

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY

CASE NO.:

PATRICIA CIRILLO as Personal
Representatives of the Estate of RUTH
TARDIE,

Plaintiff,

vs.

THE JOSEPH L. MORSE HEALTH
CENTER, INC., and MORSELIFE HEALTH
SYSTEM, INC.

Defendants.

COMPLAINT FOR WRONGFUL DEATH DAMAGES

COMES NOW the Plaintiff, PATRICIA CIRILLO as Personal Representatives of the Estate of RUTH TARDIE, by and through undersigned counsel, and sue the Defendants, THE JOSEPH L. MORSE HEALTH CENTER, INC. ("MORSE LIFE NURSING HOME") and MORSELIFE HEALTH SYSTEM, INC. ("MORSE LIFE CORPORATE"), and alleges:

GENERAL JURISDICTIONAL ALLEGATIONS

1. This is a cause of action for damages, which exceeds Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest, and attorney's fees, is being filed within the applicable statute of limitations.

2. All conditions precedent to the filing of this action, including compliance with the notice provisions of Chapter 400, have been met or waived.

Complaint

3. This action is being brought by the Plaintiff for violations of Chapter 400 against MORSE LIFE NURSING HOME and MORSE LIFE CORPORATE while RUTH TARDIE was a resident at the Defendants' nursing home, MORSE LIFE NURSING HOME located at 4847 Fred Gladstone Drive, West Palm Beach, Florida in Palm Beach County, Florida (hereafter "the nursing home" or "the facility").

4. At all times material RUTH TARDIE was a resident of Palm Beach County, Florida and Patricia Cirillo is a resident of Palm Beach County, Florida, and has been appointed the Personal Representative of the Estate of RUTH TARDIE. *Exhibit 1.*

5. At all times material, MORSE LIFE NURSING HOME, was a Florida corporation doing business in Palm Beach County, with a principal place of business in Palm Beach County and an agent in Palm Beach County.

6. At all times material, MORSE LIFE CORPORATE, was a Florida corporation, authorized and doing business in Palm Beach County.

7. At all times material hereto, the Defendants were subject to the provisions of Chapter 400 of Florida Statutes, Titles 10 and 59 of the Florida Administrative Code, and OBRA 1987, which set the standards for operating nursing homes such as this facility.

ALLEGATIONS AGAINST MORSE LIFE NURSING HOME

8. At all times material hereto, the Defendant, MORSE LIFE NURSING HOME, was the licensee of the nursing home facility in West Palm Beach, Florida, which was authorized to do business in the State of Florida and to operate a nursing home under the name of Morse Life, in Palm Beach County, Florida, and is subject to the provisions of Florida Statutes Chapter 400.

9. At all times material hereto, the Defendant, MORSE LIFE NURSING HOME employed the nurses and caretakers at the facility, and is therefore responsible for their tortious conduct.

10. At all times material hereto, the Defendant, MORSE LIFE NURSING HOME, was operating MORSE LIFE NURSING HOME and/or had a non-delegable duty to ensure reasonable operation of the facility and reasonable care to residents, as the licensee of the facility, licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

11. MORSE LIFE NURSING HOME owed a duty to its residents to provide reasonable care.

ALLEGATIONS AGAINST MORSE LIFE CORPORATE

12. At all times material, MORSE LIFE CORPORATE, was the management company/manager and/or owner of the subject nursing home.

13. At all times material hereto the Defendant, MORSE LIFE CORPORATE, was in the business of owning, managing, and/or maintaining nursing and convalescent homes and related health care facilities, including the subject facility located in Palm Beach County, Florida.

14. At all times material hereto, the Defendant, MORSE LIFE CORPORATE, was operating the subject facility, which was licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

15. At all times material hereto, the Defendant, MORSE LIFE CORPORATE, was operating MORSE LIFE NURSING HOME facility and/or had a non-delegable duty to ensure reasonable operation of the facility and reasonable care to residents, as the management company

for the facility, which was licensed as a nursing home as that term is defined in Florida Statutes Chapter 400.

16. MORSE LIFE CORPORATE had the right to control the nursing home's operations, including but not limited to the facility's policies, procedures, budget, staffing and employee training.

17. During RUTH TARDIE's residency, MORSE LIFE CORPORATE owned, managed, operated and/or had the right to control the nursing home and its staff. Therefore, MORSE LIFE CORPORATE is responsible for any actions or omissions of the nursing home's employees, agents or apparent agents.

18. MORSE LIFE CORPORATE owed a duty to its residents to provide reasonable care.

FACTS GIVING RISE TO THIS CAUSE OF ACTION

19. RUTH TARDIE was admitted to the subject Morse Life nursing home for assistance with activities of daily living.¹ This included assistance with ambulation and transfers.

