

NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
August 9, 2024 13:25

By: MATTHEW A. MOONEY 0093332

Confirmation Nbr. 3242030

ESTATE OF MARY GRANT, DECEASED — CV 24 101958

vs.

Judge: NANCY A. FUERST

HARVARD GARDENS REHABILITATION AND CARE CEN, ET AL

Pages Filed: 26

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF MARY GRANT, DECEASED Through Special Administrator, Nicholas D. Laudato c/o Michael Hill Trial Law 816 Superior Avenue, Suite 623 Cleveland, Ohio 44114 Plaintiff, vs. HARVARD GARDENS REHABILITATION AND CARE CENTER AKA WP OPERATING, LLC 18810 Harvard Ave Cleveland, Ohio 44122 Also Serve c/o Registered Agent: Registered Agents, Inc. 6545 Market Avenue N, Ste 100 North Canton, Ohio 44721 and WP OPERATING, LLC FKA EMBASSY WILLOW PARK, LLC c/o Registered Agent: Registered Agents Inc. 6545 Market Avenue N, Ste 100 North Canton, Ohio 44721 and EMBASSY HEALTHCARE, INC. c/o Registered Agent: Eric M. Simon 200 Public Square, Suite 3500 Cleveland, Ohio 44114 and EMBASSY HEALTHCARE HOLDINGS, INC.	CASE NO. JUDGE **COMPLAINT** **WITH JURY DEMAND** **MOTION TO EXTEND DEADLINE TO FILE AFFIDAVIT OF MERIT FILED CONCURRENTLY**

Electronically Filed 08/09/2024 13:25 / / CV 24 101958 / Confirmation Nbr. 3242030 / CLPXC

c/o Registered Agent:
Nicholas Ciccone
25201 Chagrin Blvd., Ste. 190
Beachwood, Ohio 44122

and

EMBASSY HEALTHCARE MANAGEMENT, INC.
c/o Registered Agent:
Eric M. Simon
200 Public Square, Suite 3500
Cleveland, Ohio 44114

and

WILLOW PARK J-DEK, LLC
c/o Registered Agent:
U-B Corporation
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113

and

HAITHAM AZEM, MD
88 Center Road #130
Bedford, OH 44146

and

ARIANE COYLE, NP
7440 Woodland Dr.
Indianapolis, IN 46278-1720

and

OPTUM CARE NETWORKS, INC.
c/o Registered Agent:
CT Corporation System
4400 Easton Commons Way, Suite 125
Columbus OH 43219

Defendants

Plaintiff, the Estate of Mary Grant, Deceased, through Special Administrator, Nicholas D. Laudato, for this Complaint against the above-named Defendant(s), 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC's ("Facility's") inadequate care of Mary Grant and the corporate control of the facility leading to such inadequate care that led to Mary Grant's untimely and wrongful death on August 19, 2023.

2. The Facility, Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC ("Harvard Gardens"), their corporate owners, and Haitham Azem, MD, injured and caused the death of 70-year-old Mary Grant.

3. On February 28, 2019, Ms. Grant was admitted to Harvard Gardens for long-term care for dementia. Upon admission, the facility was aware that Ms. Grant was at a heightened risk for falls.

4. On August 17, 2023, the staff of Harvard Gardens negligently struck Ms. Grant with a laundry cart as she was sitting in her wheelchair near the nurses' station. Ms. Grant fell out of her chair to the floor, striking her head and injuring her left knee.

5. Ms. Grant's family requested that Ms. Grant be transported to the hospital for evaluation to ensure that she did not have a concussion. The Facility denied the family's request, and Ms. Grant's doctor, Dr. Azem stated that she did not need to go to the emergency room.

