SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

BETHANY STOUT, surviving spouse of Neiland E. Stout, on her own behalf and as the Personal Representative for THE ESTATE OF NEILAND E. STOUT, Plaintiff, v. JAMES W. RICE, JR., M.D., TRAN URGENT CARE & WELLNESS CENTERS LLC, LINCOLN PHARMACY, LLC, DAT TRAN, Defendants.	No. 24-2-03547-8 SEA **FIRST AMENDED COMPLAINT FOR DAMAGES**

COME NOW, Plaintiffs, by and through her attorneys Cheryl L. Snow and Alexander E. Ackel of FRIEDMAN | RUBIN, PLLP and alleges as follows:

I. INTRODUCTION

1. On November 15, 2023, James W. Rice, Jr., M.D. (hereinafter "Defendant Rice") entered into an Agreed Order with the Washington State Medical Commission stipulating that he had committed unprofessional conduct in violation of RCW 18.130.180(4) and (7), and WAC 246-919-865; 246-919-905; WAC 246-919-910; WAC 246-919-970; WAC 246-919-985(3) with respect to his treatment of his patient, Neiland E. Stout (hereinafter "Neiland"). As a result,

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Defendant Rice's medical license was restricted by the Medical Commission.[1]

2. Neiland saw Defendant Rice eight different times between January 25 and April 21, 2021. Over the course of those few months, and without ever obtaining a proper medical history or prior records, Defendant Rice prescribed Neiland an escalating dose of dangerous narcotics.

3. In all, Defendant Rice prescribed Neiland over 1200 opioid and benzodiazepine tablets. Defendant Rice's treatment records failed to document any objective medical rationale for this extraordinary volume of dangerous narcotics.

4. On June 25, 2021, only five months after Neiland first saw Defendant Rice, Neiland was found dead in his home. The Coroner's Report revealed that Neiland had toxic levels of benzodiazepines and opioids in his system.

The Meteoric Rise of Opioid Pain Killers: How America Lost the War on Drugs

5. Initially, the ascendancy of prescription painkillers was driven by one drug, OxyContin. OxyContin is an oral, controlled release, oxycodone that is used to manage chronic types of pain such as migraine headaches, arthritis, postoperative pain, and cancer pain. OxyContin was originally available in 10 mg, 20 mg, 40 mg, and 80 mg tablets, making it the most powerful narcotic painkiller ever released for routine prescribing. By comparison, other types of common oxycodone products, such as Percocet and Tylox, contain 5 mg of oxycodone.

6. From 1997 to 2002, OxyContin prescriptions increased from 670,000 to 6.2 million.[2] Warning signs of the drug's potential for abuse were almost immediate. By the early

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[1] Attached to this Complaint as Ex. A is a copy of the Washington State Medical Commission Statement of Charges, No. M2021-286. Also attached to this Complaint as Ex. B is a copy of the Washington State Medical Commission Stipulated Findings of Fact, Conclusions of Law, and an Agreed Order, No. M2021-286.

[2] Hwang CS, Chang HY, Alexander GC. *Impact of abuse-deterrent OxyContin on prescription opioid utilization*. Pharmacoepidemiol Drug Saf. 2015; 24(2):197–204.

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2000s, the abuse of opioid pain medication had become a national problem. Between the years 2002 and 2004, lifetime nonmedical use of OxyContin increased from 1.9 million to 3.1 million people.[3] By 2004 there were 615,000 new nonmedical users of OxyContin.[4]

7. From 1997 to 2002, there was a 226%, 73%, and 402% increase in fentanyl, morphine, and oxycodone prescribing, respectively.[5] During that same period, the Drug Abuse Warning Network reported that hospital emergency department mentions for fentanyl, morphine, and oxycodone increased 641%, 113%, and 346%, respectively.[6] In the year 2005, a total of 2.1 million people reported prescription opioids as the first drug they had tried, more than for marijuana and almost equal to the number of new cigarette smokers (2.3 million).[7] In other words, by the mid-2000s, prescription opioids had become the new "gateway drug."

The Role Pharmacies and Physicians Played—and Continue to Play—in the Opioid Crisis

8. Today, over 48 million Americans are living with a substance use disorder.[8] In 2021 alone, 106,699 Americans died from drug overdoses. (*See* Figure 1).[9] To put this into perspective, that nearly doubles the amount of U.S. fatalities (58,220) from the entire Vietnam War.

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[3] Substance Abuse and Mental Health Services Administration. National Survey on Drug Use and Health, available at: http://www.oas.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf.
[4] *Id.*
[5] Van Zee A, *The Promotion and Marketing of Oxycontin: Commercial Triumph, Public Health Tragedy. Am J Public Health*, 99(2): 221–227 (2009).
[6] Gilson AM, Ryan KM, Joranson DE, et al. *A reassessment of trends in the medical use and abuse of opioid analgesics and implications for diversion control: 1997–2002*. *J Pain Symptom Manage* 2004; 28:176–188
[7] Substance Abuse and Mental Health Services Administration Results from the 2005 National Survey on Drug Use and Health: national findings. Available at: http://www.oas.samhsa.gov/nsduh/2k5nsduh/2k5Results.pdf.
[8] 2022 National Survey on Drug Use and Health, available at https://www.samhsa.gov/data/release/2022-national-survey-drug-use-and-health-nsduh-releases
[9] National Institute on Drug Abuse, *Drug Overdose Death Rates*, https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates (June 30, 2023).

