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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2023-001058

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge
L. Casey Manning, Circuit Court Judge

Case No. 2019-CP-40-04452

Anesthesiology Professionals of
Columbia, LLC

Respondent,

v.

Lifepoint Health d/b/a Providence
Health and Providence Hospital LLC

Appellants.

PETITION FOR REHEARING WITH SUGGESTION
FOR REHEARING EN BANC

Pursuant to Rules 219 and 221, SCACR, Lifepoint Health d/b/a Providence Health and Providence Hospital LLC's (collectively "Lifepoint") petition the Court for rehearing and suggest rehearing *en banc* of the Court's August 29, 2023, order dismissing the appeal as interlocutory. After noting that LifePoint had appealed and that the Court had asked for and received briefing on jurisdiction, the Order states that the appeal is interlocutory, but cites no authority and does not address the arguments raised in the parties' memoranda the Court requested on the issue of jurisdiction. No party asserted the appeal was interlocutory in their briefing on the issue of jurisdiction. Rehearing, and rehearing *en banc* (to ensure uniformity of law with respect to the dismissals of appeals) is appropriate because the dismissal is erroneous as

a matter of law for the following reasons.

I. THE ORDER OF JUDGE COBLE IS A FINAL ORDER IN CASE NUMBER 2019-CP-40-04452 APPEALABLE PURSUANT TO EITHER S.C. CODE ANN. § 15-48-200(6) OR S.C. CODE ANN. § 14-3-330(1).

The Court's dismissal order stating that Lifepoint's appeal is interlocutory is incorrect. Judge Coble's order of May 31, 2023, is a final order resolving all of the issues as to all parties raised in this action, 2019-CP-40-04452 ("the Challenge Action"). Nothing remains for the circuit court to decide. This Court has jurisdiction over this appeal pursuant to S.C. Code Ann. § 15-48-200(6) or, alternately, pursuant to 14-3-330.¹

A. All of the Issues Raised by the Parties and That Would Be Within the Subject Matter and Personal Jurisdiction of a Properly Initiated Petition for Review of an Arbitration Order Under the South Carolina Arbitration Act by a Circuit Court are Resolved.

Lifepoint and Anesthesiology Professionals of Columbia, LLC ("APC") were involved in an arbitration that ended with the arbitrator concluding that neither party owed the other anything. APC then (improperly) instituted the Challenge Action to vacate the arbitration decision pursuant to S.C. Code Ann. § 15-48-130, but did not serve a summons or petition for the action on Lifepoint as required by S.C. Code Ann. §15-48-170. Lifepoint, utterly unaware of the Challenge Action never learned of it, and was never billed for it. The Challenge Action began

¹ In *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995), the court concluded that in a proceeding under the South Carolina Uniform Arbitration Act in state court, the statutory grounds for appeal in that matter were governed by the specific provisions of S.C. Code Ann. § 15-48-200 rather than the general appellate provisions of S.C. Code Ann. § 14-3-330 where ***the two conflict***. Here, there is no conflict as both statutes provide for an appeal from a final order entered in a circuit court proceeding. Of course, an implied repeal is disfavored, and the statutes should be read harmoniously if possible. Pursuant to S.C. Code Ann. § 14-3-330(2)(b), an order affecting a substantial right which "grants ... a new trial" is immediately appealable. The orders on appeal in this case grant a new arbitration proceeding with various restrictions imposed, but not agreed to by the parties in the arbitration agreement, as set forth more fully below at pp 7-9. The orders in this case are analogous to the immediately appealable new trial order taken pursuant to section 14-3-330(2)(b).

with purported “accepted service” by counsel who had no engagement with Lifepoint to act in the Challenge Action, and who did not inform Lifepoint of its existence.²

The Challenge Action resulted in an Order of the Circuit Court entitled “Petitioner’s Proposed Order” purporting to vacate the arbitration result, remand for a new arbitration hearing before an entirely different arbitrator, and limit the matters that could be raised in the new arbitration. See Exhibit 2. A motion to reconsider was filed (again, unknown to and unauthorized by Lifepoint) on August 16, 2021 (Exhibit 12) leading to the second order of Judge Manning dated November 23, 2001 (“November 23 Order”). (Exhibit 3.) It denied the motion’s request to rescind the August 4 Order vacatur. However, it granted Lifepoint’s request to correct the filed August 4 Order and directed the Clerk to enter an attached amended order, which amended order was, in fact, not attached to the reconsideration order and which no one ever received, and which was never (and to this day still has not been) entered by the Clerk on the docket in this case.

Over a month after the November 23 Order (which the Clerk never carried out by entering the revised, correct order on the docket), and after the passage of more than 30 days from Judge Manning’s signing of it and entry of it, Lifepoint learned for the first time about the Challenge Action when it received a notice that an all new arbitration proceeding would allegedly need to occur as a result of the Challenge Action. (Exhibit 8, ¶ 13.)