20. RUTH TARDIE was not properly supervised and assisted with her movements inside the facility. As a result, she fell and suffered a broken knee. RUTH TARDIE underwent surgery with the placement of surgical hardware. Following her fall/fracture/surgery, RUTH TARDIE could no longer walk on her own. Due to the fall injury, RUTH TARDIE was confined to a wheelchair. She required total assistance with transfers in and out of her wheelchair, as well as toileting.

¹ Exact dates are unknown due to the facility's repeated failure to produce Ms. Tardie's nursing home chart, despite numerous requests.

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21. On or around August 11, 2016, RUTH TARDIE was being transferred via mechanical lift in the bathroom. During the transfer, RUTH TARDIE warned the staff that they were moving too fast and that she was not secured in the lift. Morse Life nursing home staff failed to heed RUTH TARDIE's warnings. As a result, RUTH TARDIE's leg was forcefully struck, causing grave injury.

22. RUTH TARDIE's complaints of pain were subsequently ignored. Under the duress of the incident, she called her daughter, Patricia Cirillo, to tell her about what occurred. Patricia Cirillo demanded that her mother receive an x-ray.

23. Eventually, as a result of Patricia's demand, radiology was taken confirming that RUTH TARDIE fractured her femur in the lift transfer incident. She was taken to Jupiter Medical Center, where she remained until her death.

24. RUTH TARDIE died on August 18, 2016.

25. The nursing home chart was requested pursuant to Florida Statute. Morse Life ignored this valid request. As a result, a Notice of Intent to Initiate Litigation was sent to the Defendant nursing home, again requesting the nursing home chart be produced. This Notice of Intent and all pre-suit discovery requests were also ignored by the Defendant nursing home.

WRONGFUL DEATH DAMAGES

26. RUTH TARDIE wrongfully died on August 18, 2016 as a direct and proximate result of the Defendants' negligence, more fully described above and below. The death certificate says, *Exhibit 2*, in pertinent part:

Complaint

MANNER OF DEATH: ACCIDENT

CAUSE OF DEATH: a. RIGHT FEMUR FRACTURE
b. METASTATIC CANCER TO BONE

DATE OF INJURY: August 11, 2016

DESCRIBE HOW INJURY OCCURRED:
DECEDENT FRACTURED LEG DURING LIFTING PROCESS

27. As a direct and proximate result of the rights violations outlined above and below, the Estate of RUTH TARDIE and the survivors of the Estate, including but not limited to Patricia Cirillo, are entitled to all damages recoverable for the wrongful death caused by the Defendants, as alleged above and below, including but not limited to:

- a. Damages for RUTH TARDIE's bodily injury, pain and suffering, disability, disfigurement, mental anguish, loss of the capacity for the enjoyment of life, expensive hospitalization, the value of reasonable nursing services and nursing care provided to RUTH TARDIE, medical and nursing care and treatment and aggravation of previous existing conditions, from the time of her injury until the time of her death;
- b. Medical bills and expenses;
- c. Funeral expenses;
- d. Loss of Net Accumulations;
- e. Patricia Cirillo and the other children of the deceased, have suffered mental pain and suffering which will continue for the rest of their life, and they have suffered the loss of services and support of their mother, RUTH TARDIE, and have incurred medical and funeral expenses as a result of RUTH TARDIE's death, and have suffered the loss of RUTH TARDIE's love and companionship.

SURVIVAL DAMAGES

28. This case is being pleaded as a wrongful death claim. However, alternatively, if these injuries did not cause RUTH TARDIE's death, the Estate of RUTH TARDIE claims all damages recoverable under a survival action, including but not limited to the non-economic and economic damages of the decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of RUTH TARDIE to the time of her death. These survival damages occurred as a direct and proximate result of the negligence of the Defendants' outlined above and below.

COUNT I:
TARDIE v. MORSE LIFE NURSING HOME – WRONGFUL DEATH

29. Plaintiff re-adopts and re-alleges paragraphs 1 through 27 and further alleges:

30. Defendant, MORSE LIFE NURSING HOME, through its employees, agents and apparent agents were below the standard of care and thus violated the Chapter 400 rights of RUTH TARDIE as follows:

- a. Failing to appropriately assess and screen RUTH TARDIE as a potential fall risk resident;
- b. Failing to provide appropriate intervention to prevent falls and safe lifting techniques;
- c. Dropping RUTH TARDIE;
- d. Causing injury to RUTH TARDIE's femur through trauma;

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- e. Failing to report trauma sustained by the resident;
- f. Failing to prevent skin breakdown and malnutrition;
- g. Failing to properly communicate with RUTH TARDIE and/or her family;
- h. Failing to keep proper records relating to RUTH TARDIE and failing to produce those records upon valid request;
- i. Failing to comply with the requirements of Title 59 of the Florida Administrative Code and 42 CFR Section 483, which govern nursing homes such as this facility;
- j. Failing to provide the level of care, skill, and treatment which in light of relevant surroundings circumstances is recognized as acceptable and appropriate by reasonably prudent similar health care providers; and,
- k. Failing to exercise reasonable care under all circumstances.

