

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRITTANY MCFARLIN, a Minor,
by her Next Friend and Mother,
ELIZABETH MCFARLIN,

Plaintiff,

v.

DETROIT BEHAVIORAL
INSTITUTE, INC., and
CAPSTONE ACADEMY

Defendant.

Case No. 13-013465-NO
Hon. Muriel Hughes

13-013465-NO
FILED IN MY OFFICE
WAYNE COUNTY CLERK
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CATHY M GARRETT

Mark E. Boegehold (P38699)
The Thurswell Law Firm, P.L.L.C.
Attorneys for Plaintiff
1000 Town Center, Suite
Southfield, Michigan 48075-1221
(248) 354-2222; Fax (2323)
mboegehold@thurswell.com

Thomas W. Werner (P67492)
Maddin, Hauser Wartell Roth & Heller, PC
Attorneys for Defendants
28400 Northwestern Hwy, 3rd Floor
Southfield, MI 48034
(248) 351-7067
twerner@maddinhauser.com

AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

*There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the Complaint.*

Mark E. Boegehold (P38699)

Plaintiff, Brittany McFarlin, a Minor, by her Next Friend and Mother Elizabeth McFarlin, by and through her attorneys, The Thurswell Law Firm, P.L.L.C. by Mark E. Boegehold, and complaining against the named Defendant, represents to this Honorable Court as follows:

COUNT I – GENERAL ALLEGATIONS

1. Plaintiff is a resident of the County of Wayne, Michigan.

2. Defendant Detroit Behavioral Institute, Inc. ('Detroit Behavioral Instituté') is a Foreign profit corporation conducting business in the County of Wayne, Michigan, with a resident agent as The Corporation Company located at 30600 Telegraph Rd., Bingham Farms, MI 48025.

3. Defendant Capstone Academy is a foreign profit organization conducting business in the County of Wayne, State of Michigan, with a resident agent as The Corporation Company, and entity name as Detroit Behavioral Institute, Inc, located at 30600 Telegraph Rd., Bingham Farms, MI 48025.

4. The incident occurred in the City of Detroit, County of Wayne, State of Michigan on Defendants' premises located at 3500 John R. Rd., Detroit, MI 48201.

5. The amount in controversy herein exceeds the sum of Twenty-Five Thousand Dollars (\$25,000).

6. Venue is proper in this court pursuant to MCL 600.1629(1)(c).

COUNT II – NEGLIGENCE AGAINST DEFENDANT DETROIT BEHAVIORAL INSTITUTE, INC.

7. Plaintiff re-alleges and incorporates paragraphs one through six as though more fully set forth herein.

8. On or about March 19, 2010, Plaintiff was a business invitee of Defendant, on Defendant's property located at 3500 John R. Rd., Detroit, MI 48201.

9. On or about said date at said time, Defendant was in possession of and control of the premises whereat Plaintiff was injured as described herein.

10. When Plaintiff was injured at Defendant's premises, Plaintiff was without any knowledge of the dangerous and unsafe condition of Defendant's premises.

11. On said date, Plaintiff tried to enter the gym when a staff member tried to stop her from entering causing her to cut her head on the door when he stopped the door with his foot resulting in her receiving four (4) stitches on her face.

12. On or about said date, Defendant, its agents, servants, and/or employees owed duties to Plaintiff to exercise reasonable care as a reasonably prudent person would do under same or similar circumstances, and in accordance with the common law in such case made and provided, but violated said duties in at least one or more of the following particulars, so far as it is presently known:

- a) Negligently forcing the door closed striking the Plaintiff.
- b) Failing to train its employees.
- c) Negligently hiring its employees.

13. Plaintiff sustained personal injuries as a direct and proximate result of Defendant's negligence and gross negligence of itself and its employees as alleged herein.