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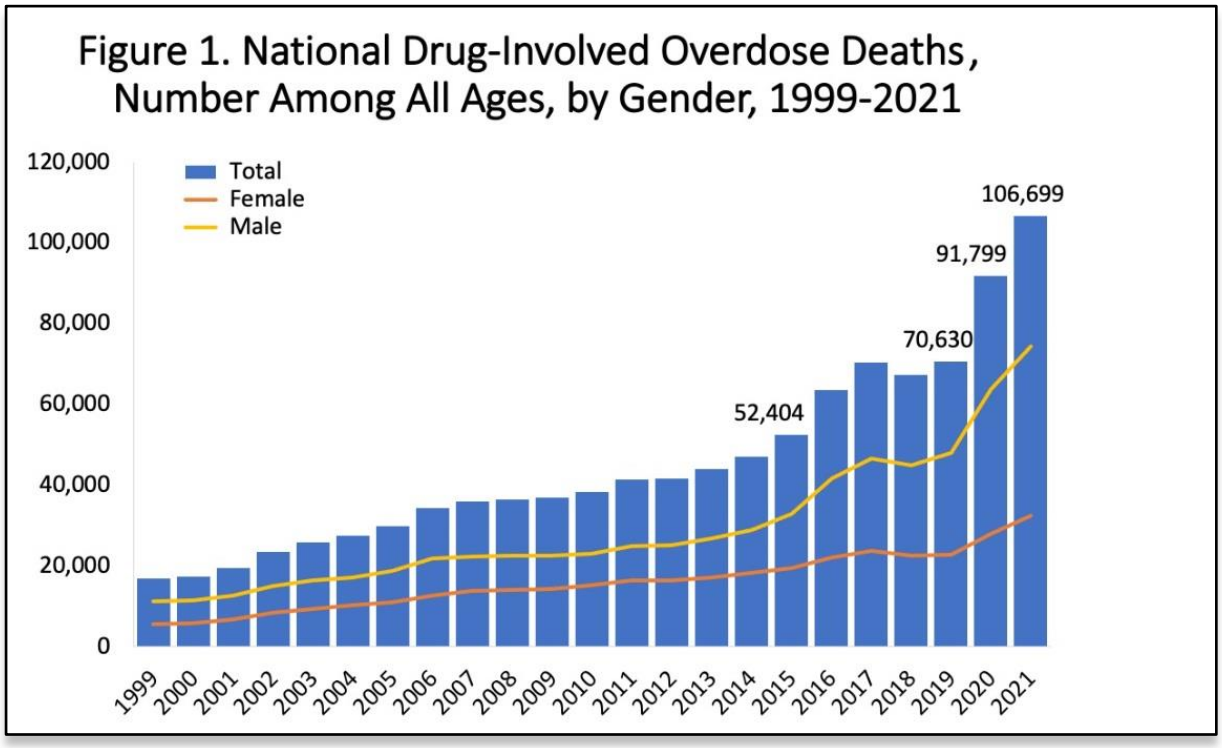

9. Currently, opioids account for 72% of overdose deaths.[10] Approximately 220 Americans die from an opioid overdose each day.[11] In 2017, the Acting Secretary of Health and Human Services declared the opioid crisis a Public Health Emergency.[12]

10. The opioid crisis has had no shortage of instigators looking to line their pockets. Pharmaceutical companies, pharmacies,[13] and unscrupulous doctors[14] have all profited while they watched hundreds of thousands of Americans die.

11. Most abusers of prescription opioids received the drug directly from a doctor's

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[10] National Center for Drug Abuse Statistics, *Drug Overdose Death Rates*, at https://drugabusestatistics.org/drug-overdose-deaths/

[11] Center for Disease Control and Prevention, *Understand the Opioids Overdose Epidemic*, at https://www.cdc.gov/opioids/basics/epidemic.html

[12] Haffajee RL, *Frank RG, Making the Opioid Public Health Emergency Effective*, JAMA Psychiatry 75(8):767-768 (Aug. 2018).

[13] Jan Hoffman, *CVS and Walgreens Near $10 Billion Deal to Settle Opioid Cases*, N.Y. TIMES, Nov. 2, 2022, at https://www.nytimes.com/2022/11/02/health/cvs-walgreens-opioids-settlement.html

[14] Jan Hoffman, *Were These Doctors Treating Pain or Dealing Drugs?*, N.Y. TIMES, Feb. 28, 2022, https://www.nytimes.com/2022/02/28/health/doctors-painkillers-supreme-court.html

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prescription.[15] Pharmacies and physicians, as the last link in the opioid supply chain, have a crucial responsibility as the gatekeepers of dangerous prescription narcotics. Indeed, pharmacies and physicians are uniquely positioned to prevent the diversion of prescription opioids due to their expert knowledge of medications and access to prescription and purchasing data.

12. This unique position, however, also presents the opportunity for abuse. Since the beginning of the opioid crisis, the country has seen a rapid increase in pain clinics and pill mills. The term "pill mill" is used to describe a doctor, clinic, or pharmacy that inappropriately prescribes controlled narcotics. The primary motivation of a pill mill is profit. Pill mill doctors and pharmacies are well aware that the prescriptions they write are ultimately abused. As one FBI agent said regarding one of the nation's most prolific pill mill operators, "[they] did not start the opioid crisis. But they sure as hell poured gasoline on the fire."[16]

II. PARTIES

13. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

14. Plaintiff Bethany Jane Stout is the surviving spouse of Neiland Everett Stout and the duly appointed personal representative of his Estate ("the Estate"), Thurston County Superior Court Case No. 21-4-00619-34. At all times relevant herein, Bethany Stout resided in the State of Washington, currently residing in King County. In addition to serving as Personal Representative of the Estate of her husband, she is a statutory beneficiary in this lawsuit under RCW 4.20 et. seq.

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[15] Substance Abuse and Mental Health Services Administration Results from the 2006 National Survey on Drug Use and Health. Available at: http://www.oas.samhsa.gov/nsduh/2k6nsduh/2k6Results.pdf.

[16] Faith Karimi, *These Florida brothers ran one of the largest opioid 'pill mills' in US history. The FBI says it was linked to thousands of deaths*, CNN (Feb. 3, 2023) available at https://www.cnn.com/2023/02/03/us/american-pain-pill-mill-documentary-cec.

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15. Minor N.S. is the sole surviving son of Neiland Everett Stout. At all times relevant herein, Minor N.S. resided in the State of Washington, currently residing in King County. He is a statutory beneficiary in this lawsuit under RCW 4.20 et. seq.

16. Plaintiff Bethany Stout, the Estate, and Minor N.S. are collectively referred to hereinafter as "Plaintiffs."

17. Defendant Rice is a physician licensed to practice medicine ***with restrictions*** in the state of Washington. At all times relevant herein, Defendant Rice resided in King County, Washington. At all times relevant herein, Defendant Rice was an actual, ostensible, apparent, or implied agent of Defendant Tran Urgent Care & Wellness Centers, LLC (hereinafter "Defendant Tran Urgent Care") working within the course and scope of said employment and/or agency.

