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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge
Daniel Coble, Circuit Court Judge
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2025-001024
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,

MOTION TO DISMISS APPEAL AND MEMORANDUM IN SUPPORT

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Pursuant to Rule 240, SCACR, Respondent Anesthesiology Professionals of Columbia, LLC, hereby moves this Court for an order dismissing Appellants Lifepoint Health d/b/a Providence Health and Providence Hospital LLC's appeal of the Form 4 Order issued by the Honorable Milton G. Kimpson on April 22, 2025 ("the April 2025 Order"). This Court's prior ruling dismissing Respondent's earlier appeal of a ruling on the identical issue presented in this appeal is controlling as law of the case. Respondent's effort to circumvent this Court's prior order of dismissal should be rejected. In addition, the April 2025 Order is an interlocutory order staying the case pending a second arbitration, which is not immediately appealable. *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) ("The sole issue we need address is whether an order granting a stay is immediately appealable. We hold that it is not."). Contrary to Appellants' argument, the April 2025 Order does not resolve any final issue or jurisdiction question. It merely stays the case to allow arbitration to proceed. Because no order that is immediately appealable is before this Court, this appeal should be dismissed.

FACTUAL AND PROCEDURAL HISTORY

Respondent 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"). Appellants subsequently purchased the hospital operated by the Sisters of Charity in Richland County and received an assignment of the Agreement. A dispute arose between Respondent and Appellants regarding Respondent's demand for 180 days of post-termination compensation provided under Section 7.2 of the Agreement. Unable to resolve this dispute with Appellants, and pursuant to the terms of the Agreement, Respondent filed a demand for arbitration with the American Health Lawyers Association ("AHLA") in accordance with Article 23 of the Agreement on January 25, 2018.

On or about April 30, 2018, Appellants appeared through retained counsel, Erin Stuckey of Nelson Mullins. An evidentiary hearing was conducted by the selected AHLA arbitrator in Richland County on March 12, 2019, and March 28, 2019. Appellants were represented by Ms. Stuckey and Mr. Chris Daniels of Nelson Mullins at the arbitration hearing.

On May 15, 2019, the Arbitrator issued a Final Determination and Order (“the Arbitration Award”) finding that although the parties intended Respondent APC receive the compensation it sought under the Agreement, the arbitrator would not award the same having determined Section 7.2 was unenforceable because it violated the federal anti-referral law known as Stark.

A. Petition to Vacate the Award

On August 12, 2019, Respondent filed a Petition to Vacate the Arbitration Award (the “Petition”) pursuant to S.C. Code Ann. § 15-48-130. Upon filing the Petition, Respondent’s counsel corresponded with counsel for Appellants, Ms. Stuckey – who had represented Appellants throughout the arbitration – to inquire if she was authorized to accept service of the Petition on behalf of her clients, the Appellants. Specifically, counsel for Respondent 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 [Appellants] 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 May 31, 2023 Order (“May 2023 Order”) at 4, Ex. 1 (emphasis added).

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.* (emphasis added). 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.” *May 2023 Order* at 4. (emphasis added).

On September 3, 2019, Ms. Stuckey executed and mailed an acceptance of service form on behalf of Appellants to counsel for Respondent. *Id.* 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 Ann. § 15-48-130 on behalf of Lifepoint Health d/b/a Providence Hospital and Providence Hospital LLC in connection with the above captioned matter on this 3rd day of September, 2019.” *Id.* at 4-5. The acceptance of service form was filed with the lower court on September 10, 2019. *Id.* at 5.

Thereafter, Ms. Stuckey, on behalf of Appellants, engaged in the joint submission of a Consent Scheduling Order for Briefing that was filed with the lower court, and also filed Appellants’ initial brief and designation of matter to be included in the record on appeal on March 24, 2021, as well as their Final Brief in Opposition to the Petition to Vacate on June 1, 2021. *Id.* At a hearing conducted by the Honorable Casey Manning on June 22, 2021, on the Motion to Reconsider, Ms. Stuckey appeared and argued on behalf of Appellants. At the conclusion of the hearing, Ms. Stuckey, on behalf of Appellants, submitted a proposed order to chambers. *Id.*

On August 4, 2021, the lower court adopted Respondent APC’s proposed order in toto, vacating the Arbitration Award and ordering a new hearing be held in arbitration before a different arbitrator (“August 2021 Order and Final Judgment”). *See Aug. 2021 Order & Final Judgment* at 1, Ex. 2. However, prior to filing the same, the word “Proposed” was not removed from the caption of the filed version of the August 2021 Order and Final Judgment. *Id.*; *see also May 2023 Order*

at 5.

In response to this order, Ms. Stucky on behalf of Appellants, thereafter filed a Motion to Reconsider, to Alter or Amend, and to Correct a Clerical Mistake (“Motion to Reconsider”) the August 2021 Order and Final Judgment pursuant to Rules 59(e) and 60(a), SCRCPP, on August 16, 2021. May 2023 Order at 5. Among the relief sought in the Motion to Reconsider, was a request to remove the word “Proposed” from the caption of the August 2021 Order and Final Judgment, thereby correcting what Appellants described as a “scrivener/clerical error” contained in the same. Id.

Thereafter, the lower court notified the parties that it was denying the same and requested Respondent APC submit a proposed order reflecting his ruling and correcting the scrivener’s error. The order (“November 2021 Order”), including Exhibit A which omitted “proposed” from the caption of the original August 2021 Order and Final Judgment, submitted by Respondent to the lower court, with Ms. Stuckey copied, was adopted in toto by the lower court and thereafter sent to the Clerk of Court for filing. Id. at 5-6. 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.” *See* Nov. 2021 Order at 1, Ex. 3; *see also* May 2023 Order at 6. Exhibit A, the replacement order, was never filed by the Clerk of Court despite Judge Manning’s instruction. *See* May 2023 Order at 6.

Following the expiration of the thirty-day window in which Appellants could have appealed the August 2021 Order and Final Judgment and the November 2021 Order denying their Motion to Reconsider, Respondent reinitiated proceedings with the AHLA to begin the process of selecting a new arbitrator and conducting a second arbitration.

B. Motion to Dismiss

On June 10, 2022, over two years after Nelson Mullins made its appearance on behalf of Appellants in the arbitration proceedings and had continued, through Ms. Stuckey, to litigate the appeal of the Arbitration Award in the lower court, Appellants filed a motion to dismiss claiming lack of personal jurisdiction (Rule 12(b)(2), SCRCF) and absence of a final order and judgment on the Petition. Following this filing, the AHLA informed the parties it was staying arbitration until resolution of this motion. The parties thereafter submitted briefing to the lower court regarding Appellants' arguments contained in the motion to dismiss: (1) improper service of the Petition; (2) Ms. Stuckey's lack of actual or implied authority to accept service of the Petition on behalf of Appellants; (3) whether the August 2021 Order on file with the clerk containing the word "proposed" constituted a final order from which Appellants could appeal. *See* May 2023 Order at 6.

On April 18, 2023, the lower court heard argument from the parties on the motion to dismiss. *Id.* Following the hearing, on April 18, 2023, the court issued a Form 4 Order ("April 2023 Form 4 Order") denying the motion to dismiss and indicating a "formal order [would] follow." Following a request from the Honorable Daniel Coble, counsel for Respondent APC submitted a proposed order, and Appellants were afforded an opportunity to submit proposed edits to Respondent's proposed order. Having considered Respondent's submission, as well as the proposed edits submitted by Appellants, the court issued its order on May 31, 2023 ("May 2023 Order") containing the court's determination that,

[Appellants] 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 [Appellants], submitted filings in this Court, and argued the appeal from the arbitrator's ruling before this Court. Additionally, the Court is unpersuaded by Appellants' contention that a final order has not been entered on the Petition based on an argument that is tantamount to a scrivener's error.

May 2023 Order at 1-2. Following receipt of this order, Respondent reinitiated the proceeding in arbitration.

C. Dismissal of First Appeal

On June 30, 2023, Nelson Mullins - *on behalf of Appellants* - filed a Notice of Appeal from the May 2023 Order denying the motion to dismiss. NOA, June 20, 2023, Ex. 4. Following receipt of the Notice of Appeal, the Court requested the parties submit briefing on the appealability of the orders set forth in the Notice of Appeal. This Court dismissed the first appeal as interlocutory. Order, Aug. 29, 2023, Ex. 5. Appellants thereafter petitioned the Court for a Rehearing with Suggestion for Rehearing En Banc. On March 18, 2024, this Court denied the Petition for Rehearing. Order March 18, 2024, Ex. 6. Appellants thereafter filed a Petition for Writ of Certiorari from this Court's Order of Dismissal. The Supreme Court issued an Order denying the Petition for Writ of Certiorari on October 30, 2024. Order, Oct. 30, 2024, Ex. 7. This case was then remitted to the Court of Common Pleas on November 1, 2024. Letter, Nov. 1, 2024, Ex. 8.

D. Motion for Entry of Final Order and Judgment on Motion to Dismiss

After the appeal was dismissed and the case was remitted, Appellants in an effort to resurrect the dismissed appeal, filed a motion styled as Motion for Entry of Final Order and Judgment on Motion to Dismiss. Motion for Entry of Final Order, Nov. 22, 2024, Ex. 9. In the motion, Appellants admit that the motion was brought because this Court dismissed its earlier appeal as interlocutory. Appellants further claim that this Court was confused by the lower court's April 2023 Form 4 Order which indicated that "[t]his order does not end the case." *Id.* at 3-4. Appellants then sought what amounts to a certification of the May 2023 Order, requesting that the Circuit Court enter a final judgment clarifying that its denial of the motion to dismiss did "end the case" as there are no further proceedings to occur in the trial Court.