14. As a direct and proximate result of the negligence of Defendant as aforesaid, the injured Plaintiff:

- a) In addition thereto, said Plaintiff suffered shock and emotional damage, disability, pain and suffering, emotional damage, disfigurement, medical expenses in the past, present and future.
- b) Possible aggravation of pre-existing conditions and/or reactivation of dormant conditions.
- c) Was unable to attend to her usual affairs, render services as formerly.
- d) Hampered said Plaintiff in the enjoyment of the normal pursuit of life as before.
- e) Said injuries are permanent to the degree that Plaintiff suffered a loss in ability to earn money as before, and will have impaired earning capacity in the future, continued pain and suffering as well as permanency, all as a result of the negligence as hereinbefore alleged.
- f) Plaintiff sustained and will continue to sustain wage loss.

g) Injury to head resulting in stitches and disfigurement.

15. Defendant is vicariously liable and liable under the Doctrine of *Respondent Superior*.

16. As a direct and proximate result of the negligence of Defendant as aforesaid, Plaintiff has been compelled to expend and become obligated for large sums of money for medical care and treatment, and in the future, may be required to expend and become obligated for large sums of money for medical care, attention and supplies for treatment and aforesaid injuries which he sustained.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Judgment against the Defendant and award damages in whatever amount Plaintiff is found to be entitled plus fees interest and costs.

COUNT III – NUISANCE AGAINST DEFENDANT DETROIT BEHAVIORAL INSTITUTE, INC.

14. Plaintiff re-alleges and incorporates paragraphs one through 13 as though more fully set forth herein.

15. Defendant, as the owner, possessor and/ or entity in control of and/ or otherwise charged with the care and/ or maintenance of the premises owed a legal duty to apprise, notify, inspect, repair, guard against danger, take proper precautions, warn or otherwise make Plaintiff aware of hidden, latent, potential, patent, or other unreasonable risks or hazards or dangers in the said premises, which the Defendant knew or should have known existed thereon or therein.

16. Defendant failed to apprise, notify, inspect, repair, guard against danger, take proper precautions, warn or otherwise make Plaintiff aware of said risks, hazards or dangers of which Defendant knew or should have known and instead allowed a serious and

dangerous condition to be created and continue without regard for the safety of others and/or their property, thus constituting a nuisance.

17. As a direct and proximate result of said nuisance created by and allowed to continue by Defendant, the Plaintiff suffered damages as stated above.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Judgment against the Defendant and award damages in whatever amount Plaintiff is found to be entitled plus fees interest and costs.

COUNT IV – NEGLIGENCE AGAINST DEFENDANT CAPSTONE ACADEMY.

18. Plaintiff re-alleges and incorporates paragraphs one through six as though more fully set forth herein.

19. On or about March 19, 2010, Plaintiff was a business invitee of Defendant, on Defendant's property located at 3500 John R. Rd., Detroit, MI 48201.

20. On or about said date at said time, Defendant was in possession of and control of the premises whereat Plaintiff was injured as described herein.

21. When Plaintiff was injured at Defendant's premises, Plaintiff was without any knowledge of the dangerous and unsafe condition of Defendant's premises.

22. On said date, Plaintiff tried to enter the gym when a staff member tried to stop her from entering causing her to cut her head on the door when he stopped the door with his foot resulting in her receiving four (4) stitches on her face.

23. On or about said date, Defendant, its agents, servants, and/or employees owed duties to Plaintiff to exercise reasonable care as a reasonably prudent person would do under same or similar circumstances, and in accordance with the common law in such case made and provided, but violated said duties in at least one or more of the following particulars, so far as it is presently known:

- A. Negligently forcing the door closed striking the Plaintiff.
- B. Failing to train its employees.
- C. Negligently hiring its employees.

24. Plaintiff sustained personal injuries as a direct and proximate result of Defendant's negligence and gross negligence of itself and its employees as alleged herein.