18. Defendant Tran Urgent Care is, and at all relevant times mentioned herein, a Washington company located at 710 S 38th St., Suite B, Tacoma, WA 98418, which has and does conduct business in the State of Washington.

19. Defendant Dat Tran is the sole member of Defendant Tran Urgent Care. At all times relevant herein, Defendant Dat Tran resided in King County, Washington.

20. Defendant Lincoln Pharmacy, LLC (hereinafter "Defendant Lincoln Pharmacy") is and at all relevant times mentioned herein, a Washington company located at 821 S 38th St., Tacoma, WA 98418, which has and does conduct business in the State of Washington.

III. JURISDICTION

21. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

22. The superior courts of the state of Washington have jurisdiction over the parties and the subject matter of this litigation.

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23. Venue is proper in this Court pursuant to RCW 4.12.025.

IV. FACTS

24. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

25. Neiland saw Defendant Rice eight different times between January 25 and April 21, 2021. Over the course of those few months, and without ever obtaining a proper medical history or prior records, Defendant Rice prescribed Neiland an escalating dose of dangerous narcotics. Prior to becoming Defendant Rice's patient, Neiland had had a history of substance use disorder.

26. In all, Defendant Rice prescribed Neiland approximately 498 opioid and 774 benzodiazepine tablets. Defendant Rice's treatment records failed to document any objective medical rationale for this extraordinary volume of dangerous narcotics.

27. Defendant Rice's chart entry for Neiland's "Review of Systems (ROS)" for each of Neiland's visits was essentially identical: "reports no muscle aches and no muscle weakness ... He reports no depression and no anxiety. He reports no fatigue." These unremarkable chart entries were wholly inconsistent with the powerful benzodiazepines and opioids Defendant Rice issued to Neiland.

28. Defendant Rice never conducted a pill count or required Neiland to return pills before providing substitute medications, allowing Neiland the opportunity to stockpile these dangerous narcotics.

29. Defendant Rice's prescribing of such a massive amount of opioids and benzodiazepines, with no regard to whether the drugs were being abused, created an unreasonable risk of harm and death to Neiland.

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30. Defendant Rice's gross overprescription of dangerous narcotics could not have been possible without a complicit pharmacy. Defendant Rice exclusively relied on Defendant Lincoln Pharmacy, which is located just a couple blocks away from his office, to dispense all of the 1200+ pills that he prescribed to Neiland. Despite having a corresponding responsibility and independent duty of care to Neiland, Defendant Lincoln Pharmacy never questioned why such a massive amount of dangerous narcotics was being issued to a single patient. Nor did it ever report Defendant Rice even though his prescriptions raised several obvious red flags. All the while, both Defendant Rice and Defendant Lincoln Pharmacy benefited financially.

31. Defendant Rice has already been punished for this deplorable care. On November 15, 2023, Defendant Rice stipulated and agreed that he had committed unprofessional conduct in violation of RCW 18.130.180(4) and (7), and WAC 246-919-865; 246-919-905; WAC 246-919-910; WAC 246-919-970; WAC 246-919-985(3). Defendant Rice is also now restricted from prescribing schedule II, III, and IV medication to patients.

32. Further, a DEA investigation into Defendant Lincoln Pharmacy's practices found that it had failed to: maintain records on substances such as oxycodone and hydrocodone between March 2020 and June 2021;[17] maintain adequate inventories of scheduled drugs; keep records of when and how much of certain scheduled drugs were delivered to the pharmacy; and secure various controlled substances.

The First Visit - Defendant Rice starts Neiland on a high dose of Xanax.

33. Neiland first saw Defendant Rice on January 25, 2021. At his initial visit, Neiland complained of anxiety, telling Defendant Rice he had taken alprazolam (commonly referred to

[17] All of Neiland's prescriptions at issue in this case were written and filled within this timeframe.

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as Xanax)[18] in the past, but had stopped taking it eight months ago. Defendant Rice documented Neiland's presenting problem as "anxiety onset 1/25/2021." Had Defendant Rice bothered to check the Prescription Monitoring Program ("PMP") Database, he would have seen that Neiland had been receiving monthly prescriptions for alprazolam and had just filled a 30-day prescription a couple weeks earlier.

34. The PMP Database would have also shown that Neiland had been filling benzodiazepine prescriptions at multiple pharmacies in multiple cities between February 2019 and January 2021. The PMP Database would have also shown that Neiland began receiving Suboxone and Narcan for substance use disorder in September 2019, which was last filled less than a month before Neiland's first visit with Defendant Rice.

35. In addition to failing to check the PMP Database, Defendant Rice failed to document any discussion of Neiland's history of depression or prior substance use disorder, or other risk factors for prescribing benzodiazepines.

36. Without obtaining this critical medical information, Defendant Rice proceeded to prescribe 90 (1 mg) tablets of alprazolam, three times per day. This was a significant increase from the .5 mg dose Neiland had taken in the past. This also was double the maximum recommended initial dose: "Adults—At first, 0.25 to 0.5 milligram (mg) 3 times a day. Your doctor may increase your dose as needed. However, the dose is usually not more than 4 mg per day."[19]

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[18] Alprazolam, commonly known by the trade name Xanax, is used to reduce anxiety and is in a class of medications known as benzodiazepines. alprazolam is a Schedule IV controlled substance because of it poses a risk of abuse and addiction.

[19] Mayo Clinic, *Drugs and Supplements, Alprazolam (Oral Route)*, https://www.mayoclinic.org/drugs-supplements/alprazolam-oral-route/proper-use/drg-20061040

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37. Defendant Rice also failed to conduct a mental health assessment or refer Neiland to a psychiatrist prior to prescribing benzodiazepines for his reported anxiety.

38. Benzodiazepines should not be the first line of defense for anxiety due to the potential for abuse and the danger of abrupt withdrawal. Had Defendant Rice obtained Neiland's records from prior or concurrent providers or obtained a complete history, he would have known that Neiland had had a seizure in October of 2020, likely due to a benzodiazepine withdrawal.