6. At around 9pm on August 18, 2023, Harvard Gardens' staff found Ms. Grant in her room nauseous, short of breath, and with critically low blood oxygen saturation levels indicating problems with her lung function. Instead of calling 911, Harvard Gardens' staff contacted the nurse practitioner, Ariane Coyle, NP, with Optum Care Networks, Inc. Ms. Coyle did not order Ms. Grant to go to the hospital, but instead ordered a STAT chest X-ray and to place Ms. Grant on a non-rebreather oxygen mask. Ms. Coyle also ordered monitoring of Ms. Grant's vital signs every 4 hours for the next 24 hours.

7. At about 12:15pm on August 19, 2023, Harvard Gardens' staff found Ms. Grant unresponsive in her bed, not breathing and with no detectable blood pressure. EMS was called and pronounced Ms. Grant dead at the scene.

8. The family of Ms. Grant requested an autopsy, however were advised by Dr. Haitham Azem – Ms. Grant's primary care provider – that an autopsy would not be performed. Dr. Azem then completed the death certificate for Ms. Grant, making no mention of the fall two days prior to her death or the respiratory distress the evening before her death.

9. Plaintiff requests a trial by jury.

10. 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

11. Harvard Gardens Rehabilitation & Care Center aka WP Operating, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

12. WP Operating, LLC Fka Embassy Willow Park, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

13. Embassy Healthcare, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

14. Embassy Healthcare Holdings, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

15. Embassy Healthcare Management, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

16. Willow Park J-Dek, 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 Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

17. Defendant, Haitham Azem, MD, is a physician licensed to practice medicine in the State of Ohio, who provided clinical oversight at Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC and was responsible for providing treatment in accordance with the standard of care and who provided care to Mary Grant during the time frame that the allegations in the Complaint arose.

18. Defendant, Ariane Coyle, NP, is a nurse practitioner licensed in advanced practice nursing in the State of Ohio, who provided clinical oversight at Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC and was responsible for providing treatment in accordance with the standard of care and who provided care to Mary Grant during the time frame that the allegations in the Complaint arose.

19. Defendant Optum Health Networks, Inc., is a provider of medical and advanced practice nursing services, at all times relevant was the employer of Ariane Coyle, NP, was contracted to provide clinical oversight at Harvard Gardens

Electronically Filed 08/09/2024 13:25 / / CV 24 101958 / Confirmation Nbr. 3242030 / CLPXC

Rehabilitation & Care Center aka WP Operating, LLC, and was responsible for providing treatment in accordance with the standard of care and who provided care to Mary Grant during the time frame that the allegations in the Complaint arose.

20. Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC, WP Operating, LLC Fka Embassy Willow Park, LLC, Embassy Healthcare, Inc., Embassy Healthcare Holdings, Inc., Embassy Healthcare Management, Inc., and Willow Park J-Dek, LLC (collectively, "Harvard Gardens Defendants") employ, manage, and direct the care and service providers who were responsible for Mary Grant's care, treatment, and safety at Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC while they were 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 Grant's injuries and untimely and wrongful death on August 19, 2023.

21. The Harvard Gardens 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.

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

23. The Harvard Gardens Defendants collectively own, manage, control, and/or are responsible for the care delivered to residents of Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC directly or through their domination and control of any putative entity license holder.

VICARIOUS LIABILITY

24. The Harvard Gardens Defendants employ the care providers who were responsible for ensuring Mary Grant's care and safety.

25. The Harvard Gardens Defendants manage, control, and/or employ the nursing staff at the Facility.

26. The Harvard Gardens Defendants contracted with Dr. Azem to provide care to its residents, including Mary Grant.

27. Mary Grant and their family looked to the Defendants for care based upon their representations.

28. The Harvard Gardens 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

29. This Court has Jurisdiction over Defendant(s) because, among other things, all Defendant(s) 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.

Electronically Filed 08/09/2024 13:25 / / CV 24 101958 / Confirmation Nbr. 3242030 / CLPXC

30. Venue is proper in Cuyahoga 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

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

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

33. 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.

