IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

THE ESTATE OF MARY LOU FRYE, DECEASED, Through Estate Representative Theresa Stott c/o Michael Hill Trial Law 815 Superior Avenue, Suite 623 Cleveland, Ohio 44114 Plaintiff, vs. MULBERRY GARDENS SENIOR LIVING AKA MUNROE FALLS ASSISTED LIVING OPCO, LLC 395 S. Main Street Munroe Falls, Ohio 44262 Also Serve c/o Registered Agent: Corporation Service Company 1160 Dublin Road, Suite 400 Columbus, Ohio 43215 and MUNROE FALLS ASSISTED LIVING, LLC c/o Registered Agent: Corporation Service Company 1160 Dublin Road, Suite 400 Columbus, Ohio 43215 and SH1 PORTLAND TRIO MGMT, LLC dba SINCERI SENIOR LIVING c/o Registered Agent: Cogency Global Inc. 3958 Brown Park Drive, Suite D Hilliard, Ohio 43026 and SH1 SHORELINE MGMT, LLC dba SINCERI SENIOR LIVING	CASE NO. JUDGE **COMPLAINT** **WITH JURY DEMAND AND AFFIDAVIT OF MERIT ATTACHED**

c/o Registered Agent:
Cogency Global Inc.
3958 Brown Park Drive, Suite D
Hilliard, Ohio 43026

and

JERRY ERWIN ASSOCIATES, LLC dba
SINCERI SENIOR LIVING
c/o Registered Agent:
Cogency Global Inc.
3958 Brown Park Drive, Suite D
Hilliard, Ohio 43026

and

ALTUS GROUP, LLC
c/o Registered Agent:
Bret Kravitz, Esq.
150 East Gay Street, Suite 2400
Columbus, Ohio 43215

and

VENTAS, INC.
c/o Registered Agent:
CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

ACCESS INDUSTRIES, INC.
40 West 57th Street, 28th Floor
New York, New York 10019

and

SERENITY HOSPICE, LLC
c/o Registered Agent:
Richard H. Carr
1446 Reynolds Road, Suite 220
Maumee, Ohio 43537

and

VERNON J. HERSHBERGER, MD

1255 Dearborn Drive)
Akron, Ohio 44313)
)
Defendants.)
)

Plaintiff, The Estate of Mary Lou Frye, through Estate Representative Theresa Stott, for this Complaint against the above-named Defendants, states and avers upon information and belief:

INTRODUCTION

1. This action involves multiple claims of medical negligence, recklessness, wrongful death, Ohio Resident's Rights Law violations, civil conspiracy and fraud involving Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC's ("Facility's") inadequate care of Mary Lou Frye and the corporate control of the facility leading to such inadequate care that led to Mary Lou Frye's injuries, pain and suffering, and her untimely and wrongful death on April 27, 2025.

2. This is a negligence case against Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC and Dr. Vernon Hershberger, MD for incorrectly entering and approving a prescription of Ativan, and administering Mary Lou Frye an excessive amount of Ativan that ultimately caused her death.

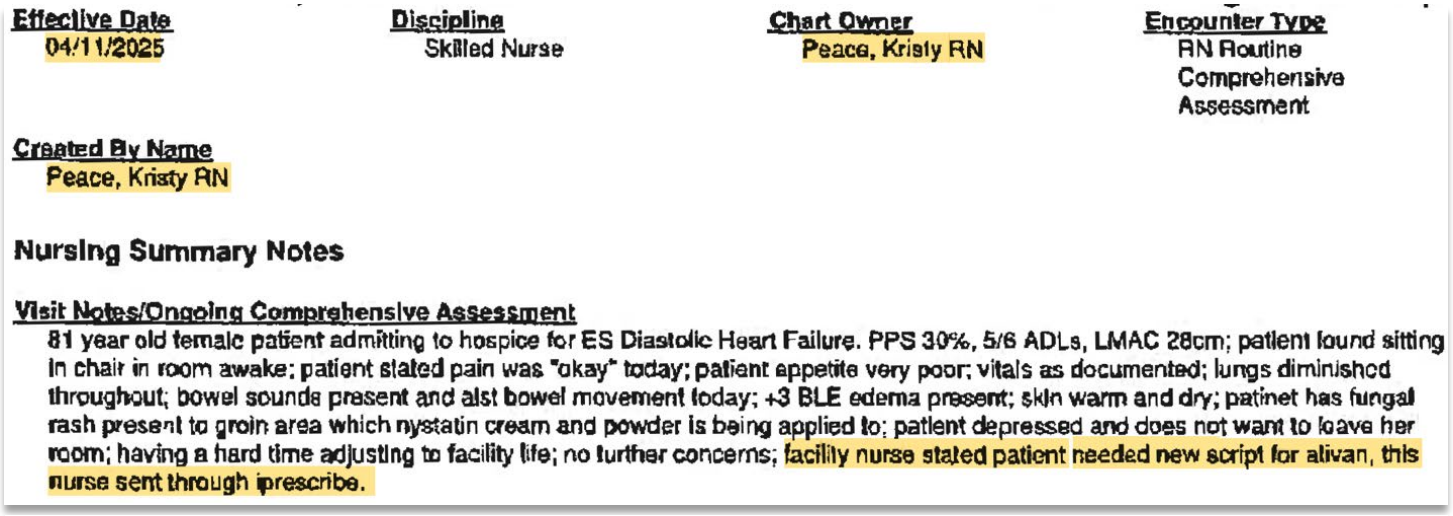
3. On March 18, 2025, Mary Lou Frye was admitted Mulberry Gardens Senior Living for long-term care.

4. While at Mulberry Gardens, Mary received hospice treatment; Serenity Hospice of Ohio was the provider for hospice services, and Dr. Vernon Hershberger, MD, was the hospice attending physician.

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5. From March 18, 2025 through April 10, 2025, Mary was reported to be doing well. On multiple occasions, she was described as greeting nursing staff and exhibiting a pleasant mood. She was noted to be lucid, oriented, and cooperative. Although she occasionally experienced shortness of breath requiring supplemental oxygen via nasal cannula, such use was limited to as-needed situations at bedtime.

6. On April 11, 2025, a nurse from Mulberry Gardens informed a Serenity Hospice nurse that Mary needed a new prescription of Ativan. This medication was necessary to treat anxiousness. The Serenity Hospice nurse sent a request for a new prescription through "iPrescribe" - an application that allows healthcare providers to securely prescribe medications directly from their devices.



