

**IN THE CIRCUIT COURT OF CALLAWAY COUNTY, MISSOURI
13th JUDICIAL CIRCUIT**

DEBORAH GREMS, Individually and in her capacity as Personal Representative for the **ESTATE OF CLARENCE BRICKLEY**

and

VIRGINIA BRICKLEY, individually as the surviving spouse of decedent Clarence Brickley

Plaintiffs.

v.

N&R OF FULTON, INC. d/b/a/ FULTON NURSING & REHAB

Serve: Charlotte Stutts
1220 N. Main
P.O. Box 1559
Sikeston, MO 63801

and

HEALTH SYSTEMS, INC.

Serve: Charlotte Stutts
1220 N. Main
P.O. Box 1559
Sikeston, MO 63801

Defendants.

Case No.:

Division:

JURY TRIAL DEMANDED

PETITION FOR DAMAGES

PLAINTIFFS

1. Clarence Brickley ("Clarence") died on June 17, 2024. Prior to his death, Clarence Brickley was a resident at N&R of Fulton, Inc. d/b/a Fulton Nursing & Rehab, a Missouri licensed nursing home located at 1510 Bluff Street, Fulton, Missouri 65251.

2. Plaintiff Deborah Gremms is a resident of Callaway County, Missouri and is the Personal Representative for the Estate of Clarence Brickley as well as the surviving child of decedent Clarence Brickley, and therefore, a member of the class of individuals authorized to

pursue a wrongful death claim pursuant to RSMo § 537.080.

3. Plaintiff Virginia Brickley is a resident of Callaway County, Missouri and is the surviving spouse of decedent Clarence Brickley, and therefore, a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080.

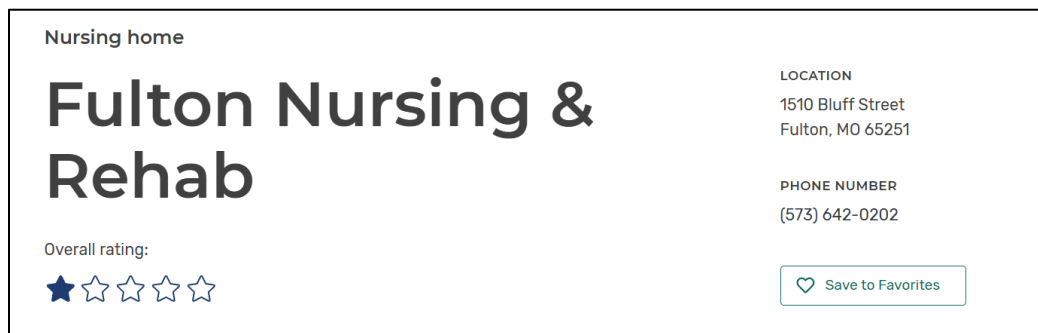
DEFENDANTS

N&R of Fulton, Inc. d/b/a Fulton Nursing & Rehab

4. N&R of Fulton, Inc. d/b/a Fulton Nursing & Rehab is a for-profit Missouri corporation.

5. N&R of Futon, Inc. d/b/a Fulton Nursing & Rehab owned, operated, and did business as 5Fulton Nursing & Rehab which is a Missouri licensed nursing home located at 11510 Bluff St., Fulton, Missouri 65251.

6. Fulton Nursing & Rehab was (and is) a “1-Star” facility which, according to Medicare.gov/NursingHomeCompare is a “Much Below Average” nursing home.



7. At all relevant times, James Lincoln and Judy L. Lincoln each owned 50% of Fulton Nursing & Rehab.

8. At all relevant times, the members of the Board of Directors were Gary Crane, and Brandon Bysor, both residents of Miller County, Missouri.

9. At all relevant times, Fulton Nursing & Rehab was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through

its owners, managers, employees, agents and representatives.

10. At all relevant times, Fulton Nursing & Rehab exercised part and/or all managerial and operational control for the Fulton Nursing & Rehab facility.

11. At all relevant times, Fulton Nursing & Rehab received money and profited from the operation of the facility.

12. As a result of multiple related party transactions and due to decisions made in whole or in part by defendant Fulton Nursing & Rehab, its owners, members, officers, Board of Directors, employees and agents, Fulton Nursing & Rehab did not have enough staff members to meet the needs of its residents, including Clarence Brickley.

