

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF ANNE S. GRAUEL, by) CASE NO.
Kristofer S. Grauel, Executor)
c/o Eadie Hill Trial Lawyers)
3100 East 45 St., Suite 400) JUDGE
Cleveland, Ohio 44127)
)
Plaintiff,)
) **COMPLAINT**
vs.) **With Jury Demand**
) **Affidavit of Merit Attached**
LIFE CARE CENTERS OF AMERICA, INC.)
3570 Keith Street NW)
Cleveland, TN 37312)
)
and)
)
MEDINA OPERATIONS, LLC dba Life)
Care Center of Medina)
Corporation Service Company)
50 West Broad Street, Suite 1330)
Columbus, OH 43215)
)
Defendants.)
)
_____)

Now comes Plaintiff, the Estate of Anne S. Grauel, by and through Kristofer S. Grauel, its duly appointed Executor, and for Plaintiff's Complaint against Life Care Centers of America, Inc. and Medina Operations, LLC dba Life Care Center of Medina (collectively "Defendants") states and avers upon information and belief as follows:

INTRODUCTION

1. This is a negligence, recklessness, and wrongful death action involving Anne S. Grauel's care at Life Care Center of Medina, located at 2400 Columbia Road, Medina, Ohio 44256 that led to her untimely and wrongful death on April 13, 2018.

2. Anne S. Grauel was a resident of Life Care Center of Medina between May 25, 2017 and 2016 and March 16, 2018.

3. Anne Grauel was a 91-year-old female resident of Life Care Center of Medina with dementia, Alzheimer's, and a history of falls who fell from her wheelchair at approximately 5pm on March 16, 2018 causing her to suffer fractures to her left wrist and hip. She was transferred to Cleveland Clinic Medina Hospital where surgery was performed. She died on April 13, 2018. The Cuyahoga County Medical Examiner certified the cause of death as "sequelae of recent hip and wrist fractures."

4. Plaintiff requests a trial by jury.

5. An Affidavit of Merit is attached as Exhibit 1.

6. Kristofer Grauel is the duly appointed Executor of the Estate of Anne S. Grauel.

7. Plaintiff brings this action on behalf of the Estate of Anne S. Grauel, the next of kin of Anne S. Grauel—including David Emerson Gould, Jr. (son), Kristofer Scott Grouel (son), Julia Anne Grouel-Rivera (daughter), and Rebecca Louise Grouel-Cadmire (daughter)—and anyone else entitled to compensation for the harms and losses sustained as the result of the negligence, recklessness, and other wrongful conduct described herein or discovered during litigation.

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

9. Plaintiff requests attorneys' fees and the costs of this litigation.

DEFENDANTS

10. Defendant Life Care Centers of America, Inc. (hereafter “Life Care America”) is a Tennessee for-profit corporation that holds itself out to the public as a provider of medical and nursing care, including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and provides nursing services to more than 200 nursing home facilities in Ohio and throughout the country, including the exercising operationl and managerial control over the following facilities:

- i. Life Care Center of Medina
2400 Columbia Road
Medina, OH 44256
- ii. Life Care Center of Westlake
26520 Center Ridge Road
Westlake, OH 44145
- iii. Life Care Center of Elyria
1212 South Abbe Road
Elyria, OH 44035
- iv. The Abbewood Retirement Center
1210 South Abbe Road
Elyria, OH 44035
- v. Mayfair Village Nursing Care Center
3000 Bethel Road
Columbus, OH 43220
- vi. Mayfair Village Retirement Center
3011 Hayden Road
Columbus, OH 43235
- vii. Life Care Center of La Center
252 W. Fifth Street
La Center, KY 42056
- viii. Life Care Center of Morehead
933 N. Tolliver Road

