employees', representatives', consultants', agents', servants', directors' and officers', acts and omissions were a substantial factor in causing the harm and damages suffered by Sarah Christianson.

53. As a direct and proximate result of the Park Views' acts, omissions and statutory, regulatory and code violations, the plaintiffs incurred past and future pain, suffering, emotional distress, disability, and medical and out- of- pocket expenses and funeral expenses.

WHEREFORE, the plaintiffs demand judgment as follows:

A. For judgment against defendants, Park View Health Center, Winnebago County and ABC Insurance Company, jointly and severally for the amount of damages found to be appropriate, together with costs, disbursements, and prejudgment interest in this action, and for judgment of default in the event they do not answer.

B. For a determination of what, if any, subrogated interest subrogated defendant Department of Health and Human Services, Medicare Parts A and B has in this action, and for a judgment of default in the event it does not answer.

C. For funeral and medical expenses against defendants, Park View Health Center, Winnebago County and ABC Insurance Company, jointly and severally;

D. For damages, costs and reasonable actual attorney fees under Wis. Stat. §51.61;

E. For any other relief this Court deems just and proper.

Dated this 25<sup>th</sup> day of July, 2012.

SCHOMISCH LEGAL GROUP LLC

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John T. Schomisch, Jr.  
Attorneys for Plaintiff La Verne M. Rolbiecki  
State Bar No. 1008992

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Appleton, WI 54914  
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PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS THAT THE  
ABOVE ENTITLED ACTION BE TRIED BY A TWELVE PERSON JURY.