

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, OHIO

Mary Davis, Executor of
the Estate and Wrongful Death
Beneficiaries of Sharon Kay Abner,
5124 Old St Mary's Pike
Parkersburg, WV 26104

PLAINTIFF

vs.

CAUSE NO. 24PT125

Jury Demanded

Marietta OPCO, LLC d/b/a Arbors at Marietta
c/o Corporation Service Company
1160 Dublin Road, Suite 400
Columbus, OH 43215

KERENYI

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Ark OPCO Group, LLC
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

B&Y Healthcare S Corp
c/o Cogency Global Inc.
850 New Burton Road Suite 201
Dover, DE 19904

Cody Healthcare S Corp
c/o Cogency Global Inc.
850 New Burton Road Suite 201
Dover, DE 19904

Noble Healthcare Management, LLC
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Prestige Administrative Services, LLC
c/o Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Kelly Nibert, Administrator
2411 Lee Circle
Syracuse, OH 45779
and/or
Arbors at Marietta
400 Seventh Street
Marietta, OH 45750

Unidentified Defendants 1-2
(as to Arbors at Marietta)

DEFENDANTS

COMPLAINT

COMES NOW Plaintiff, Mary Davis, Executor of the Estate of Sharon Kay Abner, on behalf of the Estate and Wrongful Death Beneficiaries of Sharon Kay Abner, for the use and benefit of the Estate of Sharon Kay Abner, and for the use and benefit of the wrongful death beneficiaries of Sharon Kay Abner, for her causes of action against Defendants, states:

JURISDICTIONAL STATEMENT

1. Sharon Kay Abner was, at all times material hereto, a resident of Arbors at Marietta, a skilled nursing facility located at 400 Seventh Street, Marietta, Ohio 45750, from on or about August 18, 2022, through on or about January 18, 2023, and suffered personal injuries and damages while a resident there.

2. Sharon Kay Abner died on January 18, 2023.

3. Mary Davis is the sister of Sharon Kay Abner and was appointed Executor of the Estate of Sharon Kay Abner by Order of the Probate Court of Washington County, Ohio, on April 11, 2024, and brings this suit against Defendants on behalf of Sharon Kay Abner's Estate, herself, and Sharon Kay Abner's remaining siblings and wrongful death beneficiaries, Paul Balderson and Rosalie Fridley.¹ See Entry Appointing Fiduciary; Letters of Authority, attached as **Exhibit A**.

4. Separate Defendant Marietta OPCO, LLC d/b/a Arbors at Marietta is a Delaware limited liability company with its principal place of business at 400 Seventh Street, Marietta, Ohio 45750. The agent for service for Marietta OPCO, LLC d/b/a Arbors at Marietta is Corporation Service Company, 1160 Dublin Road, Suite 400, Columbus, OH 43215. Marietta OPCO, LLC d/b/a Arbors at Marietta was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically

¹ Under 28 U.S.C. § 1332(c)(2), "the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent." See also *Gustafson v. zumBrunnen*, 546 F.3d 398, 400-01 (7th Cir. 2008); accord *Hunter v. Amin*, 583 F.3d 486, 491-92 (7th Cir. 2009).

infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about July 1, 2015.

5. Separate Defendant Ark OPCO Group, LLC is a Delaware limited liability company with its principal place of business at 3680 Dolson Court NW, Carroll, Ohio 43112. The agent for service for Ark OPCO Group, LLC is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. Ark OPCO Group, LLC was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about July 1, 2015.

6. Separate Defendant B&Y Healthcare S Corp is a Delaware corporation with its principal place of business at 3680 Dolson Court NW, Carroll, Ohio 43112. The agent for service for B&Y Healthcare S Corp is Cogency Global Inc., 850 New Burton Road Suite 201, Dover, DE 19904. B&Y Healthcare S Corp was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about July 1, 2015.

7. Separate Defendant Cody Healthcare S Corp is a Delaware corporation with its principal place of business at 3680 Dolson Court NW, Carroll, Ohio 43112. The agent for service for Cody Healthcare S Corp is Cogency Global Inc., 850 New Burton Road Suite 201, Dover, DE 19904. Cody Healthcare S Corp was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about July 1, 2015.

8. Separate Defendant Noble Healthcare Management, LLC is a Delaware limited liability company with its principal place of business at 400 Seventh Street, Marietta, Ohio 45750. The agent for service for Noble Healthcare Management, LLC is

Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. Noble Healthcare Management, LLC was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically infirmed, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about July 1, 2015.

9. Separate Defendant Prestige Administrative Services, LLC, is a Delaware limited liability company with its principal place of business at 400 Seventh Street, Marietta, Ohio 45750. The agent for service for Prestige Administrative Services, LLC is Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808. Prestige Administrative Services, LLC was, and remains, engaged in the custodial care of elderly, helpless individuals who are chronically infirmed, mentally impaired, and/or in need of nursing care and treatment at Arbors at Marietta, and assumed control over the facility on or about January 1, 2016.

10. Separate Defendant, Kelly Nibert, material hereto was an administrator of Arbors at Marietta. Kelly Nibert is a resident citizen of the State of Ohio. Defendant, Kelly Nibert, for all times material to this lawsuit conducted business in Ohio and continues to do business in Ohio. Defendant Kelly Nibert's contacts with Ohio are systematic and ongoing such that Defendant, Kelly Nibert, could reasonably expect to be haled into an Ohio court.

11. Separate Unidentified Defendants 1-2 are individuals or entities whom Plaintiff is currently unable to identify despite diligent efforts. Said Defendants are named insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of, or in the staffing, supervision, administration and direction of the care and treatment of Sharon Kay Abner during her residency at Arbors at Marietta. Alternatively, these Defendants are liable for the negligent and/or

otherwise tortious acts and/or omissions of others with respect to the care and treatment of Sharon Kay Abner during her residency at Arbors at Marietta.

12. At all times material hereto, Defendants owned, operated, managed and/or controlled, Arbors at Marietta in Washington County, Ohio and are therefore directly liable for all the care provided at Arbors at Marietta. The actions of each of Arbors at Marietta's servants, agents, and employees, as set forth herein, are imputed to Marietta OPCO, LLC d/b/a Arbors at Marietta; Ark OPCO Group, LLC; B&Y Healthcare S Corp; Cody Healthcare S Corp; Noble Healthcare Management, LLC; Prestige Administrative Services, LLC; Kelly Nibert, Administrator; and Unidentified Defendants 1-2.

13. Whenever the term "Defendants" is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.

14. Whenever the term "Nursing Home Defendants" is utilized within this suit, such term collectively refers to and includes Marietta OPCO, LLC d/b/a Arbors at Marietta; Ark OPCO Group, LLC; B&Y Healthcare S Corp; Cody Healthcare S Corp; Noble Healthcare Management, LLC; Prestige Administrative Services, LLC; and Unidentified Defendants 1-2.