Having reviewed the briefings of the parties on this most recent motion by Appellants, Judge Kimpson issued a Form Four Order denying the Appellants' Motion, stating:

The parties have not conducted the second arbitration order by the Circuit Court in its August 2021 and November 2021 orders vacating the first arbitration award issued in this case. The Court declines to characterize the April 26, 2023 and May 31, 2023, orders issued by a second Circuit Judge denying Respondents' June 2022 Motion to Dismiss as "final." The Court does not believe that the orders on Respondents' June 2022 Motion to Dismiss contain any "clerical mistakes" under Rule 60(a), SCRPC. The parties may arbitrate this case in its current posture and further proceedings in this Circuit Court are stayed until the parties have conducted the second arbitration. The parties may return to Circuit Court for further proceedings on the second arbitration award as needed.

April 2025 Order, Ex. 10.

E. Notice of Appeal from Order Denying Motion for Entry of Final Order

On May 22, 2025, Appellants once again filed a Notice of Appeal. NOA, May 22, 2025, Ex. 11. This time Appellants seek to appeal Judge Kimpson's refusal to declare Judge Coble's May 2023 Order denying the motion to dismiss as Final, which this Court has already ruled is an interlocutory order. For the reasons stated below, Appellants' effort to resurrect the previously dismissed appeal should be summarily rejected and this Court should impose sanctions against Appellants for this frivolous appeal.

ARGUMENT

I. The Court's Prior Order Dismissing the First Appeal is the Law of the Case, and is Binding on Appellants.

This Court's Order dismissing Appellants' first appeal from Judge Coble's May 2023, Order as interlocutory is the law of this case, and binding upon Appellants. *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573, 776 S.E.2d 397, 404 (Ct. App. 2015). This Court's explanation in *Flexon* of the justification for the law of the case doctrine is squarely on point:

The "law of the case" rule is based on the salutary and sound public policy that litigation should come to an end. It is predicated on the premise that "there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to listen to criticisms on their opinions or speculate of chances from changes

in its members,” and that *it would be impossible for an appellate court “to perform its duties satisfactorily and efficiently” and expeditiously “if a question, once considered and decided by it were to be litigated anew in the same case upon any and every subsequent appeal” thereof.*

Id. at 573, 776 S.E.2d at 404 (emphasis in original).

Appellants are doing exactly what obstinate litigants will do if the law of the case doctrine is not enforced. After this Court properly dismissed the first appeal because the May 2023 Order was interlocutory and remitted the case to the Circuit Court, Appellants went before the Circuit Court criticizing this Court’s ruling, brazenly positing that this Court was confused by Judge Coble’s Form 4 Order, and requesting the Circuit Court correct this Court’s misunderstanding by declaring Judge Coble’s Order final, and not interlocutory. Judge Kimpson refused Appellants request, and concluded that this Court’s prior finding, that Judge Coble’s May 2023 Order did not end the case, was correct. Appellants have now filed a repeated appeal seeking a reversal of this Court’s Order dismissing the first appeal as interlocutory, only further highlighting their continued obstinance. As a result, Appellants are making it almost impossible for this Court to perform its duties “satisfactorily and efficiently and expeditiously.” (Id.)

This Court should therefore dismiss this appeal under the law of the case doctrine.

II. Judge Kimpson’s April 2025 Order Staying the Case while the parties arbitrate is not subject to an appeal.

Judge Kimpson’s April 2025 Order stayed the case in the Circuit Court pending a second arbitration proceeding as order by Judge Manning in 2021, approximately four (4) years ago. An order staying a case is not immediately appealable. *See, e.g., Edwards v. Suncom*, 369 S.C. 91, 94-95, 631 S.E.2d 529, 530-31 (2006) (“The order here does not discontinue the proceeding. It merely temporarily stays the matter pending a ruling by the FCC. Accordingly, we find an order granting a stay is not immediately appealable.”); *Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun.*

Water & Sewer Comm'n, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (noting *Edwards* held an order granting stay is not immediately appealable); *Serv. Corp. of S.C. v. Bahama Sands Dev., LLC*, No. 2011-UP-300, 2011 WL 11734673, at *2 (S.C. Ct. App. June 14, 2011) (finding that similar to an order granting a stay, an order denying a motion to stay “did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken.”).

CONCLUSION

For the reasons above, this Court should dismiss the appeal, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Columbia, South Carolina
June 24, 2025

Exhibit 1

May 31, 2023, Order

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anesthesiology Professionals of Columbia,
LLC,

Petitioner,

v.

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

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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").

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

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 caption of the original August 4, 2021 Order and Final Judgment, submitted by Petitioner to the Court, with Ms. Stuckey copied,

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), SCRCPP, 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), SCRCPP 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.

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

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), SCRCPP; *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

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

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

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.

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



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

Exhibit 2

August 4, 2021, Order

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

**PETITIONER’S PROPOSED
ORDER**

v.

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

Respondent.

This matter is before the Court upon Anesthesiology Professionals of Columbia, LLC’s (“APC” or “Petitioner”) Petition pursuant to S.C. Code Ann. § 15-48-130(a) for an order vacating the Final Determination and Order (the “Award”) issued by Arbitrator Richard D. Sanders on May 15, 2019. Having reviewed the parties’ briefings, as well as considered the arguments presented by counsel at the hearing on this matter on June 22, 2021, the Court hereby **GRANTS** APC’s Petition for the reasons set forth below.

FACTUAL FINDINGS

A. THE AGREEMENT & DEMAND FOR ARBITRATION

1. APC and Respondent Lifepoint Hospital d/b/a/ Providence Health and Providence Hospital LLC (the “Hospital”) entered into the Agreement effective April 15, 2014, to provide in-patient anesthesiology services to surgical patients at the Hospital. *See* (R. 271:3-11); (R. 118-160); (R. 30 ¶¶ 8-9).

2. 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”).

3. Section 7.2 of the Agreement provides:

7.2 Termination Without Cause. Either party may terminate this Agreement for any or no reason, and without penalty, upon the provision of one hundred eighty (180) days prior written notice to the other party. In the event Hospital terminates this Agreement pursuant to this Section 7.2 without cause and with such termination to take effect prior to the expiration of the Initial Term, Hospital agrees that it shall continue to compensate [APC], in accordance with the terms of Section 4.4 and Exhibit E herein, for a period of one hundred eighty (180) days.

(R. 117-160).

4. In March 2017, the Hospital provided APC with notice it was terminating the Agreement without cause. *See (R. 286:9-287:18); (R. 248-249).*

5. The parties agreed that APC would continue to provide services through September 30, 2017 (the “Termination Date”). *See (R. 250-251).*

6. Following the Termination Date, a dispute arose between the parties regarding APC’s demand for 180 days of post-termination compensation (the “Post-Termination Payments”) provided under Section 7.2 of the Agreement.

7. Pursuant to Article 23 of the Agreement entitled “Dispute Resolution”, 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 American Health Lawyers Association (“AHLA”) Alternative Dispute Resolution Rules of Procedure for Arbitration.

8. Unable to resolve the dispute over the Post-Termination Payments, APC filed a demand for arbitration with the AHLA on January 25, 2018. **(R. 22-78).**

9. The Hospital filed its Answer and Counterclaim to the Demand on April 30, 2018, **(R. 79-90)**, asserting as an affirmative defense that payment of the Post-Termination Payments to APC would not be commercially reasonable or fair market value because the APC physicians were not providing services **(R. 82 at 8).**

10. Thereafter, the Arbitrator was appointed by the American Health Lawyers Association (AHLA) and the parties proceeded with discovery.

B. DISCOVERY & PRE-HEARING DISCLOSURES

11. Given the Hospital's assertion that the Post-Termination Payments to APC would not be commercially reasonable or fair market value, APC requested all evidence the Hospital had to support this position in four separate interrogatories. *See* (R. 332-334, INT Nos. 4, 5, 6, 7, & 8).

12. In response to each interrogatory concerning this affirmative defense, the Hospital answered,

ANSWER: Respondent is not claiming that the Agreement runs afoul of the Stark

law.
Id.

13. Similarly, in response to requests for production of documents supporting this Stark-based affirmative defense, the Hospital claimed attorney-client privilege and that the work product doctrine precluded disclosure of the responsive documents but confirmed that,

RESPONSE: PYA prepared a summary appraisal report of fair market value compensation and commercial reasonableness related to the Agreement (the "appraisal (R. 337, RFP No. 9).

14. Also, in response to APC's request for an identification of all witnesses with knowledge of the facts in the case and a summary of their testimony, the Hospital did not identify a single witness that had knowledge related to this affirmative defense. (R. 329-332, INT Nos. 1 & 3).

15. Nor did the Hospital identify an expert to testify on these matters in its discovery responses. (**R. 334, INT No. 9; R. 338, RFP Nos. 10, 11, & 12**) (referring to confidential PYA appraisal report).

