

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE ESTATE OF CHRISTINE MCKALE
By Rhonda Baran, Estate Representative
c/o Eadie Hill Trial Lawyers
3100 E. 45th St. Suite 400
Cleveland, Ohio 44127

Plaintiff,

vs.

SEVEN HILLS HEALTHCARE GROUP LLC,
DBA SEVEN HILLS HEALTH & REHAB
CENTER
c/o Registered Agent Gregory Nicoluzakis
26691 Richmond Road
Bedford Heights, Ohio 44146

and

SABER HEALTHCARE HOLDINGS, LLC
c/o Registered Agent Gregory Nicoluzakis
26691 Richmond Road
Bedford Heights, Ohio 44146

and

SABER HEALTHCARE GROUP, LLC
c/o Registered Agent Gregory Nicoluzakis
26691 Richmond Road
Bedford Heights, Ohio 44146

and

SABER HEALTHCARE FOUNDATION
c/o Registered Agent Gregory Nicoluzakis
26691 Richmond Road
Bedford Heights, Ohio 44146

and

GSR DYNASTY, LLC
c/o Registered Agent Joseph G. Corsaro

) **CASE NO.**
)
)

) **JUDGE**
)
)

) **COMPLAINT**
)

) **With Jury Demand and Affidavit**
) **of Merit**
)

28039 Clemens Road)
 Westlake, Ohio 44145)
)
 and)
)
 WIW DYNASTY, LLC)
 c/o Registered Agent Gregory Nicoluzakis)
 26691 Richmond Road)
 Bedford Heights, Ohio 44146)
)
 Defendants.)
)

The Estate of Christine McKale, Cuyahoga County Probate Court Case Number 2019EST242108, by and through its administrator and next-of-kin of Christine McKale, Rhonda Baran, for its Complaint against the above-captioned Defendants, states and avers upon information and belief:

INTRODUCTION

1. This case stems from the Saber Seven Hills Health and Rehab Center neglecting nursing home neglecting its resident Christine McKale to the point that she developed Stage IV pressure ulcers (“bedsores”) and infections leading to her untimely death on November 16, 2018.

2. Plaintiff requests a trial by jury.

3. Plaintiff brings this action on behalf of the Estate of Christine McKale, the next of kin of Christine McKale, and anyone else entitled to compensation for the harms and losses sustained as the result of the negligence and recklessness described herein or discovered during the litigation.

4. Plaintiff seeks punitive damages in an amount necessary to punish the above-named Defendants and deter them from engaging in similar conduct in the future.

5. Plaintiff also requests attorneys’ fees and the costs of this litigation.

6. Defendants received, on or after October 7, 2019, notice pursuant to Ohio Revised Code section 2305.113 that Christine McKale possessed a medical, dental, optometric, or chiropractic claim against them and/or their agents, and was considering bringing an action upon that claim, which action could be commenced at any time within 180 days after the notice was given.

7. Pursuant to Ohio Civil Rule 10(D)(2), an Affidavit of Merit is attached.

JURISDICTION AND VENUE

8. This Court has Jurisdiction over the Defendants because, among other things, all Defendants do, and all times relevant did, reside or have their domicile in the State of Ohio, purposefully avail themselves of the laws of the state of Ohio, and/or commit tortious acts within the state of Ohio.

9. Venue is proper in this County under Civil Rule 3 because, among other reasons: (a) Defendants reside, domicile, carry on their principal place of business, or practice medicine/nursing, in this county; and (b) part of the claim for relief arose in this county, in which county Plaintiff's Decedent was injured and died.

VICARIOUS LIABILITY

10. The Defendants employ the care providers who were responsible for ensuring Christine McKale's care and safety.

11. Defendants manage, control, and/or employ the nursing staff at the Seven Hills Health and Rehab Center.

12. Christine McKale and her family looked to the Defendants for care based upon their representations.

13. The Defendants are vicariously liable for the negligent actions of their employees and agents (*respondeat superior* and agency liability) and/or independent

contractors (*Clark v. Southview* agency by estoppel), including visiting physicians and nurse practitioners contracted with any of the Defendants and / or provided to residents as default or house care providers.

CORPORATE MANAGEMENT OF NURSING FACILITIES LIKE SEVEN HILLS HEALTH AND REHAB CENTER TO MAXIMIZE PROFIT

14. Defendants Seven Hills Healthcare Group, LLC dba Seven Hills Health and Rehab Center, Saber Healthcare Holdings, LLC, Saber Healthcare Group, LLC, GSR Dynasty, LLC and WIW Dynasty, LLC are Ohio for-profit corporations responsible for providing care and services to residents of Seven Hills Health and Rehab Center, including Christine McKale.

