

2011 WL 11071543 (Mo.Cir.) (Trial Pleading)
Circuit Court of Missouri.
St. Louis County

Jamie JONES, and Ronald Ray Jones, And Jamie Jones and Ronald Ray Jones,
Individually, and as on behalf of decedent William Christopher Jones, and Estate of William
Christopher Jones, by and Through Personal Representative, Ronald Ray Jones, Plaintiffs,

v.

NORMANDY ASSOCIATES, INC. d/b/a Normandy Nursing Center, Defendant.

No. 11SLCC01963.
May 16, 2011.

Petition for Damages

[Ron Netemeyer](#) #49409, Harper, Evans, Wade & Netemeyer, 401 Locust St. - Ste. 401, Columbia, MO 65201, Phone: (573) 442-1660, Fax: (573) 874-8961, Email: metemeyer@lawmissouri.com, Attorney for Plaintiff Jamie Jones.

[Jeffrey R. Kays](#) #48536, 105 Oak Street, Suite E, Ashland, MO 65010, Phone: (573) 657-0098, Fax: (573) 657-0159, Email: jeff@kayslaw.com, Attorney for Plaintiff Ronald Ray Jones.

COMES NOW Plaintiff Jamie Jones, individually, on behalf of decedent WILLIAM CHRISTOPHER JONES, by and through his counsel Ron Netemeyer, and Ronald Ray Jones, individually, and in his capacity as Personal Representative of the Estate of William Christopher Jones, by and through his counsel Jeffrey Kays, and for their Petition for Damages against the defendant, pleading jointly and in the alternative, state and allege as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times mentioned, decedent William Christopher Jones was a resident of St. Louis County, Missouri.
2. At all times mentioned, plaintiff Jamie Jones was and remains decedent's surviving natural nephew, and has been a resident of Howard County, Missouri; and plaintiff Ronald Ray Jones was and remains decedent's surviving brother, and has been a resident of Howard County, Missouri.
3. At all times relevant herein, defendant Normandy Associates, Inc. d/b/a Normandy Nursing Center (hereafter referred to as "defendant Nursing Home") has been a Missouri corporation owning and operating a skilled nursing facility and nursing home located in St. Louis County, Missouri, representing and holding itself out to residents of the State of Missouri, and specifically to residents of St. Louis County, the public and to decedent and his family as a medical facility specializing in providing state-of-the-art skilled nursing care in exchange for valuable consideration paid by them, and can be served by serving its registered agent, Kerri Kaufmann, 7301 St. Charles Rock Rd., Normandy, Missouri 63133.
4. At the time of the occurrences of negligence, defendant Nursing Home was acting by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, and at all times said servants, employees and/or agents, actual or ostensible, were acting within the course and scope of their employment or agency with defendant Nursing Home.
5. Jurisdiction and venue are proper in this Court, as the negligent acts of the defendant complained of herein occurred in St. Louis County, Missouri, and as decedent was first injured by the negligent acts of the defendant in St. Louis County, Missouri.

6. From May 2, 2008 through August 12, 2009, defendant Nursing Home provided nursing home care and services to decedent.
7. On May 2, 2008 decedent was accepted as a resident of defendant Nursing Home by defendant for care of multiple physical and mental disorders.
8. On May 2, 2008, defendant Nursing Home agreed to accept decedent as a resident and patient.
9. On August 12, 2009, decedent was taken to St. Mary's Health Center in Richmond Heights, Missouri by Normandy ambulance due to being unresponsive.
10. On August 12, 2009, decedent was pronounced dead at 1227 hours and the cause of death was believed to be cardiac arrest.
11. On September 4, 2009, St. Louis County Health, Office of the Medical Examiner, determined from decedent's toxicology tests that decedent's cause of death was acute morphine intoxication.
12. On September 19, 2009, St. Louis County Health, Office of the Medical Examiner, referred this case to the **Elder Abuse** and Neglect Hotline.
13. The medical care, treatment and/or services rendered to decedent by defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, were continuing and of such a nature that defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, were charged with a duty of continuing care and treatment essential to decedent's recovery and/or survival.
14. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, decedent and plaintiff sustained the injuries and damages more fully set forth below.