Lifepoint moved to dismiss (in essence set aside) the Orders of the Circuit Court vacating the arbitration decision on grounds, *inter alia*, of lack of personal jurisdiction of

² The details and supporting proof that Lifepoint was never served, never authorized any attorney to accept service or act on its behalf in the Challenge Action, and had absolutely no notice of its existence until called by the arbitration company to schedule a new arbitration is set forth in detail, with supporting exhibits, at pages 2-5 of Appellants’ Memorandum in Support of Appellate Jurisdiction filed July 31, 2023. References to exhibit numbers in this Petition are to the exhibits attached to that Memorandum. References to exhibit letters are to exhibits attached to this Petition.

Appellants.³ Lifepoint also requested in the alternative a ruling that the Order of the Circuit Court on the Motion to Reconsider be declared to be non-final because there had never been any final order sent out by the clerk with the attachment as ordered by the circuit court to occur. Had such declaratory relief been ordered, then Judge Manning's Orders could have been timely appealed.

On May 31, Judge Coble issued an Order (Exhibit 1) on Lifepoint's motion to dismiss the matter for lack of personal jurisdiction or for alternate declaratory relief. The order denied Lifepoint's defensive motion in its entirety and declined to set aside Judge Manning's orders by granting all of the relief claimed by APC and supposedly available under the South Carolina Uniform Arbitration Act ("the Arbitration Act") through the Challenge Action.

A. Judge Coble's Order is a Final, Appealable Order.

S.C. Code Ann. § 15-48-200(6) states:

- (a) An appeal may be taken from:
 - ...
- (6) a judgment or decree entered pursuant to the provisions of this chapter [Chapter 48 of Title 15].

Id. S.C. Code Ann. § 14-3-330(1) states that an appeal lies from "final judgments" in law cases.

Judge Coble's order is a "judgment or decree" in the Challenge Action, a matter initiated and existing pursuant to the Arbitration Act, which is Chapter 48 of Title 15 of the South Carolina Code. It is a "final judgment" because all claims and defenses by all parties that were asserted in the Challenge Action have been resolved. *See Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942) (defining a final judgment as one that "dispose[s] of the cause, or a distinct branch thereof, as

³ As argued in its Memorandum regarding jurisdiction, pp. 5-6, Lifepoint's motion cited Rules 4(d)(3) and 12(b)(2), SCRCP, as grounds for its motion to dismiss, but the substance of the motion, given the status of the Challenge Action (petition to vacate granted and matter remanded for a new arbitration with a new arbitrator), was a motion under Rule 60(b) to set aside the circuit court's orders.

to all the parties, reserving no further questions or directions for future determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined”, *quoting 2 Am.Jur.* 860, Section 22.) Absolutely nothing remains for the Circuit Court to decide in the Challenge Action. APC filed the Challenge Action to achieve vacatur of the arbitrator’s decision. APC received its requested relief through Judge Manning’s two orders and Judge Coble’s subsequent denial of Lifepoint’s motion to set aside Judge Manning’s orders.

Because it was never properly served with the Challenge Action pursuant to S.C. Code Ann. § 15-48-170, had no notice of the Challenge Action’s existence, and, therefore, never had the ability to participate in its own defense prior to Judge Manning’s rulings, Lifepoint, upon receiving notice that the arbitrator’s order had been vacated and a new arbitrator and arbitration ordered, filed a motion attacking the jurisdiction of the Circuit Court to enter any orders or judgments binding it due to lack of personal jurisdiction and, alternatively, seeking a declaration that Judge Manning’s orders were not final for purposes of appeal due to the failure of the clerk to enter a final judgment as required by Rule 58, SCRCF. Judge Coble’s order, denying Lifepoint’s motion on its merits (respectfully, incorrectly) and declining to set aside Judge Manning’s orders and further declining to rule that Judge Manning’s orders were non-final, ends all proceedings as to all parties in the Challenge Action. The Challenge Action is complete. Any return of an underlying arbitrated dispute and decision to the circuit court would be by the initiation of a whole new action in the circuit court, presumably upon one or more of the grounds stated in S.C. Code Ann. §§ 15-48-120 – 15-48-140 and in the manner provided by S.C. Code Ann. § 15-48-170.

This Court’s order dismissing the appeal on the basis that it is interlocutory is contrary to fact and erroneous as a matter of law. The Challenge Action is complete, and nothing remains to be decided as to any issue or any party. A final judgment in the Challenge Action has been entered and is ripe for appeal. *Cf. Sadisco of Greenville, Inc. v. Greenville Cty. Bd. of Zoning App.*, 340 S.C. 57, 530 S.E.2d 383 (2000) (reversing summary dismissal of appeal by the Court of Appeals from denial of motion under Rule 60(b)(1) and citing *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340

(1985) for the proposition that “a denial of a Rule 60(b) motion is directly appealable”).

Rehearing, or rehearing *en banc* should be granted, the dismissal vacated, and the matter set for briefing and disposition on the merits of the appeal.

II. THE ORDERS OF THE CIRCUIT COURT ARE APPEALABLE PURSUANT TO S.C. CODE ANN. § 15-48-200 (3) AND (5).

S.C. Code Ann. § 15-48-200(3) & (5) state:

(a) An appeal may be taken from:

...

(3) An order confirming or denying confirmation of an award;

...