15. Saber Healthcare Holdings, LLC and Saber Healthcare Group, LLC are more commonly referred to under the umbrella names of “Saber Healthcare” and “Saber Healthcare Group.”

16. Defendant Saber Healthcare Foundation is an Ohio non-profit private foundation supported primarily by Saber Healthcare Group, its owners and its employees and is under the “Saber Healthcare” umbrella.

17. Collectively, these Defendants are the “Saber Defendants” or “Saber Healthcare.”

18. The Saber Defendants hold themselves out to the public as providing skilled nursing & rehabilitative care to Ohio residents at their respective facilities.

19. The for-profit model of these Defendants means their primary goal is to maximize profit, measured by revenues (from residents and patients) minus expenses (the largest of which is staffing costs).

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

21. The Defendants use their for-profit model to manage nursing homes, including the amount and degree of care available, at numerous facilities throughout Ohio, including:

1. Amberwood Manor
245-251 South Broadway
New Philadelphia, OH 44663
330-339-2151
2. Astoria Health & Rehab Center
300 Astoria Road
Germantown, OH 45327
937-855-2363
3. Aurora Manor Special Care Centre
101 South Bissell Road
Aurora, OH 44202
330-562-5000
4. Bath Creek Estates
186 W. Bath Road
Cuyahoga Falls, OH 44223
330-922-9911
5. Bath Manor Special Care Centre
2330 Smith Road
Akron, OH 44333
330-836-1006
6. Bellevue Care Center
1 Audrich Square
Bellevue, OH 44811
419-483-6225
7. Centerburg Pointe
4531 Columbus Road
Centerburg, OH 43011
740-625-5401

8. Centerburg Respiratory and Specialty Rehab Center
212 Fairview Ave
Centerburg, OH 43011
740-625-5774
9. Cortland Healthcare Center
369 N. High Street
Cortland, OH 44410
330-638-4015
10. Crawford Manor Health Care Center
1802 Crawford Road
Cleveland, OH 44106
216-795-5710
11. Diplomat Healthcare
9001 W. 130th Street
North Royalton, OH 44133
440-237-3104
12. Dunbar Health & Rehab Center
320 Albany Street
Dayton, OH 45417
937-496-6200
13. Eagle Creek Nursing Center
141 Spruce Lane
West Union, OH 45693
937-544-5531
14. Grand Rapids Care Center
24201 West 3rd Street
Grand Rapids, OH 43522
419-832-5195
15. Grand River Health and Rehab Center
1515 Brookstone Blvd.
Painesville, OH 44077
440-226-8869
16. Highland Pointe Health & Rehabilitation Center
402 Golf View Lane
Highland Heights, OH 44143
440-443-0900
17. Homestead II
60 Wood Street
Painesville, OH 44077
440-352-0788
18. Indian Lake Rehabilitation Center
14442 U.S. Highway 33 West

- Lakeview, OH 43331
937-843-4929
19. London Health & Rehab Center
218 Elm Street
London, OH 43140
740-852-3100
 20. Oaks of Brecksville
8757 Brecksville Road
Brecksville, OH 44141
440-546-0643
 21. Orchard Grove
670 Flat Rock Road
Bellevue, OH 44811
419-484-1111
 22. Seven Hills Health & Rehab Center
819 Rockside Road
Seven Hills, OH 44131
216-658-3900
 23. Springfield Nursing and Independent Living
404 East McCreight Avenue
Springfield, OH 45503
937-399-8311
 24. The Willows Health & Rehab Center
1500 East 191st Street
Euclid, OH 44117
216-486-8880
 25. University Manor Health Care Center
2186 Ambleside Drive
Cleveland, OH 44106
216-721-1400
 26. Urbana Health & Rehab Center
741 East Water Street
Urbana, OH 43078
937-652-1381
 27. Wadsworth Pointe
540 Great Oaks Trail
Wadsworth, OH 44281
330-336-1141
 28. Walton Manor Health Care Center
19859 Alexander Road
Walton Hills, OH 44146
440-439-4433

29. Wilmington Nursing & Rehabilitation Center
75 Hale Street
Wilmington, OH 45177
937-382-1621
30. Woodlands Health and Rehabilitation Center
6831 North Chestnut Street
Ravenna, OH 44266
330-297-4564