31. The above negligence occurred from the actions and omissions of employees, agents and apparent agents of Defendant, MORSE LIFE NURSING HOME, while in the course and scope of their employment, agency and/or apparent agency.

32. As a proximate result of the Defendant's deprivation of and infringement upon RUTH TARDIE's Chapter 400 rights as alleged in this Complaint, which includes the above alleged negligence, RUTH TARDIE wrongfully died.

WHEREFORE, the Plaintiff, The Estate of RUTH TARDIE, demands judgment for damages against Defendant, MORSE LIFE NURSING HOME, and further demand a trial by jury of all issues so triable.

COUNT II:
TARDIE v. MORSE LIFE CORPORATE – WRONGFUL DEATH

33. Plaintiff re-adopts and re-alleges paragraphs 1 through 27 and further alleges:

34. Defendant, MORSE LIFE CORPORATE, through its employees, agents and apparent agents were below the standard of care and thus violated the Chapter 400 rights of RUTH TARDIE as follows:

- a. Failing to appropriately assess and screen RUTH TARDIE as a potential fall risk resident;
- b. Failing to provide appropriate intervention to prevent falls and safe lifting techniques;
- c. Dropping RUTH TARDIE;
- d. Causing injury to RUTH TARDIE's femur through trauma;
- e. Failing to report trauma sustained by the resident;
- f. Failing to prevent skin breakdown and malnutrition;
- g. Failing to properly communicate with RUTH TARDIE and/or her family;
- h. Failing to keep proper records relating to RUTH TARDIE and failing to produce those records upon valid request;
- i. Failing to comply with the requirements of Title 59 of the Florida Administrative Code and 42 CFR Section 483, which govern nursing homes such as this facility;
- j. Failing to provide the level of care, skill, and treatment which in light of relevant surroundings circumstances is recognized as acceptable and appropriate by reasonably prudent similar health care providers; and,

Complaint

k. Failing to exercise reasonable care under all circumstances.

35. The above negligence occurred from the actions and omissions of employees, agents and apparent agents of Defendant, MORSE LIFE CORPORATE, while in the course and scope of their employment, agency and/or apparent agency.

36. As a proximate result of the Defendant's deprivation of and infringement upon RUTH TARDIE's Chapter 400 rights as alleged in this Complaint, which includes the above alleged negligence, RUTH TARDIE wrongfully died.

WHEREFORE, the Plaintiff, The Estate of RUTH TARDIE, demands judgment for damages against Defendant, MORSE LIFE CORPORATE, and further demand a trial by jury of all issues so triable.

COUNT III:

TARDIE v. MORSE LIFE NURSING HOME – SURVIVAL ACTION

37. Plaintiff re-adopts and re-alleges paragraphs 1 through 25, 28 and further alleges:

38. Defendant, MORSE LIFE NURSING HOME, through its employees, agents and apparent agents were below the standard of care and thus violated the Chapter 400 rights of RUTH TARDIE as follows:

- a. Failing to appropriately assess and screen RUTH TARDIE as a potential fall risk resident;
- b. Failing to provide appropriate intervention to prevent falls and safe lifting techniques;
- c. Dropping RUTH TARDIE;
- d. Causing injury to RUTH TARDIE's femur through trauma;

Complaint

- e. Failing to report trauma sustained by the resident;
- f. Failing to prevent skin breakdown and malnutrition;
- g. Failing to properly communicate with RUTH TARDIE and/or her family;
- h. Failing to keep proper records relating to RUTH TARDIE and failing to produce those records upon valid request;
- i. Failing to comply with the requirements of Title 59 of the Florida Administrative Code and 42 CFR Section 483, which govern nursing homes such as this facility;
- j. Failing to provide the level of care, skill, and treatment which in light of relevant surroundings circumstances is recognized as acceptable and appropriate by reasonably prudent similar health care providers; and,
- k. Failing to exercise reasonable care under all circumstances.

39. The above negligence occurred from the actions and omissions of employees, agents and apparent agents of Defendant, MORSE LIFE NURSING HOME, while in the course and scope of their employment, agency and/or apparent agency.