Effective Date
04/11/2025

Discipline
Skilled Nurse

Chart Owner
Peace, Kristy RN

Encounter Type
RN Routine Comprehensive Assessment

Created By Name
Peace, Kristy RN

Nursing Summary Notes

Visit Notes/Ongoing Comprehensive Assessment

81 year old female patient admitting to hospice for ES Diastolic Heart Failure. PPS 30%, 5/6 ADLs, LMAC 28cm; patient found sitting in chair in room awake; patient stated pain was "okay" today; patient appetite very poor; vitals as documented; lungs diminished throughout; bowel sounds present and alst bowel movement today; +3 BLE edema present; skin warm and dry; patinet has fungal rash present to groin area which nystatin cream and powder is being applied to; patient depressed and does not want to leave her room; having a hard time adjusting to facility life; no further concerns; facility nurse stated patient needed new script for ativan, this nurse sent through iprescribe.

On April 11, 2025, at the request of a Mulberry Gardens nurse, a Serenity Hospice nurse sent a new prescription for Ativan through iPrescribe.

7. When entering this prescription, this Serenity Hospice nurse entered the Ativan as a "scheduled" medication, meaning it was ordered to be administered on a schedule – every four hours. In reality, the prescription should have ordered Ativan to be administered every four hours *as needed*.

8. The prescription was sent to Dr. Hershberger, who electronically signed it before it was sent to the pharmacy.

Ativan Oral Tablet 0.5 MG

Equivalent to: **Lorazepam Tab 0.5 MG**

Route: **Oral (by mouth)**

ADDED ON 04/12/2025

Adverse Effects: **Agranulocytosis, Anaphylaxis, Nonimmune Anaphylaxis, Pancytopenia, Psychosis, SIADH, Suicidal Ideation, Suicidal Tendencies, Asthenia, Dizziness**

NURSE ONLY

Instructions: **may take one whole o.5 mg tab as tolerated every 4 hours to swallow or under tongue if needed may crush or slurry if needed or unable to take whole may take one o.5mg tab every four hours x1 dose if not effective may take 0.5mg tab every hour prn anxiety sob until effective.**

Medication Tags:

Start Date: **04/12/2025**

Prescriber: **Hershberger, Vernon**

Diagnosis: **anxiety or sob**

PRN Administration	Date	Time	Dose	Purpose	Outcome	Staff
Ativan Oral Tablet 0.5 MG	04/14/2025	5:40 AM	1 MG	anxiety	no durther anxiety	SM1 88

Ativan Oral Tablet 0.5 MG

Equivalent to: **Lorazepam Tab 0.5 MG**

Route: **Oral (by mouth)**

ADDED ON 04/12/2025

Adverse Effects: **Agranulocytosis, Anaphylaxis, Nonimmune Anaphylaxis, Pancytopenia, Psychosis, SIADH, Suicidal Ideation, Suicidal Tendencies, Asthenia, Dizziness**

NURSE ONLY

Instructions: **may take one tab every hour 0.5mg if not effective given first order of one tab 0.5mg every 4 hours for anxiety or sob**

Medication Tags:

Start Date: **04/12/2025**

Prescriber: **Hershberger, Vernon**

Diagnosis: **anxiety or sob**

PRN Administration	Date	Time	Dose	Purpose	Outcome	Staff
Ativan Oral Tablet 0.5 MG	04/14/2025	5:40 AM	1 MG	anxiety	no durther anxiety	SM1 88

The Serenity Hospice nurse entered the Ativan as a "scheduled" medication to be administered every four hours, when it should have been ordered "as needed."

9. From April 13, 2025 at 8:00 a.m. until April 14, 2025 at 4:00 p.m., Mulberry Gardens nurses administered 0.5 milligrams of Ativan every four hours to Mary Lou Frye, rather than every four hours as needed. Ms. Frye received a total of nine doses of Ativan in the span of 33 hours.

10. On April 14, 2025, at 6:34 p.m., a Mulberry Gardens nurse recognized Mary's change in condition, and noted that she was "very hard to rouse and has done nothing but sleep today." She contacted Serenity Hospice and requested to have Mary's medications looked at, or have someone evaluate her.

04/14/2025 6:34 PM	Frye, Mary AL	THAYER, PATIENCE Charge Nurse	Type: Nurses Notes This nurse called Serenity Hospice. This nurse called to see if resident's Ativan order could be adjusted. Resident is very hard to rouse and has done nothing but sleep today. This nurse spoke to Lynn with Serenity Hospice. This nurse requested to have medications looked at or have someone come evaluate resident tomorrow. Lynn stated that she would send a message to on call provider and resident's case nurse. This nurse verbalized understanding.

After receiving 9 doses of Ativan in 33 hours, Mary was "very hard to rouse" and did nothing but sleep all day.

11. Less than ten minutes later, a Serenity Hospice nurse, Anthony Leonard, LPN, contacted the Mulberry Gardens nurse. The Mulberry Gardens nurse informed him that Mary's Ativan order needed to be modified because she was barely able to wake up all day. Anthony Leonard indicated the Ativan prescription should not have been ordered as a "scheduled" medication because Mary was not displaying any anxiousness.

04/14/2025 6:43 PM	Frye, Mary AL	THAYER, PATIENCE Charge Nurse	Type: Nurses Notes This nurse received a phone call from on call Hospice Nurse Anthony. Anthony stated that he needed clarification on what this nurse was asking for. This nurse explained that resident's Ativan order needed to be adjusted as resident was barley able to wake up all day. Anthony looked at resident's current orders of Ativan and stated that Ativan should not be scheduled as of yet as resident does not display any anxiousness. Anthony looked into chart notes as well and stated that he would reach out to case manager and notify of the issue to try to correct. This nurse verbalized understanding.

Anthony Leonard, LPN, a Serenity Hospice nurse, stated Mary's Ativan prescription should not have been ordered as a "scheduled" medication.

12. Anthony Leonard entered a visit note describing what happened. According to Anthony Leonard, the Serenity Hospice nurse that sent in the new Ativan order on April 11, 2025 "mistakenly" entered the order as a "scheduled" medication. This "mistake" was not recognized until the Mulberry Gardens nurse called in about Mary's condition. Anthony Leonard noted that he evaluated Mary, and that her "only change in condition" was increased drowsiness.