Morehead, KY 40351

- ix. Parkview Nursing and Rehabilitation Center
544 Lone Oak Road
Paducah, KY 42003
- x. The Bridge at Alamosa
3407 Carroll Street
Alamosa, CO 81101
- xi. Andover Court
721 West 21st Street
Andover, KS 67002
- xii. Garden Plaza at Aurora
14221 East Evans Avenue
Aurora, CO 80014
- xiii. Life Care Center of Bountiful
460 W. 2600 S.
Bountiful, UT 84010
- xiv. Bridgeview Estates
1828 Bridgeview Blvd.
Twin Falls, ID 83301
- xv. Bridgeview Estates – Retirement
1828 Bridgeview Boulevard
Twin Falls, ID 83301
- xvi. Cascade Park Retirement Center
950 North Cascade Drive
Woodburn, OR 97071
- xvii. The Bridge at Charleston
2590 Elms Plantation Boulevard
North Charleston, SC 29406
- xviii. Cherry Creek Retirement Village
14555 East Hampden Avenue
Aurora, CO 80014
- xix. The Bridge at Cherry Hill
1 Cherry Hill Road
Johnston, RI 02919

- xx. Cherry Hill Manor Nursing and Rehab Center
Two Cherry Hill Road
Johnston, RI 02919
- xxi. Garden Plaza at Cleveland
3500 Keith Street NW
Cleveland, TN 37312
- xxii. Life Care Center of Cleveland
3530 Keith St. NW
Cleveland, TN 37312
- xxiii. Village at Garden Plaza
3490 Keith Street N.W.
Cleveland, TN 37312
- xxiv. The Bridge at Cleveland
3500 Keith Street NW
Cleveland, TN 37312
- xxv. Life Care Center of Collegedale
9210 Apison Pike
Collegedale, TN 37315
- xxvi. The Bridge at Colorado Springs
2494 International Circle
Colorado Springs, CO 80910
- xxvii. The Bridge at Columbia
851 West James Campbell Boulevard
Columbia, TN 38401
- xxviii. Harbor Place at Cottesmore
1016 29th Street NW
Gig Harbor, WA 98335
- xxix. Cottesmore of Life Care
2909 14th Ave. NW
Gig Harbor, WA 98335
- xxx. Evergreen House Health Center
1 Evergreen Drive
East Providence, RI 02914
- xxxi. The Bridge at Farmington
1091 West Murray Drive

Farmington, NM 87401

- xxxii. Garden Terrace Healthcare Center of Federal Way
491 S. 338th St.
Federal Way, WA 98003
- xxxiii. The Bridge at Florissant
1101 Garden Plaza Drive
Florissant, MO 63033
- xxxiv. Life Care Center of Florissant
1201 Garden Plaza Drive
Florissant, MO 63033
- xxxv. Life Care Center of Greeley
4800 25th St.
Greeley, CO 80634
- xxxvi. The Bridge at Greeley
4750 25th Street
Greeley, CO 80634
- xxxvii. Heatherwood Retirement Community
3180 Horseshoe Pike
Honey Brook, PA 19344
- xxxviii. Heritage Park Care Center
1200 Village Road
Carbondale, CO 81623
- xxxix. The Bridge at Hickory Woods
4220 Murfreesboro Pike
Antioch, TN 37013
- xl. Hickory House Nursing Home
3120 Horseshoe Pike
Honey Brook, PA 19344
- xli. Highland Cove Retirement Community
3750 Highland Drive
Salt Lake City, UT 84106
- xlii. The Bridge at Inverrary
4291 Rock Island Road
Lauderhill, FL 33319

- xliii. Life Care Center of Kona
78-6957 Kamehameha III Road
Kailua-Kona, HI 96740
- xliv. Lake Pointe Landing Retirement Village
333 Thompson Street
Hendersonville, NC 28792
- xlv. The Village at Lake Pointe Landing
333 Thompson Street
Hendersonville, NC 28792
- xlvi. Bridge at Lake Pointe Landing
334 Thompson Street
Hendersonville, NC 28792
- xlvii. The Bridge at Longmont
2444 Pratt Street
Longmont, CO 80501
- xlviii. The Bridge at Mount Vernon
301 South LaVenture Road
Mount Vernon, WA 98274
- xlix. Life Care Center of Mount Vernon
2120 E. Division St.
Mount Vernon, WA 98274
- 1. Life Care Center of Ocala
2800 SW 41st St.
Ocala, FL 34474
- li. The Bridge at Ocala
2800 SW 41st Street, Building 200
Ocala, FL 34474
- lii. Life Care Center of Ooltewah
5911 Snow Hill Road
Ooltewah, TN 37363
- liii. The Bridge at Ooltewah
5901 Snow Hill Road
Ooltewah, TN 37363
- liv. Life Care Center of Orlando
3211 Rouse Road

