

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Civil

State of Minnesota, by its Attorney General,
Mike Hatch,

Court File No. MC-04-007963

Plaintiff,

FIRST AMENDED COMPLAINT

vs.

Benchmark Healthcare of Minneapolis, Inc.
d/b/a Concordia Care Center,

Defendant.

The State of Minnesota, by its Attorney General, Mike Hatch, for its First Amended Complaint, alleges as follows:

INTRODUCTION

1. The State of Minnesota, by its Attorney General, Mike Hatch brings this action to address important health and safety concerns at the Concordia Care Center nursing home, which is owned and operated by Defendant Benchmark Healthcare of Minneapolis, Inc. Specifically, Concordia has admitted multiple convicted sex offenders to its nursing home. In admitting these sex offenders, Concordia has not taken adequate precautions to protect its residents. This action has resulted in the sex offenders committing sexual and physical assaults against other vulnerable adult residents. Moreover, Concordia's management condoned the presence of other unsafe and deplorable conditions, including the presence of rats, which Concordia instructed its staff to tell residents were "bunnies." Immediate and permanent court intervention is needed to safeguard Concordia's residents, staff and neighboring community from these practices and conditions.

PARTIES

2. Mike Hatch, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. chapter 8, including Minn. Stat. §§ 8.01, 8.31, 8.32, and under Minn. Stat. §§ 144.651, 325F.67, 325F.70, 256B.121, 317A.467, 317A.751, 317A.813 and 501B.41 and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota law.

3. Benchmark Healthcare of Minneapolis, Inc. ("Benchmark") is a Minnesota non-profit corporation with its registered office at 405 Second Avenue South, Minneapolis, MN 55401. Benchmark owns and operates Concordia Care Center, which is located at 1620 Oak Park Avenue North, Minneapolis, MN 55411 ("Concordia"). Concordia is a nursing home.

JURISDICTION

4. This Court has personal jurisdiction over the defendant and, pursuant to Minn. Stat. §§ 8.31, 8.32, subd. 2(a), 325D.45, 325F.67, 325F.70, 256B.121, 144.651, 317A.467, 317A.751, and 501B.41 (2002), jurisdiction over the subject matter of this action.

VENUE

5. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2002) because the cause of action arose, in part, in Hennepin County, and the Defendant resides in Hennepin County.

FACTS

A. Ownership and Management of Concordia

6. Defendant Benchmark is a Minnesota non-profit corporation organized and operated to establish, acquire, own, maintain and operate nursing homes, and other related health care facilities, including facilities for the care of the developmentally disabled. Benchmark's

Articles of Incorporation indicate that it was organized and is operated exclusively for charitable, scientific, and educational purposes within the meaning of Section 170(c)(2) and 501(c)(3) of the Internal Revenue Code. *See* Benchmark's Articles of Incorporation, Art. II (as amended, 2000). Benchmark owns and operates Concordia, a nursing home facility certified by the Minnesota Department of Health as a skilled care nursing facility and an intermediate care facility. Concordia's manager or administrator is Paula Lewis ("Lewis").

B. Concordia's Nursing Home Facility and Resident Population

7. Concordia solicits for and accepts residents upon their direct application or upon placement or referral by third parties. Concordia residents apply for admission directly from private homes or apartments with no home health services; board and care, assisted living or group home arrangements; or other nursing homes. Concordia residents are also placed or referred by third parties, such as case workers or social workers, professional conservators, and health care providers (*e.g.*, acute care, psychiatric and rehabilitation hospitals).

8. Concordia's residents are almost entirely low-income Minnesotans. More than 90 percent are Medicaid recipients. Many have conditions that make them unstable, have little or no potential for discharge and/or have mental health issues.

9. Concordia has 94 beds for residents on three floors. Concordia's first-floor houses more "independent" residents, the second-floor houses residents in need of skilled nursing care, and the third-floor -- a so-called "secure unit" -- houses residents "who are high elopement risks and/or have challenging behavior issues."

10. Concordia's "secure unit" on the third-floor has 32 beds -- 23 or 24 for men and eight or nine for women. While most rooms in this unit are double-rooms, two are quadruple-rooms. Two of the four beds in the latter rooms are not visible from the hallway. While the

male and female residents of this unit live in the general vicinity of their respective genders, they are not otherwise physically segregated and are free to move unescorted throughout the unit.

C. Concordia's Admission of Sex Offender Residents

11. Concordia has a practice of accepting into its facility convicted sex offenders from Minnesota prison facilities.

1. Referral and Solicitation of Sex Offenders

12. According to one of Concordia's consultants, two employees of the Minnesota Department of Corrections ("DOC") (Nanette Schroeder and Michael Hermerding) toured Concordia, assessed its building, and reviewed its policies and procedures. According to the Concordia consultant, Schroeder explained that DOC wanted to refer sex offenders on conditional medical release to a skilled nursing facility because "their care needs are higher than what they typically provide in prison and they pose a minimal threat to society." The consultant states that Schroeder estimated placing one to two sex offenders each year at Concordia, beginning with certain offenders already in the correctional system, and that DOC advised Concordia that if a problem arose with a sex offender, the offender could be immediately returned to prison.

13. By late 2002, and in 2003 and 2004, Concordia actively accepted referrals of convicted sex offenders.

14. On September 11, 2002, Concordia presented to the staff of the Minnesota Correctional Facility in Faribault a training session entitled "Steps to Nursing Home Admission" ("DOC prison training"). Lewis and the Concordia consultant presented the prison training that the DOC's Schroeder attended. Lewis or the consultant touted Concordia's specialty in "care of