Visit Note

Effective Date
04/14/2025

Discipline
Skilled Nurse

Chart Owner
Leonardi, Anthony LPN

Encounter Type
Skilled Nurse Visit PRN

Created By Name
Leonardi, Anthony LPN

Visit Note Visit Type
Other

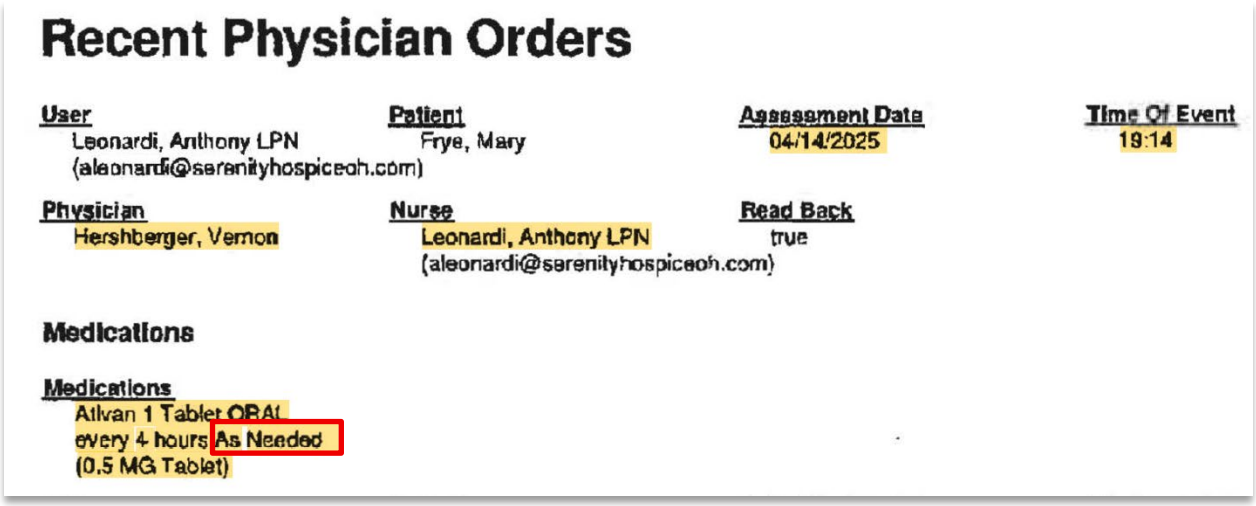
Note

PRN visit- Patient is an 81 year old female on hospice services for Unspecified diastolic (congestive) heart failure. Phone call received from facility nurse, Patience. Patience called in to clarify the patient's ativan order. Patience reported that she called last week requesting a script be sent to the pharmacy for the patient's PRN ativan order. The Serenity Hospice nurse mistakenly entered the order into IPrescribe as a "Scheduled" medication. The script was signed electronically by Dr. Hershberger and then sent to the pharmacy. The facility's pharmacy enters the orders for the facility per the prescriptions that are sent to them and so therefore, the pharmacy entered an order for "scheduled" ativan every 4 hours. Unbeknownst to the facility nurse on the following shift, she began giving the ativan as ordered "every 4 hours" starting at 0800 on 4/13/25. The patient's last dose of the ativan was given at 1600 today. Facility nurse, Patience noticed today that it seemed odd that the patient was getting the medication scheduled now as well as the patient is now very drowsy and slept most of the day today. The patient ended up getting 9 total doses of the scheduled ativan. At this time Patience called Serenity Hospice to clarify the order and that is when this nurse discovered that the medication was ordered "Scheduled" by mistake. This nurse spoke with the patient's daughter, Theresa and explained what happened and made a visit to assess the patient for any adverse affects and evaluate for possible need for intervention. When this nurse arrived to assess the patient, the patient was observed laying in bed sleeping comfortably. The patient woke easily to tactile stimuli and spoke coherently with this nurse. The patient verbalized that she is just very tired and is aware that she received the medication 5 times today and didn't know why it was being giving. The patient has no other complaints or concerns at this time and just requested to rest and hopefully sleep it off and feel back to normal tomorrow. The patient did allow this nurse to obtain vital signs which were within normal limits and at the patient's baseline. No new or worsening conditions observed at this time other than the increased drowsiness. This nurse called and notified Dr. Hershberger and got orders to discontinue the scheduled ativan and sent a prescription through IPrescribe for the PRN ativan order that was originally requested. Dr. Hershberger promptly signed it and it was sent to the pharmacy. After the visit this nurse updated the facility nurse, Heather with the new orders and on the patient's condition. Phone call with update made by this nurse to the patient's daughter, Theresa after the visit. No further concerns at this time. This nurse encouraged the daughter and the facility nurse to call Serenity Hospice with any needs, questions or concerns. RNCM, Kristy is scheduled to see the patient tomorrow.

Anthony Leonard documented that the new Ativan order on April 11, 2025 was "mistakenly" entered as a "scheduled" medication. He evaluated Mary, and stated that her "only change in condition" was increased drowsiness

13. Anthony Leonard notified Dr. Hershberger about the incorrect prescription, and a new order was placed to administer Mary the Ativan every four hours "as needed."

* *CONTINUED ON NEXT PAGE* *



Recent Physician Orders

User	Patient	Assessment Date	Time Of Event
Leonardi, Anthony LPN (aleonardi@serenityhospiceoh.com)	Frye, Mary	04/14/2025	19:14

Physician	Nurse	Read Back
Hershberger, Vernon	Leonardi, Anthony LPN (aleonardi@serenityhospiceoh.com)	true

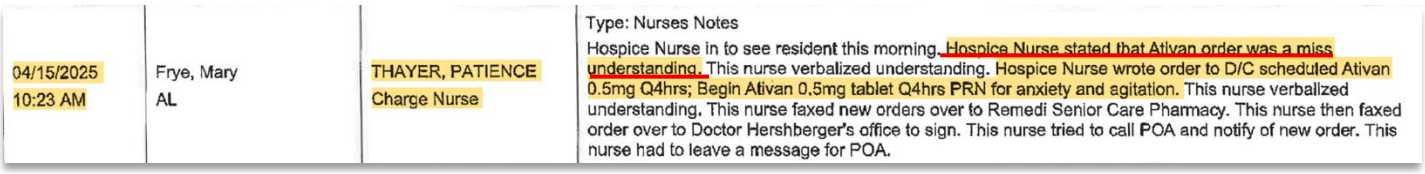
Medications

Medications

Ativan 1 Tablet ORAL every 4 hours As Needed (0.5 MG Tablet)

Anthony Leonard notified Dr. Hershberger about the incorrect prescription, and a new order was placed to administer Mary the Ativan every four hours "as needed."

