

No. 19-543

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In the  
**Supreme Court of the United States**

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JEFFREY WILLS LUSK, INDIVIDUALLY  
AND AS EXECUTOR OF THE ESTATE OF  
DOROTHY JEAN ROSS LUSK, DECEASED,  
*Petitioner,*  
v.

CROWN POINTE CARE CENTER, ET AL.,  
*Respondents.*

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**On Petition for Writ of Certiorari to the  
Court of Appeals of Ohio, Franklin County**

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**Brief in Opposition for Respondents Central Ohio  
Hospitalists, Inc. dba MedOne Physicians, Daniel  
L. Miller, M.D and Brian K. Pulliam, C.N.P.**

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## **QUESTIONS PRESENTED**

1. Whether a federal question sufficient to confer jurisdiction on this court pursuant to 28 U.S.C. §1257 is generated in a case that was decided upon state law principles that addressed the authority of a pro se executor to represent an estate in a wrongful death action where other statutory beneficiaries exist.
2. Whether 28 U.S.C. §1654 permits a pro se executor to self-represent an estate with other statutory beneficiaries in a state court wrongful death action that is predicated entirely upon state law.
3. Whether a state court judgment that is based entirely on principles of state law governing the unauthorized practice of law presents adequate state grounds where the petitioner claims a right of self-representation under 28 U.S.C. §1654.

**RULE 29.6 STATEMENT**

Central Ohio Hospitalists, Inc., dba MedOne Hospital Physicians, is a privately-held corporation that is not publicly traded. No publicly held corporation owns 10% or more of the stock of Central Ohio Hospitalists, Inc.

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## **JURISDICTION**

There is no basis for subject matter jurisdiction in this court. The federal or constitutional issue required for jurisdiction pursuant to 28 U.S.C. §1257 is absent from this case, as the statute relied upon by the plaintiff, 28 U.S.C. §1654, has no applicability to state court litigants. The decisions of the Ohio Tenth District Court of Appeals and the Supreme Court of Ohio involved only issues of state law that do not confer jurisdiction on this court.

28 U.S.C. §1254(1), cited by the petitioner as the basis for jurisdiction in this court, applies only to cases that are venued in the federal circuit courts of appeal. It confers no jurisdiction on this court to hear a state court matter that does not involve any federal or constitutional question.

## **STATEMENT OF THE CASE**

On April 5, 2016, Ms. Dorothy J. Lusk, the mother of petitioner Jeffrey Wills Lusk and a resident of Crowne Point Care Center in Columbus, Ohio, fell and sustained injuries that allegedly resulted in her death on April 11, 2016 at the age of 96 years. Resp. App. 6-7. At the time of her death, Ms. Lusk was survived by two adult children, including petitioner Jeffrey Wills Lusk, who was subsequently appointed as Executor of her estate by the Probate Court of Franklin County, Ohio. *Ibid.*, 4, 7.

On April 6, 2018 petitioner Lusk, acting in a pro se capacity individually and as the Executor of the Estate of Dorothy J. Lusk, filed a complaint in the Court of Common Pleas of Franklin County, Ohio, seeking

wrongful death and survival action damages. Resp. App. 1-13. Although the complaint contained vague and rambling allegations of “violation of Ohio and Federal laws governing care of the elderly,” *Ibid.*, 9, the gist of the action was a medical malpractice case arising from treatment afforded to the mother of the petitioner. No specific “[F]ederal laws governing care of the elderly” were identified in the complaint or in any subsequent proceedings in the state courts of Ohio.

Respondents filed a motion to dismiss under state law, contending, *inter alia*, that the petitioner, who is not an attorney admitted to the bar of any jurisdiction, was engaged in the unauthorized practice of law in violation of §4705.01 of the Ohio Revised Code. The trial court sustained the motion, and the petitioner lodged an appeal with the Tenth District Court of Appeals of Ohio. The day after the appeal was filed on July 10, 2018, the petitioner filed a document titled “Plaintiff’s Objections to 10 July 2018 Court Decision,” which for the first time in the case asserted 28 U.S.C. §1654 as grounds for pro se representation of an estate. The objections were never ruled upon by the trial court, since jurisdiction of the case had transferred to the court of appeals.

The Tenth District dismissed the appeal on April 9, 2019, finding that the petitioner, as a non-lawyer, was prohibited by R.C. §4705.01 from pro se representation of the estate of his deceased mother. Pet. App. 20. The decision of the court was based entirely on state law grounds, specifically the prohibition against the unauthorized practice of law and the requirement in Ohio that wrongful death actions must be brought by

the personal representative of the estate for the benefit of next of kin of the decedent. On September 17, 2019 the Supreme Court of Ohio declined discretionary jurisdiction. Pet. App. 28.

Pursuant to the obligation set forth in Supreme Court Rule 15.2 to address any misstatement of fact or law in the petition, the respondents identify the following:

- Contrary to statements made by the petitioner, he is not the sole beneficiary of the estate of his deceased mother. As observed by the state appellate court, “While Lusk is one of the decedent’s next of kin, he is not her only next of kin, as he has a sister, and representing the interests of his sister would constitute the unauthorized practice of law.” Pet. App. 14. The sister of the petitioner is identified in the original state court complaint as Barbara Elizabeth Lusk Proctor. Resp. App. 7.
- 28 U.S.C. §1654 does not, as claimed by petitioner, confer a federal right of self-representation in the state courts of Ohio. The application of 28 U.S.C. 1654 is limited to actions that are commenced in the federal judicial system. *Rowland v. California Men’s Colony*, 506 U.S. 194 (1993); *Simon v. Hartford Life, Inc.*, 546 F.3d 661 (9<sup>th</sup> Cir. 2008). The case before this court was, at all times prior to the filing of the petition for writ of certiorari, situated in the state courts of Ohio. Accordingly, the jurisdictional statement contained in the petition is incorrect.