16. Additionally, APC's counsel raised the issue of this Stark-related affirmative defense during a pre-trial conference with the Arbitrator. Specifically, APC's counsel inquired whether the Hospital intended to present evidence on commercial reasonableness or fair market value in support of its affirmative defense at the hearing. The Hospital's counsel indicated such testimony would not be presented and that the Hospital was not contesting the Agreement under the Stark law.

17. Finally, in its prehearing witness disclosure, the Hospital did not identify an expert witness nor a lay witness that had knowledge and intended to testify on commercial reasonableness and fair market value. *See* (**R. 258-260**).

C. THE ARBITRATION HEARING

18. The hearing on this matter took place on March 12, 2019, and March 28, 2019.

19. At the hearing, APC presented testimony from individuals involved in the negotiation of the Agreement in support of APC's interpretation of Section 7.2 of the Agreement. These witnesses included Mr. Martin, the COO of the Hospital when the Agreement was executed, as well as the APC physicians.

20. In its case, the Hospital elicited testimony from Mr. Bernard and Mr. Doyle. Both gentlemen are currently employed as executives with the Hospital; however, neither were associated with the Hospital at the time the Agreement was negotiated or executed and, thus,

necessarily did not have first-hand knowledge related to the same. (**R. 305:19-21; 306:6-10; 312:13-16; 323:9-13; 324:14-20**).

21. Over the objection of APC's counsel, the Arbitrator permitted Mr. Bernard and Mr. Doyle to testify that it would not be commercially reasonable, nor fair market value, for the Hospital to comply with the early termination provision of Section 7.2 of the Agreement and the severance payments due thereunder. (**R. 310:6-311:1; 321:25-322:15**).

22. Neither Mr. Bernard nor Mr. Doyle, who are hospital executives, are experts in making such judgments and each admitted that hospitals rely on independent third-party experts to make such determinations on their behalf – not their executives. (**R. 312:17-23; 327:2-328:1**).

D. THE AWARD

23. Despite these admitted gaps in knowledge in such testimony, and their lack of expertise in making such determinations, the Arbitrator relied on such testimony and his independent experience to find the Agreement's Post-Termination payment requirement was not commercially reasonable and therefore violated the Stark law. *See* (**R. 17, 20**). Moreover, such conclusion was reached despite the repeated representations by the Hospital that it was not contesting APC's claim based on the Stark law.

CONCLUSIONS OF LAW

24. S.C. Code Ann. § 15-48-130(a) provides that upon application by a party, the Court shall vacate an award where the misconduct of an arbitrator prejudices the rights of any party or where an arbitrator exceeds his power.

25. It is clear from the Record in this case that the Arbitrator exceeded the scope of his authority by ruling on an issue that was not before him – whether payment of the Post-Termination

Payments pursuant to Section 7.2 of the Agreement was commercially reasonable. Pre-trial discovery and disclosures make evident that neither party submitted this issue to the Arbitrator; therefore, the Arbitrator patently exceeded the scope of his authority when ruling on the same. *See Pittman Mtg. Co. v. Edwards*, 327 S.C. 72, 77 (1997) (vacating portion of arbitration award that exceeded issues presented and relief sought by parties).

26. Moreover, in ruling on an issue that was not before him, the Arbitrator prejudiced the rights of APC by permitting testimony on commercial reasonableness and fair market value from Hospital witnesses when the Hospital made repeated representations during discovery it was not challenging such Stark-related issues and did not identify an expert or lay witness in its pre-trial disclosures that it expected to testify to these matters.

27. Without notice that such issues would be considered by the Arbitrator, APC was not prepared to refute such testimony. Nor was it given an opportunity to explore the opinions presented by the Hospital on these issues during discovery or retain its own expert to refute the same.

28. Such prejudice was only further compounded by the Arbitrator's reliance on "his expertise in healthcare law" (**R. 20-21**) when the procedural rules he was bound by under the AHLA require "the Final Award [] be based on evidence presented at [the] hearing." Rule 7.2, AHLA.

29. Based on the Arbitrator's failure to circumscribe the Award to the issue before him, and the unambiguous prejudice to APC resulting therefrom, the Court vacates the Award and remands the matter back to arbitration for a rehearing before a different AHLA arbitrator. *See* S.C. Code Ann. § 15-48-130(c).

30. On remand, the arbitrator's inquiry shall focus solely on the issue the parties had an opportunity to conduct discovery on following APC's filing of the Petition – whether interpretation of Section 7.2 of the Agreement entitles APC to Post-Termination Payments.

IT IS SO ORDERED.

THE HONORABLE L. CASEY MANNING
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

_____, 2021

Columbia, South Carolina



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

Exhibit 3

November 29, 2021, Order

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

ORDER

v.

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

Respondent.

This matter is before the Court upon Respondent Lifepoint Health d/b/a Providence Health and Providence Hospital LLC's ("Providence") motion to reconsider the August 4, 2021 order of this Court ("Order") granting the petition of Anesthesiology Professionals of Columbia, LLC's ("APC") to vacate the Final Determination and Order (the "Award") issued by Arbitrator Richard D. Sanders on May 15, 2019. The arguments set forth by Respondent in its motion were previously considered by the Court and rejected. The motion does not set forth any additional grounds warranting a reversal in the Court's determination that the Award should be vacated. Accordingly, the Court hereby **DENIES** Respondent's Motion to alter or amend its judgment pursuant to Rule 59(e), SCRCF.

Additionally, the Court hereby **GRANTS** Respondent's request pursuant to Rule 60(a), SCRCF, to amend the clerical mistake in the caption of the Order presently on file. The Clerk of Court is hereby instructed to replace the Order on file entitled "Petitioner's Proposed Order" with the document attached hereto as Exhibit A and entitled "Order". The corrected Order shall retain the same filing date as the version originally filed on August 4, 2021.

IT IS SO ORDERED.

Dated: 11-23-2021

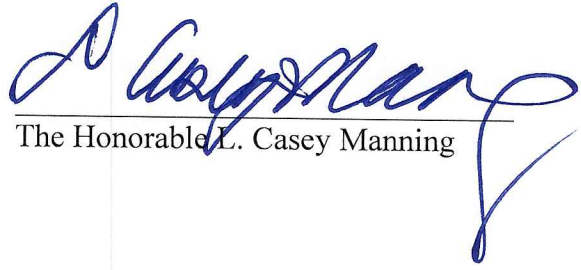

The Honorable L. Casey Manning

Exhibit 4

June 30, 2023, Notice of Appeal

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

Anesthesiology Professionals of
Columbia, LLC Respondent,

v.

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

NOTICE OF APPEAL

The unusual nature of this matter requires this explanatory notice. Lifepoint Health d/b/a Providence Health and Providence Hospital LLC (“Appellants”) and Anesthesiology Professionals of Columbia, LLC, (“Respondent”) were involved in an arbitration that ended with the arbitrator concluding that neither party owed the other anything. Respondent then instituted a legal challenge by filing this action to vacate the arbitration decision, but did not serve a summons or petition for the action on Appellants.

Appellants were unaware of the legal challenge, and claims they were never told of it, never learned of it, and never were billed for it. The legal challenge action began with purported “accepted service” by counsel who had no engagement with Appellants to act in the legal challenge action, and who did not inform Appellants of the legal challenge action.

The legal challenge action resulted in an Order of the Circuit Court entitled “Proposed Order” (attached), purporting to vacate the arbitration result. A motion to reconsider was filed (again, unknown to Appellants) leading to another Order (attached), which directed that an attachment be placed with a final order by the clerk, which attachment was never so placed, and regarding which no one has ever received.

After the second above-referenced Order on the motion to reconsider (but not ever any order with attachment), and after the passage of more than 30 days thereafter, Appellants

learned for the first time about the legal challenge action, when they received a notice that an all new arbitration proceeding would allegedly need to occur as a result of the legal challenge action.

Appellants moved to dismiss (in essence set aside) the Orders of the Circuit Court vacating the first arbitration on grounds, inter alia, of lack of personal jurisdiction of Appellants. Appellants never were served with the legal challenge action (either a summons or petition) nor did they authorize any counsel to accept service for it in the legal challenge action. *See BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006)(default set aside on grounds of lack of personal jurisdiction). Appellants 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 this declaratory relief been ordered, then Judge Manning’s Orders could have been timely appealed).

On May 31, Judge Coble issued an Order (attached) denying Appellants’ motion.

Appellants hereby appeal the Order of the Honorable Daniel Coble dated May 31, 2023, denying Appellants’ Motion to Dismiss or in the Alternative to Enter Final Order filed June 10, 2022. Appellants received notice of the entry of the May 31 Order on June 22, 2023.¹ Appellants also appeal the related Orders of the Honorable L. Casey Manning, all attached hereto.

[Signatures Next Page]

¹ The NEF for the May 31 Order incorrectly states that John Perry Bozeman, Tre Allen Holloway and J. Walker Coleman, IV, of K&L Gates, attorneys for Appellants, were electronically served with the May 31 order. None of those attorneys ever received a copy of the May 31 order by electronic means at their work email addresses from the Court or from any other person on May 31, 2023. The NEF states that attorney Jeffrey Stuart Patterson, also of K&L Gates and lead attorney for Appellants before Judge Coble, was not served electronically and needed to be served by “traditional means.” Attorney Patterson did not receive electronic notification on May 31, 2023 from the Court even though he had previously received electronic notifications of filings in the matter (the reason for now stating he must be served otherwise is unknown) and he was never served by any other means. Attorney Patterson discovered the filing of the May 31 Order on his own on June 22, 2023, while personally checking the public docket for the matter because of the long passage of time since the entry of the Form 4 order and the submission of proposed orders by the parties to Judge Coble.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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June 30, 2023

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ATTORNEYS FOR RESPONDENT

Exhibit 1

(Order filed May 31, 2023)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019 CP 40-04452

Petitioner,

v.