13. Further, defendant Fulton Nursing & Rehab, its owners, members, officers, Board of Directors, employees and agents, willfully participated in the tortious acts that are the subject of this Petition. In particular, defendants failed to ensure that Fulton Nursing & Rehab developed an appropriate care plan, failed to ensure that Fulton Nursing & Rehab had appropriate policies and procedures for its nursing staff, failed to ensure that Fulton Nursing & Rehab staff received proper training and failed to ensure that Fulton Nursing & Rehab was properly capitalized, funded and staffed. Because of these failures, Fulton Nursing & Rehab was not able meet the needs of its residents, including Clarence Brickley.

14. Fulton Nursing & Rehab can be served through its registered agent Charlotte Stutts, 1220 N. Main Street, Sikeston, Missouri 63801.

Health Systems, Inc.

15. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

16. Health Systems, Inc. (“Health Systems”) is a Missouri for-profit corporate entity with its principal place of business or corporate office located at 1220 N. Main, Sikeston, Missouri 63801.

17. At all relevant times, Health Systems was owned by James Lincoln.

18. At all relevant times, James Lincoln was the President of Health Systems.

19. At all relevant times, Judy Lincoln was the Secretary of Health Systems.

20. At all relevant times, James Lincoln and Judy L. Lincoln were the only members of the Board of Directors of Health Systems.

21. At all relevant times, Health Systems and/or individuals or entities acting on its behalf owned, operated, managed, controlled and/or provided services to multiple long-term care facilities in Missouri, including Fulton Nursing & Rehab located at 11510 Bluff St., Fulton, Missouri 65251.

22. At all relevant times, Health Systems held itself out as the Home Office for Fulton Nursing & Rehab.

23. At all relevant times, Health Systems through its owner(s), members, Board of Directors, officers, governing body and/or its subsidiary companies, owned and/or controlled (directly or indirectly) 100% of Fulton Nursing & Rehab.

24. At all relevant times, Health Systems held itself out as the management company and/or consulting company that was substantially engaged in the leasing, control, management, staffing, fiscal budgeting, oversight, risk management, regulatory compliance, implementation and enforcement of policies and procedures, consultation with and/or operation of multiple skilled nursing facilities in the State of Missouri, including Fulton Nursing & Rehab.

25. At all relevant times, Health Systems provided centralized management and support services to the healthcare facilities it owns, operates and/or manages including Fulton

Nursing & Rehab. The management and support services include operational support for preparing budgets, accounting, financial services, cash management, training, and other services all of which are provided to the various healthcare facilities by the Health Systems centralized home office.

26. At all relevant times, Health Systems was also responsible for the daily operation of Fulton Nursing & Rehab, including but not limited to: providing capital, determining facility and departmental budgets, determining per patient per day (PPD) budgets, hiring and firing staff, determining the number of staff, determining the staffing levels, determining the staff-to-resident ratio, staff training, safety of residents, licensure, auditing resident care, reviewing and approving computer systems, facility maintenance, facility licensing, contracting for services, and other operations controlling resident care.

27. As a result of the multiple related party transactions and due to decisions made in whole or in part by defendant Health Systems, its owners, members, officers, Board of Directors, employees and agents, Fulton Nursing & Rehab did not have enough staff members to meet the needs of its residents, including but not limited to, Clarence Brickley.

28. Health Systems, its owners, members, officers, Board of Directors, employees and agents, willfully participated in the tortious acts that are the subject of this Petition which include failing to ensure that Fulton Nursing & Rehab had appropriate policies and procedures for its nursing staff, that staff received proper training and that the facility was properly capitalized, funded and staffed. Because of these failures, Fulton Nursing & Rehab was not able meet the needs of its residents, including but not limited to, Clarence Brickley.

29. Health Systems owed a duty to Clarence Brickley to use reasonable care or to ensure that reasonable care was provided for his safety and health while he was a resident at Fulton Nursing & Rehab.

30. Health Systems can be served through its registered agent Charlotte Stutts at 1220 N. Main, Sikeston, MO 63801.

DEFENDANTS' JOINT ENTERPRISE

31. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

32. N&R of Fulton, Inc. is the licensee and operator of Fulton Nursing & Rehab.

33. The Manager of Fulton Nursing & Rehab is Health Systems, Inc.

34. Health Systems, Inc. exercised "operational/managerial control" over Fulton Nursing & Rehab, during the residency of Clarence Brickley.

