

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	C.A. FILE NO.: 2022-CP-20-_____
	)	
	)	

EDITH PEOPLES, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	SUMMONS
FLOYD YOUNG,	)	
	)	**Jury Trial Demanded**
Plaintiff(s),	)	
	)	
	)	
vs.	)	
	)	
PRUITT HEALTH – RIDGEWAY,	)	
	)	
Defendant(s).	)	

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE SUMMONED AND REQUIRED to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribed at his office, Post Office Box 11785, 546 E. Main Street, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the prescribed time, a judgment by default may be entered against you for the amount or other remedy requested in the attached Complaint.

EXHIBITA

{Signatures on following page}

s/Creighton B. Coleman
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January 16, 2022

Winnsboro, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	C.A. FILE NO.: 2022-CP-20-____
	)	
	)	

EDITH PEOPLES, AS PERSONAL	)	
REPRESENTATIVE OF THE ESTATE OF	)	
FLOYD YOUNG,	)	COMPLAINT
	)	**Jury Trial Demanded**
Plaintiff(s),	)	
	)	
	)	
vs.	)	
	)	
PRUITT HEALTH – RIDGEWAY,	)	
	)	
Defendant(s).	)	

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Edith Peoples, is a citizen and resident of Fairfield County, South Carolina and was the power of attorney for Floyd Young during his life. Her application for appointment has been filed and is awaiting a court order as the duly appointed Personal Representative of the Estate of Floyd Young. Ms. Peoples brings this action as a survivorship action on behalf of the Estate of Floyd Young.
2. Floyd Young, deceased, died May 30, 2020, was a vulnerable adult, and was a citizen and resident of Fairfield County. Mr. Young, at all times hereinafter mentioned, was an inpatient at Pruitt Health- Ridgeway.
3. The Defendant, Pruitt Health – Ridgeway, upon information and belief, is a nursing and rehabilitation center owned and operated by Pruitt Health in Ridgeway, Fairfield

County, South Carolina. Pruitt Health Ridgeway, was at all times hereinafter mentioned, the treating facility for Floyd Young.

4. Floyd Young, deceased, was diagnosed with dementia, schizophrenia, bipolar disorder, anxiety and depression and pica and was an inpatient with Pruitt Health Ridgeway since on or about March 2012 and up until the time of his death.
5. Mr. Young was incontinent and required frequent cleaning and changing. Due to his pica, he has been known to chew on his bedgown, bedsheets, his diaper brief, his own feces and other non-food items. His pica was well documented in Pruitt Health records.
6. Mr. Young was under constant skilled nursing care due to his conditions, decline in mental cognition and his total dependence for his needs for daily living and activity. Mr. Young could not walk, had difficulty speaking and could not make his needs known to the staff.
7. In July, 2019, Mr. Young was taken to the emergency room at Provident Health Northeast for sepsis, pneumonia, urinary tract infection, and a pressure ulcer on his right foot. During his stay at Providence, it was determined that he needed a feeding tube due to aspiration pneumonia.
8. On or about July 23, 2019, Mr. Young had a PEG tube placement while at Provident Health and was discharged from Providence on or about July 25, 2019 with an abdominal binder and hand mittens to prevent him from pulling out his PEG tube.
9. Mr. Young returned to Pruitt Health Ridgeway on or about July 25, 2019 and the notes from Pruitt only occasionally document the use of the hand mittens and abdominal binder. The purpose of the hand mittens and abdominal binder according to the CAA

Physical Restraint Assessment, performed on August 6, 2019, was to prevent him from pulling his g- tube out and from pulling his brief and eating it.

10. On or about the evening of August 9, 2019, Mr. Young's PEG tube became dislodged. Upon information and belief, the staff at Pruitt made multiple attempts to reinsert the tube which is suggested by the cuts and ulcers of his gastric tissues found on admission by Prisma Health Richland.
11. On or about August 10, 2019, the doctors at Prisma Health Richland performed chest studies which and found a large colonic and rectal fecal load. It was also determined that he had ulcers on his right heel.
12. On or about August 10, 2019, Mr. Young had an exploratory laparotomy which related to his gastric fistula and a foreign body was discovered and removed from his gastric cavity. It was later identified as a tan/white latex glove.
13. Mr. Young was discharged on or about August 16, 2019.
14. At all times, the Defendant, Pruitt Health – Ridgeway, acted by and through their agents, servants or employees. The Defendant, Pruitt Health- Ridgeway is vicariously responsible for the negligent and careless actions or inactions of its employees.
15. Mr. Young was a medically complex patient with advanced dementia and a history of PICA. The staff at Pruitt Health Ridgeway failed to take proper preventative measures in the care of Mr. Young. He was allowed to swallow a latex glove despite his history of PICA, had his abdominal binder removed without first consulting the nurse practitioner, and was not wearing his mittens which, more likely than not would have preventing him from pulling out his G-tube.
16. The nurses made multiple attempts to reinsert Mr. Young's feeding tube without consulting the nurse practitioner, causing multiple ulcerations to Mr. Young's GI tract,

needing ultimate surgical exploratory laparotomy for further evaluation. Mr. Young ultimately developed severe peritonitis from the presence of the latex glove in his stomach, requiring surgical intervention, and a prolonged hospital course. In addition, Mr. Young was not properly followed by the staff at Pruitt Health Ridgeway and was allowed to develop a stage 4 pressure ulcer to his right foot.

JURISDICTION

17. This Court has subject-matter jurisdiction over the claims in this lawsuit under Article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.
18. This Court has personal jurisdiction over Defendant under South Carolina Code § 36-2-803.
19. Venue is proper under South Carolina Code §§ 15-7-30.
20. The subject matter of this action involves an injury that occurred at Defendant's assisted-living facility.
21. Edith Peoples is the Personal Representative of the Estate of Floyd Young.

FOR A FIRST CAUSE OF ACTION SURVIVORSHIP - NEGLIGENCE

22. Plaintiff incorporates all above paragraphs as if specifically contained herein where not inconsistent with this cause of action.
23. The Defendant, Pruitt Health – Ridgeway, by and through its agents, and employees had a duty to monitor and turn Mr. Young. Due to his severe PICA, they had a duty to “pica-proof” his surrounding and ensure the safety and health of Mr. Young and other patients at the rehabilitation facility.
24. The Defendant, Pruitt Health- Ridgeway, acting by and through its agents, servants or employees, was negligent, reckless, willful, wanton and or grossly negligent in the following particulars:

- (a) Leaving a latex glove out that Mr. Young could eat despite the nursing home staff knowing that he had an eating disorder (PICA);
- (b) Failing to remove the latex glove from a location where Mr. Young could reach it and in failing to “pica-proof” Mr. Young’s surroundings;
- (c) Failing to ensure that Mr. Young wore hand mittens or an abdominal binder to prevent Mr. Young from pulling out his G-tube;
- (d) Failing to notice that the latex glove was missing and failing to closely monitor Mr. Young;
- (e) In discontinuing the abdominal binder on their own, despite hospital discharge recommendations to the contrary, as they deemed it was ineffective;
- (f) In repeatedly attempting to reinsert the dislodged G-tube before contacting the nurse practitioner for further instructions;
- (g) In delaying treatment and failing to send Mr. Young to the hospital when the medical records suggest that Mr. Young’s G-tube became dislodged in the morning and he was not sent until late at night around 10:05pm.
- (h) In attempting to reinsert Mr. Young’s G-tube multiple times before he was finally sent to the emergency room which resulted in multiple ulcerations around Mr. Young’s GI tract that ultimately resulted in the need for surgery in the form of an exploratory laparotomy to further evaluate his symptoms, replace the G-tube, and repair the ulcerations that were caused by the nurses’ attempts to reinsert the tube;
- (i) In failing to evaluate Mr. Young and follow proper skin breakdown strategies to prevent pressure ulcers resulting in the development of a stage 4 pressure ulcer to his right foot.

25. These acts were wanton and reckless, and clearly represented a deviation in the standard of care for a patient in a long-term care setting.

26. As a direct and proximate cause of the foresaid negligent, careless, reckless, willful and wanton actions of the Defendant, Pruitt Health- Ridgeway, by and through their agents, servants or employees, the Plaintiff’s decedent, Floyd Young, sustained personal injuries and damages as follows;

- a. Mr. Young had to undergo medical treatment and surgeries;

- b. Mr. Young incurred medical bills and expenses;
 - c. Mr. Young suffered physical injury to his person including the ulcerations around his G-Tube, the pressure ulcers of his foot and the surgical intervention;
 - d. Mr. Young endured mental anguish, anxiety, pain and suffering;
 - e. In other ways as a judge or jury may determine.
27. The Plaintiff, Edith Peoples, on behalf of the Estate of Floyd Young, accordingly is entitled to recover all actual and compensatory damages for the survival claim of Floyd Young in an amount to be proven at trial including but not limited to medical expenses, funeral expenses, pain and suffering, loss of enjoyment of life, mental anguish, emotional distress.
28. The Plaintiff, Edith Peoples, as the personal representative of the estate of Floyd Young, is also entitled to recover punitive damages in an amount to be proven at trial.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount of actual damages sufficient to compensate the Plaintiffs for the damages and losses suffered by Floyd Young, including all actual damages, pain and suffering, loss of enjoyment of life for the benefit of the estate of Floyd Young, on the survivorship cause of action, and for punitive damages as may be awarded by a jury and for such other and further relief as the Court may deem just and proper.

{Signatures on following page}

s/Creighton B. Coleman

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Attorneys for Plaintiff

January 16, 2022
Winnsboro, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
C.A. FILE NO.: 2021-NI-20-_____

EDITH PEOPLES, AS GUARDIAN FOR
FLOYD YOUNG, A VUNERABLE ADULT,

Plaintiff(s),

vs.

PRUITT HEALTH – RIDGEWAY,

Defendant(s).

AFFIDVAIT OF RONALD J.
SCHWARTZ, M.D., FACP

S.C. Code Ann. §15-36-100

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, WHO BEING DULY SWORN, STATES AS FOLLOWS:

1. I am Board Certified in Internal Medicine (original certification in September 1993 and recertified in 2003 and 2013; I am Board Certified in Internal Medicine – Geriatric Medicine (original certification in September, 1996 and recertified in 2006 and 2016); I am Board Certified in Internal Medicine – Hospice and Palliative care (certified in October 2012); I am Certified Medical Director in Long Term Care (original certification 9n January 1999 and recertified in December 2010, and December 2017); I am Board Certified in Internal Medicine – Geriatric Medicine – Beta Tester (2012 to present).

2. I am currently affiliated with Yale New Haven Hospital and Midstate Medical Center.

3. I am licensed to practice medicine in Connecticut (1994 to present), New York (1992 to present), Pennsylvania (1988 to present) and Florida (1988 to present).

4. I attended Autonomous University of Guadalajara, Mexico from January, 1981 to June, 1981. In August, 1981, I began attending Spartan Health Sciences University, St. Lucia, West Indies until receiving my medical degree in September, 1984.

5. I did both my internship and residency (in Internal Medicine) at St. Barnabas Hospital, Bronx, New York.

6. From July 1989 to June, 1991, I obtained a Fellowship in Geriatric Medicine at Philadelphia Geriatric Center, Albert Einstein Medical Center, Philadelphia, Pennsylvania.

7. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to Floyd Young in this case.

8. My current practice is located in Wallingford, Connecticut. Since November, 2000, I have served as the Medical Director for Masonicare Health Center, where I supervise the education of Yale geriatric fellows, residents and APRN students through clinical rotations in the geriatric, medical psychiatric unit and the geriatric assessment program.

9. I have also served as Medical Director for Masonicare Home Health and Hospice from March, 2010 to the present.

10. I belong to various professional organizations and have done academic presentations as noted in my current CV. So too, I have conducted research that has been published and I have served in various academic appointments, the latest of which is Clinical Assistant Professor of Medicine for the Frank H. Netter School of Medicine,

Quinnipiac University School of Medicine from 2013 to the present. My prior academic appointments are identified on my current CV.

11. I supervise Nurses and Nurse Practitioners in my practice through a scope of practice agreement.

12. I am familiar with the standard of care as to what a reasonably prudent physician would do or not do and I am familiar with what a reasonably prudent nurse or nurse practitioner would do or not do in the treatment of a vulnerable adult patient such as Floyd Young who is diagnosed with dementia, schizophrenia, bipolar disorder, pica, anxiety and depression.

13. I have reviewed the medical records of Floyd Young which consisted of computerized records of Pruitt Health Ridgeway, Prisma Health, Appointment of Edith Peoples as Guardian for Floyd Young and photos of Mr. Young.

14. The records and materials I have reviewed are the type of documents that I would consider in rendering an expert opinion in this case. After my review of these records, it is my opinion, to a reasonable degree of medical certainty, that, Pruitt Health Ridgeway, by and through their physicians, nurses and other agents, servants and employees committed negligent acts or omissions, including but not limited to:

(a) Leaving a latex glove out that Mr. Young could eat despite the nursing home staff knowing that he had an eating disorder (PICA)

(b) Failing to remove the latex glove from a location where Mr. Young could reach it.

(c) Failing to ensure that Mr. Young wore hand mittens or an abdominal binder to prevent Mr. Young from pulling out his G-tube

(d) Failing to notice that the latex glove was missing and failing to closely monitor Mr. Young.

(e) The staff at Pruitt Health Ridgeway discontinued the abdominal binder on their own, despite hospital discharge recommendations to the contrary, as they deemed it was ineffective.

(f) The staff at Pruitt Health Ridgeway were negligent in repeatedly attempting to reinsert the dislodged G-tube before contacting the nurse practitioner for further instructions.

(g) The medical records suggest that Mr. Young's G-tube became dislodged in the morning, yet he was not sent to the hospital until late at night, close to 10:05pm. This suggests a delay in treatment on the part of Pruitt Health Ridgeway staff. It further indicates that the nursing staff attempted to reinsert Mr. Young's G-tube multiple times before he was finally sent to the emergency room.

(h) The Pruitt Health Ridgeway nurses' attempts to reinsert Mr. Young's G-tube resulted in multiple ulcerations around Mr. Young's GI tract that ultimately resulted in the need for surgery in the form of an exploratory laparotomy to further evaluate his symptoms, replace the G-tube, and repair the ulcerations that were caused by the nurses' attempts to reinsert the tube.

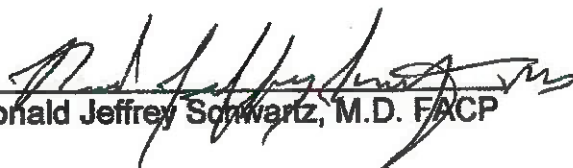
(i) Mr. Young was at a high risk for skin breakdown due to his multiple medical problems. Yet, he was not followed properly by the staff at Pruitt Health Ridgeway with proper skin breakdown prevention strategies put into place. He was allowed to develop a stage 4 pressure ulcer to his right foot.

15. In closing, my opinion of this case is that Mr. Young was a medically complex patient with advanced dementia and a history of PICA. The staff at Pruitt Health Ridgeway failed to take proper preventative measures in the care of Mr. Young. He was allowed to swallow a latex glove despite his history of PICA, had his abdominal binder removed without first consulting the nurse practitioner, and was not wearing his mittens which, more likely than not would have preventing him from pulling out his G-tube.

The nurses made multiple attempts to reinsert Mr. Young's feeding tube without consulting the nurse practitioner, causing multiple ulcerations to Mr. Young's GI tract, needing ultimate surgical exploratory laparotomy for further evaluation. Mr. Young ultimately developed severe peritonitis from the presence of the latex glove in his stomach, requiring surgical intervention, and a prolonged hospital course. In addition, Mr. Young was not properly followed by the staff at Pruitt Health Ridgeway and was allowed to develop a stage 4 pressure ulcer to his right foot.

These acts were wanton and reckless, and clearly represented a deviation in the standard of care for a patient in a long term care setting.

16. I reserve the right to supplement or amend this Affidavit and/or my professional opinion after reviewing additional medical records, depositions, or other information relating to the care and treatment of Mr. Floyd Young.


Ronald Jeffrey Schwartz, M.D. FACP

Sworn to and signed before me
This 9th day of July, 2021


Notary Public

My Commission expires: 8-31-21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CIVIL ACTION NO.: 2022-CP-2000017
	)	
Edith Peoples as Guardian for Floyd Young, a	)	
Vulnerable Adult	)	
	)	
Plaintiff,	)	
	)	DEFENDANT’S NOTICE OF
v.	)	MOTION AND MOTION TO
	)	DISMISS AND/OR STAY AND
PruittHealth-Ridgeway, LLC	)	COMPEL ARBITRATION
	)	
Defendant	)	

PLEASE TAKE NOTICE Defendant PruittHealth-Ridgeway, LLC (“Defendant”) hereby move this Honorable Court, pursuant to South Carolina Rules of Civil Procedure 12(b)(1), (3) and (6) and the Federal Arbitration Act (“FAA”), codified at 9 U.S.C. §§ 1- 16, within ten (10) days or as soon thereafter as can be heard, for an order dismissing and/or staying this action and compelling all claims in this action or otherwise to arbitration. This Motion is based on the executed Arbitration Agreement (“Arbitration Agreement”) that requires Plaintiff Edith Peoples as Guardian for Floyd Young, a vulnerable adult (“Plaintiff”) to submit all claims in this action or otherwise to arbitration. See Exhibit A, Arbitration Agreement.

The Arbitration Agreement is governed by the FAA. Id. at 8 (stating “[a]ccordingly, this Agreement shall be governed by and enforced under the FAA. The parties expressly acknowledge the applicability of the FAA allowing the aggrieved party to petition an appropriate court for enforcement of this Agreement and to obtain a stay of any other proceeding”). The Defendant relies on the authority to sign the arbitration agreement as evidenced by the fact that a competent resident bestowed general authority upon his agent to execute the arbitration agreement. Id. In this matter, the Agreement is executed March 2, 2012, by Jeanette Sanders at Fairfield County DSS

EXHIBIT B

pursuant to a Final Order filed on January 25, 2012, in Fairfield County Family Court. See Exhibit B, Final Order.

To the extent the Court is not satisfied regarding a factual issue related to authority, or any other issue, the Defendant respectfully requests and moves this Court for limited jurisdictional discovery to develop an appropriate record for the Court's full consideration on the issue of arbitration enforceability. See Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 388 n. 13, 759 S.E.2d 727, 736 (2014) (noting that the circuit court must make a full inquiry into the issue of the resident's capacity prior to enforcing the Arbitration Agreement).

Accordingly, this Court should stay the trial of this action and compel Plaintiff to submit all claims in this action or otherwise to arbitration pursuant to the binding Arbitration Agreement.

This Motion is supported by the pleadings, applicable law, arguments of counsel, a memorandum of law and affidavit(s) to be filed subsequently, and any other documents or materials the Court may receive.

Respectfully Submitted,

s/Joshua S. Whitley
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*Attorney for Defendant PruittHealth-Ridgeway,
LLC*

February 11, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CIVIL ACTION NO.: 2022-CP-2000017
	)	
Edith Peoples as Guardian for Floyd Young, a	)	
Vulnerable Adult	)	
	)	
Plaintiff,	)	
	)	DEFENDANT’S MEMORANDUM OF
v.	)	LAW IN SUPPORT OF MOTION TO
	)	DISMISS AND/OR STAY AND
PruittHealth-Ridgeway, LLC,	)	COMPEL ARBITRATION
	)	
Defendant	)	

PLEASE TAKE NOTICE Defendant PruittHealth-Ridgeway, LLC (“PruittHealth”) hereby move this Honorable Court, by and through undersigned counsel, hereby submit the following Memorandum of Law in Support of its Motion to Dismiss Plaintiff’s Complaint, pursuant to Rules 12(b)(1)(3) and (6) of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act (“FAA”), codified at 9. U.S.C. §§ 1- 16. This Motion is based on the executed Arbitration Agreement (“Arbitration Agreement”) that requires Plaintiff Edith Peoples, as Guardian for Floyd Young, a vulnerable adult (“Plaintiff”), to submit all claims in this action or otherwise to arbitration. See Exhibit A, Arbitration Agreement.

STATEMENT OF RELEVANT FACTS

This case arises from the residency of Mr. Floyd Young (“Mr. Young”) at PruittHealth, a skilled nursing facility in Ridgeway, South Carolina. Mr. Young was a vulnerable adult. See Complaint, ¶ 2. On January 11, 2011, Judge W. Thomas Sprott, Jr. placed Mr. Young in the legal and physical custody of the South Carolina Department of Social Services (“SCDSS”). See Exhibit B, Final Order. In or around March 2012, SCDSS admitted Mr. Young to PruittHealth. See

EXHIBIT C

Complaint, ¶ 4. PruittHealth provided care to Mr. Young until he passed away on May 30, 2020. Id. ¶ 2.

This lawsuit relates solely to PruittHealth's care of Mr. Young. Plaintiff is the appointed Guardian for Mr. Floyd, and she has filed a single cause of action related to the above for Negligence based on survivorship. See Exhibit C, Certificate of Appointment. Plaintiff's cause of action falls squarely within the scope of the applicable arbitration agreement with PruittHealth. See Ex. A.