14. On April 15, 2025, the Serenity Hospice nurse that sent in the April 11, 2025 Ativan order incorrectly came to Mulberry Gardens to check in on Mary. The Serenity Hospice nurse stated that the Ativan order was a "misunderstanding."



04/15/2025 10:23 AM	Frye, Mary AL	THAYER, PATIENCE Charge Nurse	Type: Nurses Notes Hospice Nurse in to see resident this morning. Hospice Nurse stated that Ativan order was a miss understanding. This nurse verbalized understanding. Hospice Nurse wrote order to D/C scheduled Ativan 0.5mg Q4hrs; Begin Ativan 0.5mg tablet Q4hrs PRN for anxiety and agitation. This nurse verbalized understanding. This nurse faxed new orders over to Remedi Senior Care Pharmacy. This nurse then faxed order over to Doctor Hershberger's office to sign. This nurse tried to call POA and notify of new order. This nurse had to leave a message for POA.

The Serenity Hospice nurse that incorrectly entered Mary's Ativan prescription stated it was a "misunderstanding."

15. Over the next few days, Mary showed signs of significant deterioration. She exhibited confusion, and began to hallucinate. On several occasions, Mary called out to her daughter, Terri, and son-in-law, Mike. At one point, she thought she was in her mother's house, and asked staff for her mother. Mary's oxygen was also significantly affected; rather than needing supplemental oxygen via nasal cannula on occasion, she required consistent oxygen.

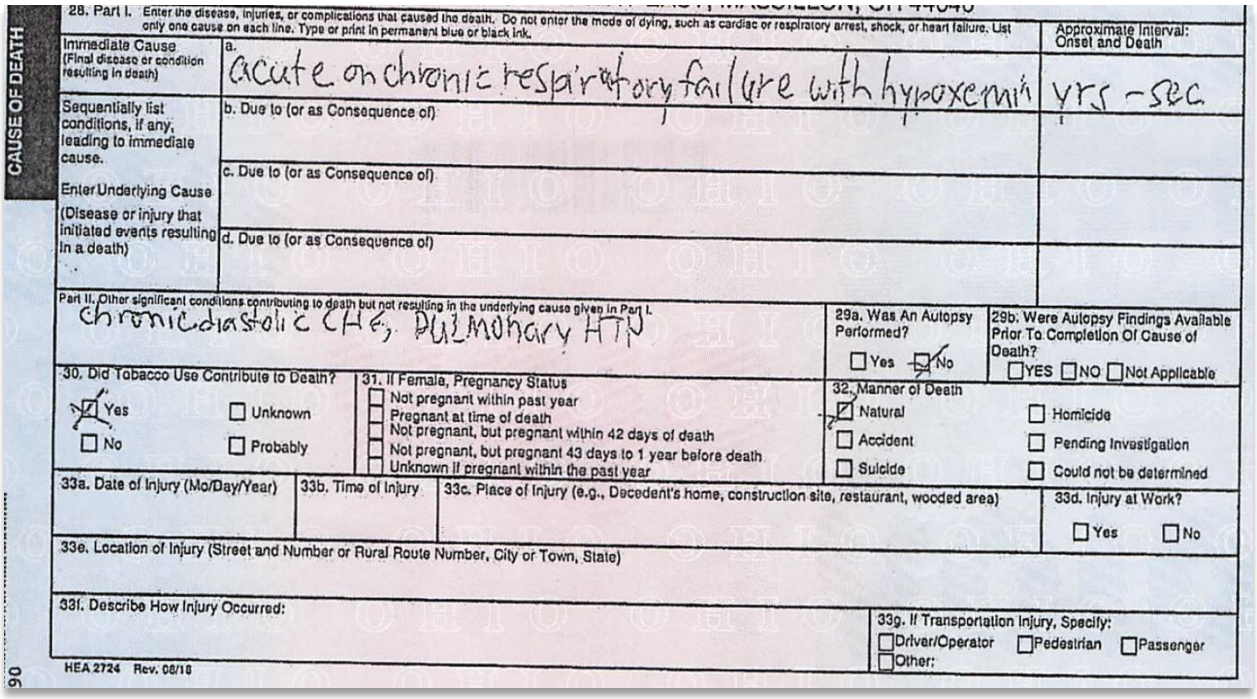
04/20/2025 6:05 PM	Frye, Mary AL	THAYER, PATIENCE Charge Nurse	Type: Nurses Notes This nurse was down the hall from resident when the following was observed: This nurse was down the hall by another resident's room when this nurse heard shouting. This nurse followed the shouting, "TERRI", "MICHAEL". This nurse followed the shouting to resident's room. This nurse stepped in to resident's room and asked what the matter was? Resident stated that she did not want to talk to this nurse as this nurse was keeping resident in her chair against her will. This nurse stated that resident has a hard time walking and should wait for staff RA's and this nurse to use hoyer lift. Resident stated her legs work just fine it is unfair for this nurse to confine resident to her chair. This nurse tried to explain that resident no longer walks. Resident demanded this nurse call POA. This nurse asked if resident would please put on her oxygen? Resident stated no not unless you call my POA. This nurse agreed to call POA. Resident was in distress and very labored breaths and agitated. This nurse gave resident a PRN ativan and morphine. This nurse came to nurses station and called POA. POA verbalized understanding of situation. POA called resident. POA came back to facility to help calm resident down. POA stayed with resident until resident fell asleep. POA has now left the building but would like to be notified if anything like this situation happens again. This nurse verbalized understanding.
04/21/2025 8:37 AM	Frye, Mary AL	Bertoni, D'Ann Licensed Practical Nurse (LPN)	Type: Nurses Notes Resident found by caregiver in front of chair. Resident's back was leaning up against the back of the chair. Resident stated she slipped out of the chair. Resident denies any pain or discomfort. 911 called and EMT's helped get resident back into chair. Resident confused and asking for her mother. She thinks she is at her mother's house. BP 196/114 P 93 R22 902 95%. Resident did not have oxygen when we first arrived in residents room. Oxygen applied. Hospice notified and daughter, Teresa. DAughter, Teresa said she will be coming in.
04/24/2025 3:13 AM	Frye, Mary AL	STOTT, LESA CHARGE NURSE	Type: Nurses Notes Staff reporting resident refusing to wear O2 and stating she wants out of the bed and out of the facility. Nurse went to resident's room and observed resident grasping O2 cord in hand and asked resident if she wanted something to help her sleep. Resident replied " I know what you are doing - I don't trust you if I could get out of this bed I would kill you." Resident was shaking both of her fists and her face was red with an angry look.
04/25/2025 10:30 AM	Frye, Mary AL	THAYER, PATIENCE Charge Nurse	Type: Nurses Notes Resident is keeping O2 therapy on. Resident is confused this morning stating she is looking for her car. Resident is calm at this time. This nurse notified CrossRoads Hospice that humidifier needs replaced. Kaylie with CrossRoads verbalized understanding. Resident is due to be seen by Hospice this afternoon in a few hours. This nurse verbalized understanding. Resident has call pendent on person.
04/26/2025 6:16 PM	Frye, Mary AL	Smith, Ellen Licensed Practical Nurse (LPN)	Type: Nurses Notes Resident condition has been declining through the day. Resident is no longer eating, and at this time is not taking liquids. Hospice called earlier in the day and 2 nurses came to see her. Prn Morphine has been administered during the day with good effect. Resident's family called and family members are visiting. Will continue to monitor Temperature: [98.1 F] Oxygen Levels: [93 %] Respiration: [22 bpm] Blood Pressure: [114/70 mmHg] Pulse: [112 bpm]
04/26/2025 2:24 AM	Frye, Mary AL	Marshall, Sophilea Licensed Practical Nurse (LPN)	Type: Nurses Notes Hospice was out from crossroads at 10 pm to check in or resident R" still having some confusion asking if "mike will be here later",no new orders written by hospice at this time said they will be back out again in the morning and night as well to do rounds and make sure r is ok and comfortable, with no more family concerns, from previous hospice company family now chose crossroads currently , safety checks in place, now resident currently sleeping soundly in recliner, no coughing or SOB observed currently. R keeping 02 on and spo2% 97 with ordered o2 on, Caretakers for this shift reminded to do frequent checks and check and changes at a min of 3 x per shift Caretakers voiced understanding of this. R is x 2 assist to perform routine chage and care. o ss of pain or distress noted no sob or cough noted while care being given, call pendant wi reach. Temperature: [98.2 F] Oxygen Levels: [97 %] Respiration: [18 bpm] Blood Pressure: [132/74 mmHg] Pulse: [88 bpm]

