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DAN FLELEY
CLERK OF COURTS
MONTGOMERY CO., OHIO

EMBED

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

JENE E. COOK
126 N. Marion Street
Dayton, Ohio 45417

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CASE NO. 06 2419

JUDGE: _____

AND

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CARENE LAW COOK
126 N. Marion Street
Dayton, Ohio 45417

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Plaintiffs,

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vs.

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THE MARIA-JOSEPH LIVING CARE
CENTER
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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PREMIER HEALTH PARTNERS
C/o Dale E. Creech, Jr., Statutory Agent
One Wyoming Street
Dayton, Ohio 45409

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And

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BARBARA AKOTO, M.D.
Maria Joseph Living Care Center
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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JONES & WASHINGTON
CO., L.P.A.
ATTORNEYS AT LAW
1308 TALBOTT TOWER
118 WEST FIRST STREET
DAYTON, OHIO 45402-1104
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PENNY WATKINS, R.N.
DIRECTOR OF NURSING
Maria Joseph Living Care Center
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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ROBERT McCONNELL
MEDICAL DIRECTOR
Maria-Joseph Living Care Center
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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JOHN DOE(S), M.D.
Maria-Joseph Living Care Center
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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JANE DOE(S), R.N.
Maria-Joseph Living Care Center
4830 Salem Avenue
Dayton, Ohio 45416-1798

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And

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CATHOLIC HEALTH INITIATIVES
c/o The Corporation Company,
Statutory Agent
1675 Broadway
Denver, Colorado 80202

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Defendants

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COMPLAINT FOR PERSONAL INJURY AND JURY DEMAND ENDORSED HEREON

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NOW COME Plaintiffs Jene D. Cook and Carene Law Cook, by and through counsel, and for their complaint against Defendants, state as follows:

1. Plaintiff, Jene D. Cook, brings this personal injury action for the injuries, pain, emotional and physical distress, and suffering sustained as a result of wrongful medication administered and given to Plaintiff while a patient at Defendant, Maria-Joseph Living Care Center on or about July 10, 2002.

2. Plaintiff, Carene Law Cook, also brings this action in her capacity as wife for loss of consortium and companionship.

3. Defendant, Maria-Joseph Living Care Center, was at all times pertinent herein and is now a corporation operating as a nursing home corporation which holds itself out to the general public to possess the requisite skills and knowledge to render quality medical care and treatment to its residents. Defendant, Dr. John Doe, M.D. and Jane Doe, R.N., were its agents, servants, and employees at all times herein mentioned.

4. Defendant, Premier Health Partners, was at all times pertinent herein and is now a corporation existing under and by virtue of the laws of the State of Ohio. Upon information and belief, Maria Joseph Living Care Center is a member organization of Premier Health Partners network of healthcare services and may provide certain oversight responsibilities to Maria-Joseph.

5. Defendant, Catholic Health Initiatives, was at all times pertinent herein and is now a sponsoring agency for Maria-Joseph Living Care Center as part of its health care systems and may provide certain oversight responsibilities to Maria-Joseph.

6. Defendant, Penny Watkins, R.N., Director of Nursing for Maria-Joseph Living Care Center, was at all times pertinent herein and is now operating as the Director of Nursing of Maria-Joseph Living Care Center and practicing as such, represented herself as competent and skilled in the care of the elderly in her capacity as the chief overseer of the nursing staff, and was an agent, servant, contractor or employee of Maria-Joseph Living Care Center.

7. Defendant, Robert McConnell, Medical Director for Maria-Joseph Living Care Center, was at all times pertinent herein and is now operating as the Medical Director of Maria-Joseph Living Care Center, practicing as such and represented himself as competent and skilled in his capacity as the chief medical overseer of the nursing home, and was an agent, servant, contractor, or employee of Maria-Joseph Living Care Center at all pertinent times herein.

8. Defendant, Barbara Akoto, M.D., was at all times pertinent herein, a physician fully licensed to practice medicine and was practicing as such at Maria-

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Joseph Living Care Center and represented herself as a competent and skilled doctor in the care of the elderly, and was an agent, servant, contractor or employee of Maria-Joseph Living Care Center at all times pertinent herein.

9. Defendant, Jane Doe, R.N., was at all times pertinent herein licensed to practice nursing and was practicing as such at Maria-Joseph Living Care Center and represented herself as a competent and skilled nurse in the care and treatment of the elderly.

10. Defendant, John Doe, M.D., was at all times pertinent herein licensed to practice medicine and was practicing as such at Maria-Joseph Living Care Center and represented himself as a competent and skilled doctor in the care of the elderly.

11. On July 10, 2002, Plaintiff, Jene D. Cook, was admitted to Maria-Joseph Living Care Center after an uneventful right hip replacement surgery performed at Good Samaritan Hospital.