ORDER

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

Respondents.

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").

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

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 caption of the original August 4, 2021 Order and Final Judgment, submitted by Petitioner to the Court, with Ms. Stuckey copied,

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.

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

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), SCRCF; *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

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

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

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.

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



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

Exhibit 2

(Petitioner's Proposed Order filed August 4, 2021)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

**PETITIONER’S PROPOSED
ORDER**

v.

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

Respondent.

This matter is before the Court upon Anesthesiology Professionals of Columbia, LLC’s (“APC” or “Petitioner”) Petition pursuant to S.C. Code Ann. § 15-48-130(a) for an order vacating the Final Determination and Order (the “Award”) issued by Arbitrator Richard D. Sanders on May 15, 2019. Having reviewed the parties’ briefings, as well as considered the arguments presented by counsel at the hearing on this matter on June 22, 2021, the Court hereby **GRANTS** APC’s Petition for the reasons set forth below.

FACTUAL FINDINGS

A. THE AGREEMENT & DEMAND FOR ARBITRATION

1. APC and Respondent Lifepoint Hospital d/b/a/ Providence Health and Providence Hospital LLC (the “Hospital”) entered into the Agreement effective April 15, 2014, to provide in-patient anesthesiology services to surgical patients at the Hospital. *See* (R. 271:3-11); (R. 118-160); (R. 30 ¶¶ 8-9).

2. 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”).

3. Section 7.2 of the Agreement provides:

7.2 Termination Without Cause. Either party may terminate this Agreement for any or no reason, and without penalty, upon the provision of one hundred eighty (180) days prior written notice to the other party. In the event Hospital terminates this Agreement pursuant to this Section 7.2 without cause and with such termination to take effect prior to the expiration of the Initial Term, Hospital agrees that it shall continue to compensate [APC], in accordance with the terms of Section 4.4 and Exhibit E herein, for a period of one hundred eighty (180) days.

(R. 117-160).

4. In March 2017, the Hospital provided APC with notice it was terminating the Agreement without cause. *See (R. 286:9-287:18); (R. 248-249).*

5. The parties agreed that APC would continue to provide services through September 30, 2017 (the “Termination Date”). *See (R. 250-251).*

6. Following the Termination Date, a dispute arose between the parties regarding APC’s demand for 180 days of post-termination compensation (the “Post-Termination Payments”) provided under Section 7.2 of the Agreement.

7. Pursuant to Article 23 of the Agreement entitled “Dispute Resolution”, 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 American Health Lawyers Association (“AHLA”) Alternative Dispute Resolution Rules of Procedure for Arbitration.

8. Unable to resolve the dispute over the Post-Termination Payments, APC filed a demand for arbitration with the AHLA on January 25, 2018. **(R. 22-78).**

9. The Hospital filed its Answer and Counterclaim to the Demand on April 30, 2018, **(R. 79-90)**, asserting as an affirmative defense that payment of the Post-Termination Payments to APC would not be commercially reasonable or fair market value because the APC physicians were not providing services **(R. 82 at 8).**

10. Thereafter, the Arbitrator was appointed by the American Health Lawyers Association (AHLA) and the parties proceeded with discovery.

B. DISCOVERY & PRE-HEARING DISCLOSURES

11. Given the Hospital's assertion that the Post-Termination Payments to APC would not be commercially reasonable or fair market value, APC requested all evidence the Hospital had to support this position in four separate interrogatories. *See* (R. 332-334, INT Nos. 4, 5, 6, 7, & 8).

12. In response to each interrogatory concerning this affirmative defense, the Hospital answered,

ANSWER: Respondent is not claiming that the Agreement runs afoul of the Stark law.
Id.

13. Similarly, in response to requests for production of documents supporting this Stark-based affirmative defense, the Hospital claimed attorney-client privilege and that the work product doctrine precluded disclosure of the responsive documents but confirmed that,

RESPONSE: PYA prepared a summary appraisal report of fair market value compensation and commercial reasonableness related to the Agreement (the "appraisal (R. 337, RFP No. 9).

14. Also, in response to APC's request for an identification of all witnesses with knowledge of the facts in the case and a summary of their testimony, the Hospital did not identify a single witness that had knowledge related to this affirmative defense. (R. 329-332, INT Nos. 1 & 3).

15. Nor did the Hospital identify an expert to testify on these matters in its discovery responses. (**R. 334, INT No. 9; R. 338, RFP Nos. 10, 11, & 12**) (referring to confidential PYA appraisal report).

16. Additionally, APC's counsel raised the issue of this Stark-related affirmative defense during a pre-trial conference with the Arbitrator. Specifically, APC's counsel inquired whether the Hospital intended to present evidence on commercial reasonableness or fair market value in support of its affirmative defense at the hearing. The Hospital's counsel indicated such testimony would not be presented and that the Hospital was not contesting the Agreement under the Stark law.

17. Finally, in its prehearing witness disclosure, the Hospital did not identify an expert witness nor a lay witness that had knowledge and intended to testify on commercial reasonableness and fair market value. *See (R. 258-260)*.

C. THE ARBITRATION HEARING

18. The hearing on this matter took place on March 12, 2019, and March 28, 2019.

19. At the hearing, APC presented testimony from individuals involved in the negotiation of the Agreement in support of APC's interpretation of Section 7.2 of the Agreement. These witnesses included Mr. Martin, the COO of the Hospital when the Agreement was executed, as well as the APC physicians.

20. In its case, the Hospital elicited testimony from Mr. Bernard and Mr. Doyle. Both gentlemen are currently employed as executives with the Hospital; however, neither were associated with the Hospital at the time the Agreement was negotiated or executed and, thus,

necessarily did not have first-hand knowledge related to the same. (R. 305:19-21; 306:6-10; 312:13-16; 323:9-13; 324:14-20).

21. Over the objection of APC's counsel, the Arbitrator permitted Mr. Bernard and Mr. Doyle to testify that it would not be commercially reasonable, nor fair market value, for the Hospital to comply with the early termination provision of Section 7.2 of the Agreement and the severance payments due thereunder. (R. 310:6-311:1; 321:25-322:15).

22. Neither Mr. Bernard nor Mr. Doyle, who are hospital executives, are experts in making such judgments and each admitted that hospitals rely on independent third-party experts to make such determinations on their behalf – not their executives. (R. 312:17-23; 327:2-328:1).

D. THE AWARD

23. Despite these admitted gaps in knowledge in such testimony, and their lack of expertise in making such determinations, the Arbitrator relied on such testimony and his independent experience to find the Agreement's Post-Termination payment requirement was not commercially reasonable and therefore violated the Stark law. *See* (R. 17, 20). Moreover, such conclusion was reached despite the repeated representations by the Hospital that it was not contesting APC's claim based on the Stark law.

CONCLUSIONS OF LAW

24. S.C. Code Ann. § 15-48-130(a) provides that upon application by a party, the Court shall vacate an award where the misconduct of an arbitrator prejudices the rights of any party or where an arbitrator exceeds his power.

25. It is clear from the Record in this case that the Arbitrator exceeded the scope of his authority by ruling on an issue that was not before him – whether payment of the Post-Termination

Payments pursuant to Section 7.2 of the Agreement was commercially reasonable. Pre-trial discovery and disclosures make evident that neither party submitted this issue to the Arbitrator; therefore, the Arbitrator patently exceeded the scope of his authority when ruling on the same. *See Pittman Mtg. Co. v. Edwards*, 327 S.C. 72, 77 (1997) (vacating portion of arbitration award that exceeded issues presented and relief sought by parties).

26. Moreover, in ruling on an issue that was not before him, the Arbitrator prejudiced the rights of APC by permitting testimony on commercial reasonableness and fair market value from Hospital witnesses when the Hospital made repeated representations during discovery it was not challenging such Stark-related issues and did not identify an expert or lay witness in its pre-trial disclosures that it expected to testify to these matters.

27. Without notice that such issues would be considered by the Arbitrator, APC was not prepared to refute such testimony. Nor was it given an opportunity to explore the opinions presented by the Hospital on these issues during discovery or retain its own expert to refute the same.

28. Such prejudice was only further compounded by the Arbitrator's reliance on "his expertise in healthcare law" (**R. 20-21**) when the procedural rules he was bound by under the AHLA require "the Final Award [] be based on evidence presented at [the] hearing." Rule 7.2, AHLA.

29. Based on the Arbitrator's failure to circumscribe the Award to the issue before him, and the unambiguous prejudice to APC resulting therefrom, the Court vacates the Award and remands the matter back to arbitration for a rehearing before a different AHLA arbitrator. *See* S.C. Code Ann. § 15-48-130(c).

30. On remand, the arbitrator's inquiry shall focus solely on the issue the parties had an opportunity to conduct discovery on following APC's filing of the Petition – whether interpretation of Section 7.2 of the Agreement entitles APC to Post-Termination Payments.

IT IS SO ORDERED.

THE HONORABLE L. CASEY MANNING
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

_____, 2021

Columbia, South Carolina



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

Exhibit 3

(Order filed November 29, 2021)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

ORDER

v.