On admission to PruittHealth, Jeanette Sanders of SCDSS, acting pursuant to Judge Sprott's Order and on behalf of Mr. Young, signed admission documents, including an Arbitration Agreement with PruittHealth¹ (the "Agreement"). See Ex. A. The Agreement was properly witnessed. Id. p. 5 of 5. By signing the Agreement, Ms. Sanders expressly represented that she was authorized to do so and had no reason to believe that Mr. Young would not have signed the Agreement if he were competent. Id. p. 2 of 5. Further, she produced the Court Order giving her authority. Moreover, she represented that she read and understood the Agreement and that she explained the Agreement, its nature, and its essential terms to Mr. Young to the extent that he could understand the explanation. Id. pp. 4-5 of 5.

Relevant to this Motion to Dismiss, the Agreement provides that it binds Mr. Young's "guardian" and "any person whose claim is derived through or on behalf of" Mr. Young (i.e., Plaintiff). Id. p. 2 of 5. It articulates the scope of the Agreement, and states, in pertinent part, that: "Any and all claims or controversies arising out of or in any relating to [the] Agreement . . . or the Patient/Resident's stay at, or the care or services provided by, [PruittHealth] . . . including any claim based on negligence . . . shall be submitted for arbitration." Id. p. 1 of 5.

¹ UniHealth PAC-Tanglewood is the former name of PruittHealth-Ridgeway, LLC.

Among its other detailed provisions, warnings, and clauses, it advises that execution of the Agreement is voluntary and not a precondition to admission or the furnishing of PruittHealth's services. Id. p. 5 of 5. In fact, in conspicuous, bold, underlined, and all caps writing at the immediate beginning of the Agreement, it states:

THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTE THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

Moreover, it provides that the Agreement could be revoked by written notice to PruittHealth within thirty (30) days of execution. Notably, neither Mr. Young nor any person acting on behalf of Mr. Young revoked the Agreement. Additionally, the Agreement was made pursuant to the FAA. Id. p. 4 of 5.

APPLICABLE LAW

A. THE AGREEMENT TO ARBITRATE ANY CLAIMS UNDER THE FEDERAL ARBITRATION ACT IS BINDING AND ENFORCEABLE AGAINST PLAINTIFF.

1. The South Carolina Supreme Court Upheld The Validity Of A Predecessor Agreement And Enforced Arbitration Under Similar Circumstances.

In Dean v. Heritage Healthcare of Ridgeway, LLC [n/k/a PruittHealth of Ridgeway, LLC], 408 S.C. 371 (2014), the Supreme Court held that the FAA indeed applied to the arbitration agreement in the nursing home context. The Court went further and held that the longstanding precedent of Timms v. Greene, 427 S.E.2d 642 (1993), was expressly overruled. *Id.* at 382 (holding “we find Timms is a relic of the past, decided before the broad definition of interstate commerce set forth in Allied-Bruce. Consequently, we explicitly overrule Timms in its entirety

and find that the residency agreement here does, in fact, involve interstate commerce, and thus is governed by the FAA”). Dean involved a sister-company’s arbitration agreement and was similarly signed by an agent of the resident on admission.² In a sweeping opinion, the Court reversed twenty (20) years of precedent and held nursing home arbitration agreements do involve interstate commerce and, therefore, agreements made pursuant to the Federal Arbitration Act are enforceable. Under Dean, the Agreement here must be enforced because it was entered pursuant to the FAA.

2. The Arbitration Agreement Is A Valid Contract That Is Binding To And Enforceable Against Plaintiff.

Under South Carolina law, the Agreement is a valid contract, and it is binding to and enforceable against Plaintiff as Mr. Young’s Guardian. First, the Agreement is valid because it has all the necessary and familiar elements that create a valid and enforceable contract. Specifically, it contains offer, acceptance, signatures evincing the intention of the parties to enter the contract (i.e., a meeting of the minds), and consideration. See Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) (stating “another way, there must be an offer and an acceptance accompanied by valuable consideration”). In other words, it is supported by mutual assent.

Second, it was a voluntary Agreement. Just as the Agreement indicates, the Agreement was entered into voluntarily on behalf of Mr. Young because it was not executed as a precondition to Mr. Young’s admission to PruittHealth nor for the furnishing of services to him. Furthermore, it was freely revokable within thirty (30) days of its execution. Yet, neither Mr. Young nor his legal custodian revoked the Agreement.

² The Arbitration Agreement in Dean, which the undersigned counsel argued at the Supreme Court, was a predecessor agreement to the current one executed in this case in 2012. There, the Arbitration Agreement was made in 2009; whereas, here, the Agreement had evolved and improved to protect the interests of both parties. So, to the extent it is different from the 2009 Dean agreement, this Agreement is more protective of the parties’ rights.

Third, it was executed by parties with legal authority to enter into the Agreement. Here, Jeanette Sanders, a representative from SCDSS, had legal authority to execute the Agreement on behalf of Mr. Young because Judge Sprott's January 11, 2021 Order granted SCDSS that authority. Specifically, he granted SCDSS physical and legal custody of Mr. Young. See Ex. B. In simple terms, South Carolina defines "legal custody" as the authority of an individual to make legal decisions on behalf of another. See e.g., S.C. § 63-15-210 (defining a parent with "sole" legal custody as a parent with "the rights and responsibilities for major decisions concerning the child, including the child's education, medical and dental care, extracurricular activities, and religious training"). Moreover, in Coleman v. Mariner Health Care, Inc., the South Carolina Supreme Court suggested, without deciding, that legal custody of an incapacitated person extends to legal decisions unrelated to healthcare and payment. 407 S.C. 346, 354 n.4, 755 S.E.2d 450, 454 (2014) (noting "[w]hile the power to make decisions other than those involving health care and payment therefore on behalf of the incapacitated person, including authority to enter other types of contracts, may be vested in an attorney-in-fact, a probate court guardian, or another who possesses legal authority, these issues are not before the Court"). Clearly, Coleman, anticipated this exact scenario – that a court order would give authority to a guardian that would include the power to enter arbitration agreements. Therefore, SCDSS, as Mr. Young's legal custodian, had the authority to enter into the Agreement on behalf of Mr. Young.

Since the Agreement is valid and was binding to and enforceable against Mr. Young, it is likewise binding to and enforceable against Plaintiff in the present action. Plaintiff's claim is one of survivorship. Therefore, it is derived through Mr. Young and is subject to the same obligations and defenses as though Mr. Young brought the claim himself. Estate of Stokes v. Pee Dee Family Physicians, L.L.P., 389 S.C. 343, 347, 699 S.E.2d 143, 145 (2010) ("Our jurisprudence makes

clear that if the decedent was barred from recovering damages for his injuries, the bar passes to the decedent's estate. Succinctly stated, if the decedent had no claim at his death, the estate has no claim.”). The Agreement expressly provides that it applies to derivative claims such as this. Additionally, to foreclose any doubt, it also provides that it applies to claims brought by Mr. Young’s guardian (i.e., Plaintiff). Accordingly, because Mr. Young’s claim would be subject to arbitration under the Agreement, the Agreement must be enforced equally to Plaintiff’s claim.

B. ARBITRATION UNDER THE FAA IS JUDICIALLY FAVORED AND MANDATORY.

To the extent this Court has any hesitations about the enforcement of the Agreement, the liberal federal policy favoring arbitration agreements should mandate enforcement here. In Dean, the South Carolina Supreme Court held that nursing home arbitration agreements do invoke interstate commerce, which implicates the federal case law highly favoring arbitration as the preferred means to dispute resolution. Dean, 408 S.C. at 371. The United States Supreme Court has stated that the FAA, codified at 9 U.S.C. §§1-16, reflects “a liberal federal policy favoring arbitration agreements.” Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). Underlying this policy is Congress’s view that arbitration constitutes a more efficient dispute resolution process than litigation. See Brantley v. Republic Mortgage Ins. Co., 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004), *aff’d* 424 F.3d 393 (4th Cir. 2005); see also Hightower v. GMRI, Inc., 272 F.3d 239, 241 (4th Cir. 2001) (same).

Accordingly, “due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself must be resolved in favor of arbitration.” Brantley at 5 (quoting Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ., 489 U.S. 468, 475-76, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)); see also Towles v. United Healthcare Corp., 338 S.C. 29, 41, 542 S.E.2d 839, 846 (Ct. App. 1999) (stating South Carolina courts “must

address questions of arbitrability with a healthy regard for the federal policy favoring arbitration”). The United States Court of Appeals for the Fourth Circuit has gone as far as to say that motions to compel arbitration “should not be denied unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute.” Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 867 F.2d 809, 812 (4th Cir. 1989) (quoting United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-83, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960)).

Moreover, the clear language of the FAA is not permissive but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides in pertinent part as follows:

The court shall hear the parties, and *upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court **shall** make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added). By its terms, the Act mandates that parties must arbitrate where there is a signed agreement to do so. See Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). Thus, because there is a signed agreement to arbitrate and the claim arises within the scope of the Agreement, the Court must compel arbitration in the subject case. See Dean, 408 S.C. 371.

Moreover, the United States Supreme Court reaffirmed its commitment to arbitration under the FAA, admonishing a state supreme court for refusing to enforce the arbitration clause, and specifically did so in the setting of a long-term care resident’s negligence claims against the facility where they resided. See Marmet Health Care Center, Inc., et al., v. Brown, 132 S. CT. 1201, 1203-04, 182 L. Ed. 2d 42 (2012) (holding from the outset that “state and federal courts must enforce the Federal Arbitration Act”). In Marmet, the Supreme Court held that arbitration agreements for a resident’s claim of personal injury are enforceable and wholly preempt a state’s public policy to the contrary. Id. at 3-4. The Court held that West Virginia’s judicial policy of refusing to enforce

arbitration agreements made between residents and the facility where they resided was both “incorrect” and “inconsistent with clear instruction in the precedents of this Court.” Id. at 3. In making its ruling that the FAA preempts West Virginia’s policy, the Supreme Court added, “[t]he [the FAA’s] text includes no exception for personal-injury or wrongful-death claims. It requires courts to enforce the bargain of the parties to arbitrate.” Id. (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217, 105 S. Ct. 1238, 84 L. Ed. 2d 158 (1985)). Explicitly relying on Marmet, the South Carolina Supreme Court noted that “courts may not refuse to compel arbitration simply because a wrongful death claim is involved.” Dean 408 S.C. at 378, n. 3.

Accordingly, and respectfully, this Court has an obligation to enforce the Arbitration Agreement entered into on Mr. Young’s behalf because it expressly bound Mr. Young and any claims derived through him to arbitration pursuant to the FAA. Indeed, the facts of this case are even more persuasive than those in the Supreme Court’s Marmet decision that compelled arbitration. Here, the Arbitration Agreement is a separate and voluntary agreement that sets forth in straight forward language the terms of the arbitration, has conspicuous, cautionary clauses and has a signature at the end – all dealing solely with arbitration. See Ex. A. Whereas, in Marmet, the arbitration that was compelled was agreed to based on a singular mandatory clause in the Resident’s Agreement. See Marmet, 132 S. CT. at 1203. (“[t]he contract[] included a clause requiring the parties to arbitrate all disputes). Nevertheless, the Supreme Court ordered that clause to be strictly enforced. Id. Respectfully, this Court should do the same here.

C. ALTERNATIVELY, PRUITTHEALTH IS ENTITLED TO JURISDICTIONAL DISCOVERY.

To the extent the Court is not satisfied with a factual issue needed to dispose of the jurisdictional issue of arbitration or to the extent Plaintiff argues that there was no authority to enter into the Agreement, PruittHealth requests that this case be stayed for the purpose of limited

jurisdictional discovery on the issue of arbitration only so that the Court can make a full inquiry on the issue. See Dean, 408 S.C. at 388, n. 13 (noting that the circuit court must make a full inquiry into the issue of the resident's capacity prior to enforcing the Arbitration Agreement). Without jurisdictional discovery, there is no way this Court can follow the dictates of Dean and conduct a full inquiry regarding the enforceability of the arbitration agreement. This limited jurisdictional discovery can be conducted on an extremely limited basis – limited to the factual dispute – and conducted in an expeditious manner.

CONCLUSION

For the reasons stated above, PruittHealth respectfully requests that this Court dismiss Plaintiff's Complaint, pursuant to the Arbitration Agreement entered into by the parties, the FAA, and Rule 12(b)(1) (3) and (6) of the South Carolina Rules of Civil Procedure; or, in the alternative, this Court should stay litigation and compel arbitration.

Respectfully Submitted,

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LLC*

March 17, 2022

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD) IN THE COURT OF COMMON PLEAS
) SIXTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2022-CP-20-00017

EDITH PEOPLES, AS PERSONAL
 REPRESENTATIVE OF THE ESTATE
 OF FLOYD YOUNG,

Plaintiff,

vs.

PRUITT HEALTH – RIDGEWAY,

Defendant.

**MEMORANDUM IN OPPOSITION TO MOTION TO
 COMPEL ARBITRATION**

The Plaintiff, Edith Peoples, as Personal Representative of the Estate of Floyd Young, (“Plaintiff”), hereby submits this Memorandum of Law in Opposition to Defendant, Pruitt Health Ridgeway’s Motion to Compel Arbitration. Plaintiff respectfully submits that the Motion filed by Defendant should be denied.

INTRODUCTION AND STATEMENT OF FACTS

Plaintiff brought this action against the Defendant as a survival action on behalf of her deceased brother, Floyd Young for pain and suffering, medical bills and other damages incurred as a result of the actions or inactions of Pruitt Health Ridgeway which occurred while the Plaintiff’s decedent was a patient at the Defendant’s assisted living facility.

The Plaintiff asserted a negligence cause of action in survivorship against Defendant for their failure to adequately care for and monitor her brother, Floyd Young, failure to PICA proof his room and surroundings allowing him to eat a latex glove and in failing to properly turn or care for Mr. Young allowing him to develop pressure ulcers.

EXHIBIT D

On or about January 16, 2022, Plaintiff filed their Summons and Complaint after their Notice of Intent and pre-suit mediation. On or about February 11, 2022, the Defendant filed the Motion requesting that this Court dismiss Plaintiff's Complaint and compel arbitration.

STANDARD OF REVIEW

The Defendant while bringing this action as a 12(b) (6) Motion is actually seeking relief to compel Plaintiff to forego a jury trial and arbitrate the matter.

Because it is a Motion to Dismiss, Plaintiff asserts that this Court should use the standard of review for a 12(b) (6) Motion and base its ruling solely on the allegations set forth in the Complaint. *Doe v. Marion*, 373 S.C., 390, 395, 645 S.E.2d 245, 247 (2007). This Court should deny the Motion if it finds—after reviewing the issues before it in the light most favorable to Plaintiff and allowing every doubt to be resolved in its behalf—that its Complaint states any valid claim for relief. *See Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Dismissal of the Complaint under Rule 12(b) (6) is improper if the facts alleged and inferences reasonably deducible from them—viewed in the light most favorable to Plaintiff—would entitle Plaintiff to relief on any theory. *See Doe*, 373 S.C. at 395, 546 S.E.2d at 247. Moreover, the Complaint should not be dismissed merely because this Court doubts that Plaintiff will prevail in this action. *Id.* at 395, 645 S.E.2d at 248. This Court's grant of the Motion will be sustained only if the facts alleged in the Complaint do not support relief under any theory of law. *Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 278, 647 S.E.2d 295, 298 (Ct. App. 2007).

Whether a claim is arbitrable "is an issue for judicial determination, unless the parties provide otherwise." *Scott v. White Oak Manor, Inc.* 828 S.E. 2d 82 citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The appellate court reviews the circuit

court's determination of whether a claim is arbitrable under a de novo standard. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007).

If there is any evidence that reasonably supports the circuit court's order will not be reversed on appeal. *Scott v White Oak Manor, Inc.* 828 S.E. 2d 82 (S.C. 2019); *Timmons v. Starkey*, 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008).

DISCUSSION

The Defendant asks the Court to look to *Dean v. Heritage Healthcare of Ridgeway, LLC* 408 S.C. 371 (2014) as the Supreme Court upheld the validity of a predecessor agreement. The Court in Dean did not address the issue of the scope of DSS authority and Plaintiff has not raised a claim that the facility did not engage in or the business did not involve interstate commerce. Furthermore, the Plaintiff in Dean did not raise the issues raised here with regard to unconscionability. Also, the Plaintiff in Dean did not address the issue on appeal of the Resident's failure to sign. The Court in Dean in footnote #13 states:

“We are concerned that, according to the Record, the patient did not sign either the residency agreement or the Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf. The parties did not address this issue on appeal, and Respondent's only argument that this issue should serve as an additional sustaining ground was located in a cursory footnote in her brief. Accordingly, we merely note that, on remand, the circuit court must engage in a full inquiry into this matter prior to any attempt to enforce the Agreement.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (S.C. 2014)Footnote #13

The Defendant also asserts that arbitration is favored and is mandatory under the FAA. However, the plain reading of the FAA, Section 4 provides that “The Court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply

therewith is not an issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.” The mandatory language of the section assumes that the Court has found that the Agreement is valid and not unconscionable as Plaintiff alleges here.

The Plaintiff asserts that this case is not subject to arbitration and should not be dismissed for the following reasons:

I. **PLAINTIFF HAS STATED A VALID CAUSE OF ACTION AGAINST DEFENDANT.**

Plaintiff’s complaint states one cause of action, a Survivorship Claim for Plaintiff’s Decedent, Floyd Young for personal injury suffered due to the negligence of Defendant while Mr. Young was a patient at Defendant’s facility. The Plaintiff has not stated a breach of contract cause of action.

The Court must look solely to the allegations contained in the Complaint and view them in the light most favorable to the Plaintiff. Plaintiff has clearly stated a valid cause of action and if the allegations are proven, would entitle plaintiff to the relief requested.

II. **THERE IS NO VALID CONTRATUAL AGREEMENT AS THE AGREEMENT WAS NEVER SIGNED BY A RESPONSIBLE PARTY OR DEFENDANT**

The Arbitration Agreement provided by Defendant to this Court with his Motion to Dismiss was never signed by anyone with authority at “Pruitt” although it purportedly waives the parties right to a jury trial and other rights afforded in litigation. Likewise, the Agreement was

not signed by Mr. Floyd or by someone with authority to bind Mr. Floyd or the personal representative of his Estate.

A. THERE IS NO FINDING THAT FLOYD YOUNG LACKED CAPACITY TO ENTER INTO ANY CONTRACT IN MARCH 2012

The Plaintiff would show that the Arbitration Agreement which does not appear to be signed by anyone from “Pruitt Health” was signed by Jeanette Sanders, an employee of DSS for Floyd Young as the Resident on or about March 2, 2012. **(Exhibit 1- Arbitration Agreement produced by Defendant’s Attorney)** The SC Department of Social Services had sought custody of Floyd Young and a hearing was held on December 14, 2011 with a Final Order issued on or about January 11, 2012. There was no finding that Floyd Young lacked capacity to enter into contracts. **(Exhibit 2 – Final Order)**

It is fundamental to contract law that a person entering into a contract must have mental capacity. There is no finding that Floyd Young lacked capacity. The Arbitration Agreement was signed by Jeannette Sanders, an employee with DSS, without presenting it to Floyd Young, reading it to Floyd Young or explaining it to Floyd Young or his family. Therefore, the Arbitration Agreement should not be enforced and this case should not be subject to arbitration.

Our Supreme Court in *Verdery v. Daniels*, 544 S.E. 2d 854 with regard to contractual capacity stated the following:

South Carolina has defined contractual capacity as a person's ability to understand, at the time the contract is executed, the nature of the contract and its effect. In *re: Nightingale's Estate*, 182 S.C. 527, 542, 189 S.E. 890, 896 (1937) (“[A] mere infirmity of mind, if it does not amount to an incapacity to understand, at the time of the execution of a contract, the nature of the act done and the effect thereof, . . . does not render a person incapable of executing a valid and binding contract.”); see also 53 Am.

Jur. 2d Mentally Impaired Persons § 156 (1996) ("The test for lack of [contractual] capacity is generally said to be whether an individual lacks sufficient mental capacity to understand in a reasonable manner the nature of the transaction in which he or she is engaging, and to understand its consequences and effect upon his or her rights and interests." (footnotes omitted)).

The Final Order from the Adult Protective Services hearing does not indicate whether or not Mr. Young was capable of making meaningful decisions. They only find that he is a vulnerable adult which includes adults which are incapable due to a physical or mental condition of adequately providing for his or her own care or protection. S.C. Code 43-35-10 (11)

In fact, medical records after his admission to Pruitt indicate just the opposite. From records from Providence Hospital on or about January 20, 2013, around 10 month after the Arbitration Agreement was signed, Floyd Yong was declared to be oriented times 3. He signed his own Acknowledgement of Receipt and answered questions concerning whether or not he had a Living Will or Healthcare Power of Attorney. **(Exhibit 3 – Medical Records from Sister of Charity Providence Hospital).**

Here it is clear that Floyd Young had contractual capacity after the date of this agreement, yet he was not afforded the opportunity to make decisions on his own behalf.

