LYNN M. JODARO
CLERK OF COURTS
STARK COUNTY, OHIO
2024 JUN 28 AM 11:51

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CASE NO. 2024CV01183

JUDGE CHRYSSA N. HARTNETT

FIRST AMENDED COMPLAINT

WITH JURY DEMAND AND AFFIDAVIT OF MERIT ATTACHED

ESTATE OF MARGARET S. BECTON,
DECEASED
Through Estate Representative Brett Becton
c/o Michael Hill Trial Law
815 Superior Avenue, Suite 623
Cleveland, Ohio 44114

Plaintiff,

vs.

ALTERCARE OF HARTVILLE CENTER FOR REHABILITATION & NURSING CARE, INC.
1420 Smith Kramer Road
Hartville, Ohio 44632

Also Serve c/o Registered Agent
SAIS Corp.
25109 Detroit Road, Suite 310
Westlake, OH 44145

and

ALTERCARE OF OHIO, INC.
7171 Keck Park Circle NW
North Canton, Ohio 44720

Also Serve c/o Registered Agent:
SAIS Corp.
25109 Detroit Road, Suite 310
Westlake, OH 44145

and

TSG NURSING CENTERS, INC.
7171 Keck Park Circle NW
North Canton, Ohio 44720

Also Serve c/o Registered Agent:
SAIS Corp.
25109 Detroit Road, Suite 310
Westlake, OH 44145

ENTERED BY SO

Pursuant to Ohio Civ. R. 15(A), Plaintiff, the Estate of Margaret S. Becton, Deceased, through Estate Representative Brett Becton, files its First Amended Complaint against the above-named Defendant(s) without leave of Court, states and avers upon information and belief:

INTRODUCTION

1. This action involves multiple claims (medical negligence, recklessness, wrongful death, Resident's Rights Law violations, civil conspiracy, and fraud) involving Altercare of Hartville Center for Rehabilitation & Nursing Care, Inc.'s ("Facility's") inadequate care of Margaret Becton and the corporate control of the facility leading to such inadequate care that led to Margaret Becton's untimely and wrongful death on July 25, 2023.

2. This is a wrongful death case against Altercare of Hartville Center for Rehabilitation & Nursing Care, an Altercare of Ohio/TSG Nursing Centers facility, for allowing Margaret Becton to fall and strike her head resulting in a traumatic brain injury that led to her death on July 25, 2023.

3. Plaintiff requests a trial by jury.

4. An Affidavit of Merit is attached.

5. Plaintiff brings this action for compensation for the harms and losses sustained as the result of the negligence, recklessness, conscious disregard, reckless disregard, conduct by which—through heedless indifference to the consequences—the Defendants or their staff disregarded a substantial and unjustifiable risk that the health care provider's conduct is likely to cause, at the time those services or that treatment or care were rendered, an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct, and other wrongful conduct described herein or discovered during litigation.

DEFENDANTS

6. Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and/or employees and does business as Altercare Hartville.

7. Altercare of Ohio, Inc. is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and/or employees and does business as Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc aka Altercare Hartville. Altercare of Ohio, Inc. manages and controls Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc aka Altercare Hartville.

8. TSG Nursing Centers, Inc. is an Ohio corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and/or employees and does business as Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc aka Altercare Hartville. TSG Nursing Centers, Inc. manages and controls Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc aka Altercare Hartville.

9. The Defendants employ, manage, and direct the care and service providers who were responsible for Margaret Becton's care, treatment, and safety at Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville while she was a resident there, and/or are responsible for creating unsafe conditions at the Facility through their control of the Facility management that directly led to Margaret Becton's injuries and untimely and wrongful death on July 25, 2023.

10. The Defendants direct and control operations at the Facility and are therefore directly liable for mismanagement of the Facility without regard to piercing the corporate veil.

11. The Defendant organization controls the other corporations in a way that is so complete that the corporations have no separate mind, will, or existence of their own, is exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; and injury or unjust loss resulted to the Plaintiff from such control and wrong, meaning the Defendants should be held directly liable for such harms and losses.

12. The Defendants collectively own, manage, control, and/or are responsible for the care delivered to residents of Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville directly or through their domination and control of any putative entity license holder.

