

IN THE CIRCUIT COURT OF THE SEVENTEETH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:

FRANCIS L. LOPEZ, as Personal
Representative of the Estate of
ALBERTINA VEGA, deceased,

Petitioner,

v.

**REHABILITATION CENTER AT
HOLLYWOOD HILLS, LLC**,
a Florida Limited Liability Company,
JACK MICHEL, M.D., individually,
JORGE CARBALLO, individually,
MARK P. EARLY, individually;
MARIA COLON, RN, BSN, individually;
And **HOLLYWOOD PROPERTY
INVESTMENTS, LLC**, a Florida
limited liability company,

Respondents.

EMERGENCY COMPLAINT FOR PURE BILL OF DISCOVERY

Petitioner, FRANCIS L. LOPEZ, as Personal Representative of the Estate of ALBERTINA LOPEZ, by and through undersigned counsel, files this Emergency Complaint for Pure Bill of Discovery and states as follows:

1. This is a Complaint solely for a Pure Bill of Discovery requesting evidence from and/or action by the following entities:



- a. REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC., a Florida limited liability company;
- b. JACK MICHEL, M.D., individually;
- c. JORGE CARBALLO, individually;
- d. MARK P. EARLY, individually;
- e. MARIA COLON, RN, BSN, individually; and
- f. HOLLYWOOD PROPERTY INVESTMENTS, LLC, a Florida limited liability company.

JURISDICTION

2. FRANCIS L. LOPEZ, at all times material, was and is a resident of Broward County, Florida and is otherwise *sui juris*. FRANCIS L. LOPEZ is Personal Representative of the Estate of ALBERTINA LOPEZ, deceased.

3. REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, is a Florida corporation for profit, doing business in Broward County, Florida at 1200 North 35th Avenue, Hollywood, Florida, 33021.

4. JACK MICHEL, M.D., was and is the Manager of the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, with a reported address of 5996 Southwest 70th Street, 5th Floor, South Miami, FL 33143.

5. JORGE CARBALLO, was and is the Administrator of the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, with a reported address of 1200 North 35th Avenue, Hollywood, Florida, 33021.

6. MARK P. EARLY, was and is the Financial Officer of the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, with a reported address of 1200 North 35th Avenue, Hollywood, Florida, 33021.

7. MARIA COLON, RN, BSN, was and is the Director of Nursing of the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, with a reported address of 1200 North 35th Avenue, Hollywood, Florida 33021.

8. HOLLYWOOD PROPERTY INVESTMENTS, LLC, is a Florida corporation for profit, that owned the Broward County, Florida parcel where Respondent REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC was located. Respondent HOLLYWOOD PROPERTY INVESTMENTS, LLC, has a reported address of 5996 Southwest 70th Street, 5th Floor, South Miami, FL 33143.

GENERAL ALLEGATIONS

9. At all times material, the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC was a for-profit nursing home doing business in Hollywood, Florida. At all times material, the facility's acting manager was JACK MICHEL, M.D., and run by Administrator JORGE CARBALLO and Financial Officer MARK P. EARLY. The facility cared for over one hundred patients. The

REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, advertised that they were a “warm and caring place”, steps away from a major hospital.¹ The REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC claimed to be a “nurturing place...a family place” and a facility where patients “receive a special kind of care” that met the “unique needs of each person”.² Nothing could be further from the truth.

10. On or about September 10, 2017, the REHABILITATION CENTER AT HOLLYWOOD HILLS, became aware that its air conditioning equipment had ceased to operate effectively and appropriately. The facility took meager measures by situating only a few portable air “coolers” throughout the entire 81,000 square foot facility. Rather than taking significant proactive measures to safely remove its residents or establish a non-hazardous environment for the residents, the REHABILITATION CENTER AT HOLLYWOOD HILLS allowed its residents to swelter in the heat, and reside in unsafe and unsanitary conditions.

11. After almost three (3) full days of residents being forced to live in these deplorable and dangerous conditions, on or about September 13, 2017, ALBERTINA LOPEZ, a resident at the facility, suffered intractable distress and died as a result of these appalling conditions. It should also be noted because of the Respondents’ heinous acts, seven (7) other innocent residents died as well: Carolyn Weatherly,

¹ <http://hollywoodhillsrehab.com/directorofnursing.shtml>.

² *Id.*

Gail Nova, Estella Hendricks, Bobby Owens, Miguel Franco, Manuel Mendieta, and Betty Hibbard.

12. A large number of other residents were eventually transferred to Memorial Hospital across the street with injuries associated with and/or caused by high temperatures and neglect.

