

CAUSE NO. _____

PLAINTIFFS

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IN THE DISTRICT COURT OF

VS

_____ COUNTY, TEXAS

DEFENDANTS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

COME NOW _____, each individually and as Representatives of the Estate of _____, Deceased, complaining of _____; and for cause of action would show the Court as follows:

I.

DISCOVERY CONTROL PLAN

Plaintiffs request that this case be governed by a Level Three (III) Discovery Control Plan and that the Court enter a Scheduling Order in this case as soon as practical.

II.

PARTIES

Plaintiffs are individuals residing in _____, _____ County, Texas. They are the surviving parents of _____, Deceased.

_____, is a domestic limited liability company licensed to do business in the State of Texas. Defendant's Registered Agent for service of process is _____. Defendant can be served by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service because Defendant is required by Texas Business corporation Act Article 2.09 to appoint and maintain a registered agent in Texas, but Defendant's registered agent cannot with reasonable diligence be found.

...add other entities here

III.

VENUE

Venue is proper in Jefferson County, Texas, pursuant to C.P.R.C § 15.002(a)(2), since the Defendants either resided in Jefferson County or maintained their principle place of business in Jefferson County at the time this cause of action accrued.

Alternatively, venue is proper in Jefferson County, Texas pursuant to C.P.R.C. §(a)(2), since the Defendants either resided in Jefferson County or maintained their principal place of business in Jefferson County at the time this cause of action accrued.

In addition, where proper venue is established as to one defendant, the court also has venue of all of the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transaction or occurrences in accordance with C.P.R.C. 15.005.

IV.

STATUTORY NOTICE AND LIMITATIONS

Plaintiffs served notice on all the Defendants pursuant to Chapter 74, Medical Liability, TEX. CIV. PRAC. & REM CODE §74.051.

V.

FACTS OF THE CASE

_____ was the 25 year old son of parents, _____. He was the unwitting victim of a scheme and conspiracy by, between and among the Defendants to distribute potentially dangerous drugs to individuals without a valid medical purpose.

Plaintiffs _____ would show that on or about _____, Plaintiffs' decedent sought medical treatment from clinics/doctors, located at _____. During this visit, decedent was seen by _____. It is believed that this was

Plaintiffs' decedent's first and only visit to clinic. It is Plaintiffs' understanding that Defendants failed to obtain a complete medical history or physical exam from decedent and that no diagnostic tests were performed on him during this initial visit. Plaintiffs also believe that no records from previous medical providers were presented to these Defendants. At some point during this visit, Defendant issued prescriptions to Plaintiffs' decedent. The prescriptions were for prescribed at _____ no. of tablets, times per day.

Plaintiffs would show that these medications were excessive and medically unnecessary. In fact, this combination of medications is often referred to on the streets as "holy trinity" or "party packs" because of the ease in which they can be obtained from numerous "pill mills" in the Houston/Beaumont and Southeast Texas area. Plaintiffs assert and allege that _____ was just such a clinic.

On _____, Plaintiffs' decedent drove to pharmacy and had prescriptions filled. Plaintiffs' decedent had never received medications from this pharmacy before. He received prescriptions. The total cost of these prescriptions was \$ _____. Plaintiffs would show that these medications were excessive and medically unnecessary.

On or about July 25, 2009, Plaintiffs' decedent was discovered unconscious on the floor of _____. He died before he could be transported to a hospital. An autopsy performed on date determined that Plaintiffs' decedent died an accidental death caused by combined drug toxicity

VI.

CAUSES OF ACTION AGAINST THE DEFENDANTS

A. Negligence

A physician/patient relationship was formed between decedent and defendants by virtue of medical treatment rendered to decedent. It was the duty of Defendants to exercise that degree of care and skill in providing medical care to decedent as is ordinarily exercised by reasonably skilled practitioners of the medical arts and sciences under the same or similar circumstances. Defendants negligently and carelessly committed one or more wrongful acts and omissions. Plaintiffs would show that at the times and on the occasions complained of, Defendants were negligent, and such negligence is proximately caused damages and injuries to decedent in the following particulars:

