Exhibit 1

(Order filed May 31, 2023)

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Anesthesiology Professionals of Columbia, LLC, Petitioner, v. Lifepoint Health d/b/a Providence Health and Providence Hospital LLC, Respondents.	C/A No. 2019 CP 40-04452 **ORDER**

Before the Court is the Motion to Dismiss, or in the Alternative, to enter Final Order ("the Motion to Dismiss"), filed by Respondents Lifepoint Health d/b/a Providence Health ("Lifepoint") and Providence Hospital LLC's ("Providence") on June 10, 2023. Respondents request the Court grant the Motion to Dismiss on the grounds the Court did not have personal jurisdiction over Respondents when it granted the Petition to Vacate the arbitrator's decision because (i) a summons did not accompany the Petition served on the Respondents' counsel, former Nelson Mullins attorney Ms. Erin Stuckey, for the underlying arbitration proceedings, and (ii) because Respondents allege Ms. Stuckey lacked actual or implied authority to accept service of the Petition on behalf of the Respondents. Alternatively, Respondents contend a final order was never issued on the Petition, and thus request the Court enter a final order on the same. On January 4, 2023, Petitioner Anesthesiology Professionals of Columbia, LLC ("APC") submitted its memorandum in opposition to the Motion to Dismiss. This Court conducted a hearing on the Motion to Dismiss on April 18, 2023.

Having considered the briefings of counsel, as well as the argument presented at the hearing conducted on this matter, the Court finds that Respondents voluntarily entered an appearance in

this action through the actions of its counsel, Nelson Mullins, who executed a written acceptance of service on behalf of Respondents, submitted filings in this Court, and argued the appeal from the arbitrator's ruling before this Court. Additionally, the Court is unpersuaded by Respondents' contention that a final order has not been entered on the Petition based on an argument that is tantamount to a scrivener's error. Accordingly, the Court **DENIES** the Motion to Dismiss.

FINDINGS OF FACT

Based on the record before the Court, it makes the following findings of fact:

On or about April 14, 2014, Petitioner APC entered into an agreement effective April 15, 2014, with Sisters of Charity Providence Hospitals to provide general anesthesiology services at the hospital ("the Agreement"). Respondents subsequently purchased the hospital operated by the Sisters of Charity in Richland County and received an assignment of the Agreement. Section 7.2 of the Agreement provided that the hospital could terminate the Agreement without cause during the initial five (5) year term (the "Initial Term"). In March 2017, less than five years into the Agreement, Respondents terminated the same without cause pursuant to Section 7.2.

Following termination of the Agreement, a dispute arose between Petitioner and Respondents regarding Petitioner's demand for 180 days of post-termination compensation provided under Section 7.2 of the Agreement. Unable to resolve this dispute with Respondents, Petitioner filed a demand for arbitration with the American Health Lawyers Association ("AHLA") in accordance with Article 23 of the Agreement on January 25, 2018. Article 23 of the Agreement entitled "Dispute Resolution," requires that any controversy or claim arising out of or relating to the Agreement shall be resolved by binding arbitration conducted by a single arbitrator in accordance with the AHLA Alternative Dispute Resolution Rules of Procedure for Arbitration ("AHLA Rules").

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

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On or about April 30, 2018, Respondents, through retained counsel Erin Stuckey of Nelson Mullins, filed an answer and counterclaim with the AHLA. Petitioner filed its answer to the counterclaim on June 22, 2018, and an arbitrator was duly selected to preside over the matter pursuant to the AHLA procedures. An evidentiary hearing was conducted in Richland County on March 12, 2019, and March 28, 2019. Lifepoint and Providence were represented by Ms. Stuckey and Mr. Daniels of Nelson Mullins at the arbitration hearing.

On May 15, 2019, the Arbitrator issued a written award, entitled "Final Determination and Order." In the award, the Arbitrator found that the parties intended that APC would be paid 180 days of post-termination compensation under Section 7.2 of the Agreement, as contended by APC. However, the Arbitrator ruled that Section 7.2 was unenforceable because it violated the federal anti-referral law known as Stark. Specifically, the Arbitrator stated,

> "[b]ased on this Arbitrator's expertise in healthcare law and though this Arbitrator does not determine fair market value, this Arbitrator is able to conclude that any "severance" payment under this Agreement would not be commercially reasonable since it would entail six months of compensation to APC when it was no longer providing services to Providence. This Arbitrator concludes that paying "severance" in a PSE is not commercially reasonable nor Stark complaint. Therefore, this Arbitrator denies APC's request for an additional five months post contract termination or "severance" compensation and all claims of interest."
>
> Award, p. 20-21.