22. The Defendants exercise actual control over their facilities' management and operations to maximize profits.

23. Through this control, they make decisions that affect the day-to-day care of residents at their facilities, including Christine McKale, making them responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

24. The Defendants have over 100 employees.

NURSING HOME MANDATORY REPORTING OF FACILITY RESIDENT CARE NEEDS ("RUG SCORES"), FINANCES, AND STAFFING LEVELS

25. Every nursing home receiving Medicare or Medicaid funding—including those at issue in this case—is required to report significant amounts of data to the federal agency that oversees operations of nursing homes receiving federal or state funding, the Centers for Medicare and Medicaid Services, or "Medicare."

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

27. This information is contained in "Minimum Data Set" evaluations of residents' care needs and treatment, and "cost reports" containing information on the

facilities' staffing levels, pay scales, hours worked, payments to companies treated as commonly owned (called "related-party transactions"), and more.

28. Medicare uses some of this data submitted by Defendants to produce its nursing home 5-star rating system, also known as "Nursing Home Compare," which the Defendants use to market their facilities, and upon which the public may rely in selecting or evaluating nursing homes.

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

30. Nursing homes provide detailed information regarding the health status, care and treatment, and services provided to each resident in the facility using a standardized electronic questionnaire called the **Minimum Data Set**, or **MDS**.

31. This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

32. Nursing homes are required to evaluate every resident using the Minimum Data Set questionnaire shortly after the time of admission, every 90 days thereafter, when a resident has a significant improvement or decline in health (physical, mental, or psychosocial), and upon discharge.

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

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

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

36. When these Resource Utilization Group scores are combined for all residents in a nursing home facility, the nursing home knows exactly how many minutes of nursing and nursing aide care should be provided, on average, to meet the expected care needs of their residents.

37. Despite this information, Defendants intentionally understaff the facilities to make more money, with the predictable outcome being increased preventable resident injuries and deaths from things like falls, dehydration, malnutrition, bedsores (pressure ulcers), and infections such as urinary tract infections.

**SYSTEMIC UNDERSTAFFING COVERED UP BY
MISLEADING ADVERTISING**

38. To persuade the families of patients to become customers, and other health care providers to refer them residents, Defendants make promises to the families of such potential residents that they will provide a level of care that they know they are incapable of providing.

39. Contrary to their claims, they systemically understaff facilities, making provision of adequate care to residents impossible.

40. As of November 13, 2019, Medicare.gov lists Seven Hills Health Care and Rehab as a “**one star**” facility for staffing. This is the lowest rating that can be achieved and is considered by the federal government to be “***much below average.***”

41. Systemic understaffing leads to poor outcomes because the nursing staff is overworked and unable to provide needed care to all residents, such as turning and positioning (leading to bedsores), changing incontinent residents (leading to bedsores and infections), toileting residents (leading to increased falls and other issues), and assisting residents with eating and drinking (leading to dehydration, malnutrition, choking, and other complications).

42. The Defendants were on notice of the types of failures of care occurring at their facilities, but consciously disregarded their residents' (including Christine McKale's) rights and safety with a great probability of causing substantial harm.

43. The intent and outcome of their misleading advertising is to cause residents, their families, and external care providers to believe the nursing facility is much better-staffed than it is, while they drastically limit the budget and overhead needed to run a safe facility to maximize profits and syphon resources at the expense of patient safety.

44. This systemic understaffing is part of the Defendants' approach to maximizing profits for its owners, as evidenced by similar poor staffing levels at some of their other Ohio nursing homes.

SYSTEMIC UNDERSTAFFING HARMED CHRISTINE MCKALE

45. The Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that the Seven Hills Health and Rehab Center was sufficiently staffed to meet the individual needs of Christine McKale.

46. Defendants engaged in a systemic practice to understaff the nursing home facilities to maximize their profits at the expense of residents' care.

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

**SABER HEALTHCARE GROUP'S NEGLIGENCE AND RECKLESSNESS
WITH CHRISTINE MCKALE'S CARE**

48. Defendants received Christine McKale as a nursing home resident at the Seven Hills Health and Rehab Center on or about July 20, 2017 and agreed to provide care to her in exchange for monetary payment.

49. At the time of the Defendants accepting of Christine McKale into Seven Hills Health and Rehab Center, she had no skin breakdowns, called bedsores or pressure ulcers.

