

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ROWAN COUNTY

2020 APR 28 A 9:46 No. 20-cvs-728

THOMAS DEL MARSHALL, by and through)
Attorney-in-Fact MELISSA STIREWALT, and)
ROBERT LEROY WHITLATCH, by and)
through Attorney-in-Fact LORETTA HAIR,)

Plaintiffs,

v.

ACCORDIUS HEALTH LLC,
ACCORDIUS HEALTH AT SALISBURY,
LLC, d/b/a The Citadel Salisbury,
THE PORTOPICCOLO GROUP, LLC,
SIMCHA HYMAN, NAFTALI
ZANZIPER, KIMBERLY MORROW, and
SHERRI L. STOLTZFUS,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF
PURSUANT TO G.S. § 131E-123

Plaintiffs THOMAS DEL MARSHALL, by and through Attorney-in-Fact MELISSA STIREWALT, and ROBERT LEROY WHITLATCH, by and through Attorney-in-Fact LORETTA HAIR (collectively "Plaintiffs"), by and through their undersigned counsel, allege as follows:

INTRODUCTION

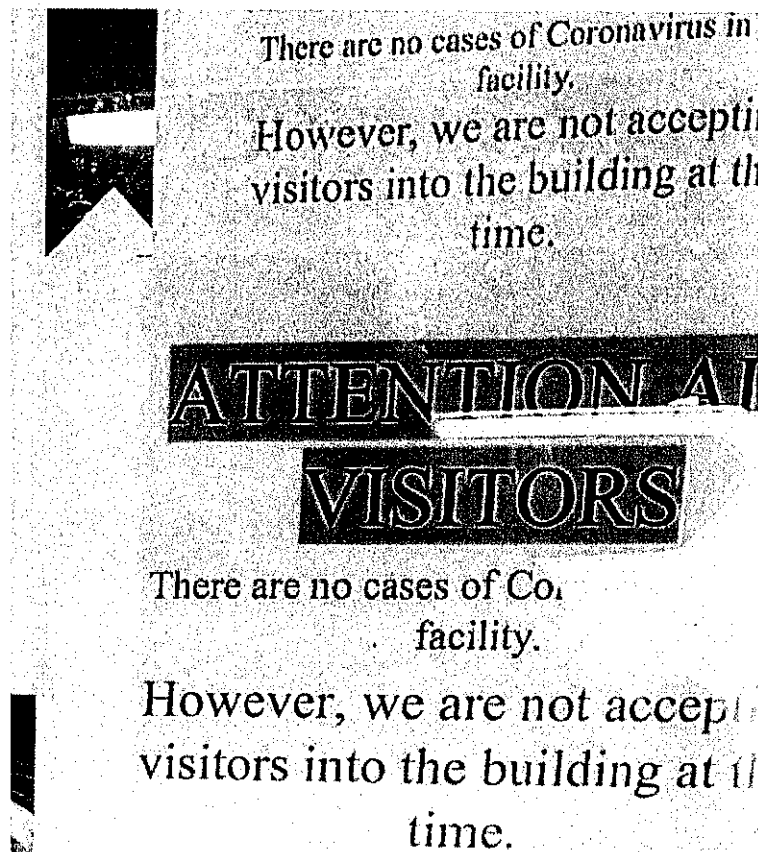
1. This lawsuit, filed pursuant to G.S. § 131E-123, requests injunctive relief to preserve the status quo and to ensure that The Citadel Salisbury ("The Citadel"), a licensed nursing home in Rowan County, North Carolina, complies with the North Carolina Nursing Home Patients' Bill of Rights ("Bill of Rights"), G.S. § 131E-115, *et seq.*

2. The sworn witness affirmations filed contemporaneously with this Complaint,¹ which speak for themselves and are incorporated herein by reference, demonstrate that there is compelling evidence that Defendants are failing to comply with the Bill of Rights, and show:

- a. The Citadel has continued to admit new residents despite the presence of the virus within the facility. At least one of the recently admitted individuals died within 14 days of admission, of the virus. The Citadel told family members that their loved one would be placed in a private room for quarantine for 14 days. But some newly admitted residents were placed into shared rooms with a roommate. Others were admitted with symptoms, including persistent cough. New patients were not tested for COVID-19 prior to admission. On April 27, 2020 the 16th death of a facility resident from the COVID-19 virus was reported, of Ms. Marjorie Garvin. The Citadel has more positive COVID-19 cases — 144 — than any other nursing home in the State. Several facility staff and/or family members of staff have also reported symptoms of the virus.
- b. The Citadel failed to direct or require nurses and employees to wear masks, gowns, or face shields throughout the month of March 2020. The Citadel directed employees who sought to wear masks when working with residents during March to remove their masks to prevent “mask fear” in the facility. The Citadel did not require or provide masks for staff until approximately April 4, when it was too late and the vast majority of staff and residents had already been exposed. Even after that date, at least one staff member reported that she had not been provided with masks or gowns to wear. Further, staff reported being provided only paper masks not appropriate N-95 masks. On April 11, an outside employee came to the Citadel facility from another Accordius facility and found N-95 masks in the facility which had not been distributed.
- c. The Citadel failed to require nurses to change their gloves from room to room, patient to patient. As late as April 5, at least one nurse reported that she had been given only a single pair of gloves for a 16-hour shift, and she was having to wear those gloves from patient to patient while administering medications and taking vitals.
- d. The Citadel failed to hold staff meetings to inform CNAs how to deal with the pandemic. Nor were members of the staff given specialized information or instructions regarding COVID-19 patient care as late as mid-April.
- e. The Citadel failed to timely implement a COVID-19 management plan at the facility.