## REASONS FOR DENYING THE WRIT

### I. This Court lacks subject matter jurisdiction.

It is well-settled in American jurisprudence that the federal judicial system is comprised of courts whose subject matter jurisdiction is limited. “We have often explained that ‘[f]ederal courts are courts of limited jurisdiction.’” *Home Depot, U.S.A., Inc. v. Jackson*, \_\_\_\_ U.S. \_\_\_\_, 139 S. Ct. 1743 (2019), citing *Kokkonen v. Guardian Life Ins. Co. of America*, 511 US 375, 377 (1994). The Supreme Court of the United States is not an exception to this rule of law, and its jurisdictional limitations for judgments rendered by state courts are set forth in 28 U.S.C. §1257:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. §1257. The statute is echoed by Rule 10 of the Rules of The Supreme Court of the United States, which provides guidance for the types of cases that will warrant granting review on a writ of certiorari:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

...

- (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
- (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

None of the considerations expressed in Rule 10 are present in this case, nor are any federal or constitutional law questions or issues involved. The decisions of the courts of Ohio were based strictly on application of state law principles governing the unauthorized practice of law, and the required jurisdictional element of a federal issue or question is missing from this case. For that reason, the petition for writ of certiorari should be denied.

**A. 28 U.S.C. §1654 has no application in a wrongful death action that is brought in state court.**

Relying upon 28 U.S.C. §1654, the petitioner urges this court to grant review of this case on the grounds of a perceived conflict between the Ohio Tenth District Court of Appeals and several federal circuit courts of appeal. Apparently believing that 28 U.S.C. §1654 grants the right of self-representation in all cases in all courts, state and federal, the petitioner urges this court to grant review on the grounds that “It only remains for the Supreme Court of the United States to make the U.S. Courts of Appeal’s rulings cited above the standard of review for all U.S. courts to eliminate the existing conflict between the Tenth District Court of Appeals for Ohio and the U.S. Court of Appeals for the Second, Fifth, and Sixth Circuits.” Petition for Writ of Certiorari, p. 4. Apparently, the petitioner desires that this Court create a nationwide standard that regulates the practice of law in all fifty states, an area that has been recognized by this Court as within the legitimate authority of the states. *See Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963). The argument of the petitioner is based upon a fundamental misapplication of 28 U.S.C. §1654, which, contrary to his assertions, does not “guarantee” the right of a pro se executor to represent an estate in state court.

28 U.S.C. §1654 states “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” The statute has no

application to proceedings lodged in state court, but applies only to the federal judicial system. *See Faretta v. California*, 422 U.S. 806 (1975) “In the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation.” 422 U.S. at 812.; *Winkelman ex rel. Winkelman v. Parma City School Dist*, 550 U.S. 516 (2007) “. . . [F]or there is no question that a party may represent his or her own interest in federal court without the aid of counsel.” See 28 U.S.C. §1654. . .”) 550 U.S. at 522; *See also Rowland v. California Men’s Colony*, 506 U.S. 194 (1993) where this Court stated that “Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. §1654, providing that ‘parties may plead and conduct their own cases personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.” 506 U.S. at 202 (Citations omitted.); *Simon v. Hartford Life, Inc.*, 546 F.3d 661 (9<sup>th</sup> Cir. 2008) “The general rule establishing the right of an individual to represent oneself in all federal courts of the United States is contained in 28 U.S.C. §1654.” 546 F.3d at 664. Thus, in civil cases such as the matter *sub judice* that are brought in state courts, 28 U.S.C. §1654 has no applicability and cannot confer federal subject matter jurisdiction on this Court.

**II. 28 U.S.C. §1654 does not permit an executor of an estate with multiple beneficiaries to proceed pro se**

Contrary to the assertions of the petitioner, in any event 28 U.S.C. §1654 does not permit prosecution of wrongful death claims by a pro se executor of an estate with multiple beneficiaries. The statute has never been construed by the federal courts as conferring an unfettered right to appear as a pro se party in any case, but rather is limited to interests that are personal to the litigant. *Iannaccone v. Law*, 142 F.3d 553 (2d Cir. 1998). Accordingly, the federal courts have consistently forbidden pro se litigants from attempting to represent the interests of others. *See, e.g., National Independent Theater Exhibitors, Inc., v. Buena Vista Distribution Co.*, 748 F.2d 602 (11<sup>th</sup> Cir. 1984) (a pro se litigant cannot represent a corporation even if they are the only shareholder); *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59 (2d Cir. 1990) (a parent may not, in a pro se capacity, represent the interests of their minor child); *Eagle Associates v. Bank of Montreal*, 926 F.2d 1305 (2d Cir. 1991) (a general partner who is not an attorney may not represent the partnership). Essentially, well-established federal law provides that “an individual who is not licensed as an attorney ‘may not appear on another person’s behalf in the other’s cause.’” *Machadio v. Apfel*, 276 F.3d 103, 106, (2d Cir. 2002), quoting *Iannaccone v. Law*, 142 F.3d 553, (2d Cir. 1998) at 142 F.3d 558. Since Ohio law provides that a wrongful death case must be “brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom

are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent.” Ohio Rev. Code §2125.02. The case brought by the petitioner is not personal to him, but rather involves the interests of other beneficiaries of the estate, specifically his sister. As such, the petitioner cannot proceed on a pro se basis under 28 U.S.C. § 1654. *Pridgen v. Andreson*, 113 F.3d 391 (2d Cir. 1997) (“We now hold that an administratrix or executrix of an estate may not proceed pro se when the estate has beneficiaries or creditors other than the litigant.”) 113 F.3d at 393.

