

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FL

DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son,

GENERAL JURISDICTION DIVISION

CASE NO.

11-25428CA061

Plaintiff,

vs.

SOUTH MIAMI HOSPITAL, INC., a Florida Corporation, CARLOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., a Florida Professional Association, JAMES VINCENT MILLERICK, LMHC, and BAPTIST HEALTH SOUTH FLORIDA, INC., a Florida Corporation,

Defendants.

COMPLAINT

The Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son,** sues the Defendants, **SOUTH MIAMI HOSPITAL, INC., a Florida Corporation, CARLOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., a**

Florida Professional Association, JAMES VINCENT MILLERICK, LMHC, and BAPTIST HEALTH SOUTH FLORIDA, INC., a Florida Corporation, and would allege as follows:

1. This is an action for medical malpractice/wrongful death with damages in excess of the minimum jurisdictional limits of this Honorable Court, to-wit: Fifteen Thousand and no/100 (\$15,000.00) Dollars, exclusive of costs and interest.

2. At all times material, Plaintiff, **DEBRA A. MARTINEZ**, was a resident of Miami-Dade County, Florida and the lawful wife of the decedent, **ALEXANDER MARTINEZ**, and was *sui juris*.

3. The Plaintiff, **DEBRA A. MARTINEZ**, has been appointed as the Personal Representative of the ESTATE OF **ALEXANDER MARTINEZ** and is the proper party to bring this action for wrongful death pursuant to Fla. Stat. §768.16, et seq.

4. At all times material, **ALEXANDER R. MARTINEZ, JR.**, was a minor child and the surviving son of **ALEXANDER MARTINEZ**.

5. At all times material, **MAXIMILLIAN D. MARTINEZ** was a minor child and surviving son of **ALEXANDER MARTINEZ**.

6. At all times relevant to this Complaint, the Plaintiff, **DEBRA A. MARTINEZ**, was and is the parent and natural guardian of the minor children, **ALEXANDER R. MARTINEZ, JR.**, and **MAXIMILLIAN D. MARTINEZ**.

7. At all times material hereto, the Defendant, **SOUTH MIAMI HOSPITAL, INC**, was a Florida Corporation, holding itself out to the public as a hospital qualified to provide medical, nursing, therapist and psychologists specializing in addiction treatment and related care, treatment and services for individuals in the community for inpatient detoxification, outpatient services, residential treatment programs, family programs and impaired professional programs.

8. At all times material hereto, the Defendant, **CARLOS LAROCCA, M.D.**, was a physician licensed by the State of Florida, practicing in Miami-Dade County, Florida holding himself out to the public as the Medical Director of the South Miami Hospital Addiction Treatment Program qualified to provide medical care, treatment and services in the field of addiction medicine, inpatient detoxification, outpatient services, residential treatment and family programs.

9. At all times material hereto, the Defendant, **CARLOS LAROCCA, M.D., P.A.**, was and is a Florida Professional Association formed under the laws of the State of Florida, conducting business in Miami-Dade County, Florida and holding itself out to the public as qualified to provide medical care, treatment and services in the field of addiction medicine, inpatient detoxification, outpatient services, residential treatment and family programs

10. At all times material hereto, the Defendant, **JAMES VINCENT MILLERIC**, was a Licensed Mental Health Counselor licensed by the State of Florida, practicing in Miami-Dade County, Florida holding himself out to the public as qualified to mental health counseling, treatment and services in the field of alcohol addiction, outpatient services, residential treatment and family programs.

11. At all times material hereto, the Defendant, **BAPTIST HEALTH SOUTH FLORIDA, INC. ("BAPTIST")**, was a Florida Corporation, holding itself out to the public, via its wholly-owned SOUTH MIAMI HOSPITAL, as qualified to provide medical, nursing, therapist and psychologists specializing in addiction treatment and related care, treatment and services for individuals in the community for inpatient detoxification, outpatient services, residential treatment programs, family programs and impaired professional programs.

COUNT I
NEGLIGENCE AGAINST DEFENDANT, CARLOS LAROCCA, M.D.