25. As a direct and proximate result of the negligence of Defendant as aforesaid, the injured Plaintiff:

- A. In addition thereto, said Plaintiff suffered shock and emotional damage, disability, pain and suffering, emotional damage, disfigurement, medical expenses in the past, present and future.
- B. Possible aggravation of pre-existing conditions and/or reactivation of dormant conditions.
- C. Was unable to attend to her usual affairs, render services as formerly.
- D. Hampered said Plaintiff in the enjoyment of the normal pursuit of life as before.
- E. Said injuries are permanent to the degree that Plaintiff suffered a loss in ability to earn money as before, and will have impaired earning capacity in the future, continued pain and suffering as well as permanency, all as a result of the negligence as hereinbefore alleged.
- F. Plaintiff sustained and will continue to sustain wage loss.
- G. Injury to head resulting in stitches and disfigurement.

26. Defendant is vicariously liable and liable under the Doctrine of *Respondent Superior*.

27. As a direct and proximate result of the negligence of Defendant as aforesaid, Plaintiff has been compelled to expend and become obligated for large sums of money for medical care and treatment, and in the future, may be required to expend

and become obligated for large sums of money for medical care, attention and supplies for treatment and aforesaid injuries which he sustained.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Judgment against the Defendant and award damages in whatever amount Plaintiff is found to be entitled plus fees interest and costs.

COUNT V – NUISANCE AGAINST DEFENDANT CAPSTONE ACADEMY

28. Plaintiff re-alleges and incorporates paragraphs one through 13 as though more fully set forth herein.

29. Defendant, as the owner, possessor and/ or entity in control of and/ or otherwise charged with the care and/ or maintenance of the premises owed a legal duty to apprise, notify, inspect, repair, guard against danger, take proper precautions, warn or otherwise make Plaintiff aware of hidden, latent, potential, patent, or other unreasonable risks or hazards or dangers in the said premises, which the Defendant knew or should have known existed thereon or therein.

30. Defendant failed to apprise, notify, inspect, repair, guard against danger, take proper precautions, warn or otherwise make Plaintiff aware of said risks, hazards or dangers of which Defendant knew or should have known and instead allowed a serious and dangerous condition to be created and continue without regard for the safety of others and/or their property, thus constituting a nuisance.

31. As a direct and proximate result of said nuisance created by and allowed to continue by Defendant, the Plaintiff suffered damages as stated above.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Judgment against the Defendant and award damages in whatever amount Plaintiff is found to be entitled plus fees interest and costs.

COUNT VI – NEGLIGENCE AGAINST DEFENDANT BRIAN PRYOR

THE THURSWELL LAW FIRM, P.L.L.C.
Attorneys at Law
1000 TOWN CENTER
SUITE 500
Southfield, Michigan 48075-1221
(248) 354-2222

32. Plaintiff re-alleges and incorporates paragraphs one through 31 as though more fully set forth herein.

33. On March 19, 2011, Plaintiff tried to enter the gym when Defendant BRIAN PRYOR tried stop her from entering, causing her to cut her head on the door when he stopped the door with his foot, resulting in Plaintiff receiving four (4) stitches.

34. On or about said date, Defendant owed duties to Plaintiff to exercise reasonable care as a reasonably prudent person would do under same or similar circumstances and under accordance with the common law in such case made and provided, but violated said duties in at least one or more of the following particulars, so far as it is presently known:

- a. Negligently forcing the door closed striking the Plaintiff
- b. other negligence as will be determined through discovery.

35. Plaintiff sustained personal injuries as a direct and proximate result of Defendant's negligence and gross negligence of itself and its employees as alleged herein.

36. As a direct and proximate result of the negligence of Defendant as aforesaid, the injured Plaintiff:

- a. in addition thereto, said Plaintiff suffered shock and emotional damage, disability, pain and suffering, emotional damages, disfigurement, medical expenses in the past, present and future.
- b. possible aggravation of pre-existing conditions and/or reactivation of dormant conditions.
- c. was unable to attend her usual affairs, render services as formerly.
- d. hampered said Plaintiff in the enjoyment of the normal pursuit of life as before.
- e. said injuries are permanent to the degree that Plaintiff suffered a loss in ability to earn money as before and will have impaired earning

THE THURSWELL LAW FIRM, P.L.L.C.
Attorneys at Law
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Southfield, Michigan 48075-1221
(248) 354-2222

capacity in the future, continued pain and suffering as well as permanency, all as a result of the negligence as hereinbefore alleged.