40. This Count is being pleaded in the alternative to the above wrongful death Count. If these injuries did not cause the death of RUTH TARDIE, the Plaintiff alleges all damages recoverable under a survival action, including but not limited to the non-economic damages of decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of RUTH TARDIE to the time of her death.

Complaint

WHEREFORE, the Plaintiff, The Estate of RUTH TARDIE, demands judgment for damages against Defendant, MORSE LIFE NURSING HOME, and further demand a trial by jury of all issues so triable.

COUNT IV:
TARDIE v. MORSE LIFE CORPORATE – SURVIVAL ACTION

41. Plaintiff re-adopts and re-alleges paragraphs 1 through 25, 28 and further alleges:

42. Defendant, MORSE LIFE CORPORATE, through its employees, agents and apparent agents were below the standard of care and thus violated the Chapter 400 rights of RUTH TARDIE as follows:

- a. Failing to appropriately assess and screen RUTH TARDIE as a potential fall risk resident;
- b. Failing to provide appropriate intervention to prevent falls and safe lifting techniques;
- c. Dropping RUTH TARDIE;
- d. Causing injury to RUTH TARDIE's femur through trauma;
- e. Failing to report trauma sustained by the resident;
- f. Failing to prevent skin breakdown and malnutrition;
- g. Failing to properly communicate with RUTH TARDIE and/or her family;
- h. Failing to keep proper records relating to RUTH TARDIE and failing to produce those records upon valid request;
- i. Failing to comply with the requirements of Title 59 of the Florida Administrative Code and 42 CFR Section 483, which govern nursing homes such as this facility;

E/O Tardie v. Morse Life
Complaint

j. Failing to provide the level of care, skill, and treatment which in light of relevant surroundings circumstances is recognized as acceptable and appropriate by reasonably prudent similar health care providers; and,

k. Failing to exercise reasonable care under all circumstances.

43. The above negligence occurred from the actions and omissions of employees, agents and apparent agents of Defendant, MORSE LIFE CORPORATE, while in the course and scope of their employment, agency and/or apparent agency.

44. This Count is being pleaded in the alternative to the above wrongful death Count. If these injuries did not cause the death of RUTH TARDIE, the Plaintiff alleges all damages recoverable under a survival action, including but not limited to the non-economic damages of decedent for bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition, from time of injury of RUTH TARDIE to the time of her death.

WHEREFORE, the Plaintiff, The Estate of RUTH TARDIE, demands judgment for damages against Defendant, MORSE LIFE CORPORATE, and further demand a trial by jury of all issues so triable.

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E/O Tardie v. Morse Life
Complaint

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Cont. from prior page

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DATED this 17th day of August, 2017.

/s/ *Michael J. Brevda, Esq.*

Michael J. Brevda, Esq.

Florida Bar No.: 084048

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Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF
RUTH M. TARDIE,
Deceased.

CASE NO. 50-2017-CP-000700-XXXX-SB

ORDER ADMITTING WILL TO PROBATE
AND APPOINTING PERSONAL REPRESENTATIVE

(self-proved)

The instrument presented to this Court as the last will of RUTH M. TARDIE, deceased, having been executed in conformity with law, and made self-proved at the time of its execution by the acknowledgment of the Decedent and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, and no objection having been made to its probate, and the Court finding that the Decedent died on August 18, 2016,

ADJUDGED that the will dated April 17, 2012 witnessed by Ann Vazquez, Clement Swaby and Barbara Cohen as subscribing and attesting witnesses, is admitted to probate according to law as and for the last will of the Decedent, and it is further

ADJUDGED that PATRICIA CIRILLO is appointed personal representative of the estate of the Decedent, and that upon taking the prescribed oath, filing designation of resident agent and acceptance, letters of administration shall be issued. No bond shall be required since the Decedent waived the necessity for same in her will.

DONE AND ORDERED in Chambers at Palm Beach County, Florida on 14th

day 2017.

of March



JUDGE, CIRCUIT COURT

c.c. Timothy G. Sander, Esq.

Estate must be closed 12
months from the date of order

No copies received by the court ✓
No envelopes received by the court ✓

FL

THIS DOCUMENT HAS A LIGHT BACKGROUND ON TRUE WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY FLORIDA WATERMARK.