COUNT I

Plaintiffs Jamie Jones and Ronald Ray Jones v. Defendant Nursing Home (Negligence - Wrongful Death Pursuant to [R.S.Mo. §§537.080, et seq.](#))

15. Paragraphs 1 through 15 above are hereby incorporated by reference as though fully set forth herein.
16. Plaintiffs are proper parties pursuant to Missouri's Wrongful Death Statute, [R.S.Mo. §§537.080, et seq.](#), to bring a wrongful death action on behalf of all Class II beneficiaries of decedent that are still living; decedent is not survived by any Class I beneficiaries in that he was not survived by either parent, a spouse or any children.

DEFENDANT NURSING HOME'S OCCURRENCES OF NEGLIGENCE

17. At all times relevant herein, defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, had a duty to possess and use that degree of skill and learning ordinarily used under the same or similar circumstances by members of defendants' profession in the care and treatment of decedent.

18. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, failed to possess and use that degree of skill and learning ordinarily used under the same or similar circumstances by members of defendants' profession in the care and treatment of decedent, in the following respects:

- a) Defendant had special duty to monitor and supervise decedent, who was known by Defendant to lack mental capacity, and breached its duty to protect decedent from foreseeable harm;
- b) Defendant failed to implement adequate medication control measures and precautions for decedent;
- c) Defendant failed to adequately monitor or supervise decedent;
- d) Defendant failed to provide adequate protective oversight for decedent;
- e) Defendant failed to institute adequate protective measures to prevent decedent from being administered or having access to morphine and or other narcotics.
- f) Defendant failed to institute adequate nursing interventions and measures to prevent decedent's access to narcotics.

DECEDENT WILLIAM CHRISTOPHER JONES' INJURIES

19. The negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, directly and proximately caused, or directly and proximately contributed to cause, decedent to suffer the following severe, permanent and progressive injuries: a) Decedent suffered an untimely, painful and agonizing death on August 12, 2009 as a result of acute morphine intoxication.

DECEDENT WILLIAM CHRISTOPHER JONES' DAMAGES

20. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth in this petition, decedent suffered physical and mental pain and anguish prior to his death, in an amount that plaintiffs are unable to state with exactitude at this time.

21. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth in this petition, decedent suffered inconvenience and the loss of enjoyment of life prior to his death, in an amount that plaintiffs are unable to state with exactitude at this time.

22. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth in this petition, decedent suffered pain and disfigurement prior to his death, in an amount that plaintiffs are unable to state with exactitude at this time.

23. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of

Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth in this petition, decedent was forced to expend monies for medical care and treatment prior to his death, in an amount that plaintiffs are unable to state with exactitude at this time.

PLAINTIFFS JAMIE JONES' AND RONALD RAY JONES' DAMAGES

24. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, decedent was forced to expend sums of money for medical care and treatment prior to his death, for which plaintiffs are entitled to recover, all in an amount that plaintiffs are unable to state with exactitude at this time.

25. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, plaintiffs, or other Class II beneficiaries, were forced to expend monies in connection with decedent's medical treatment prior to his death, for funeral and burial expenses in connection with decedent's death, and for such other expenses in an amount that at this time plaintiffs are unable to state with exactitude.

26. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, plaintiffs and other Class II beneficiaries have been and will be forever deprived of decedent's valuable services, consortium, companionship, comfort, instruction, guidance, counsel, training and spiritual and emotional support.

27. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, plaintiffs and other Class II beneficiaries have suffered and will in the future suffer great mental pain and anguish resulting from decedent's untimely and agonizing death, in an amount that plaintiffs are unable to state with exactitude at this time.

28. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, decedent was forced to suffer great mental and physical pain, suffering, anguish, inconvenience, loss of enjoyment of life and physical disfigurement all prior to his death, for which plaintiffs are entitled to recover, all in an amount that plaintiff is unable to state with exactitude at this time.

29. As a direct and proximate result of the negligence and carelessness of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, plaintiffs have suffered the loss of enjoyment of life.