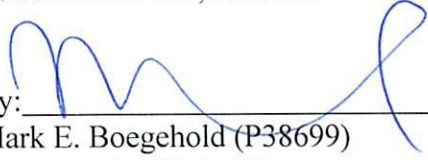
- f. Plaintiff sustained and will continue to sustain wage loss.
- g. injury to head resulting in stitches and disfigurement.

37. As a direct and proximate result of the negligence of Defendant as aforesaid, Plaintiff has been compelled to expend and become obligated for large sums of money for medical care and treatment, and in the future, may be required to expend and become obligated for large sums of money for medical care, attention and supplies for treatment and aforesaid injuries for which she sustained.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant Judgment against the Defendant and award damages in whatever amount Plaintiff is found to be entitled plus fees, interest and costs.

Respectfully submitted,

The Thurswell Law Firm, P.L.L.C.

By: 

Mark E. Boegehold (P38699)
Attorneys for Plaintiff
1000 Town Center, Suite 500
Southfield, Michigan 48075-1221
(248) 354-2222

Dated: March 28, 2014

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRITTANY MCFARLIN, a Minor,
by her Next Friend and Mother,
ELIZABETH MCFARLIN,

Plaintiff,

Case No. 14-013465-NO
Hon. Muriel Hughes

v.

DETROIT BEHAVIORAL
INSTITUTE, INC.,
CAPSTONE ACADEMY and
BRIAN PRYOR,

Defendant.

Mark E. Boegehold (P38699)
The Thurswell Law Firm, P.L.L.C.
Attorneys for Plaintiff
1000 Town Center, Suite
Southfield, Michigan 48075-1221
(248) 354-2222; Fax (2323)

DEMAND FOR TRIAL BY JURY

Plaintiff BRITTANY MCFARLIN, by and through her attorneys, The Thurswell Law Firm, demands a **trial by jury** of the facts and issues involved in this cause of action.

Respectfully submitted,

The Thurswell Law Firm, P.L.L.C.

By: 
Mark E. Boegehold (P38699)
Attorneys for Plaintiff
1000 Town Center, Suite 500
Southfield, Michigan 48075-1221
(248) 354-2222

Dated: May 28, 2014

THE THURSWELL LAW FIRM, P.L.L.C.
Attorneys at Law
1000 TOWN CENTER
SUITE 500
Southfield, Michigan 48075-1221
(248) 354-2222

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRITTANY MCFARLIN, a minor
By her Next Friend and Mother,
ELIZABETH MCFARLIN,
Plaintiffs,

Case No.: 13-013465-NO
HON. Muriel Hughes

v.

DETROIT BEHAVIORAL
INSTITUTE, INC. and
CAPSTONE ACADEMY
Defendants.

THE THURSWELL LAW FIRM, PLLC.
Mark E. Boegehold (P38699)
Attorney for Plaintiffs
1000 Town Center, Suite 500
Southfield, MI 48075
(248) 354-2222 /FAX 2323
mboegehold@thurswell.com

MADDIN HAUSER WARTELL ROTH
& HELLER, P.C.
HARVEY R. HELLER (P27351)
KATHLEEN H. KLAUS (P67207)
THOMAS W. WERNER (P67492)
Attorneys for Defendants
28400 Northwestern Highway, 3rd Floor
Southfield, MI 48034
(248) 351-7067

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2014, I electronically filed the foregoing paper with the Wayne County Circuit Court using the E-File and Serve system through Odyssey ECF, which will send notification of such filing to all counsel of record.

Dated: May 28, 2014

/s/Angela Esseily

Angela Esseily