¹ Filed herewith as exhibits to a notice of filing are sworn affirmations of Cynthia Meacham, Jamineka Davis, Kari Alquist, Kelly Fesperman, Loretta Hair, Margaret Blackwell, Melissa Stirewalt, Ronald Barber, Jane Doe 1, Jane Doe 2, Jane Doe 3, Jane Doe 4, Jane Doe 5, and Jane Doe 6. Names of certain of the employees or contract workers have been redacted out of concern over retaliation.

- f. The Citadel permitted residents to walk the halls and to leave their rooms even after an isolation protocol went into effect. Residents were permitted to walk to common vending machines and continued to mingle in the communal outdoor smoking area. Residents were not required to wear masks, even when they left their rooms for window visits with relatives or walked the hall.
- g. The Citadel permitted residents who had recently shown symptoms, such as persistent cough and weakness, and had been under isolation protocol, to walk the halls prior to being tested for the virus.
- h. The Citadel failed to timely communicate to nursing staff that residents had tested positive with coronavirus. CNAs first learned of positive cases through word of mouth and on the news. As late as April 6 there was a sign on the door falsely saying "ATTENTION ALL VISITORS. There are no cases of Coronavirus in this facility. However, we are not accepting visitors into the building at this time."



- i. The Citadel used a self-reporting system (a log) for certified nursing assistants to take their own temperatures and to report any symptoms. The Citadel failed to follow-up with nurses on the symptoms that were reported and failed to follow-up with nurses who were not utilizing the logs. Staff were permitted to work without taking their temperatures or reporting symptoms. The company did not pay for the testing of their staff many of whom did not receive medical

insurance from the company at that time either. Nor were all patients tested including new residents.

- j. The Citadel allowed symptomatic employees to return to work after sick absences or reported symptoms without being tested for the COVID-19 virus. One employee who called in sick on Tuesday, was asked to come back and work Wednesday and Thursday, only to be tested positive for the Coronavirus on Friday.
- k. The Citadel asked symptomatic employees, whose Coronavirus test results were pending, to return to work, informing them that the facility was “not accepting call-outs without a doctor’s note.” The nurses did not yet have a doctor’s note because they had not received test results. And the company would not pay for that testing.
- l. The Citadel allowed staff who had tested positive for the COVID-19 coronavirus to return to work, even if they had not quarantined for the requisite 14 days.
- m. The Citadel required staff to work double shifts, extra shifts, and to work unmanageable workloads in April 2020. One employee had 52 residents to herself on one shift. The Director of Nursing worked 24 straight hours. Another employee had an entire hall of approximately 30 residents to herself for an entire 16-hour shift.
- n. The Citadel failed to have an effective plan in place to prevent understaffing, resulting in the residents not having access to necessary services, such as the delivery of timely medications, timely assistance to and from the restroom, and timely changing of soiled clothes and undergarments. They reused equipment in an unsanitary manner. Because the owners were not providing gear, visitors brought supplies including buying sanitary disposable gloves at the local dollar store and giving an employee disposable masks. One or more employees brought their own supplies to work in an ad hoc manner.
- o. The Citadel allowed for the transport of COVID-19 positive patients from their rooms to the “100 hall” without taking proper precautions such as putting a mask on the COVID-19 positive resident or confirming the resident in fact had the virus before moving them to where other virus-positive residents were placed. Complaints to supervision went ignored.
- p. The Citadel allowed COVID-19 positive residents to share restrooms with COVID-19 negative residents.
- q. The Citadel had very poor communication with loved ones who sought to get in touch with residents. Calls remained unreturned for extended periods. In at least one instance, a Citadel supervisor lied to a family member and stated that

there were no test results when in fact the Citadel had received the residents' test results (and the majority of those results were positive).

- r. The Citadel failed to timely communicate with loved ones about residents' suspected Coronavirus symptoms and testing, waiting until well after patients were COVID-19 positive to inform family members. By that time, residents had grown too ill to communicate with loved ones and to say their goodbyes. Some family members were unable to say meaningful goodbyes to their loved ones.
- s. The Citadel management actively lied to loved ones advising that their loved one was COVID-19 negative, when in fact, the resident had been confirmed COVID-19 positive. The Citadel also lied to the patients about whether or not they were positive for COVID-19.
- t. The Citadel provided inconsistent and misleading information to loved ones, such as one family being informed their loved one was doing well one day, then calling to inform that the loved one was positive for COVID-19 and had been tested days prior.
- u. The Citadel continues to fail to timely communicate with family members on whether their loved ones have been tested or are COVID-19 positive. Many family members of residents have called state or federal agencies or the police seeking information and complaining. The facility failed to provide records and/or test results to families who requested them repeatedly. Family members have called law enforcement, state and local officials and others in an effort to obtain needed information.
- v. In at least one instance, a patient died at the Citadel and was left in the room until the next morning. In at least two instances, the power of attorney holders were not timely told of their loved ones' deaths and were not timely told whether the deceased were positive for COVID-19. One man did not even learn his loved one was ill, until after she had died and her body had been sent to the funeral home. Nor was the funeral home director advised that the body he was handling was COVID-19 positive.