B. ARBITRATION AGREEMENT WAS NOT SIGNED BY FLOYD YOUNG, READ TO HIM OR EXPLAINED TO HIM

Even though it appears that Mr. Young was competent to make his own decisions after the date of his admission, he was not afforded the opportunity to decide whether or not he wanted to give up a constitutional right. Furthermore, there is nothing to indicate that he was even told about the signing of this agreement or that the agreement was

explained to him or his family. In fact, the Arbitration Agreement itself makes the reading of the agreement and Patient's understanding the agreement to the extent they can, a condition precedent to a valid contract. **(See Section IV of Exhibit 1 – Arbitration Agreement). (See also Affidavit of Edith Peoples and Karla Cooper as Exhibit 4 and 5).**

A condition precedent to formation is one that must occur for a contract to exist. See *Wahl v. Hutto*, 249 S.C. 500, 155 S.E.2d 1 (1967).

Clearly having someone sign with mental capacity and someone sign as a responsible party and/or payor is a requirement for a contract to exist. It is otherwise, void. However, there are certain other conditions that are required under the contract in order for there to be a meeting of the minds. Plaintiffs contend that these are conditions precedent to the existence of this contract, namely that Floyd Young and his Guardian ad Litem and attorney should have been served with or presented with any contract purporting to waive any of his rights. The Arbitration Agreement itself calls for this and there is no evidence it was done.

C. ARBITRATION AGREEMENT WAS NOT SENT TO OR APPROVED BY MR. YOUNG'S DULY APPOINTED GAL AND WAS NOT SENT TO HIS ATTORNEY

Mr. Young had been appointed a Guardian ad Litem and attorney in the DSS Family Court proceeding. There is no indication that the Guardian or the attorney were ever informed or were able to address this issue or weigh in on what was in the best interests of Mr. Young. **(See Final Order – Exhibit 2).**

It is fundamental that the parties have a meeting of the minds. A contract must be the meeting of the minds of the parties. The consent to be bound by an agreement or contract is evidenced by the signature of a party with authority and capacity. Furthermore, our Statute of Frauds requires that all contracts that cannot be performed within one year be in writing and signed. S.C. Code 32-3-10. The Arbitration Agreement had no specific start or stop date.

If Floyd Young was competent and did not sign, and his court appointed Guardian Ad Litem and Court Appointed Attorney were never informed of the waiving of his constitutional rights, the Arbitration Agreement should not be enforced.

Because there is no contract between the parties (the contract was not signed by either a responsible party, Patient/Resident with mental capacity nor by anyone with authority on behalf of Floyd Young) and was furthermore not signed by Defendant, the Arbitration Agreement is not an agreement to arbitrate enforceable by the Federal Arbitration Act.

Because the Arbitration Agreement as provided by Defendant appears to have never been fully executed by all parties with capacity and authority, the contract does not exist or is void *ab initio*. Therefore, the Arbitration Agreement should not be enforced and this case should not be subject to arbitration.

III. THE ARBITRATION AGREEMENT IS UNCONSCIONABLE

Even assuming, for purposes of argument, that Mr. Young by and through DSS entered into the Arbitration Agreement with Defendant, and there are valid signatures by all parties with authority, the Arbitration Agreement is still unconscionable and should

not be enforced. The Arbitration Agreement was a stand-alone agreement, not needed for admission to the facility.

The Federal Arbitration Act, Title 9, US Code Section 2, provides: “A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”

South Carolina law defines unconscionability as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007). The bargaining process cannot be fair when one party has no meaningful choice concerning an arbitration provision. *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013)

Adhesion contracts (take it or leave it, non-negotiable terms) are not unconscionable per se, but our courts tend to look upon them with “considerable skepticism” because they give rise to “considerable doubt that any true agreement existed to submit disputes to arbitration.” *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016) (quoting *Simpson*, 373 S.C. at 26-27, 644 S.E.2d at 669-70) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001)). In *Smith v. D.R. Horton, Inc.*, the SC Supreme Court found that the terms of the

residential purchase agreement terms were “clearly one-sided and oppressive.” *Smith v. D.R. Horton, Inc.*, 417 S.C. at 50, 790 S.E.2d at 4-5.

In analyzing claims of unconscionability in the context of arbitration agreements, the Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker. See *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir.1999). It is under this general rubric that we determine whether a contract provision is unconscionable due to both an absence of meaningful choice and oppressive, one-sided terms. *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 373 S.C. 14 (S.C. 2007)

A. FLOYD YOUNG HAD NO CHOICE

Floyd Young was not given the choice or the opportunity to make a determination about his constitutional right to a Jury Trial. In *Simpson v. MSA of Myrtle Beach, Inc.* 644 S.E.2d 663, 373 S.C. 14 (S.C. 2007), our Supreme Court stated:

“Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. See *Carlson v. General Motors Corp.*, 883 F.2d 287, 295 (4th Cir.1989). In determining whether a contract was "tainted by an absence of meaningful choice," *id.* at 295, courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *Id.* at 293. See also *Holler v. Holler*, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.2005) ("A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case." (quoting 17A AM.JUR.2D Contracts § 279 (2004))).

Floyd Young was not presented with the Agreement. He did not have it read to him or explained to him as required by the Agreement itself. He lacked any meaningful choice as DSS took it upon themselves to sign this extra contract over and above any Resident Agreement.

B. THE ARBITRATION AGREEMENT VIOLATES PUBLIC POLICY

Courts will not enforce a contract that is against public policy, statutory law or the constitution. *Carolina Care Plan*, 361 S.C. at 555, 606 S.E.2d at 758.

1. THE ARBITRATION AGREEMENT PROVIDES FOR NO PUNITIVE DAMAGES EXCEPT UNDER CERTAIN CIRCUMSTANCES.

In this case, like the case in *Carolina Care Plan*, the Arbitration Agreement requires Plaintiff to “jump” through additional hoops in seeking an award of punitive damages. The Arbitration Agreement provides:

“... provided that the arbitrator shall not make an award of punitive damages unless that award is supported by a reasoned decision that addresses every question of law and fact that a court would be required to address, and further provided that the arbitrator shall not award duplicative damages in respect of a single injury.”

Arbitration Agreement II. Decision.

The provision disallows punitive damages except by special findings which run contrary to state law. S.C. Code Section 15-32-520 (a) provides that when punitive damages are sought the action has to be bifurcated. The Arbitration Agreement takes away that right from the Plaintiff. The jury can consider punitive damages when compensatory or nominal damages have been awarded. S.C. Code Section 15-32-520 (c). The Plaintiff generally has to prove by clear and convincing evidence that the Defendant’s conduct was willful, wanton or reckless. S.C. Code Section 15-32-520 (D).

The Arbitration Agreement calls for a “reasoned decision” taking into account every question of law or fact. The proof is to a higher level and is tantamount to beyond a reasonable

doubt. Furthermore, by taking away Plaintiff's right to participate in full discovery as set forth below, it essentially assures that there will be no award of punitive damages.

2. THE ARBITRATION AGREEMENT LIMITS PLAINTIFF'S RIGHT TO PARTICIPATE IN FULL DISCOVERY.

The Arbitration Agreement limits Plaintiff's right to seek full discovery except upon approval of the Arbitrator. The Arbitration Agreement provides:

"The arbitrator may issue subpoena for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. . . . On application of a party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator of a witness who cannot be subpoenaed or is unable to attend the hearing."

Arbitration Agreement F. Witnesses, Subpoenas and Depositions.

(a) Subpoenas

Rule 45 (D)(3) provides: "The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice."

The Arbitration Agreement takes away the attorney's right to issue a subpoena for discovery or for trial.

(b) Scope of Discovery

Rule 26 (b) (1) provides for the scope of discovery. It states:

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The Arbitration Agreement takes away the Plaintiff's right to seek discovery as allowed by the Rules on any matter relevant to the subject matter involving the pending action.

(c) Depositions for Discovery

Rule 30 (a)(1) of the South Carolina Rules of Civil Procedure provide:

(a)(1) When Depositions May Be Taken. After commencement of an action any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of summons and complaint upon any defendant, except that leave is not required if a defendant has served a notice of taking depositions or otherwise sought discovery as provided in these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

The Plaintiff pursuant to this Arbitration Agreement has lost the right to take depositions for discovery.

These provisions are hidden within the agreement and waive Plaintiff's right not only to a jury trial but the right to adequately prepare his case or seek punitive damages. These provisions run contrary to the statute allowing punitive damages and are adverse to our rules of civil procedure. The Agreement does not allow the following:

- a. Discovery depositions.
- b. Written discovery

- c. Attorneys cannot issue a subpoena;
- d. A deposition can only be taken with permission and for use at the arbitration hearing.

Therefore, the Arbitration Agreement should be declared void in violation of public policy and the statutes of South Carolina. See *Simpson v. MSA of Myrtle Beach, Inc.* 644 S.E.2d 663, 373 S.C. 14 (S.C. 2007)

3. **THE ARBITRATION AGREEMENT LIMITS RECOVERY AND HAS A PROVISION AGAINST DOUBLE OR TREBLE DAMAGES.**

The Agreement in this case has a provision against double or treble damages. The paragraph states:

“... further provided that the arbitrator shall not award duplicative damages in respect of a single injury.”

While the Plaintiff does not have a wage claim or Unfair Trade Practices Claim where he is seeking treble damages, the punitive damage statute provides:

“(A) Except as provide in subsections (B) and (c), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.” S.C. Code Section 15-32-530 (A).

When taken literally the Arbitration Agreement seems to limit the calculation of punitive damages in that it duplicates the compensatory damages award. This is likewise oppressive and one sided and not geared toward achieving an unbiased decision by a neutral decision maker.

When taken in conjunction with Mr. Young’s lack of meaningful choice, the Arbitration Agreement is unenforceable.

4. **THE ARBITRATION WAIVES PLAINTIFF'S RIGHT TO HAVE SOUTH CAROLINA LAW APPLY**

The Agreement provision states, This Agreement shall be governed by and enforced under federal law, specifically the Federal Arbitration Act. . . . The parties specifically exclude the application of the South Carolina's Uniform Arbitration Act.”

Plaintiff lost his right to have South Carolina law be applicable to the contract.

C. **ARBITRATION AGREEMENT WAS NOT SIGNED BY FLOYD YOUNG, READ BY FLOYD YOUNG OR EXPLAINED TO FLOYD YOUNG**

As mentioned previously, there was no finding that Floyd Young was not competent to sign. The Agreement was not presented to him for consideration, read or explained to him as required by the Agreement itself or to have a meeting of the minds as required by South Carolina Contract law.

D. **ARBITRATION AGREEMENT WAS NOT SENT TO OR APPROVED BY MR. YOUNG'S DULY APPOINTED GAL AND WAS NOT SENT TO HIS ATTORNEY**

There is no evidence that the Arbitration Agreement was even considered by Mr. Young's Guardian Ad Litem or attorney, shown to them, discussed with them or that they were given notice that significant rights belonging to Mr. Young were being waived. As such, the Arbitration Agreement is unconscionable and there was no authority for DSS to enter into this agreement.

E. **MR. YOUNG WAS NOT AFFORDED THE RIGHT TO CONSULT LEGAL COUNSEL AS ALLOWED BY THE AGREEMENT.**

Section IV of the Arbitration Agreement, entitled Patient/Resident's Understanding of Agreement, provides:

The Patient/Resident or the Patient/Resident's Representative, has read this Agreement in its entirety, and understand that language in which it is written. If this Agreement has been read on behalf of the Patient/Resident by the Patient/Resident's Representative, the Patient/Resident's Representative has explained to the Patient/Resident, to the extent of the Patient/Resident's capacity to understand such explanation, the nature of this Agreement and its essential terms. The Patient/Resident understands that:

- A. The Patient/Resident has the right to seek legal counsel concerning this Agreement.
- B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center.

The allowing Plaintiff to seek legal counsel was a condition precedent to the establishment of this contractual agreement.

**F. DSS TRANSFERRED CUSTODY TO HIS DULY APPOINTED
GUARDIAN WHO NEVER CONSENTED**

DSS apparently closed their file on this matter without notifying Floyd Young, his sister and Power of Attorney. Once DSS was no longer involved or retained custody of Floyd Young, the Arbitration Agreement was never presented to Mr. Young or his family for consideration or ratification.

**G. THE ARBITRATION AGREEMENT INCLUDES EVERY
CONTROVERSY FOREVER AND SURVIVES THE TERMINATION
OF ANY RESIDENT AGREEMENT.**

Section C of paragraph III of the Arbitration Agreement states: "The provisions of this Agreement shall remain in effect after any other agreements between the parties have been terminated."

Apparently DSS had to sign a Resident Agreement in order for Floyd Young to gain admission to the facility. The Arbitration Agreement purports to outlast any such agreement and be in affect forever. We believe this provision exceeds the bounds of the Federal Arbitration Act. The FAA is limited to controversies that arise out of a contract or transaction. Any attempt to load every conceivable dispute that the parties may ever have into the FAA regardless of whether the dispute has any relationship to the underlying transaction exceeds the limits of conscionability.

In *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (S.C. App. 2020), our Court of Appeals concluded that language of the Agreement which stated “or any resulting transaction or relationship (including any such relationship with third parties who do not sign your purchase, lease agreement, or financing contract)” was unconscionable.

An unconscionable contract is not a valid contract. “Courts have discretion though to decide whether a contract is so infected with unconscionability that it must be scrapped entirely, or to sever the offending terms so the remainder may survive. Once again, we are guided by the parties' intent.” *Columbia Architectural Grp., Inc. v. Barker*, 274 S.C. 639, 641, 266 S.E.2d 428, 429 (1980) *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (S.C. App. 2020)

IV. THE SIGNING OF THE ARBITRATION AGREEMENT WAS UNNECESSARY FOR THE PROTECTION OF FLOYD YOUNG

Section IV of the Arbitration Agreement, entitled Patient/Resident’s Understanding of Agreement, subparagraph B, provides:

- B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center.

S.C. Code 43-35-10 (9) defines protective services as follows:

9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

DSS did not have to sign this Arbitration Agreement in order to secure services or protect Floyd Young.

V. DSS EXCEEDED THE SCOPE OF THEIR AUTHORITY BY WAIVING PLAINTIFF'S CONSTITUTIONAL RIGHT TO JURY TRIAL AND VIOLATES THEIR OWN MISSION STATEMENT

The South Carolina Department of Social Services had petitioned the Family Court to protect Floyd Young as a vulnerable adult. S.C. Code Section 43-35-10 (11) defines vulnerable adult as "a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult."

The Final Order from this action does not make a finding that Floyd Young is incapable of making meaningful medical decisions. As such, Floyd Young, along with his Guardian and Attorney should have been presented with the form and DSS should not have signed the form on his behalf.

A. DSS EXCEEDED THEIR OWN AUTHORITY

DSS exceeded their authority in waiving Mr. Young's constitutional rights. Nothing in the enabling legislation or the Court Order give DSS the authority to waive constitutional rights or right to discovery or case preparation under the Rules of Evidence or Civil Procedure.

S.C. Code 43-35-10 (9) defines protective services as follows:

"(9) "Protective services" means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services."

Section 43-35-20 provides additional powers as follows:

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;

- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

South Carolina Regulations that govern DSS, particularly, Regulation 114-334, entitled “Scope of the Program” provides:

- A. Adults determined by the agency to be in need of protective services shall be eligible for such services without regard to income. All services shall be rendered pursuant to S.C.R. 114-35-70.
- B. Services provided may include, but not limited to, the following:
 - (1) Counseling with the client or other involved persons in order to remedy or prevent abusive, neglectful, or exploitive circumstances.
 - (2) Protective placement of the adult client upon a voluntary agreement or by order of the Family Court.
 - (3) Health related services to treat physical or mental illness. The caseworker shall not sign any consents for surgery unless the surgery is specifically authorized by the appropriate court.
 - (4) Homemaker services to assist the client with daily living activities in the home.
 - (5) Emergency caretaker services to provide responsible adult supervision on a temporary basis for an adult in need of protection.
 - (6) Referral to Probate Court, or the appropriate agency, such as Social Security Administration or Veteran’s Administration, in order to assist in the establishment of a representative or protective payee for protective services client.
 - (7) Facilitation in the provision of any other Title XX service as determined by the needs of the client.

The Final Order provides: “South Carolina Department of Social Services shall retain legal and physical custody of the vulnerable adult, Floyd Young, in order to secure a safe and protective placement.” As we have seen the signing of the Arbitration Agreement was not necessary to secure a safe and protective placement.

Therefore, nothing in the enabling statutes, regulations or the court order itself grants DSS the authority to waive Plaintiff's constitutional right to a jury trial and Plaintiff's right to meaningful pre trial discovery, or waive Plaintiff's right to have the agreement interpreted by South Carolina Law. DSS clearly exceeded their authority and had no right to enter into a side agreement to waive the right to a jury with Defendant purportedly in an attempt to provide protective services to Mr. Young.

B. SIGNING THE ARBITRATION AGREEMENT IS CONTRARY TO THE DSS MISSION

South Carolina DSS Mission Statement and Purpose for the Adult Protective Services taken from their website are as follows:

APS Mission Statement

To protect vulnerable adults from abuse, neglect, and exploitation by investigating and providing temporary assistance until risk is minimized and services are secured.

APS Purpose

To provide intervention and protection for Vulnerable Adults who cannot provide care or protection for themselves in a manner that ensures attention will be given to the Adult's right to self-determination, lifestyle and culture. These services must be provided in the least restrictive environment as determined by the Adult's level of care and safety.

The mission is to provide temporary assistance until risk is minimized, not to forever waive the person's constitutional rights. Furthermore, the purpose is to give attention to the Adult's right to self-determination. This was not taken into account in this case. By waiving the right of a vulnerable adult to seek a jury trial to recover damages for medical neglect is contrary to the stated mission statement of the Department.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's Motion to Dismiss and to Compel Arbitration and allow this litigation to move forward.

In the alternative, the Court should allow discovery on the issue of arbitration so that the Court can make a full inquiry into the issue.

s/Creighton B. Coleman

Creighton B. Coleman
Coleman & Tolen, LLC
120 W. Washington Street
P.O. Box 1006
Winnsboro, SC 29180
(803) 635-6884

s/ D. Bradley Jordan

D. Bradley Jordan
Jordan Law Firm, P.C.
546 East Main Street
Post Office Box 11785
Rock Hill, South Carolina 29731
(803) 817-7999

March 30, 2022
Winnsboro, South Carolina

Attorneys for Plaintiff

EXHIBIT 1

ARBITRATION AGREEMENT

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 2nd day of March, 2012, by and between UniHealth PAC - Tanglewood (the "Healthcare Center") and FLOYD YOUNG and JEANETTE SANDERS ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

A. Scope of Agreement.

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including the interpretation of either, or the Patient/Resident's stay at, or the care or services provided by, the Healthcare Center, or any acts or omissions in connection with such care or services, including care or services provided prior to the date that this Agreement was signed, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, and whether sounding in breach of contract, tort, or breach of statutory or regulatory duties (including, without limitation, any claim based on an alleged violation of the state bill of rights for Patients/Residents of long-term care facilities or federal Patient/Resident's rights, any claim based on negligence, any claim for damages resulting from death or injury to any person arising out of care or service rendered by the Healthcare Center or by any officer, agent, or partner thereof acting within the scope of his or her employment, any claim based on any other departure from accepted standards of health care or safety, or any claim for unpaid nursing home charges), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for arbitration.

2. Only disputes that would constitute a legally cognizable cause of action in a court of law may be submitted for arbitration.

3. All claims based in whole or in part on the same incident(s), transaction(s), or related course of care or services provided by the Healthcare Center to the Patient/Resident, shall be arbitrated in one proceeding.

JS Initials

State of South Carolina ARBITRATION AGREEMENT

4. A claim shall be waived and forever barred if it arose prior to a Demand for arbitration (as defined in this Agreement) and arbitration was not commenced by such Demand within the limitation period prescribed by South Carolina law for the commencement of a civil action concerning the subject matter of that claim.

B. Patient/Resident's Rights. This Agreement shall not limit the Patient/Resident's rights with respect to filing a grievance with the Healthcare Center, the Long-Term Care Ombudsman, or any appropriate state or federal regulatory agency. This Agreement shall not reduce or affect in any way the Healthcare Center's duties and obligations with respect to the provision of care and treatment of Patients/Residents.

C. Parties. This Agreement shall inure to the benefit of and bind the Patient/Resident and the Healthcare Center, their successors, assigns, and intended and incidental beneficiaries. The term "Healthcare Center" shall include its operator, management company, governing body, officers, directors, shareholders, partners, managers, agents, and any parent, affiliate or subsidiary. The term "Patient/Resident" shall include the Patient/Resident, his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person whose claim is derived through or on behalf of the Patient/Resident, including, in addition to those already listed in this Paragraph, any parent, spouse, child, executor, administrator, heir, or survivor entitled to bring a wrongful death claim. If this Agreement is signed by the Patient/Resident's representative, that individual represents that he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so.