15. Whenever the term "Administrator Defendant" is utilized within this suit, such term refers to Kelly Nibert.

16. Separate Defendants Marietta OPCO, LLC d/b/a Arbors at Marietta; Ark OPCO Group, LLC; B&Y Healthcare S Corp; Cody Healthcare S Corp; Noble Healthcare Management, LLC; Prestige Administrative Services, LLC and Unidentified Defendants 1-2 own, operate, manage, and/or control nursing homes throughout Ohio including, but not limited to, Washington County. All corporate Defendants have regular and continuous business in Washington County. Defendants were, and remain, owners and/or managers of an institution, residence or place which is advertised, offered, maintained or operated for the express or implied purpose of providing accommodations

and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation in Washington County.

17. Jurisdiction of this Court is proper in the Washington County Court of Common Pleas in that the amount in controversy, exclusive of interest and costs, far exceeds the minimum jurisdictional limits of this Court.

18. Pursuant to Civil Rule 10(D), attached hereto as **Exhibit B** is an Affidavit of Merit.

FACTUAL SUMMARY

19. On or about August 18, 2022, Sharon Kay Abner at the age of 68 was admitted to Arbors at Marietta, and she remained a resident of the nursing home until on or about January 18, 2023 and suffered injuries at Defendants' facility.

20. Defendants were well aware of Sharon Kay Abner's medical condition and the care that she required when they represented that they could adequately care for her needs. Defendants made affirmative representations to the family that the appropriate level of care would be provided when the Defendants knew, because of budgetary restrictions on staffing and supplies, that residents, including Sharon Kay Abner, would not get the necessary care.

21. Defendants held themselves out as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;
- c. Providing around the clock skilled nursing care;
- d. Able to specifically meet the total nursing home, medical, and physical therapy needs of Sharon Kay Abner and other residents like her; and,
- e. Licensed and complying on a continual basis with all rules, regulations, and

standards established for nursing homes, nursing home licensees and nursing home administrators.

22. Defendants failed to discharge their obligations of care to Sharon Kay Abner. As a consequence thereof, Sharon Kay Abner suffered catastrophic injuries, disfigurement, extreme pain, suffering, and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Sharon Kay Abner while under the care of the facility accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma which includes, but is not limited to:

- a. Development and worsening of a sacral pressure ulcer,
- b. pain;
- c. osteomyelitis;
- d. sepsis; and
- e. death.

23. All of the above identified injuries, as well as the conduct specified below, caused Sharon Kay Abner to lose her personal dignity and extreme and unnecessary pain, degradation, anguish, otherwise unnecessary hospitalizations, disfigurement, and emotional trauma.

24. The wrongs complained of herein were of a continuing nature, and occurred throughout Sharon Kay Abner's residency at Defendants' facility.

25. Plaintiff alleges that on all of the occasions complained of herein, Sharon Kay Abner was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

26. Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including its employees, agents, consultants, and independent contractors, whether in-house or

outside entities, individuals, agencies, or pools causing or contributing to the injuries of Sharon Kay Abner.

27. The Defendants are directly liable for the acts and/or omissions contained herein due to the direct control, ownership, and/or management of the operations of Arbors at Marietta. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment for all residents, including Sharon Kay Abner.

28. The Defendants were aware of the dangerous environment that was created by their methods of management and/or control at all their facilities, including Arbors at Marietta, and the harm caused to the residents, including Sharon Kay Abner.

29. This methodology of management and/or control was set out in the Corporate Plan created and/or implemented by executives of the Nursing Home Defendants.

30. Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

**COUNT ONE: CORPORATE NEGLIGENCE AGAINST NURSING
HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2
For Non-lethal Injuries)**

31. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

32. Nursing Home Defendants owed a duty to residents, including Sharon Kay Abner, to act in a manner consistent with the proper operation of the nursing homes they controlled, which a reasonably careful person/corporation would provide under similar circumstances.

33. Nursing Home Defendants' employees owed a duty to residents, including Sharon Kay Abner, to exercise reasonable care in providing oversight and management

of the nursing homes they owned, operated, managed, and/or controlled.

34. Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including and Arbors at Marietta, in a manner that a reasonably careful person/corporation would have provided under similar circumstances and by failing to properly allocate resources, provide appropriate policies and procedures, take appropriate corrective action when operational problems are brought to their attention, intentionally concealing the severity and existence of these failures from affected residents, intentionally concealing the severity and existence of these failures from the State and Federal Government.

35. The negligence of the Nursing Home Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

a. Staffing

i. Nursing home residents, including Sharon Kay Abner, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The Corporate Defendants are responsible and required to provide sufficient resources to hire and maintain sufficient staff to ensure that these residents' needs are met.

iii. Additionally, when the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

iv. When the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, those who are present must take shortcuts with respect to all aspects of their job and are unable to do their job.

v. Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nursing assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by these Corporate Defendants was too low, or such other reasons as will be proven at trial of this matter.

b. Corporate Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Marietta by any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Marietta;

iv. Notifying residents affected by and those potentially affected by deficiencies at Arbors at Marietta by any state or federal survey agency.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Marietta had sufficient numbers of nursing personnel to:

i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Corporate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Marietta for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Marietta regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and neglect to residents of the facility, including Sharon Kay Abner.

e. Budgeting or Allocation of Resources

i. Corporate Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Corporate Defendants were required to administer Arbors at Marietta in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Corporate Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Corporate Defendants failed to properly allocate the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for

compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner, and

2. Supplies and food were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Corporate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Corporate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Sharon Kay Abner.

f. Corporate Compliance and Reporting

i. Corporate Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Corporate Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Sharon Kay Abner.

iii. Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Marietta, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Sharon Kay Abner to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more

dangerous environment in which additional injuries could occur to residents, including Sharon Kay Abner.

iv. Corporate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Corporate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Sharon Kay Abner.

36. A reasonably careful Corporation, operating under similar circumstances, would foresee that the failure to provide the appropriate oversight, management, direction, and/or control would result in poorly operated nursing homes such as Arbors at Marietta and devastating injuries to residents including Sharon Kay Abner.

37. As a direct and proximate result of the negligence of Nursing Home Defendants as set out above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

38. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright, in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT TWO: CORPORATE NEGLIGENCE AGAINST NURSING HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2 (For Lethal Injuries)

39. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

40. Nursing Home Defendants owed a duty to residents, including Sharon Kay Abner, to act in a manner consistent with the proper operation of the nursing homes they controlled, which a reasonably careful person/corporation would provide under similar circumstances.

41. Nursing Home Defendants' employees owed a duty to residents, including Sharon Kay Abner, to exercise reasonable care in providing oversight and management of the nursing homes they owned, operated, managed, and/or controlled.

42. Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including and Arbors at Marietta, in a manner that a reasonably careful person/corporation would have provided under similar circumstances and by failing to properly allocate resources, provide appropriate policies and procedures, take appropriate corrective action when operational problems are brought to their attention, intentionally concealing the severity and existence of these failures from affected residents, intentionally concealing the severity and existence of these failures from the State and Federal Government.