The Second Visit – Defendant Rice prescribes a dangerous cocktail of Xanax and opioids.

39. Two days after his first visit with Defendant Rice, Neiland returned to the clinic complaining of chronic neck pain. Defendant Rice's documented physical examination was unremarkable other than noting tenderness on the right side of the neck. So, just two days after prescribing Neiland with a high dose of alprazolam, Defendant Rice prescribed him another dangerous narcotic. This time for 30 (15 mg) tablets of morphine sulfate, one tablet per day,[20] as well as 30 (2 mg) tablets of hydromorphone, one tablet every four hours.[21]

40. Defendant Rice never obtained any historical information regarding the onset of Neiland's neck pain, past studies performed, past treatments trialed or asked standard questions to elucidate the etiology of the neck pain symptoms. Defendant Rice's sole focus was on prescribing opioid pain medication, without any consideration of the etiology of the pain.

41. Further, Defendant Rice never performed a risk assessment prior to prescribing opioids. Nor did he ever document his rationale for starting Neiland on a regiment of two different opioid medications.

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[20] Morphine sulfate, commonly known by the trade name MS Cantin, is a potent opioid analgesic medication used for moderate to severe pain. Morphine sulfate is a Schedule II controlled substance because it has a "high potential for abuse, with use potentially leading to severe psychological or physical dependence."

[21] Hydromorphone, commonly known by the trade name Dilaudid, is a potent opioid analgesic medication also used for moderate to severe pain. Hydromorphone is also Schedule II controlled substance.

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42. Defendant Rice also failed to document his rationale for combining opioids with benzodiazepines, which present a risk of profound sedation, respiratory depression, and death.

43. An unsigned, undated pain management contract is included in Neiland's treatment records, acknowledging, among other things, that he would have his prescriptions filled at only one pharmacy and that any medications that were lost or stolen would not be replaced.

The Third Visit – Defendant Rice ups Neiland's doses.

44. Two days after Neiland's second visit, he returned to the clinic. This time he was not seen because Defendant Rice was not working that day.

45. Neiland returned the next day, on January 30, 2021, and asked Defendant Rice to increase his dosage of alprazolam from 1 mg to 2 mg tablets. Defendant Rice prescribed 90 (2 mg) tablets of alprazolam, one tablet three times per day.

46. By this point, Neiland had only been Defendant Rice's patient for five days. Nonetheless, Defendant Rice bumped up Neiland's alprazolam prescription to 6 mg per day, which is 400% of the maximum recommended starting dose, and 150% of the recommended maximum daily dose for all adults.

47. At the same visit, Neiland also claimed that the pain medication was not working. Defendant Rice noted this was likely due to the low dosage and prescribed 120 (2 mg) tablets of hydromorphone, one tablet every four hours, with a note to the pharmacy "up to 4/d; fillable on 2/5 as current dose is too low." Defendant Rice prescribed and additional 30 (30 mg) tablets of morphine sulfate extended release, one tablet every 12 hours, with a note to the pharmacy: "to be filled Feb 11 (current meds will be doubled until then)." Defendant Lincoln Pharmacy ignored these notes and dispensed both of these prescriptions that same day.

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48. Again, there is absolutely no documentation of Defendant Rice's rationale for increasing Neiland's medication to such a high and dangerous dose.

49. Defendant Rice instructed Neiland to return in one month for pain management and to get refills of his medication.

The Fourth Visit – Defendant Rice prescribes more opioids to Neiland with no explanation.

50. Despite the instruction to return in one month, Neiland was back a week later, on February 6, 2021. This was Neiland's fourth visit to Defendant Rice in only ten days. On this visit, Neiland reported an improvement in his pain but had a question about the medication. However, Defendant Rice failed to document his particular question. Defendant Rice proceeded to prescribe more hydromorphone, 44 (4 mg) tablets, with a note to the pharmacy: "pt. taking these w/ his 2 mg dilaudids." Defendant Rice also failed to explain why Neiland was being issued yet another prescription for hydromorphone, despite the fact that, according to Defendant Rice's handwritten note to Defendant Lincoln Pharmacy, Neiland's most recent hydromorphone prescription was supposed to be dispensed on February 5, 2021, the day prior to this visit.

51. Defendant Rice did not document any discussion or rationale for the dosage increase.

A Cry for Help – Neiland reports Defendant Rice to the Medical Commission

52. On February 22, 2021, Neiland filed a complaint against Defendant Rice with the Washington State Medical Commission.

53. In that submission, Neiland asserted Defendant Rice had "wild[ly] overprescrib[ed] controlled substances" without any "examinations or tests."

54. Notably, this was not the first time Defendant Rice had been reported for overprescribing. According to the Case Summary Report, in 2016, a patient reported Defendant

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Rice for "prescribing to a patient who died from oxycodone poisoning." In 2017, a patient reported Defendant Rice for "concerns about [his] prescribing to multiple patients."

55. Neiland's complaint sought "[t]he suspension of this doctors (sic) ability to practice medicine."

56. Neiland also told the Medical Commission that because the clinic's walls did not completely go up to the ceiling, he could clearly hear other doctor-patient conversations. According to Neiland, every conversation he overheard involved the prescribing of some sort of narcotic, typically oxycodone.

57. Around this same time, Neiland reached out to his primary care provider, Molly Mellon, ARNP, about continuing his Suboxone[22] maintenance therapy.

58. Shortly thereafter, he went for a routine urine drug screen and the results were appropriate, as they had been throughout his care with her.

The Fifth Visit – Defendant Rice introduces yet another benzodiazepine.

59. Despite taking steps towards overcoming his addiction, Neiland fell back into Defendant Rice's care on March 6, 2021. On that visit, he requested a refill of hydromorphone. Defendant Rice prescribed 120 (4 mg) tablets of hydromorphone, one tablet four times a day, and prescribed 30 (5 mg) tablets of diazepam,[23] one tablet two times daily for insomnia. Defendant Rice instructed Neiland to return to the clinic on April 3, 2021.

The Sixth Visit – Defendant Rice doubles Neiland's Valium dose.

60. Despite the instruction to return in one month, Neiland was back in one week, on

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[22] Suboxone is a medicine used to treat dependence on opioid and prevents cravings, and it allows many people to transition back from a life of addiction to a life of normalcy and safety.