WHEREFORE, Plaintiffs Jamie Jones and Ronald Ray Jones, by and through counsel, pray for judgment against defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, for such sums as are fair and reasonable, together with any and all costs herein incurred and expended, and for such other and further relief as the Court may deem necessary and proper.

COUNT II

**Plaintiffs Jamie Jones and Ronald Ray Jones v. Defendant Nursing Home
(Negligence Per Se - Wrongful Death Pursuant to R.S.Mo. §§537.080, et seq.)**

30. Paragraphs 1 through 29 above are hereby incorporated by reference as though fully set forth herein.

31. As the owners, operators, and/or managers of a skilled care nursing facility licensed by the State of Missouri and accepting Medicare and Medicaid funds, defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, were subject to regulations promulgated by the Missouri Department of Health and Senior Services and under the Social Security Act.

32. 42 C.F.R. § 483.10 states in part:

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(b)(11) *Notification of changes.*

(i) A facility must immediately inform the resident; consult with resident's physician; and if known, notify the resident's legal representative or an interested family member when there is -

(A) An accident involving the resident which results in the injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life threatening condition or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in Section 483.12(a).

33. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 42 C.F.R. § 483.10 when:

a) Defendant failed to timely report to a physician changes in Decedent's condition;

b) Defendant failed to timely notify Decedent's attending physician of his exposure to morphine and or other controlled substances; and

c) Defendant failed to ensure Decedent maintained a dignified existence.

34. 42 C.F.R. § 483.13 states in part:

(b) **Abuse**. The resident has a right to be free from verbal, sexual, physical and mental **abuse**, corporal punishment, and involuntary seclusion.

(c) *Staff treatment of residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and **abuse** of residents and the misappropriation of resident property.

35. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated

42 C.F.R. § 483.13 when:

- a) Defendant failed to ensure Decedent was free from physical and mental **abuse**; and
- b) Defendant failed to develop and/or implement written policies and procedures that prohibited the mistreatment, neglect and/or **abuse** of Decedent.

36. 42 C.F.R. § 483.15 states in part:

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Dignity.* The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

37. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 42 C.F.R. § 483.15 when:

- a) Defendant failed to consistently monitor and assess Decedent's physical condition;
- b) Defendant failed to provide Decedent with adequate nutrition and hydration;
- c) Defendant failed to timely report to a physician changes in Decedent's condition;
- d) Defendant failed to timely transfer Decedent to a facility which could provide him adequate care;
- e) Defendant failed to provide adequate nursing staff to ensure Decedent's 24-hour protective oversight and supervision;
- f) Defendant failed to properly supervise the employees, agents, and/or servants of Defendant who were responsible for the care and treatment of Decedent;
- g) Defendant failed to care for Decedent in a manner and in an environment that promoted his dignity.

38. 42 C.F.R. § 483.20 states in part:

A facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(k) *Comprehensive care plans.*

(1) The facility must develop a comprehensive care plan for each resident that includes negligible measurable objectives and time tables to meet a resident's medical, nursing and mental and psychosocial needs that identify in the comprehensive assessment.

39. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated [42 C.F.R. § 483.20](#) when Defendant failed to adequately develop, institute and follow a comprehensive care plan for Decedent to ensure his medical, nursing and mental and psychosocial needs were met.

40. [42 C.F.R. § 483.25](#) states in part:

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well being, in accordance with the comprehensive assessment and plan of care.”

(a) *Accidents.* The facility must insure 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.

(i) *Nutrition.* Based on a resident's comprehensive assessment, the facility must insure that a resident -

- (1) Maintains acceptable perimeters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that it is not possible; and
- (2) Receives a therapeutic diet when there is a nutritional problem.

(j) *Hydration.* The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

41. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated [42 C.F.R. § 483.25](#) when:

- a) Defendant failed to consistently monitor and assess Decedent's physical condition;
- b) Defendant failed to provide Decedent with adequate nutrition and hydration;
- c) Defendant failed to timely report to a physician changes in Decedent's condition;
- d) Defendant failed to timely transfer Decedent to a facility which could provide him adequate care;
- e) Defendant failed to provide adequate nursing staff to ensure Decedent's 24-hour protective oversight and supervision;
- f) Defendant failed to properly supervise the employees, agents, and/or servants of Defendant who were responsible for the care and treatment of Decedent;
- g) Defendant failed to care for Decedent in a manner and in an environment that promoted his dignity.

