

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

CAROL McCANN, as Next Friend)
of CATHERINE McCANN, a disabled adult, and)
MARY McCANN, Individually,)
))
) Plaintiffs,)
))
) vs.)
))
LUTHERAN HOME FOR THE AGED, INC.,)
an Illinois corporation,)
))
) Defendant.)

No. 2012L013377
CALENDAR/ROOM H
TIME 00:00
Medical Malpractice

FILED LAW DIVISION
2012 NOV 28 PM 2:18
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

COMPLAINT AT LAW

**COUNT I
(Res Ipsa Loquitur)**

NOW COME the plaintiff, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult, by their attorneys, HENRY PHILLIP GRUSS, LTD., and complaining of the defendant, LUTHERAN HOME FOR THE AGED, INC., an Illinois corporation, and state as follows:

1. At all times relevant to this Complaint, plaintiff CATHERINE McCANN was a resident of the nursing home, the Lutheran Home, located at 800 West Oakton Street, in Arlington Heights, Illinois, owned and operated by the Defendant, LUTHERAN HOME FOR THE AGED, INC., an Illinois corporation.

2. That on and prior to September 16, 2012, plaintiff, CATHERINE McCANN, was a resident of Defendant, LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, in Arlington Heights, Illinois, and was entrusted to the care of its employees and agents for the treatment of her degenerative Alzheimer's disease, being placed in the "Memory Support"

program at the Lutheran Home.

3. That on and prior to September 16, 2012, while a resident at defendant LUTHERAN HOME FOR THE AGED, INC.'s the Lutheran Home, plaintiff, CATHERINE McCANN, was receiving health care services, including nursing services and otolaryngology services, as well as assistance with all self-care services, as she was totally disabled.

4. That on and prior to September 16, 2012, and at all relevant times the Defendant, LUTHERAN HOME FOR THE AGED, INC., employed and/or controlled physicians, registered nurses and aides who rendered care and treatment to plaintiff, CATHERINE McCANN, while acting within the scope of their employment and agency.

5. That on and prior to September 16, 2012, defendant, LUTHERAN HOME FOR THE AGED, INC., was the exclusive provider of medical, residential and all self-care services to plaintiff, CATHERINE McCANN, as she was totally disabled.

6. That on and prior to September 16, 2012, at all times during her admission and residence at the defendant LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, the defendant exercised complete and exclusive control over the management of plaintiff, CATHERINE McCANN's medical, nursing, therapeutic and self-care services, as she was totally disabled.

7. That on and prior to September 16, 2012, no person or persons other than the agents and/or employees of the defendant, LUTHERAN HOME FOR THE AGED, INC., were responsible for, or performed any duties related to the medical, nursing, therapeutic and/or self-care services rendered to the disabled plaintiff, CATHERINE McCANN.

8. On and prior to September 16, 2012, and at all times mentioned herein, Defendant LUTHERAN HOME FOR THE AGED, INC., by and through its agents and/or employees, had a

duty to possess and apply the knowledge, skill and care ordinarily used at a reasonably well qualified nursing home, under similar circumstances.

9. On and prior to September 16, 2012, while a resident at defendant LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, and while enrolled in its Memory Support unit, CATHERINE McCANN sustained severe injuries and significant elder abuse and neglect, including aural myiasis or maggot infestation of her left ear.

10. On and prior to September 16, 2012, the injury to CATHERINE McCANN occurred during the course of her residence and care with defendant, LUTHERAN HOME FOR THE AGED, INC., while the plaintiff was under defendant's exclusive control.

11. An aural myiasis, or maggot infestation of the ear, is a rare, unusual and unexpected result while under a skilled nursing care facility's residential care, such as CATHERINE McCANN was receiving on and prior to September 16, 2012.

12. On September 16, 2012, the injury that occurred during the plaintiff's residential admission to defendant LUTHERAN HOME FOR THE AGED, INC.'S nursing home, the Lutheran Home, during which the plaintiff was under the exclusive control of the defendant, LUTHERAN HOME FOR THE AGED, INC., was a rare, unusual, and unexpected result.