The Plaintiff readopts and realleges paragraphs 1 through 20 above, as if fully set forth herein, and further alleges as follows:

21. As admitting physician and Medical Director of the Program, Defendant, **CARLOS LAROCCA, M.D.**, was ultimately responsible for the care and treatment of the Decedent while in both the inpatient and outpatient programs.

22. At all times material to this Complaint, the Defendant, **CARLOS LAROCCA, M.D.**, undertook the care and treatment of the Decedent, ALEXANDER MARTINEZ, such that a doctor-patient relationship existed. In undertaking such care and treatment of the Decedent, the Defendant, **CARLOS LAROCCA, M.D.**, owed a duty to the Decedent to provide that level of skill, care, diagnosis and treatment which in light of all relevant circumstances is and was recognized as acceptable and appropriate by reasonable prudent similar health care providers.

23. The Defendant, **CARLOS LAROCCA, M.D.**, failed to ensure that the Decedent was properly evaluated psychiatrically by a licensed psychiatrist and failed to properly evaluate the Decedent's suicidal tendencies or ensure that the Decedent was properly evaluated for suicidal tendencies and plan.

24. The Defendant, **CARLOS LAROCCA, M.D.**, breached the duty of care to the Decedent, and was negligent in that his acts and omissions fell below that level of care, skill and treatment which in light of all relevant circumstances, is and was recognized as acceptable and appropriate by reasonable similar health care providers. The acts and omissions included but were not limited to the following:

(a) Failed to perform or ensure performed the appropriate psychiatric, or

- physical examinations or diagnostic tests, as would be required under the acceptable prevailing standard of care;
- (b) Failed to appropriately evaluate, diagnose and treat the Plaintiff, as would be required under the prevailing standard of care;
 - (c) Failed to act accordingly in response to Plaintiff's presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
 - (d) Failed to examine, evaluate and adequately respond to and treat the Plaintiff in response to presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
 - (e) Failed to order the appropriate tests, procedures and/or medical or psychological consultations, as would be required under the prevailing standard of care;
 - (f) Failed to appropriately diagnose and treat the Plaintiff's presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
 - (g) Failed to prescribe, order and perform indicated tests, examinations and procedures, especially psychiatric ones, which would have more likely than not revealed the Plaintiff's medical and mental condition, as would be required under the prevailing standard of care;
 - (h) Failed to recognize signs and symptoms of a more serious condition, as would be required under the prevailing standard of care;
 - (i) Failed to ensure, obtain and/or provide appropriate and adequate physician

- care, as would be required under the prevailing standard of care;
- (j) Failed to provide adequate supervision of and assistance to medical personnel, as would be required under the prevailing standard of care;
 - (k) Failed to provide adequate safeguards, including enforcement of policies and procedures, to prevent medical negligence and injury to the Decedent, as would be required under the prevailing standard of care;
 - (l) Failed to provide adequate follow-up care to the Plaintiff, as would be required under the prevailing standard of care;
 - (m) Failed to take an adequate history and physical;
 - (n) Failed to appreciate the nature of ALEXANDER MARTINEZ's condition and symptomatology;
 - (o) Failed to perform and/or appropriately interpret the necessary physical, psychological and/or diagnostic studies or other tests that would have assisting in the timely diagnosis of ALEXANDER MARTINEZ's condition;
 - (p) Failed to properly monitor the Decedent;
 - (q) Failed to timely perform appropriate diagnostic testing or evaluation;
 - (r) Failed to order appropriate laboratory studies;
 - (s) Failed to institute the proper care, treatment, monitoring and observation which were indicated by ALEXANDER MARTINEZ's condition in a timely and competent manner;
 - (t) Failed to diagnose various medical or psychiatric conditions which ultimately led to ALEXANDER MARTINEZ'S death;
 - (u) Failed to order appropriate consultations about ALEXANDER

MARTINEZ's condition;

(v) Failed and neglected to seek the advice, consult and assistance of the requisite specialist who had the required skill, training, and qualifications to diagnose ALEXANDER MARTINEZ's condition in a timely and prompt manner or in the alternative, failed to inform them of the necessity of the immediate attention to ALEXANDER MARTINEZ's condition,

(w) Failed to discourage medical decisions based on the Defendants' fiduciary gain rather than on sound medical facts, as would be required under the prevailing standard of care; and

(x) Failed to exercise reasonable care under all of the surrounding circumstances, as would be required under the prevailing standard of care.