[23] Diazepam, commonly known by the trade name Valium, is used to reduce anxiety, and is in a class of medications known as benzodiazepines. Diazepam is a Schedule IV controlled substance because of it poses a risk of abuse and addiction.

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March 13, 2021. This time, Neiland requested a dosage increase of diazepam from 5 mg to 10 mg. Neiland explained that his insomnia and anxiety were burdensome, and he needed more help controlling his sleep time.

61. Defendant Rice documented that he reviewed Neiland's medications, and based on a history and a physical examination, Defendant Rice agreed to doubling the dosage. However, there is no objective history or physical examination documented in the record. There is also no documented discussion regarding Neiland's onset of insomnia, or rationale for the addition of diazepam in addition to the alprazolam already being prescribed. Defendant Rice failed to ask appropriate questions about Neiland's sleep complaints, or to appreciate the risk of adding yet another sedating medication.

62. Defendant Rice prescribed 30 (10 mg) tablets of diazepam and again wrote an explanation to the pharmacy: "Pt uses for sleep; Currently doubling up on the 5 mg Valiums, will run out on Mar 24 (of the 5's)." Defendant Rice also prescribed 90 more (2 mg) tablets of alprazolam.

63. Defendant Rice then instructed Neiland to return on April 3, 2021 for a change from hydromorphone to oxycodone and for a urine test. The one "drug testing form" in Neiland's chart, which was undated, shows positive for buprenorphine, benzodiazepines and oxycodone. Buprenorphine is the primary active ingredient in Suboxone and is an obvious indication that a patient is undergoing treatment for opioid use disorder. This should also have alerted Defendant Rice, if he wasn't already aware, that Neiland was being prescribed buprenorphine from someone else. This, at the very least, should have initiated a discussion with Neiland.

64. In a statement submitted pursuant to the Washington Department of Health's investigation of Neiland's death, Defendant wrote about the March 13, 2021 visit: "It was at this

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time that I noticed an absence of metabolytes (sic) in his urine, so I checked the registry and discovered that he had not filled any of the Rx's I had given him except for Lamotrigene (sic)." In addition to being incorrect—Neiland had in fact filled all but one prescription written by Defendant Rice—there is absolutely no mention of this discovery anywhere in Defendant Rice's charting.

The First Near Miss - Neiland overdoses on Defendant Rice's prescription narcotics.

65. Unsurprisingly, after being under Defendant Rice's care for less than two months, on March 17, 2021, Neiland suffered an overdose. He was rushed to the emergency department with acute respiratory failure. Neiland was admitted and hospitalized for two days.

Neiland tries to get help again.

66. Two weeks after his overdose, on March 30, 2021, Neiland saw psychiatrist, Edward P. Case, M.D. Neiland presented with complaints of insomnia and anxiety related to concerns "about his ability to be a good parent."

67. According to Dr. Case, "[w]hen he first came in his stated goal was to get off of the Benzodiazepine medication so that he would not be gripped by need to take the next dose. He had gotten onto Alprazolam 2 mg TID as well as diazepam 10 mg qhs, which he felt was helpful, but he could not change as he felt he was stuck. He reported that he had brought this up with [Defendant Rice] and had not been met with much for alternatives.

68. Following the visit, Dr. Case began a taper of Neiland's benzodiazepine medications.

69. Neiland did not show for his April 3, 2021 appointment with Defendant Rice.

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The Seventh Visit – Neiland relapses back into Defendant Rice's "care."

70. Despite Neiland's efforts to combat his addiction, he refilled his prescription for 90 (2 mg) tablets of alprazolam on April 10, 2021.

71. Neiland saw Defendant Rice on April 19, 2021 wanting to discuss his benzodiazepine medications. Neiland told Defendant Rice that his alprazolam medication had been stolen. Despite the provision in the pain contract regarding lost or stolen medications, Defendant Rice prescribed 84 (1 mg) tablets of alprazolam, one tablet four times per day, and 150 (4 mg) tablets of hydromorphone, one tablet five times a day.

72. Defendant Rice also prescribed 30 (.25 mg) tablets of triazolam,[24] one tablet at bedtime.

73. Defendant Rice documented that the clinic called the pharmacy to cancel the prescription for diazepam. However, the next day, on April 20, 2021, Neiland refilled the two prescriptions for diazepam, one written on March 6th for 30 (5 mg) tablets of diazepam and one written on March 13th for 30 (10 mg) tablets of diazepam.

74. In his statement to the Washington Health Department, Defendant Rice wrote about the April 19, 2021 visit stating: "[Neiland] came back on 4/19 and said his wife was leaving him, that he couldn't sleep, so I gave him a month's worth of Halcion and called the Pharmacy to D/C the Diazepam. I also increased the Dilaudid to 5/d (knowing he wasn't taking them anyway) . . . ." Both of these prescriptions, however, were filled by Neiland on April 19, 2021. Defendant Rice never considered the possibility that Neiland could be stockpiling medications, creating a significant risk of diversion, misuse, overdose and death.

[24] Triazolam, also known by the trade name Halcion, is a benzodiazepine medication used to treat insomnia. As with other benzodiazepines it can increase the risk of serious or life-threatening breathing problems, sedation or coma if used along with alcohol or other medications, such as opiates.

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The Last Visit – More opioids; more benzodiazepines

75. Neiland's last visit was a couple days later, April 21, 2021. Defendant Rice documented that the reason for the visit was a question about Neiland's depression medication, but failed to document what that question was. Defendant Rice failed to note any discussion about depression or suicidal ideation. Defendant Rice prescribed 90 (2 mg) tablets of alprazolam, one tablet three times per day. Defendant Rice also prescribed four (10 mg) tablets of oxymorphone,[25] one tablet twice per day, writing that this was a two-day trial to see if it worked as well as hydromorphone. Defendant Rice scheduled an appointment for May 17, 2021; however, Neiland never returned to the clinic.

The Second Near Miss - Neiland overdoses on Defendant Rice's prescription narcotics again.