13. On September 16, 2012, in the normal course of events, the injury to CATHERINE McCANN would not have occurred if the defendant LUTHERAN HOME FOR THE AGED, INC., had used a reasonable standard of professional care while the plaintiff was under its exclusive control and management.

14. As a direct and proximate result of the aforesaid failure of defendant LUTHERAN HOME FOR THE AGED, INC., to exercise a reasonable standard of professional care during the aforementioned residential admission of the plaintiff, CATHERINE McCANN, she sustained severe

and permanent injuries to her person, including aural myiasis and mental distress.

WHEREFORE, Plaintiff, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult, demands judgment against Defendant, LUTHERAN HOME FOR THE AGED, INC., in an amount in excess of Fifty Thousand Dollars (\$50,000.00).

COUNT II

(Statutory Action - Illinois Nursing Home Care Act)

NOW COME the plaintiff, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult, by their attorneys, HENRY PHILLIP GRUSS, LTD., and complaining of the defendant, LUTHERAN HOME FOR THE AGED, INC., an Illinois corporation, and state as follows:

1. The Plaintiff, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult, brings this action pursuant to the provisions of 210 ILCS 45/1-101 et seq., commonly known as the Nursing Home Care Act of the State of Illinois.
2. At all times relevant to this Complaint, plaintiff CATHERINE McCANN was a resident at the defendant, LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, located at 800 West Oakton Street, in Arlington Heights, Illinois.
3. At all times relevant to this Complaint, the Defendant, LUTHERAN HOME FOR THE AGED, INC., was one of the owners of the nursing home located at 800 West Oakton Street, in Arlington Heights, Illinois.
4. At all times relevant to this Complaint, the defendant, LUTHERAN HOME FOR THE AGED, INC., was the licensee of the the nursing home located at 800 West Oakton Street, in Arlington Heights, Illinois.
5. That at all times relevant to this Complaint, the defendant, LUTHERAN HOME

FOR THE AGED, INC., was a corporation organized and existing under the laws of the State of Illinois.

6. That at all times relevant to this Complaint, the defendant, LUTHERAN HOME FOR THE AGED, INC., was an Illinois corporation which managed, operated, maintained and controlled a nursing home named the Lutheran Home located at 800 West Oakton Street, Arlington Heights, Illinois, 60004, wherein it treated persons suffering from various ailments including Alzheimer's disease.

7. That at all times relevant to this Complaint, there was in full force and effect, a statute known as the Nursing Home Care Act, as amended ("the Act"), 210 ILCS 45/1-101 et seq.

8. The Nursing Home Care Act, as amended, provides as follows:

The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. 210 ILCS 45/3-601

9. The Nursing Home Care Act, as amended, provides as follows:

An owner, licensee, administrator, employee or agent of a facility shall not abuse or neglect a resident (210 ILCS 45/2-107).

"Abuse" means any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility (210 ILCS 45/1-103).

"Neglect" means a facility's failure to provide, or wilful withholding of, adequate...personal care, or assistance with activities of daily living that is necessary to avoid physical harm, mental anguish, or mental illness. (210 ILCS 45/1-117).

10. At all times relevant to this Complaint, the nursing home owned and operated by the defendant, LUTHERAN HOME FOR THE AGED, INC., was a "facility" as defined by 45/1-

1113 of the Act and was subject to the requirements of the Act and the regulations of the Illinois Department of Public Health promulgated pursuant to the Act.

11. At all times relevant to this Complaint, the nursing home owned and operated by the defendant, LUTHERAN HOME FOR THE AGED, INC., was defined as a “nursing facility” and subject to the requirements of 42 U.S.C. §1396(r)(1990) et seq., as amended by the Omnibus Budget Reconciliation Act of 1987 (“OBRA”) and Volume 42, Code of Federal Regulations, Part 483 setting forth Medicare and Medicaid Requirements for Long Term Facilities (“OBRA Regulations”).