3. The Plaintiffs are the powers-of-attorney for current residents at The Citadel. They are concerned that the Defendants are not complying with the Bill of Rights. As such, through this action, the Plaintiffs seek Court intervention to ensure that the Defendants are complying with the Bill of Rights, a statute designed to promote the interests and well-being of the patients in nursing

homes and to protect their civil liberties. Pursuant to G.S. § 131E-123, the Plaintiffs seek injunctive relief to enforce the provisions of the Bill of Rights.

4. Plaintiffs request that the Court review the evidence and enter a temporary and permanent injunction to ensure that The Citadel acts in compliance with the Bill of Rights.

5. Plaintiffs do not allege any claim for damages, for medical malpractice, or for medical negligence subject to N.C.R. Civ. P. 9(j), and specifically reserve all claims in that regard.

I. THE PARTIES.

A. Plaintiffs.

6. Plaintiff THOMAS DEL MARSHALL, by and through MELISSA STIREWALT, his Power of Attorney, is a citizen and resident of Rowan County, North Carolina. Mr. Marshall has been a resident of the Citadel Salisbury facility from May 2019 until present.

7. Plaintiff ROBERT LEROY WHITLATCH, by and through LORETTA HAIR, his Power of Attorney, is a citizen and resident of Rowan County, North Carolina. Mr. Marshall has been a resident of the Citadel Salisbury facility from Summer 2019 until present.

B. Defendants.

8. Defendant ACCORDIUS HEALTH LLC (“Accordius Health”) is a New York limited liability, with its principal office located at 440 Sylvan Avenue, Suite 240, Englewood Cliffs, NJ 07632.

9. Defendant ACCORDIUS HEALTH AT SALISBURY LLC, d/b/a The Citadel at Salisbury (“The Citadel”) is a North Carolina limited liability company with a principal place of business at 710 Julian Road, Salisbury, NC 28147.

10. Defendant THE PORTOPICCOLO GROUP LLC (“Portopiccolo”) is a New Jersey limited liability company with its principal office located at 440 Sylvan Avenue, Suite 240, Englewood Cliffs, NJ 07632.

11. Defendant SIMCHA HYMAN (“Hyman”) is the Co-Founder and Chief Executive Officer of Portopiccolo, the Chief Executive Officer of and co-owner of The Citadel, the member-manager of Accordius Health, and a citizen and resident of New York.

12. Defendant NAFTALI ZANZIPER (“Zanziper”) is the Co-Founder and President of Portopiccolo, the co-owner of The Citadel, and a citizen and resident of New York.

13. Defendant KIMBERLY MORROW (“Morrow”) is the Chief Operating Officer of Accordius Health and is a citizen and resident of Bradenton, Florida.

14. Defendant SHERRI L. STOLTZFUS (“Stoltzfus”) is the Administrator of The Citadel and is a citizen and resident of Iredell County.

15. On information and belief, at all times herein alleged, each Defendant engaged in relevant business activities and services in North Carolina and acted as the agent, partner, joint venturer, representative, and/or employee of the remaining Defendants, and was acting within the course and scope of such agency, partnership, joint venture, and/or employment. Furthermore, in engaging in the conduct described below, the Defendants were all acting with the express or implied knowledge, consent, authorization, approval, and/or ratification of their co-defendants.

II. JURISDICTION AND VENUE.

16. This Court has subject matter jurisdiction. N.C. Gen. Stat. §§ 7A-240; 7A-243.

17. This Court has personal jurisdiction over the Defendants. N.C. Gen. Stat. §§ 1-75.4, 7A-240, 7A-243.

18. Venue is proper in this Court. N.C. Gen. Stat. §§ 1-76, 1-77, 1-79, 1-80, 1-82.

III. BACKGROUND FACTS.

19. The Citadel is a licensed nursing home located at 710 Julian Road, Salisbury, NC 28147. The Citadel is owned, operated and/or managed by Defendant Accordius Health LLC and/or Accordius Health at Salisbury LLC, as a for-profit nursing home. The Citadel has a total of 160 beds. The facility is licensed by the North Carolina Division of Health Service Regulation, through its Nursing Home Licensure and Certification Section. The facility has license number NH0441. The facility accepts Medicare and Medicaid patients. It holds provider number 345286. The current CMS star-rating for The Citadel is one star. A one-star rating signifies that The Citadel is rated by Medicare in the bottom 20 percent of nursing homes in North Carolina.²

20. The Citadel Salisbury is a “facility” within the meaning of G.S. § 131E-116(2).

21. Defendant Stoltzfus is an “administrator” of The Citadel within the meaning of G.S. § 131E-116(2).

22. Thomas Del Marshall and Robert Leroy Whitlatch are each “patients” as that term is defined by G.S. § 131E-116(3).

23. G.S. § 131E-117 is the North Carolina Patients’ Bill of Rights. The Bill of Rights grants enumerated rights to patients of all nursing homes in North Carolina, including The Citadel. That statute contains mandatory language, and provides, in pertinent part:

All facilities shall treat their patients in accordance with the provisions of this Part.
Every patient shall have the following rights:

(1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;

² Friends of Residents in Long Term Care analyzed the publicly available information about outbreaks of COVID-19 in North Carolina nursing homes. The results suggest a correlation between low quality ratings and high infection rates. One-star nursing homes appear to have higher rates of infection, at 55%, which if true indicates that residents are more likely than not to become infected. Five-star nursing homes have only a 2% rate of infection. *See* Carli Brosseau, Advocates call for widespread coronavirus testing of NC nursing home residents, April 27, 2020, Raleigh News and Observer, <https://www.newsobserver.com/news/local/article242313991.html> (accessed 4/28/20).

