6 Plaintiff's Perspective

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I. [6.1] INTRODUCTION

Practitioners owe it to elderly clients to consider the possibility of pursuing personal injury and wrongful death cases when the elderly are victims of neglect and abuse resulting in injuries and death.

In the long-term care arena, the acquisition of several national nursing home chains by private equity firms has received a great deal of attention from the media, politicians, and elderly residents and their families. The worry is that in an effort to maximize revenue at nursing homes, these private equity firms are reducing staff and resources while increasing the census. The obvious result is that there are not enough staff and resources to care for the number of residents in the facility. This issue, referred to as the "profits over people" argument, was addressed extensively by Charles Duhigg, in *At Many Homes, More Profit and Less Nursing,* New York Times, Sept. 23, 2007, available at www.nytimes.com/2007/09/23/business/23nursing.html.

The elderly and their families as well as elder law attorneys should be aware that several laws have been codified to protect the rights of the elderly and encourage them and their families to assert their rights through litigation. On a national level, the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203, 101 Stat. 1330, sets forth requirements for long-term care facilities throughout the country. Additionally, Illinois adopted the Illinois Nursing Home Care Act (NHCA), 210 ILCS 45/1-101, *et seq.,* in 1979 amid concerns regarding inadequate care in nursing homes throughout the state. See §6.2 below.

It is important for attorneys to be able to recognize when a civil action for the injuries or death of an elderly individual may be appropriate. The elderly need advocates. Cases involving the elderly do have value and can be won. Attorneys should encourage their clients in such situations to seek the counsel of experienced trial lawyers willing to pursue their claims.

II. [6.2] ILLINOIS NURSING HOME CARE ACT

The Illinois Nursing Home Care Act, 210 ILCS 45/1-101, *et seq.,* was enacted in 1979 to address concerns of inadequate, improper, and degrading treatment of patients in nursing homes. Chicago Mayor Richard M. Daley, a senator for the 23rd District at the time, was the chief sponsor of the Act. Daley and Dean Timothy Jost coauthored an article that appeared in the Illinois Bar Journal in March 1980 highlighting the four main focuses of the NHCA:

> **First, it sets forth the rights of long term care facility residents and the responsibilities of long term care facilities. Second, it extensively expands the powers of the state to deal with facilities which provide inadequate care. Third, it requires training and minimum qualifications for non-licensed staff. Fourth, and most important, it provides extensive new opportunities for residents, relatives and friends of residents, and community advocates to become involved in assuring quality nursing home care.** Richard M. Daley and Dean Timothy Jost, *The Nursing Home Reform Act of 1979,* 68 Ill.B.J. 448 (1980).

The NHCA gives Illinois nursing home residents a private statutory cause of action for actual damages and costs and attorneys' fees against nursing home licensees for violations of the residents' rights provisions of the Act. See 210 ILCS 45/2-101 through 45/2-113.The most important right is the right to be free from abuse and neglect. It is essential that plaintiffs' personal injury lawyers handling cases against nursing homes be knowledgeable about the NHCA and its implications. While this chapter addresses several areas of the Act, the reader should refer to ADVISING ELDERLY CLIENTS AND THEIR FAMILIES, Ch. 7 (IICLE 2006), for a complete discussion.

III. [6.3] CASE INTAKE AND SCREENING

Traditionally, lawyers have overlooked cases involving the injuries and death of residents in the nursing home and long-term care setting. For a variety of reasons, including infirmities, lack of earning capacity, and because they rarely provide economic support to anyone, a misconception has formed in the legal community that personal injury cases and wrongful death cases involving the elderly do not have value. Recent case results suggest otherwise. When confronted with situations of possible abuse and neglect of a resident in a nursing home or other long-term care setting, personal injury lawyers owe it to the potential client to consider pursuing a personal injury or wrongful death case.

During the initial phone call with the client, who is most likely a family member of the nursing home resident, there are several questions that a lawyer can ask to determine whether there might be a personal injury or wrongful death case to pursue. First, the lawyer needs to establish the nature and extent of the injuries the resident has experienced. Ask the potential client what harm they believe the facility's wrongful conduct caused. Injuries that should alert the lawyer to the possibility of abuse and neglect and therefore the possibility of a personal injury or wrongful death action include the injuries and conditions discussed in §§6.4 – 6.12 below.

After determining the nature and extent of the resident's injuries, the lawyer should obtain a detailed chronology of the resident's medical history from immediately prior to the resident's nursing home stay until the present or the time of the resident's death, including any intermittent hospitalizations or other nursing home admissions. This will help the lawyer get a better feel for the case, identify other potential defendants, and identify the statute of limitations.

During this initial contact, the attorney should ask whether the potential client has filed a complaint with the Illinois Department of Public Health (IDPH). If not, the attorney should advise the client about the IDPH telephone hotline number for reporting suspected nursing home abuse and neglect. The number is 800/252-4343. If a resident or resident's family member calls this number and reports suspected abuse or neglect, a surveyor from IDPH will investigate the individual's complaints. The IDPH has the authority to cite the nursing home for violations of both state and federal regulations and to fine the nursing home. If IDPH cites the facility for regulatory violations, the surveyor's report can be very useful in determining whether a personal injury case should be pursued, the names of potential additional parties, and the names of potential witnesses to depose.

If IDPH does not cite the facility, however, the lawyer must be very careful not to close his or her mind to the possibility of pursuing a personal injury lawsuit. Just because the IDPH does not cite the facility does not mean neglect did not occur. Surveyors investigating nursing homes are doing so based on often limited information given to them by the resident or the resident's family members. The surveyor will usually review only a small portion of the resident's medical records and will not always be able to talk to the key employees of the nursing home. Therefore, it is possible for the surveyor to overlook instances of abuse or neglect.

During the initial call, the lawyer should also try to gather information such as

a. a detailed family history including all interested parties;

b. the family's involvement with the resident and frequency of visits;

c. a history of confrontations between the resident or a family member and staff;

d. the resident's attending physician;

e. the names of staff members;

f. comorbidities;

g. results of the injuries caused by the neglect of the nursing home (*e.g.,* hospitalizations, surgeries, death, etc.);

h. possession of or authority to obtain medical records;

i. existence of a will (if the resident has passed away):

    1. if a will exits, who are the heirs; who is the executor; has the will been filed; has a probate estate been opened;

    2. if there is no will, who are the interested parties pursuant to the laws of intestacy;

j. accurate contact information, including mailing address and phone number; and

k. aggravating factors (*e.g.,* instances in which the resident was verbally abused or left lying in urine or feces).

If after the initial phone call the lawyer determines there is a personal injury or wrongful death case to pursue against the nursing home, he or she should have the client sign an attorney-client agreement, and then either the lawyer or the client should obtain the medical records of the nursing home resident for review. If the lawyer has the medical records reviewed by a nurse, doctor, or some other healthcare professional, the lawyer must discuss the findings with the reviewer upon completion. In the area of nursing home litigation, it is imperative that the lawyer

know what to look for and what questions to ask the reviewer in order to determine whether to proceed with a lawsuit. For example, in a pressure ulcer case, some questions to ask would include the following:

a. Was there an assessment performed to determine if the resident was at risk for the development of pressure ulcers?

b. What risk factors did the resident have for the development of pressure ulcers?

c. Was a care plan developed to address the resident's risk for the development of pressure ulcers?

d. What did the care plan entail?

e. Was the care plan carried out?

f. Was the resident reassessed on a continuous basis to determine if the care plan was working?

g. If the care plan was not working, was the resident's doctor called? Was the resident's family called? Were new interventions put in place?

h. What interventions were in place to address the resident's risk (*e.g.,* pressure-relieving devices, a turning and repositioning schedule, appropriate nutritional and hydrational support)?

i. What stage were the pressure ulcers? Upon assessment, were there accurate descriptions of the pressure ulcers including size, stage, appearance, and drainage?

These are just a few of the multitude of questions that the lawyer needs to be aware of and ask. If the lawyer who receives a call from a family member of a nursing home resident who suspects his or her loved one has been abused or neglected in a nursing home is unfamiliar with this area of personal injury litigation, the lawyer should consult with or consider referring the potential case to a lawyer more experienced in this area of law.

If after a thorough analysis of the facts of the case a determination is made to pursue a personal injury or wrongful death case on behalf of the resident or resident's family, the lawyer should begin drafting the complaint as discussed in §§6.13 – 6.18 below.

IV. COMMON INJURIES AND CONDITIONS

A. [6.4] Pressure Ulcers

Pressure ulcers (also called bedsores, pressure sores, and decubitus ulcers) are lesions in the skin that typically form due to constant pressure on bony prominences of the body and that decrease the blood flow to those areas. Common areas where pressure ulcers form are the sacrum

and coccyx bone, often referred to as the "tailbone." There are four classifications of pressure ulcers that indicate the severity of the ulcer. A Stage I pressure ulcer presents as an area of persistent defined redness of intact skin. A Stage II pressure ulcer presents as an abrasion or blister in the skin involving partial skin loss. Full skin loss and damage to or necrosis of underlying tissue is indicative of a Stage III pressure ulcer. Finally, the most severe pressure ulcer is a Stage IV ulcer, which presents as full skin loss and extensive damage to or necrosis extending through tissue to muscle or bone.

Nursing homes are obligated to identify individuals at risk for pressure ulcers. Once the risk is assessed, the nursing home must form and implement a care plan including modalities to prevent pressure ulcers. There are numerous risk factors for the development of pressure ulcers, including

1. immobility;

2. poor nutrition and hydration;

3. peripheral vascular disease; and

4. diabetes.

These are just a few factors that can increase an individual's risk for the development of pressure ulcers. Nursing homes can prevent the formation of pressure ulcers by constantly turning and repositioning residents to ensure the residents are not putting unrelieved pressure on any certain area of the body. In addition, the nursing home should provide residents with appropriate nutritional and hydrational support. Regular bathing is also important. There are pressure-relieving devices such as special mattresses, beds, heel protectors, and boots that can help prevent pressure ulcers by alleviating pressure to areas where the resident is at risk.

B. [6.5] Sepsis

Sepsis, also referred to as "septicemia," is a bacterial blood infection. Under normal circumstances, the body's white blood cells rid the blood of bacteria, but sepsis may occur if the white blood cells are overwhelmed by an unusually large number of bacteria. Persons with sepsis may experience fever, chills, rapid breathing, irregular heartbeat, and loss of appetite. Sepsis often develops at the same time as infection in another part of the body, such as a respiratory, skin, or gastrointestinal infection. Sepsis may also coincide with or precede meningitis, an infection of the central nervous system. In severe cases, sepsis can lead to infections of the brain and heart and subsequent death.