50. Christine McKale needed assistance with turning and repositioning to avoid skin breakdowns, getting medications, staying clean, providing care and treatment to wounds, observing for significant changes in condition, and preventing wounds from becoming infected.

51. Seven Hills Health and Rehab Center failed to meet these care needs.

52. Seven Hills Health and Rehab Center's lack of care included:

- a. Failing to respond to call lights for Christine McKale and other residents in a timely way;
- b. Causing Christine McKale to develop multiple pressure ulcers;
- c. Failing to properly treat the pressure ulcers that Christine McKale developed; and.
- d. Physically abusing Christine McKale on or about November 5, 2017;

FIRST CAUSE OF ACTION
(SURVIVORSHIP / NEGLIGENCE / RECKLESSNESS)

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

54. Christine McKale depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

55. The Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Christine McKale, which they knew or should have known she required, resulting in her injury and November 16, 2018 death.

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

- a. Choosing to put inadequate prevention and response interventions in place to prevent or treat bedsores and infections;
- b. Choosing to provide inadequate resident observation, supervision, and monitoring to prevent or treat bedsores and infections;
- c. Choosing to provide too few, and/or underqualified nursing staff members for the resident needs at the facility to protect and provide adequate care to residents like Christine McKale;
- d. Choosing to not provide accurate, adequate, or timely information to Christine McKale's family;
- e. Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Christine McKale are a member of the class of persons intended to be protected from injuries like those she suffered; and
- f. Such other acts or omissions described in this Complaint or discovered in litigation.

57. These choices were made in conscious disregard for Christine McKale's rights and safety with a great probability of causing substantial harm.

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

59. As a direct and proximate result of the negligence and / or recklessness described above, Christine McKale sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and significant medical expenses and these physical injuries caused her untimely and wrongful death.

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

SECOND CAUSE OF ACTION
(WRONGFUL DEATH, R.C. 2125.01 ET SEQ.)

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

61. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute, Ohio Revised Code section 2125.01 et seq., for the benefit of Christine McKale's heirs and next of kin who have suffered loss and damage due to Christine McKale's wrongful and untimely death.

62. As a direct and proximate result of the negligence/recklessness described above, Christine McKale sustained physical injuries that caused her untimely and wrongful death.

63. Plaintiff and Christine McKale's additional next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, including mental anguish and grief, medical and funeral expenses, and loss of decedent's support, services, society and companionship.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00) to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorney's fees and expenses, exemplary damages, and any other relief the Court finds is appropriate and/or equitable.

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

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

65. Defendants, directly or through their employees or agents, violated Christine McKale's rights as a resident of the Defendants' facilities, as enumerated in R.C. 3721.13, including, but not limited to, the right to adequate and appropriate medical treatment and nursing care.

66. These violations constitute negligence *per se* and give rise to a statutory cause of action.

67. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Christine McKale endured conscious pain and suffering and disability, incurred medical expenses, suffered her untimely death, and was otherwise harmed.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), together with costs

of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the Court finds is appropriate and/or equitable.

A TRIAL BY JURY IS HEREBY DEMANDED.

/s/ William B. Eadie

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Counsel for Plaintiff

STATE OF OHIO

CUYAHOGA COUNTY

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AFFIDAVIT OF MERIT

Affiant MARK SHOAG, M.D., having been first duly sworn, states:

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

2. I am a full-time practicing physician in the fields of Geriatric and Internal Medicine, licensed in the state of Ohio, board certified in Internal Medicine, and a medical director of a long-term acute care hospital, spending more than 50% of my professional time providing direct patient care.

3. Through my specialized knowledge, skill, training, experience, and education, I am familiar with the standard of care applicable to the medical and nursing care and treatment that was provided to Christine McKalein 2017-2018, while a skilled nursing and rehabilitation resident at Seven Hills Health and Rehabilitation Center, 819 Rockside Road, Seven Hills, OH 44131.

4. I have reviewed all medical records reasonably available to the Estate of Christine McKale concerning the allegations of negligence causing her death.


5. To a reasonable degree of medical probability, it is my opinion that the medical and nursing care and treatment provided to Christine McKale deviated from the established standard of care and the breach caused Ms. McKale's pressure sores and death.

FURTHER AFFIANT SAYETH NAUGHT.



MARK SHOAG, M.D.,

SWORN TO BEFORE ME and subscribed in my presence this 14th day of November 2019.



NOTARY PUBLIC

Beth Duval

no expiration date present to

RC 814703