VICARIOUS LIABILITY

13. The Defendants employ the care providers who were responsible for ensuring Margaret Becton's care and safety.

14. The Defendants manage, control, and/or employ the nursing staff at the facility.

15. Margaret Becton and her family looked to the Defendants for care based upon their representations.

16. The Defendants are vicariously liable for the negligent actions of their employees and agents (respondeat superior and agency liability) and/or independent contractors (*Clark v. Southview Hosp. & Family Health Ctr.*, 68 Ohio St.3d 435, 628 N.E.2d 46 (1994), agency by estoppel), including visiting physicians and nurse practitioners

contracted with any of the Defendants and/or provided to residents as default or house care providers.

JURISDICTION AND VENUE

17. This Court has jurisdiction over Defendants because, among other reasons, all Defendants do, and all times relevant did, purposefully avail themselves of the laws of the State of Ohio, and/or committed tortious acts within the State of Ohio.

18. Venue is proper in Stark County, Ohio under Ohio Civ. R. 3(B) because, among other reasons: (a) one of more Defendants reside, domicile, or carry on their principal place of business in that county; and (b) part of the claim for relief arose in that county.

COMMON FACTS

19. The Defendants hold themselves out to the public as providers of long-term nursing home, skilled nursing, and memory care services.

20. Defendants' for-profit model means their primary goal is to maximize profit, measured by revenues minus expenses.

21. For nursing homes generally, the largest individual revenue source is residents (filling beds), and the largest individual expense is the cost of employing nursing staff to provide care to those residents. This creates a financial incentive to take on more residents with greater care needs than the nursing staff can properly care for, a violation of federal nursing home regulations regarding staffing levels.

22. The Defendants manage, control, and/or employ the nursing staff at the Facility.

23. The Defendants exercise actual control over the Facility's management and operations to maximize profits, including control over facility-level:

a. Policies and procedures, including regarding resident care;

b. Finances, including obtaining credit and loans, guaranteeing loans (both at the corporate and individual facility level), maintaining funds and banking, obtaining, owning, and leasing facility land and buildings, and capital expenditures;

c. Budgeting, including controlling the amount of funds available for staffing facilities;

d. Personnel management, including hiring and firing, or having authority to hire and fire, the supervisory and management personnel in each facility;

e. Supervision of management, care providers, and staff in each facility, including compliance with federal and state regulations;

f. Employment, such as setting pay scales, shifts, and time and vacation policies;

g. Systems for training, monitoring, and supervising staff;

h. Medical record systems and management;

i. Financial control systems, including budgeting and payment processing;

j. Marketing, including setting the image and expectations residents and their family should expect at the facility, and even the name of the facility;

k. Reporting procedures, including reporting to Medicare as to individual resident care and facility-wide issues.

24. As the result of this control, the Defendants make decisions that affect the day-to-day care of residents of the Facility, such as the resources available for providing nursing staff and care to residents like Margaret Becton, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

25. Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that the Facility was sufficiently staffed to meet the individual needs of its residents, including Margaret Becton.

26. Defendants engaged in a systemic practice to understaff the Facility to maximize profits at the expense of its residents' care.

27. The Defendants' systemic understaffing of the Facility resulted in a "1-star" (much below average) ranking for Staffing on the Medicare.gov Nursing Home Compare website and 3-star rating overall.



Figure 1: Center for Medicare and Medicaid found that Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville earned a 1-star or "much below average" rating for Staffing and a 3-star or "average" rating for Health Inspections. This data was taken directly from Medicare.gov on May 21, 2024.

28. This lack of sufficient staff directly resulted in Margaret Becton not receiving basic and necessary services to prevent, among other things, neglect leading to her injuries and death.