(2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;

...

(7) To receive from the administrator or staff of the facility a reasonable response to all requests;

(8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage[.]

24. The North Carolina Rules for the Licensing of Nursing Homes require nursing homes to “enforce the Nursing Facility Patient's Bill of Rights as described in G.S. 131E-115 through G.S. 131E-127.” 10A NCAC 13D .2207(a).

25. The Bill of Rights requires all licensed nursing homes to provide services that are in compliance with relevant federal and State statutes and rules. The relevant State statutes and rules include 10A NCAC 13D, The Rules for the Licensing of Nursing Homes (“Nursing Home Rules”), and G.S.131E, Article 6, the Health Care Facility Licensure Act.

26. The Nursing Home Rules require The Citadel “to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.” 10A NCAC 13D .2001(21). The evidence suggests that The Citadel has failed to comply with this rule, in violation of the Bill of Rights, by failing to provide goods, e.g., gloves, masks and other protective gear, that would avoid physical harm to the patients.

27. The Nursing Home Rules required The Citadel to comply with infection control procedures. The infection control rules, 10A NCAC 13D, .2209, Infection Control, provide as follows:

- (a) A facility shall establish and maintain an infection control program for the purpose of providing a safe, clean and comfortable environment and preventing the transmission of diseases and infection.
- (b) Under the infection control program, the facility shall decide what procedures, such as isolation techniques, are needed for individual patients, investigate episodes of infection and attempt to control and prevent infections in the facility.
- (c) The facility shall maintain records of infections and of the corrective actions taken.
- (d) The facility shall ensure communicable disease testing as required by 10A NCAC 41A, "Communicable Disease Control" which is incorporated by reference, including subsequent amendments. Copies of these Rules may be obtained at no charge by contacting the N.C. Department of Health and Human Services, Division of Public Health, Tuberculosis Control Branch, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902. Screening shall be done upon admission of all patients being admitted from settings other than hospitals, nursing facilities or combination facilities. Staff shall be screened within seven days of the hire date. The facility shall ensure tuberculosis screening annually thereafter for patients and staff.
- (e) All cases of reportable disease as defined by 10A NCAC 41A "Communicable Disease Control" and outbreaks consisting of two or more linked cases of disease transmission shall be reported to the local health department.
- (f) The facility shall use isolation precautions for any patient deemed appropriate by its infection control program and as recommended by the following Centers for Disease Control guidelines, Management of Multidrug-Resistant Organisms In Healthcare Settings, 2006, <http://www.cdc.gov/ncidod/dhqp/pdf/ar/MDROGuideline2006.pdf> and 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, <http://www.cdc.gov/hicpac/2007ip/2007isolationprecautions.html>.
- (g) The facility shall prohibit any employee with a communicable disease or infected skin lesion from direct contact with patients or their food, if direct contact is the mode of transmission of the disease.
- (h) The facility shall require all staff to use hand washing technique as indicated in the Centers for Disease Control, "Guideline for Hand Hygiene in Health-Care Settings, Recommendations of the Healthcare Infection Control Practices Advisory Committee and the HICPAC/SHEA/APIC/IDSA Hand Hygiene Task Force". This information can be accessed at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5116a1.htm>.
- (i) All linen shall be handled, store, processed and transported so as to prevent the spread of infection.

28. However, the facts demonstrate that The Citadel is likely not in compliance with the Nursing Home Rules relating to infection control. Not only have witnesses corroborated conditions that may not be in compliance with the North Carolina Rules, but as recently as Monday, April 20, 2020, Emergency Room physician John Bream, M.D. described extraordinary circumstances at The Citadel. John Bream, Outbreak at Citadel nursing home especially concerning, April 20, 2020, Salisbury Post.³

29. In addition, the attached witness statements, including those from the staff at The Citadel, suggest that The Citadel is not complying with North Carolina Rules on infection control. The employees stated that they have neither been given the most basic protection nor education on COVID-19. Residents, family members and employees also report that The Citadel has not advised them of the status of virus presence, testing, lab results and follow-up. In addition, witnesses acknowledge that The Citadel failed to advise workers, patients and powers of attorney of the patients' test results. Further, in their affirmations, The Citadel staff complain about lack of training or guidance on infection control, including COVID-19.

30. The Citadel, as a licensed nursing home, is required to comply with the Nursing Home Rules relating to staffing, 10A N.C.A.C. 13D .2303, which states:

- (a) A facility shall provide licensed nursing staff sufficient to accomplish the following:
 - (1) patient needs assessment;
 - (2) patient care planning; and
 - (3) supervisory functions in accordance with the levels of patient care advertised or offered by the facility.
- (b) A facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the physical, mental, and psychosocial well-being of each patient, as determined by patient assessments and individual plans of care.

³<https://www.salisburypost.com/2020/04/20/john-bream-outbreak-at-citadel-nursing-home-especially-concerning/> (accessed 4/27/20).