(5) An order vacating an award without directing a rehearing;

Id. Even assuming all three of the orders appealed from are individually or collectively interlocutory (which Lifepoint denies as set forth above), S.C. Code Ann. §§ 15-48-200(3) & (5) provide independent grounds for a right of immediate appeal of the orders of the circuit court in the Challenge Action. *See National Ave. Bldg. Co. v. Stewart*, 910 S.W. 2d 334, 340-41 (Mo. Ct. App. 1995) (holding that identical provisions in the Missouri Uniform Arbitration Act allow appeals from specific types of orders that apply independently of each other and holding that appeal is not precluded under any one applicable provision even if some other provision would preclude an appeal, thus harmonizing the provisions and preventing a situation where the process of vacatur of arbitrations and rehearings by arbitrators “could continue *ad infinitum*” without the appellate courts ever having an opportunity to review the correctness of the vacatur decision of the trial judge or, as in this case, the jurisdiction of the judge to act at all).

A. THE ORDERS, INDIVIDUALLY AND COLLECTIVELY, EFFECTIVELY DENY CONFIRMATION OF THE AWARD BY THE ARBITRATOR AND ARE SUBJECT TO IMMEDIATE APPEAL.

According to subsection 3 of the appeal provision of the Arbitration Act, any order denying confirmation of an arbitration award is immediately appealable. APC sought, and Judge

Manning (who decisions were deemed final by Judge Coble⁴) granted vacatur of the arbitration award in this case under the terms of S.C. Code Ann. § 15-48-130, setting forth the grounds governing vacatur of an arbitration award. Assuming for sake of argument only (which Lifepoint denies) that Lifepoint was subject to personal jurisdiction and was represented in the Challenge Action, the papers submitted in opposition to APC's petition expressly requested denial and dismissal of APC's petition. Subsection (d) of that statute states that if, as requested by Lifepoint, a petition to vacate is denied and dismissed, "the court shall confirm the award." S.C. Code Ann. § 15-48-130(d). By the plain language of the statute, confirmation is not discretionary. By granting the vacatur petition of APC and denying the relief requested in the opposition filed to the petition, the circuit court effectively entered orders "denying confirmation of an award," thus triggering the right of appeal from the circuit court's orders under S.C. Code Ann. § 15-48-200(3).

B. THE ORDERS, INDIVIDUALLY AND COLLECTIVELY, VACATE THE ARBITRATOR'S AWARD WITHOUT DIRECTING A REHEARING AS PRESCRIBED BY THE ARBITRATION ACT AND ARE, THEREFORE, SUBJECT TO IMMEDIATE APPEAL UNDER S.C. CODE ANN. § 15-48-200(5).

According to subsection 5 of the appeal provision of the Arbitration Act, any order vacating an arbitration award without directing a rehearing is immediately appealable. The Arbitration Act does not, however, bestow upon a trial court a freewheeling power to direct rehearing in any manner it chooses. Rather, the power to order a rehearing and its effectiveness is specifically circumscribed by S.C. Code Ann. § 15-48-130(c), which states:

In vacating the award on grounds other than stated in item (5) of subsection (a) [which is inapplicable in this case] the court may order a rehearing before new arbitrators ***chosen as provided in the agreement***, or in the absence thereof, by the court in accordance with § 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 15-48-30.

⁴ Judge Manning was retired and unavailable to hear Lifepoint's motion.

Id. In the Challenge Matter, Judge Manning (whose orders were deemed to be final by Judge Coble) apparently vacated the arbitrator's order based on the grounds set forth in S.C. Code Ann. § 15-48-130(a)(3) & (4). (Exhibit 2, pp. 5-7.) However, the Order goes beyond simply vacating the arbitration award and, contrary to the agreement between the parties and its arbitration provision, Article 23, (Exhibit A, excerpts attached) which prescribes a single arbitrator and application of the American Health Lawyers Association Alternative Dispute Resolution Rules of Procedure for Arbitration (Exhibit B, excerpts attached),⁵ purports to dictate the appointment of the new arbitrator and restrict or condition the ability of any new arbitrator to conduct the arbitration in accord with those rules. (Exhibit 2, ¶¶ 29, 30.)

For instance, the Rules prescribe the circumstances for removal of an arbitrator (Section 4.5) and the process for selecting a new arbitrator (See sections 3.2-3.4, 4.7). Importantly, Section 3.1 of the Rules state that “the arbitrator, once appointed, shall have power to determine his or her jurisdiction ***and any issues of arbitrability.***” (emphasis added). Section 4.1 empowers the arbitrator, not the trial court remanding the case, to “take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.” Also, when an arbitrator is replaced, Section 4.7 of the Rules states “[g]enerally, a replacement arbitrator will conduct an arbitration de novo. However, the parties may agree to alternative arrangements.” The agreement of the parties does not empower the trial court to dictate how the new hearing before the new arbitrator will be conducted. As stated in S.C. Code Ann. § 15-48-

⁵ According to the Rules, section 1.1, the applicable version of the Rules is the one in effect at the time the arbitration action is filed with the American Health Lawyers Association. The arbitration in this case was filed in 2018 and the excerpts attached as Exhibit B are from the version of the Rules then applicable effective April 30, 2017.

130(c), it is the agreement of the parties that dictates the terms of any new arbitration before any newly chosen arbitrator chosen in accord with the terms of the agreement.