29. The Defendants also exercise operational and managerial control, and apply this profits-over-safety model, at the following facilities in the State of Ohio:

a. Altercare Alliance
11750 Klinger Avenue, Alliance, OH 44601

b. Altercare Bucyrus
1929 Whetstone Street, Bucyrus, OH 44820

c. Altercare Cambridge
66731 Old Twenty One Road, Cambridge, OH 43725

d. Altercare Canal Winchester
6725 Thrush Drive, Canal Winchester, OH 43110

e. Altercare Coshocton
1991 Otsego Avenue, Coshocton, OH 43812

f. Altercare Country Lawn
10608 Navarre Road SW, Navarre, OH 44662

g. Altercare Cuyahoga Falls
2728 Bailey Road, Cuyahoga Falls, OH 44221

h. Altercare Lanfair
1590 Chartwell Street, Lancaster, OH 43130

i. Altercare Louisville
7187 St. Francis Street NE, Louisville, OH 44641

j. Altercare Majora Lane
105 Majora Lane, Millersburg, OH 44654

k. Altercare Mayfield Village
290 N. Commons Boulevard, Mayfield Village, OH 44143

l. Altercare Navarre
517 Park Street, Navarre, OH 44662

m. Altercare Newark North
151 Price Road, Newark, OH 43055

n. Altercare Newark South
17 Forry Street, Newark, OH 43055

o. Altercare Nobles Pond
7005 Fulton Drive NW, Canton, OH 44718

p. Altercare Post-Acute
1463 Tallmadge Road, Kent, OH 44240

q. Altercare Somerset
411 S. Columbus Street, Somerset, OH 43783

r. Altercare Summit Acres
44565 Sunset Road, Caldwell, OH 43724

s. Altercare Thornville
14100 Zion Road, Caldwell, OH 43724

t. Altercare Wadsworth
147 Garfield Street, Wadsworth, OH 44281

u. Altercare Western Reserve
5000 Sowul Boulevard, Stow, OH 44224

v. Altercare Zanesville
4200 Harrington Drive, Zanesville, OH 43701

30. In addition to Ohio, Defendants carry out these same business practices at a facility located at 805 West Avenue, Big Rapids, Michigan 49307.

Reporting Data – Nursing Home

31. The Defendants are required to report significant amounts of data to the federal agency that oversees operations of nursing homes receiving federal or state funding, the Centers for Medicare and Medicaid Services, or "Medicare."

32. The data the Defendants submit to Medicare regarding its facility includes data on its residents (numbers, care needs, and bed days), its finances, and its nurse and nursing aide staffing levels as compared to resident care needs.

33. This data is certified correct by the Defendants and/or submitted under penalty of perjury and/or civil or criminal penalties.

34. Medicare uses some of this data submitted by Defendants to produce its nursing home 5-star rating system, also known as, "Nursing Home Compare.

Nursing Home Resident Care Needs and Staffing Levels (MDS and RUG Scores)

35. Every nursing home receiving Medicare or Medicaid funding—the clear majority of nursing homes, including Altercare of Hartville Center for Rehabilitation & Nursing

Home, Inc. aka Altercare Hartville and others operative and/or controlled by Defendants—is required to provide detailed information regarding the health status, care and treatment, and services provided to each resident in the facility using a questionnaire called the Minimum Data Set ("MDS"). This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

36. Nursing homes like Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville are required to evaluate every resident using the Minimum Data Set questionnaire shortly after the time of admission, every 90 days thereafter, when a resident has a significant improvement or decline in health (physical, mental, or psychosocial), and upon discharge.

37. Based on this Minimum Data Set, each resident's individual care needs (called "acuity level") are assigned into a group signifying how much nursing or staff care the resident requires, called a Resource Utilization Group score, or RUG score.

38. Each resident's Resource Utilization Group score is contained in Section Z of their Minimum Data Set evaluations, meaning the total care needs of the residents in any facility at a specific time is available by totaling the residents' Resource Utilization Group scores from their Minimum Data Set evaluations.

39. Medicare has commissioned and made available to every nursing home, studies and data showing the number of minutes of nursing and nursing aide care a person at a specific RUG level should be expected to require, which Medicare calls "expected staffing."

40. When these Resource Utilization Group scores are combined for all residents in a nursing home facility, the nursing home knows exactly how many minutes of nursing and

nursing aide care should be provided, on average, to meet the expected care needs of their residents.

Misleading Advertising

41. In an effort to persuade the families of patients to become customers, Defendants make promises to the families of such potential residents that they will provide a level of care that they know they are incapable of providing.