The skin is one of the main sites of infection leading to sepsis. Normally, the skin serves as a barrier against all manner of viral and bacterial threats, but any cut or open wound can allow a bacterial infection that can cause sepsis to develop. These include surgical sites, points of entry for intravenous lines, and sites of skin breakdown such as pressure ulcers (see §6.4 above). Sepsis prevention can include monitoring the skin for the development of bedsores and taking steps to prevent bedsores from developing. If sepsis develops in a patient who was improperly monitored or treated, the medical professionals in charge of administering care may be held liable.

C. [6.6] Wandering and Elopement

Elopement and wandering are related concepts. Wandering refers to aimless movement throughout the facility during which the resident puts his or her safety at risk due to an inability to appreciate danger. Elopement refers to the resident's ability to leave the facility unsupervised and unnoticed, putting the resident's safety in danger.

Elopement and wandering are risks the nursing home must recognize and prevent by providing each resident with the appropriate level of supervision. Exit doors should be alarmed to notify staff when residents leave the facility unsupervised, and the nursing home staff must know how to appropriately respond to the alarms. Failure to prevent elopement and wandering puts residents at risk for falls, exposure to harsh weather, and other significant dangers.

D. [6.7] Falls

Falls occur frequently among the elderly population and lead to numerous other complications with devastating effects. The elderly are more likely to suffer fractures, which can lead to immobility and put the resident at risk for the development of pressure ulcers and other problems. Significant fractures shorten the life expectancy of elderly. The nursing home has a responsibility to identify and assess the resident's risk for falls. Those residents at risk should be monitored closely and receive assistance with transfers to prevent them from falling. Bed rails, nonskid footwear, an appropriate armchair with wheels locked at bedside, walkers, and canes can be used to help prevent falls.

E. [6.8] Physical Abuse

Because of their physical dependence, nursing home residents are easy targets of physical abuse. This kind of maltreatment of the elderly is absolutely unacceptable and deserves severe punishment to both the perpetrator and the nursing home that allowed abuse to occur. Physical abuse encompasses sexual assault and abuse and any other form of physical maltreatment.

F. [6.9] Malnutrition and Dehydration

Maintaining appropriate nutritional and hydrational status is important in the nursing home setting. Residents who do not receive adequate nutrition and hydration are more at risk for the development of pressure ulcers, infection, muscle weakness leading to immobility, and falls. Poor nutrition and hydration also make it more difficult for existing pressure ulcers and infections to heal.

The elderly have less water content in their bodies than younger adults and a decreased thirst response that, among other factors, put them at risk for dehydration. Increasing fluid intake in the elderly is important and relatively simple. The nursing home should monitor the resident's fluid intake and ensure that the resident drinks at least six cups of fluid each day. Fruit juices, popsicles, and gelatin are excellent sources of fluid that help residents maintain appropriate hydration.

There is a variety of factors that can lead to malnutrition. Depression, an increasing problem among the elderly, is a potential cause of malnutrition as individuals suffering from depression have a tendency to eat less and in turn to do not receive sufficient vitamins and minerals to prevent malnutrition. Other causes of malnutrition include difficulty swallowing and adverse drug effects such as vomiting and diarrhea. Nursing homes often fail to take steps to prevent malnutrition by not monitoring resident food intake and output, not providing a comfortable environment to promote eating, and not providing food that is appetizing.

G. [6.10] Medication Errors

Misadministration of medicine is a frequent and serious problem at nursing homes. Residents are often given the wrong medication or not given the medication in the dosage or frequency required by the physician's order. This occurs as a result of carelessness on the part of the staff, lack of supervision of the nurses administering the medications, or lack of properly trained and supervised staff to administer the medications.

Medication error risks can be considerable because many patients are on a number of prescriptions and already have compromised physical health conditions. These risks are also exacerbated by the fact that nursing homes are often understaffed. If medication error causes injury to a resident, he or she has the right to seek compensation for their losses.

H. [6.11] Choking/Clogged Breathing Tubes

Choking deprives the brain of oxygen and can cause brain damage and even death. While such an injury may appear to be accidental, nursing homes can be held accountable. If the choking occurred because the patient was not properly monitored, it is the fault of the nursing home, and there may be a personal injury and wrongful death case to pursue.

I. [6.12] Burns

Many nursing home residents suffer severe burns as a result of water that is too hot in bathtubs or sitz baths. These injuries often occur because nursing homes are understaffed or the staff members are negligent.

V. COMPLAINT

A. [6.13] Parties

Prior to the filing of the lawsuit, it is important to know who the interested parties are. Who will act as the named plaintiff?

If the resident is still alive, the lawsuit may be brought in his or her name if he or she is mentally competent. Find out if a family member has been appointed power of attorney or guardian of the resident and if so whether the appointment allows the family member to bring the lawsuit in his or her name.

If the resident has passed away and there will be both a survival and wrongful death action, find out if there is a will, whether it has been filed, whether a probate estate has been opened, who is the executor, and who are the heirs. The lawsuit will then likely be filed in the name of the executor.

If there is no will, then a special representative and special administrator must be appointed to prosecute the causes of action under the survival statute and the Wrongful Death Act. This can be done in the law division upon verified motion of the petitioner seeking to be appointed.

After determining the appropriate plaintiff and the interested parties to the lawsuit, the appropriate defendant or defendants and possibly respondents in discovery need to be identified.

The licensee of the nursing home should be named as a defendant in every case brought pursuant to the Nursing Home Care Act, which provides:

> **The licensee shall pay the actual damages and costs and attorney's fees to a facility resident whose rights, as specified in Part 1 of Article II of this Act, are violated.** 210 ILCS 45/3-602.

Attorneys handling nursing home cases owe it to their clients to consider other defendants as well. The attorney should find out if any outside company provided management services to the nursing home. This information can be ascertained by looking at the cost reports prepared by the Illinois Department of Healthcare and Family Services (formerly known as the Illinois Department of Public Aid). These reports are available at www.hfs.illinois.gov/costreports.

Other outside agencies should be considered as possible defendants as well. For example, if there are nutritional issues, the attorney should find out if a dietician was seeing the resident and by whom the dietician is employed, as these individuals often work as independent contractors and therefore might not be considered employees of the nursing home.

Consider naming individual nurses, certified nursing assistants, the administrator, and other employees of the nursing home as defendants when appropriate. Find out who the resident's attending physician is or was and what role he or she played in the care and treatment of the resident.

If the attorney is unsure whether any of these entities or individuals should be named as defendants, he or she should consider naming them as respondents in discovery in order to avoid waiving the right to name them as defendants later on. This also gives the plaintiff an opportunity to obtain written discovery and oral discovery of key witnesses early on in the case.

B. [6.14] Survival Action

An issue that has arisen under the Nursing Home Care Act is whether a deceased resident's right to prosecute a private civil damage action for injuries incurred prior to death passes unabated to the decedent's estate. In *Wills v. DeKalb Area Retirement Center,* 175 Ill.App.3d 833, 530 N.E.2d 1066, 125 Ill.Dec. 657 (2d Dist. 1988), the court held that a special administrator of a

nursing home resident's estate could bring an action under 210 ILCS 45/3-602 for injuries incurred prior to death pursuant to 755 ILCS 5/27-6. In *Myers v. Heritage Enterprises, Inc.,* 332 Ill.App.3d 514, 773 N.E.2d 767, 266 Ill.Dec. 32 (4th Dist. 2002), the Fourth District Appellate Court confirmed that a plaintiff could bring a survival action pursuant to 755 ILCS 5/27-6 on the decedent's behalf under the NHCA for injuries sustained by the decedent prior to death.

The caselaw is also clear that, when bringing a survival action under the NHCA, a certificate of merit and supporting report from a healthcare professional pursuant to 735 ILCS 5/2-622 are *not* required. In *Eads v. Heritage Enterprises, Inc.,* 204 Ill.2d 92, 787 N.E.2d 771, 272 Ill.Dec. 585 (2003), the Supreme Court held that §2-622 was inapplicable to actions under the NHCA and, therefore, the certificates and reports required by this section were not necessary for actions filed under the Act. 787 N.E.2d at 780.

C. [6.15] Wrongful Death Action

Practitioners should be aware that in *Pietrzyk v. Oak Lawn Pavilion, Inc.,* 329 Ill.App.3d 1043, 769 N.E. 2d 134, 263 Ill.Dec. 932 (1st Dist. 2002), the court held that the heirs of a deceased nursing home resident could not bring a wrongful death claim under the Nursing Home Care Act. However, this does not preclude the heirs from bringing a wrongful death claim in a common-law negligence count. There is dispute as to whether a certificate of merit and healthcare professional's report pursuant to 735 ILCS 5/2-622 are required for a common-law wrongful death count. Therefore, the authors recommend the filing of a §2-622 certificate and report if bringing counts alleging wrongful death. The authors also recommend filing a wrongful death count pursuant to the NHCA to preserve the issue in the event there is a retroactive change in the law.

D. [6.16] Allegations of Negligence and Statutory Violations

The attorney filing a nursing home complaint should be familiar with the federal and state regulations governing nursing homes. In 1987, the federal government promulgated the Omnibus Budget Reconciliation Act of 1987. The Illinois Department of Public Health also promulgated regulations, which are codified at 77 Ill.Admin. Code pt. 300 and govern nursing homes in this state. Violations of the federal and state regulations can be alleged and pled in the complaint as evidence of negligence. See §6.25 below for a sample complaint.

Some examples of commonly pled OBRA regulations are as follows:

Pressure ulcers. Based on a comprehensive assessment of a resident, the facility must ensure that (1) a resident who enters the facility without pressure ulcers does not develop pressure ulcers unless the resident's clinical conditions demonstrate that they were unavoidable; and (2) a resident having pressure ulcers receives necessary treatment and services to promote healing, prevent infection, and prevent new sores from developing. 42 C.F.R. §483.25(c).