35. Upon information and belief James Lincoln and Judy Lincoln each own 50% of Fulton Nursing & Rehab.

36. Upon information and belief, James Lincoln is 100% owner of Health Systems, Inc.

37. Health Systems, at the direction of James Lincoln and Judy Lincoln, is the corporate parent of Fulton Nursing & Rehab

38. During the time-period of Clarence Brickley's residency at Fulton Nursing & Rehab and, upon information and belief, to this day, James Lincoln possesses an ownership in approximately 88 skilled nursing facilities in Missouri

39. Upon information and belief, Health Systems also serves as the "management company" for Fulton Nursing & Rehab and each of the above-referenced facilities and derives a "consulting fee" or "management fee" from each as a result.

40. Health Systems employees a "Director of Operations" to oversee Fulton Nursing & Rehab.

41. Health Systems assisted Fulton Nursing & Rehab in creating the budget for the nursing of nursing personnel before, during and after the residency of Clarence Brickley.

42. Health Systems also assisted Fulton Nursing & Rehab in matters involving personnel, staffing levels and other operational decisions.

43. Health Systems was actively involved in determining the “appropriate budgeted amount of nursing care per patient, per day” at Fulton Nursing & Rehab before, during and after the residency of Clarence Brickley.

44. Upon information and belief, Health Systems charges a management fee of a specific percentage of all gross revenue for all the facilities in the James Lincoln nursing home conglomerate.

DEFENDANTS’ JOINT ENTERPRISE

45. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

46. Each of the defendants were engaged in a joint enterprise in that:

- a. Defendants had an agreement, express and/or implied, among the members of the group to operate the skilled nursing home known as Fulton Nursing & Rehab;
- b. Defendants had a common purpose to operate Fulton Nursing & Rehab;
- c. Defendants had a community of pecuniary interest in the operation of Fulton Nursing & Rehab;
- d. Defendants had an equal right to a voice in the direction of the operation of Fulton Nursing & Rehab which gave each of the defendants an equal right of control.

47. There has been a close relationship and common ownership between the defendants at all relevant times.

48. As a consequence of the joint enterprise, defendants owed a joint duty to Clarence to use reasonable care for his safety while under their care and supervision at Fulton Nursing & Rehab.

JURISDICTION AND VENUE

49. Venue is proper in this Court, because the tortious acts complained of occurred in Callaway County, Missouri.

50. Each named defendant is a Missouri corporation who committed tortious acts in the state of Missouri, thereby making jurisdiction in this Court proper.

AGENCY

51. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

52. The acts hereinafter described were performed by the agents, representatives, servants, and employees of defendants and were performed either with the full knowledge and consent of defendants, and/or were performed by their agents, representatives, servants, or employees during the scope of their agency, representation, or employment with the defendants.

53. Furthermore, the acts hereinafter described as being performed by the agents, representatives, servants, or employees of defendants were performed or were supposed to be performed on behalf of and/or for the benefit of Clarence Brickley.

FACTUAL BACKGROUND

54. Plaintiff incorporates by reference the allegations previously set forth and further allege as follows.

55. Defendants exercised substantial control over significant aspects of the operation and management of the Fulton Nursing & Rehab during Clarence Brickley's period of residency therein, including but not limited to the creation, setting, funding and/or implementation of budgets; the hiring and training of staff; the monitoring of resident acuity levels and staffing sufficiency to meet each resident's needs; control over resident admissions and discharge to and from the facility; the supervision and monitoring of residents; and the creation and enforcement of

care plans that are to provide for the safety and well-being of residents and the creation and enforcement of written policies and procedures pertaining to the rules that provide for the safety and well-being of residents.

56. Each of these managerial and operational functions had a direct negative impact on the quality of care delivered to Clarence Brickley and other residents at Fulton Nursing & Rehab nursing home and were taken in furtherance of an operational and managerial objective of maximizing profit at the expense of quality care.

57. Defendants substantially derive their revenue and profits from the receipt of taxpayer dollars through federally and state funded Medicare and Medicaid programs.

58. Upon information and belief Plaintiffs further allege that throughout the time period of Clarence Brickley's residency at the facility, defendants through their operational, budgetary, consulting and managerial decisions and actions, provided grossly inadequate capitalization to ensure that their residents received the required care and services for them to attain or maintain the highest practicable, physical, mental and psychosocial well-being, consistent with each residents' comprehensive assessments and plans of care, including Clarence Brickley.