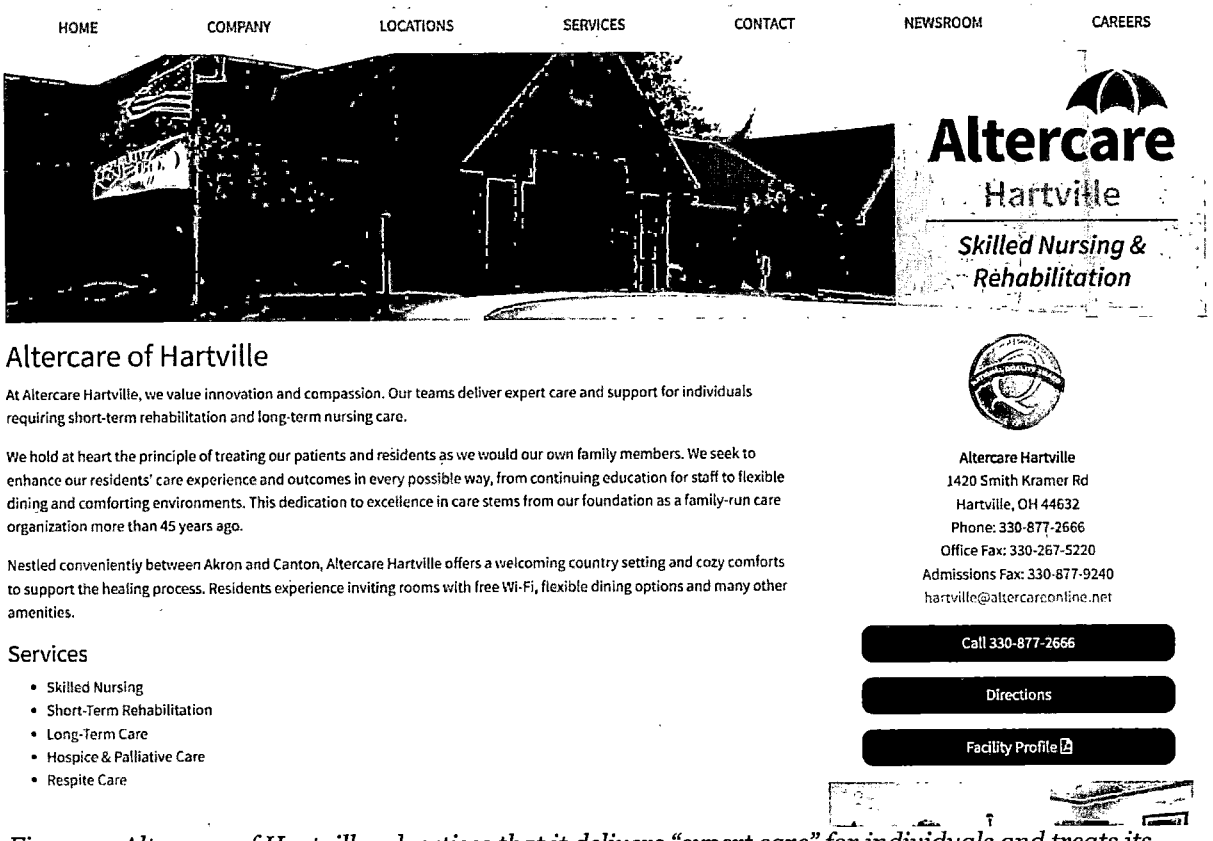


Figure 2: Altercare of Hartville advertises that it delivers "expert care" for individuals and treats its patients as their "own family members" to lead families of potential residents to believe that their loved one will be taken care of at a level that the facility cannot actually provide. This data was taken directly from altercareonline.com on May 23, 2024.

Altercare
Integrated Health Services

Schedule a Tour

HOME COMPANY LOCATIONS SERVICES CONTACT NEWSROOM CAREERS

Respite Care - Short-Term Support for Caregivers

Caring for an aging relative at home brings rewards and comfort, yet this admirable role carries significant responsibility. To remain balanced and healthy—physically and mentally—family caregivers may need to take time on occasion to recharge so they can be there for their loved one for years to come.