After receiving nine doses of Ativan in 33 hours, Mary Lou Frye began to deteriorate. She exhibited severe confusion and began to hallucinate that she was a different age, in a different location, and with different people. Mary's oxygen was also significantly affected; she now required consistent oxygen.

16. Mary Lou Frye never returned to her alert and oriented baseline after receiving this excessive amount of Ativan.

17. On April 27, 2025, less than two weeks after she was "mistakenly" administered nine doses Ativan in 33 hours, Mary Lou died surrounded by her children.

18. Mary Lou Frye's Death Certificate lists her immediate cause of death as "acute chronic respiratory failure with hypoxemia."



28. Part I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Type or print in permanent blue or black ink.

CAUSE OF DEATH

		Approximate Interval: Onset and Death
Immediate Cause (Final disease or condition resulting in death)	a. acute on chronic respiratory failure with hypoxemia	yrs -sec
Sequentially list conditions, if any, leading to immediate cause. Enter Underlying Cause (Disease or injury that initiated events resulting in a death)	b. Due to (or as Consequence of)	
	c. Due to (or as Consequence of)	
	d. Due to (or as Consequence of)	

Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.
chronic diastolic CHF, Pulmonary HTN

29a. Was An Autopsy Performed? ☐ Yes ☒ No

29b. Were Autopsy Findings Available Prior To Completion Of Cause of Death? ☐ YES ☐ NO ☐ Not Applicable

30. Did Tobacco Use Contribute to Death? ☒ Yes ☐ No ☐ Unknown ☐ Probably

31. If Female, Pregnancy Status
☐ Not pregnant within past year
☐ Pregnant at time of death
☐ Not pregnant, but pregnant within 42 days of death
☐ Not pregnant, but pregnant 43 days to 1 year before death
☐ Unknown if pregnant within the past year

32. Manner of Death
☒ Natural ☐ Homicide
☐ Accident ☐ Pending Investigation
☐ Suicide ☐ Could not be determined

33a. Date of Injury (Mo/Day/Year)	33b. Time of Injury	33c. Place of Injury (e.g., Decedent's home, construction site, restaurant, wooded area)	33d. Injury at Work?
			☐ Yes ☐ No

33e. Location of Injury (Street and Number or Rural Route Number, City or Town, State)

33f. Describe How Injury Occurred:

33g. If Transportation Injury, Specify: ☐ Driver/Operator ☐ Pedestrian ☐ Passenger ☐ Other:

HEA 2724 Rev. 08/18

Mary Lou Frye's immediate cause of death was "acute chronic respiratory failure with hypoxemia."

19. Plaintiff requests a trial by jury.

20. An Affidavit of Merit is attached.

21. Plaintiff reserves the right to amend this Complaint to add additional parties pursuant to Ohio Revised Code Section 2323.451(D)(1)-(2).

22. 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,

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or intentional misconduct or willful or wanton misconduct, and other wrongful conduct described herein or discovered during litigation.

23. Plaintiff seeks punitive damages in an amount necessary to punish the above-named Defendants and deter the Defendants from engaging in similar conduct in the future, attorneys' fees, and the costs of this litigation.