59. As a result of defendants' actions, defendants underfunded Fulton Nursing & Rehab during Clarence Brickley's residency which directly led to understaffing of the facility which, while profitable to defendants and their multiple related parties, directly resulted in the failure of Fulton Nursing & Rehab to provide the basic services Clarence Brickley needed in order to prevent him from suffering the abuse, neglect and injuries that ultimately caused his death.

60. In accepting and utilizing taxpayer dollars through Medicaid reimbursement in the provision of nursing home care and related services provided to Clarence Brickley and other residents, Defendants undertook a duty and were obligated to (1) comply with the federal Nursing Home Reform Act of 1987 a/k/a the Omnibus Budget Reconciliation Act of 1987 (OBRA '87)

signed into law by President Ronald Reagan, (2) adhere to Clarence Brickley's resident rights as set forth the Omnibus Nursing Home Act, Mo. Rev. Stat. § 198.003, (3) comply with the Missouri Code of State Regulations § 19 C.S.R. 30-85.042 and (4) provide care and services that met the prevailing standard of care in the delivery of all care and services provided to Clarence Brickley while he resided at Fulton Nursing & Rehab.

61. Clarence Brickley was admitted to Fulton Nursing & Rehab on April 2, 2024. At the time of his admission defendants knew that Clarence Brickley was at risk for falls.

62. On the second day of his admission, April 3, 2024, Clarence Brickley suffered a witnessed fall when he stood up and fell backwards.

63. Two days later, on April 5, 2024, Clarence Brickley was found on the floor in his room uninjured. It was noted that his bed was in the lowest level and a "floor mattress" was on the side of his bed.

64. On the afternoon of April 8, 2024, Clarence Brickley suffered an unwitnessed fall and was found laying on the floor after staff heard yelling coming from his room. That evening staff members noted that "Resident continues to get out of chair and attempt to walk. Was noted to have fall on day shift. Constant reminders to not get out of chair without assist unsuccessful. Remains confused at baseline. Does not follow commands and remains a fall risk." His bed was not in the lowest position, nor was there a floor mattress next to his bed.

65. On April 9, 2024, nursing notes indicate that Clarence Brickley "tries to get up out of w/c [his wheelchair] and walking. Gait unsteady and needs monitored closely. Pleasantly confused. Hx [History] of unsteady gait and falling."

66. On May 6, 2024, Clarence Brickley suffered a fall that was not reported in his chart until May 7, 2024 when it was noted that "Resident with c/o [complaint of] right-sided pain r/t

[related to] fall from yesterday....Greater increase of falling noted due to confusion and unwilling to follow directions. Continue to remind and direct for correct behavior.”

67. On May 8, 2024, after Clarence Brickley finished breakfast, he stood up to get into his wheelchair. The wheelchair had not been locked by staff members and he fell to the floor.

68. On May 10, 2024 staff members noted that Clarence Brickley “[D]oes not follow commands and resists care. Continually attempts to stand and is at greater risk to fall.”

69. On June 2, 2024, Clarence Brickley suffered an unwitnessed fall in his room and was found lying on the floor sustaining a laceration on his mid-scalp that suffered “profuse bleeding” and complaining of pain in his left leg/hip. He was sent to a local hospital as a result.

06/02/2024 3:21AM	A call light was turned on in room 106 and a nursing staff went to check on resident. Resident was observed to be lying on the floor and reported to this writer that the resident had a suspected fall. This writer and another nursing aide went to check on Pete and observed him on the floor groaning sustained laceration on his mid-scalp measures approximately 3cm in length. A dry gauze then an abdominal pad was applied with direct pressure to manage profuse bleeding on his mid-scalp. Pete groaned more when he was tried to turn to lay flat and he was holding his left leg/hip. This writer instructed an aide to call 911 to send resident to hospital for further evaluation and treatment. VS taken: 133/57, 101, 19, 85% on RA. Call was made with the wife Virginia, and daughter Deborah to made aware of the fall. Virginia mentioned to send Pete to MU as the hospital of choice. EMS arrived around 12::10am, handed them a copy of face sheet, CCD and DNR document. Parenteral pain medication was given to resident by the paramedics. Resident left building to go to university hospital in Columbia @ approximately 12:30am.	Nursing	Kristine A Razal RN	06/02/2024 - *Neurological Checks 72 Hour Monitoring - 12hr shifts	06/02/2024 - Fall
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70. Clarence Brickley’s bed was not in a low position nor was there a floor mat next to his bed at the time of his fall on June 2, 2024.