D. Administration of Arbitration. Any arbitration conducted pursuant to this Agreement shall be administered by, and according to the applicable rules and procedures then in effect of, an independent impartial entity that is regularly engaged in providing arbitration services (the "Arbitration Service"). A demand for arbitration ("Demand") shall be made in writing and submitted to the Arbitration Service by regular mail, certified mail, or overnight delivery. The Demand must identify the issues in dispute, the amount(s) in dispute, any special qualifications of a desired arbitrator, and the Respondent(s). The parties intend that the Arbitration Service shall be the National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, Minnesota 55405-0191, or its successor. If NAF or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Judicial Arbitration and Mediation Services, Inc. ("JAMS"), 235 Peachtree Street, N.E., 600 North Tower, Atlanta, Georgia 30303-1411, or its successor. If JAMS or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Henning Mediation & Arbitration Service, Inc. ("Henning") 3350 Riverwood Parkway, Riverwood Building Lobby, Suite 75, Atlanta, Georgia 30339, or its successor. If Henning or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the arbitration conducted pursuant to this Agreement will be carried out in conformance with the following Paragraph I.F. of this Agreement. The rules of these Arbitration

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State of South Carolina
ARBITRATION AGREEMENT

Services are available from the administrator of the Healthcare Center. The parties intend that the arbitration will be held as close as possible to where the Healthcare Center is located.

E. Ad Hoc Arbitration. In the event that none of the entities named in the foregoing Paragraph I.E. of this Agreement are willing or able to serve as the Arbitration Service (and only in that event), the Demand shall be served on the other party by certified mail or overnight mail, and both parties shall in good faith attempt to agree upon one arbitrator to conduct the arbitration. If the parties are unable to agree upon an arbitrator within 30 days of the receipt of the Demand, each shall within 30 days thereafter appoint an arbitrator and these two individuals shall appoint a third arbitrator within 10 days, in which case the three arbitrators shall serve as the panel of arbitrators. If the arbitration conducted pursuant to this Agreement is conducted before a panel of arbitrators, references to the "arbitrator" contained in this Agreement shall be understood to mean the panel of arbitrators, and the decision of at least two of the three arbitrators shall constitute the decision of the panel. In the event that the arbitration is carried out in accordance with this Paragraph I.F., the arbitrator shall establish the procedural rules for conducting the arbitration.

F. Witnesses, Subpoenas, and Depositions. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness for the circuit court in this state. Upon the request of any party or arbitrator, the arbitrator shall cause to be made a record of the testimony and evidence introduced at the hearing.

G. Costs. The Healthcare Center shall pay the fees of the Arbitration Service up to a maximum of five (5) days of hearing. Any fees of Arbitration Service beyond five (5) days of hearing shall be split between the parties. Each party shall bear its own attorneys' fees.

II. Decision

A. Form of Decision. The arbitrator may, within the time fixed by the rules of the Arbitration Service, grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the Agreement of the parties and consistent with applicable law, provided that the arbitrator shall not make an award of punitive damages unless that award is supported by a reasoned decision that addresses every question of law and fact that a court would be required to address, and further provided that the arbitrator shall not award duplicative damages in respect of a single injury. Notwithstanding any provision contained herein, any award of punitive or

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State of South Carolina
ARBITRATION AGREEMENT

noneconomic damages shall be capped at the statutory amount at which a judgment or jury verdict would be capped had the claim been brought before a court of law. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrator shall deliver a copy to each party personally or by registered mail.

B. Exclusive Process - Result Final. The parties agree that, except to the extent that reconsideration is allowed by the rules and procedures of the Arbitration Service, an arbitration decision shall be the final and unappealable resolution of any controversy within the scope of this Agreement, provided that either party shall be entitled to challenge an arbitration decision upon the limited grounds which are set forth in the rules and procedures of the Arbitration Service. Any decision rendered by the arbitrator may be confirmed in any court of competent jurisdiction.

III. Governing Law, Severability

A. The Healthcare Center's business activities substantially affect, relate to, and involve interstate commerce. For example, the Healthcare Center purchases substantial quantities of goods and services that are produced outside of the state and shipped across state lines to be provided to Patients/Residents of the Healthcare Center. The Healthcare Center participates in federally administered reimbursement programs, including Medicare and Medicaid, in which the Healthcare Center receives reimbursement that is derived from out of state sources for items and services provided to its Patients/Residents. As such, this Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16), as opposed to state arbitration law, notwithstanding any provision of state law or any other understanding or agreement between the parties. The parties specifically exclude the application of South Carolina's Uniform Arbitration Act.

B. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

C. The provisions of this Agreement shall remain in effect after any other agreements between the parties have been terminated.

IV. Patient/Resident's Understanding of Agreement

The Patient/Resident or the Patient/Resident's Representative, has read this Agreement in its entirety, and understands the language in which it is written. If this Agreement has been read on behalf of the Patient/Resident by the Patient/Resident's Representative, the Patient/Resident's Representative has explained to the Patient/Resident, to the extent of the Patient/Resident's capability to understand such

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State of South Carolina

ARBITRATION AGREEMENT

explanation, the nature of this Agreement and its essential terms. The Patient/Resident understands that:

- A. The Patient/Resident has the right to seek legal counsel concerning this Agreement;
- B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center; and
- C. This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature. If not revoked within thirty (30) days, this Agreement shall remain in effect for all care and services rendered at the Healthcare Center, even if such care and services are rendered following the Patient/Resident's discharge and readmission to the Healthcare Center.

THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE SIGNING. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH ARBITRATION.

FLOYD YOUNG

Print: Name of Patient/Resident

UniHealth PAC - Tanglewood

Print: Name of Healthcare Center

Signature of Patient/Resident

Signature of Healthcare Center's Authorized Agent

Jeannette Sanders for DSS

Signature of Patient/Resident Representative

CLEMENTINE WOOD LBSW

Print: Name and Title of Healthcare Center's
Authorized Agent

JEANETTE SANDERS

Print: Name of Patient/Resident Representative and indicate capacity of representative (e.g., guardian, attorney-in-fact, agent under Durable Power of Attorney for Healthcare, spouse, son, daughter, etc.).

NOTE: In signing this Agreement, Patient/Resident Representative binds both Patient/Resident and Patient/Resident Representative individually.

JS Initials

ELECTRONICALLY FILED 2022 MAR 14 PM 3:30 PM PAIR FILED - COMMON PLEAS - CASE#2022CP00009017

EXHIBIT 2

FINAL ORDER FROM FAMILY COURT

FILED ELECTRONICALLY FILED - 2022 Mar 10 08:49 AM - FAIRFIELD - COMMON PLEAS - CASE#2022CP2000017

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

South Carolina Department
of Social Services,

Plaintiff,
vs.

South Carolina Department
of Mental Health

Defendant.

In the interests of:
Floyd Young (DOB: 06/30/1951)
A vulnerable adult.

RECEIVED

2012 JAN 25

IN THE FAMILY COURT
SIXTH JUDICIAL CIRCUIT
2012-20-315

FAIRFIELD FAMILY COURT
BETTY JO BECKHAM

FINAL ORDER

[Adult Protective Services]

I, Betty Jo Beckham, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

1125/12 Betty Jo Beckham
Clerk of Court

PRESIDING JUDGE:	W. Thomas Sprott, Jr.
DATE OF HEARING:	December 14, 2011
ATTORNEY FOR PLAINTIFF:	Calvin L. Goodwin
FAIRFIELD COUNTY DSS:	Jeanette Sanders
ATTORNEY FOR MR. YOUNG:	Nicole Singletary
GUARDIAN AD LITEM :	Maria Patton
ATTORNEY FOR GUARDIAN AD LITEM:	Nicole Singletary
COURT REPORTER:	Latoya C. Perry

This matter is before me pursuant to a complaint submitted under S.C. Code Ann. § 43-35-45 (C) wherein the plaintiff sought court-ordered protective services/custody of the vulnerable adult after he was placed into protective custody by law enforcement pursuant to S.C. Code Ann. § 43-35-55.

The above-listed persons were present; the vulnerable adult, Floyd Young, was not present. This court has jurisdiction over the parties and the subject matter. Also present was Eric Hartley of the South Carolina Department of Mental Health.

I was advised at the call of this case that an agreement on the issues had been reached. This agreement was presented to me for the record by the plaintiff's attorney. Eric Hartley of the South Carolina Department of Mental Health made a statement to the court regarding their agency attempts to find the appropriate placement for the vulnerable adult; accordingly, I find that the South Carolina Department of Mental Health should be made a party to this matter for the purpose of placement. The Department of Social Service shall retain custody of the vulnerable adult.

Based on the information presented, a review of the file, and the recommendations of the guardian *ad litem*, I make the following:

FINDING OF FACT AND CONCLUSIONS OF LAW

1. The South Carolina Department of Social Services should retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement. SCDSS shall remain Mr. Young's personal representative as set out in HIPPA regulations.
2. That the Defendant, Floyd Young, did physically neglect himself as defined by S.C. Code Ann. 43-35-10 and Mr. Young is unable to adequately provide for his own care and protection.
3. That SCDSS may seek payment for services by or from the financial resources by Floyd Young, if it is proven that Mr. Young has any resources.
4. That Floyd Young will follow all physician medical recommendations and take his medication as prescribed.
5. That Floyd Young will cooperate with DSS case manager at all times.
6. That the South Carolina Department of Mental Health is added as the lead agency to assist with the placement of Mr. Young.
7. That this case be reviewed within 6 months.

8. All parties, including the guardian *ad litem* for the vulnerable adult, stated that they fully understand the agreement and believe it to be fair, equitable, reasonable, and in the best interests of Mr. Floyd Young. Therefore, this agreement should be adopted as the order of the court.

THEREFORE, I ORDER that:

1. South Carolina Department of Social Services shall retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement. SCDSS shall remain Mr. Young's personal representative as set out in HIPPA regulations.
2. The Defendant, Floyd Young physically neglected himself as defined by S.C. Code Ann. 43-35-10.
3. SCDSS may seek payment for services by or from the financial resources by Floyd Young, if it is proven that Mr. Young has any resources.
4. The vulnerable adult, Floyd Young will follow all physician medical recommendations and take his medication as prescribed.
5. The vulnerable adult, Floyd Young will cooperate with DSS case manager at all times.
6. The South Carolina Department of Mental Health be added as a party to this action to assist with the placement of Mr. Young.
7. This case be reviewed within 6 months.

IT IS SO ORDERED.

S. W. T. Spratt, Jr.
W. Thomas Spratt, Jr.
Presiding Family Court Judge
Sixth Judicial Circuit

J-11, 2012.
Lancaster, South Carolina

EXHIBIT 3

MEDICAL RECORDS FROM PROVIDENCE HOSPITAL JANUARY, 2013

SISTERS OF CHARITY PROVIDENCE HOSPITALS
2435 FOREST DRIVE
COLUMBIA, SOUTH CAROLINA 29204
(803) 256-5300

*****ED PROVIDER NOTE*****

PATIENT: YOUNG, FLOYD NMI	ACCOUNT # D00507724961
DICTATING PROVIDER: Mull, Melissa Dawn FNP	MED REC # M000971370
ATTENDING: Carroll, Vernon Scott Sr. MD	AGE: 61
ADMISSION DATE:	NURSING STATION: D.ED
DISCHARGE DATE:	DATE OF DICTATION: 01/20
ROOM/BED:	TIME OF DICTATION: 1154
PATIENT TYPE:	

* *****

Abdominal Pain HPI

General

Mode of Arrival+: EMERGENCY MEDICAL SERVICE

Accompanied By+: EMT/PARAMEDIC

Chief Complaint Gastrointestinal Complaints

Stated Complaint COFFE GROUND EMESIS WITH SYNCOPAL EPISODE

Time Seen by MD 1130

Source patient, old records

Exam Limitations no limitations

History of Present Illness

Initial Comments

pt presents from Tanglewood nursing home with report of coffee ground emesis 2 days ago and generalized weakness and near syncope. pt on my exam is alert, calm and follows commands. pt abd is soft, NT, BSx4 quads. pt denies any discomfort. pt states he had drank coffee and spit it up that is why they sent him here, denies any abd pain, vomiting blood.

Timing/Duration per HPI

Severity/Quality mild, per HPI

Location generalized abdomen

Radiation no radiation

Activities at Onset none

Modifying Factors

improves with: per HPI.

Associated Symptoms per HPI, nausea/vomiting

Cardiac/Abd ROS

Constitutional

Pt reports: no symptoms reported.

EENTM

Pt reports: no symptoms reported.

Respiratory

Pt reports: no symptoms reported.

Cardiovascular

Pt reports: no symptoms reported.

Gastrointestinal

Pt reports: see HPI, nausea, vomiting.

Genitourinary

Pt reports: no symptoms reported.

dorsalis pedis (L)

Gastrointestinal soft, non tender, NABS, no organomegaly

Pelvic normal external exam, normal adnexa, no cerv. motion tender, no masses

Male Genitalia normal genitalia, normal prostate, no hernia

Rectal normal exam, normal rectal tone, heme negative stool

Back normal inspection, no CVA tenderness, no vertebral tenderness, neg. straight leg raise

Extremities non-tender, normal range of motion, normal inspection, normal capillary refill, no calf tenderness, no pedal edema, pelvis stable, no pretibial edema

Neurologic/Psychiatric conscious, alert, oriented x3, no motor deficits, no sensory deficits, normal mood, normal affect, normal concentration, CNs II-XII nml as tested

Skin normal color, warm/dry

Lymphatic no adenopathy

Medical decision making

Pt seen under the direction of:

Carroll, Vernon Scott Sr. MD

Course:

see HPI: will do labs, hemocult, IVF, zofran. and reeval.

labs wnl. normal rectal exam, no blood noted. pt in nad. no vomiting while in ED. non-ill appearing. tolerating po fluids well. discussed findings with pt and sister. pt to return to tanglewood and fu with pcp. pt is not orthostatic.

pt ambulating without difficulty upon dc, tolerating po fluids and food. pt will be given zofran for nausea rx.

Medications administered:

Current Medications

Medication	Dose	Sig/Sch Route	Start time Stop Time	Status	Last Admin
Acetaminophen/ Hydrocodone Bitart	1 tab	1X ER STAT STA PO	01/20 1251 01/20 1252	DC	01/20 1320
Pantoprazole Sodium	40 mg	1X ER STAT STA IV	01/20 1245 01/20 1246	DC	01/20 1320
Ondansetron HCl	4 mg	1X ER STAT STA IV	01/20 1116 01/20 1117	DC	01/20 1130
Sodium Chloride	1000 ml	1X ER STAT STA IV	01/20 1116 01/20 1915	AC	01/20 1130

Orders placed:

Orders

Procedure	Date/time	Status
T4 FREE	01/20 1150	Complete
PORTABLE CHEST	01/20 1117	Active
ABDOMEN 2 VIEWS	01/20 1117	Active
VS: Orthostatic +	01/20 1116	Active
OCCULT BLOOD, STOOL	01/20 1116	Complete
URINALYSIS	01/20 1116	Active
TSH W/ REFLEX	01/20 1116	Complete
TROPONIN I WITH REFLEX CKMB	01/20 1116	Complete
T4 FREE	01/20 1116	Complete
MAGNESIUM	01/20 1116	Complete
LACTIC ACID	01/20 1116	Active
COMPREHENSIVE METABOLIC PANEL	01/20 1116	Complete
CBC WITH AUTO DIFF	01/20 1116	Complete
EKG	01/20 1116	Active

Effective Date 3/4/04

Acknowledgement of Receipt of Notice Of Privacy Practices

I acknowledge that I have received a copy of the Hospitals' Notice of Privacy Practices

Acknowledgement of Directory Inclusion / Exclusion☒ I choose to be **INCLUDED** in this Sisters of Charity Providence Hospitals Directory.☐ I choose to be **EXCLUDED** from the Sisters of Charity Providence Hospitals Directory.**Choosing to be excluded from the Directory means:**

- ☒ No information will be given regarding my hospital stay --e.g. if someone calls and request my room number, or any information, the caller will be told, "We do not have any information on that person in the system."

➤ Flowers received to the hospital will not be delivered.

➤ Mail / Cards received to the hospital will not be delivered.

☒ I acknowledge that, at the time of or prior to being admitted to the hospital for inpatient care or outpatient surgery, I have received the written information required under the Patient Safety Act. FLOYD

Signature of Patient or Representative

Date

1-20-2013

Or

☐ The patient did not receive the written information required under the Patient Safety Act prior to or upon admission to the hospital for inpatient care or outpatient surgery because the patient was admitted under emergency circumstances.

Signature of Hospital Employee verifying emergency admission

Date

**SISTERS OF CHARITY
PROVIDENCE HOSPITALS**

2435 Forest Drive · Columbia, SC 29204



ADMACKPP

Rev. Date 10/07



Patient Name:

Acc#

Ad#

DO#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

Adm#

YOUNG, FLOYD, M

D00507724961

01/20/13

M 61

06/30/51

U#000971370

06/30/51

06/30/51

06/30/51

06/30/51

06/30/51

06/30/51

06/30/51

06/30/51

practitioners who render professional services to me/the patient, may bill and collect independently for these services. I understand that their bills will be separate and apart from the Hospital's billing and collections or that the Hospital may bill on the health care provider's behalf. Furthermore, I understand that each health care provider may be individually contracted with an HMO or PPO. These contracts could be different from the contracts the Hospital holds. I understand that it is my responsibility to find out if each health care provider is a member of my/the patient's insurance provider network.

9. Consent to Photograph : I understand that photographs, videotapes, digital, or other images may be recorded to document my care and I consent to this. I understand that these photographs, videotapes, digital, or other images will become part of my medical record and are considered protected health information. I also understand that Sisters of Charity Providence Hospitals is the owner of my medical record, but that I have a right to access my protected health information in the medical record in the manner described in the Notice of Privacy Practices. I understand that these images will be stored in a secure manner that will protect my privacy and that they will be kept at least for the time period required by law.

Guarantee of Payment

By signing the form below, I understand that:

- * I am financially responsible for this account with the Hospital, regardless of any insurance benefits to the fullest extent allowed by law.
- * I understand that I may be held responsible for any charges not covered for any reason by a third party payer. Should this account be turned over to a collection agency or an attorney for collection, I understand that I will be obligated to pay all collection fees and reasonable attorney's fees.

By signature below, I consent to and agree to the conditions set forth on this form. I have been given the opportunity to ask questions regarding this form, and understand the obligation I assume by signing this form.

1-20-2013
DATE AND TIME

WITNESS

SIGNATURES OF PATIENT
or

PATIENT'S PERSONAL REPRESENTATIVE
(Circle one: Parent, Guardian, or Legally Authorized Representative)

Yearly Consent for Outpatient Radiology and Lab test only:

☐

I hereby give consent to use this Consent to Conditions of Treatment for exactly one (1) year from today's date for any future Radiology of Lab test performed at Providence Hospitals.


PROVIDENCE HOSPITALS
A Ministry of the Sisters of Charity Health System
2435 Forest Drive 1/2 Columbia, SC 29204



Rev. Date 10/07

ADMCONSENT


YOUNG FLOYD, M
A# D00507724961 U#M000921370
01/20/13 M 61 06/30/51
I HEREBY GIVE CONSENT TO THE TREATMENT OF MY PATIENT

EXHIBIT 4

AFFIDAVIT OF EDITH PEOPLES

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Edith Peoples, as Personal Representative of
the Estate of Floyd Young,
Petitioner,

v.

Pruitt Health - Ridgeway,
Respondent.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-NI-20-0005

AFFIDAVIT OF EDITH PEOPLES

PERSONALLY, appeared before me the undersigned, who, being first duly sworn, deposes and says that:

1. My name is Edith Peoples.
2. Floyd Young was my brother. I have three sisters, Nancy Crumpton, Lola Young and Mabel Thompson and two other brothers, John Young and Amos Young.
3. I took care of Floyd Young until he became too much for me to handle. DSS stepped in. I made a statement at the 72 Hour hearing but I was not served with any documents nor was I notified of any hearings.
4. At the final hearing I was given visitation with my brother. In 2015 I was appointed his Guardian.
5. I did not understand what DSS was doing or that I was giving up my rights to my brother. Nor was I informed that the DSS was waiving Floyd's right to a jury trial.
6. Floyd was not served with any documents nor was he notified that he was waiving his right to a jury trial.

Edith Peoples (L.S.)
Edith Peoples

SWORN to before me this

30 day of March, 2022

Karla B. Cooper
Notary Public of South Carolina

My Commission Expires: 8-24-2027

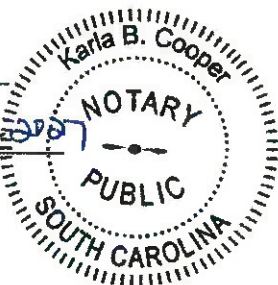


EXHIBIT 5

AFFIDAVIT OF KARLA COOPER

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Edith Peoples, as Personal Representative of
the Estate of Floyd Young,

Petitioner,

v.