Here, because Judge Manning's orders, declared to be final by Judge Coble, are inconsistent with the statute prescribing how a rehearing shall be ordered, there is no effective rehearing prescribed as envisioned by the statute. Thus, the orders are immediately appealable pursuant to S.C. Code Ann. § 15-48-200(5).

This Court's order dismissing the appeal on the basis that it is interlocutory is contrary to the specific directives that such an order, either effectively denying confirmation of the arbitrator's award or vacating and remanding for rehearing in a manner contrary to the prescriptions of the Arbitration Act, gives rise to a right of appeal under subsections (3) and (5) and is, therefore, erroneous as a matter of law. Rehearing, or rehearing *en banc* should be granted, the dismissal vacated, and the matter set for briefing and disposition on the merits.

CONCLUSION

For the reasons set forth above, in Lifepoint's Notice of Appeal, and in its Memorandum in Support of Appellate Jurisdiction and its supporting exhibits, the Court should grant rehearing or rehearing *en banc* in this matter, vacate its order of dismissal of the appeal as interlocutory, and set the matter for full briefing and disposition on the merits and ultimately vacate the orders of the circuit court and remand the matter for dismissal for lack of person jurisdiction or, alternatively, entry of a declaratory judgment that the orders of Judge Manning are not final judgments and are subject to appeal in due course.

[Signatures Next Page]

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September 28, 2023

Attorneys for Petitioners

Exhibit A

NOTICE REQUIRED BY SECTION 15-48-10 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, IS HEREBY GIVEN THAT THE FOLLOWING AGREEMENT IS SUBJECT TO ARBITRATION.

**MEDICAL DIRECTOR AND EXCLUSIVE AGREEMENT FOR
GENERAL ANESTHESIOLOGY SERVICES**

THIS MEDICAL DIRECTOR AND EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT FOR GENERAL ANESTHESIOLOGY SERVICES (the "Agreement") is entered into to be effective as of April 15, 2014 (the "Effective Date"), by and between Sisters of Charity Providence Hospitals (the "Hospital") and Anesthesiology Professionals of Columbia, LLC ("APC").

Introduction. Hospital is the owner and operator of acute care hospital facilities in Richland County, South Carolina. For purposes of this Agreement, "Hospital" shall include Providence Hospital Downtown and Providence Orthopaedic Hospital.

Hospital provides services in its medical and surgical departments (collectively the "Department") which includes both inpatient and outpatient surgery that require the services of general anesthesiologists. The general anesthesiology services¹ provided in the Department and covered by this Agreement are set forth in the attached Exhibit A (the "Anesthesia Services").

APC (or "Group") employs or otherwise engages physicians who shall exclusively provide Anesthesia Services to Hospital, who are duly qualified and licensed South Carolina physicians, and who, on the basis of training, experience, and continued medical education, are knowledgeable in providing Anesthesia Services ("Physicians"). A list of Group Physicians is attached hereto as Exhibit B. Group also employs or otherwise engages certified registered nurse anesthetists (CRNA's) who shall assist Physicians in the provision of Anesthesia Services, who are duly qualified and licensed South Carolina CRNAs, and who, on the basis of training, experience, and continued medical education, are knowledgeable in providing assistance to the Physicians in the provision of Anesthesia Services. A list of Group CRNAs is attached hereto as Exhibit B-1. For purposes of this Agreement, the term "Group" shall include the Physician(s), and Physician(s) shall also be obligated to comply with all requirements and fulfill all obligations assigned to "Group" under this Agreement. Where applicable, for purposes of this Agreement, the term "Physician" shall also include and apply to CRNA(s), and CRNA(s) shall be obligated to comply with all applicable requirements and fulfill all applicable obligations assigned to "Group" or "Physician" under this Agreement. In addition to other responsibilities and obligations hereinafter set forth, Group shall be responsible for ensuring Physician(s) perform Anesthesia Services in compliance with the terms of this Agreement.

¹ Please note that this Agreement does not apply to cardiac anesthesia services as Hospital contracts separately with a different physician group for cardiac anesthesia services.

Upon written request of the United States Secretary of Health and Human Services or the Comptroller General or any of their duly authorized representatives, the parties will make available those contracts, books, documents, and records necessary to verify the nature and extend of the costs of providing services under this Agreement. Such inspection shall be available up to five (5) years after the rendering of such services. If, after receiving the Hospital's written consent as required by Article 5 of this Agreement, the Group carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, the parties agree to include their requirements of Public Law 96-499, Sec.952 (Sec. 1861 (v) (1) of the Social Security Act) and the regulation promulgated thereunder. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the Hospital, Group, or any Physicians by virtue of this Agreement.

ARTICLE 23 DISPUTE RESOLUTION

In the event of any controversy or claim arising out of or relating to this Agreement, including any and all claims of Physicians arising out of the Group's engagement hereunder, whether such claim or controversy is brought in tort, contract or otherwise, or the breach, termination or validity of this Agreement, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved within sixty (60) days of the commencement of such discussions (which period may be extended by mutual agreement), then the parties hereby agree to immediately submit the controversy to binding arbitration. The arbitration shall be conducted by a single arbiter in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules of Procedure for Arbitration. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Each party shall bear its share of the expenses and attorneys' fees incurred in the arbitration and any action to enforce the arbitration award as determined by the arbitrator. The place of arbitration shall be Columbia, South Carolina.