43. The negligence of the Nursing Home Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

a. Staffing

i. Nursing home residents, including Sharon Kay Abner, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The Corporate Defendants are responsible and required to provide sufficient resources to hire and maintain sufficient staff to ensure that these residents' needs are met.

iii. Additionally, when the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

- iv. When the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, those who are present must take shortcuts with respect to all aspects of their job and are unable to do their job.
 - v. Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nursing assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by these Corporate Defendants was too low, or such other reasons as will be proven at trial of this matter.
- b. Corporate Defendants failed to implement adequate guidelines, policies and procedures for:
- i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Marietta by any state or federal survey agency;
 - ii. Determining the cause of any such deficiencies, violations or penalties; and
 - iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Marietta;
 - iv. Notifying residents affected by and those potentially affected by deficiencies at Arbors at Marietta by any state or federal survey agency.
- c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Marietta had sufficient numbers of nursing personnel to:
- i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;
 - ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- d. Corporate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Marietta for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Marietta regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and neglect to residents of the facility, including Sharon Kay Abner.
- e. Budgeting or Allocation of Resources
- i. Corporate Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Corporate Defendants were required to administer Arbors at Marietta in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Corporate Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Corporate Defendants failed to properly allocate the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner, and

2. Supplies and food were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Corporate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Corporate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Sharon Kay Abner.

f. Corporate Compliance and Reporting

i. Corporate Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Corporate Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Sharon Kay Abner.

iii. Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of non-compliance occurring

at Arbors at Marietta, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Sharon Kay Abner to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Sharon Kay Abner.

iv. Corporate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Corporate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Sharon Kay Abner.

44. A reasonably careful Corporation, operating under similar circumstances, would foresee that the failure to provide the appropriate oversight, management, direction, and/or control would result in poorly operated nursing homes such as Arbors at Marietta and devastating injuries to residents including Sharon Kay Abner.

45. As a direct and proximate result of the negligence of Nursing Home Defendants as set out above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and death, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

46. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment

of life, humiliation, disfigurement, and fright, as well as all damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Sharon Kay Abner, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT THREE: NEGLIGENCE CLAIM
AGAINST ADMINISTRATOR DEFENDANTS

47. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

48. Upon information and belief, Administrator Defendants were the administrators of Arbors at Marietta during the residency of Sharon Kay Abner. To the extent the names of the licensed administrators who may have managed this facility during the residency of Sharon Kay Abner are determined, all of the following acts are properly attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

49. As nursing home administrators, Administrator Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of Arbors at Marietta.

50. As nursing home administrators, Administrator Defendants owed a common law duty to remain informed as to events occurring at Arbors at Marietta through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Administrator Defendants were required under law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, abuse or neglect to residents of the home.

51. When Administrator Defendants accepted the position of administrator of Arbors at Marietta they assumed the duties as set forth in the preceding paragraphs.

52. It is reasonably foreseeable that injuries, abuse and neglect to residents of Arbors at Marietta, including Sharon Kay Abner, would occur as a direct result of Administrator Defendants' failures to carry out their duties as administrators of the facility.

53. As nursing home administrators, Administrator Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Sharon Kay Abner. The following areas describe with specificity the wrongdoings of Administrator Defendants that resulted in harm to Sharon Kay Abner:

a. Staffing

i. Nursing home residents, including Sharon Kay Abner, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii. The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.

iv. Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

v. When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.

vi. Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the

nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of this matter.

vii. Separate Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Sharon Kay Abner was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Marietta, Sharon Kay Abner's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete documentation resulted in further injuries to Sharon Kay Abner—the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.

ix. Separate Defendants owed a non-delegable duty to Sharon Kay Abner and other residents of Arbors at Marietta, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Sharon Kay Abner if staffing levels were not maintained within reasonable parameters.

x. With respect to staffing, the failures of Separate Defendants include but are not limited to:

1. Ensuring that the staff provided Sharon Kay Abner adequate hygiene and sanitary care;
2. Ensuring that the staff provided Sharon Kay Abner clean bed linens to prevent urine and fecal contact for extended periods of time;
3. Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Sharon Kay Abner throughout her residency;
4. Ensuring that Sharon Kay Abner:
 - a. Received timely and accurate care assessments;
 - b. Received prescribed treatment, medication and diet; and
 - c. Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;
5. Providing a safe environment free from preventable abuse and neglect;
6. Ensuring that Sharon Kay Abner received care, treatment and medication in accordance with physician's orders; and

7. Ensuring that Sharon Kay Abner was provided with the dignity and respect that all nursing home residents are entitled to receive.

xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Marietta;

xii. Terminating employees at Arbors at Marietta that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;

xiii. Assigning nursing personnel at Arbors at Marietta consistent with their education and experience and based on:

1. Sharon Kay Abner's medical history and condition, nursing and rehabilitative needs;

2. The characteristics of the resident population residing in the area of the facility where Sharon Kay Abner was a resident; and

3. Nursing skills needed to provide care to such resident population.

b. Separate Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Marietta by the State of Ohio or any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Marietta.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Marietta had sufficient numbers of nursing personnel to:

i. Provide 24-hour nursing services;

ii. Meet the needs of residents who reside at the facility, including Sharon Kay Abner; and

iii. Meet the total nursing needs of residents, including their activities of daily living.

d. Separate Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Marietta for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Arbors at Marietta regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and neglect to residents of the facility, including Sharon Kay Abner.

- e. Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Arbors at Marietta.
- f. Separate Defendants failed to ensure that Sharon Kay Abner attained and maintained her highest level of physical, mental and psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Sharon Kay Abner.
- g. Budgeting or Allocation of Resources
 - i. As administrators, Separate Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set.
 - ii. As administrators, Separate Defendants were required to administer Arbors at Marietta in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.
 - iii. As administrators, Separate Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Sharon Kay Abner, were met.
 - iv. Separate Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:
 - 1. Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Sharon Kay Abner, and
 - 2. Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Sharon Kay Abner.
 - v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Separate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Separate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.
 - vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Sharon Kay Abner.
- h. Corporate Compliance and Reporting
 - i. As administrators of Arbors at Marietta, Separate Defendants were responsible for ensuring that the facility complied with state and federal

standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. As administrators, Separate Defendants were charged with the responsibility of reporting instances of abuse and neglect that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Sharon Kay Abner.

iii. Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Marietta, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Sharon Kay Abner to place her in the facility and misled them as to the care she would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Sharon Kay Abner.

iv. Separate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief, Separate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Sharon Kay Abner's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Sharon Kay Abner.

54. A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries to Sharon Kay Abner.

55. As a direct and proximate result of these Administrator Defendants' failure to perform the responsibilities as set forth above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, death, and also suffered extreme pain, suffering, mental anguish, embarrassment, disfigurement, fright, all of which required hospitalization and medical treatment, and all of which required Sharon Kay Abner to incur significant hospital and

medical expenses.

56. WHEREFORE, based on such conduct of Administrator Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Administrator Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright, as well as all damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Sharon Kay Abner, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT FOUR: NURSING HOME VIOLATIONS AGAINST NURSING
HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2**
(For Non-lethal Injuries)

57. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

58. Nursing Home Defendants owed a duty to residents, including Sharon Kay Abner, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and shall be liable to the resident for injuries suffered.

59. Nursing Home Defendants' employees owed a duty to residents, including Sharon Kay Abner, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation.

60. Nursing Home Defendants breached this duty by depriving residents including Sharon Kay Abner of rights and benefits created or established for the well-being of the residents by the terms of applicable contracts, by any state statutes and rules, and by

applicable federal statutes and regulations and by failing to prevent the mistreatment, abuse and neglect of Sharon Kay Abner.