- (c) A multi-storied facility shall have at least one nurse aide on duty on each patient care floor at all times.
- (d) Except for designated units with higher staffing requirements noted elsewhere in this Subchapter, daily direct patient care nursing staff, licensed and unlicensed, shall include:
 - (1) at least one licensed nurse on duty for direct patient care at all times; and
 - (2) a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage may be spread over more than one shift if such a need exists. The director of nursing may be counted as meeting the requirements for both the director of nursing and patient staffing for facilities with a total census of 60 nursing beds or less.

31. During the COVID-19 pandemic, the CDC emphasized that “Healthcare facilities must be prepared for potential staffing shortages and have plans and processes in place to mitigate these.” CDS published a bulletin, entitled “Strategies to Mitigate Healthcare Personnel Staffing Shortages.” That bulletin contains comprehensive strategies for long-term facilities to use, including The Citadel, to accommodate staffing shortages related to the COVID-19 pandemic.

32. The North Carolina Department of Health and Human Services (“DHHS”), via an Emergency Staffing Needs bulletin, notified all long-term care facilities that “facilities should prepare for the possibility of staffing shortages and have a concrete plan with specific steps to take if they do need additional staff.” The bulletin instructed facilities to use the following options to address needed staffing: (a) allow caregivers that are positive but asymptomatic to staff areas dedicated to caring for positive residents (while wearing appropriate PPE); (b) contact temporary staffing agencies; (c) contact other sister agencies for temporary staffing support; and (d) contact local hospitals for temporary staffing support. If all available staffing options were exhausted and additional staffing was still needed, NC DHHS notified all skilled nursing facilities to make emergency staffing requests to their local health department.

33. The evidence contains copies of The Citadel’s staffing assignment forms. Purportedly, the forms reflect the level of staff that the Citadel expected was needed to provide

nursing and related services to attain or maintain the physical, mental, and psychosocial well-being of each patient. The evidence demonstrates that on many instances there are blanks on the staffing assignment forms and further testimony demonstrates that on many instances there were no aides working on certain halls of The Citadel. Further, the affidavits of family members demonstrate that staff were not present or available to answer the resident's telephone or respond to questions about the health status of residents.

34. The Citadel has more positive COVID-19 cases among residents and staff than any other nursing home in North Carolina.

35. Out of 100 counties in North Carolina, Rowan County ranks number 21 in terms of population,⁴ but as of April 26, 2020, was number five in COVID-19 cases with 342⁵ confirmed cases; 102 originated from The Citadel.

36. The magnitude of positive COVID cases at The Citadel make it an outlier among North Carolina nursing homes. Notably, it is not the only Accordius facility with such issues. As of April 22, 2020, the Central Shenandoah Health District reported 81 cases at the Accordius Health facility in Harrisonburg, Virginia, including 13 residents that died of COVID-19.⁶

37. And, as with the Citadel facility in Salisbury, NC, the facts regarding the Accordius facility in Virginia were initially concealed by the company and only came to light when a facility worker acted as a whistleblower and went public.

When the outbreak was announced by the health department, Kornegay and state health officials would not release the name of the facility.

But Kaneshia Hamilton, an employee of the long-term care facility, came forward and identified Accordius Health, to the Daily-News Record.

⁴ <https://worldpopulationreview.com/us-counties/nc/> (accessed 4/27/20).

⁵ <https://www.ncdhhs.gov/divisions/public-health/covid19/covid-19-nc-case-count#by-counties> (accessed 4/27/20).

⁶ <https://www.whsv.com/content/news/Health-department-confirms-13-COVID-19-deaths-at-Accordius-Health-Harrisonburg-569870791.html> (accessed 4/27/20).

“There’s a lot of sick people,” said Hamilton, a certified nursing assistant who works at the nursing home facility. “All of our aides are pretty much sick right now.” In the interview, Hamilton said she didn’t have enough personal protective equipment and had to reuse a gown she wore to examine a patient who was confirmed positive with coronavirus COVID-19.

“All of this could have been prevented,” said Hamilton in the interview with the Daily-News Record. “We told them over and over and over that we didn’t feel comfortable working there. I’ve never been in the dark so much. It was like we’re figuring it out as we go.”⁷

38. In addition to what is reported by the attached witness statements, in recent months, the North Carolina Division of Health Services Regulation (“NC DHSR”) investigated The Citadel. Published NC DHSR reports acknowledge deficient practices that include residents left unattended, residents not subject to proper hygiene and bathing, lack of adequate food or housekeeping services, and inadequacy of medication practices.

39. A February 24, 2020⁸ survey at The Citadel listed safety and resident care regulatory violations. The inspectors found that based on records review, observations, and resident and staff interviews, the facility failed to resolve repeated concerns reported during resident council meetings related to not answering “call lights” for three consecutive months, not cleaning showers for six consecutive months, and other violations.

40. In connection with the facility inspection, an interview with the resident council group was held on January 29, 2020 at 11:00 a.m. and 23 residents attended. During the interview, residents voiced concerns that the facility was not resolving grievances. Residents stated, “They act like they are interested, and nothing happens.” “The showers are not cleaned, and they say they will jump right on it, but nothing gets done.” “Call lights are being answered because you (meaning state surveyors) are here this week, as soon as you leave the building, it will go back to normal.”

⁷ <https://www.newsleader.com/story/news/2020/04/14/harrisonburg-nursing-home-covid-19-outbreak-accordius-health/2989223001/> (accessed 4/27/20).

⁸ <https://info.ncdhhs.gov/dhsr/facilities/nh/2020/20200402-923354.pdf> (accessed 4/27/20).