12. Plaintiff, Jene D. Cook's, final diagnosis at the time he was transferred to Maria-Joseph Living Care Center was (1) total right hip replacement; (2) anxiety; (3) constipation; (4) insomnia; (5) hypertension; and (6) depression.

13. At the time of Plaintiff's admission to Maria-Joseph Living Care Center, Plaintiff was to receive total care, assistance with feeding, daily medication, PRN medication, assistance with ambulation, assistance with transfers, staff repositioning, monitor mental status, comfort measures, and skilled nursing observation.

14. At the time of his admission to Maria-Joseph Living Care Center, Plaintiff Jene D. Cook's medications were Docusate, multivitamins, ferrous sulfate, Lanoxin, Lasix, Lisinopril, Percocet, Zoloft, Xanax and Elavil.

15. On or about July 10, 2002, Plaintiff, Carene Law Cook received a phone call that Plaintiff Jene D. Cook had been given a series of wrong medications.

16. Plaintiff, Jene D. Cook, was negligently and recklessly given un-prescribed medications consisting of the following: Isosorbide; Hydrolazine; Reglan; Manoxodil; Trandate; Cardura; Niferex; OystCal-D; and 15 units of NPH insulin by injection. None of the above medications had been prescribed for Plaintiff and were negligently given to Plaintiff by Maria-Joseph Living Care Center's staff, servants, contractors and/or employees.

17. As a result of the medication that was negligently given to Plaintiff, he was required to be transported by emergency rescue on the evening of July 10, 2002 to Good Samaritan Hospital with a blood pressure of 80/40.

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18. At the Good Samaritan Hospital emergency room, Plaintiff had an abnormal electrocardiogram, a significant drop in hemoglobin and underwent a period of tremors.

19. After initial treatment in the emergency room, Plaintiff was admitted to Good Samaritan Hospital, placed on a cardiac monitor bed with an admission diagnosis as a result of the negligent medication errors of (1) anemia; (2) hypotension; (3) possible GI bleeding; and (4) accidental drug poisoning.

20. Plaintiff remained hospitalized as a result of the negligent drug poisoning occurring at Maria-Joseph Living Care Center until July 16, 2002.

21. At all times material to this Complaint, there was in effect in the State of Ohio a Nursing Home Residents' Bill of Rights pursuant to O.R.C. 3721.13.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

22. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-21 as if they were fully rewritten.

23. On the occasions listed above upon which Plaintiff Jene D. Cook was admitted to Defendant Maria-Joseph Living Care Center, Defendants, Maria-Joseph and Premier Partners entered into a contract with Plaintiff whereby they agreed to provide reasonable care for him in exchange for payment.

24. Plaintiff performed all of the conditions, covenants, and promises that the contract required him to perform in accordance with the terms and conditions of the contract.

25. Defendants Premier Health Care Partners and Maria-Joseph Living Care Center as well as their agents and employees each breached their contract with Plaintiff by failing and refusing to perform in good faith their promise to render reasonable care for him.

26. As a direct and proximate result of this breach of contract involving the negligent administration of wrongful medications, Plaintiff, Jene D. Cook underwent physical pain and suffering, anxiety, allergic reaction, mental distress, loss of enjoyment of life and physical impairment.

SECOND CAUSE OF ACTION
NEGLIGENT SUPERVISION AND TRAINING

27. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-26 as if they were fully re-written.

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28. By virtue of Plaintiff Jene D. Cook's residence at Maria-Joseph Living Care Center, Defendant Maria-Joseph owed a duty of care to provide him appropriate care, treatment, and supervision.

29. Defendants knew that Plaintiff, Jene D. Cook was elderly and frail, and that he required skilled nursing observation, assistance with ambulation, assistance with transfers, staff repositioning, daily medication, monitored mental status and other comfort measures.

30. At all times mentioned, Defendants knew that Plaintiff was unable to reliably and routinely care for all of his own personal needs such as ambulating without some assistance and supportive care and taking his medications.

31. At all times mentioned, all Defendants knew that Plaintiff was dependent upon them for the proper medical diagnosis and care, as well as the accurate prescription and administration of prescription drugs.

32. In part, because of the above mentioned knowledge, Defendants, and each of them through agents, employees, officers and directors, knew that the administration of prescription medications to Plaintiff and the failure to provide adequate and correct medication for his existing medical conditions, posed a significant risk that Plaintiff would suffer allergic reactions and life-threatening symptoms which would result in pain, injury, physical deterioration or other complications.

33. Defendants disregarded their above-mentioned duties with respect to supervision, due care, and erroneous prescription and administration of medication.

34. Such conduct was in breach of Plaintiff's right to receive legally required care meeting an appropriate standard of care.

35. Defendant employers failed to properly train, screen, and supervise their employees to the detriment of Plaintiff.

36. Defendant employers entrusted Plaintiff to the care of unskilled, unqualified, and unfit personnel to the Plaintiff's detriment.