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

Respondent.

This matter is before the Court upon Respondent Lifepoint Health d/b/a Providence Health and Providence Hospital LLC's ("Providence") motion to reconsider the August 4, 2021 order of this Court ("Order") granting the petition of Anesthesiology Professionals of Columbia, LLC's ("APC") to vacate the Final Determination and Order (the "Award") issued by Arbitrator Richard D. Sanders on May 15, 2019. The arguments set forth by Respondent in its motion were previously considered by the Court and rejected. The motion does not set forth any additional grounds warranting a reversal in the Court's determination that the Award should be vacated. Accordingly, the Court hereby **DENIES** Respondent's Motion to alter or amend its judgment pursuant to Rule 59(e), SCRPC.

Additionally, the Court hereby **GRANTS** Respondent's request pursuant to Rule 60(a), SCRPC, to amend the clerical mistake in the caption of the Order presently on file. The Clerk of Court is hereby instructed to replace the Order on file entitled "Petitioner's Proposed Order" with the document attached hereto as Exhibit A and entitled "Order". The corrected Order shall retain the same filing date as the version originally filed on August 4, 2021.

IT IS SO ORDERED.

Dated: 11-23-2021

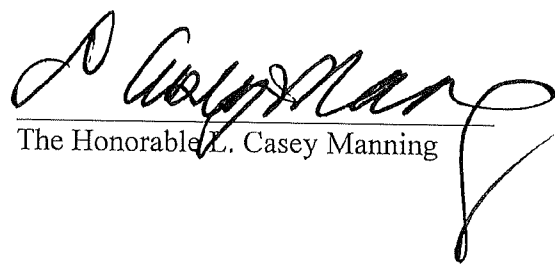

The Honorable L. Casey Manning

Exhibit 5

August 29, 2023, Order

The South Carolina Court of Appeals

Anesthesiology Professionals of Columbia, LLC,
Respondent,

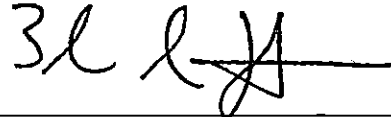
v.

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

Appellate Case No. 2023-001058

ORDER

Appellant appeals from three orders issued by the circuit court regarding arbitration of a contract dispute. Upon receiving the notice of appeal, this court requested memoranda from the parties regarding the appealability of the orders. After carefully considering both parties' memoranda, we dismiss the appeal as interlocutory.



FOR THE COURT

Columbia, South Carolina

cc:
C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire

FILED
Aug 29 2023

Exhibit 6

March 18, 2024, Order



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 18, 2024

Mr. C. Mitchell Brown, Esquire
PO Box 11070
Columbia SC 29211

Re: Anesthesiology Professionals of Columbia, LLC v. Lifepoint Health
Appellate Case No. 2023-001058

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

cc: William C. Wood, Jr., Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire

The South Carolina Court of Appeals

Anesthesiology Professionals of Columbia, LLC,
Respondent,

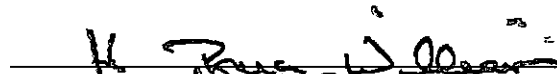
v.

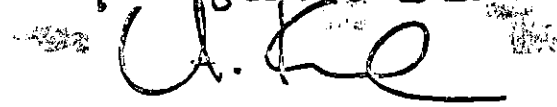
Lifepoint Health d/b/a Providence Health and Providence
Hospital, LLC, Appellant.

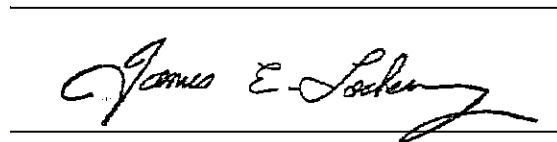
Appellate Case No. 2023-001058

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ C.J.


_____ J.


_____ A.J.

Columbia, South Carolina

cc:

C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire

FILED
Mar 18 2024

Exhibit 7

October 30, 2024, Order

The Supreme Court of South Carolina

Anesthesiology Professionals of Columbia, LLC,
Respondent,

v.

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

Appellate Case No. 2024-000588

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
October 30, 2024

cc:
James Mixon Griffin
Margaret Nicole Fox
C. Mitchell Brown
William C. Wood, Jr.
The Honorable Jenny Abbott Kitchings

Exhibit 8

November 1, 2024, Letter



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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November 01, 2024

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Anesthesiology Professionals of Columbia, LLC v. Lifepoint Health
Lower Court Case No. 2019CP4004452
Appellate Case No. 2023-001058

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in blue ink that reads "Catherine Harrison, deputy".

CLERK

Enclosure

cc: C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire

Exhibit 9

November 22, 2024, Respondents' Motion for Entry of
Final Order and Judgment on Motion to Dismiss

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	CASE NO. 2019-CP-40-04452
)	
Anesthesiology Professionals of Columbia, LLC,)	
)	
Petitioner,)	
)	
v.)	RESPONDENTS' MOTION FOR
)	ENTRY OF FINAL ORDER AND
Lifepoint Health d/b/a Providence Health and Providence Hospital, LLC,)	JUDGMENT ON MOTION TO
)	DISMISS
Respondents.)	
)	
)	

Pursuant to Rule 60 of the South Carolina Rules of Civil Procedure, Respondents Lifepoint Health, d/b/a Providence Health and Providence Hospital, LLC (“Respondents”) hereby move this Court for the entry of a final, appealable order on *Respondents’ Motion to Dismiss or in the Alternative, to Enter Final Order* (“Motion to Dismiss”).

Respondents bring this motion because the South Carolina Court of Appeals dismissed their appeal of this Court’s ruling on the Motion to Dismiss as interlocutory. While the denial of a motion to dismiss does not typically result in a final, appealable order, the circumstances of this case render this Court’s ruling on the Motion to Dismiss final and it should be reviewable by the Court of Appeals. For the reasons set forth herein, Respondents believe that the Court of Appeals was confused by the Court’s Form 4 Order on the Motion to Dismiss which indicated that “This order does not end the case” even though there will be no further proceedings in this court. Accordingly, Respondents ask this Court to enter a final judgment clarifying that the Court’s denial of the motion to dismiss did “end the case” as there are no further proceedings to occur in the trial court.

BACKGROUND

1. On or about January 25, 2018 Petitioner filed a demand for arbitration with the American Health Lawyers Association (“AHLA”), Claim No. 4419.
2. On May 15, 2019, the Arbitrator issued a Final Determination and Order in the First Arbitration (the “Arbitration Award”).
3. Petitioner, dissatisfied with the Arbitration Award, filed a Petition to Vacate Arbitration Award in this Court (“Petition”).
4. As more fully set forth in the Motion to Dismiss, Respondents never received direct service of the Petition or any Summons, were never notified of the Petition by their counsel in the Arbitration, Erin Stuckey, or her purported acceptance of service of it, and they had no opportunity to participate in their defense of the Petition, to review pleadings, to assert a counter petition, or to appeal this Court’s orders during the case.
5. Unbeknownst to Respondents, on or around August 4, 2021, this Court entered an Order purporting to adopt Petitioner’s *proposed* order vacating the Arbitration Award (the “Proposed Order”).
6. On or around August 16, 2021, Ms. Stuckey filed a motion for reconsideration, to alter or amend judgment, and to correct a clerical mistake (the “Motion to Alter or Amend”) with the Proposed Order. Ms. Stuckey filed the Motion to Alter or Amend without Respondents’ approval, permission, knowledge, or consent.
7. Respondents were not aware of the Proposed Order until 2022 when the AHLA began issuing notices regarding a new arbitration.
8. On June 10, 2022, upon learning of what had occurred in this Court without their knowledge or participation, Respondents filed the Motion to Dismiss asking this Court to dismiss

the Petition on the grounds that they were not properly served, did not voluntarily appear in the action, that Attorney Stuckey lacked authority to waive service, and, as a result, the Court lacked personal jurisdiction over them. In the alternative, Respondents asked this Court to issue a final order on the Petition based on prior clerical errors with the Proposed Order.

9. On April 26, 2023, this Court entered a Form 4 Order denying the Motion to Dismiss, indicating that it was a “Statement of Judgment” with a formal order to follow. The Order incorrectly stated that “This order does not end the case.”

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:

Defendant's Motion to Dismiss, heard on April 18th, 2023, is denied. Formal Order to Follow.

ORDER INFORMATION

This order ends does not end the case. [See Page 2 for additional information.](#)

COMMON PLEAS - CASE#2019CP400

See Exhibit A.

10. The Court entered a written Formal Order on May 31, 2023.

11. Respondents timely appealed the Order denying the Motion to Dismiss to the South Carolina Court of Appeals.

12. On August 20, 2023, the South Carolina Appeals Court (Case No. 2023-001058) entered an Order dismissing the appeal as interlocutory. See Exhibit B. The Order did not explain why the denial of the Motion to Dismiss was interlocutory, but Respondents assume it was based on the language on the Form 4 order above.

13. On March 18, 2024, the Court of Appeals denied Respondents’ Petition for Rehearing and denied Respondent’s Petition for Rehearing En Banc.

14. Respondents filed a Petition for a Writ of Certiorari in the Supreme Court of South Carolina, which the Court denied on October 30, 2024. See Exhibit C.