1. Failing to properly evaluate, assess, diagnose and treat his individual medical conditions;
2. The failure by a physician to adequately supervise the carrying out or signing of a prescription drug order by a physicians' assistant in violation of the Texas Occupations Code, Medical Practice Act §157.053 and the Physicians' Assistant Act §204.204, and the Texas Administrative Code, Texas Medical Board Rules §185.14;
3. Prescribing unnecessary or inappropriate medications;
4. Prescribing controlled substances without a valid medical purpose in violation of the Texas Health & Safety Code §481.071;
5. Failing to provide critical information about the risks and hazards inherent in the prescriptions, which could have influenced a reasonable person in making a decision about whether to take such medication;
6. Failing to act as a reasonable and prudent physician would have under the same or similar circumstances; and
7. Failing to comply with the applicable standard of care as it related to their care and treatment of these individuals.

Each of these acts and omissions, singularly or in combination with others, constitute negligence which proximately caused the occurrences made the basis of Plaintiffs' action and the injuries and damages to decedent.

B. Negligence Per Se

Defendants are guilty of acts and omissions which are, as a matter of law, negligent. Defendants violated statutes that were specifically placed in the law to protect a category of individuals including decedent. Defendants have violated portions of the Texas Health & Safety Code §481.001 et seq and are, therefore, negligent as a matter of law. Specifically, Defendants violated Texas Health & Safety Code §481.071 that indicates a practitioner may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the direction and supervision except for a valid medical purpose and in the course of medical practice. This is a state jail felony violation under §481.128 of the Texas Health & Safety Code, punishable confinement of 180 days to two years and a fine not to exceed \$10,000.00.

Defendants have additionally violated portions of the Texas Occupations Code §157.001 et seq and §185.1 et seq, identified as the Texas Medical Board Rules. These acts and rules require a physician to adequately supervise the carrying out or signing of a prescription drug order by a physicians' assistant. Failure to do so is a violation of the Medical Practice Act §157.053, the Physicians' Assistant Act §204.204, and the Texas Medical Board Rules §185.14.

Defendants' actions constitute negligence per se and were the sole proximate cause of, or a proximate cause of the injuries and damages for which Plaintiffs now sue, and Defendants are responsible for the same as a matter of law.

C. Gross Negligence

Plaintiffs, pleading further, would show that Defendants committed an act or omission which when viewed objectively from the standpoint of Defendants at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential

harm to decedent; and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of decedent. Therefore, Plaintiffs seek an award of exemplary damages to punish Defendants' conduct and to deter Defendants from engaging in similar conduct in the future.

D. Vicarious Liability

Pleading further, Plaintiffs state that at all times mentioned herein, Defendants, the nurses, and other personnel providing care to defendant were acting as agents, employees, servants, apparent or ostensible agents within the course and scope of their agency or employment with clinic, each of which are, therefore, liable for their acts under the theory of *respondent superior* or apparent agency.

VII.

CAUSES OF ACTION AGAINST PHARMACY DEFENDANTS

A. Negligence

A pharmacist/patient relationship was formed between decedent and the pharmacy by virtue of pharmaceutical services rendered. It was the duty of the pharmacy Defendants to exercise that degree of care and skill in providing pharmaceutical services to decedent as is ordinarily exercised by reasonably skilled practitioners of pharmaceutical arts and sciences under the same or similar circumstances. The pharmacy Defendants negligently and carelessly committed one or more of the following wrongful acts and omissions. Plaintiffs would show that at the times and on the occasions complained of, the pharmacy Defendants were negligent, and such negligence proximately caused their damages and injuries to decedent in the following particulars:

1. Dispensing a controlled substance without a legitimate medical purpose when the pharmacist knew or reasonably should have known that the controlled substance was not necessary or required for the patient's valid medical needs or for a therapeutic purpose in violation of the Texas Administrative Code §281.7(a)(2)(A) and Texas Health & Safety Code §481.071;
2. Failing to provide critical information about the risks and hazards inherent in the prescriptions, which could have influenced a reasonable person in making a decision to give or withhold consent to such medication;
3. Failing to provide patient counseling to decedent of the known risks of the prescribed medication in violation of the Texas Administrative Code §291.33(c)(1); and
4. Failing to conduct a drug regimen review or inappropriate drug regimen review in violation of the Texas Administrative Code §291.33(c)(2)(A).