Pruitt Health - Ridgeway,

Respondent.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2021-NI-20-0005

AFFIDAVIT OF KARLA COOPER

PERSONALLY, appeared before me the undersigned, who, being first duly sworn, deposes and says that:

1. My name is Karla B. Cooper.
2. I am a paralegal of Creighton B. Coleman.
3. I researched the file of South Carolina Department of Social Services vs South Carolina Department of Mental Health, In the interests of: Floyd Young (DOB: 06/30/1951). Docket No.: 2011-DR-20-315 in the Fairfield County Family Courthouse.
4. There were two Certificate of Service documents in the file. One was serving Nicole Singletary, the attorney for the Guardian Ad Litem and the second was serving Maria Patten at the Office for the Study of Aging as the Guardian Ad Litem and Eric Hartley at the Department of Mental Health.
5. There were no service documents serving Edith Peoples or any other member of Floyd Young's family.

 (L.S.)
Karla B. Cooper

SWORN to before me this
29th day of March, 2022


Notary Public of South Carolina
My Commission Expires: 3/16/25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	2022-CP-20-00017
	)	
	)	
	)	
	)	
EDITH PEOPLES AS PR OF THE	)	
ESTATE OF FLOYD YOUNG,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
PRUITHEALTH-RIDGEWAY,	)	
DEFENDANT.	)	
_____	)	

March 31, 2022
Via WebEx

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

A P P E A R A N C E S:

CREIGHTON COLEMAN, ESQ.
BRAD JORDAN, ESQ.
Attorney for the Plaintiff

JOSH WHITLEY, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

EXHIBIT E

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

(WHEREUPON, the proceedings were held via WebEx.)

COURT REPORTER'S NOTE: Due to remote platform interruption and video-audio interference throughout the hearing, those instances are denoted with "audio distortion" in the transcript.

THE COURT: This is case Edith Peoples as PR of the Estate of Floyd Young vs. PruittHealth-Ridgeway, 2022-CP-20-17, it's a motion to compel brought by PruittHealth-Ridgeway.

Mr. Whitley, I believe it's your motion, I'll be glad to hear from you, sir.

MR. WHITLEY: Good morning, Your Honor. May it please Court. I'm sorry if I appeared reared to go. It was not impatience. I think you've handled this docket very efficiently and I appreciate it.

THE COURT: Not a problem.

MR. WHITLEY: Being last on the docket has a meaning and all is well, and I apologize.

This is PruittHealth-Ridgeway's motion to compel arbitration. The motion was made, of course, pursuant to Rule 12(b)(1), (3), (6) and, of course, significantly to our motion, the Federal Arbitration Act at 9 USC Section 1 through 16.

Your Honor, we filed a memorandum in support on March

1 the 17th and, of course, I'd ask for it to be incorporated
2 as part of my argument and relied on by the Court.

3 Your Honor, just a little background because I used to
4 say I spent 25 percent of my time litigating arbitration
5 agreements, now, I spend, I think, 75 percent of my in-court
6 time litigating arbitration agreements at the trial and
7 appellate levels. This one is only a tad bit different, but
8 only different in a significant favorable way to compelling
9 arbitration. So very briefly on the background.

10 In 2011, January the 11th, Judge Sprott made an order
11 awarding legal and physical custody to the Department of
12 Social Services for the resident that is the subject of this
13 motion. Mr. Young was a vulnerable adult under our law. He
14 was a danger, I suppose, to himself and others. We have
15 filed that final order from Judge Sprott as our Exhibit B.

16 The DSS person who was given legal and physical custody
17 thereafter admitted Mr. Young to our nursing facility where
18 they executed a number of admission documents, including a
19 voluntary arbitration agreement.

20 The arbitration agreement was made pursuant to the
21 Federal Arbitration Act. I don't think there could be any
22 reasonable dispute that it covers the scope of the
23 negligence claimed in the Plaintiff's complaint. It allows
24 for 30-day revocation. It admonishes whoever to seek legal
25 advice if need be and to revoke within 30 days.

1 By way of a short legal background, Your Honor, it does
2 not fail on me that in 2014 -- actually, 2013, I was in the
3 Fair -- not virtual, I was in the Fairfield County
4 courthouse moving to compel arbitration in the Dean vs.
5 Heritage Healthcare case. And I've argued a number of these
6 to the Court, so I won't belabor the point with you, Judge
7 Gibbons.

8 But in the Dean case, which was out of Fairfield, back
9 then, arbitration agreements had not been enforced routinely
10 in South Carolina courts. And the basis of those rulings
11 were generally that they did not implicate interstate
12 commerce. But in those motions, which many were denied, if
13 not all, in those motions, the Plaintiffs threw the
14 proverbial kitchen sink. It was unconscionable the form
15 failed. Everywhere there was an arbitration decision
16 anywhere, they threw those arguments.

17 By and large, beginning in 2014 and beginning with the
18 Dean case, those arguments have been settled and well
19 settled. The Dean case went to the Supreme Court and the
20 Court found we will enforce nursing home arbitration
21 agreements in this context. They reversed 20 years of
22 precedent and said it did affect interstate commerce. They
23 addressed discovery issues and reform clause and on and on.

24 So they put up to bed a lot of the kitchen sink
25 arguments. I don't mean that disrespectfully, I just mean

1 when motions and memorandums, as it did here last night,
2 raise a myriad of issues.

3 And what the progeny of cases did thereafter were this:
4 We're going to force it, but if and only if there is the
5 appropriate authority of the signatory who signed the
6 arbitration agreement. That's what the last six, seven
7 years of cases have focused on, is whether the person having
8 authority to sign the arbitration agreement, in fact, had
9 authority.

10 So how do we know that? We have a number of ways to
11 indicate authority. Of course, number one, if a cognizant
12 resident has good ability to contract on their behalf and
13 signs a resident agreement, no question, our courts have
14 enforced the arbitration agreement. If not, did they give a
15 daughter, a spouse, somebody general principles of agency
16 authority, general authority, apparent authority to contract
17 on their behalf? If not, did they give actual authority, a
18 power of attorney. And, perhaps, the strongest evidence of
19 authority is a court order. A judge who has said I'm giving
20 authority to another person over your behalf.

21 And that's exactly what we have in this case. We have
22 Judge Sprott who has given not only physical custody, but
23 legal custody to the Department of Social Services. And
24 they have signed a voluntary arbitration agreement on their
25 behalf.

1 And that's the basis of our motion. We think, frankly,
2 it's very clear. The case law and progeny is clear, so long
3 as there's an appropriate person with authority, it's
4 enforceable. And I don't think there's any case law when a
5 judge awards legal and physical custody that they would not
6 have authority. Of course, there's no statutory or
7 otherwise restricting DSS's authority when a judge grants
8 them legal and apparent authority.

9 I did review the Plaintiff's and my colleagues brief
10 from last night. And I just want to point out a few things
11 that, again, I think have been foreclosed and well settled.
12 Number one, they focused on they have a viable cause of
13 action under 12(b)(6). Of course, we don't deny that, but
14 it's subject to the Court's 12(b)(1) and (3) subject matter
15 and venue jurisdiction that you don't have a viable cause of
16 action in this venue. Your venue is in arbitration. We
17 wouldn't go to arbitration and say they don't have a cause
18 of action. They have pled negligence, that will be
19 appropriate in arbitration setting. So that's their first
20 argument that survived 12(b)(6). They don't survive it when
21 the court lacks jurisdiction.

22 Number two, they make a big deal about the responsible
23 party. A sister came along three years later and got
24 guardianship and so forth. But they make a big deal that
25 the responsible party didn't sign the arbitration agreement.

1 Your Honor, in the nursing home context, generally --
2 and I think Your Honor, who has experience in the nursing
3 home context with your parent, the responsible party can be
4 someone with legal custody, but it might be a child or a
5 spouse who receives the phone call when something is going
6 on with the parent.

7 In that regard, Your Honor, that's generally where we
8 lose motions to compel arbitration. They say oh, well, they
9 might have been the responsible party, but they did not have
10 authority to contract in an arbitration setting. It doesn't
11 matter. The only person, the only person on this date when
12 this arbitration agreement was signed that a court could
13 find had authority was the one the Court gave legal custody
14 to, and that's the very person who signed the arbitration
15 agreement.

16 The memorandum states that Mr. Young didn't have
17 capacity. I think that's inherent in the judge's ruling of
18 taking away custodial decisions legal and physical and
19 giving them to DSS.

20 And they focus greatly that the Vulnerable Adult Act
21 doesn't give the authority to sign arbitration agreements.
22 Frankly, that's not our argument and not the Court's
23 dictate. The court says find out who has authority. And
24 the only person who could have authority is who the judge
25 gave legal and physical custody to.

1 They also says that the guardian ad litem or attorney
2 didn't have a chance to review the arbitration agreement.
3 That may be fair, but it's not when you say the agreement on
4 its face gives you 30 days to go out and get -- and advises
5 you, advises you, go get a legal opinion. You got 30 days
6 to revoke it. But that's a red heron because, in fact, the
7 guardian ad litem and the attorney didn't have the
8 authority. Again, only the person the Court gave authority
9 to and legal custody to could have signed this agreement
10 regardless of a guardian ad litem.

11 I think Your Honor is very aware that the
12 unconscionable arguments, the public policy arguments, the
13 limits of discovery and labor ("audible distortion") law,
14 those are well settled. But I will tell you, for example,
15 they say it doesn't allow punitive damages, that's just not
16 true. They do allow -- explicitly allows punitive damages.
17 It just says that the arbitrator must do a written order
18 finding the facts supporting punitive damages.

19 But in all those reasons, it's well settled that
20 arbitration agreements are not unconscionable. Involuntary
21 arbitration agreements have been enforced by courts, much
22 less voluntary ones like this one. It was not required for
23 the admission of Mr. Young.

24 I think I have addressed it. Of course, I know you'll
25 allow me a short rebuttal if I haven't answered all the

1 concerns -- of I hope you will, I don't want to assume, Your
2 Honor, that Mr. Jordan and Mr. Coleman might raise. In this
3 case, they have been a pleasure to work with. We just
4 disagree, I suppose, on whether or not we have an
5 enforceable arbitration agreement in terms of the person who
6 had authority to sign the agreement. I know Your Honor will
7 give our memorandums and arguments thoughts and I'll answer
8 any questions the Court may have.

9 THE COURT: Thank you, sir. No questions at this time.

10 I'm going to recognize -- who's going to argue, Mr.
11 Jordan or Mr. Coleman?

12 MR. JORDAN: I am, Your Honor.

13 THE COURT: Okay. Thank you. Go ahead.

14 MR. JORDAN: Thank you, Your Honor. First of all, I
15 would agree with you that I dislike WebEx hearings. I would
16 must rather be in person.

17 Your Honor, I want to address a few of the issues that
18 have been raised here. First of all, we have raised the
19 issue that a person with authority did not sign the
20 contract. And I want to talk a little bit about that. Your
21 Honor, the DSS order, the Family Court order does not make a
22 finding that Mr. Young is mentally incompetent. Finding
23 number two specifically said that he has physically
24 neglected himself, not that he was mentally incompetent or
25 he didn't have the capacity to enter contracts.

1 One of the things that Mr. Whitley has mentioned is
2 that DSS had this authority. Well, DSS obtains its
3 authority by enabling it. And none of that legislation
4 allows them to, with a side agreement, waive Constitutional
5 rights of the residents or patients or their clients.

6 This arbitration clause was not in a residential
7 agreement. DSS has the authority by court order to protect
8 the individual. What does that mean? It means that they
9 have to find placement. If you look at the language of this
10 arbitration agreement itself, it says this is not necessary
11 for placement. So DSS, their authority is merely to protect
12 the individual and find placement. Had this been a
13 residential agreement in which an arbitration clause
14 happened to be placed there, then the argument may be in
15 order to get placement, you've got to sign the agreement as
16 is.

17 This is not the case. This is a side agreement, a
18 separate agreement going solely to waiving Constitutional
19 rights, waiving discovery rights. This is not your usual
20 residential agreement. And Mr. Whitley mentioned, in fact,
21 there were multiple other documents that, Your Honor, quite
22 frankly, we don't have yet because we've just started this
23 case. But this is a side agreement relating solely to
24 litigation. This is not a residential agreement for
25 placement, which we would concede DSS has authority to do.

1 But DSS does not have authority by statute, by regulation or
2 this court order to enter into side agreements solely
3 concerning potential litigation. So that's what we have
4 here.

5 So I want to address a few more of the issues, if I
6 could, Your Honor. First of all, we are alleging that this
7 agreement is unconscionable and for several reasons. I've
8 never had one of these arbitration agreements, Your Honor,
9 where the patient had an attorney. The patient had an
10 attorney here and the attorney was never consulted.

11 And if you look at the plain language of the agreement,
12 which we consider to be a condition precedent, the language
13 of the agreement says you've got a right to legal counsel to
14 review this before you sign it. Well, in fact, he had legal
15 counsel and the legal counsel was never brought in and never
16 shown it and never given the opportunity to weigh in on this
17 issue.

18 So if you take a look at -- it's the last page of our
19 Exhibit 1, it says the patient resident has the right to
20 seek legal counsel concerning this agreement. Never done.
21 It's a condition precedent, we believe. Part B says, the
22 signing of this agreement is not a precondition to
23 admission, expedited admission or the furnishing of
24 services.

25 So DSS, obviously, entered into other agreements

1 concerning services, but took it upon themselves to enter
2 into a side agreement solely for the purpose of waiving any
3 rights to litigation of Floyd Young. So that far exceeded
4 the scope of the DSS authority by statute, by regulation or
5 by court order.

6 I want to talk a little bit about the -- sorry, Your
7 Honor. So, Your Honor, South Carolina law defines
8 unconscionability as the absence of meaningful choice. So
9 several reasons he had no meaningful choice. Number one, he
10 -- there was no finding that he was mentally incompetent,
11 just that he had neglected himself.

12 Number two, if you look at the medical records that
13 we've attached as Exhibit No. 3 from Providence Hospital,
14 they specifically found that he was oriented times three.
15 He signed for himself acknowledging receiving the paperwork.
16 He actually answered questions concerning whether or not he
17 had a Living Will or healthcare power of attorney. He was
18 competent to fully advise the medical personnel concerning
19 his condition, yet, he was not shown this document. He was
20 not read the document, explained the document nor was his
21 attorney given the right to view this document. So we think
22 that's one reason it's unconscionable, is that he had no
23 choice.

24 Your Honor, we think it violates public policy. You
25 know, we mentioned the punitive damages issue. If you look

1 at the language in this arbitration agreement, it seems to
2 add some additional hoops that you have to jump through in
3 order to get punitive damages. I'm sorry, Your Honor, I'm
4 trying to find the correct portion. But the punitive
5 damages, Your Honor, it says it has to be a reasoned
6 decision and then it has to go through every question of law
7 in fact.

8 Here, Your Honor, if -- you know, our statute says that
9 if compensatory or nominal damages are awarded and there's a
10 finding of reckless or intentional conduct, then there could
11 be an award of punitive damages. So I think it requires
12 some additional hoops to be jumped through in order to seek
13 punitive damages.

14 We mentioned the discovery issue. Your Honor, this
15 particular agreement far exceeds what the FAA -- the
16 Arbitration Act itself. This limits an attorney's right to
17 issue a subpoena. It says that only depositions will be
18 allowed as approved by permission of the arbitrator.

19 This is a medical negligence case, Your Honor. I
20 don't, quite frankly, know how we can prepare a medical
21 negligence case without doing discovery. It doesn't allow
22 for written discovery. It doesn't allow for deposition
23 discovery. It doesn't allow for an attorney to issue a
24 subpoena. And this far exceeds the FAA. So this agreement,
25 Your Honor, I mean, it's much more intrusive, one-sided than

1 the FAA itself. Even the scope of discovery, we're just not
2 allowing it, Your Honor.

3 I think it speaks to the fundamental fairness of the
4 agreement and, you know, given the fact that we contend Mr.
5 Young was not mentally incompetent and his attorney never
6 had a chance to look at it, there can be no meeting of the
7 minds, so no contract formed.

8 The other thing, Your Honor, I want to mention is under
9 Section C of the -- Paragraph 2 of the agreement, it states
10 that this particular arbitration agreement is going to
11 survive any residential agreement. It says -- it purports
12 to remain in effect forever. Your Honor, that far exceeds
13 the FAA.

14 The FAA, if you're looking at lumping every single
15 cause of action or any attempt to load every conceivable
16 dispute that the parties may ever have under FAA, regardless
17 of whether the dispute has any issue or relationship to the
18 underlying transactions, i think that's unconscionable. And
19 so that's the case.

20 The other thing, Your Honor, it says you can't appeal
21 the decision, whereas the FAA rule says that you can. So
22 this restricts your right not only to a trial by a jury, but
23 it restricts your right to appeal the decision if you don't
24 like it.

25 Your Honor, you know, I've already mentioned that DSS

1 exceeded their scope by signing this side agreement. Not
2 only did they exceed the scope of their authority, but, Your
3 Honor, it violated their own mission. You know, the DSS
4 mission for -- and purpose for the adult protective services
5 says protect vulnerable adults from abuse, neglect and
6 exploitation. And the APF purpose, it says, to provide
7 intervention and protection for vulnerable adults who cannot
8 provide care or protection for themselves in a manner that
9 ensures attention will be given to the adult's right of
10 self-determination.

11 Self-determination means, Your Honor, he gets to make
12 or his attorney gets to make decisions as to whether or not
13 they're going to waive Constitutional rights or waive rights
14 to an appeal or waive rights to have South Carolina law
15 apply to a contract, or whether or not they even want to
16 sign a separate side agreement limiting litigation.

17 So, Your Honor, we think that there was no authority by
18 DSS or anyone else that signed it. Your Honor, we think
19 it's unconscionable for the reasons set forth in our brief,
20 and also the reason -- the appeal issue, I did not address
21 in the brief, Your Honor, but it's there as well. So we
22 think it's unconscionable.

23 THE COURT: All right. Thank you, Mr. Jordan.

24 Mr. Coleman.

25 MR. COLEMAN: Your Honor, if I may say, and Brad may

1 jump in, I think, too, there were two affidavits we
2 submitted with the brief. Number one, Carla Cooper in my
3 office went over to Family Court and looked at the DSS file.
4 There were no notices to any of the family members that this
5 was being done.

6 At the time, I think that there were four siblings of
7 Floyd Young and nobody was given notice. Now, one of the
8 siblings, Edith Peoples, was at the hearing and she spoke,
9 but she was not explained what was going on. None of the
10 other family members were put on notice. And, also, there's
11 an affidavit from Edith Peoples saying that she didn't know
12 that Floyd Young was giving up his jury trial rights and
13 that Floyd didn't know it.

14 THE COURT: Okay.

15 Mr. Jordan, anything else you want to add before I let
16 Mr. Whitley close?

17 MR. JORDAN: No, Your Honor.

18 THE COURT: Thank you.

19 Mr. Whitley, the Court recognizes you for a brief
20 reply.

21 MR. WHITLEY: Thank you, Judge Gibbons.

22 Of course, thank you to my colleagues.

23 Number one, questioning DSS admission statement and
24 enabling statute is a red heron. The issue is Judge Sprott.
25 Whether or not there's an affidavit filed last night about a

1 DSS file is of no moment. The Court only needs to look to
2 the final order of Judge Sprott, which grants legal and
3 physical custody to the DSS caseworker, period. That means
4 she has the authority to do all such things, which that
5 person could do for themselves if they were competent and
6 ready to do it themselves. That's truly, I believe, direct
7 application of the authority cases in the state and
8 otherwise.

9 Number two, it seems to me a conflicting argument by
10 Mr. Jordan. To say on the one side, Pruitt, you shouldn't
11 have a voluntary agreement. It should be in the resident's
12 agreement, then the DSS could sign it. But then at the same
13 time, say it's unconscionable, a voluntary agreement is
14 unconscionable because I don't have meaningful -- it can
15 only be one or the other and under our law, it actually can
16 be neither.

17 Number one, Chief Justice Toal's opinion in the Coleman
18 case explains why a separate voluntary arbitration agreement
19 is a mechanism protecting residents' rights, protecting them
20 because their admission is not predicated on the signing of
21 a separate voluntary arbitration agreement.

22 Wouldn't it be a disservice if we all of a sudden put
23 it in the mandatory resident's agreement and then you may
24 have an adhesion unconscionable argument. But you can't
25 have it both ways. And Chief Justice Toal certainly

1 articulated that better than I ever will.

2 Number three, I believe, my friend is just wrong. The
3 FAA doesn't give parties the right to subpoena. The FAA
4 does exactly what this form does and that is it makes the
5 arbitrator the person who has to issue the subpoenas.
6 That's a simple procedural issue. It happens across the
7 country. I've done it many, many times. You send the
8 subpoena to whoever the arbitrator is and they issue the
9 subpoena. That's consistent in exactly what Section 7 of
10 the FAA says.

