

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA**

Case No.: 2020-CA-000424  
Section: 07

**PAMELA KENNARD, as Personal  
Representative of the ESTATE OF  
EVAN KENNARD, and on behalf of  
VANIA KENNARD AND A.K,**

Plaintiff,

v.

**CORIZON HEALTH, INC, a foreign  
corporation for profit,**

Defendant.

---

**ORDER ON PLAINTIFF'S AMENDED MOTION TO AMEND TO ADD  
A CLAIM FOR PUNITIVE DAMAGES**

**THIS CAUSE** came before this Court at a hearing on October 1, 2021 and October 22, 2021, pursuant to *Plaintiff's Amended Motion to Amend to Add a Claim for Punitive Damages, (Motion)* filed on October 13, 2021. Appearing before the Court was Justin B. Shapiro, Esq, for Plaintiff, PAMELA KENNARD as Personal Representative of the ESTATE OF EVAN KENNARD; and S. Renee Stephens Lundy, Esq. for Defendant, CORIZON HEALTH, INC. The Court, having reviewed *the Motion, Defendant, Corizon Health Inc.'s, Supplemental Response in Opposition to Plaintiff's Motion/Amended Motion for Leave to Amend Complaint to Add Count for Punitive Damages filed on October 15, 2021; Motion for Leave to Amend Complaint to Add Count for Punitive Damages and Incorporated Memorandum of Law and Proffer of Evidence Pursuant to Florida Statue Section. 768.72* filed on September 17, 2021; *Defendant's Response in Opposition to Plaintiff's Motion to Amend a Claim to Add Count Punitive Damages and Incorporated Memorandum of Law* filed on September 27, 2021; *Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Leave to Amend Complaint to Add Punitive Damages* filed on October 4, 2021; Plaintiff's Notice of Filing Evidence and

Exhibits in Support of Plaintiff's Amended Motion for Leave to Amend Complaint to Add Punitive Damages including Affidavit of Grady Bazzel, M.D. dated October 13, 2021, depositions of Margie Gomez, M.D. taken January 21, 2021 and January 27, 2021, Luis Rodriguez-Colon, M.D. taken November 25, 2020, Denise Sheldon, R.N. taken on July 28, 2020, and Darla Morrow, R.N. taken on July 28, 2020; *Segregated Inmates*, Corizon *Health General Health Services Policy & Procedure* dated November 2015; Encounters dated June 5, 2018, Segregation Encounter dated June 5, 2018; autopsy, medical and billing submissions, census for South County Jail Medical and Central County Jail Infirmary from May 30, 2018 through June 5, 2018; court record, applicable statutory and case law, and having considered the arguments of counsel, and otherwise being fully advised in the matter, makes the following findings of fact and conclusions of law:

1. Plaintiff seeks to add a claim for punitive damages by a showing of admissible evidence that would provide a reasonable basis for recovery of punitive damages. See generally Fla. Stat. sec. 768.72 (2017).

2. "Exemplary damages are given solely as a punishment where torts are committed with fraud, actual malice, or deliberate violence or oppression, or when the defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the right of others." See *Perdue Farms, Inc. v. Hook*, 777 So.2d 1047, 1053 (Fla. 2d DCA 2001) (citing *Winn & Lovett Grocery Co. v. Archer*, 171 So. 214,221 (Fla. 1936)). A punitive damage claim is also appropriate where there was an "outrageous deviation from the acceptable standard" of care. See *Payton Health Care Facilities, Inc. v. Estate of Campbell*, 497 So.2d 1233, 1240 (Fla. 2d DCA 1986).

3. It is not the function of the Court to weigh or prejudge the evidence before it when considering a motion to add a claim for punitive damages. *Dolphin Cove Association v. Square Co.*, 616 So.2d 553 (Fla. 2d DCA 1993).

4. The Court's consideration of Plaintiffs' Motion is similar to determining whether a complaint states a cause of action, viewed in light most favorable to the claimant and accepted as true. *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637 (Fla. 5th DCA 2005); *Wayne Frier Home Center of Pensacola, Inc. v. Cadlerock Joint Venture, L.P.*, 16 So.3d 1006, 1009 (Fla. 1st DCA 2009).

5. “Intentional misconduct” is defined under Section 768.72(2)(a), as follows:

(a) “Intentional misconduct” means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

6. “Gross negligence” is defined under Section 768.72(2)(b), as follows:

(b) “Gross negligence” means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

7. An “outrageous deviation from the acceptable standard” of care can also form the basis for a punitive damages claim. *See, e.g., Payton Health Care Facilities, Inc. v. Estate of Campbell*, 497 So.2d 1233, 1240 (Fla. 2d DCA 1986) and *Estate of Youngblood v. Halifax Convalescent Center. Ltd.*, 874 So.2d 596, 605 (Fla. 5<sup>th</sup> DCA 2004).