13. On September 13, 2017, the Florida Agency for Health Care Admission (“AHCA”) ordered an immediate moratorium on admissions and access to the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, as AHCA determined that **the facility was a threat to the health, safety and welfare of the residents and posed an immediate serious danger to the public health, safety or welfare.** The City of Hollywood Police Department initiated a criminal investigation into the facts surrounding the residents’ deaths.

14. This is not the first time that the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, has had serious complaints levied against them. The nursing home has a health inspection rating of “much below average” by AHCA, and an “overall rating,” which includes staffing, fire safety and health inspections, of “below average.” Respondent JACK MICHEL, M.D., has had a troubled past as well. Several years ago, he was forced to pay \$15.4 million to settle federal and Florida civil health care fraud claims made against him. The charges against him ranged from his conspiring to admit patients to a hospital that the he owned in

order to obtain unnecessary medical treatment. The United States contended that the primary recipient of the kickbacks was JACK MICHEL, M.D.³

15. Due to the high-profile nature of this incident, due to the record of appalling conduct by the REHABILITATION CENTER AT HOLLYWOOD HILLS, LLC, the fraudulent history of the facility's manager JACK MICHEL, M.D., and particularly in light of the impending and/or concurrent criminal investigation (and potential criminal charges), the Petitioner has a well-founded belief that evidence in the Respondents' possession may be destroyed, withheld, or altered.

16. Petitioner has no other way of ensuring that the below items sought are preserved and produced other than seeking an emergency order from the Court to compel discovery of these items to ensure no spoliation of these items occurs.

PURPOSE FOR COMPLAINT

17. Petitioners seek to obtain the surveillance video and/or surveillance photographs from the above referenced entities to document these alleged wrongful acts. The purpose for obtaining the surveillance video is to better determine what appropriate measures were taken before, during and after the notification that the air conditioning equipment at the facility was not working properly.

³ https://www.justice.gov/archive/opa/pr/2006/November/06_civ_803.html.

18. Petitioners seek to obtain all evidence referenced in paragraph 21 below in order to ensure its preservation and to better determine the underlying cause.

19. The evidence sought to be obtained in this Pure Bill is crucial to determine the cause of the decedent's death and fault of those involved.

20. Respondents have possession, custody and control of the items requested documenting these wrongful acts and the Petitioner has no other remedy at law by which he may immediately obtain same.

ITEMS SOUGHT

21. The following materials are sought in this Petition that are in the possession of Respondents and Petitioner requests an emergency order precluding destruction or alteration of said items and immediate production of same to Petitioner:

- a. Any and all surveillance video and/or photographs taken on September 8, 2017 through September 13, 2017;
- b. Any documents or materials identifying all of the air conditioning equipment in place at the facility on September 7 through September 13, 2017;

- c. Any documents or materials identifying when every piece of air conditioning equipment was purchased and from whom and for what price;
- d. Any documents or materials identifying each piece of air conditioning equipment was installed and by whom and certificates of installation of each piece of air conditioning equipment;
- e. A map or other identifying document that showed the exact location of all air conditioning equipment located at the facility;
- f. Any documents or materials that specifically identifies what repairs, modifications, or alterations were performed, by whom and when, on each piece of air conditioning equipment at the facility for the past 5 years from September 13, 2017;
- g. Any and all manuals dealing with hurricane preparation and transfer or patients or patient care during and after a hurricane;
- h. All policies and procedures related to treatment of patient contraction of hyperthermia;
- i. All policies and procedures related to identifying patient temperature;
- j. All policies and procedures or manuals that identified the specific criteria of transferring patients to a cooler area whether in the facility or to another facility or hospital;

- k. All policies and procedures related to patient transfers;
- l. All e-mails sent to residents or residents' next of kin (or emergency contacts), related to Hurricane Irma preparation and what measures the facility was undertaking in preparation of the hurricane;
- m. The complete medical and administrative chart regarding and/or referencing ALBERTINA VEGA during the entire time she was admitted to and/or was a resident at REHABILITATION CENTER AT HOLLYWOOD HILLS;
- n. The name and address of each and every current or former employee of the facility whose name and/or handwriting appears in the charts or records pertaining to ALBERTINA VEGA;
- o. A copy of the survey reports for the five years preceding the date of admission of ALBERTINA VEGA;
- p. Copies of all of the facility's survey reports for every year of the residency of ALBERTINA VEGA;
- q. Copies of any and all reports of any accidents or unusual incidents involving ALBERTINA VEGA and which are required to be maintained and kept by your nursing home facility pursuant to Federal or State regulations;