DEFENDANTS

24. Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

25. Munroe Falls Assisted Living, LLC 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

26. SH1 Portland Trio Mgmt, LLC dba Sinceri Senior Living is a Delaware 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

27. SH1 Shoreline Mgmt, LLC dba Sinceri Senior Living is a Delaware 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,

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operatives and / or employees and does business as Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

28. Jerry Erwin Associates, LLC dba Sinceri Senior Living is a Washington 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

29. Altus Group, LLC 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

30. Ventas, Inc. is a Delaware 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

31. Access Industries, Inc. is a New York 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 Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

32. Serenity Hospice, LLC 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

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and does business as Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

33. Vernon J. Hershberger, MD is a physician licensed to practice in the State of Ohio, who provided clinical oversight at Mulberry Gardens and was responsible for providing medical services in accordance with the standard of care.

34. Defendants Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC, Munroe Falls Assisted Living, LLC, SH1 Portland Trio MGMT, LLC dba Sinceri Senior Living, SH1 Shoreline MGMT, LLC dba Sinceri Senior Living, Jerry Erwin Associates, LLC dba Sinceri Senior Living, Altus Group, LLC, Ventas, Inc., and Access Industries, Inc., will be referred to collectively as "Sinceri Defendants."

35. Defendants Serenity Hospice, LLC, and Vernon J. Hershberger, MD, will be referred to collectively as "Hospice Defendants."

36. The Defendants employ, manage, and direct the care and service providers who were responsible for Mary Lou Frye's care, treatment, and safety at Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC 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 Mary Lou Frye's injuries.

37. The Sinceri 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.

38. The Sinceri Defendants control 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

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to disregard the corporate entity; and injury or unjust loss resulted to the plaintiff from such control and wrong, meaning the Sinceri Defendants should be held directly liable for such harms and losses.

39. The Sinceri Defendants collectively own, manage, control, and/or are responsible for the care delivered to residents of Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC directly or through their domination and control of any putative entity license holder.

VICARIOUS LIABILITY

40. The Defendants employ the care providers who were responsible for ensuring Mary Lou Frye's care and safety.

41. The Defendants manage, control, and/or employ the bedside care, nursing, and/or medical care staff at the Facility.

42. Mary Lou Frye and their family looked to the Defendants for care based upon their representations.

43. 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 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

44. This Court has Jurisdiction over Defendants because, among other things, 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.

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45. Venue is proper in Summit County, Ohio under Civil Rule 3(B) because, among other reasons: (a) one or 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

46. Defendants hold themselves out to the public as medical and nursing providers at a residential care facility, also known as an assisted living facility.

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

48. For residential care facilities, 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.

49. The Sinceri Defendants manage, control, and / or employ the nursing staff, licensed aides, and unlicensed caregivers at the Facility.

50. The Sinceri 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;

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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. medication administration systems, including medication ordering software and/or medication storage and dispensation systems;

j. financial control systems, including budgeting and payment processing;

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

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

51. As the result of this control, the Sinceri 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 Mary Lou Frye, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

52. Sinceri Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that the facilities were sufficiently staffed to meet the individual needs of its residents, including Mary Lou Frye.

53. Sinceri Defendants engaged in a systemic practice to understaff the facilities to maximize profits at the expense of its residents' care.

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54. This lack of sufficient staff directly resulted in Mary Lou Frye not receiving basic and necessary services to prevent, among other things, neglect leading to their injuries and wrongful death.

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

a. Barberton Pointe Senior Living
487 Austin Drive, Barberton, Ohio 44203

b. Broadway Creek Senior Living
1046 N. Jefferson Street, Medina, Ohio 44256

c. Kessler Estates Senior Living
2075 N. Eastown Road, Lima, Ohio 45807

d. Lorain Estates Senior Living
3290 Cooper Foster Park Road, Vermilion, Ohio 44089

e. Magnolia Springs Loveland
767 Loveland-Miamiville Road, Loveland, Ohio 45140

f. Medina Pointe Senior Living
49 N Jefferson Street, Medina, Ohio 44256

g. Ontario Estates Senior Living
2010 Walker Lake Road, Ontario, Ohio 44906

h. Shawnee Estates Senior Living
60 Paceline Court, Xenia, Ohio 45385

i. Stoney Ridge Senior Living
8630 Washington Church Road, Miamisburg, Ohio 45342

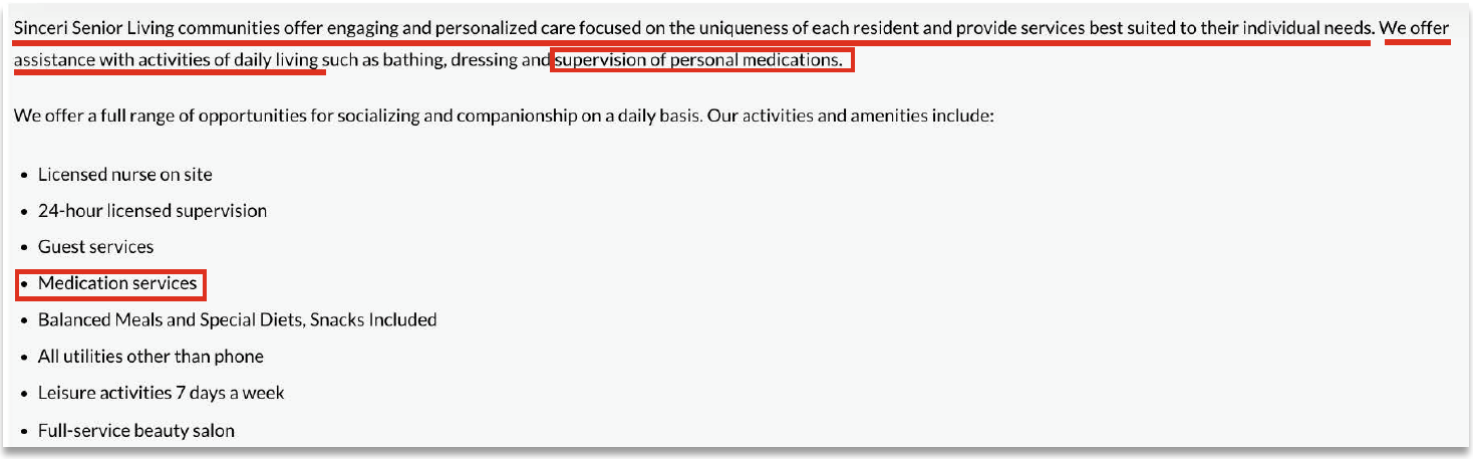
j. The Estates at Knightsbridge
4590 Knightsbridge Boulevard, Columbus, Ohio 43214