34. The Harvard Gardens Defendants manage, control, and / or employ the nursing staff at Facility.

35. The Harvard Gardens 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;

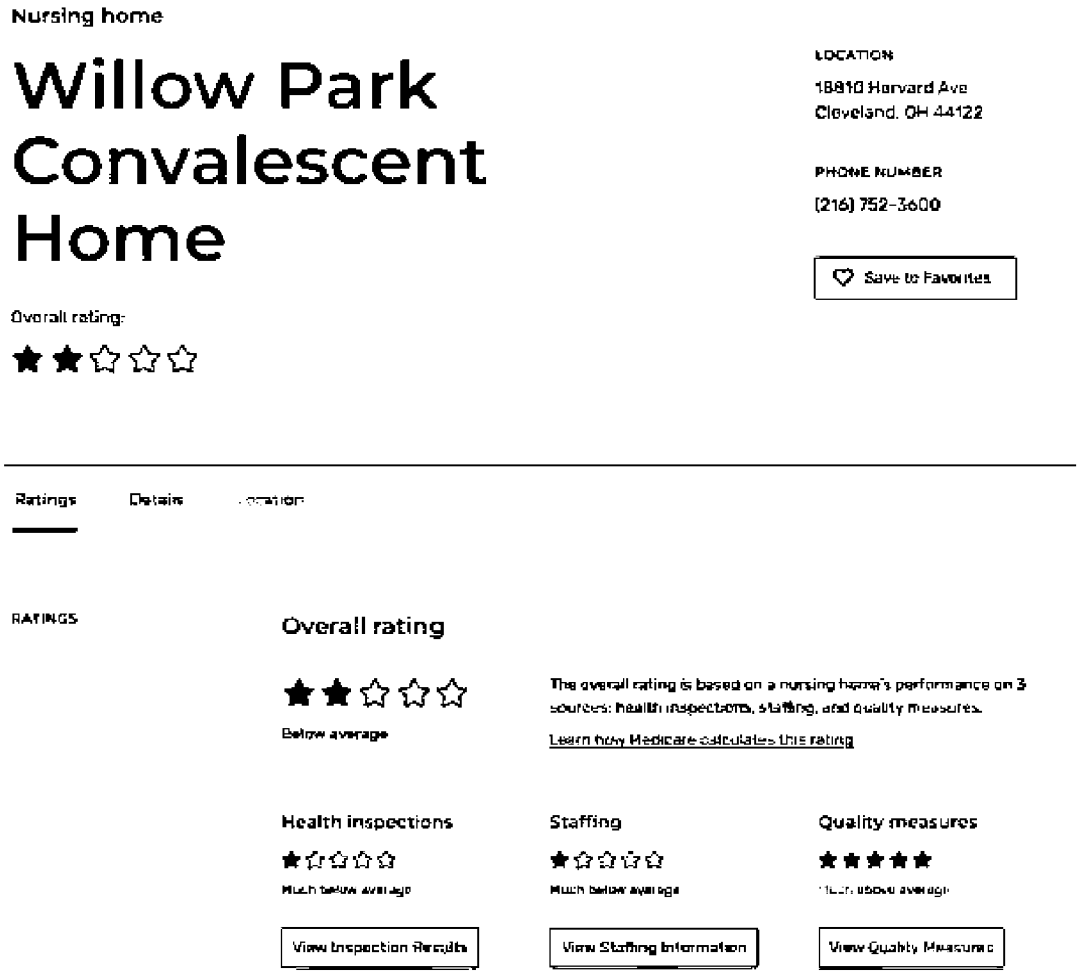
k. Reporting procedures, including reporting to Medicare as to individual resident care and facility-wide issues.

36. As the result of this control, the Harvard Gardens 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 Grant, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

37. Harvard Gardens 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 Grant.

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

39. The Harvard Gardens 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 2-star overall ranking.



According to the Centers for Medicare and Medicaid, Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC earned a 1-star, or "much below average" rating for both Staffing and Health Inspections. This data was taken directly from medicare.gov on June 20, 2024

40. This lack of sufficient staff directly resulted in Mary Grant not receiving basic and necessary services to prevent, among other things, neglect leading to their

injuries and death.