37. As a direct and proximate result of the negligence of Defendant, Maria-Joseph Living Care Center employees, as set forth above, Plaintiff was negligently given wrong unprescribed medications, while in the care, control and custody of Defendant, Maria-Joseph Living Care Center.

38. As a direct and proximate result of the negligence of all Defendants, Plaintiff received incorrect medication, improper dosages of medication, and/or

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improper combinations of drugs that resulted in anemia, hypotension, possible GI bleeding, allergic reaction, and accidental drug poisoning.

39. As a direct and proximate result of the Defendants' negligence, Plaintiff, Jene D. Cook suffered injuries, pain, suffering and pecuniary damages as a result thereof.

THIRD CAUSE OF ACTION **NEGLIGENCE**

40. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-39 as if they were fully rewritten.

41. By virtue of the fact that Plaintiff Jene D. Cook had been committed to Defendants' care, each of them owed him a duty to provide an appropriate standard of medical care with respect to his medical condition.

42. Plaintiff's medical condition as diagnosed after receipt of the wrongful medications was the proximate result of one or more of the following negligent acts or omissions of each Defendant:

- a. Inadequate management of Plaintiff's medical condition.
- b. Administration of certain drugs to Plaintiff which resulted in Plaintiff suffering anemia, hypotension, allergic reaction, possible GI bleeding, and accidental drug poisoning.
- c. Administration of a prescription drug cocktail, in error, which was never prescribed for Plaintiff.

43. As a direct and proximate result of the above-mentioned breaches of duty, Plaintiff suffered damages requiring that he be hospitalized for the period of July 10-16, 2002 at Good Samaritan Hospital.

FOURTH CAUSE OF ACTION **FRAUD**

44. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-43 as if they were fully rewritten herein.

45. By accepting Plaintiff Cook as a patient, Defendant Maria-Joseph Living Care Center made two representations, as a matter of law: (1) that Defendants had the training and expertise to afford care which met an appropriate standard of care,

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and (2) that Defendants intended to conform to that standard of care in the rendition of care and treatment of Plaintiff.

46. Such representations and promises were false when made, and Defendants knew that such representations were false. Instead, the true facts were that Defendants knew that they were unable, because of a lack of training, experience and/or resources, to provide care and treatment to Plaintiff which met an appropriate standard of care, and that they had no intention of devoting the necessary resources to provide care and treatment within that standard of care.

47. Plaintiff relied upon such representations and promises and was placed as a resident in Defendant Maria-Joseph Living Care Center to his detriment as alleged.

FIFTH CAUSE OF ACTION
EMOTIONAL DISTRESS (JENE D. COOK)

48. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-47 as if they were fully rewritten.

49. Defendant, Maria-Joseph Living Care Center, negligently administered medications to Jene D. Cook that were not prescribed prior to administration to Plaintiff and caused Plaintiff to have an allergic reaction.

50. Defendant engaged in this action with the intent of causing emotional distress to Plaintiff, or in reckless disregard for the probability that Plaintiff would experience severe emotional distress from such conduct.

51. At a minimum, Defendant's actions were negligent.

52. The conduct of Defendant Maria-Joseph was outrageous, inconsistent, and intolerable with respect to the norms of a modern society.

53. As a direct and proximate cause of Defendant Maria-Joseph Living Care Center's conduct, Plaintiff did, in fact, experience severe emotional distress and damages.

SIXTH CAUSE OF ACTION
LOSS OF CONSORTIUM

54. Plaintiffs hereby incorporate all allegations in paragraphs 1-53 as if they were fully rewritten.

55. Plaintiff was hospitalized for the period of July 10-16, 2002 as a result of the negligent care and treatment rendered to him by Defendants.

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56. At all times herein, Plaintiff was married to Carene Law Cook, his lawful wife.

57. Plaintiff's wife, Carene Law Cook, suffered damages for the loss of his love, support, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and services. Plaintiff Carene Law Cook has additionally suffered mental anguish because of the trauma associated with the erroneous drug medication incident.

58. Plaintiff, Carene Law Cook, has been deprived of the loss of her consortium and companionship.

SEVENTH CAUSE OF ACTION
EMOTIONAL DISTRESS (CARENE LAW COOK)

59. Plaintiffs hereby incorporate all allegations contained in paragraphs 1-58 as if they were fully rewritten.

60. While in the care of Defendant, Maria-Joseph Living Care Center, Defendants administered inappropriate medication to Plaintiff at the times previously noted in this complaint.

61. This inappropriate medication caused anemia, hypotension, possible GI bleeding, accidental drug poisoning, and other extremely troubling symptoms, and a deterioration of Plaintiff's physical and mental conditions and his quality of life.