11 And furthermore, it doesn't on it's face -- again, I
12 believe Mr. Jordan is wrong. It doesn't restrict the
13 appellate process. It does exactly how we know arbitration
14 appellate processes to do and that's what in the agreement.
15 It's pursuant to the rules and it allows for an appeal
16 within the rules.

17 I believe I have addressed all of the arguments raised
18 that I didn't anticipate. But, Your Honor, in our view,
19 there is no dispute of the person who had legal custody and
20 legal authority to sign the arbitration agreement on that
21 date. Had any other person, including the resident, who was
22 just taken into custody, had any other person signed this
23 arbitration agreement, it would not be enforceable. The
24 only person who could have signed the arbitration agreement
25 was the one who signed it. And, therefore, respectfully to

1 my friends, I believe it should be enforced and I would ask
2 the Court to move and compel arbitration.

3 THE COURT: Thank you, gentlemen. That concludes the
4 arguments in this matter. I'm going to take it under
5 advisement. I or my law clerk will be in touch with you
6 with my ruling as soon as I make one.

7 Thank you very much. That concludes this hearing.
8 Great to see y'all.

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

July 7, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SIXTH JUDICIAL CIRCUIT
COUNTY OF FAIRFIELD	)	
	)	
Edith Peoples, as personal representative	)	Civil Action No.: 2022-CP-20-00017
of the estate of Floyd Young,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANT’S
v.	)	MOTION TO DISMISS AND/OR STAY
	)	AND COMPEL ARBITRATION
Pruitt Health – Ridgeway,	)	
	)	
Defendant.	)	
_____	)	

This matter comes before the Court on Defendant’s Motion to Dismiss and/or Stay and Compel Arbitration pursuant to Rules 12(b)(1)(3) and (6) of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act. A hearing was held before the Court on March 31, 2022. Joshua Whitley was present on behalf of the Defendant and Creighton Coleman and Brad Jordan were present on behalf of the Plaintiff. For the following reasons this Court respectfully **DENIES** the Defendant’s Motion to Dismiss and/or Stay and Compel Arbitration.

FACTUAL AND PROCEDURAL BACKGROUND¹

In 2012, Mr. Young was found to be a vulnerable adult and placed in the custody of the South Carolina Department of Social Services (DSS) pursuant to a Family Court Order by the Honorable W. Thomas Sprott, Jr. dated January 11, 2012. This Order found that “Mr. Young physically neglected himself,” and that “[he] is unable to adequately provide for his own care and protection.” Judge Sprott ordered that “[DSS] shall retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement.” The Order did not make any findings regarding Mr. Young’s mental capacity.

¹ Unless otherwise cited, all facts in this section were taken from Plaintiff’s Complaint, and the Memoranda submitted for this motion along with any exhibits.

In March of 2012, DSS admitted Mr. Young to PruittHealth, a skilled nursing facility in Ridgeway, South Carolina. Upon his admission, DSS employee Jeanette Sanders signed an Arbitration Agreement on March 2, 2012, which stated

[a]ny and all claims or controversies arising out of or in any way relating to this Agreement ... including ... any acts or omissions in connection with such care or services ... any claim based on negligence, any claim resulting from death or injury ... shall be submitted for arbitration.

The arbitration agreement waived Mr. Young's Constitutional right to a trial by jury and required any disputes over PruittHealth's care of Mr. Young to be resolved through binding arbitration. The agreement, was never shown or explained to Mr. Young, his family, or his Power of Attorney, Edith Peoples.

Mr. Young resided in PruittHealth for over eight years. During his stint, Mr. Young required several trips to the Emergency room for pneumonia, sepsis, a urinary tract infection, pressure ulcers, feeding tube issues, ulcerations in the GI tract, and severe peritonitis from swallowing a latex glove, all of which the Plaintiff claim were a result of actions or inactions by the Defendant. On March 30, 2020 Mr. Young passed away. Edith Peoples, as Personal Representative of the Estate of Mr. Young, filed a survivorship action against PruittHealth. The Defendant filed this motion to dismiss and/or stay and compel arbitration pursuant to the Arbitration Agreement.

STANDARD OF REVIEW

"Whether a claim is arbitrable 'is an issue for judicial determination, unless the parties provide otherwise.'" *Scott v. White Oak Manor, Inc.*, 426 S.C. 568, 573, 828 S.E.2d 82, 85 (2019) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). "[A] circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports

those findings.” *Id.* (quoting *Timmons v. Starkey*, 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008)).

DISCUSSION

The Supreme Court of South Carolina has held that arbitration agreements in conjunction with nursing home residency contracts are governed by the Federal Arbitration Act. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). “Because arbitration under the FAA rests entirely upon consent, it is always up to the court to determine if the parties have an agreement to arbitrate.” *Simmons v. Benson Hyundai, LLC*, No. 2019-000344, 2022 WL 791174, at *2 (S.C. Ct. App. Mar. 16, 2022), *reh'g denied* (Mar. 25, 2022) (internal citations omitted). “Arbitration may not be compelled unless the court is satisfied ‘the making of the agreement for arbitration ... is not in issue.’” *Id.* (citing 9 U.S.C § 4). Whether an agreement to arbitrate was formed is a question for the court. *Id.* While the Defendant argues that the FAA governs the arbitration agreement and, therefore, arbitration is mandatory, the Court believes that the FAA is not an issue in this case². Instead, the issue here is whether or not the agreement to arbitrate was sufficiently entered into. Because Mr. Young was placed into DSS custody by the Family Court, and DSS signed the arbitration agreement on behalf of Mr. Young, this decision boils down to whether or not DSS had authority to bind Mr. Young to the arbitration agreement.

Clearly, the Family Court Order does not specifically grant DSS the authority to bind Mr. Young to arbitration agreements or any other contracts. It simply places Mr. Young into the “legal and physical custody” of DSS with no explanation or guidance into what that means. Thus, the

² The Plaintiff never disputed that this case is governed by the FAA.

analysis takes the court to the enabling statutes and regulations governing DSS to determine DSS's authority. The relevant portions of the statutes are as follows.

'Protective services' means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

S.C. Code Ann. § 43-35-10 (9) (1976).

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- (7) conduct studies and compile data regarding abuse, neglect, and exploitation;
- (8) issue reports and recommendations.

S.C. Code Ann. § 43-35-20 (1976).

The relevant portions of the regulations are as follows: "The agency shall provide protective services for adults who have been determined to be in need of such services in order to remedy or prevent situations of abuse, neglect or exploitation." S.C. Code Ann. Regs. 114-3310 (A) (2011). Further, it states

[s]ervices provided may include, but not limited to, the following:

- (1) Counseling with the client or other involved persons in order to remedy or prevent abusive, neglectful, or exploitive circumstances.
- (2) Protective placement of the adult client upon a voluntary agreement or by order of the Family Court.
- (3) Health related services to treat physical or mental illness. The caseworker shall not sign any consents for surgery unless the surgery is specifically authorized by the appropriate court.
- (4) Homemaker services to assist the client with daily living activities in the home.
- (5) Emergency caretaker services to provide responsible adult supervision on a temporary basis for an adult in need of protection.
- (6) Referral to Probate Court, or the appropriate agency, such a Social Security Administration or Veteran's Administration, in order to assist in the establishment of a representative or protective payee for protective services client.
- (7) Facilitation in the provision of any other Title XX service as determined by the needs of the client.

S.C. Code Ann. Regs. 114-3340 (2011).

The cardinal rule in statutory interpretation is that the Court must look at the plain and ordinary meaning in determining the intent of the legislature. Using this cardinal rule, it is clear that the legislation did not intend to give DSS the authority to sign binding arbitration agreements on behalf of vulnerable adults. Nothing in these statutes or regulations gives DSS the authority to sign any contracts on behalf of vulnerable adults in its custody, including arbitration agreements. The statutes generally direct investigations by DSS and focus on preventing harm to the vulnerable adult. An arbitration agreement does nothing to prevent harm to a vulnerable adult, but controls the method in which an issue between two parties is litigated. Additionally, the regulations do not give authority for DSS to provide services beyond dealing with healthcare issues. In fact, under these regulations, DSS does not even have authority to consent to a surgery on behalf of a vulnerable adult without court approval. The court is aware that both the relevant statutes and regulations include a "not limited to" provision, however, in interpreting legislative intent, the Court does not believe that allowing DSS to enter into arbitration agreement on behalf of a vulnerable adult was intended to be included in DSS authority. Further, allowing DSS to bind a

vulnerable adult to an arbitration agreement would be a significant overstep given the limited services that are specifically authorized by the legislation. Further, the arbitration agreement is expressly not a precondition of admission to PruittHealth. Thus, statutes giving authority to DSS for securing living quarters does not include to the authority to sign arbitration agreements.

The Defendant points this Court to *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014), stating that the Court should compel arbitration because circumstances in that case are similar to the circumstances in this case. However, this Court finds that *Dean* deals with a significantly different issue. In *Dean*, the issue addressed by the court was whether or not the FAA controlled the agreement to arbitrate. In this case, the Plaintiffs are arguing that the agreement to arbitrate was not entered into by the parties to be bound and the DSS employee did not have legal authority to bind the client. In *Dean*, the arbitration agreement was not signed by the patient, but signed by the patient's daughter³, even though the patient was competent. *Id.* at 376, 730. Most importantly, the Court in *Dean* noted that it was concerned that the patient did not sign the arbitration agreement despite being competent to do so, but that issue did not come up on appeal. *Id.* at 388, 736, footnote 13.

Unlike *Dean*, the issue that the arbitration agreement was not signed by the party to be bound is properly before this Court. Based on the arguments, Mr. Young was never found to be incompetent by the Family Court or medical providers. Thus, he had the capacity to understand and sign the arbitration agreement himself if he wanted to. Further, the DSS employee did not discuss the arbitration agreement with Mr. Young or with Mr. Young's family and power of attorney.

³ The patient's daughter was not the patient's health care power of attorney. *Dean*, 376, 730, footnote 1.

The Defendant argues that the DSS employee had authority to sign the arbitration agreement on behalf of Mr. Young, based on Judge Sprott's Order. The Order put Mr. Young in the "legal and physical" custody of DSS. However, that Order only gave DSS the authority to "secure a safe and protective placement." Admitting Mr. Young to the care of PruittHealth was in DSS's authority, but waiving his Constitutional Rights to a jury trial was not.⁴ Signing the arbitration agreement on behalf of Mr. Young was an overstep in DSS's authority as granted by Judge Sprott's Order.

CONCLUSION

For the foregoing reasons, the Defendant's motion to dismiss and/or stay and compel arbitration is **DENIED**⁵.

So Ordered.

Fairfield County, South Carolina

April _____, 2022

Judge Brian M. Gibbons
Chief Administrative Judge
Sixth Judicial Circuit

⁴ The arbitration agreement specifically stated that it was not a precondition to admission. The DSS employee could have admitted Mr. Young without signing the arbitration agreement.

⁵ The Defendant's Motion was partly based on 12(b) (1)(3) and (6), however, no argument was made in its memorandum or during oral arguments based on these rules. Thus, they are not addressed in this Order.



Fairfield Common Pleas

Case Caption: Edith Peoples , plaintiff, et al VS Pruitt Health-Ridgeway

Case Number: 2022CP2000017

Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CIVIL ACTION NO.: 2022-CP-20-00017
	)	
Edith Peoples as Guardian for Floyd Young, a	)	
Vulnerable Adult	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S NOTICE OF
	)	MOTION AND MOTION TO
	)	RECONSIDER COURT'S ORDER
PruittHealth-Ridgeway, LLC	)	DENYING DEFENDANT'S MOTION
	)	TO DISMISS AND/OR STAY AND
Defendant	)	COMPEL ARBITRATION

PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant PruittHealth-Ridgeway, LLC ("PruittHealth") and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, hereby moves this Honorable Court for a hearing for the purpose of reconsidering the Court's ruling set forth in its Order filed April 21, 2022 (the "Order")¹, which denied PruittHealth's Motion to Dismiss and/or Stay and Compel Arbitration (the "Motion"). *See* Exhibit A, April 21, 2022, Order. PruittHealth respectfully requests that the Court reconsider its ruling and, in support thereof, show the following:

INTRODUCTION²

On January 16, 2022, Plaintiff Edith Peoples, as Personal Representative of the Estate of Floyd Young ("Plaintiff"), instituted the present action against PruittHealth. Plaintiff is the sister of Mr. Floyd Young ("Mr. Young") and, effective April 8, 2015, Mr. Young's appointed Guardian.

¹ Pursuant to Rule 59(e), SCRPC, PruittHealth must submit a motion to reconsider "not later than 10 days after receipt of written notice of the entry of the order." Accordingly, PruittHealth's Motion to Reconsider is timely as the Order was received on April 21, 2022, and this Motion to Reconsider is being filed on April 29, 2022.

²PruittHealth incorporates by reference the Statement of Relevant Facts section of its Memorandum of Law in Support of Motion to Dismiss and/or Stay and Compel Arbitration.

EXHIBIT G

See Exhibit B, Certificate of Appointment. Mr. Young was a vulnerable adult, diagnosed with multiple mental and other health conditions, including dementia, schizophrenia, bipolar disorder, anxiety, depression and pica, a compulsive eating disorder that causes an individual to eat nonfood items, and he was ultimately placed in the legal and physical custody of the South Carolina Department of Social Services (“DSS”) in January 2011 – four (4) years *before* Plaintiff’s appointment as Guardian. *See* Plaintiff’s Complaint (“Compl.”) ¶¶ 2,4; *see also* Exhibit C, Final Order. Mr. Young was also a resident of PruittHealth. Compl. ¶ 4. Three (3) years prior to Plaintiff’s appointment as Guardian, in or around March of 2012, DSS admitted Mr. Young to PruittHealth. *Id.* In admitting Mr. Young to PruittHealth, a representative of DSS completed admissions documents on behalf of Mr. Young, including an arbitration agreement, which governed any and all claims arising out of Mr. Young’s residency at PruittHealth. *See* Exhibit D, Arbitration Agreement. Consequently, when Plaintiff filed this action alleging negligence based on PruittHealth’s care of Mr. Young, PruittHealth filed the Motion to Dismiss and/or Stay and Compel Arbitration that is the subject of the Court’s Order.

Following PruittHealth’s Motion, the parties each submitted memorandums³ related to PruittHealth’s Motion and, on March 31, 2022, the Court held a virtual hearing. On April 21, 2022, the Court entered its Order denying PruittHealth’s Motion. PruittHealth is filing the present Motion to Reconsider because the Order misstates pertinent facts and clear South Carolina law, and ultimately reaches the wrong conclusion. Accordingly, PruittHealth respectfully requests that the Court reconsider its ruling and correct its Order in compliance with the facts and binding legal precedent.

³ Notably, although PruittHealth filed its initial Memorandum in support of its motion on March 17, 2022 (2 weeks prior to the Hearing), Plaintiff filed her memorandum in opposition to PruittHealth’s Motion at nine (9) p.m. on the night before the Court scheduled its Hearing, so PruittHealth was unable to file a reply. Therefore, PruittHealth will address Plaintiff’s arguments in the present Motion to Reconsider.

LEGAL ANALYSIS AND DISCUSSION⁴

In the Order, the Court found that DSS did not have authority to bind Mr. Young to the arbitration agreement. *See* Ex. A, p. 3. In reaching this precarious conclusion that impacts DSS's rights in difficult circumstances, the Court erroneously (1) determined that Judge W. Thomas Sprott, Jr.'s January 11, 2011 Order granting DSS "legal and physical custody" of Mr. Young did not grant DSS authority to execute the arbitration agreement on Mr. Young's behalf; (2) found that Mr. Young had the capacity to enter into the arbitration agreement himself; (3) found that DSS did not read the arbitration agreement to Mr. Young and considered whether the arbitration agreement was discussed with Plaintiff; and (4) failed to give due regard to the Federal Arbitration Act ("FAA"), codified at 9 U.S.C. §§ 1-16. As discussed in further detail below, these errors were fatal to the Court's Order and warrant granting PruittHealth's Motion.

1. Judge Sprott Jr.'s Order Granting Legal Authority To DSS Enabled DSS To Execute The Arbitration Agreement On Behalf Of Mr. Young.

In determining that DSS did not have authority to bind Mr. Young to the arbitration agreement, the Court disregarded the plain language of Judge Sprott Jr.'s Order granting DSS "legal" custody of Mr. Young and elected to interpret it in light of DSS-related statutes and regulations. In doing so, the Court determined that Judge Sprott Jr.'s Order could not have granted DSS authority to enter into the arbitration agreement because "the regulations do not give authority for DSS to provide services beyond healthcare issues." *See* Ex. A, pp. 3-5. As a threshold matter, this was erroneous because an analysis of statutory interpretation was unnecessary because Judge Sprott Jr.'s Order placing Mr. Young in DSS's "legal and physical custody" was unambiguous. Moreover, though, this was erroneous because it is counter to the very statutes cited by the Court,

⁴ PruittHealth reasserts all of the arguments that it presented to the Court in its Motion to Dismiss and/or Stay and Compel Arbitration, its Memorandum in Support of its Motion to Dismiss and/or Stay and Compel Arbitration, and during the hearing related to this matter.

among others, and it completely disregards the South Carolina Supreme Court's opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346 (2014).

For example, S.C. Code § 43-35-10(9), contained in the Court's Order, provides that DSS is enabled to provide "protective services" for vulnerable adults and that such services "include, but are not limited to, elevating the need for protective services, securing and coordinating existing services, arranging for living quarters, *obtaining financial benefits to which a vulnerable adult is entitled*, and securing medical services, supplies, and *legal services*." While this statute is not exhaustive of the authorities granted to DSS by the South Carolina legislature, as the Court acknowledged but nonetheless disregarded, it definitively enables DSS to carry out tasks for a vulnerable adult that are unrelated to healthcare, including instituting legal proceedings. If DSS has the authority to institute legal proceedings on behalf of a vulnerable adult, it certainly may choose the forum in which to do so, including arbitration.

A grant of "legal custody" in other family law contexts is similarly not limited to healthcare decisions. Under S.C. Code § 63-15-210, a parent with sole legal custody of a child has the broad authority to make decisions for the child, including making decisions about the child's education, medical and dental care, extracurricular activities, and religious training. Accordingly, the Court's basis for determining that "legal" custody only extends to healthcare decisions does not comport with South Carolina statutory law or an implementation of legal custody under any scenario in South Carolina. DSS is often tasked with legal custody of minors and vulnerable adults and sign permission slips for field trips, enroll children in schools and extracurricular activities, and are empowered by our courts to do all such things that any person (i.e., a parent) can do that has legal custody. DSS is awarded legal custody across the state on a nearly daily basis. There is no limitation to such custody and the Court's ruling endangers DSS's ability to function as a legal

guardian under various difficult circumstances without limitation. If there was to be any limit on the legal custody given DSS, it was Judge Sprott Jr.'s prerogative to do so.

Even if it were true that Judge Sprott Jr.'s order limited DSS's decision making authority to healthcare decisions (it did not), the Court's conclusion would nonetheless run afoul of binding South Carolina Supreme Court precedent: *Coleman*. 407 S.C. 346 (2014). In *Coleman*, the Supreme Court anticipated the exact scenario presented in this case – that a court order would give authority to an agent that would include the power to enter arbitration agreements. Specifically, it stated: “the power to make decisions other than those involving health care and payment therefore on behalf of the incapacitated person, including authority to enter other types of contracts, may be vested in an attorney-in-fact, a probate court guardian, or another who possesses legal authority” *Id.* at 354 n.4 (emphasis added). This language clearly suggests that legal custody of a person extends to legal decisions unrelated to healthcare and payment.

At bottom, Judge Sprott Jr.'s Order placing Mr. Young in DSS's legal custody was sufficient on its own to create authority for DSS to execute the arbitration agreement on behalf of Mr. Young. It was not an “overstep,” but consistent with DSS's enabling statute and the Supreme Court's opinion in *Coleman*. Accordingly, the arbitration agreement is enforceable, and the Court should reconsider its Order.

2. Mr. Young Did Not Have Capacity To Enter Into The Arbitration Agreement Himself.

In support of its conclusion that DSS did not have authority to bind Mr. Young to the arbitration agreement, the Court stated that it found that Mr. Young had the “capacity to understand and sign the arbitration agreement himself if he wanted to.” Ex. A, p. 6. The Court's Order provides that this finding is based on representations during the arguments that “Mr. Young was never found to be incompetent by the Family Court or medical providers.” *Id.* Plaintiff's representations about

Mr. Young's capacity during oral argument are unavailing for multiple reasons. Respectfully, the Court's reliance on those representations must be revisited.

First, Plaintiff's claim that Mr. Young had capacity conflicts with her own allegations in the Complaint. By Plaintiff's own admission, Mr. Young suffered from multiple mental and other health conditions, including dementia, schizophrenia, bipolar disorder, anxiety, depression, and pica. Compl. ¶ 4. Plaintiff's Complaint sets forth the debilitating affect that these conditions had on Mr. Young's cognition. Specifically, she alleges that Mr. Young was "under constant skilled nursing care due to his conditions, *decline in mental cognition* and his total dependence for his needs for dally (sic) living and activity. Mr. Young could not walk, *had difficulty speaking and could not make his needs known to the staff*[]" and that, "[d]ue to his pica, [Mr. Young was] known to chew on his bedgown, bedsheets, his diaper brief, his own feces and other non-food items." Compl. ¶¶ 5-6. Plaintiff's Complaint, at a minimum, suggests – if not establishes – that Mr. Young, at all times relevant to the Complaint, lacked capacity to understand and execute the arbitration agreement.