Malnutrition and dehydration. Based on a comprehensive assessment, the facility must provide sufficient fluid intake to maintain proper hydration and health (42 C.F.R. §483.25(j)) and ensure the resident maintains acceptable parameters of nutritional status such as body weight and

protein status unless the resident's clinical condition demonstrates that this is not possible and he or she receives a therapeutic diet after nutritional problems develop (42 C.F.R. §483.25(i)). The facility must also ensure that a resident who has been able to eat enough alone or with assistance is not fed by nasal gastric tube unless the resident's clinical condition demonstrates that use of a nasal gastric tube was unavoidable. 42 C.F.R. §483.25(g)(1). A resident who is fed by a nasal gastric or gastrostomy tube must receive the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal pharyngeal ulcers; normal feeding functions should be restored if possible. 42 C.F.R. §483.25(g)(2). Pursuant to §483.25(a), the facility must ensure that a resident's abilities in the activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that the diminution was unavoidable. This includes the resident's ability to eat.

Falls. The facility must ensure that the resident environment remains as free of accident hazards as possible and provide appropriate supervision and assistance devices to prevent falls. 42 C.F.R. §483.25(h).

Choking. The facility must insure that residents receive proper care and treatment for special services such as tracheotomy care, tracheal suctioning, and respiratory care. 42 C.F.R. §483.25(k).

E. [6.17] Damages

Attorneys should think about damages throughout the prosecution of a nursing home negligence and wrongful death case. Damages for the pain, suffering, disability, disfigurement, and medical expenses the resident experienced prior to death as a result of the negligence of the defendant may be recovered.

While attorneys have a tendency to focus on pain and suffering experienced by the resident, it is important not to discount the disability and disfigurement experienced. For example, if the resident is injured in a fall and the injuries put the resident in a coma, stress how the neglect of the nursing home left the resident in a completely disabled state. Portray what the resident could do prior to the injuries and how the resident could no longer do any of those things after the injuries. Let the jury know at trial that as a result of the injuries suffered, the resident could not feel a loved one hold his or her hand or hear a loved one tell him or her "I love you." This is powerful evidence at trial.

Consider and plead violations of the resident's dignity. For example, damages can be awarded for the suffering caused as a result of being left lying in urine or feces for extended periods of time, especially when it causes an exacerbation of other injuries.

While it is important to show how the loss of the resident in a wrongful death action has impacted the heirs, be careful not to overemphasize this loss. It has been the authors' experience that jurors are more inclined in nursing home survival and wrongful death cases to award damages for the pain, suffering, disability, and disfigurement experienced by the resident as opposed to the loss of companionship and society experienced by the heirs.

Attorneys bringing a negligence action under the Nursing Home Care Act must remember that the Act grants the right to recovery of attorneys' fees. 210 ILCS 45/3-602. Be sure to plead this in the complaint. One key case to be familiar with is *Berlak v. Villa Scalabrini Home for the Aged, Inc.,* 284 Ill.App.3d 231, 671 N.E.2d 768, 219 Ill.Dec. 601 (1st Dist. 1996). In *Berlak,* the court addressed the issue of whether a court could enter an award of attorneys' fees both disproportionate to the jury verdict on damages and in disregard of the contingent fee agreement that may have existed between the plaintiff and his or her attorneys. The *Berlak* court reasoned that the intent behind the NHCA suggests that attorneys' fees should be awarded whenever a violation of the Act is proven even if the monetary recovery is minimal. The court concluded that since the purpose of the Act is to make nursing home residents private attorneys general, awarding attorneys' fees in direct proportion to the amount of damages recovered would discourage private enforcement of the Act and defeat that purpose. 671 N.E.2d at 772. Based on this reasoning, the court affirmed an award of attorneys' fees in the approximate amount of $85,000 despite the fact that the jury returned a damage award in the approximate amount of $3,750.

F. [6.18] Punitive Damages

Originally, §3-602 of the Nursing Home Care Act provided for treble damages for violations of the resident rights provision:

> **The licensee shall pay 3 times the actual damages, or $500, whichever is greater, and costs and attorney's fees to a facility resident whose rights, as specified in Part I of Article II of this Act, are violated.**

Section 3-602 was amended effective July 21, 1995, and the treble damages provision of the original Act was repealed. Section 3-602 now provides:

> **The licensee shall pay the actual damages and costs and attorney's fees to a facility resident whose rights, as specified in Part 1 of Article II of this Act, are violated.** 210 ILCS 45/3-602.

The amendment did not address whether the repeal of treble damages was to be applied prospectively or retroactively. In *Dardeen v. Heartland Manor, Inc.,* 186 Ill.2d 291, 710 N.E.2d 827, 238 Ill.Dec. 30 (1999), the Illinois Supreme Court resolved a conflict in the appellate court and held that the amendment did not infringe on vested rights and applied the amendment retroactively, extinguishing the triple damages remedy for all pending claims.

It is clear that the treble damages provision is punitive in nature. It is also clear that even though the treble damages provision was repealed, a resident can still recover punitive damages upon a showing of willful and wanton misconduct as opposed to simple negligence. However, it is not entirely clear whether a resident's claim for punitive damages will survive the death of the resident. The general rule in Illinois is that an action for punitive damages will not survive the death of the original claimant. However, the Illinois courts have carved out two exceptions that allow the punitive damages claim to survive. The punitive damages claim will survive when (1) there is a statutory basis for the claim, or (2) strong equitable considerations favor survival.

In the context of nursing home litigation, this issue is crucial. Due to advanced age, many residents die before their claims are filed or while their claims are pending as a result of conduct by the nursing home that is willful or wanton. If punitive damages do not survive the death of the resident, the consequence will be that the nursing home will escape liability for willful and wanton conduct for which the award of punitive damages is appropriate. The Illinois Department of Public Health lists quarterly violations of nursing homes on its Web site, www.idph.state.il.us/about/nursing_home_violations/quarterlyreports.htm. A few examples of conduct that may be considered willful and wanton include the following:

1. A resident with a history of wandering and whose whereabouts were supposed to be monitored every two hours escaped from the facility and was found frozen to death in the snow. The nurses' notes did not reveal that the resident was being monitored, and an IDPH survey revealed that the front door of the facility did not have an alarm.

2. A resident fell and hit her head. The facility's own policy called for 40 hours of neurological assessment after a head injury. However, the staff performed the neurological assessment for only four hours. The resident died the next day from a blood clot near the brain.

3. A resident who was supposed to be "intensely supervised" suffocated to death in his room as a result of being wedged between his mattress and bed. His body was lying on the floor of his room for more than two hours before being discovered. Nurses were in and out of the room giving care to other residents but did not notice the resident because of clutter around the bed.

The language of the NHCA, Senator Fawell's legislative comments (quoted below), and the Illinois Supreme Court cases *Dardeen, supra,* and *Eads v. Heritage Enterprises, Inc.,* 204 Ill.2d 92, 787 N.E.2d, 771, 272 Ill.Dec. 585 (2003), all suggest that punitive damages are available under the Act. The following provisions are contained in the current version of the Act:

> **The owner and licensee are liable to a resident for any *intentional* or negligent act or omission of their agents or employees which injures the resident. [**Emphasis added.**]** 210 ILCS 45/3-601.
>
> **The licensee shall pay the actual damages and costs and attorney's fees to a facility resident whose rights, as specified in Part 1 of Article II of this Act, are violated.** 210 ILCS 45/3-602.
>
> **A resident may maintain an action *under this Act for any other type of relief,* including injunctive and declaratory relief, permitted by law. [**Emphasis added.**]** 210 ILCS 45/3-603.
>
> **The remedies provided in Sections 3-601 through 3-607, are in addition to and cumulative with any other legal remedies available to a resident.** 210 ILCS 45/3-604.

The Act itself contemplates relief for intentional conduct and states that a resident may maintain an action under the Act for any other relief, which certainly includes punitive damages.

Further support for a statutory basis for punitive damages comes from the Illinois Supreme Court. In *Dardeen, supra,* 710 N.E. 2d at 832, the court stated:

> ***Under the amended version of the statute,*** **plaintiff may recover actual damages and attorney fees upon proof of defendant's negligent violations of the Act, and may additionally recover common law punitive damages upon proof of willful and wanton misconduct on the part of the defendant. [**Emphasis added.**]**

The court's reasoning arguably allows a common-law action for punitive damages based on proof of willful and wanton misconduct even though the nursing resident in *Dardeen* was deceased at the time the action was filed. Further support for this argument can be found in the comments of Senator Beverly J. Fawell during debate over the bill. Senator Fawell stated:

> **The elimination of the mandatory provision in no way prevents a judge or jury from awarding punitive damages in any amount, even in excess of triple actual damages, if actions of the nursing home or any of its employees or agents are deemed to be intentional or willful and wanton.** 89th General Assembly, Regular Session, Senate Transcript, 57th Legislative Day, p. 90 (May 24, 1995).

In 2003, the Illinois Supreme Court reiterated its position of allowing punitive damages for willful and wanton misconduct under the NHCA. In *Eads, supra,* 787 N.E.2d at 777 – 778, the Illinois Supreme Court cited *Dardeen, supra,* 710 N.E.2d at 832, stating:

> **By contrast, *the Nursing Home Care Act* allows plaintiffs to recover common law punitive damages upon proof of willful and wanton misconduct on the part of the defendants. [**Emphasis added.**]**

The second exception in which a punitive damages claim will survive the death of the claimant is when strong equitable considerations exist favoring survival. The courts consider three factors when determining whether strong equitable considerations exist favoring survival of a claim for punitive damages: (1) whether the conduct of the defendant offends clearly articulated public policy; (2) whether the conduct of the defendant is criminal as opposed to or in addition to willful and wanton misconduct; and (3) whether absent an award of punitive damages the plaintiff would receive inadequate or small compensation for his or her injuries. *Grunloh v. Effingham Equity, Inc.,* 174 Ill.App.3d 508, 528 N.E.2d 1031, 124 Ill.Dec. 140 (4th Dist. 1988); *Raisl v. Elwood Industries, Inc.,* 134 Ill.App.3d 170, 479 N.E.2d 1106, 89 Ill.Dec. 100 (1st Dist. 1985).

All three factors exist in the context of nursing home litigation when the defendant's conduct is willful and wanton. The enactment of the NHCA and other legislation designed to protect the rights of the elderly suggests that willful and wanton misconduct directed toward a nursing home resident offends clearly articulated public policy. Section 12-21 of the Illinois Criminal Code, 720 ILCS 5/12-21, makes criminal abuse and neglect of a long-term care facility resident a felony. Finally, absent an award of punitive damages, many residents, due to their advanced age and mental infirmities, are unlikely to pursue costly and time-consuming litigation when the recovery will be small or is uncertain. Most residents do not have wage-loss claims. Without the availability of punitive damages, the deterrent purpose of the NHCA is compromised.