76. On April 25, 2021, Neiland was found unresponsive in his home. EMTs responded, and Neiland was intubated and transported to a local hospital where he was admitted to the ICU. Neiland presented with acute hypoxemic and hypercarbic respiratory failure due to an overdose of benzodiazepines and opioids. Neiland was discharged on May 1, 2021.

The end of Neiland's battle with addiction and his tragic death

77. After being discharged from the hospital, Neiland underwent inpatient substance use disorder treatment from May 4, 2021, through June 20, 2021.

78. Unfortunately, after completing the rehab program, Neiland relapsed. On June 25, 2021, five days after leaving rehab, Neiland was found dead in his home.

79. The Coroner's Report revealed that Neiland's body had toxic levels of benzodiazepines and opioids.

[25] Oxymorphone is a potent opioid analgesic medication used for moderate to severe pain. Oxymorphone is a Schedule II controlled substance because of it poses a risk of abuse and addiction.

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80. Neiland left behind his wife, Bethany and their 2-month old baby. At the request of the Washington Department of Health as part of its investigation into Defendant Rice, Bethany provided the following in a statement:

> My name is Bethany Stout, I am Neiland's wife. Unfortunately, Neiland passed away due to a drug overdose on June 25th, one day before his 39th birthday. Neiland left behind a 2-month-old son (at the time) and me, his wife. I want you to hear from my perspective what impact this has had on my life, and what impact his death will continue to have for many years to come as his son begins to want to know what happened to his daddy. I wish Neiland were still alive to be able to tell you for himself that the actions of Dr. Rice had grave consequences on his life. I believe the complaint filed by Neiland was a cry for help, help that never came.
>
> . . .
>
> My son and I have now had to pick up the pieces of our lives without Neiland. Our son will never get to hear his dad speak, hold his hand, ride a bike with him, play golf (one of Neiland's passions) or watch him have his first day of Kindergarten and not to mention the countless other milestones in his life that will be absent of Neiland. The implications of this negligence will have lasting effects for my son and my lives; some of which I probably don't even know yet.

The Department of Health's Investigation into Defendant Rice

81. Shortly after Neiland reported Defendant Rice for overprescribing, the Washington Department of Health began an investigation.

82. In Defendant Rice's initial response to the Department, which he submitted just three days prior to Neiland's death, he expressed great "displeasure having to go through this process on someone who is an obvious 'plant' for someone or for something, trying to frame me for doing something wrong."

83. His response contained a number of factual inaccuracies. First, Defendant Rice claimed he "prescribed [Neiland] Alprazalam (sic), initially .5 mg." However, a review of the PMP Database shows that the first prescription Defendant Rice ever wrote for Neiland was for 90 (1 mg) tablets of alprazolam. The PMP Report indicates that this prescription was written on

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January 25, 2021, the date of Neiland's first visit with Defendant Rice. There is no entry on the PMP Database for a .5 mg prescription.

84. Defendant Rice also claims that after upping Neiland's dose of alprazolam to 2 mg, three times a day, he reduced it back down to 1 mg, four times a day. Although it is true that Defendant Rice wrote a prescription for 1 mg tablets of alprazolam on April 19, 2021, he ignored the fact that two days later, on April 21, 2021, he wrote an additional prescription for 90 (2 mg) alprazolam tablets. Defendants allowed Neiland to fill both prescriptions. This also ignores the fact that Defendant Rice also prescribed Neiland with two other benzodiazepines concurrently (Diazepam and Triazolam).

85. Defendant Rice also claimed that at one point, he actually checked the "registry" to see if Neiland had been filling his prescriptions. Defendant Rice claims that his review of the PMP Database showed Neiland had only filled prescriptions for Lamotrigine. Again, this is utterly inconsistent with the PMP Database.

86. Defendant Rice asserted that his rationale for prescribing Neiland with such a large amount of dangerous narcotics was "to believe the patient at face value, to take care of the immediate problems related to his pain and anxiety." Defendant Rice also admitted that, even though Neiland "had 4 visits in the first 10 days" of becoming his patient, this "did not alarm [him] initially."

87. Nonetheless, Defendant Rice stated that at a certain point he became suspicious of Neiland and "thought I was being played." But, there is no reference to this suspicion anywhere in Defendant Rice's chart notes. Nor is his claimed suspicion consistent with his blatant overprescribing of dangerous narcotics.

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88. Among the various inconsistencies and issues with Defendant Rice's response to the Department of Health, he did get one thing right: "***I gave him some of exactly what he asked for.***"[26]

89. On November 15, 2023, Defendant Rice agreed to enter into Stipulated Findings of Fact, Conclusions of Law, and an Agreed Order with the Washington State Department of Health. By doing so, Defendant Rice avoided a hearing on the matter.

90. In the Agreed Order, despite his claim that Neiland's complaint was "some kind of set-up, rather than a legitimate complaint," Defendant Rice stipulated and agreed that he had committed unprofessional conduct in violation of RCW 18.130.180(4) and (7), and WAC 246-919-865; 246-919-905; WAC 246-919-910; WAC 246-919-970; WAC 246-919-985(3).

91. As a result, the Department suspended Defendant Rice's privileges to prescribe, administer, order or provide, or direct others to prescribe, administer, order, or provide Schedule II, III, and IV medications to patients.

Defendant Lincoln Pharmacy violated its obligations under the Controlled Substances Act.

92. Defendant Lincoln Pharmacy is located three blocks west of Defendant Rice's office.

93. Defendant Lincoln Pharmacy was the exclusive pharmacy Defendant Rice used for issuing prescriptions to Neiland.

94. Defendant Lincoln Pharmacy is registered to distribute and/or dispense controlled substances under the Controlled Substances Act ("CSA").

[26] (Emphasis added).

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95. Defendant Lincoln Pharmacy, as a registrant under the CSA, is required to maintain "effective controls against diversion" of controlled substances.[27] This includes designing and operating a system to identify suspicious orders of controlled substances.[28] Once a suspicious order is identified, the pharmacy must report it to the DEA.

96. The CSA requires that controlled substances be dispensed only pursuant to a valid prescription written by a medical professional acting in the ordinary course of professional practice. Pharmacies have a corresponding responsibility with physicians to determine whether a prescription for a controlled substance is written for a legitimate medical purpose before dispensing it.