Thirteen out of 23 residents that attended the group interview raised their hands to indicate the NAs will come into their rooms, turn off their call light and leave without addressing their concerns.

41. The inspectors conducted an observation of the “500/600 shower room” on January 28, 2020 at 2:30 p.m. which revealed dry skin on the shower stretcher in the shower room. An observation of the “300 shower room” was completed on January 29, 2020 at 10:00 a.m. “Gray colored grout was black in several areas. Loose black flaky particles were noted on the shower floor. The shower walls had long streaks of dried white drainage.”

42. An observation of the 500/600 shower room on January 28, 2020 at 4:00 p.m. observed: “Dark black grout was observed on some of the floor tiles on one of the shower stalls. A white washcloth with dark brown spots was hanging on the shower curtain bar in a shower stall. A second wet wash cloth was wadded up and lying on the shower shelf in a stall, as well as dark black grout noted on some of the floor tiles.”

43. The February 2020 deficiency report acknowledged that The Citadel failed to “protect a resident’s right to be free from physical abuse.”

44. In addition to the witness statements and deficiency reports, current and former employees of Accordius Health facilities reported on the public website, www.indeed.com, that Accordius Health routinely understaffs the facilities that it owns and operates, and engages in numerous other improper practices:

- “Run far away. RUN RUN RUN!!!! If you value your licenses don’t come here. HR and Admin are the rude to everyone. **They can’t keep staff or the supplies needed to do the job.** Takes them forever to give out paychecks/paystubs and W2’s. The WORST place I have ever worked.” (Former employee, registered nurse, Accordius, Salisbury, NC, January 28, 2020).
- “Nursing management very shady. Don[’]t want to pay employees their worth. Residents and floor staff very good to work with but the bosses will end up running

everyone off. To[o] much expected from individuals because they don[']t want to hire for positions want current staff to be over extended.” (Former employee, RN, Accordius, Salisbury, NC, January 19, 2019).

- “Avoid Accordius. Employees are not valued whatsoever. We are all expendable and I quote this from a high ranking corporate employee... ‘a dime a dozen’ in regards to clinical staff. **Budgetary cuts are made in staff pay and areas that affect patient care the greatest. Extremely poor leadership in corporate and zero support.** Accordius touts themselves to be all about patient care, but turns out to be just another big company out to make money. Worst job experience EVER in my 20+ year career.” (Former employee, manager, Wilson, NC, review dated April 14, 2020).
- “Crazy workplace. There needs to be some changes made. The staff and the D.O.N. [director of nursing]. **WE DID NOT SEE ANYONE FROM THE COMPANY SINCE THEY TOOK OVER IN APRIL/MAY.**” (Former employee, LPN (Licensed Practice Nurse), Winston-Salem, NC, April 12, 2020).
- “**Dangerous Company. Accordius only cares about profits; not patients and not staff ... just profits.** Micromanage on unimportant things and care little about things that affect patient care. And the COO stated she goes on Indeed in every building she visits to put up a fake positive review and then hands cards out to management with the link to do the same.” (Former employee, executive director/ administrator, Virginia, March 14, 2020).
- “Worst company ever. Only work here if there are no other options. Corporate doesn't care. They don't pay their bills and vendors are constantly threatening to sue, send to collections or refuse service. Benefits are a joke. You have to use your PTO for ‘paid’ holidays. There is absolutely nothing good to say about this company. Do not work here.” (Former employee, maintenance, Charlotte, NC, February 27, 2020).
- “Over growth. Company as a whole needs to ask and listen to their employees who are delivering care each day. VERY fast growth to the point of too fast. They don[']t fully transition you into the Accordius platform before they purchase another round of facilities. Vendors are not being paid and therefore **not providing maintenance repairs, necessary equipment for residents needs.**” (Current employee, management, Charlotte, NC, February 19, 2020).
- “not a great place to work. I am not the type of person to down a company, however this company was very discriminating toward its staff, very rude to the residents that lived there. **They were tagged by the state for stuff that they would try to hide.**” (Former employee, maintenance, Winston-Salem, NC, January 31, 2020).
- “**Short staffed all the time** especially on weekends. They expect you to take your lunch break, chart and get 15-20 people ready. Rude management.” (Former employee, CNA, Ahoskie, NC, January 15, 2020).