FL

BUREAU of VITAL STATISTICS

AMENDED

CERTIFICATION OF DEATH

STATE FILE NUMBER: 2016125054

DATE ISSUED: January 31, 2017

DECEDENT INFORMATION

STATE FILE DATE: August 19, 2016

NAME: RUTH TARDIE

DATE OF DEATH: August 18, 2016

SEX: FEMALE SSN: 049-16-3668 AGE: 091 YEARS

DATE OF BIRTH: December 7, 1924

BIRTHPLACE: DERBY, CONNECTICUT, UNITED STATES

PLACE OF DEATH: HOSPICE

FACILITY NAME OR STREET ADDRESS: HOSPICE OF PALM BEACH COUNTY

LOCATION OF DEATH: WEST PALM BEACH, PALM BEACH COUNTY, 33407

SURVIVING SPOUSE, DECEDENT'S RESIDENCE AND HISTORY INFORMATION

MARITAL STATUS: WIDOWED

SURVIVING SPOUSE NAME: NONE

RESIDENCE: 4847 FRED GLADSTONE DRIVE, WEST PALM BEACH, FLORIDA 33417, UNITED STATES

COUNTY: PALM BEACH

OCCUPATION, INDUSTRY: LPN, MEDICAL

RACE: White Black or African American Asian Indian Chinese Filipino Native Hawaiian Japanese Korean
 American Indian or Alaskan Native-Tribe: Vietnamese Other Asian:
 Guamanian or Chamorro Samoan Other Pacific Isl: Other: Unknown

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC/HAITIAN ORIGIN

EDUCATION: 9TH THRU 12TH GRADE; NO DIPLOMA

EVER IN U.S. ARMED FORCES? NO

PARENTS AND INFORMANT INFORMATION

FATHER/PARENT: CLARENCE H BAILEY

MOTHER/PARENT: ANNA BRUNDAGE

INFORMANT: PATRICIA CIRILLO

RELATIONSHIP TO DECEDENT: DAUGHTER

INFORMANT'S ADDRESS: 4333 WILLOW BROOK CIRCLE, WEST PALM BEACH, FLORIDA 33417, UNITED STATES

PLACE OF DISPOSITION AND FUNERAL FACILITY INFORMATION

PLACE OF DISPOSITION: SCIENCE CARE ANATOMICAL
CORAL SPRINGS, FLORIDA

METHOD OF DISPOSITION: DONATION

FUNERAL DIRECTOR/LICENSE NUMBER: DANA M. HALL, F052147

FUNERAL FACILITY: BERGEN FUNERAL SERVICE INC F039998
3107 DAVIS BLVD, NAPLES, FLORIDA 34104

CERTIFIER INFORMATION

TYPE OF CERTIFIER: MEDICAL EXAMINER

MEDICAL EXAMINER CASE NUMBER: 161501273

TIME OF DEATH (24 hr): 1442

DATE CERTIFIED: December 15, 2016

CERTIFIER'S NAME: MICHAEL DAVID BELL

CERTIFIER'S LICENSE NUMBER: ME54359

NAME OF ATTENDING PHYSICIAN (If other than Certifier): NOT APPLICABLE

CAUSE OF DEATH AND INJURY INFORMATION

MANNER OF DEATH: ACCIDENT

CAUSE OF DEATH - PART I - and Approximate Interval: Onset to Death:

a RIGHT FEMUR FRACTURE

b METASTATIC CANCER TO BONE

c

d

PART II - Other significant conditions contributing to death but not resulting in the underlying cause given in PART I:
CORONARY ARTERY DISEASE, DIABETES MELLITUS

AUTOPSY PERFORMED? NO

AUTOPSY FINDINGS AVAILABLE TO COMPLETE CAUSE OF DEATH?

DATE OF SURGERY:

DID TOBACCO USE CONTRIBUTE TO DEATH? NO

REASON FOR SURGERY:

IF FEMALE, NOT PREGNANT WITHIN PAST YEAR

DATE OF INJURY: August 11, 2016

TIME OF INJURY (24 hr): UNKNOWN

INJURY AT WORK? NO

LOCATION OF INJURY: 4847 FRED GLADSTONE DRIVE, WEST PALM BEACH, FLORIDA 33417, UNITED STATES

DESCRIBE HOW INJURY OCCURRED:

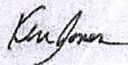
DECEDENT FRACTURED LEG DURING LIFTING PROCESS

PLACE OF INJURY: ALF/HOME

IF TRANSPORTATION INJURY, Status of Decedent:

Type of Vehicle:

DATE AMENDED: 12/19/2016 ANY CERTIFICATION ISSUED PRIOR TO THE AMENDED DATE MAY BE NULL AND VOID.



, State Registrar

REQ: 2017783469

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.

WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND, GOLD EMBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIAL LINES WITH TEXT. THIS DOCUMENT WILL NOT PRODUCE A COLOR COPY.



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DH FORM 1947 (03-13)

CERTIFICATION OF VITAL RECORD



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