The cases cited by the petitioner do not support his arguments for review by this Court. As noted by the Ohio Tenth District Court of Appeals and reflected by the state court complaint, the petitioner is not the only beneficiary of the estate that he seeks to represent, as his sister remains a next of kin. This distinction, which the petitioner has refused to acknowledge since the inception of this case, was recognized by the cases referenced in his argument.

For example, *Bass v. Leatherwood*, 788 F.3d 228 (6<sup>th</sup> Cir. 2015), involved efforts by estate fiduciaries to litigate claims for fraudulent transfer of real estate by various financial institutions. Unlike the instant matter, the plaintiffs in *Bass* were, in fact, the only beneficiaries of the estates they wished to represent and thus the only individuals with an interest in the outcome of the case. The Sixth Circuit held that under such limited circumstances, where no other persons were affected, the plaintiffs would be permitted pro se representation. However, *Bass* specifically recognized

that 28 U.S.C. §1684 did not permit pro se litigants to appear in federal court in cases that involved the interests of other people, including estates where other beneficiaries were present:

Federal law allows parties to “plead and conduct their own cases personally or by counsel.” 28 U.S.C. §1654. In 1997, the Second Circuit interpreted this language to impose a barrier on pro se litigants wishing to appear on behalf of “another person or entity,” including a corporation, a partnership, a minor child or “an estate. . . when the estate has beneficiaries or creditors other than the litigant.” *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997). The court reasoned that “appearance pro se denotes (in law latin) appearance for one’s self,” but “when an estate has beneficiaries or creditors other than the administratrix or executrix, the action cannot be described as the litigant’s own.” *Id.* This court adopted the Second Circuit’s reasoning in *Shepherd v. Wellman*, 313 F.3d 963 (6<sup>th</sup> Cir. 2002), prohibiting a litigant from proceeding pro se “because he is not the sole beneficiary of the decedent’s estate.” *Id.* at 970 (citing *Pridgen*, 113 F.3d at 393).

*Bass v. Leatherwood, supra*, at 788 F.3d 230. Federal law continues to prohibit pro se representation by a non-attorney administrator or executor in circumstances in which other people have an interest in the matter. See, e.g., *Jones ex rel. Jones v. Correctional Medical Services, Inc.*, 401 F.3d 950 (8<sup>th</sup> Cir. 2005) (holding that an estate administrator was

prohibited from pro se representation in a medical malpractice case based on Arkansas law where other beneficiaries existed.)

A second case cited by the petitioner, *Rodgers v. Lancaster Police and Fire Dept.*, 819 F.3d 205 (5<sup>th</sup> Cir. 2016) likewise provides no support for his arguments and dictates against review of this case by this Court. In *Rodgers*, where federal question jurisdiction was present through claims based on violation of 42 U.S.C. §1983, the court declined to permit the plaintiff, a non-attorney, to represent the estate of her deceased son until the District Court determined on remand whether she was the sole statutory beneficiary. Despite the petitioner's erroneous assertions to the contrary, that question has been determined in the case *sub judice* by the presence of his sister, who is identified in the original state court complaint. Resp. App. 7. In *Guest v. Hansen*, 603 F.3d 15, (2d Cir. 2010), a third case cited by the petitioner, the court held "that an administrator can proceed pro se where an estate has neither creditors nor beneficiaries other than the administrator." 603 F.3d at 17. Barbara Elizabeth Lusk Proctor, the sister of the petitioner, renders the *Guest* case inapplicable.

The rule against pro se representation where the interests of others are at stake is well-reasoned and established in the jurisprudence of both state and federal law, and does not warrant review by this Court. The expansion of the ability to proceed pro se that is urged by the petitioner should be rejected since it is contrary to established law and on the basis of concerns expressed by the Second Circuit:

The reasons for requiring that an attorney appear are thoroughly discussed in the above cases. In summary, they are principally that the conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative. In addition to lacking the professional skills of a lawyer, the lay litigant lacks many of the attorney's ethical responsibilities, e.g. to avoid litigating unfounded or vexatious claims. See Model Code of Professional Responsibility, DR 7-102 (A) (1&2) (1976).

*Jones v. Niagara Frontier Transportation Auth.*, 722 F.2d 20 (2d Cir. 1983) at 722 F.2d 22.

**III. The decision of the Supreme Court of Ohio rests on adequate state grounds that preclude granting of the petition for writ of certiorari.**

Prior proceedings in this case were confined to the state courts of Ohio. The decision of the Tenth District Court of Appeals of Franklin County, which was left undisturbed when the Supreme Court of Ohio declined discretionary jurisdiction, was based entirely on state law grounds. Assuming only for purpose of argument that the case involved any type of federal issue, the decisions of the state courts were based on adequate state grounds that preclude granting of the writ sought by the petitioner.