On August 12, 2019, APC filed a Petition to Vacate the Arbitration Award (the "Petition") pursuant to S.C. Code § 15-48-130 alleging that:

a. The Arbitrator exceeded the scope of his authority under the arbitration agreement.

b. The Arbitrator was required to determine the dispute solely based on the evidence presented by the parties at the hearings held and conducted in accordance with the procedure set forth in the agreement.

c. The Arbitrator had no authority to consult outside sources or to make an independent investigation of the disputed matters.

d. In addition, the Arbitrator acted in manifest disregard of South Carolina law regarding the enforcement of contracts, by his misapplication of the Stark law.

Upon filing the Petition, APC's counsel corresponded with counsel for Respondents, Ms. Stuckey – who had represented Respondents throughout the arbitration - to inquire if she was authorized to accept service of the Petition on behalf of her clients, the Respondents. Specifically, counsel for Petitioner stated:

> Dear Erin:
>
> I am providing you a courtesy copy of the Petition to Vacate the arbitration award in the above case that we filed on August 12, 2019, in the Richland County Court of Common Pleas.
>
> I am requesting that you accept service on behalf of the respondents in this action. To this end, I am also enclosing an acceptance of service form for you to execute on behalf of your clients. If you are authorized, please execute the acceptance forms and return to me at your earliest convenience. If you are not able to do so, please notify me immediately so that we may effectuate service.
>
> *See* Pet.'s RIO Mot. to Dismiss Ex. A.

Ms. Stuckey replied to the August 19, 2019, correspondence via her Nelson Mullins email account on August 20, 2019 stating, "wanted to let you know that I received this and am checking with my client regarding acceptance of service." Id. Ex. B. On August 27, 2019, Ms. Stuckey further responded via the same email, "I can accept. I am out of the office this afternoon but I will sign and return to you tomorrow." Id. Ex. C

On September 3, 2019, Ms. Stuckey executed and mailed an acceptance of service form on behalf of Lifepoint and Providence to counsel for APC. Id. Ex. D. The acceptance of service form states, "I Erin Stuckey hereby accept service and acknowledge receipt of Petitioner's Petition to Vacate Arbitration Award pursuant to S.C. Code 15-48-130 on behalf of Lifepoint Health d/b/a Providence Hospital and Providence Hospital LLC in connection with the above captioned matter

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

on this 3rd day of September, 2019." Id. Ex. E. The acceptance of service form was filed with this Court on September 10, 2019. *See* Pet.'s RIO Mot. to Dismiss Ex. E.

Thereafter, counsel for Petitioner and Ms. Stuckey, on behalf of Respondents, jointly drafted a Consent Scheduling Order for Briefing that was filed with the Court. *Id.*, Ex. F. In accordance with the Consent Scheduling Order, and the Court-granted extensions to the same, Mr. Stuckey filed Respondents' initial brief and designation of matter to be included in the record on appeal on March 24, 2021, and Respondents' Final Brief in Opposition to the Petition to Vacate on June 1, 2021. Id. Exs. G & H. Ms. Stuckey thereafter appeared on behalf of Respondents and presented argument on their behalf at a hearing conducted by the Honorable Casey Manning on June 22, 2021. At the conclusion of the hearing, Ms. Stuckey, on behalf of Respondents, submitted a proposed order to chambers.

On August 4, 2021, the Court adopted APC's proposed order in toto and filed the same ("Order and Final Judgment"); however, prior to filing the same, the word "Proposed" was not removed from the caption of the filed version of the Order and Final Judgment. Id. Ex. I. Thereafter, on August 16, 2021, Ms. Stuckey, on behalf of Respondents filed a Motion to Reconsider the August 4, 2021 Order and Final Judgment. Id. Ex. J. Among the relief sought in the Motion to Reconsider, was a request from Respondents to remove the word "Proposed" from the caption of the Order and Final Judgment, thereby correcting what Respondents described as a "scrivener/clerical error" contained in the same. Id. After considering Lifepoint and Providence's Motion to Reconsider, the Court notified the parties it was denying the same and requested Petitioner submit a proposed order reflecting his ruling and correcting the scrivener's error. The order, including Exhibit A which omitted "proposed" from the cation of the original August 4, 2021 Order and Final Judgment, submitted by Petitioner to the Court, with Ms. Stuckey copied,

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

was adopted in toto by the Court and thereafter sent to the Clerk for filing. Notably, the filed November 29, 2021 Order directed the clerk of court to file Exhibit A as a replacement for the original, and instructed the clerk of court that the replacement "shall retain the original filing date of August 4, 2021." Exhibit A, the replacement order, was never filed by the Clerk of Court despite Judge Manning's instruction. *See* Pet.'s RIO Mot. to Dismiss Ex. K.