Second, Judge Sprott Jr.'s Order similarly supports that Mr. Young lacked capacity. While the Order does not explicitly conclude that Mr. Young was "incompetent," a lack of capacity is implicit in the Order. It states that "Mr. Young is unable to adequately provide for his own care and protection," and that the South Carolina Department of Mental Health was made a party to the matter, evincing that Mr. Young was unable to understand and contract for his own care and protection. Ex. C. This is bolstered by Mr. Young's advanced directives form, which DSS completed upon Mr. Young's admission. *See* Exhibit E, Advanced Directives Checklist. It explicitly provides that Mr. Young was "unable to comprehend what advanced directives are[.]" It follows that Mr. Young was also unable to comprehend the arbitration agreement such that he

should have executed it. Therefore, Plaintiff's representations that Mr. Young had capacity lack support. Even if he were able to execute the agreement, which PruittHealth denies, the fact that someone else with authority executed the agreement makes his execution unnecessary.

Mr. Young's medical records from Sister of Charity Providence Hospital, dated ten (10) months after Mr. Young's admission to PruittHealth, do not provide a factual basis for the Court's finding either because an individual's orientation or alertness and ability to sign his or her name is distinguishable from his or her ability to understand and effectuate contracts. Additionally, any reliance on those documents to determine the enforceability of the arbitration agreement is inappropriate because they have no bearing on Mr. Young's capacity at the time that the arbitration agreement was signed, which is the operative time period. *See Verdery v. Daniels (In re Thames)*, 344 S.C. 564, 570 (Ct. App. 2001) (holding "South Carolina has defined contractual capacity as a person's ability to understand, *at the time the contract is executed*, the nature of the contract and its effect.") (emphasis added). To the extent that the Court relied on these medical records in forming the conclusions in its Order, this reliance too requires reconsideration. Moreover, it is in further error, as PruittHealth moved for limited jurisdictional discovery to the extent the Court needed to reach any of these factual issues in order to obtain under oath testimony regarding the same.

As the above demonstrates, DSS did not lack authority to execute the arbitration agreement on behalf of Mr. Young because Mr. Young did not have capacity himself (and would not have lacked authority even had he had capacity given the Court's award of legal custody to it). Although there is strong evidentiary support establishing that Mr. Young lacked capacity, as discussed below, if the Court is not satisfied with the evidentiary basis, PruittHealth should be given the opportunity to engage in jurisdictional discovery to resolve this issue.

3. DSS Certified That It Discussed The Arbitration Agreement With Mr. Young, But It Was Not Required To Do The Same For Plaintiff Or Any Other Individual.

The Court's Order further justifies its conclusion that DSS did not have authority to bind Mr. Young to the arbitration agreement by stating that it found that DSS "did not discuss the arbitration agreement with Mr. Young or with Mr. Young's family and power of attorney." At the outset, beyond Plaintiff's conclusory statement in the Complaint, there is no evidence that Plaintiff was Mr. Young's Power of Attorney. Further, she was not his guardian until *years* later. *See* Ex. A. In any event, the Court's finding that DSS did not discuss the arbitration agreement with Mr. Young is unsupported by the record and truly based on no factual record whatsoever. Additionally, its finding that the arbitration agreement was not shared with Plaintiff or Mr. Young's family is immaterial.

By executing the arbitration agreement, Jeanette Sanders, a representative of DSS, certified that she not only read the agreement before executing it, but she also "explained to [Mr. Young], to the extent of [Mr. Young's] capability to understand such explanation, the nature of [the] Agreement and its essential terms." Ex. D, p. 5. As demonstrated above, explaining the arbitration agreement to Mr. Young was not required due to Mr. Young's lack of capacity and DSS's legal authority, but this certification nonetheless refutes the Court's factual finding and advances the need to reconsider the Court's Order.

Although PruittHealth does not dispute the Court's finding that the arbitration agreement was not shared with Plaintiff or any other individual outside of Mr. Young and DSS, this fact is immaterial because, at the time of execution, DSS – and DSS alone – had the authority to execute the arbitration agreement on behalf of Mr. Young. Plaintiff did not become Mr. Young's Guardian until three (3) years *after* Mr. Young was admitted to PruittHealth and the arbitration agreement

was signed. Ex. D. In fact, under federal privacy laws, it may have been inappropriate to share information with Plaintiff at that point of the residency. The Court has not cited and PruittHealth has not found any authority under South Carolina law requiring PruittHealth to present Plaintiff with the arbitration agreement or any other admissions document upon her appointment as Guardian *three* (3) years after the execution of the agreement. Thus, the nonoccurrence has no bearing on DSS's authority or the arbitration agreement's enforceability.

4. The Court Should Give Due Regard To The FAA And Enforce The Arbitration Agreement, Or, In The Alternative, Permit Jurisdictional Discovery.

The Court did not give due regard to the FAA in its Order. Instead, it preliminarily concluded that "the FAA is not an issue in this case." Ex. A, p. 3. However, the FAA is necessarily an issue in this case because the Court has been presented with an issue relating to the enforceability of an arbitration agreement and Plaintiff's memorandum in opposition takes positions adverse to the FAA. *See* Plaintiff's Memorandum in Opposition, pp. 8-9 (stating "[e]ven assuming, for purposes of argument, that Mr. Young by and through DSS entered into the Arbitration Agreement with Defendant, and there are valid signatures by all parties with authority, the Arbitration Agreement is still unconscionable and should not be enforced. The Arbitration Agreement was a stand-alone agreement, not needed for admission to the facility."). Accordingly, reconsideration of the Court's Order under the FAA is appropriate.

The United States Supreme Court has stated that the FAA reflects "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Underlying this policy is Congress's view that arbitration constitutes a more efficient dispute resolution process than litigation. *See Brantley v. Republic Mortgage Ins. Co.*, 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004), *aff'd* 424 F.3d 393 (4th Cir. 2005); *see also Hightower v. GMRI*,

Inc., 272 F.3d 239, 241 (4th Cir. 2001) (same). Accordingly, “due regard must be given to the federal policy favoring arbitration[.]” *Brantley* at 5 (quoting *Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76 (1989)); see also *Towles v. United Healthcare Corp.*, 338 S.C. 29, 41, 542 S.E.2d 839, 846 (Ct. App. 1999) (stating South Carolina courts “must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration”).

The FAA supports enforcement of the arbitration agreement in this case. In properly considering the FAA, the Court will reach the same conclusion. The arbitration agreement contains all of the necessary and familiar elements of a valid and binding contract, and as explained above, it was properly entered into by the parties.

Despite this, should the Court remain dissatisfied with a factual issue needed to dispose of the issue of arbitration, the law necessitates the Court to compel jurisdictional discovery. 9 U.S.C. § 4; see also, e.g., *Dean v. Heritage Healthcare of Ridgeway, LLC [n/k/a PruittHealth of Ridgeway, LLC]*, 408 S.C. 371, 388 n. 13 (2014) (noting that the circuit court must make a full inquiry into the issue of the resident’s capacity prior to enforcing the Arbitration Agreement). Although PruittHealth believes that DSS’s legal custody is favorably dispositive of the arbitration issue here, the Court’s decision is based on facts that have not been substantiated. Thus, PruittHealth respectfully requests that the Court reconsider its ruling consistent with the FAA, and, at a minimum, permit the parties to engage in limited jurisdictional discovery.

CONCLUSION

Due to the severity of his mental health and other medical conditions, the record demonstrates that Mr. Young lacked the capacity to contract. As a result, Judge Sprott, Jr. granted DSS legal custody of Mr. Young. As Mr. Young’s legal custodian, DSS had the authority to execute the arbitration agreement in this case on behalf of Mr. Young. Plaintiff’s appointment as

Mr. Young's Guardian over three (3) years after DSS admitted Mr. Young to PruittHealth did not displace the authority of DSS to execute the arbitration agreement at the time of his admission, nor did it affect the future enforceability of the arbitration agreement. The arbitration agreement is therefore a binding and enforceable contract under South Carolina law, and the Court should amend its Order to reflect the same, or in the alternative, permit jurisdictional discovery.

Respectfully Submitted,

s/Joshua S. Whitley
Joshua S. Whitley, Esquire
S.C. Bar No.: 77824
Smyth Whitley, LLC
126 Seven Farms Drive, Suite 260
Charleston, South Carolina 29492
Tel.: (843) 606-5635
Fax: (843) 654-4095
jwhitley@smythwhitley.com

Attorney for the Defendant

April 28, 2022

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Fairfield
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2000017

Edith Peoples et al
PLAINTIFF(S)

Pruitt Health-Ridgeway
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Reconsider is Denied. No further arguments are necessary.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/01/2022 .

Edith Peoples As Pr Of Estate

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Fairfield Common Pleas

Case Caption: Edith Peoples , plaintiff, et al VS Pruitt Health-Ridgeway

Case Number: 2022CP2000017

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

BRIAN M. GIBBONS, Circuit Court Judge

RECEIVED

MAY 04 2022

SC Court of Appeals

Case No. 2022-CP-20-00017

Edith Peoples as Personal
Representative of the Estate of
Floyd Young,

Respondents,

v.

PruittHealth-Ridgeway,

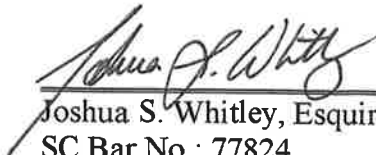
Appellant.

NOTICE OF APPEAL

PruittHealth-Ridgeway appeals the Order of the Honorable Brian M. Gibbons dated May 2, 2022, denying Appellant's timely Motion to Reconsider the Court's denial of Defendant's Motion to Dismiss/Compel Arbitration.

The Court filed a formal order on April 21, 2022. Appellant moved to reconsider the Court's denial of its motion to compel arbitration on April 28, 2022. Appellant received a Form 4 Order denying its Motion to Reconsider on May 2, 2022. The Orders are attached hereto as Exhibits A and B.

May 2, 2022



Joshua S. Whitley, Esquire

SC Bar No.: 77824

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29492

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jwhitley@smythwhitley.com

Attorney for Appellant

Other Counsel of Record:

Creighton B. Coleman, Esquire

Coleman & Tolen, LLC

120 W. Washington Street

Winnsboro, SC 29180

D. Bradley Jordan, Esquire

Jordan law Firm, P.C.

546 East Main Street

Rock Hill, SC 29731

Attorneys for Respondent

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAY 04 2022

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

SC Court of Appeals

BRIAN N. GIBBONS, Circuit Court Judge

Case No. 2022-CP-20-00017

Edith Peoples as Personal
Representative of the Estate of
Floyd Young,

Respondents,

v.

PruittHealth-Ridgeway

Appellant.

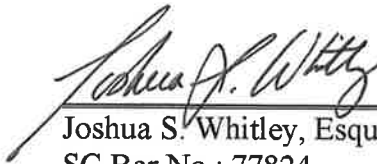
PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Edith Peoples as Personal Representative of the Estate of Floyd Young by depositing a copy of it in the United States Mail, postage prepaid, on May 2, 2022, addressed to her attorneys of record as listed below:

Creighton B. Coleman, Esquire
Coleman & Tolen, LLC
120 W. Washington Street
Winnsboro, SC 29180

-and-

D. Bradley Jordan, Esquire
Jordan law Firm, P.C.
546 East Main Street
Rock Hill, SC 29731



Joshua S. Whitley, Esquire
SC Bar No.: 77824
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Tel.: (843) 606-5635
Fax: (843) 654-4095
jwhitley@smythwhitley.com

Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)
Edith Peoples, as personal representative)
of the estate of Floyd Young,)
Plaintiff,)
v.)
Pruitt Health – Ridgeway,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-20-00017

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS AND/OR STAY
AND COMPEL ARBITRATION**

This matter comes before the Court on Defendant's Motion to Dismiss and/or Stay and Compel Arbitration pursuant to Rules 12(b)(1)(3) and (6) of the South Carolina Rules of Civil Procedure and the Federal Arbitration Act. A hearing was held before the Court on March 31, 2022. Joshua Whitley was present on behalf of the Defendant and Creighton Coleman and Brad Jordan were present on behalf of the Plaintiff. For the following reasons this Court respectfully **DENIES** the Defendant's Motion to Dismiss and/or Stay and Compel Arbitration.

FACTUAL AND PROCEDURAL BACKGROUND¹

In 2012, Mr. Young was found to be a vulnerable adult and placed in the custody of the South Carolina Department of Social Services (DSS) pursuant to a Family Court Order by the Honorable W. Thomas Sprott, Jr. dated January 11, 2012. This Order found that "Mr. Young physically neglected himself," and that "[he] is unable to adequately provide for his own care and protection." Judge Sprott ordered that "[DSS] shall retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement." The Order did not make any findings regarding Mr. Young's mental capacity.

¹ Unless otherwise cited, all facts in this section were taken from Plaintiff's Complaint, and the Memoranda submitted for this motion along with any exhibits.

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MAY 04 2022

SC Court of Appeals



In March of 2012, DSS admitted Mr. Young to PruittHealth, a skilled nursing facility in Ridgeway, South Carolina. Upon his admission, DSS employee Jeanette Sanders signed an Arbitration Agreement on March 2, 2012, which stated

[a]ny and all claims or controversies arising out of or in any way relating to this Agreement ... including ... any acts or omissions in connection with such care or services ... any claim based on negligence, any claim resulting from death or injury ... shall be submitted for arbitration.

The arbitration agreement waived Mr. Young's Constitutional right to a trial by jury and required any disputes over PruittHealth's care of Mr. Young to be resolved through binding arbitration. The agreement, was never shown or explained to Mr. Young, his family, or his Power of Attorney, Edith Peoples.

Mr. Young resided in PruittHealth for over eight years. During his stint, Mr. Young required several trips to the Emergency room for pneumonia, sepsis, a urinary tract infection, pressure ulcers, feeding tube issues, ulcerations in the GI tract, and severe peritonitis from swallowing a latex glove, all of which the Plaintiff claim were a result of actions or inactions by the Defendant. On March 30, 2020 Mr. Young passed away. Edith Peoples, as Personal Representative of the Estate of Mr. Young, filed a survivorship action against PruittHealth. The Defendant filed this motion to dismiss and/or stay and compel arbitration pursuant to the Arbitration Agreement.

STANDARD OF REVIEW

"Whether a claim is arbitrable 'is an issue for judicial determination, unless the parties provide otherwise.'" *Scott v. White Oak Manor, Inc.*, 426 S.C. 568, 573, 828 S.E.2d 82, 85 (2019) (quoting *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)). "[A] circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports

those findings.” *Id.* (quoting *Timmons v. Starkey*, 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008)).

DISCUSSION

The Supreme Court of South Carolina has held that arbitration agreements in conjunction with nursing home residency contracts are governed by the Federal Arbitration Act. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). “Because arbitration under the FAA rests entirely upon consent, it is always up to the court to determine if the parties have an agreement to arbitrate.” *Simmons v. Benson Hyundai, LLC*, No. 2019-000344, 2022 WL 791174, at *2 (S.C. Ct. App. Mar. 16, 2022), *reh’g denied* (Mar. 25, 2022) (internal citations omitted). “Arbitration may not be compelled unless the court is satisfied ‘the making of the agreement for arbitration ... is not in issue.’” *Id.* (citing 9 U.S.C § 4). Whether an agreement to arbitrate was formed is a question for the court. *Id.* While the Defendant argues that the FAA governs the arbitration agreement and, therefore, arbitration is mandatory, the Court believes that the FAA is not an issue in this case². Instead, the issue here is whether or not the agreement to arbitrate was sufficiently entered into. Because Mr. Young was placed into DSS custody by the Family Court, and DSS signed the arbitration agreement on behalf of Mr. Young, this decision boils down to whether or not DSS had authority to bind Mr. Young to the arbitration agreement.

Clearly, the Family Court Order does not specifically grant DSS the authority to bind Mr. Young to arbitration agreements or any other contracts. It simply places Mr. Young into the “legal and physical custody” of DSS with no explanation or guidance into what that means. Thus, the

² The Plaintiff never disputed that this case is governed by the FAA.

analysis takes the court to the enabling statutes and regulations governing DSS to determine DSS's authority. The relevant portions of the statutes are as follows.

'Protective services' means those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another. These services include, but are not limited to, evaluating the need for protective services, securing and coordinating existing services, arranging for living quarters, obtaining financial benefits to which a vulnerable adult is entitled, and securing medical services, supplies, and legal services.

S.C. Code Ann. § 43-35-10 (9) (1976).

In addition to all other powers and duties that an investigative entity is given in this article, the investigative entity may:

- (1) have access to facilities for the purpose of conducting investigations, as otherwise permitted by law;
- (2) request and receive written statements, documents, exhibits, and other items pertinent to an investigation including, but not limited to, hospital records of a vulnerable adult which the hospital is authorized to release upon written request of the investigative entity without obtaining patient authorization;
- (3) issue, through its director, administrative subpoenas for the purpose of gathering information and documents;
- (4) institute proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (5) require all persons, including family members of a vulnerable adult and facility staff members, to cooperate with the investigative entity in carrying out its duties under this chapter including, but not limited to, conducting investigations and providing protective services;
- (6) require all officials, agencies, departments, and political subdivisions of the State to assist and cooperate within their jurisdictional power with the court and the investigative entity in furthering the purposes of this chapter;
- ~~(7) conduct studies and compile data regarding abuse, neglect, and exploitation;~~
- (8) issue reports and recommendations.

S.C. Code Ann. § 43-35-20 (1976).

The relevant portions of the regulations are as follows: "The agency shall provide protective services for adults who have been determined to be in need of such services in order to remedy or prevent situations of abuse, neglect or exploitation." S.C. Code Ann. Regs. 114-3310 (A) (2011). Further, it states

[s]ervices provided may include, but not limited to, the following:

- (1) Counseling with the client or other involved persons in order to remedy or prevent abusive, neglectful, or exploitive circumstances.
- (2) Protective placement of the adult client upon a voluntary agreement or by order of the Family Court.
- (3) Health related services to treat physical or mental illness. The caseworker shall not sign any consents for surgery unless the surgery is specifically authorized by the appropriate court.
- (4) Homemaker services to assist the client with daily living activities in the home.
- (5) Emergency caretaker services to provide responsible adult supervision on a temporary basis for an adult in need of protection.
- (6) Referral to Probate Court, or the appropriate agency, such a Social Security Administration or Veteran's Administration, in order to assist in the establishment of a representative or protective payee for protective services client.
- (7) Facilitation in the provision of any other Title XX service as determined by the needs of the client.

S.C. Code Ann. Regs. 114-3340 (2011).

The cardinal rule in statutory interpretation is that the Court must look at the plain and ordinary meaning in determining the intent of the legislature. Using this cardinal rule, it is clear that the legislation did not intend to give DSS the authority to sign binding arbitration agreements on behalf of vulnerable adults. Nothing in these statutes or regulations gives DSS the authority to sign any contracts on behalf of vulnerable adults in its custody, including arbitration agreements. The statutes generally direct investigations by DSS and focus on preventing harm to the vulnerable adult. An arbitration agreement does nothing to prevent harm to a vulnerable adult, but controls the method in which an issue between two parties is litigated. Additionally, the regulations do not give authority for DSS to provide services beyond dealing with healthcare issues. In fact, under these regulations, DSS does not even have authority to consent to a surgery on behalf of a vulnerable adult without court approval. The court is aware that both the relevant statutes and regulations include a "not limited to" provision, however, in interpreting legislative intent, the Court does not believe that allowing DSS to enter into arbitration agreement on behalf of a vulnerable adult was intended to be included in DSS authority. Further, allowing DSS to bind a

vulnerable adult to an arbitration agreement would be a significant overstep given the limited services that are specifically authorized by the legislation. Further, the arbitration agreement is expressly not a precondition of admission to PruittHealth. Thus, statutes giving authority to DSS for securing living quarters does not include to the authority to sign arbitration agreements.

The Defendant points this Court to *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014), stating that the Court should compel arbitration because circumstances in that case are similar to the circumstances in this case. However, this Court finds that *Dean* deals with a significantly different issue. In *Dean*, the issue addressed by the court was whether or not the FAA controlled the agreement to arbitrate. In this case, the Plaintiffs are arguing that the agreement to arbitrate was not entered into by the parties to be bound and the DSS employee did not have legal authority to bind the client. In *Dean*, the arbitration agreement was not signed by the patient, but signed by the patient's daughter³, even though the patient was competent. *Id.* at 376, 730. Most importantly, the Court in *Dean* noted that it was concerned that the patient did not sign the arbitration agreement despite being competent to do so, but that issue did not come up on appeal. *Id.* at 388, 736, footnote 13.