61. These breaches were due to the use of improper management styles and systems that were enacted and implemented by the Nursing Home Defendants without consideration of the impact that such improper management styles and systems would have on the residents including Sharon Kay Abner.

62. Nursing Home Defendants were centrally involved and actively participated in tortious conduct that directly caused and/or contributed to the injuries of Sharon Kay Abner. The following areas describe with specificity the wrongdoings and/or negligent actions of the Nursing Home Defendants that resulted in harm to Sharon Kay Abner:

a. Staffing

i. Nursing home residents, including Sharon Kay Abner, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii. The Nursing Home Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Nursing Home Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the Nursing Home Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Additionally, when the Nursing Home Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.

v. When the Nursing Home Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with

all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. Rather than hiring and maintaining sufficient staff, Nursing Home Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Nursing Home Defendants was too low, or such other reasons as will be proven at trial of this matter.

vii. Nursing Home Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Marietta, Sharon Kay Abner's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ix. Nursing Home Defendants owed a non-delegable duty to Sharon Kay Abner and other residents of and/or Arbors at Marietta, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as Sharon Kay Abner if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

x. Ensuring that Sharon Kay Abner was provided with the dignity and respect that all nursing home residents are entitled to receive;

xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Marietta;

xii. Terminating employees at Arbors at Marietta that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;

b. Nursing Home Defendants failed to implement adequate guidelines, policies and procedures for:

- i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Marietta by the State of Ohio or any state or federal survey agency;
 - ii. Determining the cause of any such deficiencies, violations or penalties; and
 - iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Marietta.
- c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Marietta had sufficient numbers of nursing personnel to:
 - i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;
 - ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- d. Nursing Home Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Marietta for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Marietta regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and neglect to residents of the facility, including Sharon Kay Abner.
- e. Nursing Home Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at Arbors at Marietta.
- f. Nursing Home Defendants failed to ensure that Sharon Kay Abner attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Sharon Kay Abner.
- g. Budgeting or Allocation of Resources
 - i. Nursing Home Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.
 - ii. Nursing Home Defendants were required to administer Arbors at Marietta in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Nursing Home Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Nursing Home Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner, and

2. Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Nursing Home Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Nursing Home Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Sharon Kay Abner.

h. Corporate Compliance and Reporting

i. Nursing Home Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Nursing Home Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Sharon Kay Abner.

iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Marietta, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly

managed and maintained. This false and misleading appearance induced the family of Sharon Kay Abner to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Sharon Kay Abner.

iv. Nursing Home Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Nursing Home Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Sharon Kay Abner's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Sharon Kay Abner.

63. A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to comply with Ohio's resident's rights would result in devastating injuries to Sharon Kay Abner.

64. As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

65. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages, punitive damages and injunctive relief against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright, in an amount to be

determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT FIVE: NURSING HOME VIOLATIONS AGAINST NURSING
HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2
(For Lethal Injuries)

66. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

67. Nursing Home Defendants owed a duty to residents, including Sharon Kay Abner, comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and shall be liable to the resident for injuries suffered.

68. Nursing Home Defendants' employees owed a duty to residents, including Sharon Kay Abner, to comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation.

69. Nursing Home Defendants breached this duty by depriving residents including Sharon Kay Abner of rights and benefits created or established for the well-being of the residents by the terms of applicable contracts, by any state statutes and rules, and by applicable federal statutes and regulations and by failing to prevent the mistreatment, abuse and neglect of Sharon Kay Abner.

70. These breaches were due to the use of improper management styles and systems that were enacted and implemented by the Nursing Home Defendants without consideration of the impact that such improper management styles and systems would have on the residents including Sharon Kay Abner.

71. Nursing Home Defendants were centrally involved and actively participated in tortious conduct that directly caused and/or contributed to the injuries of Sharon Kay Abner. The following areas describe with specificity the wrongdoings and/or negligent actions of the Nursing Home Defendants that resulted in harm to Sharon Kay Abner:

a. Staffing

i. Nursing home residents, including Sharon Kay Abner, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii. The Nursing Home Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Nursing Home Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii. When the Nursing Home Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Additionally, when the Nursing Home Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.

v. When the Nursing Home Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. Rather than hiring and maintaining sufficient staff, Nursing Home Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Nursing Home Defendants was too low, or such other reasons as will be proven at trial of this matter.

vii. Nursing Home Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii. Due to staff shortages at Arbors at Marietta, Sharon Kay Abner's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ix. Nursing Home Defendants owed a non-delegable duty to Sharon Kay Abner and other residents of and/or Arbors at Marietta, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as Sharon Kay Abner if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

x. Ensuring that Sharon Kay Abner was provided with the dignity and respect that all nursing home residents are entitled to receive;

xi. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Arbors at Marietta;

xii. Terminating employees at Arbors at Marietta that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State of Ohio;

b. Nursing Home Defendants failed to implement adequate guidelines, policies and procedures for:

i. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Arbors at Marietta by the State of Ohio or any state or federal survey agency;

ii. Determining the cause of any such deficiencies, violations or penalties; and

iii. Correcting deficiencies or licensure violations or penalties found to exist at Arbors at Marietta.

c. Adopting adequate guidelines, policies, and procedures for determining whether Arbors at Marietta had sufficient numbers of nursing personnel to:

i. Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii. To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d. Nursing Home Defendants failed to adopt adequate guidelines, policies, and procedures of Arbors at Marietta for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Arbors at Marietta regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and neglect to residents of the facility, including Sharon Kay Abner.

e. Nursing Home Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at Arbors at Marietta.

f. Nursing Home Defendants failed to ensure that Sharon Kay Abner attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Sharon Kay Abner.

g. Budgeting or Allocation of Resources

i. Nursing Home Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii. Nursing Home Defendants were required to administer Arbors at Marietta in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii. Nursing Home Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv. Nursing Home Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

1. Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner, and

2. Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Sharon Kay Abner.

v. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Nursing Home Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Nursing Home Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi. The failure to adequately budget and allocate resources to the facility directly caused damages to Sharon Kay Abner.

h. Corporate Compliance and Reporting

i. Nursing Home Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii. Nursing Home Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Sharon Kay Abner.

iii. Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Arbors at Marietta, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Sharon Kay Abner to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Sharon Kay Abner.

iv. Nursing Home Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Nursing Home Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Sharon Kay Abner's admissions agreement.

v. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Sharon Kay Abner.

72. A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to comply with Ohio's resident's rights would result in devastating injuries to Sharon Kay Abner.

73. As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and death, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

74. WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages, punitive damages and injunctive relief against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright, as well as all damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Sharon Kay Abner, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SIX: MEDICAL MALPRACTICE
AGAINST NURSING HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2
(For Non-lethal Injuries)

75. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

76. Separate Defendants owed a duty to residents, including Sharon Kay Abner, to hire, train, and supervise employees so that such employees delivered care and

services to residents in a safe and beneficial manner.