This court is precluded from exercising review of a question of federal law that is decided by a state court, provided that the decision of the court “. . . rests on a state law ground that is independent of the federal question and adequate to support the judgment.” *Coleman v. Thompson*, 501 U.S. 722 (1991), at 501 US 729, citing *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935). To the extent that the Ohio courts considered that the petitioner had a right to self-representation in state court under 28 U.S.C. §1654, their ultimate decisions were based upon Ohio law that was clearly sufficient to support their findings. In lower court proceedings, the petitioner never claimed that R.C. §4705.01 was repugnant to the federal constitution, and he is prohibited from presenting such an argument at this stage. R.C. §4705.01 remains a valid and constitutionally sound exercise of the power of the state of Ohio, and was an adequate and independent basis for the lower court decisions.

## **CONCLUSION**

The petition should be denied. This Court lacks subject matter jurisdiction where the issue on appeal involves denial, under state law, of the plaintiff’s efforts to pursue pro se litigation on behalf of an estate with multiple beneficiaries. 28 U.S.C. §1654 does not apply in the courts of Ohio, does not confer federal subject matter jurisdiction in a case that commenced and proceeded exclusively in state court, and in any event does not permit the plaintiff to represent, pro se, an estate with multiple beneficiaries. No federal question or constitutional issue is present in this case.

Respectfully submitted,

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## **APPENDIX**

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**APPENDIX 1**

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**IN THE COURT OF COMMON PLEAS  
OF FRANKLIN COUNTY, OHIO**

**Case Number:**

**Judge**

**[Filed April 6, 2018]**

---

Jeffrey Wills Lusk, Individually and as	)
Executor of the Estate of	)
Dorothy Jean Ross Lusk, Deceased	)
5219 Heathmoor Street	)
Columbus, Ohio 43235	)
Plaintiff	)
	)
v.	)
	)
Crown Pointe Care Center	)
(Unregistered Fictitious Name)	)
1850 Crown Park Court	)
Columbus, Ohio 43235	)
	)
and	)
	)
SHCP Franklin, Inc. d/b/a	)
Crown Pointe Care Center	)
(Unregistered Fictitious Name) c/o	)
Ohio Agent Solutions, Inc.	)
25000 Country Club Boulevard (Suite 255)	)
North Olmsted, Ohio 44070	)

App. 2

and )  
 )  
 Foundations Health Solutions, Inc. d/b/a )  
 Provider Services, Inc. c/o )  
 Ohio Agent Solutions, Inc. )  
 25000 Country Club Boulevard (Suite 255) )  
 North Olmsted, Ohio 44070 )  
 )  
 and )  
 )  
 Atlas Healthcare Solutions, Inc. c/o )  
 Michael K. Provenza, Esq. )  
 25000 Country Club Boulevard (Suite 255) )  
 North Olmsted, Ohio 44070 )  
 )  
 and )  
 )  
 Central Ohio Hospitalists, Inc. d/b/a )  
 MedOne Hospital Physicians c/o )  
 Taft Service Solutions Corp. )  
 425 Walnut Street (Suite 1800) )  
 Cincinnati, Ohio 45202 )  
 )  
 and )  
 )  
 Daniel Lawrence Miller, M.D. c/o )  
 Central Ohio Hospitalists, Inc. d/b/a )  
 MedOne Hospital Physicians )  
 3525 Olentangy River Road (Suite 4330) )  
 Columbus, Ohio 43214 )  
 )  
 and )  
 )

App. 3

Brian Kenneth Pulliam, C.N.P. c/o	)
Central Ohio Hospitalists, Inc. d/b/a	)
MedOne Hospital Physicians	)
3525 Olentangy River Road (Suite 4330)	)
Columbus, Ohio 43214	)
	)
and	)
	)
Christa King, N.H.A. c/o	)
Crown Pointe Care Center	)
(Unregistered Fictitious Name)	)
1850 Crown Park Court	)
Columbus, Ohio 43235	)
	)
and	)
	)
Lynn Marie Gutridge, R.N. c/o	)
Crown Pointe Care Center	)
(Unregistered Fictitious Name)	)
1850 Crown Park Court	)
Columbus, Ohio 43235	)
	)
and	)
	)
John Does 1-10 Inclusive	)
Defendants Whose Names Are	)
Unknown To Plaintiff At This Time	)
	)
Defendants	)
	)

App. 4

**COMPLAINT**

**Jury Demand Endorsed Hereon**

**(Affidavits Attached)**

Now comes Plaintiff Jeffrey Wills Lusk, Individually and as Executor of the Estate of Dorothy Jean Ross Lusk, Deceased, and for his Complaint against Defendants, pursuant to O.R.C. 2125 *et seq.*, O.R.C. 313.19, O.R.C. 2921.22, *Kaler v. St. Joseph Hospital* (1982), 69 Ohio St.2d 477, and *Carte v. The Manor at Whitehall*, 2014-Ohio-5670, and states as follows:

**First Claim**

1. At all times relevant hereto, Defendants John Does 1-10, inclusive, are persons and/or entities whose names and addresses Plaintiff does not know and has been unable to presently ascertain, but are people and/or entities who provided common and ordinary living assistance and/or Long-Term Care and/or were responsible for supervising the people and/or entities who provided common and ordinary living assistance and/or Long-Term Care for Dorothy Jean Ross Lusk, Deceased. Defendants John Does 1-10, inclusive, presently unnamed, will in no way be prejudiced in the maintenance of their defense on the merits within the meaning of Civ.R.15(D) because of their constructive or actual notice of the institution of this Case.
2. Plaintiff was appointed Executor of the Estate of Dorothy Jean Ross Lusk, Deceased, by the Franklin County Probate Court on 13 September 2016 in Case No. 580770. He brings this wrongful death action as personal representative for the exclusive benefit of the

## App. 5

surviving children, and other next of kin of the deceased.