8. Such is described by Dr. Grady Judson Bazzel, MD, CCHP in his Amended Sworn Affidavit dated October 13, 2021. Dr. Bazzel describes the “outrageous mismanagement and, in my opinion, reckless indifference to Evan Kennard’s life and welfare, which caused or contributed to Evan Kennard’s death”:

a. Charlene Lemay, LPN’s decision to admit Evan Kennard to the jail on May 30, 2018 citing “no urgent medical referral,” when she knew Mr. Kennard had been vomiting 10 times per day for several days, had a fever for the previous seven days, had vomiting and fever [at] during the Intake Screening, had blood in his stool for the previous two weeks, had an elevated heart rate, and had low blood pressure.

b. Corizon’s failure to arrange an evaluation from a physician at any time on May 30, 2018 and May 31, 2018 when Denise Sheldon, RN knew Evan Kennard had been vomiting 10 times per day for several days, had a fever for the previous seven days, had vomiting and fever [at] during Intake Screening, had blood in his stool for the previous two weeks, and was bent over and crying with 10/10 abdominal pain.

c. Luis Rodriguez, MD’s failure to refer Evan Kennard to the emergency room on June 1, 2018 when he knew through Evan Kennard’s medical chart that Mr. Kennard had been vomiting 10 times per day for several days, had a fever for the previous seven days, had vomiting and fever [at] during

Intake Screening, had blood in his stool for the previous two weeks, had an elevated heart rate, had been bent over and crying with 10/10 abdominal pain, and had lost nine pounds in just two days.

d. Corizon's failure to arrange any medical or nursing evaluation whatsoever on June 3, 2018, given Evan Kennard's extremely alarming symptoms and how clearly and rapidly his condition was deteriorating.

e. Darla Morrow, RN's decision to leave Evan Kennard in segregation, without making any plan or arranging any evaluation, when she found him hallucinating, picking at the air, unable to respond, and unable to open his eyes.

Paragraph 17 Amended Sworn Affidavit of Grady Judson Bazzel, MD, CCHP dated October 13, 2021. Further, Dr. Bazzel points to understaffing which nurses Wilkensa Delva and Denise Morrow and R. Rodriguez stated in their depositions. Understaffing that was brought to the attention of their supervisors and reflected in the staffing for the 7:00 pm to 7:00 am shift of one RN for 99 to 126 inmates in the South County Jail infirmary from June 1, 2018 to June 5, 2018 during Evan Kennard's incarceration.

9. Fla. Stat. Section 768.72(3) provides:

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria in subsection (2) and

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

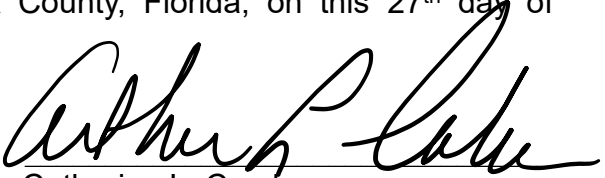
Fla. Stat. Section 768.72(3).

10. Plaintiff fails to establish direct liability showing that the conduct of corporate Defendant's owners, officers, directors, and management, constituted intentional misconduct or gross negligence under Fla. Stat. sec. 768.72(2). However, the Court finds that Plaintiff makes a "reasonable showing of evidence" sufficient to support a "reasonable basis for recovery" of punitive damages as to vicarious liability consistent with Fla. Stat. 768.72(3). Indeed, the collective treatment or lack thereof of Evan Kennard was violative

of numerous Corizon policies. Deposition Margie Gomez, M.D. dated January 27, 2021. Violations which may be the result of staffing shortages which were brought to the attention of management with no action taken. See generally Fla. Stat. sec. 768.72; Estate of Despain v. Avante Group, Inc., 900 So. 2d 637 (Fla. 5th DCA 2005).

Accordingly, based upon the above findings of fact and conclusions of law, it is **ORDERED AND ADJUDGED** *Plaintiff's Amended Motion to Amend to Add a Claim for Punitive Damages* is hereby **GRANTED**.

**DONE AND ORDERED** in Bartow, Polk County, Florida, on this 27<sup>th</sup> day of October, 2021.



Catherine L. Combee  
Circuit Judge

Copies to all counsel of record via e-filing portal