62. Plaintiff did, in fact, experience severe emotional distress, including helplessness, hopelessness, loneliness, and outrage as a direct and proximate cause of such conduct.

63. Had Defendants complied with laws prescribing the manner in which nursing homes and/or hospitals are to be operated, Plaintiff would have sustained none of the injuries on which this action is based.

64. The conduct of Maria-Joseph Living Care Center was outrageous, inconsistent, inexcusable, and intolerable with respect to the norms of a modern society.

65. Plaintiff belonged to a class of individuals that is most vulnerable in our society. He was virtually dependent on Defendants and powerless to obtain redress when violations of his rights occurred or when his health and safety was endangered.

66. As a direct and proximate cause of Defendant Maria-Joseph Living Care Center's negligence, Plaintiff Carene Law Cook did, in fact, experience severe emotional distress and damages.

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EIGHTH CAUSE OF ACTION
PUNITIVE DAMAGES

67. Plaintiffs hereby incorporate all allegations contained in paragraph 1-66 as if they were fully rewritten.

68. By virtue of Plaintiff's residence at Defendant Maria-Joseph Living Care Center, Defendant Maria-Joseph owed a duty of care to provide him appropriate care, treatment, and supervision.

69. Defendant, Maria-Joseph Living Care Center, knew that Plaintiff was elderly and frail, and that he suffered from a number of physical and mental impairments, impaired coordination, impaired ambulation, and an intermittent lack of awareness of his surrounds, at the complete mercy of Defendant Maria-Joseph Living Care Center, and that he had routine difficulty ambulating.

70. At all times mentioned, Defendants knew that Plaintiff was unable to reliably and routinely care for all of his own personal needs such as ambulating without some assistance and supportive care.

71. At all times mentioned, all Defendants knew that Plaintiff was dependent upon them for the proper medical diagnosis and care, as well as accurate prescription and administration of prescription drugs.

72. In part, because of the above mentioned knowledge, Maria-Joseph Living Care Center and all Defendants knew and each of them through their agents, employees, officers and directors, knew that the failure to provide due care to Plaintiff, including assistance with daily medication and PRN medication, posed a significant risk that Plaintiff would be injured if improperly supervised.

73. In part, because of the above mentioned knowledge, all Defendants, and each of them through managing agents, officers and directors, knew that the administration of prescription medications to Plaintiff and the failure to provide adequate and correct medication for his existing medical conditions, posed a significant risk that Plaintiff would suffer injuries which would result in additional pain or injuries.

74. Defendants knowingly and consciously disregarded their above-mentioned duties with respect to supervision, due care, giving correct and proper prescription drugs and administration of medication.

75. Such conduct was in breach of Plaintiff's right to receive an appropriate standard of legally required care was consciously in disregard of the rights and safety of Plaintiff and in disregard of the probability that serious injury would be sustained by

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him unless care standards were carefully observed and needed care was rendered to him.

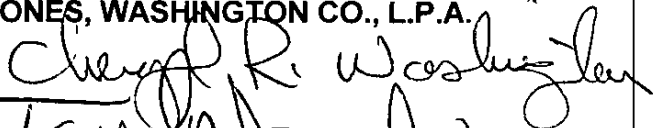
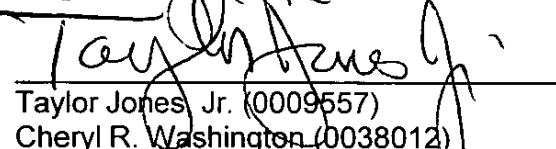
76. Such conduct was despicable, intolerable and inexcusable in a civilized society, in that the abuse and neglect of the elderly, particularly by those who have care and custody of them, is akin to abuse of children.

77. As a direct and proximate result of the negligence of Defendants, as set forth above, Plaintiff received a large quantity of unprescribed wrong medications and required hospitalization thereafter.

WHEREFORE, Plaintiffs demand judgment against Defendants jointly and severally in an undetermined amount exceeding One Hundred Thousand Dollars (\$100,000.00). Plaintiffs further demand punitive damages in an undetermined amount and costs of this suit. Finally, Plaintiffs request such further relief as the court may deem just and equitable.

Respectfully Submitted,


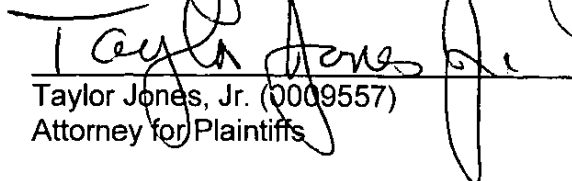
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Taylor Jones, Jr. (0009557)
Cheryl R. Washington (0038012)
Attorneys for Plaintiffs
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JURY DEMAND

Plaintiffs demand a trial by jury on all issues in this action.

Taylor Jones, Jr. (0009557)
Attorney for Plaintiffs

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