ARTICLE 24 CATHOLIC DIRECTIVES

The Parties acknowledge that the Hospital is an institution operated in accordance with The Ethical and Religious Directives for Catholic Health Facilities as approved by the National Conference of Catholic Bishops. Notwithstanding any provisions of this Agreement to the contrary, the parties shall not provide services or participate in activities during the course of their performance under this Agreement that are inconsistent with the medical ethics or precepts of the Catholic Church.

ARTICLE 25 SURVIVABILITY

Any term or condition of this Agreement that requires or might require performance after termination of this Agreement shall survive such termination.

Exhibit B

Rules of Procedure for **Commercial Arbitration**

These rules apply to claims received on or after April 30, 2017

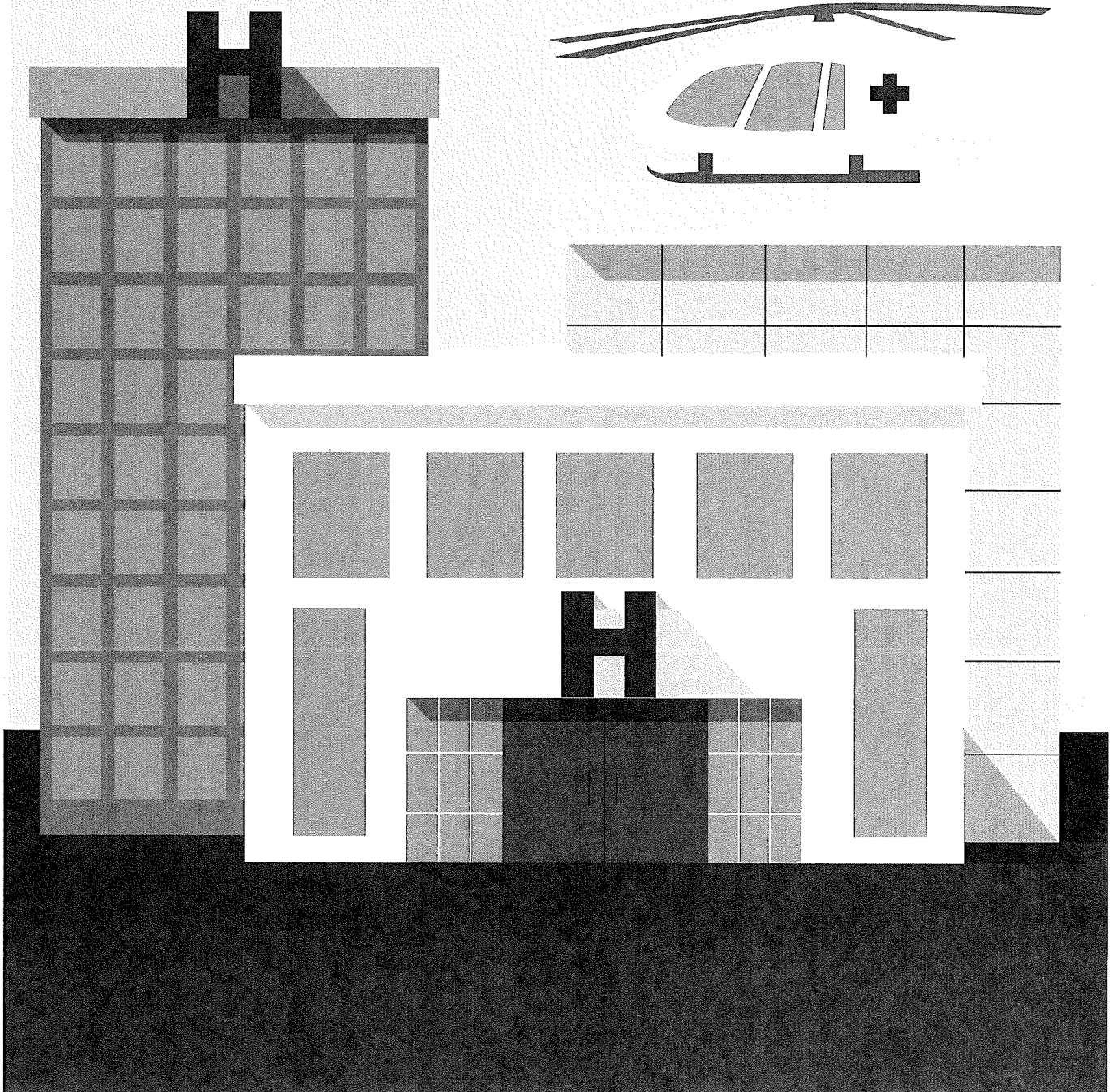


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Section 1: Policies

1.1 Applicable Version of Rules

A claim will be arbitrated in accordance with the version of these rules (Rules) posted on the website of the American Health Lawyers Association (AHLA) on the date a claim is filed. Any reference to the Rules of the American Health Lawyers Association Dispute Resolution Service will be deemed to be a reference to such version of the Rules.