3. On 5 April 5 2016, Dorothy Jean Ross Lusk, Deceased, was a resident at the extended care facility (ECF) located at 1850 Crown Park Court, Columbus, Ohio 43235, known as Crown Pointe Care Center (CROWN), and one or more of Defendants, by their common ordinary negligence, gross negligence, wantonness, abuse and neglect caused an accident that resulted in a trauma acute impact fracture injury to Dorothy Jean Ross Lusk's left humeral bone driving that bone 15 mm (0.6 in) into itself, by allowing her to fall through no fault of her own. Defendants allowed the fall by failing to provide appropriate fall preventative measures and precautions of a common and ordinary nature. Defendants actions and omissions, violated both Ohio and Federal laws governing the care of elderly residents, and because none of the Defendants reported the fall, all are in violation of O.R.C. 2921.22 for failure to report a crime or knowledge of a death or burn injury.

4. Defendants took on the responsibility of providing common and ordinary living assistance and/or Long-Term Care for Dorothy Jean Ross Lusk, but failed to make appropriate common and ordinary differential decisions and failed to administer common and ordinary care to Dorothy Jean Ross Lusk.

5. Jeffrey Wills Lusk states that the common and ordinary living assistance and/or Long-Term Care Defendants provided his Mother, Dorothy Jean Ross Lusk, fell below acceptable standards of common and ordinary living assistance and/or Long-Term Care, and

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that said Defendants were negligent in a common and ordinary manor.

6. As a direct and proximate result of the common and ordinary negligence of Defendants, Plaintiff Dorothy Jean Ross Lusk fell on 5 April 2016 causing permanent injuries, including but not limited to a trauma acute impact fracture of left humeral bone with a degree of impaction of 15 mm (0.6 in), great pain and suffering, a loss of ability to perform her usual activities, and death. She also incurred other damages and losses.

7. By reason of their common and ordinary negligent acts and/or omissions, Defendants, their agents, representatives, servants and/or employees, in the course and scope of their agency or employment, breached their duty of care to Plaintiff Dorothy Jean Ross Lusk, by failing to exercise the appropriate degree of skill, care, and diligence in providing Dorothy Jean Ross Lusk with common and ordinary living assistance and/or Long-Term Care ordinarily used by personnel in like and similar circumstances resulting in Dorothy Jean Ross Lusk sustaining a trauma acute impact fracture of left humeral bone with a degree of impaction of 15 mm (0.6 in) and eventual death.

8. As a direct and proximate result of the Defendants' common and ordinary negligence, Plaintiff Dorothy Jean Ross Lusk was caused to incur great pain and suffering, disability, pain of body and mind, loss of enjoyment of life, mental anguish, and was otherwise injured.

9. Dorothy Jean Ross Lusk, age 96, died on 11 April 2016, as a result of the permanent injury sustained in

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said accident, and Defendants attempted to prevent Jeffrey Wills Lusk from reporting said death to the Franklin County Ohio Coroner, and in so doing all are in violation of O.R.C. 2921.22 for a second offense of same.

10. Dorothy Jean Ross Lusk was survived by her children, Barbara Elizabeth Lusk Proctor and Jeffrey Wills Lusk, of which Jeffrey Wills Lusk is the sole beneficiary of this action.

11. Decedent's beneficiary suffered damages for loss of her services over the time she could have been expected to live.

12. Decedent's beneficiary suffered damages for the loss of her society over her life expectancy, including loss of companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education.

13. Decedent's beneficiary suffered damages for the mental anguish caused by her death.

14. Reasonable funeral and burial expenses in the amount of \$11,380.65 have been incurred.

### **Second Claim**

15. As Executor of the Estate of Dorothy Jean Ross Lusk, Deceased, Plaintiff brings this action for the injuries and damages to Dorothy Jean Ross Lusk prior to her death for the benefit of the Estate of Dorothy Jean Ross Lusk.

16. Plaintiff incorporates the allegations of the First Claim for relief.

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17. At all times pertinent hereto, Plaintiff Dorothy Jean Ross Lusk was a resident as defined by O.R.C. 3721.10.

18. At all times pertinent hereto, Defendants' ECF was a home as defined by O.R.C. 3710.01.

19. The Defendants' actions, inaction, and common ordinary neglect in the care provided Plaintiff Dorothy Jean Ross Lusk was a violation of Plaintiff's rights as set forth in O.R.C. 3721.13.

20. The Defendants' actions, inaction, and common ordinary neglect in the care provided Plaintiff Dorothy Jean Ross Lusk were violations of 42 C.F.R. 483 et seq.