25. As a direct and proximate result of the negligent acts or omissions of the Defendant, **CARLOS LAROCCA, M.D.**, ALEXANDER MARTINEZ died on July 21, 2009, and as a result, his Estate and survivors have suffered the following damages:

(a) The **ESTATE OF ALEXANDER MARTINEZ** has sustained a loss of net accumulation of the decedent;

(b) The **ESTATE OF ALEXANDER MARTINEZ** and/or **DEBRA A. MARTINEZ** have sustained funeral expenses due to Decedent's untimely death;

(c) **DEBRA A. MARTIENZ**, the surviving spouse, has lost and will continue to lose the support and services of the Decedent the companionship and protection of the Decedent, and has sustained and will continue to sustain future severe mental pain and suffering as result of the Decedent's untimely death;

(d) **ALEXANDER R. MARTINEZ, JR.**, surviving son, has lost and will

continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering; and;

(e) **MAXIMILLIAN D. MARTINEZ**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering.

WHEREFORE, Plaintiff, **DEBRA A. MARTINEZ as Personal Representative of the ESTATE OF ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son** demands Judgment against the Defendant, **CARLOS LAROCCA, M.D.**, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

COUNT II
NEGLIGENCE AGAINST DEFENDANT, CARLOS LAROCCA, M.D., P.A.

The Plaintiff readopts and realleges paragraphs 1 through 25 above, as if fully set forth herein, and further alleges as follows:

26. At all times relevant to the Complaint in this matter, the Defendant, **CARLOS LAROCCA, M.D.**, was a physician member of, employed by, an agent of and worked under the auspices of Defendant, **CARLOS LAROCCA, M.D., P.A.**

27. Defendant **CARLOS LAROCCA, M.D., P.A.**, is vicariously liable for the negligence of its agents, servants, and employees committed within the course and scope of their agency or employment therewith.

28. The injury to the Decedent was as a direct result of the negligence of Defendant, **CARLOS LAROCCA, M.D.**

29. The Defendant, **CARLOS LAROCCA, M.D., P.A.**, is responsible for the negligence of its employee or agent, **CARLOS LAROCCA, M.D.**

30. Defendant **CARLOS LAROCCA, M.D., P.A.**, at all times material hereto, failed to ensure that the Decedent received the treatment required under the prevailing standard of care from its physician member, Defendant, **CARLOS LAROCCA, M.D.**

31. As a direct and proximate result of the negligent acts or omissions of the Defendant, **CARLOS LAROCCA, M.D., P.A.**, ALEXANDER MARTINEZ died on July 21, 2009, and as a result, his Estate and survivors have suffered the following damages:

(a) The **ESTATE OF ALEXANDER MARTINEZ** has sustained a loss of net accumulation of the Decedent;

(b) The **ESTATE OF ALEXANDER MARTINEZ** and/or **DEBRA A. MARTINEZ** have sustained funeral expenses due to Decedent's untimely death;

(c) **DEBRA A. MARTINEZ**, the surviving spouse, has lost and will continue to lose the support and services of the Decedent, the companionship and protection of the decedent, and has sustained and will continue to sustained future severe mental pain and suffering as result of the Decedent's untimely death;

(d) **ALEXANDER R. MARTINEZ, JR.**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and

guidance of his father and has and will continue to endure mental pain and suffering; and;

(e) **MAXIMILLIAN D. MARTINEZ**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering.

WHEREFORE, the Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son**, demands Judgment against the Defendant, **CARLOS LAROCCA, M.D., P.A.**, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

COUNT III
NEGLIGENCE AGAINST DEFENDANT, JAMES VINCENT MILLERICK, LMHC

The Plaintiff readopts and realleges paragraphs 1 through 20 above, as if fully set forth herein, and further alleges as follows:

32. As ALEXANDER MARTINEZ'S mental health treatment counselor, Defendant, **JAMES VINCENT MILLERICK, LMHC**, was responsible for the care and treatment of the Decedent while in both the inpatient and outpatient programs.