k. Westlake Pointe Senior Living
27569 Detroit Road, Westlake, Ohio 44145

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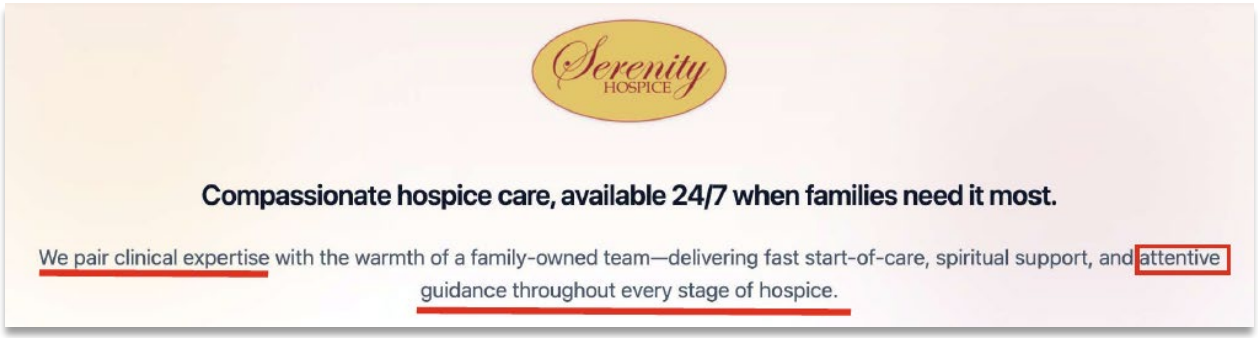
Misleading Advertising

56. In an effort to persuade the families of patients to become customers, Sinceri 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.



Sinceri Senior Living advertises Mulberry Gardens as an assisted living facility that offers personalized care for each resident, including supervision of personal medications.

This information was taken from https://sinceriseniorliving.com/mulberry-gardens-al/assisted-living/ on April 14, 2026.



57. 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 actually the practice of the Sinceri Defendants with regard to staffing the Facility.

Serenity Hospice advertises compassionate and attentive care.

This information was taken from https://www.serenityhospiceoh.com/ on April 14, 2026.

58. 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.

59. In truth, Sinceri Defendants operated the Facility, as they operated all of their many assisted living facilities with the goal to improve margins by increasing occupancy rates while using "expense discipline" according to their own CEO, Chris Belford:

"Our 2024 goal in a nutshell is margin improvement through occupancy and top-line growth and expense discipline with different offerings," Belford said.

Statement of Chris Belford, CEO of Sinceri Senior Living, the entity owning and controlling the Defendants and Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC, quoted in an article titled "Sinceri Senior Living Deepens Focus on Margins After 7 Quarters of NOI Growth" published on the company's website.

Accessed at https://sinceriseniorliving.com/sinceri-senior-living-deepens-focus-on-margins-after-7-quarters-of-noi-growth/ on April 19, 2026.

Systemic Understaffing and Mary Lou Frye's Care

60. The Sinceri Defendants' "expense discipline" included cutting costs such as staffing and training of the staff at their facilities, including Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC.

61. Sinceri Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC was sufficiently staffed, and the staff appropriately trained and informed, to meet the individual needs of Mary Lou Frye during the period she was a resident at the facility.

62. Sinceri Defendants engaged in a systemic practice to understaff Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC, and choosing not to provide adequate and appropriate training on medication administration, to maximize profits at the expense of its residents' care.

63. This lack of sufficient staff and appropriate training directly resulted in Mary Lou Frye not receiving basic and necessary services, assessments, and interventions to prevent, among other things, neglect leading to their injuries at Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC during the period they were a resident at the Facility.

Defendants' Negligence and Recklessness with Mary Lou Frye

64. Defendants accepted Mary Lou Frye as an assisted living resident and/or hospice patient for long-term care.

65. Defendants agreed to accept Mary Lou Frye into their facility and/or under their care as a hospice patient to provide care to her in exchange for monetary payment.

66. On April 11, 2025, a Serenity Hospice nurse negligently and incorrectly entered an Ativan prescription into the iPrescribe system as a scheduled medication to be administered every four hours, rather than properly ordering it to be administered every four hours as needed.

67. On April 11, 2025, Defendant Dr. Vernon Hershberger, MD, approved and electronically signed the erroneous Ativan order without adequately reviewing its accuracy, appropriateness, or necessity.

68. From April 13, 2025 at 8:00 a.m. through April 14, 2025 at 4:00 p.m., Mulberry Gardens nursing staff negligently administered Ativan to Mary Lou Frye on a

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fixed every-four-hour schedule, resulting in the administration of 9 doses totaling an excessive amount over a 33-hour period.

69. During this same period, Defendants failed to recognize, question, or intervene upon the clearly excessive and unnecessary administration of a sedating medication to a hospice patient who was not exhibiting symptoms warranting such scheduled dosing.

70. Despite clear signs of oversedation on April 14, 2025, Defendants failed to timely discontinue or promptly correct the improper medication order prior to the administration of multiple unnecessary doses.

71. On April 14, 2025, Serenity Hospice personnel, including Anthony Leonard, LPN, acknowledged that the Ativan order had been "mistakenly" entered as a scheduled medication and should not have been ordered as such, thereby confirming that the prescription was improper and unsafe from its inception.

72. Mary Lou Frye suffered a permanent decline from her prior baseline, never regained her alert and oriented condition, and ultimately died on April 27, 2025, from acute chronic respiratory failure with hypoxemia as a direct result of the foregoing negligent acts and omissions.

73. As a direct and consequence of Defendants' negligence, Mary Lou Frye suffered conscious pain and suffering and death.

FIRST CAUSE OF ACTION
(MEDICAL NEGLIGENCE / RECKLESSNESS)

74. Plaintiffs incorporate all other paragraphs of this Complaint as if fully rewritten herein.

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75. Mary Lou Frye depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

76. The Defendants had a duty to provide proper care and treatment to Mary Lou Frye and to avoid causing injury to Mary Lou Frye.

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

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

a. choosing to provide inadequate resident observation, supervision, and monitoring;

b. choosing to provide improper training to staff members regarding resident monitoring, assessment, response, treatment, and medication administration;

c. 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 Mary Lou Frye;

d. choosing to enter orders for sedative medication which were unsafe, excessive, and which led to an overdose;

e. choosing to violate orders relating to care of Mary Lou Frye;

f. failing to ensure the rights and safety of its residents, including Mary Lou Frye, as required by Ohio and federal regulations;

g. choosing not to provide appropriate care to Mary Lou Frye while she was a resident of the Facility; and

h. such other acts or omissions described in this Complaint or discovered in litigation.