Altercare offers flexible, convenient short-term stays to give family caregivers support and respite. Your loved one will receive compassionate care and experience opportunities for enriching social engagement. Our respite care program offers caregivers the chance to take a break while ensuring their loved one's well-being remains intact. It goes beyond mere physical relief, providing families with peace of mind. Additionally, a respite stay can serve as an excellent opportunity to assess whether one of our centers and our care model would be a suitable long-term fit for your loved one.



The respite care experience at Altercare includes:

- 24/7 comprehensive care
- Medication assistance
- Nutritionally balanced meals
- Daily activities
- Safe, secure environment
- Laundry and housekeeping services

Figure 3: Altercare of Hartville advertises its respite care program to caregivers as a way to give caregivers "support" while ensuring their loved one will receive "compassionate care." The facility further advertises the respite care program as an opportunity for caregivers to "take a break" while having "peace of mind" that their loved one's "well-being remains intact." Altercare of Hartville promises families that their loved ones will be in a "safe, secure environment." This data was taken directly from altercareonline.com on May 23, 2024.

42. The intent and outcome of this misleading practice is to cause residents, their families, and external care providers to believe the nursing facility is much better staffed to provide the promised care than what is the actual practice of the Defendants with regard to staffing the Facility.

43. The intent and outcome of this misleading practice is to drastically limit the budget and overhead needed to run a safe facility in order to maximize profits and syphon resources at the expense of patient safety.

Systemic Understaffing and Margaret Becton's Care

44. Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville was sufficiently staffed, and the staff appropriately trained and informed, to meet the individual needs of Margaret Becton during the period she was a resident at the Facility.

45. Defendants engaged in a systemic practice to understaff Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville to maximize profits at the expense of its residents' care.

46. This lack of sufficient staff directly resulted in Margaret Becton not receiving basic and necessary services, assessments, and interventions to prevent, among other things, neglect leading to her injuries at Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville during the period she was a resident at the Facility.

Defendants' Negligence and Recklessness with Margaret Becton

47. Defendants accepted Margaret Becton as a nursing home resident for temporary respite care while her family members went on a short family vacation.

48. Defendants agreed to accept Margaret Becton into their facility and provide care to her in exchange for monetary payment.

49. Margaret was 90 years old when she was admitted into Altercare Hartville on June 26, 2023. Margaret was admitted in the skilled nursing unit for medical management and assistance with ADLs. The plan was for Margaret to return to her home on the afternoon of July 25, 2023, once her family members returned from vacation.

50. The first few days that Margaret Becton was at Altercare Hartville, her family members stayed at the Facility for 10-12 hours out of the day to ensure she had a smooth transition from being at home.

51. During this time, Margaret's family members noted to the nursing staff that Margaret seemed antsy from the transition from home to the Facility. The nursing staff acknowledged the same and assured the Becton family that the fall prevention mat would be always in place as a precaution.

52. Defendants were aware that Margaret Becton was a fall risk as she had previously been admitted to the Facility following a fall on her right hip in January 2023 as she stayed at the Facility for approximately 30 days for rehabilitative services.

53. Margaret Becton's family members were scheduled to leave for their vacation on July 1, 2023.

54. On June 30, 2023, one of Margaret Becton's family members went to visit her at the Facility and found her lying in a pool of blood in her room by herself.

55. Margaret Becton was transported to Akron City Summa Health Hospital and remained in the intensive care unit through the afternoon of July 1, 2023. At that point, it was communicated to her family that she would not recover from the traumatic brain injuries sustained from her fall.

56. Margaret Becton was transported to hospice care and remained there until July 13, 2023, until she was transferred to her home to be with her family.

57. Margaret Becton died on July 25, 2023. Her death certificate reports her cause of death as traumatic brain injury due to a fall.

58. Margaret Becton endured mental and physical pain, suffering, and death as a direct and proximate result of Defendants' failure to provide adequate are due to understaffing the facility.

FIRST CAUSE OF ACTION
(MEDICAL NEGLIGENCE/RECKLESSNESS)

59. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

60. Margaret Becton depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

61. The Defendants had a duty to provide proper care and treatment to Margaret Becton and to avoid causing injury to Margaret Becton.

62. The Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Margaret Becton, which they knew or should have known she required, and their negligence was the direct and proximate cause of the injuries that Margaret Becton suffered.