33. At all times material to this Complaint, the Defendant, **JAMES VINCENT MILLERICK, LMHC**, undertook the care and treatment of the Decedent, ALEXANDER

MARTINEZ, such that a healthcare provider-patient relationship existed. In undertaking such care and treatment of the Decedent, the Defendant, **JAMES VINCENT MILLERICK, LMHC**, owed a duty to the Decedent to provide that level of skill, care, diagnosis and treatment which in light of all relevant circumstances is and was recognized as acceptable and appropriate by reasonable prudent similar health care providers

34. The Defendant, **JAMES VINCENT MILLERICK, LMHC**, failed to ensure that the Decedent was properly evaluated psychiatrically by a licensed psychiatrist and failed to properly evaluate the Decedent's suicidal tendencies or ensure that the Decedent was properly evaluated for suicidal tendencies and plan.

35. The Defendant, **JAMES VINCENT MILLERICK, LMHC**, breached the duty of care to the Decedent, and was negligent in that his acts and omissions fell below that level of care, skill and treatment which in light of all relevant circumstances, is and was recognized as acceptable and appropriate by reasonable similar health care providers. The acts and omissions included but were not limited to the following:

- (a) Failed to perform or ensure performed the appropriate psychiatric, or physical examinations or diagnostic tests, as would be required under the acceptable prevailing standard of care;
- (b) Failed to appropriately evaluate, diagnose and treat the Decedent, as would be required under the prevailing standard of care;
- (c) Failed to act accordingly in response to Decedent's presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
- (d) Failed to examine, evaluate and adequately respond to and treat the

- Decedent in response to presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
- (e) Failed to order the appropriate tests, procedures and/or medical or psychological consultations, as would be required under the prevailing standard of care;
 - (f) Failed to appropriately diagnose and treat the Decedent's presenting signs and symptoms and medical condition, as would be required under the prevailing standard of care;
 - (g) Failed to prescribe, order and perform indicated tests, examinations and procedures, especially psychiatric ones, which would have more likely than not revealed the Decedent's medical and mental condition, as would be required under the prevailing standard of care;
 - (h) Failed to recognize signs and symptoms of a more serious condition, as would be required under the prevailing standard of care;
 - (i) Failed to ensure, obtain and/or provide appropriate and adequate physician care, as would be required under the prevailing standard of care;
 - (j) Failed to provide adequate supervision of and assistance to medical personnel, as would be required under the prevailing standard of care;
 - (k) Failed to provide adequate safeguards, including enforcement of policies and procedures, to prevent medical negligence and injury to the Decedent, as would be required under the prevailing standard of care;
 - (l) Failed to provide adequate follow-up care to the Decedent, as would be required under the prevailing standard of care;

(m) Failed to discourage medical decisions based on the Defendants' fiduciary gain rather than on sound medical facts, as would be required under the prevailing standard of care; and

(n) Failed to exercise reasonable care under all of the surrounding circumstances, as would be required under the prevailing standard of care.

36. As a direct and proximate result of the negligent acts or omissions of the Defendant, **JAMES VINCENT MILLERICK, LMHC**, ALEXANDER MARTINEZ died on July 21, 2009, and as a result, his Estate and survivors have suffered the following damages:

(a) The **ESTATE OF ALEXANDER MARTINEZ** has sustained a loss of net accumulation of the decedent;

(b) The **ESTATE OF ALEXANDER MARTINEZ** and/or **DEBRA A. MARTINEZ** have sustained funeral expenses due to decedent's untimely death;

(c) **DEBRA A. MARTINEZ**, the surviving spouse, has lost and will continue to lose the support and services of the decedent, the companionship and protection of the decedent, and has sustained and will continue to sustained future severe mental pain and suffering as result of the Decedent's untimely death;

(d) **ALEXANDER R. MARTINEZ, JR.**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering; and;

(e) **MAXIMILLIAN D. MARTINEZ**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and

suffering.

WHEREFORE, the Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son,** demands Judgment against the Defendant, **JAMES VINCENT MILLERICK, LMHC**, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demand trial by jury of all issues so triable as of right by a jury.

COUNT IV
NEGLIGENCE AGAINST DEFENDANT, SOUTH MIAMI HOSPITAL, INC.