97. A prescription that is not for the purpose of treating a patient's genuine medical condition is an illegitimate prescription. One source of illegitimate prescriptions are unscrupulous doctors. Unscrupulous doctors—sometimes referred to as pill mills—write medically unnecessary or excessive prescriptions for patients, often in exchange for cash payment.

98. Signs that a prescription may be illegitimate are commonly referred to as "red flags," which are warning signs indicating that further inquiry is required. Red flags include, but are not limited to: (a) multiple prescriptions to the same patient using the same doctor; (b) multiple prescriptions by the same patient using different doctors; (c) prescriptions of unusual size and frequency for the same patient; (d) an unusual or disproportionate number of prescriptions paid for in cash; (e) prescriptions paired with other drugs frequently abused in combination of one another such as opioids and benzodiazepines; and (f) volumes, doses, or

[27] 21 U.S.C. § 823 (d)(1), 21 U.S.C. § 824 (d)(2).
[28] 21 U.S.C. § 832 (a)(1).

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combinations that suggest that the prescriptions were likely being diverted or were not issued for a legitimate medical purpose.

99. Any red flag must be resolved through due diligence before the prescription is dispensed. If, even after investigating the order, there is any remaining basis to suspect that a customer is engaged in diversion, the order must be deemed suspicious, and the DEA must be informed.

100. Had anyone at Defendant Lincoln Pharmacy bothered to perform even a cursory investigation of the PMP Database, they would have found ***all*** of the aforementioned red flags present in Defendant Rice's treatment of Neiland. The most obvious red flag should have been the sheer volume and frequency of the prescriptions (approximately 498 opioid and 774 benzodiazepine tablets). Further, the PMP Database would have shown that all of the prescriptions filled at Defendant Lincoln Pharmacy were paid by "Private Pay." Further, Defendant Rice prescribed opioids and benzodiazepines in tandem with one another for essentially the entirety of Neiland's care.[29] Several of the prescriptions were redundant of each other or in excess of the amount required for normal treatment.

101. In addition to failing to perform any investigation into Defendant Rice's suspicious prescribing pattern, Defendant Lincoln Pharmacy also failed to make any report to the DEA.

102. The CSA also imposes crucial recordkeeping obligations on pharmacies. "[E]very registrant . . . dispensing a controlled substance or substances shall maintain, on a current basis,

[29] Opioids and benzodiazepines are commonly combined into "cocktails." Such cocktails are widely known to be diverted, and when taken together, significantly increase a patient's risk of death or overdose.

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a complete and accurate record of each such substance . . . received, sold, delivered, or otherwise disposed of by him."[30]

103. If pharmacies adhere to their recordkeeping obligations, they possess valuable dispensing data providing unique and detailed insight into the volume, frequency, dose, and type of controlled and non-controlled substances a pharmacy typically orders. Pharmacies must utilize this information to identify patterns of diversion and for auditing, training, and investigation of suspicious activity.

104. Notably, in a recent investigation into Defendant Lincoln Pharmacy's practices, the DEA found that: Lincoln Pharmacy failed to maintain records on substances such as oxycodone and hydrocodone between March 2020 and June 2021;[31] Lincoln Pharmacy's inventories of scheduled drugs were inadequate; the pharmacy failed to keep records of when and how much of certain scheduled drugs were delivered to the pharmacy; and the pharmacy failed to secure some of the controlled substances.[32]

Defendants Tran Urgent Care & Dat Tran's corporate medical practice.

105. In Washington, it is unlawful for a corporation to practice medicine.

106. In Washington, it is unlawful for an unlicensed person to practice medicine.

107. In Washington, it is unlawful for a corporation to have any part in owning, maintaining, or operating an office that practices medicine.

108. In Washington, it is unlawful for an unlicensed person to have any part in owning, maintaining, or operating an office that practices medicine.

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[30] 21 U.S.C. § 827(a).
[31] All of Neiland's prescriptions were written and filled within this timeframe.
[32] United States Attorney's Office Press Release, *DOJ and Lincoln Pharmacy in Tacoma settle allegations the pharmacy failed to follow the Controlled Substances Act*, https://www.justice.gov/usao-wdwa/pr/doj-and-lincoln-pharmacy-tacoma-settle-allegations-pharmacy-failed-follow-controlled (Feb. 27, 2023).

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109. These rules, also known as the corporate practice of medicine doctrine, are designed to protect the public from possible abuses arising from the commercial exploitation of the practice of medicine.

110. Defendant Tran Urgent Care is owed by Defendant Dat Tran.

111. Defendant Dat Tran is not a medical doctor.

112. Defendant Dat Tran does not possess a license to practice medicine in the State of Washington.

113. Under Washington's corporate practice of medicine doctrine, it is unlawful for Defendants Tran Urgent Care (an LLC) and Dat Tran to own or operate a medical clinic.

V. CAUSE OF ACTION # 1 – MEDICAL NEGLIGENCE OF DEFENDANT RICE

114. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

115. Defendant Rice had a duty to exercise the degree of care, skill, and learning expected of a reasonably prudent physician in the State of Washington, acting in the same or similar circumstances.

116. Defendant Rice breached the standard of care by, among other things:

a. recklessly prescribing escalating amounts of dangerous narcotics to Neiland;

b. having a custom, pattern and practice of recklessly prescribing inappropriate amounts of dangerous narcotics to his patients;

c. ignoring the potentially fatal impact of combining opioids and benzodiazepines;

d. failing to ever obtain a proper medical history for Neiland;

e. failing to investigate the etiology of Neiland's medical complaints;

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f. failing to consult Neiland's prior and concurrent medical providers;

g. failing to consult prior medical records;

h. failing to consult the PMP database;

i. failing to keep proper records of his treatment of Neiland;

j. failing to administer regular pill counts;

k. failing to administer regular drug screening;

l. failing to adhere to a pain management contract;

m. failing to recognize obvious signs of addiction; and

n. replacing dangerous narcotics that the patient claimed were lost or stolen.