- Orlando, FL 32817
- iv. The Bridge at Orlando
3201 Rouse Road
Orlando, FL 32817
 - lvi. The Bridge at Paradise Valley
2205 East Harmon Avenue
Las Vegas, NV 89119
 - lvii. Life Care Center of South Las Vegas
2325 E. Harmon Ave.
Las Vegas, NV 89119
 - lviii. Pointe Frontier Retirement Community
1406 Prairie Avenue
Cheyenne, WY 82009
 - lix. Life Care Center of Port St. Lucie
3720 SE. Jennings Road
Port St. Lucie, FL 34952
 - lx. Garden Plaza of Post Falls
545 N. Garden Plaza Court
Post Falls, ID 83854
 - lxi. Life Care Center of Post Falls
460 N. Garden Plaza Court
Post Falls, ID 83854
 - lxii. Quail Ridge
797 Hospital Way
Pocatello, ID 83201
 - lxiii. Remington Heights Retirement Community
12606 West Dodge Road
Omaha, NE 68154
 - lxiv. Life Care Center of Rhea County
10055 Rhea County Highway
Dayton, TN 37321
 - lxv. The Veranda at Rhea County
10055 Rhea County Highway
Dayton, TN 37321

- lxvi. Life Care Center of Sandpoint
1125 N. Division St.
Sandpoint, ID 83864
- lxvii. The Bridge at Sandpoint
1123 North Division Street
Sandpoint, ID 83864
- lxviii. Life Care Center of Sparta
508 Mose Drive
Sparta, TN 38583
- lxix. The Veranda at Sparta
508 Mose Drive
Sparta, TN 38583
- lxx. Life Care Center of Saint Louis
3520 Chouteau Ave.
St. Louis, MO 63103
- lxxi. Harbor Place at Port St. Lucie
3700 Southeast Jennings Road
Port Saint Lucie, FL 34952
- lxxii. Life Care Center of Stoneham
25 Woodland Road
Stoneham, MA 02180
- lxxiii. Westside Garden Plaza
8616 West Tenth Street
Indianapolis, IN 46234
- lxxiv. Westside Village Health Center
8616 W. 10th St.
Indianapolis, IN 46234
- lxxv. The Bridge at Westside Garden Plaza
8614 West 10th Street
Indianapolis, IN 46234

11. Medina Operations, LLC (“Life Care Medina”) is an Ohio for-profit company that holds itself out to the public as a provider of medical and nursing care,

including but not limited to, rehabilitation and skilled nursing care, through its agents, operatives and / or employees and does business as Life Care Center of Medina.

12. Life Care America and Life Care Medina employ, manage, and direct the care and service providers who were responsible for Anne Grauel's care, treatment, and safety at Life Care Center of Medina at all times she was a resident there.

13. Anne Grauel and her family looked to the Defendants for care based upon their representations.

14. 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).

JURISDICTION AND VENUE

15. 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.

16. Venue is proper in Cuyahoga County under Civil Rule 3(B) because, among other reasons: (a) Defendants reside, domicile, carry on their principal place of business, or practice medicine / nursing, in Cuyahoga County; and / or (b) part of the claim for relief arose in Cuyahoga County, in which county Anne Grauel died.

COMMON FACTS

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

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

19. 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.