12. At all times relevant to this Complaint, the Defendant LUTHERAN HOME FOR THE AGED, INC., by and through its employees and agents, had a duty to exercise the care required of a nursing home owner and/or operator and/or licensee in the same or similar circumstances.

13. On and prior to September 16, 2012, during the period of plaintiff CATHERINE McCANN’s residency at the Defendant LUTHERAN HOME FOR THE AGED, INC.’s nursing home, by and through its employees or agents, Defendant LUTHERAN HOME FOR THE AGED, INC., breached its duties and was negligent as a result of one or more of the following negligent acts or omissions:

- (a) Operated the nursing home in a careless manner, allowing a fly to infest the plaintiff, CATHERINE McCANN’s left ear, lay its eggs and for larvae, i.e. maggots to develop;
- (b) Operated the nursing home without sufficient nursing or self-care aides attending to the plaintiff, CATHERINE McCANN, and allowing a fly to infest her left ear, lay its eggs and for larvae to develop;
- (c) Allowing the nursing home and area where CATHERINE McCANN resided to exist in an unclean, unsanitary condition, allowing a fly or flies to habitat and lay its eggs in CATHERINE McCANN’S left ear;

- (d) Failed to adequately supervise its personnel in the care and treatment of its residents, and in particular of the plaintiff, CATHERINE McCANN;
- (e) Failed to prevent neglect or abuse in the care and treatment of CATHERINE McCANN, causing her to suffer serious injury and emotional distress;

14. The Nursing Home Care Act, as amended, provides as follows:

The licensee shall pay the actual damages and costs and attorney's fees to a facility resident whose rights, as specified in Part 1 of Article 2 of this Act, are violated (210 ILCS 45/3-602).

15. The Nursing Home Care Act, as amended, provides as follows:

The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the residents (210 ILCS 45/3-601).

16. As a direct and proximate result of some or all of the above listed negligent acts or omissions by the defendant, LUTHERAN HOME FOR THE AGED, INC., the nursing home was staffed, managed and operated in a manner insufficient to meet the plaintiff, CATHERINE McCANN's needs for supervision and assistance with the activities of daily living and to ensure that she was receiving proper care to meet her individualized needs, causing her to experience severe injury and harm.

WHEREFORE, Plaintiff, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult, demands judgment against Defendant, LUTHERAN HOME FOR THE AGED, INC., in an amount in excess of Fifty Thousand Dollars (\$50,000.00), and for all associated costs and attorney's fees recoverable pursuant to 210 ILCS 45/3-602.

COUNT III
(Intentional Infliction of Emotional Distress)

NOW COME the plaintiff, MARY McCANN, Individually, by her attorneys, HENRY PHILLIP GRUSS, LTD., and complaining of the defendant, LUTHERAN HOME FOR THE AGED, INC., an Illinois corporation, and state as follows:

1. Plaintiff MARY McCANN is the daughter of the plaintiff, CATHERINE McCANN.

2. At all times relevant to this Complaint, plaintiff CATHERINE McCANN was a resident of the nursing home, the Lutheran Home, located at 800 West Oakton Street, in Arlington Heights, Illinois.

3. That on and prior to September 16, 2012, plaintiff, CATHERINE McCANN, was a resident of Defendant, LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, in Arlington Heights, Illinois, and plaintiff, MARY McCANN, entrusted the Defendant, by and through its employees and agents, complete control for the care of her mother, CATHERINE McCANN, for her degenerative Alzheimer's disease, having placed her mother in the "Memory Support" program at the Lutheran Home.

4. That on and prior to September 16, 2012, the disabled plaintiff, CATHERINE McCANN, was in the complete control of the Defendant, LUTHERAN HOME FOR THE AGED, INC. by and through its agents/employees, and the defendant LUTHERAN HOME FOR THE AGED, INC. neglected to properly care for plaintiff, CATHERINE McCANN, allowing her to reside in an unclean and unsanitary environment infested with Diptera flies.