42. [42 C.F.R. § 483.30](#) states in part:

The facility must have sufficient nursing staff to provide nursing and related services to 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.

43. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator,

Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated [42 C.F.R. § 483.30](#) when:

a) Defendant failed to employ nursing personnel in sufficient numbers and with sufficient qualifications to enable Decedent to attain and maintain the highest practicable level of care; and

b) Defendant failed to employ nursing personnel and/or trained staff in sufficient numbers and with sufficient qualifications to evaluate and meet Decedent's needs on a daily and continuous basis.

44. [19 C.S.R. 30-85.042\(3\)](#) states:

The operator shall be responsible to assure compliance with all applicable laws and rules. The administrator shall be fully authorized and empowered to make decisions regarding the operation of the facility and shall be held responsible for the actions of all employees. The administrator's responsibilities shall include the oversight of residents to assure that they receive appropriate nursing and medical care.

45. Defendants by and through their agents, servants and/or employees including, but not limited to, nurses caring for Decedent from May 2, 2008 to August 12, 2009, violated [19 C.S.R. 30-85.042\(3\)](#) when:

a) Defendant failed to assure compliance with all applicable state and federal laws and rules governing patient care; and

b) The administrator of defendant failed to assure that decedent received appropriate nursing and medical care.

46. [19 C.S.R. 30-85.042\(6\)](#) states:

A 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.

47. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated [19 C.S.R. 30-85.42\(6\)](#) when:

a) Defendant knew or should have known that Defendant did not have adequate staff to meet the needs of Decedent both when Decedent was admitted to defendant Nursing Home and each and every day thereafter that Decedent resided at defendant Nursing Home; and

b) Defendant knew or should have known that Decedent needed to be transferred to a hospital for treatment of his worsening condition.

48. [19 C.S.R. 30-85.042\(13\)](#) states:

The facility shall develop policies and procedures applicable to its operation to ensure the residents' health and safety and to meet the residents' needs. At a minimum, there shall be policies covering personnel practices, admission, discharge, payment, medical emergency treatment procedures, nursing practices, pharmaceutical services, social services, activities, dietary, house keeping, infection control, disaster and accident prevention, resident's rights in handling residents' property.

49. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(13) when:

- a) Defendant failed to develop, initiate and enforce appropriate policies and procedures applicable to its operation to ensure the health and safety of Decedent; and
- b) Defendant failed to develop, initiate and enforce appropriate policies and procedures applicable to its operation to ensure that Decedent's needs were met including, but not limited to, policies covering personnel practices, admission, discharge, medical emergency treatment procedures, nursing practices, pharmaceutical services, social services, activities, dietary, infection control, disaster and accident prevention, and residents' rights.

50. [19 C.S.R. 30-85.042\(16\)](#) states:

All persons who have any contact with the residents in the facility shall not knowingly act or admit any duty in a manner which would materially and adversely affect the health, safety, welfare or property of resident.

51. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(16) when:

- a) Defendant failed to consistently monitor and assess Decedent's physical condition;
- b) Defendant failed to provide Decedent with adequate nutrition and hydration;
- c) Defendant failed to timely report to a physician changes in Decedent's condition;
- d) Defendant failed to timely transfer Decedent to a facility which could provide him adequate care;
- e) Defendant failed to provide adequate nursing staff to ensure Decedent's 24-hour protective oversight and supervision;
- f) Defendant failed to properly supervise the employees, agents, and/or servants of Defendant who were responsible for the care and treatment of Decedent;
- g) Defendant failed to care for Decedent in a manner and in an environment that promoted his dignity.

52. [19 C.S.R. 30-85.042\(34\)](#) states:

All facilities shall employ a director of nursing on a full time basis who shall be responsible for the quality of patient care and supervision of personnel rendering patient care.