79. These actions constituted a conscious disregard for Mary Lou Frye's rights and safety with a great probability of causing substantial harm from this misconduct, by

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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.

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

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

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

83. The Defendants and their medical and nursing staff provided care to Mary Lou Frye that fell below the standard of care expected of medical care and residential care facilities, under the same or similar circumstances.

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

85. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars ($25,000.00), for conscious pain

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and suffering, loss of enjoyment, loss of consortium, together with costs of suit, attorneys' 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
(RESIDENTS' RIGHTS VIOLATION R.C. 3721.13)

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

87. Defendants, directly or through their employees or agents, violated Mary Lou Frye's rights as a resident of the Facility 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 adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care;

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

d. the right to participate in decisions that affect the resident's life; and

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

88. These violations are evidence of negligence and conscious disregard of Mary Lou Frye's rights and safety and give rise to a statutory cause of action.

89. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Mary Lou Frye suffered conscious pain, suffering, disability, and other harms and losses

90. WHEREFORE, Plaintiffs demand 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, loss of consortium, together with costs of suit, attorneys'

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fees and expenses, punitive and exemplary damages, and any other relief to which the Plaintiffs may be entitled to and/or that the Court finds is appropriate and/or equitable

THIRD CAUSE OF ACTION
(WRONGFUL DEATH)

91. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten therein.

92. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute, Ohio Revised Code section 2125 *et seq*., for the benefit of Mary Lou Frye's heirs and next of kin who have suffered loss and damage due to Mary Lou Frye's wrongful and untimely death.

93. As a direct and proximate result of the negligence/recklessness described above, Mary Lou Frye sustained physical injuries that caused their untimely and wrongful death.

94. Mary Lou Frye's next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, including mental anguish and grief, medical and funeral expenses, and loss of Decedent's support, services, society, and companionship.

95. 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, exemplary damages, and any other relief the court finds is appropriate and / or equitable fourth Cause of Action

FOURTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

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

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97. Sinceri Defendants and unknown additional potential co-conspirators had an express agreement, mutual understanding, or tacit agreement to, and/or their agents maliciously combined efforts to:

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

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

c. systemically provide inadequate training and education to the caregivers and nursing staff of their facilities in violation of regulations, and for the purposes of their own profit at the expense of resident health and safety;

d. 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;

e. not providing the level of care, by understaffing the facility, paid for by taxpayer dollars; and

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

98. This understanding constitutes a malicious combination to injure residents of the Sinceri Defendants' Facility, including Mary Lou Frye.

99. In pursuance of this common plan or design to commit tortious acts, the Sinceri 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.

100. The conspiracy caused injury to Mary Lou Frye, including death.

101. The negligent and / or reckless and / or fraudulent acts of the Sinceri Defendants constitute unlawful acts independent from the conspiracy itself.

102. WHEREFORE, Plaintiff prays for judgment against Sinceri Defendants, for damages in an amount of more than Twenty-Five Thousand Dollars ($25,000.00),

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together with punitive and exemplary damages, attorney fees and expenses, fees, interest, and costs incurred in this action, and any other relief this Court deems just and equitable to compensate Plaintiffs for the damages and injuries suffered.

FIFTH CAUSE OF ACTION
(FRAUD)

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

104. Sinceri Defendants concealed facts concerning their staffing levels, pay, resident injuries including falls, infections, medication misadministration and/or overdoses, neglect, abuse, and death, and the amount of support and services they were actually capable of providing at their assisted living facilities, including the Facility.

105. Not only did Sinceri Defendants conceal this information, they publicly and privately represented that they provide exceptional services in an effort to induce Mary Lou Frye and/or her family and other potential customers to place their loved ones and/or permit them to remain in their care and custody.

106. 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 Mary Lou Frye and/or her family and other potential customers to place their loved ones and/or permit them to remain in Sinceri Defendants' care and custody.

107. Mary Lou Frye and/or her family and other potential and current customers and their families reasonably relied on Defendants' representations and concealments regarding the degree of services and support they provide.

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108. The result of these inducements and concealments was that Mary Lou Frye and/or her family and numerous other potential and current customers and their families, allowed their loved one to be placed or remain in Sinceri Defendants' facilities including the Facility.

109. As a direct and proximate result of Sinceri Defendants' actions, representations, and concealments, Mary Lou Frye suffered injuries, conscious pain and suffering, and death.

WHEREFORE, Plaintiff demands judgment against the Sinceri 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,

/s/ Matthew A. Mooney

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www.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 of 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 Mary Lou Frye while a resident of Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC, Munroe Falls Assisted Living, LLC, SH1 Portland Trio MGMT, LLC dba Sinceri Senior Living, SH1 Shoreline MGMT, LLC dba Sinceri Senior Living, Jerry Erwin Associates, LLC dba Sinceri Senior Living, which are owned by Altus Group, LLC, Ventas, Inc., and Access Industries, Inc. At the time she was also under the care of Serenity Hospice, LLC, and Vernon J. Hershberger, MD.

4. I have reviewed all medical records reasonably available to the Estate of Mary Lou Frye, Deceased, concerning the allegations contained in the complaint.

5. To a reasonable degree of medical probability, the Defendants, Mulberry Gardens Senior Living aka Munroe Falls Assisted Living OPCO, LLC, Munroe Falls Assisted Living, LLC, SH1 Portland Trio MGMT, LLC dba Sinceri Senior Living, SH1 Shoreline MGMT, LLC dba Sinceri Senior Living, Jerry Erwin Associates, LLC dba Sinceri Senior Living, Altus Group, LLC, Ventas, Inc., Access Industries, Inc. Serenity Hospice, LLC, and Vernon J. Hershberger, MD, breached the standard of care and the breach caused Mary Lou Frye's injuries and untimely death

FURTHER AFFIANT SAYETH NAUGHT.

Kapil Gulati
KAPIL GULATI, MD

SWORN TO BEFORE ME and subscribed in my presence this 13th day of April, 2026.

NOTARY PUBLIC Beth Dvorak
My commission has no expiration date pursuant to

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