The Plaintiff readopts and realleges paragraphs 1 through 36 above, as if fully set forth herein, and further alleges as follows:

37. At all times material, Defendant, **SMH**, was a corporation engaged in the business of providing and holding itself out to the public as qualified to provide medical, nursing, and related care, treatment and services through physicians, physician assistants, nurses, licensed mental health counselors, and other health care providers it selected for or supplied to the public, including but not limited to decedent ALEXANDER MARTINEZ, and it is vicariously liable for the errors and omissions in providing said services in on one or more of the following bases:

- (a) Defendant, **SMH**, is vicariously liable for the negligence of its agents, servants and employees committed within the course and scope of their agency or employment therewith;
- (b) At all times material, the physicians and healthcare providers responsible for

or assigned to attend to patients within Defendant, **SMH'S**, facility or on an outpatient basis were its agents, apparent agents, servants, employees, acting within the course and scope of their agency or employment therewith. Such physicians and health care providers include but are not limited to Defendants **CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A, AND JAMES VINCENT MILLERICK, LMHC;**

(c) At all times material, the physician assistants, nurses, nurses' aides, technicians, mental healthcare counselors and other healthcare providers responsible for or assigned to attend to Decedents within Defendant, **SMH'S**, facilities or as outpatients, were the agents, apparent agents, servants or employees of Defendant, **SMH**, acting within the course and scope of their agency or employment therewith. Such healthcare providers include, but are not limited to Defendants, **CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A, AND JAMES VINCENT MILLERICK, LMHC.**

(d) By virtue of its contract(s) with ALEXANDER MARTINEZ, Defendant, **SMH**, possessed a non-delegable duty to provide medical, nursing, mental health counseling and related care, treatment and services to him, and a result of said non-delegable duty, Defendant, **SMH**, is vicariously liable for the negligence of those physicians, nurses, nurses aids, mental health counselors and other healthcare providers it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but are not limited to Defendants, **CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A, AND JAMES VINCENT MILLERICK, LMHC**, and their agents, servants and

employees;

(e) By virtue of its status as a facility where addiction treatment, inpatient detoxification, outpatient services, residential treatment, family programs, impaired professional programs are performed, and/or by virtue of accepting state or federal funds, Defendant Baptist, possessed on or more non-delegable duties by statute or regulation providing medical, nursing, and related care, treatment, and services to ALEXANDER MARTINEZ, and as a result of said non-delegable duties, Defendant, **SMH**, is vicariously liable for the negligence of those physicians, nurses, nurses aids, mental health counselors and any other health care provider it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but are not limited to Defendants, **CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A., AND JAMES VINCENT MILLERICK, LMHC.**

38. Defendant, **SMH**, failed to ensure that its nursing staff and employees or agents rendered treatment to ALEXANDER MARTINEZ at or above the prevailing standard of care by doing the following:

- (a) failed to enforce its policies and procedures regarding the operation of the Program;
- (b) failed to ensure that proper policies were in place for the operation of the Program;
- (c) failed to ensure that proper psychiatric evaluations were performed on ALEXANDER MARTINEZ by a licensed psychiatrist;
- (d) failed to ensure that daily continuing evaluations for suicidal thoughts,

intent, and plan were performed on ALEXANDER MARTINEZ by a licensed psychiatrist;

(e) failed to assess necessity for post-treatment inpatient program and recommend the same to ALEXANDER MARTINEZ following discharge;

(f) Failed to have appropriate and adequate mental health care providers on duty;

(g) failed to ensure that the medication administered to ALEXANDER MARTINEZ was properly titrated and properly administered;

(h) failure to provide and operate outpatient services on a daily, seven-day per week basis;

(i) failure to recognize the signs and symptoms of Substance Induced Mood Disorder;

(j) Failure to transfer ALEXANDER MARTINEZ into a residential treatment program.

(k) Negligently credentialed Defendant, **CARLOS M. LAROCCA, M.D.**, to perform discharge evaluation of ALEXANDER MARTINEZ;

(l) Negligently credentialed Defendant, **JAMES VINCENT MILLERICK, LMHC**, to perform outpatient services to ALEXANDER MARTINEZ;

(m) Negligently credentialed other unnamed employees to perform inpatient and outpatient services to ALEXANDER MARTINEZ;

(n) Negligently acted or failed to act in other presently undetermined ways.