- r. Copies of any and all discoverable incident reports that pertain to ALBERTINA VEGA;
- s. A copy of the facilities “table of organization”;
- t. The names, positions of employment and qualifications of all members of your “quality assessment and assurance committee” together with copies of all written policies and procedures of assuring quality assessment in effect during the residency of ALBERTINA VEGA;
- u. All copies of quarterly meetings of “quality assessment and assurance committee” during the residency of ALBERTINA VEGA, and copies of all minutes of said committee’s meetings during the residency of ALBERTINA VEGA;
- v. Copies of any and all written staff education plans in effect at the nursing facility during the residency of ALBERTINA VEGA;
- w. A copy of any and all documents that were executed by and between ALBERTINA VEGA and/or any person, family member or party on her behalf, and the REHABILITATION CENTER AT HOLLYWOOD HILLS facility;
- x. A copy of any and all documents that were executed by and between FRANCIS L. LOPEZ and the REHABILITATION CENTER AT HOLLYWOOD HILLS facility;

- y. Documents that indicate the precise staff to patient ratio during the time of ALBERTINA VEGA's residency;
- z. Copies of any and all billing statements, invoices, statements of account and other documents reflecting amounts charged and paid for any and all care, services and treatment to ALBERTINA VEGA, regardless of pay source;
- aa. Copies of any and all written resident care plans or other records regarding the care and treatment of ALBERTINA VEGA;
- bb. All records of grievances and annual reports that were generated, kept and maintained pursuant to Florida Statutes §400.118, for the five (5) years preceding the residency of ALBERTINA VEGA, for each and every year of the residency of ALBERTINA VEGA;
- cc. All reports to AHCA of staff to resident ratios, staff turnover, staff stability, and vacant beds at your facility as required by Florida Statutes §400.141, for the five (5) years preceding the residency of Albertina Vega and for each and every year of the residency of ALBERTINA VEGA;
- dd. Any and all performance reviews of all facility staff who provided care or services to ALBERTINA VEGA during her entire residency;

- ee. Any and all records of compliance with staffing requirements during ALBERTINA VEGA's residency;
- ff. Any and all cell phone data, records, photographs, videos, emails, and texts, including meta data, from any cell phone used by any officer, manager, and administrator at REHABILITATION CENTER AT HOLLYWOOD HILLS for the period inclusive of September 10, 2017 through September 13, 2017. This specifically includes but is not limited to the named respondents herein and their subordinates;
- gg. Any and all CCTV surveillance video from any camera inside or outside the REHABILITATION CENTER AT HOLLYWOOD HILLS taken between September 10, 2017 through September 13, 2017.
- hh. Any and all cell phone or video camera footage taken of anything inside the REHABILITATION CENTER AT HOLLYWOOD HILLS from September 10, 2017 through September 13, 2017 from any source;
- ii. Any and all communication with any state and/or federal agency regarding conditions inside the REHABILITATION CENTER AT HOLLYWOOD HILLS for the period inclusive of September 10, 2017 through September 13, 2017;
- jj. Any and all communication with any third-party entity such as service providers regarding electrical and air conditioning equipment and/or

conditions at the REHABILITATION CENTER OF HOLLYWOOD HILLS for the period inclusive of January 1, 2017 through September 14, 2017;

kk. Any and all telephone records and detail billing records for any and all telephone lines at the REHABILITATION CENTER AT HOLLYWOOD HILLS for the period inclusive of September 5, 2017 through September 14, 2017.

ll. Any and all telephone records and detail billing records for any and all cellular telephones owned by, used by or provided to any of the named respondents for the period inclusive of September 5, 2017 through September 14, 2017.

22. There is no prejudice to the Respondents in being compelled to provide the discovery requested. The only prejudice suffered would be if the Petitioner does not receive these vital documents, records or materials that are in jeopardy of being altered, modified or destroyed.

WHEREFORE, Petitioners seek a Pure Bill of Discovery against Respondents as set forth above.

Dated this 15th day of September, 2017.

LEIGHTON LAW, P.A.

Attorneys for Petitioner FRANCIS L. LOPEZ

1401 Brickell Avenue, Suite 900

Miami, FL 33131

Phone: (305) 347-3151

Fax: (305) 675-0123

Email: John@Leightonlaw.com

Max@Leightonlaw.com

Carmen@Leightonlaw.com

Leomarys@Leightonlaw.com

By: _____



JOHN ELLIOTT LEIGHTON

Florida Bar No. 507921

MAX N. PANOFF

Florida Bar No. 84548