VI. DISCOVERY

A. [6.19] Written Discovery

Written discovery should be used as a tool to find out as much information as possible about the nursing home and the incidents involved in the complaint. To avoid getting generic responses such as "see medical records," the attorney should avoid asking generic, vague, and overbroad questions.

Tailor interrogatories to the specific case. Get the information you really want. There are key witnesses to speak to in almost all nursing home cases. For the applicable time period, find out who the administrator, assistant administrator, medical director, director of nursing, assistant director of nursing, head charge and/or floor nurses on the unit where the resident resided, MDS (minimum data set) coordinator, care plan coordinator, attending physician, and regional nurse consultant or corporate nurse consultant were. In a pressure ulcer case, find out if the nursing home employed a wound or skin care nurse. If physical or occupational therapy is an issue in the case, ask for the names of therapists who provided treatment to the resident. In a malnutrition or dehydration case, determine if any nutritionists or dieticians saw the resident.

When asking for the names of these individuals, remember to find out their dates of employment as well. Request last known addresses, social security numbers, telephone numbers, and professional license numbers. Note that the plaintiff can contact and speak with any former employees of the nursing home. To the extent there are former employees, it might be helpful to speak with them prior to a deposition and obtain a sworn statement.

If not already known, be sure to find out the insurance information of the defendant(s), including any excess coverage and whether the policy is an "eroding" policy. An eroding policy is one in which the defense attorneys' fees and costs come out of the policy. For example, if the nursing home has a $250,000 policy and the defense fees and costs are $100,000, there would be only $150,000 available in insurance coverage to pay the plaintiff. Adequate insurance coverage is becoming an issue in the area of nursing home litigation. Attorneys need to be aware that many nursing homes are operating without coverage or with insufficient coverage and consider all potential defendants. Obtain this information as soon as possible.

Instead of asking for the names of every nurse, certified nursing assistant, or other healthcare professional that saw the resident during his or her entire admission, review the chart and ask the defendant to identify the individuals who wrote on specific pages. Making the questions more specific will help avoid objections that the questions are overbroad or vague. Looking at the chart early on will also save time later.

Because CNAs rarely document in the chart, ask for the timecards and staffing schedules to identify the CNA who provided care and treatment to the resident.

Use production requests to ensure you have a complete copy of the nursing home chart. For example, make the following production request:

A complete copy of the nursing home chart for [resident**], including but not limited to the following:**

1. **Admission/discharge records, transfer forms, discharge summaries, initial assessments, histories and physicals, physicians' orders at admission and upon discharge;**

2. **Medication records — telephone order slips, physicians' order sheets, medication administration records, PRN [**as-needed**] administration records, pharmacy order sheets;**

3. **Physicians' records — progress notes, exams, physicals, written orders of attending physicians and specialists, including but not limited to podiatrists, dentists, and psychiatrists;**

4. **Nursing records — assessments (falls, skin care needs, other risks), Minimum Data Set (MDS) and updates, RAPs [**resident assessment protocols**], progress notes, care plans and updates, incident reports;**

5. **Dietary records — initial diet orders, diet/nutritional assessments, ongoing dietary orders, intake and output records, dietary progress notes;**

6. **Activity/social services — histories and assessments, care plans, progress notes;**

7. **Rehabilitation/therapy records — orders, evaluations, care plans, progress notes; [**and**]**

8. **Legal records — notice of guardianship appointment, advance directives[**.**][;]**

[Other items to ask for in production requests might include the following:**]**

9. **Index or table of contents of policies and procedures [**from which the attorney can select those applicable to the case**];**

10. **Incident reports;**

11. **Photographs of the resident;**

12. **Copy of the contract for admission to the facility in use at the time and the executed contract for the resident;**

13. **Complete copy of promotional materials used for admission and orientation, including but not limited to brochures, summary of residents' rights, rate schedules, services available, responsibilities of residents and facility, and advance directive information;**

14. **Copies of any and all agreements or contracts for services between the facility and any other agency or entity;**

15. **Insurance policies;**

16. **Staffing schedules; and**

17. **24-hour reports and/or shift reports.**

Be sure to review the defendant's answers to discovery to ensure they are complete. If the questions have been asked in a concise manner and the answer is nonresponsive, push the defendant for more complete answers by 201(k) conferences (see Ill.S.Ct. Rule 201(k)); if they are unwilling to provide more complete answers, file a motion to compel.

B. [6.20] Oral Discovery

Once written discovery is complete, it is time to move on to what is, in the opinion of the authors, the most important part of the discovery process: discovery depositions. Ironically, discovering information is rarely, if ever, the purpose of a discovery deposition. Discovering information is done before oral discovery. Use written discovery and other means to discover information. Instead, the purposes of the discovery deposition are to

1. prove your case;

2. develop a roadmap for adverse examination at trial;

3. establish the standard of care pertaining to the care and treatment of the nursing home resident;

4. establish the importance of following the standard of care;

5. establish the consequences of breaking the rules;

6. elicit testimony from employees and former employees of the nursing home that the standard of care and facility policies and procedures were violated;

7. elicit testimony pertinent to proving proximate cause;

8. elicit damage testimony, pain and suffering, disability and disfigurement;

9. lock in the witness to prevent future creativity (*i.e.,* if the witness admits to a standard of care or policy and procedure violation ten different ways during a deposition, it will be harder for him or her to change that testimony at trial);

10. block defenses;

11. make it difficult for the defense to find an expert to testify credibly;

12. put your client in the best position to settle the case; and

13. create conflict among multiple defendants.

In most nursing home cases, it is important to depose the administrator of the facility, director of nursing, and attending physician. Prior to the deposition of the administrator, be familiar with 42 C.F.R. §483.75 and the responsibility it places on the administrator of the home. Question the administrator about the regulatory history of the facility. Regulatory history information is available at the Illinois Department of Public Health nursing home Web site, www.idph.state.il.us/healthca/nursinghometestjava.htm. At this site, there is a link to every nursing home in Illinois and the facility regulatory history with the actual reports of investigations. If any of the reports are not available electronically, they can be obtained through a Freedom of Information Act request.

The director of nursing can be used to establish the standard of care and the facility's policies and procedures and hypothetical violations of both.

The questions to ask the resident's attending physician will depend in large part on whether the attending physician is a defendant in the case. If the attending physician is a defendant in the case, the goal of the deposition is, as stated above, to prove the plaintiff's prima facie case against the doctor. If the attending physician is not a defendant, his or her testimony can be helpful in building the case against the nursing home. The attending physician will testify that the nursing home staff acts as his or her eyes and ears. The attending physician will speak to the expectations about what the nursing home staff must report and testify that if the nursing home staff failed to report changes in the condition of the resident, the staff violated those expectations. Find out the doctor's role, how the doctor was involved, what was communicated to the doctor, what should have been communicated to the doctor, what the doctor would have done if certain information had been communicated, and how, had the doctor been notified, interventions could have taken place and the outcome would have been different.

Choosing other nurses and certified nursing assistants to depose depends on the case. In a pressure ulcer case, determine who the treatment nurses were and who was supposed to be providing treatment to the resident. In a fall case, depose the nurses and CNAs that responded to the incident. Depose the individuals responsible for monitoring the resident to prevent falls on the date of the incident. In a malnutrition and dehydration case, depose the dietician or nutritionist.

In every nursing home case, determine if the resident was predisposed or had risk factors for the injuries that ultimately occurred. The answer to that question is almost always yes. The next step is to find out whether an accurate assessment was performed of the resident that identified those risk factors, whether a care plan was developed to address those risks, whether the care plan was implemented, and whether the resident was continuously reassessed to determine if the care plan was working. If there was not an accurate assessment performed, depose the individual who performed the assessment or who was responsible for performing the assessment. The initial assessment is crucial because it dictates the care and treatment the resident is to receive at the facility.

VII. [6.21] COMMON THEMES AND DEFENSES

Following the completion of discovery (or even prior to the completion of discovery), your client will hopefully be in a solid position to settle the case. In the event a settlement cannot be reached, common themes to keep in mind throughout discovery and constantly reinforce during trial are discussed in §§6.22 – 6.26 below.

A. Plaintiff Themes

1. [6.22] Profits over People

Keep in mind that the main defendant in a nursing home case is frequently a corporation. Often, nurses and staff at nursing homes care about the residents they provide care and treatment to, but due to an insufficient number of appropriately trained and supervised staff, resident care suffers. This theme should be advanced during depositions and at trial. Nurses and staff members are willing to talk about complaints they have made to management about short staffing and how their complaints have gone unaddressed. It angers juries to hear that, in an effort to increase profits, the nursing home increases the number of residents and decreases the number of staff and the resources available to them.

2. [6.23] Trust and Broken Promises

No one wants to put his or her loved one in a nursing home. However, it often comes to that when the loved one needs care and treatment that cannot be provided by a family member. For that reason, the family member must trust the nursing home to provide the care and treatment promised. This is why it is important to obtain marketing materials, brochures, and the nursing home contract during discovery. These documents are filled with promises. Nursing homes use these documents to lure more residents. Juries will award damages if it can be proven at trial that the promises made by the nursing home were broken. "Trust and broken promises" is a simple and effective theme that juries embrace.

3. [6.24] The Right To Die with Dignity

It should be the plaintiff's position throughout the case that it is not that the resident died but *how* he or she died. Acknowledge that we are all going to die. A legitimate argument can be made that we have the right to die with dignity, without horrible painful pressure ulcers all over our bodies that extend all the way to the bone and without lying in our own urine and feces. Consider pleading a violation of 42 C.F.R. §483.15 if appropriate.

B. Defense Themes

1. [6.25] Unavoidability

The defense will argue that the resident's injuries or death was unavoidable. To prevent the defense from using it effectively at trial, take this common theme out during the deposition phase by showing that the only way to determine that an injury was unavoidable is to show that the risk

for the injury was properly assessed, a care plan was developed to address the risk, the care plan was implemented, the resident was reassessed, and all other possible measures were exhausted to prevent the injury from occurring if the care plan was not working. If effective depositions are taken during discovery, the defense will not be able to offer a credible witness to champion the unavoidability defense.