71. Upon admission to the local hospital, Clarence Brickley complained of 10/10 severity of pain in his left hip. Examinations did not reveal any acute injury to his head or spine, but x-rays did reveal a left intertrochanteric femur fracture. A urine culture also grew greater than 100,000 colonies of E-coli, suggesting a urinary tract infection.

72. The next day, Clarence Brickley underwent an open reduction and placement of an intramedullary nail to transfix the femur fracture.



73. His hospital course was complicated by severe pain, delirium and aspiration. Ultimately, his family decided he had suffered enough and opted to change his status to Do Not Intubate/Do Not Resuscitate and a hospice program was initiated.

74. Clarence Brickley returned to the N&R of Fulton facility and remained there and died on June 17, 2024 as a direct result of the left hip fracture he suffered on June 2, 2024 at the facility.

STATE OF MISSOURI	
DEATH CERTIFICATION	
DATE FILED: JUNE 25, 2024	STATE FILE NUMBER: [REDACTED]
DECEDENT'S NAME: CLARENCE BRICKLEY	
DATE OF DEATH: JUNE 17, 2024	DATE OF BIRTH: [REDACTED]
COUNTY OF DEATH: CALLAWAY	SSN: [REDACTED]
MARITAL STATUS: MARRIED	SEX: MALE
EVER IN ARMED FORCES: NO	
RESIDENCE ADDR: [REDACTED]	
SURV SPOUSE (PRIOR FIRST MARRIAGE): [REDACTED]	
FUNERAL HOME: MAUPIN FUNERAL HOME	
CAUSE OF DEATH (ICD CODE):	MANNER: ACCIDENT
HIP FRACTURE	
SIG COND: CHRONIC OBSTRUCTIVE PULMONARY DISEASE, HYPERTENSION	
THIS IS A TRUE CERTIFICATION OF NAME AND DEATH FACTS AS RECORDED BY THE BUREAU OF VITAL RECORDS, JEFFERSON CITY, MISSOURI.	
ISSUED LOCALLY BY: CALLAWAY	Dylan R. Bryant
DATE ISSUED: JUNE 25, 2024	State Registrar & Chief
THE REPRODUCTION OF THIS DOCUMENT IS PROHIBITED BY LAW. ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATION.	

COUNT I – WRONGFUL DEATH

75. Plaintiff incorporates by reference all the foregoing allegations in this Petition as though fully set forth herein.

76. At all times during her residency at Fulton Nursing & Rehab, Clarence Brickley was in a defenseless and dependent condition.

77. As a result of her defenseless and dependent condition, Clarence Brickley relied upon defendants to provide for his safety, protection, care and treatment.

78. At all relevant times, defendants had a duty to act in accordance with the standards of care required of those owning, operating, managing, maintaining, and/or controlling a skilled nursing facility.

79. These duties required defendants to implement and enforce policies and procedures to ensure the proper care for, and treatment of, residents such as Clarence Brickley.

80. These duties required defendants to have sufficient and qualified staff at Fulton Nursing & Rehab nursing home to ensure that residents of the nursing home receive proper care, supervision, monitoring and treatment.

81. These duties required defendants to ensure that Fulton Nursing & Rehab' nurses and other staff prepare and follow an appropriate care plan in accordance with the care needs of their residents, including Clarence Brickley.

82. These duties required defendants to ensure that Fulton Nursing & Rehab' nurses and other staff were educated, qualified and trained to provide proper supervision, care and treatment for the residents, like Clarence Brickley.

83. These duties required defendants to ensure that Fulton Nursing & Rehab was properly capitalized to ensure that the staff members were properly trained and that residents received proper supervision, care and treatment.