20. Defendants manage, control, and / or employ the nursing staff at Life Care Center of Medina Care.

21. Defendants exercise actual control over the facility's management and operations to maximize profits, including control over facility-level:

- a. Policies and procedures, including regarding resident care;
- b. Finances, including obtaining credit and loans, guaranteeing loans (both at the corporate and individual facility level), maintaining funds and banking, obtaining, owning, and leasing facility land and buildings, and capital expenditures.
- c. Budgeting, including controlling the amount of funds available for staffing facilities;
- d. Personnel management, including hiring and firing, or having authority to hire and fire, the supervisory and management personnel in each facility;
- e. Supervision of management, care providers, and staff in each facility, including compliance with federal and state regulations;
- f. Employment, such as setting pay scales, shifts, and time and vacation policies;
- g. Systems for training, monitoring, and supervising staff;
- h. Medical record systems and management;
- i. Financial control systems, including budgeting and payment processing;

- j. Marketing, including setting the image and expectations residents and their family should expect at Life Care Center of Medina Care, and even the name of the facility;
 - k. Reporting procedures, including reporting to Medicare as to individual resident care and facility-wide issues.
22. As the result of this control, Defendants make decisions that affect the day-to-day care of Life Care Center of Medina residents, such as the resources available for providing nursing staff and care to residents like Anne Grauel, meaning they are responsible for the foreseeable harm that results from careless decisions while voluntarily exercising that control.

Reporting Data

23. Life Care Center of Medina 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.”

24. 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.

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

26. Medicare uses some of this data submitted by Defendants to produce its nursing home 5-star rating system, also known as “Nursing Home Compare.”

Nursing Home Resident Care Needs and Staffing Levels (MDS and RUG Scores)

27. Every nursing home receiving Medicare or Medicaid funding—the clear majority of nursing homes, including Life Care Center of Medina Care Center and others

operated and / or controlled by Defendants—is required to provide detailed information regarding the health status, care and treatment, and services provided to each resident in the facility using a questionnaire called the **Minimum Data Set**, or **MDS**. This evaluation is done for all nursing home residents regardless of whether their care is being paid for by Medicare.

28. Nursing homes like Life Care Center of Medina 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.

29. 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**.

30. 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.

31. 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.”

32. When these Resource Utilization Group scores are combined for all residents in a nursing home facility, the nursing home knows exactly how many minutes

of nursing and nursing aide care should be provided, on average, to meet the expected care needs of their residents.

Misleading Advertising

33. In an effort to persuade the families of patients with memory care disorders to become customers, Defendants make promises to the families of such potential residents that they will provide a level of care that they know they are incapable of providing, including touting their expertise in patient safety issues concerning memory care, Alzheimer's, and dementia.

34. The intent and outcome of this misleading practice is to cause residents, their families, and external care providers to believe the nursing facility is much better staffed than it is.

35. The intent and outcome of this misleading practice is to drastically limit the budget and overhead needed to run a safe facility in order to maximize profits and syphon resources at the expense of patient safety.

Systemic Understaffing and Anne Grauel's Care

36. Defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Life Care Center of Medina was sufficiently staffed to meet the individual needs of Anne Grauel.

37. Defendants engaged in a systemic practice to understaff its nursing home facility to maximize its profits at the expense of its residents' care.

38. This lack of sufficient staff directly resulted in Anne Grauel not receiving basic and necessary services to prevent, among other things, neglect leading to repeated

falls between May 2017 and March 2018, including the last fall on March 16, 2018 that caused her to break her wrist and femur and caused her death.

Defendants' Negligence and Recklessness with Anne Grauel

39. Defendants received Anne Grauel as a nursing home resident in May 2017.

40. Defendants agreed to accept Anne Grauel into their facility and provide care to her in exchange for monetary payment.

41. Anne Grauel was 91 years old when these events happened.

42. Defendants knew that Anne Grauel had dementia and Alzheimer's, which limited her memory and cognition and increased her dependence on Defendants' staff.

43. Defendants solicited patients with dementia and Alzheimer's and publicly advertised themselves as full providers of memory care, including holding Life Care Center of Medina out as a secured Alzheimer's, dementia, and memory care unit in an effort to attract nursing home residents with dementia, Alzheimer's and other memory disorders.