Unlike *Dean*, the issue that the arbitration agreement was not signed by the party to be bound¹ is properly before this Court. Based on the arguments, Mr. Young was never found to be incompetent by the Family Court or medical providers. Thus, he had the capacity to understand and sign the arbitration agreement himself if he wanted to. Further, the DSS employee did not discuss the arbitration agreement with Mr. Young or with Mr. Young's family and power of attorney.

³ The patient's daughter was not the patient's health care power of attorney. *Dean*, 376, 730, footnote 1.

The Defendant argues that the DSS employee had authority to sign the arbitration agreement on behalf of Mr. Young, based on Judge Sprott's Order. The Order put Mr. Young in the "legal and physical" custody of DSS. However, that Order only gave DSS the authority to "secure a safe and protective placement." Admitting Mr. Young to the care of PruittHealth was in DSS's authority, but waiving his Constitutional Rights to a jury trial was not.⁴ Signing the arbitration agreement on behalf of Mr. Young was an overstep in DSS's authority as granted by Judge Sprott's Order.

CONCLUSION

For the foregoing reasons, the Defendant's motion to dismiss and/or stay and compel arbitration is **DENIED**⁵.

So Ordered.

Judge Brian M. Gibbons
Chief Administrative Judge
Sixth Judicial Circuit

Fairfield County, South Carolina

April _____, 2022

⁴ The arbitration agreement specifically stated that it was not a precondition to admission. The DSS employee could have admitted Mr. Young without signing the arbitration agreement.

⁵ The Defendant's Motion was partly based on 12(b) (1)(3) and (6), however, no argument was made in its memorandum or during oral arguments based on these rules. Thus, they are not addressed in this Order.



Fairfield Common Pleas

Case Caption: Edith Peoples , plaintiff, et al VS Pruitt Health-Ridgeway

Case Number: 2022CP2000017

Type: Order/Other

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Fairfield
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2000017

Edith Peoples et al
PLAINTIFF(S)

Pruitt Health-Ridgeway
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
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- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Motion to Reconsider is Denied. No further arguments are necessary.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/01/2022 .

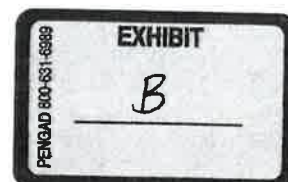
Edith Peoples As Pr Of Estate

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MAY 04 2022

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Fairfield Common Pleas

Case Caption: Edith Peoples , plaintiff, et al VS Pruitt Health-Ridgeway
Case Number: 2022CP2000017
Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2022-05-01 09:43:13 page 3 of 3

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MAY 04 2022

Transcript Request Form**SC Court of Appeals**

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Tara Markham</u>		Phone Number <u>843-606-5635</u>	Email Address <u>tmarkham@smythwhitley.com</u>
Mailing Address <u>126 Seven Farms Drive, Suite 260</u>		City <u>Charleston</u>	State <u>SC</u>
		Zip Code <u>29492</u>	
Transcript Information			
Docket Number <u>2022-CP-20-00017</u>		Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Edith Peoples as PR of the Estate of Floyd Young v. PruittHealth-Ridgeway</u>	
Date(s) of Proceeding <u>March 31, 2022</u>		Circuit X Family ☐	County <u>Fairfield</u>
Presiding Judge <u>Brian M. Gibbons</u>		Expedited Yes ☐ No ☒	
Court Reporter(s) <u>Maria DiScioscia</u>		Opposing Counsel <u>Creighton Coleman and Brad Jordan</u>	

Requestor's Signature: s/Tara Markham
(Typed name will serve as signature)

Date: 5/2/2022

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____		Date Received _____	Email Address _____
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
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		Zip Code _____	

2022CP2000017: Peoples as PR of the Estate of Young v. PruittHealth-Ridgeway

Tara Markham <tmarkham@smythwhitley.com>

Mon 5/2/2022 11:31 AM

To: transcripts@sccourts.org <transcripts@sccourts.org>; mldiscioscia@sccourts.org
<mldiscioscia@sccourts.org>

Cc: Josh Whitley <jwhitley@smythwhitley.com>; creighton@colemantolen.com
<creighton@colemantolen.com>; Brad Jordan <bradjordan@comporium.net>; Susie
<susie@jordanlawfirmmpc.com>

 1 attachments (58 KB)

Transcript Request Form .pdf;

Good morning.

Please see the attached hearing transcript request. The motion hearing took place on March 31, 2022, before Judge Gibbons via WebEx. I am copying all counsel of record to advise them of the same.

Thanks.

Tara Markham
Paralegal
Smyth Whitley, LLC
126 Seven Farms Drive
First Citizens Plaza, Suite 260
Charleston, SC 29492
Direct: 843.606.5634
Fax: 843.654.4095

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Re: 2022CP2000017: Peoples as PR of the Estate of Young v. PruittHealth-Ridgeway

Tara Markham <tmarkham@smythwhitley.com>

Mon 5/2/2022 12:33 PM

To: DiScioscia, Maria L. <mldiscioscia@sccourts.org>; Transcripts <transcripts@sccourts.org>

Cc: Josh Whitley <jwhitley@smythwhitley.com>; Creighton Coleman <creighton@colemantolen.com>; Brad Jordan <bradjordan@comporium.net>; Susie <susie@jordanlawfirmmpc.com>

Maria:

Thank you for the quick response. You are correct - I apologize for the error and confusion. The judicial website has it listed as no Court Reporter and WebEx only. The Court Administration has been copied on this correspondence and should be able to process the request.

Thanks,
Tara

Tara Markham
Paralegal
Smyth Whitley, LLC
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Charleston, SC 29492
Direct: 843.606.5634
Fax: 843.654.4095

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From: DiScioscia, Maria L. <mldiscioscia@sccourts.org>

Sent: Monday, May 2, 2022 11:38 AM

To: Tara Markham <tmarkham@smythwhitley.com>; Transcripts <transcripts@sccourts.org>

Cc: Josh Whitley <jwhitley@smythwhitley.com>; Creighton Coleman <creighton@colemantolen.com>; Brad Jordan <bradjordan@comporium.net>; Susie <susie@jordanlawfirmmpc.com>

Subject: Re: 2022CP2000017: Peoples as PR of the Estate of Young v. PruittHealth-Ridgeway

Good morning,

I do not believe I was the court reporter on this day. I will double check my records, but I don't think it was me.

Get Outlook for iOS

From: Tara Markham <tmarkham@smythwhitley.com>

Sent: Monday, May 2, 2022 11:31:26 AM

To: Transcripts <transcripts@sccourts.org>; DiScioscia, Maria L. <mldiscioscia@sccourts.org>

Cc: Josh Whitley <jwhitley@smythwhitley.com>; Creighton Coleman <creighton@colemantolen.com>; Brad Jordan <bradjordan@comporium.net>; Susie <susie@jordanlawfirmmpc.com>

Subject: 2022CP2000017: Peoples as PR of the Estate of Young v. PruittHealth-Ridgeway

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Please see the attached hearing transcript request. The motion hearing took place on March 31, 2022, before Judge Gibbons via WebEx. I am copying all counsel of record to advise them of the same.

Thanks.

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Direct: 843.606.5634
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STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

RECEIVED  
IN THE FAMILY COURT  
SIXTH JUDICIAL CIRCUIT  
2012 JAN 25 2:50 PM  
A2011-0R-20-315

South Carolina Department  
of Social Services,

FAIRFIELD FAMILY COURT  
BETTY JO BECKHAM

Plaintiff,  
vs.

**FINAL ORDER**  
[Adult Protective Services]

South Carolina Department  
of Mental Health

Defendant.

In the interests of:  
Floyd Young (DOB: 06/30/1951)  
A vulnerable adult.

I, Betty Jo Beckham, Clerk of Court,  
Fairfield County, South Carolina, do  
hereby certify this is a true copy of  
the original on file in this office.

1125/12 Betty Jo Beckham  
Clerk of Court

PRESIDING JUDGE: W. Thomas Sprott, Jr.  
DATE OF HEARING: December 14, 2011  
ATTORNEY FOR PLAINTIFF: Calvin L. Goodwin  
FAIRFIELD COUNTY DSS: Jeanette Sanders  
ATTORNEY FOR MR. YOUNG: Nicole Singletary  
GUARDIAN AD LITEM: Maria Patton  
ATTORNEY FOR GUARDIAN AD LITEM: Nicole Singletary  
COURT REPORTER: Latoya C. Perry

This matter is before me pursuant to a complaint submitted under S.C. Code Ann. § 43-35-45 (C) wherein the plaintiff sought court-ordered protective services/custody of the vulnerable adult after he was placed into protective custody by law enforcement pursuant to S.C. Code Ann. § 43-35-55.

The above-listed persons were present; the vulnerable adult, Floyd Young, was not present. This court has jurisdiction over the parties and the subject matter. Also present was Eric Hartley of the South Carolina Department of Mental Health.

I was advised at the call of this case that an agreement on the issues had been reached. This agreement was presented to me for the record by the plaintiff's attorney. Eric Hartley of the South Carolina Department of Mental Health made a statement to the court regarding their agency attempts to find the appropriate placement for the vulnerable adult; accordingly, I find that the South Carolina Department of Mental Health should be made a party to this matter for the purpose of placement. The Department of Social Service shall retain custody of the vulnerable adult.

Based on the information presented, a review of the file, and the recommendations of the guardian *ad litem*, I make the following:

#### **FINDING OF FACT AND CONCLUSIONS OF LAW**

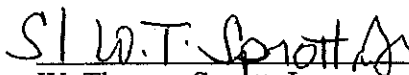
1. The South Carolina Department of Social Services should retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement. SCDSS shall remain Mr. Young's personal representative as set out in HIPPA regulations.
2. That the Defendant, Floyd Young, did physically neglect himself as defined by S.C. Code Ann. 43-35-10 and Mr. Young is unable to adequately provide for his own care and protection.
3. That SCDSS may seek payment for services by or from the financial resources by Floyd Young, if it is proven that Mr. Young has any resources.
4. That Floyd Young will follow all physician medical recommendations and take his medication as prescribed.
5. That Floyd Young will cooperate with DSS case manager at all times.
6. That the South Carolina Department of Mental Health is added as the lead agency to assist with the placement of Mr. Young.
7. That this case be reviewed within 6 months.

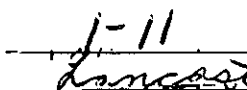
8. All parties, including the guardian *ad litem* for the vulnerable adult, stated that they fully understand the agreement and believe it to be fair, equitable, reasonable, and in the best interests of Mr. Floyd Young. Therefore, this agreement should be adopted as the order of the court.

**THEREFORE, I ORDER that:**

1. South Carolina Department of Social Services shall retain legal and physical custody of the vulnerable adult, Floyd Young in order to secure a safe and protective placement. SCDSS shall remain Mr. Young's personal representative as set out in HIPPA regulations.
2. The Defendant, Floyd Young physically neglected himself as defined by S.C. Code Ann. 43-35-10.
3. SCDSS may seek payment for services by or from the financial resources by Floyd Young, if it is proven that Mr. Young has any resources.
4. The vulnerable adult, Floyd Young will follow all physician medical recommendations and take his medication as prescribed.
5. The vulnerable adult, Floyd Young will cooperate with DSS case manager at all times.
6. The South Carolina Department of Mental Health be added as a party to this action to assist with the placement of Mr. Young.
7. This case be reviewed within 6 months.

**IT IS SO ORDERED.**

  
W. Thomas Sprott, Jr.  
Presiding Family Court Judge  
Sixth Judicial Circuit

  
J-11, 2012.  
Dorchester, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF FAIRFIELD

IN THE MATTER OF FLOYD YOUNG

IN THE PROBATE COURT  
CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2014GC2000005

**This is to certify that**

EDITH PEOPLES

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE  
☒ GUARDIAN  
☐ CONSERVATOR  
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 8th day of April, 2015 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

**RESTRICTIONS:**

Executed this 12th day of August, 2019.

**Do not accept a copy of this certificate without the raised seal of the Probate Court.**



Pamela W. Renwick  
PAMELA W. RENWICK, PROBATE JUDGE  
By: Sharon A. Peak

**EXHIBIT K**

**State of South Carolina**  
**ARBITRATION AGREEMENT**

This Arbitration Agreement ("Agreement") is made and entered into this 2nd day of March, 2012, by and between UniHealth PAC - Tanglewood (the "Healthcare Center") and FLOYD YOUNG and JEANETTE SANDERS ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

**I. Arbitration**

**THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.**

**A. Scope of Agreement.**

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including the interpretation of either, or the Patient/Resident's stay at, or the care or services provided by, the Healthcare Center, or any acts or omissions in connection with such care or services, including care or services provided prior to the date that this Agreement was signed, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, and whether sounding in breach of contract, tort, or breach of statutory or regulatory duties (including, without limitation, any claim based on an alleged violation of the state bill of rights for Patients/Residents of long-term care facilities or federal Patient/Resident's rights, any claim based on negligence, any claim for damages resulting from death or injury to any person arising out of care or service rendered by the Healthcare Center or by any officer, agent, or partner thereof acting within the scope of his or her employment, any claim based on any other departure from accepted standards of health care or safety, or any claim for unpaid nursing home charges), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for arbitration.

2. Only disputes that would constitute a legally cognizable cause of action in a court of law may be submitted for arbitration.

3. All claims based in whole or in part on the same incident(s), transaction(s), or related course of care or services provided by the Healthcare Center to the Patient/Resident, shall be arbitrated in one proceeding.

**EXHIBIT L**  Initials

**State of South Carolina**  
**ARBITRATION AGREEMENT**

4. A claim shall be waived and forever barred if it arose prior to a Demand for arbitration (as defined in this Agreement) and arbitration was not commenced by such Demand within the limitation period prescribed by South Carolina law for the commencement of a civil action concerning the subject matter of that claim.

B. Patient/Resident's Rights. This Agreement shall not limit the Patient/Resident's rights with respect to filing a grievance with the Healthcare Center, the Long-Term Care Ombudsman, or any appropriate state or federal regulatory agency. This Agreement shall not reduce or affect in any way the Healthcare Center's duties and obligations with respect to the provision of care and treatment of Patients/Residents.

C. Parties. This Agreement shall inure to the benefit of and bind the Patient/Resident and the Healthcare Center, their successors, assigns, and intended and incidental beneficiaries. The term "Healthcare Center" shall include its operator, management company, governing body, officers, directors, shareholders, partners, managers, agents, and any parent, affiliate or subsidiary. The term "Patient/Resident" shall include the Patient/Resident, his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person whose claim is derived through or on behalf of the Patient/Resident, including, in addition to those already listed in this Paragraph, any parent, spouse, child, executor, administrator, heir, or survivor entitled to bring a wrongful death claim. If this Agreement is signed by the Patient/Resident's representative, that individual represents that he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so.

D. Administration of Arbitration. Any arbitration conducted pursuant to this Agreement shall be administered by, and according to the applicable rules and procedures then in effect of, an independent impartial entity that is regularly engaged in providing arbitration services (the "Arbitration Service"). A demand for arbitration ("Demand") shall be made in writing and submitted to the Arbitration Service by regular mail, certified mail, or overnight delivery. The Demand must identify the issues in dispute, the amount(s) in dispute, any special qualifications of a desired arbitrator, and the Respondent(s). The parties intend that the Arbitration Service shall be the National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, Minnesota 55405-0191, or its successor. If NAF or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Judicial Arbitration and Mediation Services, Inc. ("JAMS"), 235 Peachtree Street, N.E., 600 North Tower, Atlanta, Georgia 30303-1411, or its successor. If JAMS or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Henning Mediation & Arbitration Service, Inc. ("Henning") 3350 Riverwood Parkway, Riverwood Building Lobby, Suite 75, Atlanta, Georgia 30339, or its successor. If Henning or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the arbitration conducted pursuant to this Agreement will be carried out in conformance with the following Paragraph I.F. of this Agreement. The rules of these Arbitration

JS Initials

**State of South Carolina**  
**ARBITRATION AGREEMENT**

Services are available from the administrator of the Healthcare Center. The parties intend that the arbitration will be held as close as possible to where the Healthcare Center is located.

E. Ad Hoc Arbitration. In the event that none of the entities named in the foregoing Paragraph I.E. of this Agreement are willing or able to serve as the Arbitration Service (and only in that event), the Demand shall be served on the other party by certified mail or overnight mail, and both parties shall in good faith attempt to agree upon one arbitrator to conduct the arbitration. If the parties are unable to agree upon an arbitrator within 30 days of the receipt of the Demand, each shall within 30 days thereafter appoint an arbitrator and these two individuals shall appoint a third arbitrator within 10 days, in which case the three arbitrators shall serve as the panel of arbitrators. If the arbitration conducted pursuant to this Agreement is conducted before a panel of arbitrators, references to the "arbitrator" contained in this Agreement shall be understood to mean the panel of arbitrators, and the decision of at least two of the three arbitrators shall constitute the decision of the panel. In the event that the arbitration is carried out in accordance with this Paragraph I.F., the arbitrator shall establish the procedural rules for conducting the arbitration.

F. Witnesses, Subpoenas, and Depositions. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness for the circuit court in this state. Upon the request of any party or arbitrator, the arbitrator shall cause to be made a record of the testimony and evidence introduced at the hearing.

G. Costs. The Healthcare Center shall pay the fees of the Arbitration Service up to a maximum of five (5) days of hearing. Any fees of Arbitration Service beyond five (5) days of hearing shall be split between the parties. Each party shall bear its own attorneys' fees.

**II. Decision**

A. Form of Decision. The arbitrator may, within the time fixed by the rules of the Arbitration Service, grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the Agreement of the parties and consistent with applicable law, provided that the arbitrator shall not make an award of punitive damages unless that award is supported by a reasoned decision that addresses every question of law and fact that a court would be required to address, and further provided that the arbitrator shall not award duplicative damages in respect of a single injury. Notwithstanding any provision contained herein, any award of punitive or

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**State of South Carolina**  
**ARBITRATION AGREEMENT**

noneconomic damages shall be capped at the statutory amount at which a judgment or jury verdict would be capped had the claim been brought before a court of law. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrator shall deliver a copy to each party personally or by registered mail.

B. Exclusive Process - Result Final. The parties agree that, except to the extent that reconsideration is allowed by the rules and procedures of the Arbitration Service, an arbitration decision shall be the final and unappealable resolution of any controversy within the scope of this Agreement, provided that either party shall be entitled to challenge an arbitration decision upon the limited grounds which are set forth in the rules and procedures of the Arbitration Service. Any decision rendered by the arbitrator may be confirmed in any court of competent jurisdiction.

**III. Governing Law, Severability**

A. The Healthcare Center's business activities substantially affect, relate to, and involve interstate commerce. For example, the Healthcare Center purchases substantial quantities of goods and services that are produced outside of the state and shipped across state lines to be provided to Patients/Residents of the Healthcare Center. The Healthcare Center participates in federally administered reimbursement programs, including Medicare and Medicaid, in which the Healthcare Center receives reimbursement that is derived from out of state sources for items and services provided to its Patients/Residents. As such, this Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16), as opposed to state arbitration law, notwithstanding any provision of state law or any other understanding or agreement between the parties. The parties specifically exclude the application of South Carolina's Uniform Arbitration Act.

B. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

C. The provisions of this Agreement shall remain in effect after any other agreements between the parties have been terminated.

**IV. Patient/Resident's Understanding of Agreement**

The Patient/Resident or the Patient/Resident's Representative, has read this Agreement in its entirety, and understands the language in which it is written. If this Agreement has been read on behalf of the Patient/Resident by the Patient/Resident's Representative, the Patient/Resident's Representative has explained to the Patient/Resident, to the extent of the Patient/Resident's capability to understand such

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**State of South Carolina**  
**ARBITRATION AGREEMENT**

**explanation, the nature of this Agreement and its essential terms.** The Patient/Resident understands that:

A. The Patient/Resident has the right to seek legal counsel concerning this Agreement;

B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center; and

C. This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature. If not revoked within thirty (30) days, this Agreement shall remain in effect for all care and services rendered at the Healthcare Center, even if such care and services are rendered following the Patient/Resident's discharge and readmission to the Healthcare Center.

**THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE SIGNING. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH ARBITRATION.**

FLOYD YOUNG

Print: Name of Patient/Resident

UniHealth PAC - Tanglewood

Print: Name of Healthcare Center

Signature of Patient/Resident

Signature of Healthcare Center's Authorized Agent

*Jeannette Sanders for DSS*

Signature of Patient/Resident Representative

CLEMENTINE WOOD LBSW

Print: Name and Title of Healthcare Center's  
Authorized Agent

JEANETTE SANDERS

Print: Name of Patient/Resident Representative and indicate capacity of representative (e.g., guardian, attorney-in-fact, agent under Durable Power of Attorney for Healthcare, spouse, son, daughter, etc.).

NOTE: In signing this Agreement, Patient/Resident Representative binds both Patient/Resident and Patient/Resident Representative individually.

JS Initials