Following the expiration of the thirty-day window in which Respondents could have appealed the denial of their Motion to Reconsider, and in accordance with the Order and Final Judgment vacating the Arbitration Award, Petitioner reinitiated proceedings with the AHLA to begin the process of selecting a new arbitrator and conducting a second arbitration. Then, on June 10, 2022, over two years after Nelson Mullins made its appearance on behalf of Respondents in the arbitration proceedings and had continued, through Ms. Stuckey, to litigate the appeal in Circuit Court - Respondents filed the present Motion to Dismiss claiming lack of personal jurisdiction and absence of a final order and judgment on the Petition.

CONCLUSIONS OF LAW

I. The Court has personal jurisdiction over Respondents.

Respondents urge the Court to dismiss the Petition pursuant to Rule 12(b)(2), SCRCP, for lack of personal jurisdiction on the grounds a summons was not served with the Petition, and even if one had been included with the Petition, Ms. Stuckey lacked the requisite authority required by Rule 4(d)(3), SCRCP to effectuate service of the Petition on Respondents. As set forth below, the Court finds these arguments are not supported by the State's procedural rules, arbitration statute, or agency law. Accordingly, the Motion to Dismiss is denied.

A. A Summons Is Not Required for an Application to Vacate an Arbitration Award.

Respondents contend that a summons was required to accompany the Petition to Vacate.

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

This is not correct. Petitioner filed an application in circuit court to vacate the arbitrator's decision pursuant to S.C. Code Ann. § 15-48-130. An application filed under Section 130 "shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions." S.C. Code Ann. § 15-48-170. Section 170 further provides "[u]nless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action." Section 170 does not require that a summons be served with the application. Rather as the plain language states, the application must be served in the same manner as summons are required to be served, unless otherwise agreed. Accordingly, this argument is not persuasive.

B. Lifepoint and Providence Voluntarily Appeared in this Action through Its Retained Counsel and thereby have Waived Any Challenge to Service of Process.

Respondents contend that service of the Petition on Ms. Stuckey was insufficient to effectuate service on Respondents because Ms. Stuckey did not have express or implied authority to accept service on behalf of the Respondents. However, this argument must fail because the record before the Court necessitates a finding that Ms. Stuckey had apparent authority to enter an appearance and accept service of the Petition on behalf of the Respondents. Accordingly, any challenge to service of the Petition has been waived and the Court has personal jurisdiction over the Respondents. Accordingly, the Motion to Dismiss must be denied.

1. Ms. Stuckey had apparent authority to accept the Petition on behalf of the Defendants.

An agency relationship may be established by evidence of actual or apparent authority. *See Fochtman v. Clanton's Auto Auction Sales,* 233 S.C. 581, 106 S.E.2d 272 (1958); *see also Fernander v. Thigpen,* 278 S.C. 140, 293 S.E.2d 424 (1982) (agency relationship may be proven by evidence of apparent or implied authority, even where parties have entered agreement to

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

contrary). The doctrine of apparent authority focuses on the principal's manifestation to a third party that the agent has certain authority. *Rickborn v. Liberty Life Ins. Co.,* 321 S.C. 291, 468 S.E.2d 292 (1996). Concomitantly, the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. *Eadie v. H.A. Sack Co.,* 322 S.C. 164, 470 S.E.2d 397 (Ct.App.1996). Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Beasley v. Kerr–McGee Chem. Corp.,* 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia,* 311 S.C. 484, 429 S.E.2d 839 (Ct. App. 1993); *see also Moore v. North American Van Lines,* 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

The elements of apparent agency are: (1) purported principal consciously or impliedly represented another to be his agent; (2) third party reasonably relied on the representation; and (3) third party detrimentally changed his or her position in reliance on the representation. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432–33, 540 S.E.2d 113, 117–18 (Ct. App. 2000). It is undisputed that Respondents held Nelson Mullins out as its counsel to Petitioner during all relevant times over the course of the contract dispute with Petitioner and during arbitration before the AHLA. Neither Petitioner, nor its counsel, were ever informed by Respondents that Nelson Mullins' representation was solely limited to the arbitration proceedings or that Nelson Mullins ceased representing Respondents upon the issuance of the arbitration award. Despite an opportunity to do so, Respondents have not provided the Court with any documentation

between Respondents and Nelson Mullins indicating Nelson Mullins' representation of Respondents did in fact cease following the arbitration award or that Petitioner was ever informed that Nelson Mullins was no longer representing Respondents.