2. [6.26] Blaming the Resident or the Family

Keep in mind that it is unfair for the nursing home to blame the resident or the family, who placed their trust in the nursing home to provide the care and treatment promised. The nursing home is supposed to be equipped with the necessary resources and staff to provide this care. That is the reason the resident went to the nursing home in the first place.

VIII. [6.27] CONCLUSION

Nursing home litigation protects Illinois' most vulnerable residents by advancing the standard of care and ensuring that those wronged receive adequate compensation for the harm suffered.

IX. [6.28] SAMPLE NURSING HOME PRESSURE ULCER COMPLAINT

ARDC#

IN THE CIRCUIT COURT OF THE [21st JUDICIAL CIRCUIT]
[IROQUOIS] **COUNTY, ILLINOIS**

[Plaintiffs]**, as Independent Coexecutors and/or Independent Representatives of the Estate of** [Resident]**, Deceased,**	)	
Plaintiffs,	)	**COURT #:**
v.	)	
[Nursing facility] **and** [additional plaintiffs]**,**	)	**PLAINTIFFS DEMAND TRIAL BY JURY**
Defendants	)	

PLAINTIFFS' [THIRD AMENDED] **COMPLAINT**

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by and through their attorneys, _____, complain against the Defendants, _____, as follows:

COUNT I
(Plaintiffs v. _____)
(Illinois Nursing Home Care Act — Survival Statute)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against Defendant, _____, as follows:

1. The Plaintiffs, _____, are the Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased. See attached Exhibit A.

2. The decedent, _____, was born [date**], and died [**date**].**

3. [Decedent**] was a resident of the long-term care facility known as _____ from on or about [**date**], through on or about [**date**].**

4. The Defendant, _____, was the licensee of the nursing home where [decedent**] resided at all times relevant to this complaint.**

5. The Defendant, _____, was the owner of the nursing home where [decedent**] resided at all times relevant to this Complaint.**

6. At all times relevant to this Complaint, there was in full force and effect, a statute known as the Nursing Home Care Act, as amended (Act), 210 ILCS 45/1-101, *et seq.*

7. At all times relevant to the Complaint, [facility**], owned, operated and/or managed by the Defendant, _____, was a "facility" as defined by §1-113 of the Act and was subject to the requirements of the Act and the regulations of the Illinois Department of Public Health promulgated pursuant to the Act.**

8. At all times relevant to this Complaint, [defendant**] and [**facility**], were subject to the requirements of 42 U.S.C. §1396r, *et seq.*, as amended by the Omnibus Budget Reconciliation Act of 1987 (OBRA) and Volume 42, Code of Federal Regulations, Part 483, setting forth requirements for long-term care facilities (OBRA Regulations), as effective on October 1, 1990.**

9. At all times relevant to this Complaint, [facility**], owned, operated and/or managed by the Defendant, _____, was a "nursing facility" as defined by 42 U.S.C. § 1396r.**

10. The [facility**] nursing home is located at [**address**].**

11. The Defendant and its owners, officers, employees, and agents were under a statutory obligation not to violate the rights of any resident of the facility, including the obligation not to abuse or neglect any resident as the statute provides:

No resident shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of his status as a resident of a Facility. 210 ILCS 45/2-101;

An owner, licensee, administrator, employee or agent of a facility shall not abuse or neglect a resident. It is the duty of any facility employee or agent who becomes aware of such abuse or neglect to report it as provided in "The Abused and Neglected Long Term Care Facility Residents Reporting Act." 210 ILCS 45/2-107.

"Neglect" means a failure in a facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. 210 ILCS 45/1-117.

"Abuse" means any physical or mental injury or sexual assault inflicted on a resident other than that by accidental means in a facility. 210 ILCS 45/1-103.

"Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person whether or not a guardian has been appointed for such an individual. 210 ILCS 45/1-120.

12. During the period of [decedent**]'s residency at [**facility**], Defendant failed to provide ordinary care and violated the provisions of the Act in that Defendant:**

(a) in violation of §483.25 of the OBRA Regulations, failed to provide necessary care and services to attain or maintain [decedent**] at the highest practicable level of physical, mental, and psychosocial well being in accordance with a comprehensive assessment and plan of care;**

(b) in violation of §483.13(c) of the OBRA Regulations failed to protect [decedent**] from neglect;**

(c) in violation of §483.10(b)(11) of the OBRA Regulations, failed to inform [decedent**]'s physician and family of significant changes in [**decedent**]'s physical, mental, or psychosocial status;**

(d) in violation of §483.25(a) of the OBRA Regulations, failed to provide [decedent**] the necessary care and services to prevent a decline in [**his**] [**her**] abilities to perform activities of daily living;**

(e) in violation of §483.20(k) of the OBRA Regulations, failed to develop a comprehensive plan of care to address [decedent**]'s medical, nursing, mental, and psychosocial needs;**

(f) in violation of §483.15(g)(1) of the OBRA Regulations, failed to provide [decedent**] medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being;**

(g) in violation of §483.75(*l*) of the OBRA Regulations, failed to maintain the clinical record and document changes in [decedent**]'s condition, including, but not limited to, changes in the condition of [**decedent**]'s pressure ulcers;**

(h) in violation of §483.20(b) of the OBRA Regulations, failed to make a comprehensive assessment of [decedent**]'s needs;**

(i) failed to ensure that physician's orders were carried out;

(j) in violation of §483.75(b) of the OBRA Regulations, failed to administer the facility in compliance with federal, state, and local laws and professional standards and in a manner that enables it to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(k) in violation of §§483.25(c)(1) and 483.25(c)(2) of the OBRA Regulations, failed to provide necessary treatment and services to avoid the development of pressure sores, to promote healing of pressure sores, and to prevent infection and development of new pressure sores;

(*l*) in violation of §483.25(j) of the OBRA Regulations, failed to provide [decedent**] with sufficient fluid intake to maintain proper hydration and health and failed to provide necessary treatment and services to avoid the development of specific hydration issues;**

(m) in violation of §483.25(i)(1) of the OBRA Regulations, failed to ensure that [decedent**] maintained acceptable parameters of nutritional status;**

(n) in violation §483.25(i)(2) of the OBRA Regulations, failed to ensure that [decedent**]received a therapeutic diet after nutritional problems developed;**

(*o*) in violation of 77 Ill.Admin. Code §300.1210(a), failed to provide [decedent**] the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with [**decedent**]'s comprehensive assessment and plan of care;**

(p) in violation of 77 Ill.Admin. Code §300.1210(a)(1), failed to provide [decedent**] restorative and rehabilitative measures to meet [**his**] [**her**] individual needs;**

(q) in violation of 77 Ill.Admin. Code §300.1210(a)(4), failed to assist and encourage [decedent**] so that [**decedent**]'s abilities in daily living did not diminish;**

(r) in violation of 77 Ill.Admin. Code §300.1210(b)(2), failed to administer treatments and procedures to [decedent**] as ordered by his physician;**

(s) in violation of 77 Ill.Admin. Code §300.1210(b)(3) failed to objectively observe, assess, and evaluate changes in [decedent**]'s condition;**

(t) in violation of §300.1220(b)(3), failed to develop an up-to-date care plan for [decedent**] based on [**his**] [**her**] comprehensive assessment, individual needs and goals to be accomplished, physician's orders, and personal care and nursing needs;**

(u) in violation of 77 Ill.Admin. Code §300.1810(b) failed to maintain an active medical record for [decedent**].**

(v) in violation of 77 Ill.Admin. Code §§300.3210(n) and 300.3210(*o*), failed to notify [decedent**]'s family, representative, and physician of changes in [**decedent**]'s condition;**

(w) in violation of 77 Ill.Admin. Code §300.3240, failed to protect [decedent**] from abuse and/or neglect;**

(x) in violation of 77 Ill.Admin. Code §§300.1210(b)(4)(A) and 300.1210(b)(4)(B), failed to ensure that [decedent**] received proper daily personal attention to maintain personal hygiene;**

(y) in violation of 77 Ill.Admin. Code §300.1210(b)(5), failed to provide [decedent**] with the necessary treatment and services to promote healing, prevent infection, and prevent pressure sores from developing;**

(z) in violation of 77 Ill.Admin. Code §300.2050, failed to provide [decedent**] with an adequate diet in order to attain and maintain appropriate nutritional levels;**

(aa) failed to provide [decedent**] necessary services to attain and maintain the highest practicable physical, mental, and psychosocial well-being in accordance with a comprehensive assessment and plan of care;**

(bb) failed to develop, implement, and alter when necessary a care plan to meet [decedent**]'s needs.**

(cc) failed to report changes in [decedent**]'s condition to [**his**] [**her**] physician(s);**

(dd) failed to protect [decedent**] from abuse and neglect;**

(ee) failed to administer treatments and procedures to [decedent**] as ordered by [**his**] [**her**] physician;**

(ff) failed to notify [decedent**]'s family of changes in [**his**] [**her**] condition;**

(gg) failed to provide [decedent**] restorative and rehabilitative measures to meet [**his**] [**her**] individual needs, total nursing needs, and personal care needs;**

(hh) failed to provide appropriate medical care to [decedent**] when it was known or should have been known that such care was needed;**

(ii) failed to maintain an active medical record;

(jj) failed to properly train individuals who provided care and treatment to [decedent**];**

(kk) failed to provide necessary treatment and services to promote healing of pressure sores and prevent infection and development of new pressure sores;

(*ll*) failed to identify and treat changes in [decedent**]'s skin and texture before the onset of pressure sores;**

(mm) failed to properly reposition and turn [decedent**] to relieve existing pressure sores and prevent future pressure sores;**

(nn) failed to anticipate, recognize, and provide appropriate infection control measures for [decedent**]'s open wounds;**

(*oo*) failed to implement daily skin checks as required according to [decedent**]'s care plan;**

(pp) failed to properly implement vitamin C and zinc therapy pursuant to wound and skin care protocol;

(qq) failed to correctly implement the registered dietician's recommendations for increased calories for one month;

(rr) failed to measure and document weekly weights;

(ss) failed to accurately monitor intakes and outputs;

(tt) failed to provide appropriate services for receiving feedings per gastrostomy tube;

(uu) failed to address [decedent**]'s weight loss;**

(vv) failed to provide [decedent**] with sufficient fluid intake to maintain proper hydration and health;**

(ww) failed to make a comprehensive assessment of [decedent**]'s clinical condition as it related to [**his**] [**her**] risk for dehydration and physical and psychosocial decline;**

(xx) failed to identify and treat changes in [decedent**]'s mentation, cognition, and physical functioning before the onset of dehydration;**

(yy) failed to provide necessary treatment and services to avoid the development of specific nutritional and hydration issues;

(zz) failed to appropriately assess, prevent, and ultimately treat dehydration;

(aaa) failed to ensure that [decedent**] maintained acceptable parameters of nutritional status;**

(bbb) failed to institute a regular program for [decedent**] to prevent and treat malnutrition;**

(ccc) otherwise failed to provide adequate medical care, personal care, maintenance, and treatment to [decedent**].**

13. The Nursing Home Care Act, as amended, provides as follows:

The licensee shall pay the actual damages and costs and attorney's fees to a facility resident whose rights, as specified in Part 1 of Article II of this Act, are violated. 210 ILCS 45/3-602.