39. The Defendant, **SMH'S**, negligence was a direct and proximate cause of ALEXANDER MARTINEZ'S death.

40. As a direct and proximate result of the negligent acts or omissions of the Defendant, **SMH**, ALEXANDER MARTINEZ died on July 21, 2009, and as a result, his Estate and survivors have suffered the following damages:

(a) The **ESTATE OF ALEXANDER MARTINEZ** has sustained a loss of net accumulation of the decedent;

(b) The **ESTATE OF ALEXANDER MARTINEZ** and/or **DEBRA A. MARTINEZ** have sustained funeral expenses due to decedent's untimely death;

(c) **DEBRA A. MARTINEZ**, the surviving spouse, has lost and will continue to lose the support and services of the Decedent, the companionship and protection of the decedent, and has sustained and will continue to sustain future severe mental pain and suffering as result of the Decedent's untimely death;

(d) **ALEXANDER R. MARTINEZ, JR.**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering; and

(e) **MAXIMILLIAN D. MARTINEZ**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering.

WHEREFORE, the Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and**

MAXIMILLIAN D. MARTINEZ, a minor child and surviving son, demands Judgment against the Defendant, **SOUTH MIAMI HOSPITAL, INC.**, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

COUNT V
NEGLIGENCE AGAINST DEFENDANT, BAPTIST HEALTH SOUTH FLORIDA, INC.

The Plaintiff readopts and realleges paragraphs 1 through 40 above, as if fully set forth herein, and further alleges as follows:

41. At all times material, Defendant, **BAPTIST**, was a corporation engaged in the business of providing and holding itself out to the public as qualified to provide medical, nursing, and related care, treatment and services through physicians, physician assistants, nurses, licensed mental health counselors, and other health care providers it selected for or supplied to the public, including but not limited to decedent **ALEXANDER MARTINEZ**, and it is vicariously liable for the errors and omissions in providing said services in on one or more of the following bases:

- (a) Defendant, **BAPTIST**, is vicariously liable for the negligence of its agents, servants and employees committed within the course and scope of their agency or employment therewith;
- (b) At all times material, the physicians and healthcare providers responsible for or assigned to attend to Decedents within Defendant, **BAPTIST'S**, facility or on an outpatient basis were its agents, apparent agents, servants, employees, acting within the course and scope of their agency or employment therewith. Such physicians and health care providers include but are not limited to Defendants

**SMH, CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A,
AND JAMES VINCENT MILLERICK, LMHC.**

(c) At all times material, the physician assistants, nurses, nurses' aides, technicians, mental healthcare counselors and other healthcare providers responsible for or assigned to attend to Decedents within Defendant, **BAPTIST'S**, facilities or as outpatients, were the agents, apparent agents, servants or employees of Defendant, **BAPTIST**, acting within the course and scope of their agency or employment therewith. Such healthcare providers include, but are not limited to Defendants, **SMH, CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A, AND JAMES VINCENT MILLERICK, LMHC.**

(d) By virtue of its contract(s) with ALEXANDER MARTINEZ, Defendant, **BAPTIST**, possessed a non-delegable duty to provide medical, nursing, mental health counseling and related care, treatment and services to him, and a result of said non-delegable duty, Defendant, **BAPTIST**, is vicariously liable for the negligence of those physicians, nurses, nurses aids, mental health counselors and other healthcare providers it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but are not limited to Defendants, **SMH, CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A, AND JAMES VINCENT MILLERICK, LMHC**, and their agents, servants and employees.

(e) By virtue of its status as a facility where addiction treatment, inpatient detoxification, outpatient services, residential treatment, family programs,

impaired professional programs are performed, and/or by virtue of accepting state or federal funds, Defendant, **BAPTIST**, possessed one or more non-delegable duties by statute or regulation providing medical, nursing, and related care, treatment, and services to ALEXANDER MARTINEZ, and as a result of said non-delegable duties, Defendant, **BAPTIST**, is vicariously liable for the negligence of those physicians, nurses, nurses aids, mental health counselors and any other health care provider it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but are not limited to Defendants **SMH, CARLOS M. LAROCCA, M.D., CARLOS M. LAROCCA, M.D., P.A., AND JAMES VINCENT MILLERICK, LMHC.**