44. People with memory disorders are known to be at an increased risk of falling for, among other reasons, gait related disturbances that cause unsteadiness and weakness, short and long-term memory disorders, loss of impulse control, lack of insight into what actions are safe and unsafe, and related behaviors.

45. In addition to dementia and Alzheimer's, Anne Grauel had numerous other risk factors for falling including numerous documented falls, advanced age, cognitive decline, multiple medication usage, agitation and confusion, and frailty.

46. Because of these numerous risk factors and prior falling incidents, Anne Grauel required additional supervision and precautions to prevent additional falls and fall-related injuries.

47. Between Anne Grauel's admission on May 25, 2017 and her discharge on March 16, 2018, Life Care Centers of Medina performed 4 fall risk assessments, each time noting that Anne Grauel was at high risk for falls fall-related injuries.

48. Anne Grauel was documented as having multiple falls between May 2017 and March 2018.

49. Anne Grauel fell from her wheelchair on March 16, 2018, and she suffered, among other injuries, a broken wrist and femur.

50. After a several hour delay, Anne was transferred to Cleveland Clinic Medina Hospital where physicians diagnosed her with a left hip intertrochanteric fracture and left comminuted displaced extraarticular distal radius fracture.

51. Physicians attempted to surgically repair Anne's broken wrist and hip on March 18, 2018.

52. Anne Grauel never recovered and died on April 13, 2018.

53. The Cuyahoga County Chief Medical Examiner—Thomas P. Gilson, M.D.—certified Anne Grauel's official and legal cause of death as "sequelae of recent hip and wrist fractures" from a fall at Life Care Center of Medina on March 16, 2018.

54. From the time of her fall on March 16, 2018 and her death, Anne complained of and demonstrated outward signs and symptoms of pain in her wrist and hip.

FIRST CAUSE OF ACTION
(SURVIVORSHIP / NEGLIGENCE / RECKLESSNESS)

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

56. Anne Grauel depended on the Defendants, and their respective nursing and medical staff, for medical and nursing care, treatment, evaluation, and assistance.

57. The Defendants, including their medical and nursing staff, failed to provide proper care and treatment to Anne Grauel, which they knew or should have known she required, resulting in her injury and death.

58. 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 falling and injuries, including deaths;
- b. Choosing to provide inadequate resident observation, supervision, and monitoring;
- c. Choosing to provide improper training to staff members regarding fall prevention and response;
- d. 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 Anne Grauel;
- e. Choosing to not provide accurate, adequate, or timely information to Anne Grauel family;
- f. Choosing to violate state and federal regulations governing care and staffing levels in nursing home facilities by which residents like Anne Grauel are a member of the class of persons intended to be protected from injuries like she suffered; and
- g. Such other acts or omissions described in this Complaint or discovered during litigation.

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

60. As a direct and proximate result of the negligence described above, Anne Grauel 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 on April 13, 2018.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), for Anne Grauel's conscious pain and suffering, medical expenses, loss of enjoyment of life, 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)

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

62. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute for the benefit of Anne Grauel's heirs and next of kin who have suffered loss and damage due to Anne Grauel's wrongful and untimely death

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

64. Plaintiff and Anne Grauel'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)

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

66. Defendants, directly or through their employees or agents, violated Anne Grauel'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.

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

68. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Anne Grauel 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 in excess of Twenty-Five Thousand Dollars (\$25,000.00), together with costs of

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

A TRIAL BY JURY IS HEREBY DEMANDED.

/s/ Michael A. Hill

MICHAEL A. HILL (0088130)

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Court of Common Pleas

New Case Electronically Filed:
March 11, 2019 16:47

By: WILLIAM B. EADIE 0085627

Confirmation Nbr. 1648799

ESTATE OF ANNE S. GRAUEL

CV 19 912347

vs.

LIFE CARE CENTERS OF AMERICA, INC., ET AL

Judge: DICK AMBROSE

Pages Filed: 21