5. That on a prior to September 16, 2012, the disabled plaintiff, CATHERINE McCANN was in the complete control of the defendant, LUTHERAN HOME FOR THE AGED,

INC.'S nursing home, and all of her self-care needs were the responsibility of the Defendant, LUTHERAN HOME FOR THE AGED, INC.

6. That on and prior to September 16, 2012, the Defendant LUTHERAN HOME FOR THE AGED, INC., neglected to provide necessary, basic, self-care services to the disabled plaintiff, CATHERINE McCANN, allowing her left ear to deteriorate to a condition susceptible to aural myiasis, or maggot infestation of the ear.

7. That on and prior to September 16, 2012, while a resident at the Defendant, LUTHERAN HOME FOR THE AGED, INC.'s nursing home, the Lutheran Home, the plaintiff, CATHERINE McCANN's left ear became infested with at least 57 Diptera fly larvae, i.e. maggots.

8. That on and prior to September 16, 2012, the acts of neglect by the Defendant, LUTHERAN HOME FOR THE AGED, INC., demonstrated a reckless and/or conscious disregard for the possibility of causing emotional distress to the plaintiff, CATHERINE McCANN's family, including her daughter, the plaintiff, MARY McCANN.

9. That on September 16, 2012, the plaintiff, MARY McCANN, accompanied her mother, the plaintiff, CATHERINE McCANN, to the Emergency Department at Northwest Community Hospital.

10. That on September 16, 2012, while at the Emergency Department at Northwest Community Hospital, the plaintiff, MARY McCANN, personally observed late stage larvae of Diptera flies, i.e. maggots, crawl out of the left ear of her mother, the plaintiff, CATHERINE McCANN.

11. That on September 16, 2012, while at Northwest Community Hospital, the plaintiff, CATHERINE McCANN, had at least 57 late stage larvae of Diptera flies, i.e. maggots

removed from her left ear.

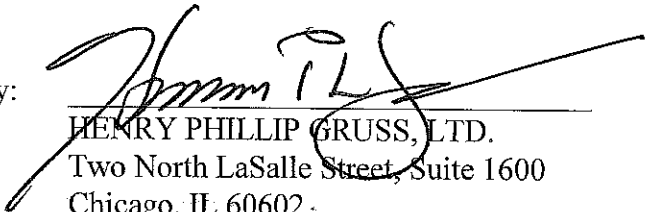
12. That as a result of the existence, removal, knowledge and observation of the plaintiff, CATHERINE McCANN'S aural myiasis, i.e. maggot infestation of the ear, the plaintiff, MARY McCANN, suffered and continues to suffer extreme emotional distress.

13. That the Defendant, LUTHERAN HOME FOR THE AGED, INC.'s conduct, and in particular its neglect of CATHERINE McCANN in failing to provide a sanitary, clean and safe living environment and in failing to provide basic self-care needs to the plaintiff, CATHERINE McCANN, was an actual and proximate cause of the plaintiff, MARY McCANN's emotional distress.

WHEREFORE, Plaintiff, MARY McCANN, Individually, demands judgment against Defendant, LUTHERAN HOME FOR THE AGED, INC., in an amount in excess of Fifty Thousand Dollars (\$50,000.00).

PLAINTIFF DEMANDS TRIAL BY JURY.

By:


HENRY PHILLIP GRUSS, LTD.
Two North LaSalle Street, Suite 1600
Chicago, IL 60602
(312) 422-1880
Attorney # 22332

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222(B)

Carol McCann, being first duly sworn, states:

1. I am the plaintiff in the above-entitled cause, and reside in Cook County, Illinois.
2. The total amount of money damages sought exceeds \$50,000.
3. This affidavit is made to comply with Illinois Supreme Court Rule 222(b).

FURTHER AFFIANT SAYETH NOT.


Mary Carol McCann-Stassen

Subscribed and Sworn to before me this ___ day of _____, 2012.