21. As a direct and proximal result of Defendants' violation of O.R.C. 3721.13 and 42 C.F.R. 483 et seq., Plaintiff Dorothy Jean Ross Lusk suffered pain and suffering, emotional distress, and other significant permanent injuries to her person and well-being.

22. As a result of the accident, Dorothy Jean Ross Lusk suffered a trauma acute impact fracture injury to her left humeral bone driving that bone 15 mm (0.6 in) into itself. Her injury was permanent and resulted in her death on 11 April 2016.

**Third Claim**

23. Plaintiff incorporates the allegations of the First Claim and Second Claim for relief.

24. Defendants' conduct of improperly caring for Plaintiff Dorothy Jean Ross Lusk demonstrates actual malice and egregious fraud including conscious disregard for the rights and safety of Plaintiff Dorothy

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Jean Ross Lusk, which constituted a great probability of causing substantial harm and did so cause substantial harm.

### **Fourth Claim**

25. As Executor of the Estate of Dorothy Jean Ross Lusk, Deceased, Plaintiff brings this action for punitive damages and costs pursuant to O.R.C. 3721.10 et seq. for the willful, wanton, and reckless conduct by Defendants to cover-up the accident that caused the injuries and damages to Dorothy Jean Ross Lusk, Deceased, demonstrating Defendants were indifferent to the rights and safety of Dorothy Jean Ross Lusk, Deceased.

26. Plaintiff also seeks punitive damages under Ohio's nursing home laws for the following: Defendants' deliberate cover-up and concealment of the injury to Plaintiff Dorothy Jean Ross Lusk; the indifference displayed for the right and safety of others and the Defendants' employee conduct surrounding the injury; failure to report the injury to appropriate State authorities; violation of Ohio and Federal laws governing care of the elderly that permit the imposition of punitive damages; and to punish the wrongful conduct of Defendants and to deter Defendants and other similarly situated providers from engaging in such conduct in the future.

27. Plaintiff incorporates the allegations of the First Claim, Second Claim, and Third Claim for relief.

28. Plaintiff Jeffrey Wills Lusk states he is the duly appointed Executor of the Estate of Dorothy Jean Ross Lusk, who died on 11 April 2016, leaving the heirs at

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law and/or next of kin surviving her each of whom had a pecuniary or other interest in her life, and this action is brought on their behalf under the statutes of Ohio including, but not limited to, O.R.C. 2125.02, and further states that by reason of Decedent Dorothy Jean Ross Lusk's wrongful death, the Decedent's statutory beneficiary has been damaged, deprived of her society and companionship, suffered loss of future services, a loss of love and affection, severe mental anguish and emotional distress, and has sustained pecuniary losses, including but not limited to, funeral and burial expenses.

29. Said Defendants negligently, recklessly and/or willfully and wantonly failed to use that degree of care, skill, and diligence in providing Dorothy Jean Ross Lusk, Deceased, with proper and appropriate common and ordinary living assistance and/or Long-Term Care ordinarily used by personnel in like and similar circumstances, which ultimately resulted in the death of Dorothy Jean Ross Lusk.

30. Said Defendants were negligent, reckless and/or willful and wanton in their common and ordinary living assistance and/or Long-Term Care of Dorothy Jean Ross Lusk, and as a direct and proximate result of their negligence, Dorothy Jean Ross Lusk failed to receive the necessary care and, as a consequence, lost her life on 11 April 2016.

31. At the time of her death, Dorothy Jean Ross Lusk was not provided and/or afforded the opportunity to live the rest of her natural life, nor to continue to experience the opportunity to bond with and love her heirs at law and next of kin now and in the future, and

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that by reason of the wrongful death of Dorothy Jean Ross Lusk, her heirs at law and surviving next of kin have suffered severe mental anguish and emotional distress, a loss of her society and companionship, and pecuniary losses.

32. At all times material to the present cause of action, Plaintiff Dorothy Jean Ross Lusk was a resident of CROWN.

33. As a nursing home resident, each Defendant in this action owed a duty to Decedent Plaintiff Dorothy Jean Ross Lusk to provide a safe living environment and to provide her with adequate and appropriate common and ordinary care.

34. As a nursing home resident Plaintiff Dorothy Jean Ross Lusk had the right to a safe living environment and the right to adequate and appropriate common and ordinary care.

35. Each Defendant in this action breached their duty to Plaintiff Dorothy Jean Ross Lusk by failing to provide a safe living environment and by failing to provide adequate and appropriate common and ordinary care.

36. Defendants' conduct, acts and/or omissions constitute a statutory violation of Plaintiff Dorothy Jean Ross Lusk's rights pursuant to O.R.C. 3721.10 et seq.

37. Pursuant to statute, the violation of Plaintiff Dorothy Jean Ross Lusk's rights, as set forth above, permit Plaintiff to recover punitive damages and costs from Defendants.

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WHEREFORE, Plaintiff Jeffrey Wills Lusk, Individually and as Executor of the Estate of Dorothy Jean Ross Lusk demands judgment against Defendants on his First Claim for relief, jointly and severally, in an amount which exceeds Twenty-Five Thousand Dollars (\$25,000.00), together with interest and the costs of this action.

WHEREFORE, Plaintiff Jeffrey Wills Lusk, Individually and as Executor of the Estate of Dorothy Jean Ross Lusk demands judgment against Defendants on his Second Claim for relief, jointly and severally, in an amount which exceeds Twenty-Five Thousand Dollars (\$25,000.00), together with interest and the costs of this action.