77. Separate Defendants' employees owed a duty to residents, including Sharon Kay Abner, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

78. Separate Defendants owed a duty to assist all residents, including Sharon Kay Abner in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

79. Defendants failed to meet the standard of care and violated its duty of care to Sharon Kay Abner through mistreatment, abuse and neglect. The negligence of Defendants, their employees, and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to properly notify a doctor upon significant changes in Sharon Kay Abner's condition;
- b. The failure to respond to significant signs and symptoms of change in the condition of Sharon Kay Abner;
- c. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Sharon Kay Abner;
- d. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Sharon Kay Abner condition;
- e. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Sharon Kay Abner;
- f. The failure to increase the number of nursing personnel to ensure that Sharon Kay Abner:

- i. received timely and accurate care assessments;
 - ii. received prescribed treatment, medication, and diet;
 - iii. received necessary supervision; and
 - iv. received timely nursing and medical intervention due to a significant change in condition.
- g. The failure to provide nursing personnel sufficient in number to ensure that Sharon Kay Abner attained and maintained her highest level of physical, mental and psychosocial well-being;
- h. The failure to provide adequate supervision to the nursing staff so as to ensure that Sharon Kay Abner received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent the formation of pressure sores, to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Sharon Kay Abner;
- i. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Sharon Kay Abner received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by any state or federal agency;
- j. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- k. The failure to provide and ensure an adequate nursing care plan based on the needs of Sharon Kay Abner;
- l. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Sharon Kay Abner changed;
- m. The failure to implement and ensure that an adequate nursing care plan for Sharon Kay Abner was followed by nursing personnel;

- n. The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care, the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;
- o. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- p. The failure to provide Sharon Kay Abner with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;
- q. The failure to provide Sharon Kay Abner with adequate and appropriate observation and examination so as to timely and adequately intervene to prevent the development, aggravation and progression of infection;
- r. The failure to provide Sharon Kay Abner with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Sharon Kay Abner;
- s. The failure to provide care, treatment, and medication in accordance with physician's orders;
- t. The failure to provide Sharon Kay Abner with adequate and appropriate assessment for fluid management to prevent dehydration;
- u. The failure to maintain an adequate and appropriate fluid maintenance program;
- v. The failure to ensure that Sharon Kay Abner received adequate assessment of her nutritional needs;

w. The failure to maintain medical records on Sharon Kay Abner in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

- i. the diagnosis of Sharon Kay Abner;
- ii. the treatment of Sharon Kay Abner; and
- iii. the assessment and establishment of appropriate plans of care and treatment.

x. The failure to adequately and appropriately monitor Sharon Kay Abner and recognize significant changes in her health status; and

y. The failure to prevent Sharon Kay Abner from developing pneumonia.

80. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Sharon Kay Abner's injuries. Sharon Kay Abner's injuries were all foreseeable to Defendants.

81. Defendants' conduct in breaching the duties owed to Sharon Kay Abner was negligent, grossly negligent, willful, wanton, malicious and reckless.

82. As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless and malicious conduct, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

83. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical

pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright, in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

COUNT SEVEN: MEDICAL MALPRACTICE
AGAINST NURSING HOME DEFENDANTS; UNIDENTIFIED DEFENDANTS 1-2
(For Lethal Injuries)

84. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

85. Separate Defendants owed a duty to residents, including Sharon Kay Abner, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

86. Separate Defendants' employees owed a duty to residents, including Sharon Kay Abner, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

87. Separate Defendants owed a duty to assist all residents, including Sharon Kay Abner in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

88. Defendants failed to meet the standard of care and violated thier duty of care to Sharon Kay Abner through mistreatment, abuse and neglect. The negligence of Defendants, their employees, and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a. The failure to properly notify a doctor upon significant changes in Sharon Kay Abner's condition;
- b. The failure to respond to significant signs and symptoms of change in the condition of Sharon Kay Abner;

- c. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Sharon Kay Abner;
- d. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Sharon Kay Abner condition;
- e. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Sharon Kay Abner;
- f. The failure to increase the number of nursing personnel to ensure that Sharon Kay Abner:
 - i. received timely and accurate care assessments;
 - ii. received prescribed treatment, medication, and diet;
 - iii. received necessary supervision; and
 - iv. received timely nursing and medical intervention due to a significant change in condition.
- g. The failure to provide nursing personnel sufficient in number to ensure that Sharon Kay Abner attained and maintained her highest level of physical, mental and psychosocial well-being;
- h. The failure to provide adequate supervision to the nursing staff so as to ensure that Sharon Kay Abner received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent the formation of pressure sores, to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Sharon Kay Abner;
- i. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Sharon Kay Abner received appropriate nursing care, in

accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by any state or federal agency;

j. The failure to provide a nursing staff that was properly staffed, qualified, and trained;

k. The failure to provide and ensure an adequate nursing care plan based on the needs of Sharon Kay Abner;

l. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Sharon Kay Abner changed;

m. The failure to implement and ensure that an adequate nursing care plan for Sharon Kay Abner was followed by nursing personnel;

n. The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care, the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;

o. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

p. The failure to provide Sharon Kay Abner with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;

q. The failure to provide Sharon Kay Abner with adequate and appropriate observation and examination so as to timely and adequately intervene to prevent the development, aggravation and progression of infection;

r. The failure to provide Sharon Kay Abner with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Sharon Kay Abner;

- s. The failure to provide care, treatment, and medication in accordance with physician's orders;
- t. The failure to provide Sharon Kay Abner with adequate and appropriate assessment for fluid management to prevent dehydration;
- u. The failure to maintain an adequate and appropriate fluid maintenance program;
- v. The failure to ensure that Sharon Kay Abner received adequate assessment of her nutritional needs;
- w. The failure to maintain medical records on Sharon Kay Abner in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - i. the diagnosis of Sharon Kay Abner;
 - ii. the treatment of Sharon Kay Abner; and
 - iii. the assessment and establishment of appropriate plans of care and treatment.
- x. The failure to adequately and appropriately monitor Sharon Kay Abner and recognize significant changes in her health status; and
- y. The failure to prevent Sharon Kay Abner from developing pneumonia.

89. A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Sharon Kay Abner's injuries. Sharon Kay Abner's injuries were all foreseeable to Defendants.

90. Defendants' conduct in breaching the duties owed to Sharon Kay Abner was negligent, grossly negligent, willful, wanton, malicious and reckless.

91. As a direct and proximate result of such negligent, grossly negligent, willful,

wanton, reckless and malicious conduct, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, death, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

92. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, and fright, as well as all damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Sharon Kay Abner, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT EIGHT: MALICE, AND/OR GROSS NEGLIGENCE
WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS
DISREGARD FOR THE SAFETY OF SHARON KAY ABNER
AGAINST ALL DEFENDANTS**

93. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

94. The longevity, scope and severity of Defendants' failures and actions as heretofore described constitute malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Sharon Kay Abner. Specifically, such conduct was undertaken by Defendants without regard to the health and safety consequences to those residents, such as Sharon Kay Abner, entrusted to their care. Moreover, such conduct evidences such little regard for their duties of care, good faith, and fidelity owed to Sharon Kay Abner.

95. The malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Sharon Kay Abner includes, but is not limited to, one or more of the acts and/or omissions as alleged in other paragraphs contained herein.