Each of these acts and omissions, singularly or in combination with others, constitute negligence which proximately caused the occurrence made the basis of Plaintiffs' action and injuries and damages to decedent.

B. Negligence Per Se

The Pharmacy Defendants are guilty of acts of omissions which are as a matter of law negligent. The pharmacy Defendants have violated statutes that were specifically placed in the law to protect a category of individuals including decedent. The pharmacy Defendants have violated portions of the Texas Health and Safety Code Chapter 481.001 *et seq* and are therefore negligent as a matter of law. Specifically, Defendants violated Texas Health & Safety Code §481.071 that indicates a practitioner may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's

direction and supervision except for a valid medical purpose and in the course of medical practice. This is a state jail felony violation under §481.128 of the Texas Health & Safety Code, punishable by confinement of 180 days to two years and a fine not to exceed \$10,000.00.

In addition, Defendants have violated portions of the Texas Administrative Code. Specifically, dispensing a controlled substance without a legitimate medical purpose when the pharmacist knew or reasonably should have known that the controlled was not necessary or required for the patient's valid medical needs or for a therapeutic purpose in violation of the Texas Administrative Code §281.7(a)(2)(A); failing to provide patient counseling to decedent of the known risks of the prescribed medications in violation of the Texas Administrative Code §291.33(c)(2)(A). These violations are punishable by fines up to \$5,000.00.

C. Gross Negligence

Plaintiffs, pleading further, would show that Defendants committed an act or omission which when viewed objectively from the standpoint of Defendants at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to decedent; and of which Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of decedent. Therefore, Plaintiffs seek an award of exemplary damages to punish Defendants' conduct and to deter Defendants from engaging in similar conduct in the future.

D. Vicarious Liability

Pleading further, Plaintiffs state that at all times mentioned herein, Defendants, the nurses, and other personnel providing care to defendant were acting as agent, employee, servant, apparent or ostensible agent within the course and scope of his/her agency or employment with

clinic, each of which are, therefore, the pharmacy Defendants are liable for their acts under the theory of *respondent superior* or apparent agency.

VIII.

CONSPIRACY CAUSE OF ACTION AS TO ALL DEFENDANTS

Pleading further, Plaintiffs would show that at the time and on the occasion complained of all Defendants jointly were engaged in a civil conspiracy to commit illegal acts by way of prescribing and dispensing unnecessary, improper, and non-therapeutic medications and dangerous drugs to decedent and others in order to generate profit.

Each of such acts and omissions identified in paragraphs VI and VII, singularly or in combination with others, were a proximate cause of the injuries to decedent.

IX.

DAMAGES

Plaintiffs would show that as a result of the negligence of Defendants, decedent suffered severe and permanent injuries to his body which ultimately led to his death. For these injuries, the Estate of decedent, specifically seeks an award of damages for funeral and burial expenses, conscious pain and suffering prior to his death, exemplary damages, pre and post judgment interest, costs of court, and such other and further relief to which it may be entitled under law.

Plaintiffs, _____, as statutory beneficiaries of decedent, have suffered grief and mental anguish as a result of the death of decedent, for which they seek monetary damages far in excess of the minimum jurisdictional limits of the Court, pre and post judgment interest, costs of court and such and further relief to which they may be entitled under law.

XI.

REQUEST FOR DISCLOSURE

Pursuant to TRCP 194, Defendants herein are requested to disclose, within fifty (50) days of the service of this Petition and request, the information and/or material described in Rule 194.2(a) through (l).

XII.

JURY DEMAND

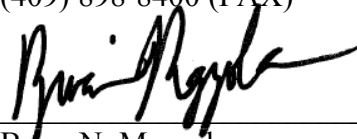
Plaintiffs respectfully request that a jury decide the fact issues in this case.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs _____, each individually and as representative of the Estate of decedent, deceased, pray that Defendants.....be cited to appear and answer herein, that after final trial hereon, they recover of and from said Defendantstheir damages as mentioned herein, costs of court, prejudgment and post judgment interest, and for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

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