ARGUMENT

In a typical case, an order denying a motion to dismiss does not end the case, it is usually just the beginning of a case. This, however, is not a typical case. This case involved a Petition to Vacate an Arbitration Award, not standard civil litigation. Respondents' Motion to Dismiss effectively asked this Court to alter, vacate, or amend the Proposed Order that it had intended to enter on the Petition. This Court denied the Motion to Dismiss and Respondents do not ask this Court to reconsider the merits of its ruling on the Motion to Dismiss again. Respondents do, however, ask this Court to revise its Form 4 Order to make it clear that the Order is final and that no further proceedings are needed in the trial court.

While the Appeals Court did not explain its rationale, it did deny the appeal as interlocutory. The most logical explanation is that this Court's Form Order indicated that "This order does not end the case." See Exhibit A. In most cases, the denial of a motion to dismiss does not end a case. In this instance, it did. After ruling on the Motion to Dismiss, there was nothing left for this Court to do on the Petition. Thus, the denial of the Motion to Dismiss was the end of the case, and an appeal of that Order would not be interlocutory. If Respondents are mistaken and this Court expects further action in the case such as depositions, motions or other litigation after remand, Respondents request a status conference to understand the schedule for such additional discovery and briefing.

Rule 60(a) allows for corrections of clerical mistakes and provides: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and

after such notice, if any, as the court orders.” Therefore, this Court should correct the clerical mistake on the Order to make it a final order.

WHEREFORE, Respondents respectfully request that this Court enter a final order on their Motion to Dismiss, which indicates that the Order “Ends the Case” and have the Clerk of Court for Richland County enter that Order.

Dated: November 22, 2024

K&L GATES, LLP

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*Attorneys for Respondents Lifepoint
Health d/b/a Providence Health and
Providence Hospital, LLC*

Exhibit A

Anesthesiology Professionals Of Columbia Llc
PLAINTIFF(S)

Lifepoint Health et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; 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:

Defendant's Motion to Dismiss, heard on April 18th, 2023, is denied. Formal Order to Follow.

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 04/26/2023 .

Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health
Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health

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.

EEIEECOTRRONNICALLY FILED - 2023 NOV 25 41 05 PM - FRISCO, TEXAS - COUNTY CLERK'S OFFICE



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Electronic Form 4

So Ordered

s/ Daniel Coble, 2774

Electronically signed on 2023-04-26 15:00:01 page 3 of 3

EELEECOTTRRONNICCALLYFFIILED-2023Noy 25 #1687PAM-RRICHLAND-CCOMMONPLEAS-CAS#2019CP4004452

Exhibit B

The South Carolina Court of Appeals

Anesthesiology Professionals of Columbia, LLC,
Respondent,

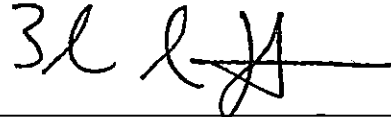
v.

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

Appellate Case No. 2023-001058

ORDER

Appellant appeals from three orders issued by the circuit court regarding arbitration of a contract dispute. Upon receiving the notice of appeal, this court requested memoranda from the parties regarding the appealability of the orders. After carefully considering both parties' memoranda, we dismiss the appeal as interlocutory.



FOR THE COURT

Columbia, South Carolina

cc:
C. Mitchell Brown, Esquire
William C. Wood, Jr., Esquire
James Mixon Griffin, Esquire
Margaret Nicole Fox, Esquire

FILED
Aug 29 2023

Exhibit C

The Supreme Court of South Carolina

Anesthesiology Professionals of Columbia, LLC,
Respondent,

v.

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

Appellate Case No. 2024-000588

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
October 30, 2024

cc:
James Mixon Griffin
Margaret Nicole Fox
C. Mitchell Brown
William C. Wood, Jr.
The Honorable Jenny Abbott Kitchings

Exhibit 10

April 22, 2025, Order

Anesthesiology Professionals Of Columbia Llc
PLAINTIFF(S)

Lifepoint Health et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; 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:

This matter came before the Court on a Motion for Entry of Final Judgment and Entry of Final Order on Motion to Dismiss (Motion) filed by Respondents Lifepoint Health d/b/a Providence Health and Providence Hospital, LLC (filed November 22, 2024). After a thorough review of the Record, to include the prior Circuit Court orders, the parties' memoranda, exhibits and other submissions, as well as the parties' oral arguments, the Court DENIES the Respondents' Motion.

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 04/19/2025 .

Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health
Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health

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.

The parties have not conducted the second arbitration ordered by the Circuit Court in its August 2021 and November 2021 orders vacating the first arbitration award issued in this case. The Court declines to characterize the April 26, 2023 and May 31, 2023 orders issued by a second Circuit Court Judge denying Respondents' June 2022 Motion to Dismiss as "final." The Court does not believe that the orders on Respondents' June 2022 Motion to Dismiss contain any "clerical mistakes" under Rule 60(a), SCRCP. The parties may arbitrate this case in its current posture and further proceedings in this Circuit Court case are stayed until the parties have conducted the second arbitration. The parties may return to Circuit Court for further proceedings on the second arbitration award as needed.



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

Exhibit 11

May 22, 2025, Notice of Appeal

RECEIVED

May 22 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge
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.

NOTICE OF APPEAL

The unusual nature of this matter requires this explanatory notice. Lifepoint Health (“Lifepoint”) and Anesthesiology Professionals of Columbia, LLC, (“APC”) arbitrated a payment dispute arising from the services agreement between them. The arbitrator entered an award, concluding that neither party owed the other anything. APC subsequently filed a petition with the circuit court to vacate the award. S.C. Code Ann. §15-48-130.

However, APC did not serve a summons or petition for the action on Lifepoint as specified by S.C. Ann. § 15-48-170. Rather, the matter proceeded in the circuit court based upon a purported “acceptance of service” by counsel who had no engagement with Lifepoint to act in the matter before the circuit court, and who did not inform Lifepoint of the circuit court action’s existence. Lifepoint was utterly unaware of the matter’s existence in the circuit court. It was never told of it, never learned of it, and was never billed for it. The subsequent proceedings in the circuit court and the response of Lifepoint upon discovering the existence of the matter and the circuit court’s rulings made without its knowledge or participation are set forth in the first Notice of Appeal that was filed regarding this matter, attached as Exhibit 1, along with the orders then appealed.

In the first appeal, this Court dismissed the appeal without explanation or citation to any authority in a three-sentence order as “interlocutory.” The South Carolina Supreme Court denied certiorari. Based on this Court’s “interlocutory” holding, Lifepoint examined the order

of Judge Coble, particularly the Form 4 entered with it, and noticed that it indicated that the order “does not end the case” with no explanation, even though nothing remained to be done in the circuit court.¹

Given this ambiguity, Lifepoint again moved the circuit court to enter a final judgment making clear that the power and jurisdiction of the circuit court to act was complete and that nothing remained for the circuit court to decide. On April 22, 2025, Judge Kimpson entered an order (attached as Exhibit 2) denying Lifepoint’s motion and checking the “does not end the case” box, but making it clear in a lengthy (for a Form 4 Order) explanation that nothing remained to be decided by the circuit court and that jurisdiction and power to act was returned to an arbitrator.²

Lifepoint once again appeals the orders of the circuit court denying its motion to dismiss the petition to vacate for lack of jurisdiction. As stated by our Supreme Court:

South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884). If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment. *Good v. Hartford Accident and Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942).

Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). Here, there is nothing more to be done by the circuit court in this case. Its jurisdiction and power over the matter is at an end. It has resolved the distinct jurisdiction question matter adversely to Lifepoint making that question ripe for resolution and appeal.

Wherefore, Lifepoint appeals from the orders of the circuit court (attached) purporting to vacate the arbitration award without jurisdiction over Lifepoint.³

[Signatures Next Page]

¹ Ordinarily, under the SCUAA, the power and jurisdiction of the circuit court in a matter, in this case 2019-CP-40-04452, would end once the circuit court vacated an arbitration award and sent the matter back for an entirely new arbitration. *See Main Corp. v. Black*, 357 S.C. 179, 181, 592 S.E.2d 300, 301-02 (2004).

² In apparent contradiction to the holding of *Main Corp.*, the order also purported to retain some jurisdiction of the matter and stay the matter in the circuit court even though jurisdiction of the matter was being returned to arbitration for new proceedings under the SCUAA and could never return to the circuit court’s jurisdiction except by action of the parties as provided by the SCUAA.

³In addition to the grounds raised in this notice, Lifepoint reserves the right to argue any other grounds which have been presented to the trial court including the newly discovered evidence proving that the Respondent APC has not existed as a legal entity since 2020.

Dated: May 22, 2025

K&L GATES, LLP

By: /s/ Jeffrey S. Patterson

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ATTORNEYS FOR RESPONDENT

RECEIVED

May 22 2025

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

Case No. 2019-CP-40-04452

Anesthesiology Professionals of
Columbia, LLC

Respondent,

v.

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

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Anesthesiology Professionals of Columbia, LLC by depositing a copy of it in the United States Mail, postage prepaid, on May 22, 2025, addressed to its attorneys of record, James M. Griffin and Margaret N. Fox, Griffin Davis Law Firm, P. O. Box 999, Columbia, SC, 29202.

May 22, 2025

K&L GATES LLP

By: /s/ Jeffrey S. Patterson

Jeffrey S. Patterson (S.C. Bar No. 9414)

Jeffrey.Patterson@klgates.com

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ATTORNEYS FOR APPELLANT

RECEIVED

May 22 2025

SC Court of Appeals

Exhibit 1

RECEIVED

Jun 30 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

Anesthesiology Professionals of
Columbia, LLC Respondent,

v.