- “Don’t work here. Stay away. regionals are a joke. Do not work here. This company will damage your soul. Absolutely no consideration for human beings just dollar signs. Feel sorry for all that darken the doors.” (Former employee, management, Winston-Salem, NC, December 18, 2019).
- “Run away and don’t look back! This place is horrid. They changed the name but it’s still the same. 1. **They are always short.** Even when there are 2 nurses in the building for 120 patients, you’re stuck because the DON won’t answer her phone. The scheduler will leave people on the schedule when they’re not supposed to be to make it look like you’re fully staffed for the shift. 2. The place is bug infested. 3. The benefits are a joke. 4. The DON is sneaky and can’t be trusted. If you’re not a favorite, she will come for you. Find a place that cares about the employees.” (Former employee, LPN, Lynchburg, VA, November 20, 2019).
- “Corporate Management Does Not Care. The corporate managers do not care about the employees that work in the facility. They are spending more time buying facilities than they are on listening to those that work in them. **Once they take over a building, they then go in and cut staffing down** and force the remaining good employees to leave. If you’re even thinking about working for Accordius/ The Portopicollo Group (which is really who is running it all) run very fast in the opposite direction.” (Former employee, HR manager, Virginia, November 18, 2019).
- “This place is not treating it's employees fair. This facility has more than enough residents and has been getting new residents but yet corporate is telling us that our census is too low and have been having our work hours purposely cut and purposely **forcing us to work short staffed on the floor** and it's not fair to purposely overwork us with a facility full of staff who actually want to work. It's also not fair to the residents who don't get the proper care because they will not allow enough workers to work on the floor but purposely put a lot of burden on workers to work short.” (Current employee, CNA, Charlotte, NC, October 27, 2019).
- “Worst management, **no training, no teamwork**, terrible benefits. If you want to feel safe about not losing your nursing license, don't even consider it.” (Former employee, management trainee, Greensboro, NC, September 30, 2019).
- “Inexperienced, poor management, unaffordable benefits. Everyone, including my direct supervisor, is only concerned with covering themselves. They could not care less about me or their residents. Our building is sad-looking. It is a depressing environment. **I received little to no training upon hire and have been constantly bombarded with unrealistic expectations.** Corporate individuals I have had the ‘pleasure’ of working with are condescending and not helpful.” (Current employee, dietary, NC, July 27, 2019).
- “Spreading Like A Virus Across LTC. Awful company from New Jersey that is buying up nursing homes across the south faster than I have ever seen. Medicare

fraud. **They purposely keep dangerously low staffing numbers** and their strategie is to feel all beds with what people consider the ‘worst patients’. Those poor patients deserve better because Accordius is 100% quantity over quality. Every company values profit, but these crooks **do not place any value in patient care and safety.**” (Former employee, Nurse, NC, July 20, 2019).

- “One star and heading down. Owned by people who have very little idea what taking care of patients requires. **Rarely had proper staffing o[r] supplies.**” (Former employee, RN, Wilmington, NC, May 23, 2019).
- “Horrible Place to Work. The Administrator who just left is a joke! Constantly complaining about the company. The DON who just left doesn't know her stuff. The company promises and promises and delivers nothing for the staff or buildings. Almost 1 year since the Brian Center sign came down and still no Front Yard Side. Very sad for our community.” (Current employee, CNA, Brevard, NC, March 6, 2019).
- “Very shady company. Company comes in and takes over Sava group with promises to give quality patient care. **Always short staffed with nursing**, limited food offered for residents, patient care is significantly lacking, place is not well cleaned, poor administration, department heads all quitting and corporate has no care as to what is going on. Kitchen equipment always breaking, roof always leaking, transport van in terrible shape, always behind on paying bills, and **always behind on ordering supplies so often times there isn't stuff available for staff and residents when needed.** This new company has ruined this building.” (Former employee, Brevard, NC, February 23, 2019).
- “Corporate is two faced. Corporate is two faced and act like they care. They tell us to call and let them know how things are going. **We call and tell them how short staffed we are and they never do anything about it.** They walk by call lights and never answer them.” (Former employee, CNA, Winston-Salem, NC, January 7, 2019). (Emphases added throughout).

45. As of Monday, April 20, 2020, with regard to the outbreak of COVID-19 at the Citadel facility in Salisbury, it was reported that there were at least 96 positive cases among the facility’s residents, 17 employees who had tested positive and an unknown number of fatalities.

46. According to Emergency Room Physician Dr. Bream who provided information publicly out of mounting concern,⁹ the first patient who tested positive from the Citadel presented

⁹ <https://www.salisburypost.com/2020/04/20/john-bream-outbreak-at-citadel-nursing-home-especially-concerning/> (accessed 4/27/20).

to the emergency department at Novant Health Rowan Medical Center on April 4, 2020. In the next three days, the emergency department would see and admit several more patients from this facility, and it became clear an outbreak had occurred.

47. With no communication or assistance from the Defendants, a discussion occurred among the local hospital emergency department's leadership team on the night of April 7, 2020 about the need for action. On April 8, multiple meetings occurred. The emergency department's team reached out to the Rowan County Health Department.

48. COVID-19 tests were collected at the Citadel on April 10th, refrigerated overnight and driven to the state lab on April 11th. It was also only on or about April 10th or 11th that the Citadel first notified some families of the possibility of exposure. That occurred nearly a week after the first suspected case was seen in the ER and, at that time, at least five COVID-19 positive patients had been identified at the hospital.

49. On April 12th, it was noted on the N.C. Department of Health and Human Services website that a significant increase in COVID-19 cases had occurred in Rowan County. On April 13th, it was confirmed from one or more medical professionals at the hospital that this increase was from the first wave of positive Citadel results.

50. Initial results from the Citadel showed that 85 residents were positive and 15 negative for the virus. On an internal call on April 13th, it was also revealed that 15 Citadel residents were not tested. Among the facility's team members tested, 32 were tested, with 17 found to be positive, four negative, and the rest with results still pending.

51. On April 13th, Dr. Bream saw several disturbing circumstances, as he subsequently related in an article published in the Salisbury Post:

- My first patient of the day was from the Citadel, positive for COVID-19 and in serious condition. I called the family to let them know the patient was in the

emergency department, and I was exasperated to know that **the family had not been made aware — now at least a day and a half later — that their family member was positive for COVID-19.** Unfortunately, this patient succumbed to the illness the next day.