Moreover, absent the conveyance of such information, Rule 4.2, SCRE, prohibits Petitioner's counsel from communicating with Respondents – parties Petitioner and its counsel knew to be represented by Nelson Mullins. Accordingly, Petitioner, through its counsel, was ethically required to, and did, communicate with Nelson Mullins regarding the Petition. Petitioner detrimentally relied upon this representation by not serving Respondents' registered agent and instead accepting Nelson Mullins' acknowledgment of service as sufficient. Under these circumstances, Nelson Mullins was Respondents' apparent agent for purposes of Petitioner's appeal from the arbitrator's ruling and Respondents are thereby bound by Nelson Mullins' actions.

Notably, this scenario – in which Nelson Mullins had been engaged in the dispute from its inception – is markedly different from those cases cited by Respondents in which various courts found service incomplete when a pleading was served on an attorney that had represented the party previously, but in a separate, unrelated matter to that set forth in the pleading. *See* MIS Mot. to Dismiss at 7. Most significantly, Nelson Mullins through Ms. Stuckey voluntarily appeared on behalf of Respondents and litigated the appeal from the Arbitrator's ruling to conclusion in this Court. Respondents have not cited any authority involving a factually similar situation.

2. *Respondents' appearance through Ms. Stuckey is equivalent to personal service.*

Having found Nelson Mullins had apparent authority to act on behalf of Respondents in this matter, it follows that Respondents appearance through Ms. Stuckey is equivalent to personal service. Rule 4(d), SCRCP; *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP,* 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) ("Voluntary appearance by defendant is equivalent to

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

personal service."); *see also Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) ("We now hold a non-lawyer cannot represent a corporation in circuit or appellate courts"). Here, it is undisputed that Nelson Mullins represented Respondents in their contract dispute with Petitioner over its claim for post-termination severance pay under the Agreement. Nelson Mullins' representation of Respondents in this capacity continued with Ms. Stucky's appearance on their behalf during the arbitration proceedings and in the appeal of the arbitrator's ruling in this Court. In short, Nelson Mullins' appearance on behalf of Respondents in this Court is equivalent to personal service, regardless of any claimed defective service of process.

On this point, *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP,* 373 S.C. 331, 644 S.E.2d 793, (Ct. App. 2007) is instructive. In that matter, the Court of Appeals upheld the lower court's ruling that a party had voluntarily appeared solely based upon the representations of counsel. The Court noted,

> In the November 9 letter, Cisa not only announces his representation of Glenwood Falls without reservation but also expresses an intent to reach the merits of the case, especially when he writes "for DC Development, Inc., to recover any money in this action, my opinion is that Glenwood Falls, LP needs to assert a claim over and against the architects and engineers who designed this project." *See Jenkinson v. Murrow Bros. Seed Co.,* 272 S.C. 148, 154, 249 S.E.2d 780, 783 (1978) (Ness, J., concurring) ("In order to establish waiver of the right to contest jurisdiction, it is only necessary that a party, by its conduct, evince an intent to proceed to the merits of the case."). Moreover, the November 9 letter contains not the slightest hint of a desire to challenge service of process. Based on the record before us, we hold the master did not err in finding the November 9 letter was a voluntary appearance by Glenwood Falls.

373C. at 341, 644 S.E.2d at 798.

As is evident from the correspondence surrounding the service of process of the Petition between counsel for Petitioner and Respondents, as well as the acceptance of service on file, Nelson Mullins entered a general appearance on behalf of Respondents in this action without reservation. Nelson Mullins litigated this Petition *for over two years*, causing this Court to expend

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

limited and valuable resources and costing Petitioner significant fees and expenses. Yet, Respondents now claim the Petition should be dismissed because they did not specifically retain Nelson Mullins to represent them in this appeal from the arbitration proceeding. *Importantly*, Respondents do not claim that they discharged Nelson Mullins prior to the Court issuing the August 4, 2019 Order and Final Judgment vacating the arbitrator's ruling. Nor do Respondents contend that they would not have retained Nelson Mullins had they been informed of this appeal.