41. 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. Autumnwood Nursing & Rehab Center
275 East Sunset Drive, Rittman, OH 44270

b. Carlisle Manor Health Care Inc
730 Hillcrest Drive, Carlisle, OH 45005

c. Crystal Care Center Of Ashland
1251 East Main Street, Ashland, OH 44805

d. Embassy Of Cambridge
1471 Wills Creek Valley Drive, Cambridge, OH 43725

e. Embassy Of Euclid
3 Gateway Dr, Euclid, OH 44119

f. Embassy Of Logan
300 Arlington Avenue, Logan, OH 43138

g. Embassy Of Lyndhurst
1575 Brainard Rd, Lyndhurst, OH 44124

h. Embassy Of Marion
175 Community Drive, Marion, OH 43302

i. Embassy Of Newark
75 Mcmillen Drive, Newark, OH 43055

j. Embassy Of Painesville
70 Normandy Dr, Painesville, OH 44077

k. Embassy Of Swanton
214 S Munson Rd, Swanton, OH 43558

l. Embassy Of Valley View
3363 Ragged Ridge Road, Frankfort, OH 45628

m. Forest Hills Center
2841 East Dublin Granville Road, Columbus, OH 43231

n. Grande Oaks
24579 Broadway Ave, Oakwood Village, OH 44146

o. Heritage Health Care Center
24613 Broadway Avenue, Oakwood Village, OH 44146

p. Longmeadow Care Center
565 Bryn Mawr, Ravenna, OH 44266

q. Madison Health Care
7600 S Ridge Rd, Madison, OH 44057

r. Oak Hills Nursing Center
3650 Beavercrest Drive, Lorain, OH 44053

s. Parkside Nursing And Rehabilitation Center
908 Symmes Road, Fairfield, OH 45014

t. Pickerington Care And Rehabilitation
1300 Hill Road North, Pickerington, OH 43147

u. Royal Oak Nursing & Rehab Ctr
6973 Pearl Rd, Middleburg Heights, OH 44130

v. Seasons Nursing And Rehab
456 Seasons Rd, Stow, OH 44224

Reporting Data – Nursing Home

42. The Harvard Gardens 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."

43. The data the Harvard Gardens 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.

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

45. Medicare uses some of this data submitted by Harvard Gardens 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)

46. Every nursing home receiving Medicare or Medicaid funding—the clear majority of nursing homes, including Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC and others operated and / or controlled by the Harvard Gardens 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, or MDS. This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

47. Nursing homes like Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC 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.

48. 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.

49. 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.

50. 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."

51. 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

52. 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.

53. 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 Harvard Gardens Defendants with regard to staffing the Facility.

54. 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 Mary Grant's Care

55. Harvard Gardens Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC was sufficiently staffed, and the

staff appropriately trained and informed, to meet the individual needs of Mary Grant during the period she was a resident at the facility.

56. Harvard Gardens Defendants engaged in a systemic practice to understaff Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC to maximize profits at the expense of its residents' care.

57. This lack of sufficient staff directly resulted in Mary Grant not receiving basic and necessary services, assessments, and interventions to prevent, among other things, neglect leading to their injuries at Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC during the period they were a resident at the Facility.

Defendants' Negligence and Recklessness with Mary Grant

58. Defendants accepted Mary Grant as a nursing home resident for long-term care for dementia.

59. Defendants agreed to accept Mary Grant into their facility and provide care to them in exchange for monetary payment.

60. The Facility agreed to provide appropriate care to Mary Grant and was bound not to cause harm to Mary Grant through their willful, wanton, and/or reckless actions.

61. Mary Grant endured mental and physical pain suffering and death as a direct and proximate result of Defendants' failure to provide adequate care due to understaffing the facility.

FIRST CAUSE OF ACTION
(MEDICAL NEGLIGENCE / RECKLESSNESS)

62. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

Electronically Filed 08/09/2024 13:25 / / CV 24 101958 / Confirmation Nbr. 3242030 / CLPXC

63. Mary Grant depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

64. The Defendants had a duty to provide proper care and treatment to Mary Grant and to avoid causing injury to Mary Grant.