These Rules apply to any contract that invokes arbitration under the Rules of the American Health Lawyers Association unless the claim constitutes a Consumer Case, as that term is defined in the Rules of Procedure for Consumer Arbitration, or an Employment Case, as that term is defined in the Rules of Procedure for Employment Arbitration.

1.2 Electronic Case Management System

- (a) **APPLICABILITY.** Parties, party representatives, the Administrator (defined in Section 1.6), and the arbitrator (once appointed), will transmit written messages and documents regarding a case through AHLA's Electronic Case Management System (ECM).
- (b) **NOTICE.** A message is deemed to have been received by the person(s) to whom it is addressed on the next business day after it is sent through the ECM. A party or party representative is deemed to have notice of the contents of any message sent to it through the ECM.
- (c) **FILING.** A document is deemed to have been filed on the day it is transmitted (uploaded) to the ECM.
- (d) **SERVICE.** A document is deemed to have been served one business day after notice is sent to a party at the email address listed for this party in the ECM.
- (e) **OPTING OUT.** A party or party representative may opt out of using the ECM if it agrees to pay all the additional direct and indirect costs associated with communicating through hard copy documents. AHLA will provide a price list upon request, and will consider claims of indigence in applying and/or adjusting such price list.

1.3 Representation

Parties may designate a representative. The claimant should designate its representative on the claim form. Any party may designate a primary representative, designate additional representatives, change its representative, or withdraw a repre-

Section 3:

Appointment of an Arbitrator

3.1 Criteria

If the filing party (Claimant) produces a document that arguably requires arbitration of the claim under the Rules, the Administrator will appoint an arbitrator pursuant to the process described in this Section. After receiving appropriate evidence and argument, the arbitrator, once appointed, shall have the power to determine his or her jurisdiction and any issues of arbitrability.

3.2 Appointment Process

The appointment process begins after the requirements in Section 2 have been met. Unless the parties agree otherwise in writing, the Administrator will appoint a single, neutral arbitrator through the process set forth in the Rules.

- (a) **NUMBER OF CANDIDATES.** In its Demand for Arbitration, the filing party may request and pay for a list of either five (5) or ten (10) proposed arbitrators (candidates). If the filing party requests only five (5) candidates, the responding party may expand the list to ten (10) candidates by paying an additional fee, as established by the Administrator.
- (b) **RANKING SHEET.** The Administrator will provide a list of candidates (Ranking Sheet) based on information provided by the Claimant in the Demand for Arbitration and any additional information a responding party may choose to provide.
- (c) **CANDIDATE PROFILES.** The Administrator will provide the parties with the profiles and resumes of all candidates. Profiles and resumes are completed by candidates. AHLA does not verify the information in profiles and resumes and does not warrant that they are accurate, current, or complete.
- (d) **REVIEW OF CANDIDATES.** In ranking candidates, parties should carefully assess the candidates' qualifications and experience. Parties may contact candidates directly to inquire about their suitability and their availability for appointment. Such contacts must be in writing, and a copy of any such communication must be provided to the other party(ies). When corresponding with candidates, parties may disclose the general nature of the question in dispute in the case, but may not discuss its merits.

- (e) **INELIGIBLE CANDIDATES.** A candidate is ineligible to arbitrate a claim only if it would be unethical or impossible for him or her to do so. If a party believes a single candidate is ineligible, it should strike him or her. If a party believes two (2) or more candidates are ineligible, it may petition the Administrator to replace them with eligible candidates and provide a new Ranking Sheet. The Administrator will grant such a petition only if it is clearly established, in the sole discretion of the Administrator, why the candidate(s) to be replaced would be ineligible.
- (f) **RANKING CANDIDATES.** Within ten (10) days after receiving a Ranking Sheet and profiles, parties must rank the candidates sequentially in order of preference in the ECM. The most highly desired candidate should be ranked “1,” the second choice should be ranked “2,” etc. Parties may strike no more than one (1) candidate. If a party fails to timely submit rankings in accordance with these rules, the Administrator shall send notice that, if the party fails to submit rankings within five (5) days of the posting of the notice, the Administrator will appoint an arbitrator or panel based upon whatever rankings it has received by that date.
- (g) **SELECTION PROCESS.** After removing any candidate struck from the list by a party, the Administrator will select the candidate with the lowest combined score from Ranking Sheets completed on time. The process used in the event of a tie score is illustrated in **Exhibit 1**.

3.3 Acceptance of Appointment

Within five (5) days after receiving an offer of appointment from the Administrator, a candidate who has been selected must complete the Arbitration Disclosure Checklist and decide whether or not to accept the appointment. The Administrator may grant a reasonable extension of time.

A candidate accepts an appointment by completing an Arbitrator’s Acceptance Form in the ECM. If a candidate does not accept the appointment within the five (5) day period, and no extension has been granted, the Administrator will offer it to the candidate with the next lowest ranking. The Administrator will repeat this process until an arbitrator is appointed.

3.4 Appointment Date

The Appointment Date is the date on which an arbitrator’s acceptance of appointment is uploaded to the ECM. If a panel has been appointed, the Appointment Date is the date on which the third arbitrator’s acceptance of appointment is uploaded to the ECM.