84. Specifically, with respect to Clarence Brickley, defendants and their agents, servants, owners and/or employees breached their duties and were guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standard of due care, skill, and practice ordinarily exercised by members of their profession under the same or similar circumstances, including:

- a. By failing to adequately assess, monitor, document, treat, and respond to Clarence Brickley's physical condition;
- b. By failing to timely, consistently, and properly assess and document Clarence Brickley's physical condition;
- c. By failing to provide adequate nursing staff to ensure Clarence Brickley's 24-hour protective oversight and supervision;
- d. By failing to provide adequate assistive devices to prevent injuries to Clarence Brickley;
- e. By failing to enact and carry out an adequate care plan in regard to Clarence Brickley's risk for increased risk for injuries related to falls;
- f. By failing to provide adequate preventative interventions to protect Clarence Brickley from fall related injuries;
- g. By failing to prevent Clarence Brickley from suffering injuries in a fall;
- h. By failing to timely report to a physician changes in the condition of Clarence Brickley;
- i. By failing to timely transfer Clarence Brickley to a facility that could provide him with adequate care;
- j. By failing to properly supervise and train the employees, agents and/or servants of the Defendants who were responsible for the care and treatment of Clarence Brickley;
- k. By failing to consistently monitor, assess, and document Clarence Brickley's physical condition;
- l. By failing to have a sufficient number of staff members to provide care for residents at the facility, including Clarence Brickley; and
- m. By failing to ensure the nursing home was properly capitalized.

85. Defendants, as the owners, operators, and/or managers of skilled care nursing facilities licensed by the State of Missouri and accepting Medicare and Medicaid funds, were subject to regulations promulgated by the Missouri Division of Social Services and under the Social Security Act.

86. While providing care and treatment to Clarence Brickley defendants and their agents, servants and/or employees breached their duty of care and were guilty of acts of negligence and negligence, *per se*, in violating regulations governing nursing home facilities including but not limited to the following:

- a. 19 C.S.R. 30-85.032(38). Rooms shall be designed and furnished so that the comfort and safety of the residents are provided for at all times.
- b. 19 C.S.R. 30-85.042(3). The operator shall be responsible to assure compliance with all applicable laws and rules. The administrator's responsibilities shall include the oversight of residents to assure that they receive appropriate nursing and medical care;
- c. 19 C.S.R. 30-85.042(6). The facility shall not knowingly admit or continue to care for residents whose needs cannot be met by the facility directly or in cooperation with outside resources. Facilities which retain residents needing skilled nursing care shall provide licensed nurses for these procedures;
- d. 19 C.S.R. 30-85.042(13). The facility shall develop policies and procedures applicable to its operation to insure the residents' health and safety and to meet the residents' needs;
- e. 19 C.S.R. 30-85.042(15). All personnel shall be fully informed of the policies of the facility and their duties;
- f. 19 C.S.R. 30-85.042(16). All persons who have contact with the residents in the facility shall not knowingly act or omit any duty in a manner which would materially or adversely affect the health, safety, welfare or property of a resident;
- g. 19 C.S.R. 30-85.042(20). The facility shall develop and offer an in-service orientation and continuing educational program for the development and improvement of skills of all the facility's personnel, appropriate for their job function.

- h. 19 C.S.R. 30-85.042(22). The facility must ensure there is a system of in-service training for nursing personnel which identifies training needs related to problems, needs, and care of residents and sufficient to ensure staff's continuing competency.
- i. 19 C.S.R. 30-85.042(37). All facilities shall employ nursing personnel in sufficient numbers and with sufficient qualifications to provide nursing and related services which enable each resident to attain or maintain the highest practicable level of physical, mental and psychosocial well-being. Each facility shall have a licensed nurse in charge who is responsible for evaluating the needs of the residents on a daily and continuous basis to ensure there are sufficient, trained staff present to meet those needs;
- j. 19 C.S.R. 30-85.042(38). Failing to ensure that all nursing personnel shall be on duty at all times on each resident-occupied floor;
- k. 19 C.S.R. 30-85.042(66). Each resident shall receive twenty-four (24)-hour protective oversight and supervision.
- l. 19 C.S.R. 30-85.042(67). Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice;
- m. 19 C.S.R. 30-88.010(20). Each resident shall be free from mental and physical abuse;
- n. 19 C.S.R. 30-88.010(22). Each resident shall be free from abuse or the infliction of physical or emotional injury or harm, among other things.
- o. 19 C.S.R. 30-88.010(24). Each resident shall be treated with consideration, respect and full recognition of his/her dignity and individuality, including privacy in treatment and care of his/her personal needs;
- p. 42 C.F.R. 483.10(a)(1). A facility must treat each resident with respect and dignity and care for each residents in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident's individuality. The facility must protect and promote the rights of the resident;
- q. 42 C.F.R. 483.10(h)(3)(i)(ii)(i). The resident has a right to a safe, clean, comfortable and homelike environment, including but not limited to receiving treatment and supports for daily living safely.
- r. 42 C.F.R. 483.420(d). The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents...;