WHEREFORE, as a direct and proximate result of the wrongful and malicious conduct of the Defendants, Plaintiff Dorothy Jean Ross Lusk was caused to incur great pain and suffering and disability. Plaintiff Jeffrey Wills Lusk, Individually and as Executor of the Estate of Dorothy Jean Ross Lusk demands judgment against Defendants on his Third Claim for relief, jointly and severally, in an amount which exceeds Twenty-Five Thousand Dollars (\$25,000.00), together with interest and the costs of this action.

WHEREFORE, Plaintiff Jeffrey Wills Lusk, Individually and as Executor of the Estate of Dorothy Jean Ross Lusk demands judgment against the Defendants on his Fourth Claim for relief, jointly and severally, in an amount which exceeds Twenty-Five Thousand Dollars (\$25,000.00), together with interest and the costs of this action.

Respectfully submitted,

/s/ Jeffrey Wills Lusk

Jeffrey Wills Lusk, Individually and as  
Executor of the Estate of  
Dorothy Jean Ross Lusk, Deceased  
5219 Heathmoor Street  
Columbus, Ohio 43235  
(614) 558-0072  
*pro se*

**JURY DEMAND**

Plaintiff Demands a Trial by a Jury of Eight

/s/ Jeffrey Wills Lusk

Jeffrey Wills Lusk, Individually and as  
Executor of the Estate of  
Dorothy Jean Ross Lusk, Deceased  
*pro se*

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**APPENDIX 2**

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**IN THE COURT OF COMMON PLEAS  
OF FRANKLIN COUNTY, OHIO**

**Case Number: 18CV-04-2941**

**Judge David Charles Young**

**[Filed July 11, 2018]**

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Jeffrey Wills Lusk, Individually and as	)
Executor of the Estate of	)
Dorothy Jean Ross Lusk, Deceased	)
Plaintiff	)
	)
v.	)
	)
Crown Pointe Care Center et al.	)
Defendants	)
	)

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**PLAINTIFF'S OBJECTIONS TO 10 JULY 2018  
COURT DECISION**

Comes now Jeffrey Wills Lusk ("Plaintiff") for his Objections to this Court's Decision issued and entered 10 July 2018.

**Failure to Covert Motions to Dismiss to  
Motions for Summary Judgment**

Defendant Objects to this Court not converting Defendant's Motions to Dismiss to Motions for Summary Judgment, because Plaintiff's Pleadings

offered documents and evidence outside of the pleadings, which turns the Motions to Dismiss into Motions for Summary Judgment pursuant to *Schuh v. Mora*, 95APE09-1259 (10<sup>th</sup> Dist. Ct. App., Franklin Feb. 13, 1996) (Ohio App. LEXIS 553), and *State, ex rel. Keller v. Cox*, 5 Ohio St. 3d 279, 707 NE2d 931 (1999).

**Plaintiff is the only Real Party in Interest and Sole Beneficiary of Estate**

Plaintiff Objects to this Court concluding Plaintiff attempts to represent interests other than his own against the facts and evidence on the Record. The Record reflects Plaintiff is the Sole Beneficiary of the Estate (no creditors), and no next of kin exist besides Plaintiff. The spouse is deceased, no minor children exist, and the parents are deceased. Only minor children are presumed to have suffered from the loss of a parent. Ohio limits Statutory beneficiaries to spouse, minor children, and parents. This Court erroneously combined Wrongful Death and Survival Claims to give the appearance Plaintiff attempts to represent multiple interests other than his own. Representing the Estate beneficiaries for Survival Claims is separate from representing Statutory beneficiaries for Wrongful Death Claims. Plaintiff is the only Real Party in interest to both and can represent both separately in one action, which is required by statute. Plaintiff further Objects to this Court's abuse of its discretion to not allow Plaintiff to attempt to retain counsel based upon its erroneous conclusion Plaintiff is attempting to represent interests other than his own. No other similar Cases have not allowed Plaintiff to attempt to retain counsel.

**Plaintiff's Survivorship Claims are not Time-Barred by Statutes of Limitations**

Plaintiff Objects to this Court erroneously concluding Plaintiff's Survivorship Claims are time-barred by Statutes of Limitations. Medical Malpractice statute of limitations do not apply to Wrongful Death Claims pursuant to Ohio Supreme Court's Decision in *Koler v. St. Joseph Hospital* (1982), 69 Ohio St.2d 477, the statute of limitations for malpractice by a physician or hospital in O.R.C. 2305.11(A) does not apply to Ohio Wrongful Death actions. As *Koler* states:

“The *statute of limitations* contained in O.R.C. 2305.11(A) is limited to the areas specifically enumerated therein and to the **common law** definition of ‘malpractice.’”

Ohio Wrongful Death law is at statute, not common law. A full reading of *Koler* is sufficient to establish the statute of limitations for malpractice by a physician does not time-barr Plaintiff's Survivorship Claims, in addition to the fact Plaintiff averred no malpractice claims. Plaintiff Objects to this Court's erroneous conclusion Plaintiff's Survivorship Claims are time-barred by the statute of limitations for O.R.C. 2305.10(A). This Court failed to apply the two-pronged rule requiring both prongs to be satisfied before the statute of limitations begins to run. The Supreme Court of Ohio in *O'Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84 states:

“When an injury does not manifest itself immediately, the cause of action does not arise until the plaintiff knows or, by the exercise of reasonable diligence should

have known, that he had been injured by the **conduct of defendant**, for purposes of the statute of limitations contained in R.C. 2305.10.”