53. Defendant Nursing Home, individually, and by and through its servants, employees *and/or* agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(34) when:

- a) The Director of Nursing of defendant Nursing Home failed to ensure that Decedent received quality care; and
- b) The Director of Nursing of defendant Nursing Home failed to adequately supervise employees of Defendants rendering care to decedent.

54. [19 C.S.R. 30-85.042\(37\)](#) states:

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.

55. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(37) when:

- a) Defendant failed to employ nursing personnel in sufficient numbers and with sufficient qualifications to enable Decedent to attain and maintain the highest practicable level of care; and
- b) Defendant failed to employ nursing personnel and/or trained staff in sufficient numbers and with sufficient qualifications to evaluate and meet Decedent's needs on a daily and continuous basis.

56. [19 C.S.R. 30-85.042\(44\)](#) states:

The facility shall ensure that the residents' private physician, the physician's designee, the facility's supervising physician or an alternate physician shall exam the resident at least annually, and shall examine the resident as often as necessary to ensure proper medical care.

57. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(44) when:

- a) Defendant failed to ensure that Decedent's personal physician examined him as often as necessary to ensure proper medical care.

58. [19 C.S.R. 30-85.042\(66\)](#) states:

Each resident shall receive twenty four (24) hour protective oversight and supervision.

59. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(66) when Defendant failed to provide adequate nursing staff to ensure Decedent 24 hour protective oversight and supervision

60. [19 C.S.R. 30-85.042\(67\)](#) states:

Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practices.

61. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, violated 19 C.S.R. 30-85.42(67) when:

- a) Defendant failed to consistently monitor and assess Decedent's physical condition;
- b) Defendant failed to provide Decedent with adequate nutrition and hydration;
- c) Defendant failed to timely report to a physician changes in Decedent's condition;
- d) Defendant failed to timely transfer Decedent to a facility which could provide him adequate care;
- e) Defendant failed to provide adequate nursing staff to ensure Decedent's 24-hour protective oversight and supervision;
- f) Defendant failed to properly supervise the employees, agents, and/or servants of Defendant who were responsible for the care and treatment of Decedent;
- g) Defendant failed to care for Decedent in a manner and in an environment that promoted his dignity.

62. Decedent was a member of the class of persons intended to be protected by the enactment of the aforementioned federal and state regulations.

63. The injuries and damages sustained by Decedent were the type of injuries that the aforementioned regulations were intended to prevent.

64. As a direct and proximate result of the Defendants' negligence and carelessness as stated above, Decedent suffered severe pain, mental distress and ultimately death on August 12, 2009.

65. As a further, direct and proximate cause of the negligence and carelessness of Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, plaintiff Jamie Jones, and other Class I beneficiaries, sustained the injuries and damages more fully set forth above.

66. The negligence and carelessness of Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, was outrageous and constituted gross negligence in that Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, knew or in the exercise of ordinary care should have known that its conduct created a high probability of injury; Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, thereby demonstrated a conscious and reckless disregard for the rights of Decedent, permitting the recovery of damages for aggravating circumstances.

WHEREFORE, Plaintiffs Jamie Jones and Ronald Ray Jones, by and through counsel, pray for judgment against defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, for such

sums as are fair and reasonable, together with any and all costs herein incurred and expended, and for such other and further relief as the Court may deem necessary and proper.

COUNT III

**Plaintiff Jamie Jones and Ronald Ray Jones, on behalf of
Decedent William Christopher Jones v. Defendant Nursing Home**

(Alternative Lost Chance of Recovery and/or Survival Claim)

67. Paragraphs 1 through 66 above are hereby incorporated by reference as though fully set forth herein.

68. At all times relevant herein, plaintiff Jamie Jones has been and is the surviving natural nephew of decedent; and plaintiff Ronald Ray Jones has been the surviving brother of decedent.

69. As such, and pursuant to [R.S.Mo. §§537.080](#) and [537.021](#), plaintiffs have sought and have been appointed Plaintiffs ad Litem on behalf of decedent in order to pursue any and all claims of decedent which survive his death, including but not limited to any alternative lost chance of survival and/or recovery claim.