- s. 42 C.F.R. 483.21(b)(i). The facility must develop and implement a comprehensive person-centered care plan for each resident...the comprehensive care plan must describe the following: The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required...
- t. 42 C.F.R. 483.25(c)(3). A resident with limited mobility receives appropriate services, equipment, and assistance to maintain or improve mobility with the maximum practicable independence unless a reduction in mobility is demonstrably unavoidable;
- u. 42 C.F.R. 483.25(d). The facility must ensure that (1) the resident environment remains as free of accident hazards as is possible; and (2) each resident receives adequate supervision and assistance devices to prevent accidents;
- v. 42 C.F.R. 483.35. The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e);
- w. 42 C.F.R. 483.35(a)(1). The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans
- x. 42 C.F.R. 483.70(d). The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility;
- y. 42 C.F.R. 483.35(c). The facility must ensure that nurse aides are able to demonstrate competency in skill and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care; and/or
- z. 42 C.F.R. 483.75(g). The facility must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

87. Clarence Brickley was a member of the class of persons intended to be protected by the enactment of the aforementioned regulatory requirements.

88. The physical injuries Clarence Brickley incurred were the type of injuries that the regulatory requirements were enacted to prevent.

89. As a direct and proximate result of the individual and collective acts of negligence of defendants as described above, Clarence Brickley suffered severe pain, anxiety, mental distress, and death.

90. As a direct and proximate result of the individual and collective acts of negligence of all defendants as described above, Plaintiffs suffered damages including, but not limited to, loss of companionship, loss of comfort, loss of guidance, loss of counsel and loss of instruction, pain, suffering, bereavement and mental anguish.

91. At the time defendants failed to provide proper medical care for Clarence Brickley they knew that their conscious disregard to provide adequate staff, to properly capitalize Fulton Nursing & Rehab, to prepare an adequate care plan for his needs, to provide adequate treatment to prevent pressure ulcers from developing, to provide adequate treatment when pressure ulcers had developed, and their failure to supervise their agents, servants and/or employees created a high degree of probability of injury to Clarence Brickley.

92. Defendants showed a complete indifference to, or conscious disregard, for the safety of the Fulton Nursing & Rehab residents, including Clarence Brickley.

93. As a direct and proximate result of defendants' negligence, and complete indifference to, or conscious disregard, for the safety of others, including Clarence Brickley, Clarence Brickley was harmed and suffered damages, including but not limited to pain, suffering, mental anguish, disability, disfigurement, and loss of enjoyment of life; death; and other damages.

WHEREFORE, Plaintiffs in their capacity as members of the wrongful death class of claimants pursuant to RSMO § 537.080, pray for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual

damages, the costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT II – LOSS CHANCE OF SURVIVAL

94. Plaintiff, Estate of Clarence Brickley, by and through its Personal Representative Deborah Grems, incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

95. At the time of the negligent acts complained of herein, and at all times mentioned, Plaintiff, Deborah Grems, has been the surviving biological child of decedent Clarence Brickley. As such, and pursuant Section 537.021, R.S.Mo., Plaintiff has been properly appointed as Personal Representative for the Estate of Clarence Brickley and is therefore eligible to pursue any and all claims that survive her death.

96. The negligence of defendants in failing to properly care for Clarence Brickley, as set forth herein, directly and proximately caused or directly and proximately contributed to cause Clarence Brickley to lose his material chance of survival.

97. As a direct and proximate result of the carelessness and negligence of the defendants, as set forth previously herein, decedent Clarence Brickley suffered the following injuries:

- a. Decedent has had his ability to survive and his significant material chance of survival taken away by defendants' negligence;
- b. Decedent suffered the loss of his chance of survival and with it the loss of his future enjoyment of life; and
- c. Decedent was required to undergo surgical treatment for his injuries.

98. By their actions, defendants knew or, in the exercise of ordinary care, should have known that their conduct created a high probability of injury demonstrating a disregarding for the rights of Clarence Brickley and thereby permitting recovery for her damages.