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

NOTICE OF APPEAL

The unusual nature of this matter requires this explanatory notice. Lifepoint Health d/b/a Providence Health and Providence Hospital LLC (“Appellants”) and Anesthesiology Professionals of Columbia, LLC, (“Respondent”) were involved in an arbitration that ended with the arbitrator concluding that neither party owed the other anything. Respondent then instituted a legal challenge by filing this action to vacate the arbitration decision, but did not serve a summons or petition for the action on Appellants.

Appellants were unaware of the legal challenge, and claims they were never told of it, never learned of it, and never were billed for it. The legal challenge action began with purported “accepted service” by counsel who had no engagement with Appellants to act in the legal challenge action, and who did not inform Appellants of the legal challenge action.

The legal challenge action resulted in an Order of the Circuit Court entitled “Proposed Order” (attached), purporting to vacate the arbitration result. A motion to reconsider was filed (again, unknown to Appellants) leading to another Order (attached), which directed that an attachment be placed with a final order by the clerk, which attachment was never so placed, and regarding which no one has ever received.

After the second above-referenced Order on the motion to reconsider (but not ever any order with attachment), and after the passage of more than 30 days thereafter, Appellants

learned for the first time about the legal challenge action, when they received a notice that an all new arbitration proceeding would allegedly need to occur as a result of the legal challenge action.

Appellants moved to dismiss (in essence set aside) the Orders of the Circuit Court vacating the first arbitration on grounds, inter alia, of lack of personal jurisdiction of Appellants. Appellants never were served with the legal challenge action (either a summons or petition) nor did they authorize any counsel to accept service for it in the legal challenge action. *See BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006)(default set aside on grounds of lack of personal jurisdiction). Appellants 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 this declaratory relief been ordered, then Judge Manning’s Orders could have been timely appealed).

On May 31, Judge Coble issued an Order (attached) denying Appellants’ motion.

Appellants hereby appeal the Order of the Honorable Daniel Coble dated May 31, 2023, denying Appellants’ Motion to Dismiss or in the Alternative to Enter Final Order filed June 10, 2022. Appellants received notice of the entry of the May 31 Order on June 22, 2023.¹ Appellants also appeal the related Orders of the Honorable L. Casey Manning, all attached hereto.

[Signatures Next Page]

¹ The NEF for the May 31 Order incorrectly states that John Perry Bozeman, Tre Allen Holloway and J. Walker Coleman, IV, of K&L Gates, attorneys for Appellants, were electronically served with the May 31 order. None of those attorneys ever received a copy of the May 31 order by electronic means at their work email addresses from the Court or from any other person on May 31, 2023. The NEF states that attorney Jeffrey Stuart Patterson, also of K&L Gates and lead attorney for Appellants before Judge Coble, was not served electronically and needed to be served by “traditional means.” Attorney Patterson did not receive electronic notification on May 31, 2023 from the Court even though he had previously received electronic notifications of filings in the matter (the reason for now stating he must be served otherwise is unknown) and he was never served by any other means. Attorney Patterson discovered the filing of the May 31 Order on his own on June 22, 2023, while personally checking the public docket for the matter because of the long passage of time since the entry of the Form 4 order and the submission of proposed orders by the parties to Judge Coble.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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William C. Wood, Jr., Esq.
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bill.wood@nelsonmullins.com

June 30, 2023

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ATTORNEYS FOR RESPONDENT

RECEIVED

Jun 30 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

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: Notice of Appeal

Counsel Served:

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James Mixon Griffin, Esquire
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jgriffin@griffindavislaw.com

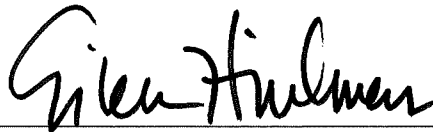
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Attorneys for Appellants



Eileen Hindman
Administrative Assistant

6/30, 2023

Eileen Hindman

From: Eileen Hindman
Sent: Friday, June 30, 2023 12:17 PM
To: 'mfox@griffindavislaw.com'; 'jgriffin@griffindavislaw.com';
'walker.coleman@klgates.com'; 'Tre.Holloway@klgates.com';
'jeffrey.patterson@klgates.com'; 'estuckey@mcgowanhood.com'; Bill Wood; Mitch
Brown
Subject: Lifepoint Health et al. v. Anesthesiology Professionals of Columbia LLC -
2019CP4004452
Attachments: 2023.06.30 Notice of Appeal with exhibits (Lifepoint).pdf; 2023.06.30 Proof of Service
(Lifepoint).pdf

Good afternoon,

Attached for service upon you in the above matter is a Notice of Appeal with exhibits and Proof of Service.

Thank you,



EILEEN HINDMAN SENIOR ADMINISTRATIVE ASSISTANT
eileen.hindman@nelsonmullins.com

MERIDIAN | 17TH FLOOR
1320 MAIN STREET | COLUMBIA, SC 29201
T 803.255.9204 F 803.256.7500
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Exhibit 1

(Order filed May 31, 2023)

RECEIVED

Jun 30 2023

SC Court of Appeals

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Anesthesiology Professionals of Columbia,
LLC,

Petitioner,

v.

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

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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").

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 compliant. 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

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 caption of the original August 4, 2021 Order and Final Judgment, submitted by Petitioner to the Court, with Ms. Stuckey copied,

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.

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

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), SCRCF; *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

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

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

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.

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



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

Exhibit 2

(Petitioner's Proposed Order filed August 4, 2021)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

**PETITIONER'S PROPOSED
ORDER**

v.

RECEIVED

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

Jun 30 2023

Respondent.

SC Court of Appeals

This matter is before the Court upon Anesthesiology Professionals of Columbia, LLC's ("APC" or "Petitioner") Petition pursuant to S.C. Code Ann. § 15-48-130(a) for an order vacating the Final Determination and Order (the "Award") issued by Arbitrator Richard D. Sanders on May 15, 2019. Having reviewed the parties' briefings, as well as considered the arguments presented by counsel at the hearing on this matter on June 22, 2021, the Court hereby **GRANTS** APC's Petition for the reasons set forth below.

FACTUAL FINDINGS

A. THE AGREEMENT & DEMAND FOR ARBITRATION

1. APC and Respondent Lifepoint Hospital d/b/a/ Providence Health and Providence Hospital LLC (the "Hospital") entered into the Agreement effective April 15, 2014, to provide in-patient anesthesiology services to surgical patients at the Hospital. *See* (R. 271:3-11); (R. 118-160); (R. 30 ¶¶ 8-9).

2. 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").

3. Section 7.2 of the Agreement provides:

7.2 Termination Without Cause. Either party may terminate this Agreement for any or no reason, and without penalty, upon the provision of one hundred eighty (180) days prior written notice to the other party. In the event Hospital terminates this Agreement pursuant to this Section 7.2 without cause and with such termination to take effect prior to the expiration of the Initial Term, Hospital agrees that it shall continue to compensate [APC], in accordance with the terms of Section 4.4 and Exhibit E herein, for a period of one hundred eighty (180) days.

(R. 117-160).

4. In March 2017, the Hospital provided APC with notice it was terminating the Agreement without cause. *See (R. 286:9-287:18); (R. 248-249).*

5. The parties agreed that APC would continue to provide services through September 30, 2017 (the “Termination Date”). *See (R. 250-251).*

6. Following the Termination Date, a dispute arose between the parties regarding APC’s demand for 180 days of post-termination compensation (the “Post-Termination Payments”) provided under Section 7.2 of the Agreement.

7. Pursuant to Article 23 of the Agreement entitled “Dispute Resolution”, 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 American Health Lawyers Association (“AHLA”) Alternative Dispute Resolution Rules of Procedure for Arbitration.

8. Unable to resolve the dispute over the Post-Termination Payments, APC filed a demand for arbitration with the AHLA on January 25, 2018. **(R. 22-78).**

9. The Hospital filed its Answer and Counterclaim to the Demand on April 30, 2018, **(R. 79-90)**, asserting as an affirmative defense that payment of the Post-Termination Payments to APC would not be commercially reasonable or fair market value because the APC physicians were not providing services **(R. 82 at 8).**

10. Thereafter, the Arbitrator was appointed by the American Health Lawyers Association (AHLA) and the parties proceeded with discovery.

B. DISCOVERY & PRE-HEARING DISCLOSURES

11. Given the Hospital's assertion that the Post-Termination Payments to APC would not be commercially reasonable or fair market value, APC requested all evidence the Hospital had to support this position in four separate interrogatories. *See* (R. 332-334, INT Nos. 4, 5, 6, 7, & 8).

12. In response to each interrogatory concerning this affirmative defense, the Hospital answered,

ANSWER: Respondent is not claiming that the Agreement runs afoul of the Stark law.
Id.

13. Similarly, in response to requests for production of documents supporting this Stark-based affirmative defense, the Hospital claimed attorney-client privilege and that the work product doctrine precluded disclosure of the responsive documents but confirmed that,

RESPONSE: PYA prepared a summary appraisal report of fair market value compensation and commercial reasonableness related to the Agreement (the "appraisal (R. 337, RFP No. 9).