Because Petitioner and its counsel have dealt with Respondents' attorneys reasonably, in good faith, and without being provided any indication that Nelson Mullins' actions were not authorized, Respondents are estopped from denying that Nelson Mullins was their agent for purposes of this litigation. *Id.* Respondents' sole remedy, if in fact Nelson Mullins' actions were not authorized, is to assert a claim against its attorneys. *Lord Jeff Knitting Co. v. Mills*, 281 S.C. 374, 377, 315 S.E.2d 377, 379 (Ct. App. 1984) ("[I]f the attorney has apparent authority to confess, or consent to, judgment, it is ordinarily binding and conclusive on the client, notwithstanding an actual lack of authority unknown to the court or the opposing party, the sole remedy in such a case being against the attorney."); *Motley v. Williams*, 374 S.C. 107, 112, 647 S.E.2d 244, 247 (Ct. App. 2007) ("Any communication failure or mistake on the part of an attorney is directly attributable to his client"). Respondents' claim that Nelson Mullins lacked authority to accept service of the Petition and enter an appearance in this action on their behalf does not provide a basis to void two years of litigation and vacate this Court's final order.

II. That the August 4, 2021 Order Contains a Scrivener's Error in the Caption and has not been remedied due to a clerical error does not nullify the Order.

Respondents contend that a final order granting the Petition has not been entered in the present matter, and request the court enter a final order – presumably to restart the time in which Respondents could appeal the same. However, the Court finds the August 4, 2021 Order is a final

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

order. The fact that the Order contained a scrivener's error in the caption does not negate its finality. Nor does the clerical failure of the clerk's office to replace the original August 4, 2021 order with Exhibit A to the November 29, 2021 nullify the original order. This is especially true, whereas here, the replacement order (Exhibit A to the November 29, 2021 Order) is identical to the original August 4, 2021 order in every respect except for removal of the word "Proposed" from the case caption. Had the Clerk's office filed Exhibit A, it is clear from the November 29, 2021 Order that the filing date *would have remained the same* – August 4, 2021.

Moreover, that Exhibit A was inadvertently omitted by the clerk's office from the November 29, 2021 Order does not prejudice Respondents. A plain reading of the November 29, 2021 Order illustrates that Exhibit A merely removed the word "proposed" and did not substantively alter the findings of the Order and Final Judgment granting the Petition. Thus, this is not a scenario in which Respondents were denied an opportunity for the Court to reconsider an issue that was raised for the first time in the replacement order. Moreover, even if this clerical mistake had not occurred and Exhibit A had been filed, Nelson Mullins remained the agent for Respondents and Ms. Stuckey did not appeal the November 29, 2021 Order within the thirty-day window.

In the November 29, 2021 Order denying Respondents' motion to reconsider, the Court instructed the Clerk to correct a clerical mistake in the caption of the August 4, 2021 Order. The November 29, 2021 Order specifically states "the corrected order shall retain the original filing date of August 4, 2021." The fact that the Clerk's office has apparently failed to perform this ministerial task does not change the finality of the Court's original order vacating the arbitration award or the finality of Judge Manning's Order denying Respondent's motion to alter or amend. Accordingly, the Court declines the alternative relief sought by Respondents.

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452

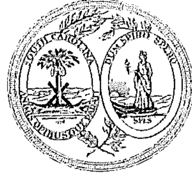
CONCLUSION

Nelson Mullins had apparent authority to accept service of the Petition to Vacate and enter an appearance on behalf of Respondents in this case. Petitioner, its counsel, and this Court reasonably, and in good faith, relied upon Nelson Mullins' apparent authority to represent Respondents in this litigation. Respondents' claim that they did not authorize Nelson Mullins to take these actions does not provide a basis to void two years of litigation and to vacate this Court's August 4, 2021 Order and Final Judgment overruling the arbitrator's decision. Based on the foregoing, the Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

The Honorable Daniel Coble

ELECTRONICALLY FILED - 2023 May 31 4:47 PM - RICHLAND - COMMON PLEAS - CASE#2019CP4004452



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health , defendant, et al

Case Number: 2019CP4004452

Type: Order/Dismissal

So Ordered

s/ Daniel Coble, 2774

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