42. At all material times Defendant, **BAPTIST**, owed a duty to provide medical care, treatment and services to ALEXANDER MARTINEZ, within the prevailing professional standards for the providing of medical care, treatment, and services and had the duty to properly evaluate, investigate and credential all physicians, mental health counselors who provided care to ALEXANDER MARTINEZ, including but limited to Defendants **CARLOS M. LAROCCA, M.D.** and **JAMES VINCENT MILLERICK, LMHC.**

43. At all times material Defendant, **BAPTIST'S**, foregoing duties were non-delegable.

44. Notwithstanding the agreements and undertakings referred to in the above paragraphs, Defendant, **BAPTIST**, negligently and carelessly cared for and treated ALEXANDER MARTINEZ, by its agents, servants, and employees and/or through others caring out its non-delegable duties, thereby breaching said duties in that it did nor failed to do one or more of the following acts of omission or commission, any or all which constitute a departure

from the prevailing professional standard of medical and or mental health counseling care and treatment, to wit:

- (a) Failed to enforce its policies and procedures regarding the operation of the Program;
- (b) Failed to ensure that proper policies were in place for the operation of the Program;
- (c) Failed to ensure that proper psychiatric evaluations were performed on ALEXANDER MARTINEZ by a licensed psychiatrist;
- (d) Failed to ensure that daily continuing evaluations for suicidal thoughts, intent, and plan were performed on ALEXANDER MARTINEZ by a licensed psychiatrist;
- (e) Failed to assess necessity for post-treatment inpatient program and recommend the same to ALEXANDER MARTINEZ following discharge;
- (f) Failed to have appropriate and adequate mental health care providers on duty;
- (g) Failure to transfer ALEXANDER MARTINEZ into a residential treatment program;
- (h) Failure to provide and operate outpatient services on a daily, seven-day per week basis;
- (i) Negligently credentialed Defendant, **CARLOS M. LAROCCA, M.D.**, to perform discharge evaluation of ALEXANDER MARTINEZ;
- (j) Negligently credentialed Defendant, **JAMES VINCENT MILLERICK, LMHC**, to perform outpatient services to ALEXANDER MARTINEZ; and

(k) Negligently acted or failed to act in other presently undetermined ways.

45. Defendant, **BAPTIST**, is vicariously liable for the negligence of its agents, servants and employees committed within the course and scope of their agency or employment therewith;

(a) At all times material, the physicians and healthcare providers responsible for or assigned to attend to Decedents within Defendant, **BAPTIST'S**, facility or on an outpatient basis were its agents, apparent agents, servants, employees, acting within the course and scope of their agency or employment therewith. Such physicians and health care providers include, but are not limited to, Defendants **SMH, CARLOS LAROCCA, M.D., CARLOS LAROCCA, M.D., P.A. and JAMES VINCENT MILLERICK, LMHC.**

(b) At all times material, the physician assistants, nurses, nurses' aides, technicians, mental healthcare counselors and other healthcare providers responsible for or assigned to attend to Decedents within Defendant, **BAPTIST'S**, facilities or as outpatients, were the agents, apparent agents, servants or employees of Defendant, Baptist, acting within the course and scope of their agency or employment therewith. Such healthcare providers include by not limited to Defendants **SMH, CARLOS LAROCCA, M.D., CARLOS LAROCCA, M.D., P.A. and JAMES VINCENT MILLERICK, LMHC.**

(c) By virtue of its contract(s) with ALEXANDER MARTINEZ, Defendant, **BAPTIST**, possessed a non-delegable duty to provide medical, nursing, mental health counseling and related care, treatment and services to him, and as a result of said non-delegable duty, Defendant **BAPTIST**, is vicariously liable for the

negligence of those physicians, nurses, nurses aids, mental health counselors and other healthcare providers it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but are not limited to Defendants, **SMH, CARLOS LAROCCA, M.D., CARLOS LAROCCA, M.D., P.A. and JAMES VINCENT MILLERICK, LMHC**, and its agents, servants and employees.