96. As a direct and proximate result of the above cited malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Sharon Kay Abner, she suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, disfigurement, fright, all of which required hospitalization and medical treatment, and all of which required Sharon Kay Abner to incur significant hospital and medical expenses.

97. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiffs are entitled to and therefore assert a claim for punitive damages in an amount sufficient to punish and deter Defendants and others like them from such conduct in the future.

COUNT NINE: PREMISES LIABILITY CLAIM AGAINST ALL DEFENDANTS

98. Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

99. Defendants, during the time they owned, operated, managed, and/or controlled Arbors at Marietta, had a duty to warn patrons/residents, including Plaintiff, of dangerous conditions of which Defendants knew existed, or reasonably should have known existed in the exercise of reasonable care, and particularly dangerous conditions that were willfully, wantonly, and/or intentionally created by Defendants, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to

provide adequate and appropriate healthcare to the residents which posed a foreseeable threat to the residents of Arbors at Marietta.

100. Defendants, as owners or occupiers of a business premises, owed Sharon Kay Abner, as a business invitee, a duty of ordinary care in maintaining the premises in a reasonably safe condition and had a duty to warn Sharon Kay Abner of latent or hidden dangers pursuant to Ohio law.

101. Defendants knew, or should have known, that the aforesaid dangerous condition on its premises presented a foreseeable and unreasonable danger or risk of harm to invitees such as Sharon Kay Abner.

102. Defendants breached their duty to Sharon Kay Abner by negligently failing to maintain the area under its control, failing to protect or warn Plaintiff of a hazardous and dangerous condition, and failing to correct the hazardous and dangerous condition.

103. These injuries were a direct and proximate result of Defendants' disregard of their duty to the public and all business invitees, including Sharon Kay Abner who, at all times, exercised due care.

104. Defendants were also negligent in failing to warn residents, including the Plaintiff, of known insufficient staffing problems occurring while Defendants owned, operated, managed, and/or controlled Arbors at Marietta.

105. Defendants owed a duty to exercise reasonable care to correct dangerous conditions, including but not limited to the failure to adequately staff the facility, adequately train the staff, provide adequate support for the staff, adequately budget, fund, or spend sufficient sums to provide adequate and appropriate healthcare, for the safety of their residents including Plaintiff.

106. Defendants owed a duty to the residents, including Plaintiff, to provide safe living conditions.

107. Defendants having years of experience owning, operating, and/or managing nursing homes across the country have set in place numerous systems to provide information on occurrences, conditions, and events involving patrons/residents in their nursing homes including Arbors at Marietta, which provided Defendants with the notice and knowledge of the conditions alleged by Plaintiff or reasonably should have placed Defendants on notice of said conditions.

108. Defendants were negligent in the following acts and/or omissions which contributed to causing the dangerous conditions complained of:

- a. The failure to maintain the premises so that residents such as Sharon Kay Abner would not be injured;
- b. The failure to protect Sharon Kay Abner from harm within the facility;
- c. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Sharon Kay Abner's condition;
- d. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Sharon Kay Abner;
- e. The failure to provide a nursing personnel that was properly staffed, qualified, and trained;
- f. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- g. The failure to ensure sufficient and appropriate supplies were available to meet the needs of the residents, including Plaintiff; and
- h. The failure to ensure that the facility was properly budgeted to ensure that residents' needs were met.

109. Defendants willfully and wantonly created these dangerous conditions by the methodology of management and/or control that was set out in the Corporate Plan created and/or implemented by Nursing Home Defendants' executives.

110. Not only did Defendants create these dangerous conditions that put Plaintiff and other residents at risk, but they attempted to keep this information secreted from the public, their investors, and their residents including but not limited to Plaintiff, by means of an intentional cover-up and inaccurate/incomplete documentation.

111. Defendants failed to warn the residents, including Plaintiff, of these dangerous conditions created by Defendants at Arbors at Marietta.

112. As a direct and proximate result of the negligence of Defendants as set out above, Sharon Kay Abner suffered injuries, including the development and worsening of a sacral pressure ulcer, osteomyelitis, sepsis, death, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Sharon Kay Abner to incur significant hospital and medical expenses.

113. WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright, as well as all damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Sharon Kay Abner, including but not limited to sorrow, mental anguish, solace, society, companionship, comfort, guidance, kindly offices, advice, services, protection, care, and assistance in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

PRAYER FOR RELIEF

Pursuant to Ohio Rules of Civil Procedure, Plaintiff asserts demand that all issues of fact in this case be tried by a jury.

WHEREFORE, the Plaintiff, Individually and on behalf of the Estate and Wrongful Death Beneficiaries of Sharon Kay Abner, prays for judgment against Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of this Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;
2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating this case;
4. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter Defendants from ever repeating such atrocities; and
5. For all other relief to which Plaintiff is entitled by Ohio law.

Respectfully submitted, this the 15th day of April, 2024.

Mary Davis, Executor of the Estate
and Wrongful Death Beneficiaries of
Sharon Kay Abner,

MCHUGH FULLER LAW GROUP, PLLC

By: 

Michael J. Fuller, Jr., OH Bar No. 90250

Mike@mchughfuller.com

D. Bryant Chaffin, OH Bar No. 90249

Bryant@mchughfuller.com

John R. Cummings, OH Bar No. 0091507

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97 Elias Whiddon Rd.

Hattiesburg, MS 39402

T: 601-261-2220 // F: 601-261-2481

Attorneys for Plaintiff

PROBATE COURT OF WASHINGTON COUNTY, OHIO

ESTATE OF SHARON KAY ABNER, DECEASED

CASE NO. 2024 ES 00211

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY

FILED

[For Executors and all Administrators]

APR 11 2024

TIMOTHY A. WILLIAMS, JUDGE
PROBATE COURT
WASHINGTON COUNTY, OHIO

Name and Title of Fiduciary MARY DAVIS, EXECUTOR

On hearing in open Court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that;

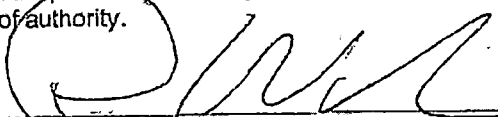
Decedent died [check one of the following] testate - intestate - on JANUARY 16TH, 2023, domiciled in _____

[Check one of the following] Bond is dispensed with by the Will - Bond is dispensed with by law - Applicant has executed and filed an appropriate bond, which is approved by the Court; and

Applicant is a suitable and competent person to execute the trust.