70. Defendant knew, or should have known, that decedent was suffering from acute morphine intoxication on or about August 12, 2009.

71. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, failed to properly identify decedent's condition and failed to administer any of the accepted and commonly used treatments for an individual suffering from a respiratory depression from a potential overdose or acute morphine intoxication; including but not limited to:

- a) The administering of cardiopulmonary resuscitation, chest compression, oxygen administration, and use of a bag valve mask (Ambubag).
- b) Monitoring and recording of decedent's pulse rate, heart rate, respiratory rate, and blood pressure.
- c) Establishment of decedent's airway, an examination and "sweep" of decedent's mouth and oropharynx to remove food and vomit from decedent's mouth and throat.
- d) Monitoring and documentation of decedent's condition when he first exhibited unusual behavior.
- e) The use of a stomach pump.
- f) The administering of certain accepted and widely used medications such as Narcan.

72. The negligence of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth above, directly caused or directly contributed to cause decedent to sustain and suffer personal injury and/or to lose any chance of recovery and/or survival; had Defendant used the accepted methods of treating decedent's condition, decedent would not have perished.

73. Such lost chance of recovery and/or survival was material to decedent and resulted in decedent suffering severe, permanent and progressive injuries leading to decedent's untimely death on August 12, 2009. Such injuries and damages would not have

been sustained by decedent, or would have been minimized, had defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, not been negligent.

WHEREFORE, Plaintiffs Jamie Jones and Ronald Ray Jones, on behalf of decedent, by and through counsel, pray for judgment against defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, for such sums as are fair and reasonable, together with any and all costs herein incurred and expended, and for such other and further relief as the Court may deem necessary and proper.

COUNT IV

**Ronald Ray Jones, Personal Representative of the Estate of
Decedent William Christopher Jones v. Defendant Nursing Home**

(Decedent's Surviving Personal Injury Claim - [R.S.Mo. §§537.020, et seq.](#))

74. Paragraphs 1 through 73 above are hereby incorporated by reference as though fully set forth herein.

75. Plaintiff Ronald Ray Jones, in his capacity as Personal Representative of the Estate of Decedent William Christopher Jones, is the proper party to pursue any and all personal injury claims of decedent which survive his death, including but not limited to any medical negligence claims.

76. Defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, committed the acts of negligence more fully set forth above.

77. The negligence of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth above, directly caused or directly contributed to cause decedent to sustain and suffer personal injury from May 2, 2008 prior to and up through the time of his death on August 12, 2009.

78. The negligence of defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, more fully set forth, above directly caused or directly contributed to cause decedent to sustain and suffer severe, permanent and progressive injuries and damages prior to decedent's death, including but not limited to physical and emotional pain and suffering, anxiety, worry, fear and anguish.

WHEREFORE, Ronald Ray Jones, Personal Representative of the Estate of Decedent William Christopher Jones, by and through counsel, prays for judgment against defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, for such sums as are fair and reasonable, together with any and all costs herein incurred and expended, and for such other and further relief as the Court may deem necessary and proper.

COUNT V - Punitive Damages

79. Paragraphs 1 through 78 above are hereby incorporated by reference as though fully set forth herein.

80. Defendant should have known that negligently allowing decedent access to or exposure to morphine, without a prescription, created a high probability of injury, and thereby showed complete indifference or conscious disregard for the safety of others.

81. Defendant, by and through its agents and employees, should have known that intentionally injecting decedent with morphine, without a prescription, created a high probability of injury, and thereby showed complete indifference or conscious disregard for the safety of others.

WHEREFORE, Plaintiffs Jamie Jones and Ronald Ray Jones, on behalf of decedent, by and through counsel, pray for judgment against defendant Nursing Home, individually, and by and through its servants, employees and/or agents, actual or ostensible, including but not limited to the Administrator, Director of Nursing and any nurse's, nurse aides or other allied health care professionals, for punitive damages in such sums as are fair and reasonable, together with any and all costs herein incurred and expended, and for such other and further relief as the Court may deem necessary and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY.

Respectfully Submitted,

By: <<signature>>

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