14. The Nursing Home Care Act, as amended, provides as follows:

The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the residents. 210 ILCS 45/3-601.

15. As a direct and proximate result of one or more of the Defendant's violations of the Illinois Nursing Home Care Act, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to death, and [**decedent**] would have been entitled to recover from the Defendant for these injuries, had [**he**] [**she**] survived.**

16. As a direct and proximate result of one or more of the Defendant's statutory violations, [decedent**] sustained substantial personal and pecuniary injuries, past, present and future, including, but not limited to, disability and disfigurement, pain and suffering, and expenses for hospital and related medical care, and [**decedent**] would have been entitled to receive compensation from the Defendant for these injuries, had [**he**] [**she**] survived. Further, [**decedent**]'s estate was diminished by virtue of the medical, hospital, and funeral expenses that were incurred.**

17. [Plaintiffs**] bring this action on behalf of [**decedent**] under provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.**

18. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against Defendant, _____, in a fair and just amount in excess of _____, plus attorneys' fees and costs as provided for by statute.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT II
(Plaintiffs v. _____)
(Illinois Nursing Home Care Act — Wrongful Death Act)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against Defendant, _____, as follows:

1. – 14. Plaintiffs reallege paragraphs 1 – 14 of Count I of this Complaint as and for paragraphs 1 – 14 of this Count II.

15. [Decedent] **died on** [date]**.**

16. As a direct and proximate result of one or more of the Defendant's statutory violations, [decedent] **sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused or contributed to** [his] [her] **death.**

17. The Plaintiffs, _____, bring this action pursuant to 740 ILCS 180/1, *et seq.*, commonly known as the Wrongful Death Act.

18. [Decedent] **left surviving** [him] [her] **various persons who were** [his] [her] **next-of-kin, including, but not limited to, the following individuals:**

[list]

19. All of [decedent]**'s next-of-kin suffered injuries as a result of** [decedent]**'s death, including the loss of companionship and loss of society.**

20. Attached to this Third Amended Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against the Defendant, _____, in a fair and just amount in excess of _____, plus attorneys' fees and costs as provided for by statute.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT III
(Plaintiffs v. _____)
(Negligence — Wrongful Death Act)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against Defendant, _____, as follows:

1. The Plaintiffs, _____, are the Independent Coexecutors and/or Independent Representatives of the Estate of [decedent]**. See attached Exhibit A.**

2. The decedent, _____, was born [date]**, and died** [date]**.**

3. [Decedent] **was a resident of the long-term care facility known as _____from on or about** [date]**, through on or about** [date]**.**

4. The Defendant, _____, was the licensee of the nursing home where [decedent] **resided at all times relevant to this complaint.**

5. The Defendant, _____, was the owner of the nursing home where [decedent] **resided at all times relevant to this complaint.**

6. The [facility] **nursing home is located at** [address]**.**

7. In providing nursing home services to [decedent]**, Defendants, _____, through their owners, officers, employees, and agents, had a duty to exercise ordinary care.**

8. Defendants, _____, breached their duty to exercise ordinary care by one or more of the following acts or omissions constituting negligence:

(a) failed to provide [decedent] **necessary services to attain and maintain the highest practicable physical, mental, and psychosocial well-being in accordance with a comprehensive assessment and plan of care;**

(b) failed to develop, implement, and alter as necessary a care plan to meet [decedent]**'s needs.**

(c) failed to report changes in [decedent]**'s condition to** [his] [her] **physician(s);**

(d) failed to protect [decedent] **from abuse and neglect;**

(e) failed to administer treatments and procedures to [decedent] **as ordered by** [his] [her] **physician;**

(f) failed to notify [decedent]**'s family of changes in** [his] [her] **condition;**

(g) failed to provide [decedent**] restorative and rehabilitative measures to meet [**his**] [**her**] individual needs, total nursing needs, and personal care needs;**

(h) failed to provide appropriate medical care to [decedent**] when it was known or should have been known that such care was needed;**

(i) failed to maintain an active medical record;

(j) failed to properly train individuals who provided care and treatment to [decedent**];**

(k) failed to provide necessary treatment and services to promote healing of pressure sores and prevent infection and development of new pressure sores;

(*l*) failed to identify and treat changes in [decedent**]'s skin and texture before the onset of pressure sores;**

(m) failed to properly reposition and turn [decedent**] to relieve existing pressure sores and prevent future pressure sores;**

(n) failed to anticipate, recognize, and provide appropriate infection control measures for [decedent**]'s open wounds;**

(*o*) failed to implement daily skin checks as required according to [decedent**]'s care plan;**

(p) failed to properly implement vitamin C and zinc therapy pursuant to wound and skin care protocol;

(q) failed to correctly implement the registered dietician's recommendations for increased calories for one month;

(r) failed to measure and document weekly weights;

(s) failed to accurately monitor intakes and outputs;

(t) failed to provide appropriate services for receiving feedings per gastrostomy tube;

(u) failed to address [decedent**]'s weight loss;**

(v) failed to provide [decedent**] with sufficient fluid intake to maintain proper hydration and health;**

(w) failed to make a comprehensive assessment of [decedent**]'s clinical condition as it related to [**his**] [**her**] risk for dehydration and physical and psychosocial decline;**

(x) failed to identify and treat changes in [decedent**]'s mentation, cognition, and physical functioning before the onset of dehydration;**

(y) failed to provide necessary treatment and services to avoid the development of specific nutritional and hydration issues;

(z) failed to appropriately assess, prevent, and ultimately treat dehydration;

(aa) failed to ensure that [decedent**] maintained acceptable parameters of nutritional status;**

(bb) failed to institute a regular program for [decedent**] to prevent and treat malnutrition;**

(cc) in violation of §483.25 of the OBRA Regulations, failed to provide necessary care and services to attain or maintain [decedent**] at the highest practicable level of physical, mental, and psychosocial well-being in accordance with a comprehensive assessment and plan of care;**

(dd) in violation of §483.13(c) of the OBRA Regulations, failed to protect [decedent**] from neglect;**

(ee) in violation of §483.10(b)(11) of the OBRA Regulations, failed to inform [decedent**]'s physician and family of significant changes in [**decedent**]'s physical, mental, or psychosocial status;**

(ff) in violation of §483.25(a) of the OBRA Regulations, failed to provide [decedent**] the necessary care and services to prevent a decline in his abilities to perform activities of daily living;**

(gg) in violation of §483.20(k) of the OBRA Regulations, failed to develop a comprehensive plan of care to address [decedent**]'s medical, nursing, mental, and psychosocial needs;**

(hh) in violation of §483.15(g)(1) of the OBRA Regulations, failed to provide [decedent**] medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being;**

(ii) in violation of §483.75(l) of the OBRA Regulations, failed to maintain the clinical record and document changes in [decedent**]'s condition, including, but not limited to, changes in the condition of [**decedent**]'s pressure ulcers;**

(jj) in violation of §483.20(b) of the OBRA Regulations, failed to make a comprehensive assessment of [decedent**]'s needs;**

(kk) failed to ensure that physician's orders were carried out;

(*ll*) **in violation of §483.75(b) of the OBRA Regulations, failed to administer the facility in compliance with federal, state, and local laws and professional standards and in a manner that enables it to use their resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident;**

(mm) **in violation of §§483.25(c)(1) and 483.25(c)(2) of the OBRA Regulations, failed to provide necessary treatment and services to avoid the development of pressure sores, promote healing of pressure sores, and to prevent infection and development of new pressure sores;**

(nn) **in violation of §483.25(j) of the OBRA Regulations, failed to provide [**decedent**] with sufficient fluid intake to maintain proper hydration and health and failed to provide necessary treatment and services to avoid the development of specific hydration issues;**

(*oo*) **in violation of §483.25(i)(1) of the OBRA Regulations, failed to ensure that [**decedent**] maintained acceptable parameters of nutritional status;**

(pp) **in violation §483.25(i)(2) of the OBRA Regulations, failed to ensure that [**decedent**] received a therapeutic diet after nutritional problems developed;**

(qq) **in violation of 77 Ill.Admin. Code §300.1210(a), failed to provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with [**decedent**]'s comprehensive assessment and plan of care;**

(rr) **in violation of 77 Ill.Admin. Code §300.1210(a)(1), failed to provide [**decedent**] restorative and rehabilitative measures to meet [**his**] [**her**] individual needs;**

(ss) **in violation of 77 Ill.Admin. Code §300.1210(a)(4), failed to assist and encourage [**decedent**] so that [**decedent**]'s abilities in daily living did not diminish;**

(tt) **in violation of 77 Ill.Admin. Code §300.1210(b)(2), failed to administer treatments and procedures to [**decedent**] as ordered by [**his**] [**her**] physician;**

(uu) **in violation of 77 Ill.Admin. Code §300.1210(b)(3), failed to objectively observe, assess, and evaluate changes in [**decedent**]'s condition;**

(vv) **in violation of 77 Ill.Admin. Code §300.1220(b)(3), failed to develop an up-to-date care plan for [**decedent**] based on [**his**] [**her**] comprehensive assessment, individual needs and goals to be accomplished, physician's orders, and personal care and nursing needs;**

(ww) **in violation of 77 Ill.Admin. Code §300.1810(b), failed to maintain an active medical record for [**decedent**].**

(xx) in violation of 77 Ill.Admin. Code §§300.3210(n) and 300.3210(*o*), failed to notify [decedent**]'s family, representative, and physician of changes in [**decedent**]'s condition;**

(yy) in violation of 77 Ill.Admin. Code §300.3240, failed to protect [decedent**] from abuse and/or neglect;**

(zz) in violation of 77 Ill.Admin. Code §§300.1210(b)(4)(A) and 300.1210(b)(4)(B), failed to ensure that [decedent**] received proper daily personal attention to maintain personal hygiene;**

(aaa) in violation of 77 Ill.Admin. Code §300.1210(b)(5), failed to provide [decedent**] with the necessary treatment and services to promote healing, prevent infection, and prevent pressure sores from developing;**

(bbb) in violation of 77 Ill.Admin. Code §300.2050, failed to provide [decedent**] with an adequate diet in order to attain and maintain appropriate nutritional levels;**

(ccc) otherwise failed to provide adequate medical care, personal care, maintenance, and treatment to [decedent**].**

9. [Decedent**] died on [**date**].**

10. As a direct and proximate result of one or more of the Defendants' negligent acts or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused or contributed to [**his**] [**her**] death.**

11. [Decedent**] left surviving [**him**] [**her**] various persons who were his next of kin, including, but not limited to:**

[list**]**

12. [Decedent**]'s next of kin suffered injuries as a result of [**his**] [**her**] death, including the loss of companionship and society.**

13. The Plaintiffs, _____, bring this action pursuant to 740 ILCS 180/1, *et seq.*, commonly known as the Wrongful Death Act of the State of Illinois.

14. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against the Defendants, _____, in a fair and just amount in excess _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT IV
(Plaintiffs v. _____)
(Negligence — Survival Statute)

1. – 9. Plaintiffs reallege paragraphs 1 – 9 of Count III of this Complaint as and for paragraphs 1 - 9 of this Count IV.

10. As a direct and proximate result of one or more of the Defendants' negligent acts or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to [**decedent**]'s death, and [**decedent**] would have been entitled to recover from the Defendants for these injuries, had [**he**] [**she**] survived.**

11. As a direct and proximate result of one or more of the Defendants' negligent acts or omissions, [decedent**] sustained substantial personal and pecuniary injuries, past, present and future, including, but not limited to, disability and disfigurement, pain and suffering, and expenses for hospital and related medical care, and [**decedent**] would have been entitled to receive compensation from the Defendants for these injuries, had [**he**] [**she**] survived. Further, [**decedent**]'s estate was diminished by virtue of the medical, hospital, and funeral expenses that were incurred.**

12. [Plaintiffs**] bring this action on behalf of [**decedent**] under provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.**

13. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against Defendants, _____, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT V
(Plaintiffs v. _____)
(Negligence — Wrongful Death Act)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against Defendant, _____, as follows:

1. The Plaintiffs, _____, are the Independent Coexecutors and/or Independent Representatives of the Estate of [decedent**]. See attached Exhibit A.**

2. The decedent, _____, was born [date**], and died [**date**].**

3. [Decedent] **was a resident of the long-term care facility known as _____ from on or about** [date]**, through on or about** [date]**.**

4. The [facility] **nursing home is located at** [address]**.**

5. The Defendant _____, owned, operated, and/or managed the nursing home where [decedent] **resided at all times relevant to this complaint and as such is vicariously liable for the negligent acts or omissions of the staff at the facility.**

6. In providing nursing home services to [decedent]**, Defendant, _____, through its owners, officers, employees, and agents, had a duty to exercise ordinary care.**

7. Defendant, _____, breached its duty to exercise ordinary care by one or more of the following acts or omissions constituting negligence:

(a) failed to provide [decedent] **necessary services to attain and maintain the highest practicable physical, mental, and psychosocial well-being in accordance with a comprehensive assessment and plan of care;**

(b) failed to develop, implement, and alter when necessary a care plan to meet [decedent]**'s needs.**

(c) failed to report changes in [decedent]**'s condition to** [his] [her] **physician(s);**

(d) failed to protect [decedent] **from abuse and neglect;**

(e) failed to administer treatments and procedures to [decedent] **as ordered by** [his] [her] **physician;**

(f) failed to notify [decedent]**'s family of changes in** [his] [her] **condition;**

(g) failed to provide [decedent] **restorative and rehabilitative measures to meet** [his] [her] **individual needs, total nursing needs, and personal care needs;**

(h) failed to provide appropriate medical care to [decedent] **when it was known or should have been known that such care was needed;**

(i) failed to maintain an active medical record;

(j) failed to properly train individuals who provided care and treatment to [decedent]**;**

(k) failed to provide necessary treatment and services to promote healing of pressure sores and prevent infection and development of new pressure sores;

(*l*) failed to identify and treat changes in [decedent]**'s skin and texture before the onset of pressure sores;**

(m) failed to properly reposition and turn [decedent**] to relieve existing pressure sores and prevent future pressure sores;**

(n) failed to anticipate, recognize, and provide appropriate infection control measures for [decedent**]'s open wounds;**

(*o*) failed to implement daily skin checks as required according to [decedent**]'s care plan;**

(p) failed to properly implement vitamin C and zinc therapy pursuant to wound and skin care protocol;

(q) failed to correctly implement the registered dietician's recommendations for increased calories for one month;

(r) failed to measure and document weekly weights;

(s) failed to accurately monitor intakes and outputs;

(t) failed to provide appropriate services for receiving feedings per gastrostomy tube;

(u) failed to address [decedent**]'s weight loss;**

(v) failed to provide [decedent**] with sufficient fluid intake to maintain proper hydration and health;**

(w) failed to make a comprehensive assessment of [decedent**]'s clinical condition as it related to [**his**] [**her**] risk for dehydration and physical and psychosocial decline;**

(x) failed to identify and treat changes in [decedent**]'s mentation, cognition, and physical functioning before the onset of dehydration;**

(y) failed to provide necessary treatment and services to avoid the development of specific nutritional and hydration issues;

(z) failed to appropriately assess, prevent, and ultimately treat dehydration;

(aa) failed to ensure that [decedent**] maintained acceptable parameters of nutritional status;**

(bb) failed to institute a regular program for [decedent**] to prevent and treat malnutrition;**

(cc) in violation of §483.25 of the OBRA Regulations, failed to provide necessary care and services to attain or maintain [decedent**] at the highest practicable level of physical, mental, and psychosocial well being in accordance with a comprehensive assessment and plan of care;**

(dd) in violation of §483.13(c) of the OBRA Regulations failed to protect [decedent**] from neglect;**

(ee) in violation of §483.10(b)(11) of the OBRA Regulations, failed to inform [decedent**]'s physician and family of significant changes in [**decedent**]'s physical, mental, or psychosocial status;**

(ff) in violation of §483.25(a) of the OBRA Regulations, failed to provide [decedent**] the necessary care and services to prevent a decline in [**his**] [**her**] abilities to perform activities of daily living;**

(gg) in violation of §483.20(k) of the OBRA Regulations, failed to develop a comprehensive plan of care to address [decedent**]'s medical, nursing, mental, and psychosocial needs;**

(hh) in violation of §483.15(g)(1) of the OBRA Regulations, failed to provide [decedent**] medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being;**

(ii) in violation of §483.75(l) of the OBRA Regulations, failed to maintain the clinical record and document changes in [decedent**]'s condition, including, but not limited to, changes in the condition of [**decedent**]'s pressure ulcers;**

(jj) in violation of §483.20(b) of the OBRA Regulations, failed to make a comprehensive assessment of [decedent**]'s needs;**

(kk) failed to ensure that physician's orders were carried out;

(*ll*) in violation of §483.75(b) of the OBRA Regulations, failed to administer the facility in compliance with federal, state, and local laws and professional standards and in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(mm) in violation of §§483.25(c)(1) and 483.25(c)(2) of the OBRA Regulations, failed to provide necessary treatment and services to avoid the development of pressure sores, promote healing of pressure sores, and prevent infection and development of new pressure sores;

(nn) in violation of §483.25(j) of the OBRA Regulations, failed to provide [decedent**] with sufficient fluid intake to maintain proper hydration and health and failed to provide necessary treatment and services to avoid the development of specific hydration issues;**

(*oo*) in violation of §483.25(i)(1) of the OBRA Regulations, failed to ensure that [decedent**] maintained acceptable parameters of nutritional status;**

(pp) in violation §483.25(i)(2) of the OBRA Regulations, failed to ensure that [decedent**] received a therapeutic diet after nutritional problems developed;**

(qq) in violation of 77 Ill.Admin. Code §300.1210(a), failed to provide [decedent**] the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being in accordance with [**decedent**]'s comprehensive assessment and plan of care;**

(rr) in violation of 77 Ill.Admin. Code §300.1210(a)(1), failed to provide [decedent**] restorative and rehabilitative measures to meet [**his**] [**her**] individual needs;**

(ss) in violation of 77 Ill.Admin. Code §300.1210(a)(4), failed to assist and encourage [decedent**] so that [**decedent**]'s abilities in daily living do not diminish.**

(tt) in violation of 77 Ill.Admin. Code §300.1210(b)(2), failed to administer treatments and procedures to [decedent**] as ordered by [**his**] [**her**] physician;**

(uu) in violation of 77 Ill.Admin. Code §300.1210(b)(3), failed to objectively observe, assess, and evaluate changes in [decedent**]'s condition;**

(vv) in violation of §300.1220(b)(3), failed to develop an up-to-date care plan for [decedent**] based on [**his**] [**her**] comprehensive assessment, individual needs and goals to be accomplished, physician's orders, and personal care and nursing needs;**

(ww) in violation of 77 Ill.Admin. Code §300.1810(b), failed to maintain an active medical record for [decedent**].**

(xx) in violation of 77 Ill.Admin. Code §§300.3210(n) and 300.3210(*o*), failed to notify [decedent**]'s family, representative, and physician of changes in [**decedent**]'s condition;**

(yy) in violation of 77 Ill.Admin. Code §300.3240, failed to protect [decedent**] from abuse and/or neglect;**

(zz) in violation of 77 Ill.Admin. Code §§300.1210(b)(4)(A) and 300.1210(b)(4)(B), failed to ensure that [decedent**] received proper daily personal attention to maintain personal hygiene;**

(aaa) in violation of 77 Ill.Admin. Code §300.1210(b)(5), failed to provide [decedent**] with the necessary treatment and services to promote healing, prevent infection, and prevent pressure sores from developing;**

(bbb) in violation of 77 Ill.Admin. Code §300.2050, failed to provide [decedent**] with an adequate diet in order to attain and maintain appropriate nutritional levels;**

(ccc) otherwise failed to provide adequate medical care, personal care, maintenance, and treatment to [decedent**].**

8. [Decedent**] died on [**date**].**

9. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused or contributed to [**his**] [**her**] death.**

10. [Decedent**] left surviving [**him**] [**her**] various persons who were his next of kin, including, but not limited to:**

[list**]**

11. [Decedent**]'s next of kin suffered injuries as a result of [**his**] [**her**] death, including the loss of companionship and society.**

12. The Plaintiffs, _____, bring this action pursuant to 740 ILCS 180/1, *et seq.,* commonly known as the Wrongful Death Act of the State of Illinois.

13. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C) filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against the Defendant, _____, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT VI
(Plaintiffs v. _____)
(Negligence — Survival Statute)

1. – 8. Plaintiffs reallege paragraphs 1 – 8 of Count V of this Complaint as and for paragraphs 1 - 8 of this Count VI.

9. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to [**his**] [**her**] death, and [**decedent**] would have been entitled to recover from the Defendant for these injuries, had [**he**] [**she**] survived.**

10. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent**] sustained substantial personal and pecuniary injuries, past, present and future, including, but not limited to, disability and disfigurement, pain and suffering,**

and expenses for hospital and related medical care, and [decedent**] would have been entitled to receive compensation from the Defendant for these injuries, had [**he**] [**she**] survived. Further, [**decedent**]'s estate was diminished by virtue of the medical, hospital, and funeral expenses that were incurred.**

11. [Plaintiffs**] bring this action on behalf of [**decedent**] under provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.**

12. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against Defendant, _____, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT VII
(Plaintiffs v. _____)
(Negligence — Wrongful Death Act)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against Defendant, _____, as follows:

1. – 6. Plaintiffs reallege paragraphs 1 – 6 of Count V of this Complaint as and for paragraphs 1 - 6 of this Count VII.

7. The Defendant, _____, as the management company and/or operator of [facility**], exercised significant control over the day-to-day operations of [**facility**]'s business, including but not limited to budgetary decisions, hiring and firing, staffing the facility, training the staff, contracting for services with consultants, managing the finances of the facility, monitoring the quality of care by nursing and physicians to residents of facility, and providing financial resources for nursing and medical supplies.**

8. In providing the services as the management company and/or operator of [facility**], the Defendant, _____, through its owners, managers, officers, employees, and agents, had a duty to exercise ordinary care in the operation of [**facility**].**

9. Plaintiffs reallege the allegations contained in paragraph 8 of Count III of this complaint as and for paragraph 9 of this count VII.

10. Defendant, _____, further breached its duty to exercise ordinary care by one or more of the following acts or omissions constituting negligence:

(a) failed to allocate sufficient resources to adequately staff the facility to provide appropriate care and to assess, treat, and cure [decedent] **when** [defendant] **knew or should have known the facility was understaffed and unable to provide reasonable care;**

(b) failed to allocate sufficient resources to provide necessary medical supplies to [decedent]**;**

(c) failed to adequately hire trained registered nurses, licensed practical nurses, certified nurse assistants and adequately train registered nurses, licensed practical nurses, certified nurse assistants to provide appropriate care and treatment to [decedent]**;**

(d) failed to appropriately monitor the quality of care rendered by physicians and nurses to [decedent]**.**

11. [Decedent] **died on** [date]**.**

12. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent] **sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused or contributed to** [his] [her] **death.**

13. [Decedent] **left surviving** [him] [her] **various persons who were** [his] [her] **next of kin, including, but not limited to:**

[list]

14. [Decedent]**'s next of kin suffered injuries as a result of** [his] [her] **death, including the loss of companionship and society.**

15. The Plaintiffs, _____, bring this action pursuant to 740 ILCS 180/1, *et seq.,* commonly known as the Wrongful Death Act of the State of Illinois.

16. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against the Defendant, _____, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT VIII

(Plaintiffs v. _____)
(Negligence — Survival Statute)

1. – 11. Plaintiffs reallege paragraphs 1 – 11 of Count VII of this Complaint as and for paragraphs 1 - 11 of this Count VIII.

12. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to [**his**] [**her**] death, and [**decedent**] would have been entitled to recover from the Defendant for these injuries, had [**he**] [**she**] survived.**

13. As a direct and proximate result of one or more of the Defendant's negligent acts or omissions, [decedent**] sustained substantial personal and pecuniary injuries, past, present, and future, including, but not limited to, disability and disfigurement, pain and suffering, and expenses for hospital and related medical care, and [**decedent**] would have been entitled to receive compensation from the Defendant for these injuries, had [**he**] [**she**] survived. Further, [**decedent**]'s estate was diminished by virtue of the medical, hospital, and funeral expenses that were incurred.**

14. [Plaintiffs**] bring this action on behalf of [**decedent**] under provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.**

15. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, ask that judgment be entered against Defendant, _____, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

COUNT IX

(Plaintiffs v. _____)
(Negligence — Survival Statute)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against the Defendant, _____, as follows:

1. The Plaintiffs, _____, are the Independent Coexecutors and/or Independent Representatives of the Estate of [decedent**], Deceased. See attached Exhibit A.**

2. The decedent, _____, was born [date**], and died [**date**].**

3. [Decedent] **was a resident of the long-term care facility known as _____ from on or about** [date]**, through on or about** [date]**.**

4. At all times relevant to this Complaint, Defendant, _____, was a physician duly licensed by the State of Illinois to practice medicine in all its branches.

5. At all times relevant to this Complaint, Defendant, _____, was a duly authorized employee, servant, or agent of [facility]**.**

6. During [decedent]**'s residence at** [facility] **and during** [decedent]**'s hospitalizations at _____, Defendant, _____, was designated and assigned to care for** [decedent]**, and** [defendant] **agreed to be** [decedent]**'s attending physician during** [his] [her] **residency at** [facility]**.**

7. On and before [date]**,** [decedent] **sustained injuries including multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to** [his] [her] **death.**

8. At all times relevant to this Complaint, it became and was the duty of the Defendant, _____, individually and/or as the agent of [facility]**, to possess and apply the knowledge and use the skill and care ordinarily used by a well-qualified attending physician in caring for a resident like** [decedent]**.**

9. The Defendant, _____, was negligent in his care and treatment of [decedent] **in one or more of the following ways:**

(a) failed to ensure that the nursing home performed daily skin checks on [decedent]**.**

(b) failed to see and assess [decedent] **within seventy-two (72) hours of** [his] [her] **admission;**

(c) failed to identify [decedent] **as a patient at risk for the development of pressure ulcers and order the necessary treatment, services, and devices to prevent the development and progression of pressure ulcers;**

(d) failed to thoroughly examine [decedent] **and accurately assess** [decedent]**'s pressure ulcers, reassess the pressure ulcers as they worsened, and appropriately institute treatment;**

(e) failed to order and monitor proper wound care for [decedent] **for** [his] [her] **pressure ulcers, once present;**

(f) failed to ensure that an adequate turning and repositioning schedule was in place for [decedent]**;**

(g) failed to identify infected pressure ulcers and order proper treatment;

(h) failed to document and documented inadequately, inconsistently, and inaccurately the development and progression of [decedent**]'s multiple pressure ulcers;**

(i) failed to appropriately communicate with or notify [decedent**]'s family of changes in [**his**] [**her**] condition, as it related to the development and progression of worsening pressure ulcers;**

(j) failed to ensure that [decedent**] was receiving adequate nutritional and hydrational support;**

(k) failed to order appropriate treatment and monitor [decedent**]'s malnutrition;**

(*l*) failed to be aware of, timely respond to, and issue orders in accordance with dietician recommendations;

(m) failed to assess and appropriately respond to [decedent**]'s weight loss;**

(n) discharged [decedent**] from the hospital without antibiotics and while [**decedent**] was not in a medically stable enough condition to return to the nursing home;**

(*o*) failed to provide adequate medical care, personal care, maintenance, and treatment to [decedent**];**

10. As a direct and proximate result of one or more of the Defendant's negligent acts and/or omissions, [decedent**] sustained injuries including, but not limited to, multiple pressure ulcers, dehydration, malnutrition, weight loss, sepsis with multiple organ dysfunction, hypoxia, emaciation, and pneumonia, all of which caused and contributed to [**his**] [**her**] death and, as a direct result, suffered substantial injuries of a personal and pecuniary nature, past, present, and future, including, but not limited to, disability and disfigurement, pain and suffering, expenses for medical care, and eventual death, and [**decedent**] would have been entitled to receive compensation from the Defendant for these injuries, had [**he**] [**she**] survived.**

11. The Plaintiffs, _____, bring this action for [decedent**] under the provisions of 755 ILCS 5/27-6, known as the Illinois Survival Statute.**

12. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, pray for judgment against Defendant, _____, jointly and severally in a fair and just amount in excess of _____.

COUNT X
(Plaintiffs v. _____)
(Negligence — Wrongful Death Act)

The Plaintiffs, _____, as Independent Coexecutors and/or Independent Representatives of the Estate of _____, Deceased, by their attorneys, _____, complain against the Defendant, _____, as follows:

1 – 9. Plaintiffs reallege Paragraphs 1 – 9 of Count IX of this Complaint as and for Paragraphs 1 – 9 of this Count X.

10. On [date**], [**decedent**] died.**

11. As a direct and proximate result of one or more of the Defendant's negligent acts and/or omissions, [decedent**] sustained injuries including, but not limited to, infected pressure sores, dehydration, and malnutrition, which caused and/or contributed to the cause of [**his**] [**her**] death.**

12 The Plaintiffs, _____, bring this action pursuant to 740 ILCS 180/1, *et seq.,* commonly known as the Wrongful Death Act.

13. [Decedent**] left surviving [**him**] [**her**] various persons who were [**his**] [**her**] next-of-kin, including, but not limited to, the following individuals:**

[list**]**

14. All of [decedent**]'s next-of-kin suffered injuries as a result of [**decedent**]'s death, including the loss of companionship and society.**

15. Attached to this Complaint are an Attorney Affidavit (see Exhibit B) and Health Professional Report (see Exhibit C), filed pursuant to 735 ILCS 5/2-622.

WHEREFORE, the Plaintiffs, _____, pray for judgment against Defendant, _____, jointly and severally, in a fair and just amount in excess of _____.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully submitted,

BY: _____