- About an hour later, I had a patient **who was an employee of the Citadel who was experiencing symptoms. She volunteered that she felt the facility had ‘dropped the ball.’** Being extensively involved in the situation, I asked her if she would mind sharing what she meant. She told me that the staff had repeatedly asked to wear masks and were denied by the facility’s leadership. She also told me that the staff had asked to wear gowns. Only after patients started to get sick were those measures implemented. The employee lamented that, **‘By then, it was too late.’**
- A few hours later, I got my second case of the day from the Citadel. I called the family to let them know the patient was in the emergency department, and **this family was also unaware that their loved one was positive for COVID-19.**
- I then contacted a member of our nursing staff who I knew had family at the Citadel. She also confirmed that **her family had not been made aware of the outbreak.**
 - My last patient of the shift came in around 11 p.m. The patient was from the Citadel, COVID-19 positive and in critical condition. I called the family immediately because it was apparent that without major, invasive interventions the patient would not survive. After a discussion with the family, it was decided we would make the goal of care to keep the patient comfortable and transition to palliative care. Denied knowledge that the family member was critically ill and COVID-19 positive and unable to come to the hospital, I called the patient’s daughter on FaceTime so that she could have one more final moment with her father in which she could tell him she loved him one last time. The patient died approximately 18 hours later.

52. On Monday, April 20, 2020, the Salisbury Police Department¹⁰ sought to contact the facility to inquire about the condition of a resident. At approximately 2:00 pm, a 77-year-old resident contacted her son to say that she needed to go to the restroom and could not get anyone to help her. By 5:00 pm, the woman still had not gotten any help. The son called police. Officers began calling The Citadel, but no one answered. An officer drove to the Citadel and rang a

¹⁰ <https://www.wbtv.com/2020/04/21/report-citadel-ignored-calls-police-about-woman-needing-go-restroom/> (accessed 4/27/20).

doorbell, but no one answered. A police supervisor said that this was the second call from the family member of a Citadel resident who said that they were concerned about a loved one and could not get any communication from The Citadel.

CLAIM FOR RELIEF
(Injunctive Relief Pursuant to G.S. § 131E-123)

53. Plaintiff incorporates by reference all prior allegations contained in the Complaint as if fully set out herein.

54. At all times relevant hereto, The Citadel was required to comply with the Nursing Home Bill of Rights, N.C. Gen. Stat. § 131E-117.

55. Pursuant to N.C. Gen. Stat. § 131E-123, “Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Part.”

56. Plaintiffs are “Patients” as defined by N.C. Gen. Stat. § 131E-116(3).

57. Defendants violated the North Carolina Patients’ Bill of Rights by failing to ensure that the Plaintiffs had and have the right to:

- a. be treated with consideration, respect, and full recognition of personal dignity and individuality;
- b. receive services which are in compliance with relevant federal and State statutes and rules;
- c. to receive from the administrator or staff of the facility a reasonable response to all requests;
- d. enjoy privacy in the patient's room;
- e. associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; and
- f. to have access at any reasonable hour to a telephone where the patient may speak privately.

58. Plaintiffs seek temporary and permanent injunctive relief that mandates Defendants' compliance with the North Carolina Bill of Rights.

59. Plaintiffs request that the Court conduct a hearing with regard to the current conditions and circumstances at The Citadel and enter appropriate orders pursuant to G.S. § 131E-123, including but not limited to:

- a. A mandate that Defendants provide services to the Plaintiffs which are in compliance with relevant North Carolina statutes and rules;
- b. A mandate that Defendants treat the Plaintiffs with consideration, respect, and full recognition of personal dignity and individuality;
- c. A mandate that the Plaintiffs receive from the administrator of The Citadel a reasonable response to all requests, including requests for information regarding the health condition and COVID-19 test results of residents, when first available;
- d. A mandate that the Defendants provide a means for the Plaintiffs to associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour;
- e. A mandate that the Defendants ensure that the Plaintiffs have access at any reasonable hour to a telephone where the patient may speak privately;
- f. A mandate that the Defendants ensure that The Citadel is staffed in accordance with the Nursing Home Rules;
- g. A mandate that the Defendant ensure that infection control procedures are implemented and enforced according to the Nursing Home Rules and CDC and Medicare recommendations;
- h. A mandate that Defendants provide the Court with documentation that (1) shows the date, time, and detail of all infection control measures that were implemented at The Citadel that relate in any way to COVID-19, (2) contains all policies and procedures relating to infection control that are and have been in place at The Citadel, including the dates and time that each policy went into effect; (3) shows the level of nurse and aide staffing on each hall and on each shift, including names, job title, and times and dates worked in March and April 2020;
- i. A mandate that Defendants advise the Plaintiffs and the Court in detail, on a monthly basis, as to the present status of the availability of personal protective equipment at the facility, including gloves, face masks and eye protection, and other PPE; and

- j. A mandate that Defendant verify to the Court, on a monthly basis, for a period of 24 months, compliance with above mandates.

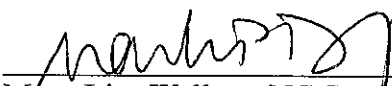
60. Plaintiffs further request that the Court enjoin the Defendants from engaging in any action or refraining from action that violates or would lead to a violation of the Bill of Rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

1. For the entry of a preliminary and permanent injunction in accordance with G.S. § 131E-123 and as noted herein;
2. For payment of any costs, interests, expenses or attorney fees to which the Plaintiffs may be legally entitled; and
3. For such other and further relief as the Court may deem just and proper.

This the 28th day of April, 2020.



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