3.5 Arbitration Panels

- (a) **DEFAULT PROCESS.** Parties may agree to appoint a panel of three (3) arbitrators. Unless they specify otherwise, parties will each select a single arbitrator from a list of five (5) or ten (10) candidates provided by the Administrator, and these two (2) arbitrators will select a third arbitrator from this same list of candidates. If the parties designate the same candidate as their top choice, this candidate becomes the panel chair (Chair), and the parties' second choices become the other two panel members.
- (b) **PRESUMPTION OF NEUTRALITY.** If the two (2) selected arbitrators cannot agree on a third arbitrator, the Administrator will appoint a third from the list of candidates. All three (3) arbitrators shall be neutral unless, prior to the appointment date, the Administrator receives a written agreement stating that the party-appointed panelists will not be neutral.
- (c) **PANEL CHAIR.** The third arbitrator (or consensus choice, as determined under Section 3.5(a)) will serve as the Chair. The Chair manages the arbitration process and presides at the hearing. The panel will decide all matters by majority vote except to the extent that the parties agree to have the Chair serve as the sole arbitrator of procedural and/or evidentiary issues.

3.6 Alternative Selection Processes

If the parties agree in writing to an alternative process for selecting an arbitrator, and the validity and interpretation of such agreement are not in dispute, the Administrator will not permit a party to delay or avoid arbitration by failing to abide by the agreement.

Illustration: Party A and Party B agree to appoint an arbitrator directly (on their own) from a list of ten (10) candidates provided by AHILA, and they agree that their direct appointments will select a third arbitrator from this list. Party A fails to appoint an arbitrator within the prescribed period.

The Administrator will offer appointments to the arbitrators as ranked 1 and 2 by Party B. These two arbitrators will select the third.

Section 4: Arbitrators

4.1 Conduct

- (a) **POWERS AND DUTIES.** An arbitrator has the power to:
 - (1) determine his or her powers and duties under an arbitration clause;
 - (2) interpret the Rules to the extent that they relate to his or her powers or duties;
 - (3) sanction parties for failing to comply with any orders of the arbitrator or any obligations under the Rules;
 - (4) stay or dismiss proceedings for good cause, which may include agreement of the parties; and
 - (5) take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.
- (b) **ETHICS.** Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes.
- (c) **SETTLEMENT AND MEDIATION.** Arbitrators should encourage parties to discuss settlement on their own or with the assistance of a mediator. However, arbitrators should not pressure parties to settle, express a point of view on settlement, or participate in settlement discussions. An arbitrator may mediate only as provided in the *Guidelines for Mediation-Arbitration (Med-Arb) and Arbitration-Mediation (Arb-Med)* set forth in **Exhibit 2**.

4.2 Ex Parte Communication

- (a) **GENERAL RULE.** Except as provided in paragraphs (b) and (c) below, once an arbitrator is appointed he or she may not communicate with a party unless all other parties participate in the conversation or exchange of written messages.
- (b) **NON-NEUTRAL ARBITRATORS.** Parties who have agreed to the use of non-neutral arbitrators may agree to permit *ex parte* communications with such non-neutral arbitrators. Arbitrators are regarded as non-neutral when all parties expect them to be predisposed toward the party appointing them.
- (c) **FAILURE TO PARTICIPATE.** If, after receiving notice, a party fails to participate in a teleconference or video conference or fails to appear at a hearing, an arbitrator may communicate with the participating parties despite that party's absence.

4.3 Case Management

- (a) **DEFAULT TIMEFRAME.** Except as provided below, an arbitrator should use reasonable efforts to issue a Final Award within twelve (12) months after the Appointment Date. Arbitrators should schedule pre-hearing proceedings and hearings accordingly.
- (b) **EXPEDITED REVIEW.** If the parties jointly request expedited review, the arbitrator should make best efforts to issue a final award within ninety (90) days after the Appointment Date.
- (c) **EXCEPTIONAL CASES.** If an arbitrator determines that a case is unusually complex, or that a delay is necessary for other reasons, the arbitrator may allow more time for either pre-hearing proceedings or a hearing. However, arbitrators should exercise their discretion sparingly to permit further delay.
- (d) **TIMEFRAMES.** The arbitrator may extend any timeframe for good cause but should endeavor to do so sparingly. Failure of the arbitration to adhere to any timeframe specified herein shall not result in loss of jurisdiction or invalidate an arbitration award.

4.4 Review Board

- (a) **PURPOSE.** The Review Board (RB) and its designated Review Panel(s) will rule on petitions to remove an arbitrator under Rule 4.5.
- (b) **APPOINTMENT.** When the Review Board is initially constituted, the President of AHLA will appoint two (2) Senior Arbitrators to serve two-year terms; two (2) to serve three-year terms; and one (1), who will be appointed as the Review Board Chair (RB Chair), to serve a four-year term. Thereafter, the President will fill vacancies by appointing Senior Arbitrators, including the RB Chair, to three-year terms. Non-chairs serving on the Review Board will be eligible for appointment to serve as RB Chair. Individuals will be eligible to serve multiple terms on the Review Board, provided that three (3) years have elapsed since their last term of service ended.
- (c) **QUALIFICATIONS.** All Senior Arbitrators must have significant experience in the arbitration, litigation, or mediation of health law disputes.*

*Prior to June 28, 2017, Senior Arbitrators were required to have sat as an arbitrator in at least twenty cases.