117. These breaches of the standard of care proximately caused injuries, harms, and losses to the Plaintiffs.

VI. CAUSE OF ACTION # 2 – MEDICAL NEGLIGENCE OF DEFENDANT TRAN URGENT CARE

118. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

119. Defendant Tran Urgent Care and its agents and employees had a duty to exercise the degree of care, skill, and learning expected of reasonably prudent health care providers in the State of Washington, acting in the same or similar circumstances.

120. Defendant Tran Urgent Care, and its agents and employees, breached the standard of care by failing to have policies, customs and practices to detect and prevent its providers and other agents or employees from issuing suspicious and/or illegitimate prescriptions to its patients and the public at large. Defendant Tran Urgent Care, and its agents and employees, also breached

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the standard of care by having a custom, pattern and practice of recklessly prescribing inappropriate amounts of dangerous narcotics to its patients.

121. These breaches of the standard of care proximately caused injuries, harms, and losses to the Plaintiffs.

VII. CAUSE OF ACTION # 3 – DEFENDANT TRAN URGENT CARE'S NEGLIGENT HIRING AND RETENTION OF DEFENDANT RICE

122. Defendant Rice had received previous patient complaints regarding unprofessional and dangerous conduct, including complaints regarding the overprescription of opioid painkillers. One of these complaints specifically involved a patient "who died from oxycodone poisoning."

123. Through the use of reasonable care, Defendant Tran Urgent Care knew or should have known about these prior complaints.

124. Defendant Tran Urgent Care breached its duty of care owed to Plaintiffs by retaining and/or hiring Defendant Rice despite the fact that it knew or should have known about these prior complaints.

125. These breaches of duty of care owed to Plaintiffs caused injuries, harms, and losses to the Plaintiffs.

VIII. CAUSE OF ACTION # 4 – VICARIOUS LIABILITY OF DEFENDANT TRAN URGENT CARE

126. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

127. At all relevant times, Defendant Rice was an actual, ostensible, apparent, or implied agent of Defendant Tran Urgent Care within the course and scope of said employment and/or agency.

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128. Defendant Tran Urgent Care is vicariously liable for the negligence alleged herein against Defendant Rice.

IX. CAUSE OF ACTION # 5 – NEGLIGENCE & VICARIOUS LIABILITY OF DEFENDANT LINCOLN PHARMACY

129. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

130. Defendant Lincoln Pharmacy and its agents and employees had a duty to exercise the degree of care, skill, and learning expected of reasonably prudent health-care providers in the State of Washington, acting in the same or similar circumstances.

131. Defendant Lincoln Pharmacy and its agents and employees breached the standard of care by, among other things:

a. failing to recognize "red flags" regarding Defendant Rice's prescribing patterns such as combining prescriptions for opioids and benzodiazepines and the suspicious frequency and volume of narcotics commonly associated with abuse and diversion;

b. failing to investigate or resolve the red flags;

c. failing to report Defendant Rice's suspicious reporting behavior to the DEA;

d. failing to design and implement policies, practices and procedures for detecting suspicious prescriptions;

e. failing to maintain effective controls against diversion of controlled substances;

f. failing to consult the PMP Database;

g. allowing Neiland to fill cancelled prescriptions;

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h. allowing Neiland to fill certain prescriptions earlier than prescribed;

i. failing to maintain proper records on substances such as oxycodone and hydrocodone;

j. failing to maintain adequate inventories on controlled substances;

k. failing to keep records of when and how much of certain scheduled drugs were delivered to the pharmacy; and

l. failing to secure a number of controlled substances.

132. These breaches of the standard of care proximately caused injuries, harms, and losses to the Plaintiffs.

133. At all relevant times, Defendant Lincoln Pharmacy's agents and employees referenced in this section were the actual, ostensible, apparent, or implied agents of Defendant Lincoln Pharmacy working within the course and scope of said employment and/or agency.

134. Defendant Lincoln Pharmacy is vicariously liable for the negligence alleged herein against its agents and employees referenced in this section.

X. CAUSE OF ACTION # 6 – DEFENDANTS TRAN URGENT CARE & DAT TRAN'S CORPORATE PRACTICE OF MEDICINE

135. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

136. At all times relevant herein, Defendants Tran Urgent Care and Dat Tran were engaged in the unlawful corporate practice of medicine.

137. The rule prohibiting the corporate practice of medicine is designed to protect the public from possible abuses arising from the commercial exploitation of the practice of medicine.

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138. In the practice of medicine, the safety and health of the patient must always be the top priority.

139. The unlawful corporate practice of medicine risks prioritizing profits above patient safety.

140. Thus, allowing corporations like Defendant Tran Urgent Care and businessmen like Defendant Dat Tran to engage in the practice of medicine jeopardizes the safety of the public.

141. Defendants Tran Urgent Care and Dat Tran's unlawful corporate practice of medicine violated the standard of care and proximately caused injuries, harms, and losses to the Plaintiffs.

XI. DAMAGES

142. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

143. As a direct and proximate result of the negligence of Defendants, Plaintiffs have been forced to suffer the loss of Neiland's love, society, and affection. Plaintiffs have also sustained medical and other expenses in an amount that will be proven at trial. Plaintiffs seek a verdict for all damages permissible under Washington law for Neiland's wrongful death.

XII. WAIVER OF PHYSICIAN-PATIENT PRIVILEGE

144. Plaintiffs reallege and incorporate every allegation of this Complaint as if each were set forth fully herein.

145. In filing this lawsuit, Plaintiffs do not waive any physician-patient privileges but, instead, intend to rely upon the protections afforded by the Washington Supreme Court in *Loudon v. Mhyre*, 110 W2d 675, 756 P.2d 138 (1998). Thus, Plaintiffs do not authorize any *ex parte* contact, directly or indirectly, with any of Neiland's treating physicians or medical providers

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either by way of in person interviews, telephone conversations or conferences, correspondence or requests for medical records except through formal discovery as permitted by Washington law.

PRAYER FOR RELIEF

A. An award of economic damages, including but not limited to past and future medical expenses, past and future lost wages and loss of earning capacity, and loss of domestic services in amounts to be established at the time of trial.

B. An award of non-economic damages in an amount to be determined at trial.

C. Statutory costs and attorney fees.

D. For all other relief permissible under Washington law.

DATED this 17 day of April, 2024.

FRIEDMAN | RUBIN ® PLLP

By: _____

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