In *Viock v. Stowe-Woodward Co.*, 13 Ohio App. 3d 7 (1983) the Court states:

This “discovery rule,” as articulated by the Supreme Court in *O’Stricker, supra*, is a two-pronged rule requiring both prongs to be satisfied before the statute of limitations begins to run. **First**, a plaintiff must know or reasonably should have known that he has been injured; and **second**, a plaintiff must know or reasonably should have known that his injury was proximately caused by **conduct of the defendant**. Upon actual knowledge or reasonable cause shown to have knowledge of these factors imputed as a matter of law, the limitation period in O.R.C. 2305.10 begins to run. This articulation of the “discovery rule,” we note, is consistent, congruent, and harmonious with articulations in other jurisdictions which have adopted and applied the discovery rule. See, e.g., *Schiele v. Hobart Corp.* (Ore. 1978), 587 P.2d 1010, 1014 (“The statute of limitations begins to run when a reasonably prudent person associates his symptoms with a serious or permanent condition and at the same time **perceives the role which the defendant has played** in inducing that condition.”); *Nolan v. Johns-Manville Asbestos & Magnesia Materials Co.* (Ill. App. 1979), 392 N.E.2d 1352, 1359 (“\* \* \* the statute of limitations commences when the injured party discovers or should reasonably have discovered not only the nature of the affliction **but also** that it was wrongfully caused.”).

Plaintiff knew his Mother was injured April 5, 2016, but did not know the Defendants caused the injury until the Franklin County Coroner's Report was issued July 12, 2016, which is the second prong that completed the two-prong rule which triggered the statute of limitations to begin running.

This Court clearly based its Decision and Rulings only upon the unsupported conclusions of Defendant's Motions to Dismiss, rather than at the same time considering Plaintiff's Record and applicable laws. This Court's findings of fact and conclusions of law are not sufficient to support Defendant's Motions to Dismiss pursuant to *Thomas v Jackson Hewitt, Inc.*, 2011 OH 618, 950 NE2d 578 (Ohio App).

**Court Copied Defendants' Mistake Identifying Plaintiff as "Administrator" and Appears to have made *ex parte* Communication with Counsel for Defendants**

This Court identified Plaintiff in the Caption as "Administrator" instead of "Executor", which was originally a mistake by attorney Poling, not attorney Auciello. Plaintiff Objects to the appearance of *ex parte* communication between this Court and attorney Poling, as evidenced by this copied mistake and the E-mail, attached as Ex. A, sent from attorney Cook to Staff Attorney Megan Shultz at 12:43 p.m. 10 July 2018. This Court issued and entered its Decision at 3:46 p.m. 10 July 2018, just about three hours later. Plaintiff objects to attorney Cook, an attorney who has never made an appearance, communicating *ex parte* with this Court's Staff Attorney.

Respectfully submitted,

/s/ Jeffrey Wills Lusk  
Jeffrey Wills Lusk, Individually and as  
Executor of the Estate of  
Dorothy Jean Ross Lusk, Deceased  
5219 Heathmoor Street  
Columbus, Ohio 43235  
(614) 558-0072  
jeffreylexus@aol.com  
Plaintiff  
*pro se*

**CERTIFICATE OF SERVICE**

Plaintiff served the foregoing Objections on Brant Eric Poling, address listed below, attorney for Defendants, MedOne Defendants, and Ernest W. Auciello, Jr., address listed below, attorney for Defendants, Crown Pointe Defendants via eFlex on 11 July 2018.

/s/ Jeffrey Wills Lusk  
Jeffrey Wills Lusk, Individually and as  
Executor of the Estate of  
Dorothy Jean Ross Lusk, Deceased  
Plaintiff  
*pro se*

**Ernest W. Auciello, Jr.**  
Tucker Ellis LLP  
950 Main Avenue (Suite 1100)  
Cleveland, Ohio 44113

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**Brant Eric Poling**  
Poling Law  
300 East Broad Street (Suite 350)  
Columbus, Ohio 43215

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**Ex. A**

**(follows)**

From: Laura Cook <lcook@poling-law.com>  
To: Megan\_Schultz  
<Megan\_Schultz@fccourts.org>  
Cc: Brant Poling <bpoling@poling-law.com>;  
jeffreylexus <jeffreylexus@aol.com>;  
Mindi Schaefer  
<M S c h a e f e r @ p o l i n g - l a w . c o m >;  
ernest.auciello  
<ernest.auciello@tuckerellis.com>;  
Laura Cook <lcook@poling-law.com>  
Subject: Lusk v Crowne Pointe et al # 18 CV 002941  
Date: Tue, Jul 10, 2018 12:43 pm

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Megan,

I'm writing to request a status conference in this case regarding the issues raised in the Defendants' motions to dismiss.

Please let me know if that can be arranged soon,  
thanks,

Laura  
Laura Folkerth Cook  
Attorney  
Columbus 614.737.2919 | Mobile 614.581.7876  
poling-law.com  
COLUMBUS, OH – DAYTON, OH – FAIRFAX, VA  
\* \* \*