63. The Defendants' failure to provide proper care and treatment included, but is not limited to:

a. Choosing to put inadequate prevention and response interventions in place to prevent injuries;

b. Choosing to provide inadequate resident observation, supervision, and monitoring;

c. Choosing to provide improper training to staff members regarding resident monitoring, assessment, response, and treatment;

d. Choosing to provide too few, and / or underqualified nursing staff members for resident needs at each facility to protect and provide adequate care to residents like Margaret Becton; Choosing to not provide accurate, adequate, or timely information to Margaret Becton's family;

e. Choosing to provide inadequate supervision to prevent accidents and falls;

f. Choosing to violate orders relating to care of Margaret Becton; Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Margaret Becton are a member of the class of persons intended to be protected from injuries like those they suffered;

g. Failing to ensure the rights and safety of its residents, including Margaret Becton, as required by Ohio and federal regulations;

h. Choosing not to provide appropriate care to Margaret Becton while she was a resident of the Facility; and

i. Such other acts or omissions described in this Complaint or discovered in litigation.

64. These actions constituted a conscious disregard for Margaret Becton's rights and safety with a great probability of causing substantial harm from this misconduct, by which—through heedless indifference to the consequences—the Defendants or their staff disregarded a substantial and unjustifiable risk that the health care provider's conduct was likely to cause, at the time those services or that treatment or care were rendered, constituting an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct. The Defendants were aware of the great probability of harm that could result from their willful, wanton, and/or reckless misconduct.

65. The Defendants' disregard for the rights and safety of residents like Margaret Becton created circumstances under which it became substantially certain that serious injuries would result, entitling Plaintiff to awards for compensatory and punitive damages.

66. The Defendants are directly liable for their own willful, wanton, and/or reckless misconduct.

67. The Defendants are also vicariously liable for their employees' and agents' willful, wanton, and/or reckless misconduct.

68. The Defendants and their medical and nursing staff provided care to Margaret Becton that fell below the standard of care expected of medical care and nursing home organizations, under the same or similar circumstances.

69. The departures from the standard of care are evidenced by violations of sections of Federal Regulations, 42 C.F.R. § 483 et seq., and Ohio Administrative Code sections, OAC 3701-17 et seq., and the Ohio Resident's Rights Law, R.C. section 3721.13.

70. As a direct and proximate result of the negligent and/or willful, wanton and/or reckless actions of the Defendants described above, Margaret Becton sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and death.

71. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars ($25,000.00), for conscious pain and suffering, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the Plaintiff may be entitled to and/or that the court finds is appropriate and/or equitable.

SECOND CAUSE OF ACTION
(WRONGFUL DEATH)

72. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

73. As a direct and proximate result of the negligence/recklessness described above, Margaret Becton sustained injuries that caused her untimely and wrongful death.

74. Margaret Becton's next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, R.C. 2125.01 et seq., including mental anguish and grief and loss of Decedent's society and companionship.

75. WHEREFORE, Plaintiff demands judgment against Defendants, in an amount more than $25,000.00 to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorneys' fees and expenses, and any other relief the court finds is appropriate and / or equitable.

THIRD CAUSE OF ACTION
(NURSING HOME RESIDENT RIGHTS VIOLATION R.C. 3721.13)

76. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

77. Defendants, directly or through their employees or agents, violated Margaret Becton's rights as a resident of the Defendants' facilities, as enumerated in Ohio Revised Code section 3721.13, including, but not limited to:

a. The right to a safe and clean living environment;

b. The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality;

c. The right to adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care;

d. The right to have clothes and bed sheets changed as the need arises, to ensure the resident's comfort or sanitation;

e. The right to participate in decisions that affect the resident's life;

f. The right to have any significant change in the resident's health status reported to the resident's sponsor.

78. These violations are evidence of negligence and conscious disregard of Margaret Becton's rights and safety and give rise to a statutory cause of action.

79. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Margaret Becton experienced conscious pain, suffering, and disability, and other harms and losses including death.

80. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount in excess of $25,000.00, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FOURTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

81. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

82. Defendants had an express agreement, mutual understanding, or tacit agreement to, and/or their agents maliciously combined efforts to:

g. defraud residents and their families by delivering wholly inadequate care, contrary to their promises;

h. systemically understaff their facilities in violation of federal regulations, and for the purposes of their own profit, at the expense of resident health and safety;

i. under-capitalize the facilities and syphon money to themselves and related entities for the purposes of their own profit at the expense of resident health and safety;

j. inflate resident RUG levels to obtain excessive and unjustified payments from Medicare and Medicaid while not providing the care paid for with these taxpayer dollars;

k. not provide the level of care, by understaffing the facility, paid for by taxpayer dollars;

l. misrepresenting to Medicare the staffing level of the facility to increase their rating; and

m. as otherwise may be described in the Complaint or learned through discovery.

83. This understanding constitutes a malicious combination to injure residents of the Facility, including Margaret Becton.

84. In pursuance of this common plan or design to commit tortious acts, the Defendants actively took part in it, or furthered it by cooperation or request, or lent aid or encouragement to the wrongdoers, or ratified and adopted the wrongdoers' acts done for their benefit.

85. The conspiracy caused injury to Margaret Becton.

86. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount in excess of $25,000.00, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FIFTH CAUSE OF ACTION
(FRAUD)

87. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

88. Defendants concealed facts concerning their staffing levels, pay, and the amount of care they were actually capable of providing at Altercare of Hartville Center for Rehabilitation & Nursing Home, Inc. aka Altercare Hartville.

89. Not only did Defendants conceal this information, but they publicly and privately represented that they provide exceptional services in an effort to induce the family of Margaret Becton and other potential customers to place their loved ones in their care and custody.

90. These inducements were made falsely, with knowledge of their falsity, or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred with the intent of misleading Margaret Becton's family and other potential customers into placing their loved ones in the care and custody of Defendants.

91. Margaret Becton's family and the family members of other potential customers reasonably relied on Defendants' representations and concealments regarding the degree of care they provide.

92. The result of these inducements and concealments was that Margaret Becton's family, and the family of numerous other residents, allowed their loved one to be placed in Defendants' facility.

93. As a direct and proximate result of Defendants' actions, representations, and concealments, Margaret Becton suffered conscious pain and suffering and death.

94. As a direct and proximate result of Defendants' action, representations, and concealments, Margaret Becton's next-of-kin have experienced harms and losses as a result of their death, including those damages set forth in Ohio's wrongful death statute, Ohio Revised Code section 2125.02 et seq.

95. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount in excess of Twenty-Five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and/or equitable.

A TRIAL BY JURY IS HEREBY DEMANDED

Respectfully Submitted,



MICHAEL A. HILL (0088130)
MOLLY B. MORRIS (0102510)
MICHAEL HILL TRIAL LAW
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michael.hill@protectseniors.com
molly.morris@protectseniors.com
Counsel for Plaintiff

STATE OF OHIO)
) **AFFIDAVIT OF MERIT**
)
CUYAHOGA COUNTY)

Affiant KAPIL GULATI, MD, having been first duly sworn, states:

1. I am an adult, have no known disability preventing my truthful testimony, and have personal knowledge of the matters contained within this affidavit.

2. I am a full-time practicing physician in the field Internal Medicine, licensed in the state of Ohio, board certified in Internal Medicine, spending more than 50% of my professional time providing direct patient care.

3. Through my specialized knowledge, skill, training, experience, and education, I am familiar with the standard of care applicable to the medical and nursing care and treatment that was provided to Margaret Becton while a resident of Altercare of Hartville Center for Rehabilitation and Nursing Care, Inc. in June 2023.

4. I have reviewed all medical records reasonably available to the Estate of Margaret Becton concerning the allegations contained in the complaint.

5. To a reasonable degree of medical probability, Altercare of Hartville Center for Rehabilitation and Nursing Care, Inc., TSG Nursing Centers, Inc., and Altercare of Ohio, Inc. breached the standard of care and the breach caused Margaret Becton's injuries and death.

FURTHER AFFIANT SAYETH NAUGHT.

KAPIL GULATI, MD

SWORN TO BEFORE ME and subscribed in my presence this 6th day of May, 2024.

NOTARY PUBLIC
Paper Dvorak
My commission has no expiration
Date pursuant to RC § 147.03