(d) By virtue of its status as a facility where addiction treatment, inpatient detoxification, outpatient services, residential treatment, family programs, impaired professional programs are performed, and/or by virtue of accepting state or federal funds, Defendant, **BAPTIST**, possessed one or more non-delegable duties by statute or regulation to provide medical, nursing, and related care, treatment, and services to ALEXANDER MARTIENZ, and as a result of said non-delegable duties, Defendant, **BAPTIST**, is vicariously liable for the negligence of those physicians, nurses, nurses aids, mental health counselors and any other health care provider it employed, contracted with, selected, or supplied to ALEXANDER MARTINEZ, which include but, are not limited, to Defendants **SMH, CARLOS LAROCCA, M.D., CARLOS LAROCCA, M.D., P.A. and JAMES VINCENT MILLERICK, LMHC**.

46. As a direct and proximate result of the negligent acts or omissions of the Defendant, **BAPTIST**, ALEXANDER MARTINEZ died on July 21, 2009, and as a result, his Estate and survivors have suffered the following damages:

(a) The **ESTATE OF ALEXANDER MARTINEZ** has sustained a loss of net accumulation of the decedent;

- (b) The **ESTATE OF ALEXANDER MARTINEZ** and/or **DEBRA A. MARTINEZ** have sustained funeral expenses due to decedent's untimely death;
- (c) **DEBRA A. MARTINEZ**, the surviving spouse, has lost and will continue to lose the support and services of the Decedent, the companionship and protection of the decedent, and has sustained and will continue to sustain future severe mental pain and suffering as result of the decedent's untimely death;
- (d) **ALEXANDER R. MARTINEZ, JR.**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering; and;
- (e) **MAXIMILLIAN D. MARTINEZ**, surviving son, has lost and will continue to lose the support, services, parental companionship, instruction and guidance of his father and has and will continue to endure mental pain and suffering.

WHEREFORE, the Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son**, demands Judgment against the Defendant, **BAPTIST**, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

COUNT VII
JOINT VENTURE

The Plaintiff readopts and realleges paragraphs 1 through 46 above, as if fully set forth herein, and further alleges as follows:

47. Additionally and in the alternative to other allegations plead, herein, at all times material, Defendants, **SMH, BAPTIST, CARLOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., JAMES VINCENT MILLERICK, LMHC, and BAPTIST**, were engaged in a joint venture to provide medical, psychological, mental health, nursing, and related care and services, rendering each liable for the errors and omissions of the other.

WHEREFORE, the Plaintiff, **DEBRA A. MARTINEZ as surviving spouse, and Personal Representative of the Estate of ALEXANDER MARTINEZ, for the benefit of DEBRA A. MARTINEZ, surviving spouse, and as parent and natural guardian of ALEXANDER R. MARTINEZ, JR., a minor child and surviving son, and MAXIMILLIAN D. MARTINEZ, a minor child and surviving son**, demands Judgment against all Defendants, **SOUTH MIAMI HOSPITAL, INC., BAPTIST, CALOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., JAMES VINCENT MILLERICK, LMHC, and BAPTIST HEALTH SOUTH FLORIDA, INC.**, jointly and severally, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

COUNT VIII
COMMON PURPOSE AND CONCERTED ACTION

The Plaintiff readopts and realleges paragraphs 1 through 47 above, as if fully set forth herein, and further alleges as follows:

48. Additional and in the alternative to other allegations pled herein, at all times material, Defendants, SMH, BAPTIST, CALOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., JAMES VINCENT MILLERICK, LMHC, and BAPTIST, were engaged in a common purpose and concerted action to provided medical, psychological, mental health, nursing, and related care and services, rendering each liable for the errors and omissions of the other.

WHEREFORE, the Plaintiff, DEBRA A. MARTINEZ as surviving spouse and Personal Representative of the Estate of ALEXANDER MARTINEZ, Deceased, demands Judgment against the Defendants, SOUTH MIAMI HOSPITAL, INC., BAPTIST, CARLOS LAROCCA, M.D., and CARLOS LAROCCA M.D., P.A., JAMES VINCENT MILLERICK, LMHC, and BAPTIST HEALTH SOUTH FLORIDA, INC., jointly and severally, for compensatory damages together with costs and all other relief this Court deems just an appropriate. The Plaintiff further demands trial by jury of all issues so triable as of right by a jury.

DATED: this 12 day of July 2011
August

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