14. Also, in response to APC's request for an identification of all witnesses with knowledge of the facts in the case and a summary of their testimony, the Hospital did not identify a single witness that had knowledge related to this affirmative defense. (R. 329-332, INT Nos. 1 & 3).

15. Nor did the Hospital identify an expert to testify on these matters in its discovery responses. (**R. 334, INT No. 9; R. 338, RFP Nos. 10, 11, & 12**) (referring to confidential PYA appraisal report).

16. Additionally, APC's counsel raised the issue of this Stark-related affirmative defense during a pre-trial conference with the Arbitrator. Specifically, APC's counsel inquired whether the Hospital intended to present evidence on commercial reasonableness or fair market value in support of its affirmative defense at the hearing. The Hospital's counsel indicated such testimony would not be presented and that the Hospital was not contesting the Agreement under the Stark law.

17. Finally, in its prehearing witness disclosure, the Hospital did not identify an expert witness nor a lay witness that had knowledge and intended to testify on commercial reasonableness and fair market value. *See (R. 258-260)*.

C. THE ARBITRATION HEARING

18. The hearing on this matter took place on March 12, 2019, and March 28, 2019.

19. At the hearing, APC presented testimony from individuals involved in the negotiation of the Agreement in support of APC's interpretation of Section 7.2 of the Agreement. These witnesses included Mr. Martin, the COO of the Hospital when the Agreement was executed, as well as the APC physicians.

20. In its case, the Hospital elicited testimony from Mr. Bernard and Mr. Doyle. Both gentlemen are currently employed as executives with the Hospital; however, neither were associated with the Hospital at the time the Agreement was negotiated or executed and, thus,

necessarily did not have first-hand knowledge related to the same. (R. 305:19-21; 306:6-10; 312:13-16; 323:9-13; 324:14-20).

21. Over the objection of APC's counsel, the Arbitrator permitted Mr. Bernard and Mr. Doyle to testify that it would not be commercially reasonable, nor fair market value, for the Hospital to comply with the early termination provision of Section 7.2 of the Agreement and the severance payments due thereunder. (R. 310:6-311:1; 321:25-322:15).

22. Neither Mr. Bernard nor Mr. Doyle, who are hospital executives, are experts in making such judgments and each admitted that hospitals rely on independent third-party experts to make such determinations on their behalf – not their executives. (R. 312:17-23; 327:2-328:1).

D. THE AWARD

23. Despite these admitted gaps in knowledge in such testimony, and their lack of expertise in making such determinations, the Arbitrator relied on such testimony and his independent experience to find the Agreement's Post-Termination payment requirement was not commercially reasonable and therefore violated the Stark law. *See* (R. 17, 20). Moreover, such conclusion was reached despite the repeated representations by the Hospital that it was not contesting APC's claim based on the Stark law.

CONCLUSIONS OF LAW

24. S.C. Code Ann. § 15-48-130(a) provides that upon application by a party, the Court shall vacate an award where the misconduct of an arbitrator prejudices the rights of any party or where an arbitrator exceeds his power.

25. It is clear from the Record in this case that the Arbitrator exceeded the scope of his authority by ruling on an issue that was not before him – whether payment of the Post-Termination

Payments pursuant to Section 7.2 of the Agreement was commercially reasonable. Pre-trial discovery and disclosures make evident that neither party submitted this issue to the Arbitrator; therefore, the Arbitrator patently exceeded the scope of his authority when ruling on the same. *See Pittman Mtg. Co. v. Edwards*, 327 S.C. 72, 77 (1997) (vacating portion of arbitration award that exceeded issues presented and relief sought by parties).

26. Moreover, in ruling on an issue that was not before him, the Arbitrator prejudiced the rights of APC by permitting testimony on commercial reasonableness and fair market value from Hospital witnesses when the Hospital made repeated representations during discovery it was not challenging such Stark-related issues and did not identify an expert or lay witness in its pre-trial disclosures that it expected to testify to these matters.

27. Without notice that such issues would be considered by the Arbitrator, APC was not prepared to refute such testimony. Nor was it given an opportunity to explore the opinions presented by the Hospital on these issues during discovery or retain its own expert to refute the same.

28. Such prejudice was only further compounded by the Arbitrator's reliance on "his expertise in healthcare law" (**R. 20-21**) when the procedural rules he was bound by under the AHLA require "the Final Award [] be based on evidence presented at [the] hearing." Rule 7.2, AHLA.

29. Based on the Arbitrator's failure to circumscribe the Award to the issue before him, and the unambiguous prejudice to APC resulting therefrom, the Court vacates the Award and remands the matter back to arbitration for a rehearing before a different AHLA arbitrator. *See* S.C. Code Ann. § 15-48-130(c).

30. On remand, the arbitrator's inquiry shall focus solely on the issue the parties had an opportunity to conduct discovery on following APC's filing of the Petition – whether interpretation of Section 7.2 of the Agreement entitles APC to Post-Termination Payments.

IT IS SO ORDERED.

THE HONORABLE L. CASEY MANNING
CHIEF ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT

_____, 2021

Columbia, South Carolina



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Other

So Ordered

s/L. Casey Manning, 2061

Exhibit 3

(Order filed November 29, 2021)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Anesthesiology Professionals of Columbia,
LLC,

C/A No. 2019-CP-40-04452

Petitioner,

ORDER

v.

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

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Jun 30 2023

Respondent.

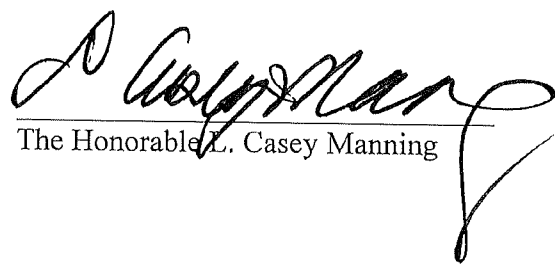
SC Court of Appeals

This matter is before the Court upon Respondent Lifepoint Health d/b/a Providence Health and Providence Hospital LLC's ("Providence") motion to reconsider the August 4, 2021 order of this Court ("Order") granting the petition of Anesthesiology Professionals of Columbia, LLC's ("APC") to vacate the Final Determination and Order (the "Award") issued by Arbitrator Richard D. Sanders on May 15, 2019. The arguments set forth by Respondent in its motion were previously considered by the Court and rejected. The motion does not set forth any additional grounds warranting a reversal in the Court's determination that the Award should be vacated. Accordingly, the Court hereby **DENIES** Respondent's Motion to alter or amend its judgment pursuant to Rule 59(e), SCRCPP.

Additionally, the Court hereby **GRANTS** Respondent's request pursuant to Rule 60(a), SCRCPP, to amend the clerical mistake in the caption of the Order presently on file. The Clerk of Court is hereby instructed to replace the Order on file entitled "Petitioner's Proposed Order" with the document attached hereto as Exhibit A and entitled "Order". The corrected Order shall retain the same filing date as the version originally filed on August 4, 2021.

IT IS SO ORDERED.

Dated: 11-23-2021


The Honorable L. Casey Manning

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May 22 2025

SC Court of Appeals

Exhibit 2

Anesthesiology Professionals Of Columbia Llc
PLAINTIFF(S)

Lifepoint Health et al
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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; 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:

This matter came before the Court on a Motion for Entry of Final Judgment and Entry of Final Order on Motion to Dismiss (Motion) filed by Respondents Lifepoint Health d/b/a Providence Health and Providence Hospital, LLC (filed November 22, 2024). After a thorough review of the Record, to include the prior Circuit Court orders, the parties' memoranda, exhibits and other submissions, as well as the parties' oral arguments, the Court DENIES the Respondents' Motion.

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 04/19/2025 .

Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health
 Jeffrey Stuart Patterson for Lifepoint Health, Providence Hospital Llc, Providence Health

RECEIVED
May 22 2025
 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.

The parties have not conducted the second arbitration ordered by the Circuit Court in its August 2021 and November 2021 orders vacating the first arbitration award issued in this case. The Court declines to characterize the April 26, 2023 and May 31, 2023 orders issued by a second Circuit Court Judge denying Respondents' June 2022 Motion to Dismiss as "final." The Court does not believe that the orders on Respondents' June 2022 Motion to Dismiss contain any "clerical mistakes" under Rule 60(a), SCRCP. The parties may arbitrate this case in its current posture and further proceedings in this Circuit Court case are stayed until the parties have conducted the second arbitration. The parties may return to Circuit Court for further proceedings on the second arbitration award as needed.



Richland Common Pleas

Case Caption: Anesthesiology Professionals Of Columbia Llc vs Lifepoint Health ,
defendant, et al
Case Number: 2019CP4004452
Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/Milton G. Kimpson 2783

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Jun 24 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge
Daniel Coble, Circuit Court Judge
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2025-001024
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,

PROOF OF SERVICE

I, Jaime Harmon, legal assistant at Griffin Humphries LLC, attorneys for the Respondent, located at 8906 Two Notch Road, Suite 200, Columbia, South Carolina 29223, hereby certify that on June 24, 2025, I have served counsel in this action a copy of the **Motion to Dismiss Appeal and Memorandum in Support** by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System.

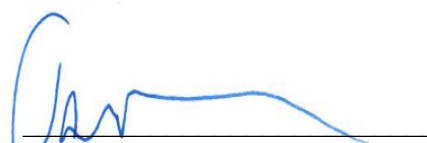
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Columbia, South Carolina
June 24, 2025