The Court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

APRIL 11, 2024
Date


PROBATE JUDGE TIMOTHY A. WILLIAMS

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

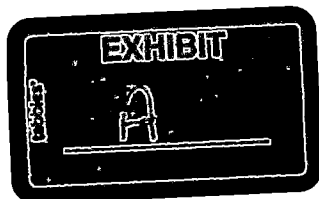
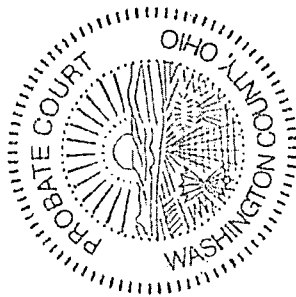
The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

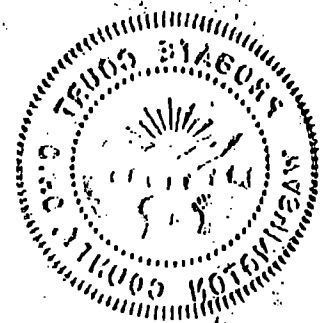
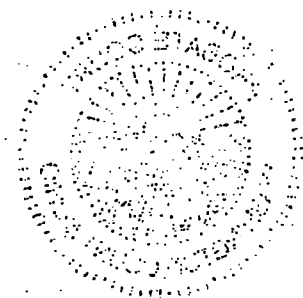
TIMOTHY A. WILLIAMS
Probate Judge/Clerk

by Michelle Whikelish

Date

[Seal]





AFFIDAVIT OF MERIT
REGARDING ARBORS AT MARIETTA'S TREATMENT OF
SHARON ABNER

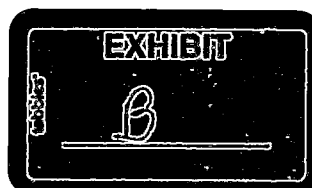
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

BEFORE ME, the undersigned authority, personally appeared Dean Nickles who upon being duly sworn herein states as follows:

1. I, Dean Nickles, am a physician licensed and currently practicing in the State of California and have personal knowledge of the matters set forth in this declaration and if called upon to testify to such matters, I could and would do it competently.

2. I am board certified in Internal Medicine, certified by the American Board of Internal Medicine in 1979. I received my undergraduate degree from the United States Military Academy at West Point, New York. I received my doctorate of medicine degree in 1975 from West Virginia University School of Medicine in Morgantown, West Virginia, following which I completed an internship at Madigan Army Medical Center in Tacoma, Washington in 1976 and an internal medicine residency at Tripler Army Medical Center in 1979. I have been in the private practice of internal medicine in Oakland, California and Emeryville, California since 1981. For the past 43 years, I have cared for many patients with similar problems experienced by Sharon Abner.

3. I have extensive personal experience in primary medical care and long-term care. I personally have provided care for patients in addition to my academic teaching and



administrative responsibilities and presently devote greater than one-half of my professional time to the active clinical practice in internal medicine. My background is more fully described in my curriculum vitae, a copy of which is attached to this declaration.

4. That Exhibit "A" attached hereto is a true and complete copy of my current Curriculum Vitae, which is incorporated herein by reference.

I have reviewed the following medical records as they pertain to Sharon Abner:

- | | |
|-------------------------------|---|
| a) Stonerise Belmont | 06/22/21 – 10/03/21 |
| b) Marietta Memorial Hospital | 05/03/22 – ER
07/07/22 – OP Lab
08/11/22 – 08/18/22 |
| c) Arbors at Marietta | 08/18/22 – 12/13/22 |
| d) Marietta Memorial Hospital | 10/11/22 – Pulmonary Function Lab
11/10/22 – OP x-ray
12/13/22 – 12/17/22 |
| e) Arbors at Marietta | 12/17/22 – 12/26/22 |
| f) Marietta Memorial Hospital | 12/26/22 – 12/27/22 |
| g) Arbors at Marietta | 12/27/22 – 01/18/23 |
| h) Death Certificate | |

5. Sharon Abner resided with the Defendants from on or about August 18, 2022, until January 18, 2023.

6. That it is my professional opinion, within a reasonable degree of medical probability, based on my review of the above medical records, my experience, my education and training, that Arbors at Marietta, its agents, its parent and/or subsidiary corporations involved in any way with the operation, supervision, management, and/or control of this nursing home, its employees, its administrators, its nurses and its staff, did deviate from the accepted standards of medical care

in the treatment of Sharon Abner and these deviations did result in and proximately caused Sharon Abner to suffer severe injuries and death.

7. As a result of my training and experience, I am familiar with the applicable standard of care.

8. It is my professional opinion, within a reasonable degree of certainty, that Arbors at Marietta, its agents, its parent and/or subsidiary corporations involved in any way with the operation, supervision, management, and/or control of this nursing home, violated that applicable standard of care. The deviations in the standard of care include but are not limited to the following deficiencies:

- a. The failure to respond to significant signs and symptoms of change in the condition of Sharon Abner;
- b. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Sharon Abner;
- c. The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Sharon Abner's condition;
- d. The failure to meet the total needs of Sharon Abner;
- e. The failure to ensure that Sharon Abner
 - i. received timely and accurate care assessments;
 - ii. received prescribed treatment, medication, and diet;
 - iii. received necessary supervision; and

- iv. received timely intervention due to a significant change in condition.
- f. The failure to ensure that Sharon Abner attained and maintained her highest level of physical, mental, and psychosocial well-being;
- g. The failure to adequately assess, evaluate and supervise nursing personnel so as to ensure that Sharon Abner received appropriate nursing care, in accordance with the statutorily mandated regulations implemented by the Ohio Department of Health and its agents;
- h. The failure to provide and ensure an adequate care plan based on the needs of Sharon Abner;
- i. The failure to provide and ensure adequate care plan revisions and modifications as the needs of Sharon Abner changed;
- j. The failure to implement and ensure that an adequate nursing care plan for Sharon Abner was followed by nursing personnel;
- k. The apparent failure to adopt and or follow adequate guidelines, policies, and procedures for documenting, and maintaining files;
- l. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- m. The failure to maintain medical records on Sharon Abner in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - i. the diagnosis of Sharon Abner;

- ii. the treatment of Sharon Abner; and
 - iii. the assessment and establishment of appropriate plans of care and treatment.
- n. The failure to adequately and properly monitor Sharon Abner and recognize significant changes in her health status; and
- o. The failure to adequately inform Sharon Abner's physician and family of changes in her condition.
- p. The aforementioned failures are consistent with and indicative of a failure to provide sufficient nursing personnel to meet the total needs of Sharon Abner.

All of the forgoing deviations are based on the gross failure to meet the needs of Sharon Abner as well as the injuries she sustained while under the care of Arbors at Marietta

9. These deviations were not isolated incidents but were repeated throughout the residency of Sharon Abner. Due to and as a result of these repeated deviations in the standard of care, within a reasonable degree of medical probability, Sharon Abner suffered injuries including but not limited to:

- a) The failure to provide adequate and appropriate pressure relief that resulted in the development and worsening of an infected Stage IV pressure ulcer to Ms. Abner's sacrum;
- b) Failure to prevent infection;
- c) Pain; and,
- d) Death.

10. The care provided at Arbors at Marietta demonstrates a course of conduct and or systemic problems which evidence willful and wanton disregard for the health and safety of the residents including Sharon Abner.

11. All of the opinions stated in this affidavit are expressed within a reasonable degree of medical probability and are based on my education, training and experience and upon my review of the records listed in this Affidavit.

12. This Affidavit is by no means to be construed as an exhaustive recitation of all of my opinions with regard to the care and treatment that Sharon Abner received while she was a resident of Arbors at Marietta. I expressly reserve my right to amend, modify, and or supplement the opinions expressed herein upon the review of additional information.

13. It is my opinion, to a reasonable degree of medical probability, that Sharon Abner's injuries, and damages, and death are the proximate result of Arbors at Marietta's deviations from the standard of care outlined above.