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

66. 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 Mary Grant; Choosing to not provide accurate, adequate, or timely information to Mary Grant's family;

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

f. Choosing to violate orders relating to care of Mary Grant; Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Mary Grant 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 Mary Grant, as required by Ohio and federal regulations;

h. Choosing not to provide appropriate care to Mary Grant while they were a resident of the Facility; and

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

67. These actions constituted a conscious disregard for Mary Grant'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 the harm that could result from their willful, wanton, and/or reckless misconduct.

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

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

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

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

72. 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

Electronically Filed 08/09/2024 13:25 / / CV 24 101958 / Confirmation Nbr. 3242030 / CLPXC

sections, OAC 3701-17 et seq., and the Ohio Resident's Rights Law, R.C. section 3721.13.

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

74. 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)

75. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

76. Mary Grant depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

77. The Defendants had a duty to provide proper care and treatment to Mary Grant and to avoid causing injury to Mary Grant.

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

79. 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 Mary Grant; Choosing to not provide accurate, adequate, or timely information to Mary Grant's family;

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

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

g. Failing to ensure the rights and safety of its residents, including Mary Grant, as required by Ohio and federalregulations;

h. Choosing not to provide appropriate care to Mary Grant while they were a resident of the Facility; and

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

80. Defendants, directly or through their employees or agents, violated Mary Grant'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.

81. These violations are evidence of negligence and conscious disregard of Mary Grant's rights and safety, and give rise to a statutory cause of action.

82. Mary Grant endured conscious pain, suffering, and disability, and other harms and losses as the direct and proximate result of Defendants' violations of R.C. 3721.13.

83. These actions constituted a conscious disregard for Mary Grant'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.

84. The Defendants were aware of the great probability of the harm that could result from their willful, wanton, and/or reckless misconduct.

85. The Defendants' disregard for the rights and safety of residents like Mary Grant created circumstances under which it became substantially certain that serious injuries would result.

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

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

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

89. 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.

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

91. Mary Grant'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.

92. 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)

93. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

94. Defendants, directly or through their employees or agents, violated Mary Grant'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 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.

95. These violations are evidence of negligence and conscious disregard of Mary Grant's rights and safety, and give rise to a statutory cause of action.

96. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Mary Grant conscious pain, suffering, and disability, and other harms and lossesincluding death.

97. 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)

98. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

99. Defendants 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 federal regulations, and for the purposes of their own profit, at the expense of resident health and safety;

c. 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;

d. 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;

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

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

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

100. This understanding constitutes a malicious combination to injure residents of the Facility, including Mary Grant.

101. 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.

102. The conspiracy caused injury to Mary Grant.

103. 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)

104. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

105. The Harvard Gardens Defendants concealed facts concerning their staffing levels, pay, and the amount of care they were actually capable of providing at Harvard Gardens Rehabilitation & Care Center aka WP Operating, LLC.

106. Not only did the Harvard Gardens Defendants conceal this information, they publicly and privately represented that they provide exceptional services in an effort to induce the family of Mary Grant and other potential customers to place their loved ones in their care and custody.

107. 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 Grant's family and other potential customers into placing their loved ones in the care and custody of Defendants.

108. Mary Grant's family and the family members of other potential customers reasonably relied on the Harvard Gardens Defendants' representations and concealments regarding the degree of care they provide.

109. The result of these inducements and concealments was that Mary Grant's family, and the family of numerous other residents, allowed their loved one to be placed in the Harvard Gardens Defendants' facility.

110. As a direct and proximate result of Defendants' actions, representations, and concealments, Mary Grant suffered conscious pain and suffering and death.

111. As a direct and proximate result of the Harvard Gardens Defendants' action, representations, and concealments, Mary Grant'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.*

112. 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,

/s/ Matthew A. Mooney

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