Notary Public

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

AFFIDAVIT OF PLAINTIFF'S ATTORNEY

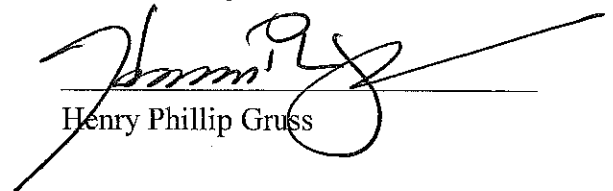
Henry Phillip Gruss, being first duly sworn, states:

1. I am the attorney representing the plaintiffs, CAROL McCANN, as Next Friend of CATHERINE McCANN, a disabled adult in their cause of action against defendants LUTHERAN HOME FOR THE AGED, INC.

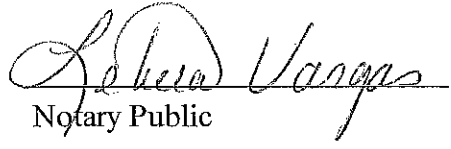
2. Before the filing of this Complaint, I consulted and reviewed the facts of this case with a registered Advanced Practice Nurse, licensed to practice nursing in the State of Illinois who I believe is knowledgeable in the relevant issues involved in the particular action, who practices or has practiced within the last six years or who teaches or has taught within the last six years in the same area of health care that is at issue in this action, and who meets the expert witness standards set forth in paragraphs (a) through (d) of section 8-2501 of the Illinois Code of Civil Procedure.

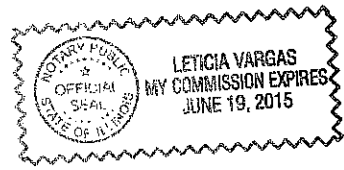
3. The written report of the reviewing health professional, which states that after a review of the relevant material involved in this action there is a reasonable and meritorious cause for the filing of such action, is attached hereto.

4. I have concluded on the basis of the reviewing health professional's review and consultation, that there is a reasonable and meritorious cause for the filing of this action.


Henry Phillip Gruss

Subscribed and Sworn to before me this 5th day of November, 2012.


Notary Public



CAROL McCANN, as Next Friend of CATHERINE)	
McCANN, a disabled adult, and MARY McCANN,)	
Individually,)	
)	
Plaintiffs,)	
vs.)	No.
)	
LUTHERAN HOME FOR THE AGED, INC.,)	
an Illinois corporation,)	
Defendant.)	

REPORT OF REVIEWING HEALTH PROFESSIONAL

1. I am a registered Advanced Practice Nurse, Geriatric Nurse Practitioner, licensed to practice nursing in the State of Illinois. I currently specialize in geriatric nursing and the care and research of geriatric patients suffering from dementia and Alzheimer's disease and I am nationally Board Certified;
2. I am knowledgeable in the relevant issues involved in this particular action and the relevant standard of care. Specifically, pursuant to my training and experience, I am familiar with the examination, maintenance and treatment of a patient suffering from Alzheimer's disease and living in a skilled nursing facility;
3. I have reviewed the medical records of Catherine McCann from Northwest Community Hospital, including a videotape taken of Ms. McCann in the Emergency Department at that hospital displaying aural myiasis, or maggot infestation of her left ear.
4. Based upon my experience and my review of the above-referenced medical records and videotape, in my opinion, there is a reasonable and meritorious cause for filing this case against Lutheran Home for the Aged, Inc., for the following reasons:
 - It was a violation of the standard of care for a skilled nursing facility, such as the Memory Support Department at the Lutheran Home, to allow a fly to infest Ms. McCann's left ear, allowing it to lay eggs and for larvae, i.e. maggots to develop;
 - In the absence of negligence by the defendant, Lutheran Home for the Aged, Inc., by and through its agents and employees, its full-time resident, Ms. Catherine McCann, would not have developed an aural myiasis, or maggot infestation, in her left ear.
5. In my opinion, as a result of Lutheran Home for the Aged, Inc.'s negligence, Ms. Catherine McCann experienced injury and damage.

I reserve the right to supplement this report should additional materials be made available to me.