FURTHER AFFIANT SAYETH NOT.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Dean J Nickles
Dean J. Nickles, M.D., FACP

Sworn to and subscribed before me on 5th day of April 2024.

[Signature]
Notary Public, State of California

My Commission Expires:

12-19-2027

Personally Known _____ or Produced Identification X
Type of Identification Produced CALIFORNIA D.L.



DEAN J. NICKLES, M.D., FACP

90 Inverleith Terrace • Piedmont, California 94611-3323
(510) 530-9220 • (510) 530-1161 (fax) • DeanNickles@gmail.com

CURRICULUM VITAE

CURRENT PRACTICE AND AFFILIATIONS

Internist

University Medical Partners
Stanford Healthcare
5800 Hollis Street
Emeryville, California 94608

PROFESSIONAL EXPERIENCE

Clinical Work

**Chairman, Stanford Healthcare Cancer Committee for
Health Equity and Patient Advocacy**

May 2021 – Present

**Instructor/ Mentor, Stanford Physician Assistant
Student Program**

January 2021 – Present

Consultant, Radiology Department
Stanford Healthcare
5800 Hollis Street
Emeryville, California 94608

July 2019 – Present

Stanford Medicine Partners
555 Twelfth Street
Oakland, California 94607
Co-Chairman of the Board of Directors

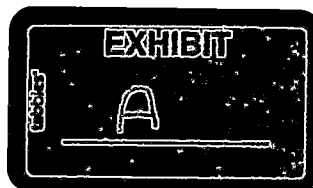
Jan 2015 – Dec 2020

Associated Internal Medicine
University Medical Partners
Stanford Healthcare
350 30th Street, Suite 320
Oakland, California 94609
*Member, Physician Leader, Laboratory Director,
Site Coordinator of Stanford Residency Program*

Jan 2017 – Jul 2019

University Medical Partners
Stanford Healthcare
555 Twelfth Street
Oakland, California 94607
Member and Co-Chairman of Board

Jan 2017 – Jul 2019



**Associated Internal Medicine
University Healthcare Alliance
Stanford Healthcare**
350 30th Street, Suite 320
Oakland, California 94609
Member & Physician Leader

May 2013 – Jan 2017

Veridia Diagnostics
1701 Harbor Bay Parkway, Suite 200
Alameda, California 94502
Laboratory Director

Aug 2017 – Mar 2018

Associated Internal Medicine Medical Group
350 30th Street, Suite 320
Oakland, California 94609
*Founding Member, Group Private Practice of Internal Medicine
President*

*April 1990 – April 2013
1996-2010*

Alta Bates Summit Medical Center, Summit Campus
350 Hawthorne Avenue
Oakland, California 94609
Director, Utilization Management & Clinical Resource Management

Jan. 2000 – Jun 2015

Hill Physicians Medical Group
2409 Camino Ramon
San Ramon, California 94583
*Chief of Primary Care, Oakland/Berkeley Region
Board Member*

*Jan. 1996 – Dec. 2013
July 2003 – May 2014*

Singulex Laboratory
1701 Harbor Bay Parkway, Suite 200
Alameda, California 94502
Laboratory Director

August 2008 – July 2017

Professional HealthCare at Home
San Pablo, California
Medical Director

1993 – May 2010

Summit Medical Center
Oakland, California
Director, Utilization and Clinical Resource Management

July 1992 – Dec 1999

Merritt Peralta Medical Center
Oakland, California
Director, Medical Intensive Care Unit

1986 – 1992

Dean J. Nickles, M.D.
3300 Webster Street
Oakland, California 94609
Private Solo Practice of Internal Medicine and Critical Care

May 1981 – March 1990

Stanford University School of Medicine Palo Alto, California <i>Clinical Instructor of Medicine</i>	<i>June 1981 – Aug 1983</i>
Texas Tech University School of Medicine Lubbock and El Paso, Texas <i>Assistant Clinical Professor of Medicine</i>	<i>Sept. 1979 – Feb. 1981</i>
William Beaumont Army Medical Center El Paso, Texas <i>Staff Internist & Director, Medical Intensive Care Unit</i>	<i>Aug. 1979 – Jan. 1981</i>
Tripler Army Medical Center Honolulu, Hawaii <i>Director, Medical Intensive Care Unit and Coronary Care Unit</i>	<i>July 1978 – June 1979</i>

PROFESSIONAL EXPERIENCE

Committee Work

University Medical Partners/ Stanford Medicine Partners Oakland, California <i>Member, Quality Committee</i>	<i>Jan 2017 – Present</i>
Alta Bates Summit Medical Center, Summit Campus Oakland, California <i>Chairman, Utilization Management & Clinical Resource Management Committee</i> <i>Secretary-Treasurer, Summit Medical Staff</i> <i>Member, Pharmacy and Therapeutics Committee</i> <i>Member, Utilization Management Committee</i> <i>Member, Infection Control Committee</i> <i>Member, Carol Ann Read Breast Center Task Force</i> <i>Member, Ethics Committee</i>	<i>Jan. 2000 – Jun 2015</i> <i>Feb. 2002 – Feb. 2004</i> <i>Jan. 2000 – Present</i> <i>Jan. 2000 – Present</i> <i>Jan. 2000 – Feb. 2016</i> <i>2009 – 2014</i> <i>2000 – 2010</i>
Alameda-Contra Costa Medical Association 6230 Claremont Avenue Oakland, California 94618 <i>Member, Liability Committee</i>	<i>2006 – 2020</i>
Merritt Peralta Medical Center Oakland, California <i>Chairman, Critical Care Committee</i> <i>Secretary-Treasurer, Medical Staff</i> <i>Chairman, Wellness Advisory Committee</i>	<i>1986 – 1992</i> <i>1987 – 1989</i> <i>1984 – 1987</i>

EDUCATION

- Residency:** **Tripler Army Medical Center**
Honolulu, Hawaii
July 1976 to June 1979
Chief Medical Resident, 1978 - 1979
- Flexible Internship:** **Madigan Army Medical Center**
Tacoma, Washington
July 1975 to June 1976
- Medical School:** **West Virginia University**
Morgantown, West Virginia
1971-1975
M.D. awarded May 1975
- Undergraduate:** **United States Military Academy**
West Point, New York
1966-1970
B.S. Degree with honors, General Engineering
- High School:** **Linsly Military Institute**
Wheeling, West Virginia
1962-1966

CERTIFICATIONS

- American Board of Internal Medicine *September 1979 – Present*
- Critical Care Medicine *1987 – 1997*

MEDICAL EXAMINATIONS

- State of New Mexico Licensure Examination – 1980
- American Board of Internal Medicine Certification Examination – *September 1979*
- Critical Care Medicine Certification Examination – 1987
- National Board of Medical Examiners – 1975

SOCIETIES

- American College of Physicians
- American College of Physician Executives

AWARDS

- *The Oakland Tribune* Best Medical Doctor 1996, 2002, 2003, 2007
- Best Resident Award, Tripler Army Medical Center, Honolulu, 1979

CALIFORNIA LICENSE Number G44039

PERSONAL INFORMATION

- Married, 2 children