WHEREFORE Plaintiff, Estate of Clarence Brickley prays for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, the costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT III – MEDICAL NEGLIGENCE

99. Plaintiff, Estate of Clarence Brickley, by and through his Personal Representative Deborah Grems, incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

100. Defendants owed Clarence Brickley a duty to use reasonable care to protect him from unreasonable risk of harm and/or death.

101. Defendants owed Clarence Brickley a duty to ensure that he remained free from mental and physical abuse and physical injuries as a result of negligent conduct.

102. Defendants had a duty to ensure that Clarence Brickley was treated with consideration, respect and full recognition of his dignity and individuality.

103. During his residency at Fulton Nursing & Rehab, Clarence Brickley was dependent upon defendants to meet his daily needs, safety, protection, care, treatment, assistance, and determinations of risk to his health.

104. Defendants were aware of Clarence Brickley's vulnerability and risk of falling and suffering injury or death as a result.

105. Defendants failed to provide Clarence Brickley with the care, treatment, monitoring, and supervision required to meet his needs.

106. Defendants failed to provide a sufficient number of staff members and sufficiently trained staff members to prevent the injuries sustained by Clarence Brickley, even including death.

107. Defendants failed to provide a sufficient staff-to-resident ratio so that the employees at Fulton Nursing & Rehab could provide the care, treatment, monitoring and supervision Clarence Brickley required.

108. By their actions, defendants knew or, in the exercise of ordinary care, should have known that their conduct created a high probability of injury demonstrating a disregarding for the rights of Clarence Brickley and thereby permitting recovery for her damages.

WHEREFORE Plaintiff, Estate of Clarence Brickley prays for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, the costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT IV – MISSOURI OMNIBUS NURSING HOME ACT

109. Plaintiff incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

110. The cause of action set forth in this Count is brought under the Omnibus Nursing Home Act, Mo. Rev. Stat. § 198.003, *et seq.*, and more specifically by reason of statutorily created private cause of action pursuant to Mo. Rev. Stat. § 198.003.

111. As the operator of a long-term skilled care nursing facility licensed by the state of Missouri, Defendants were at all relevant times subject to the provision of the Omnibus Nursing Home Act, Section 198.003, *et seq.*

112. During his residency at Fulton Nursing & Rehab, Clarence Brickley was subject to abuse and neglect at the hands of defendants and their owners, members, agents, servants and/employees as stated above.

113. The aforementioned abuse and neglect was physically and mentally tortuous causing great physical pain and suffering and emotional distress to Clarence Brickley.

114. The aforementioned abuse and neglect occurred in violation of the Omnibus Nursing Home Act 198.088, declaring that, “1. Every facility, in accordance with the rules applying to each particular type of facility, shall ensure that: (1) There are written policies and procedures available to staff, residents, their families or legal representative and the public which govern all areas of service provided to the facility...(2) Policies relating to admission, transfer, and discharge of residents shall assure that: (a) Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts; (b) As changes occurred in their physical or mental condition, necessitating service or care which cannot be adequately provided by the facility, residents are transferred promptly to hospitals, skilled nursing facilities, or other appropriate facilities;...(6) Each resident admitted to the facility:(g) Is free from mental and physical abuse....(i) Is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs...”

115. Clarence Brickley was a member of the class of persons intended to be protected by the enactment of the aforementioned statutes.

116. The injuries Clarence Brickley sustained and identified herein are of the kind of injuries the statutes were designed to prevent.

117. As a direct and proximate result of Defendants’ failure to fulfill its responsibility of care and protection to Clarence Brickley as imposed by the aforementioned statutes attendant to their privilege of ownership and operation of a nursing home business, she suffered severe pain, anxiety and mental distress.

118. On October 22, 2024, Plaintiff submitted a timely written complaint with the office of the Attorney General for the State of Missouri alleging deprivations of care by Fulton Nursing & Rehab which caused her injuries, all as set forth above.

119. The Office of the Attorney General for the State of Missouri has declined to initiate legal action at this time.

120. Plaintiff filed this civil action against defendants within two hundred forty days of filing the complaint with the Office of the Attorney General for the State of Missouri.

WHEREFORE, for the reasons set forth above, Plaintiff prays for judgment against the defendants for such sums as a fair and reasonable over and above the jurisdictional minimum, for actual damages, the costs for this action, for attorneys' fees pursuant to Section 198.093(3) and for such other relief as this Court deems just and proper.

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