- (d) **REVIEW PANELS.** When the Administrator notifies the RB Chair that a petition under Rule 4.5(c) requires review, the RB Chair will designate a panel of three (3) Senior Arbitrators drawn from the current RB. This panel may or may not include the RB Chair. In deciding which Senior Arbitrators to select, the RB Chair may take into account their availability, expertise, actual or perceived conflicts of interest, and any other factors relevant to ensuring a well-reasoned and impartial decision. If the RB Chair is not a member of the panel, the RB Chair will designate a Senior Arbitrator as the lead panelist. The lead panelist will preside and perform all administrative functions. The panel will decide substantive matters by majority vote.
- (e) **COMPENSATION.** Senior Arbitrators will receive no compensation for reviewing petitions under Rule 4.5 (Removing an Arbitrator).
- (f) **ETHICS.** When serving on a Review Panel, Senior Arbitrators must comply with the Code of Ethics for Arbitrators in Commercial Disputes.

4.5 Removing an Arbitrator

A party who believes an arbitrator is unfit to serve because of a conflict of interest, a mental or physical impairment, or conduct that calls his or her fairness or impartiality into question, may pursue the following options:

- (a) **UNANIMOUS CONSENT.** If all of the parties request an arbitrator to withdraw, the arbitrator must do so. (Code of Ethics, Canon II (G)).
- (b) **WITHDRAWAL.** A party may request an arbitrator to withdraw in writing, served upon the Administrator, the arbitrator and all other parties. In responding to such a request, an arbitrator should be guided by Code of Ethics Canon II (G)(2).
- (c) **REMOVAL.** A party may file a petition with the Administrator requesting the Review Board to remove the arbitrator. Other parties may file a response with the Administrator within fifteen (15) days of service. If the petitioner so requests, neither the Review Panel nor any party may inform the arbitrator of the petition. In ruling on the petition, however, the Review Panel will consider the arbitrator's lack of opportunity to respond. If the Review Panel grants a petition, it will inform the arbitrator why he or she was removed. The Review Board will not assess costs and expenses for reviewing a petition for removal unless it determines the petition was frivolous.

4.6 Exigent Circumstances

A party may petition the Administrator to have the proceedings suspended while a petition for removal is being reviewed in accordance with Rule 4.5 (c), if delay is likely to cause irreparable harm. Neither the Review Panel nor any party may inform the arbitrator of this petition.

4.7 Replacing an Arbitrator

If an arbitrator is removed pursuant to Rule 4.5, or an arbitrator becomes unable or unwilling to serve, the Administrator will replace the arbitrator as follows:

- (1) The Administrator will ask the parties whether they can agree on a replacement.
- (2) If the parties cannot agree, and the original arbitrator was chosen from a Ranking Sheet (see Rule 3.2), the Administrator will select the candidate with the next lowest combined score, and, if necessary use the tie-breaking procedures set forth in Exhibit 1.
- (3) If no Ranking Sheet is available, the Administrator will create a new one based on the parties' preferences and request the parties to complete the new Ranking Sheet.
- (4) Generally, a replacement arbitrator will conduct an arbitration de novo. However, the parties may agree to alternative arrangements.

RECEIVED

Sep 28 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge
L. Casey Manning, Circuit Court Judge

Case No. 2019-CP-40-04452
Appellate Case No. 2023-001058

Anesthesiology Professionals of Columbia, LLC,..... Respondent,

v.

Lifepoint Health d/b/a Providence Health and Providence
Hospital, LLC,..... Appellants.

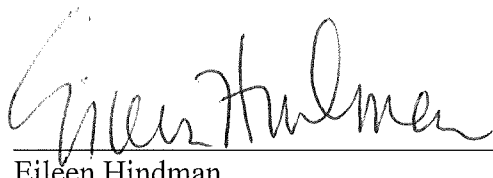
PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Lifepoint Health d/b/a Providence Health and Providence Hospital, LLC, hereby certify that I have served all counsel in this action with a copy of the pleading(s) specified below by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

Pleadings: Appellants' Petition for Rehearing with Suggestion for Rehearing En Banc

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Administrative Assistant

9/28, 2023

Eileen Hindman

From: Eileen Hindman
Sent: Thursday, September 28, 2023 5:18 PM
To: mfox@griffindavislaw.com; jgriffin@griffindavislaw.com; Bill Wood; Mitch Brown; Meredith Keane
Subject: Anesthesiology Professionals of Columbia, LLC v. Lifepoint Health - Appellate Case No. 2023-001058
Attachments: 2023.09.28 Petition for Rehearing with Exhibits (Lifepoint).pdf; 2023.09.28 Proof of Service - Lifepoint.pdf

Good afternoon,

Attached for service upon you in the above matter is Petition for Rehearing with Suggestion for Rehearing En Banc with exhibits and Proof of Service.

Thank you,



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