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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
The Honorable Jocelyn Newman, Circuit Court Judge

Civil Action No.: 2023CP4003086
Appeal Number: 2024-001802

Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee.....Plaintiff/Appellant,

v.

All Seasons Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill
Creek Manor, LLC f/k/a Amara Place at ColumbiaDefendants,

Of whom All Seasons Healthcare, LLC isRespondent.

**SUPPLEMENTAL RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,	)	Notice of Intent to File Suit
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
<u>Defendants.</u>)	

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

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**Stanley McCloy, MD
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Patricia Henderson, ALMT
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2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

**All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)**

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved,

ANSWER: See, Answer Number 1 and Answer Number 2.

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Plaintiff is unaware of the insurer for Defendant.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: There are no medical bills associated with the claim.

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER: Carl Grey, MD
Department of Medicine
Section of Gerontology and Geriatrics
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Medical Center Boulevard
Winston-Salem, NC 27157
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cgrey@wakehealth.edu**

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski

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November 10, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,) Notice of Intent to File Suit
)

v.)

All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)

Defendants.

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was “shivering and clammy” and “making a sound like she was going to vomit.” As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate “Debra” and “Katie” from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

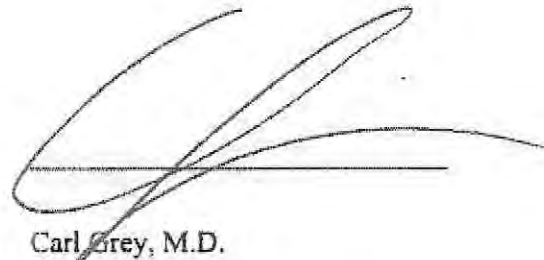
- 17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
- 18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
- 19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7th day of November, 2022

Bobbie Jo Haydt
My Commission Expires 11/14/2026
Notary Public for North Carolina


Carl Grey, M.D.

BOBBIE JO HAYDT
NOTARY PUBLIC
Forsyth County
North Carolina
My Commission Expires 11/14/2026

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
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COUNTY OF GREENWOOD)	FOR THE EIGHTH JUDICIAL CIRCUIT
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Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,)	Civil Action No.: 2022-NI-40-
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Plaintiff,)	Notice of Intent to File Suit
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v.)	
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All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
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Defendants.)	

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
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- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

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- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

**Josh Gee
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2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

**All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)**

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

ANSWER: See, Answer Number 1 and Answer Number 2.

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Plaintiff is unaware of the insurer for Defendant.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: There are no medical bills associated with the claim.

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER: Carl Grey, MD
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cgrey@wakehealth.edu**

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski
John D. Kassel (SC Bar 3286)
jkassel@kasselaw.com
Theile B. McVey (16682)
tmevey@kasselaw.com
Jamie Rutkoski (103270)
jrutkoski@kasselaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P.O. Box 1476
Columbia, SC 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: cmoultire@kasselaw.com

November 10, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,	)	Notice of Intent to File Suit
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
Defendants.)	

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 12-18-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was “shivering and clammy” and “making a sound like she was going to vomit.” As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate “Debra” and “Katie” from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
- a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

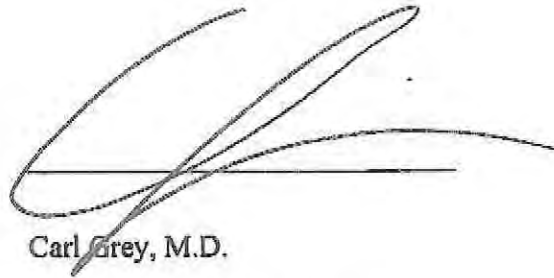
Bobbie Jo Haydt

this 7th day of November, 2022

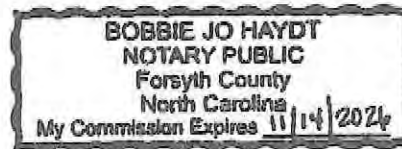
Bobbie Jo Haydt

My Commission Expires 11/14/2026

Notary Public for North Carolina



Carl Grey, M.D.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-CP-40-_____
)	
Plaintiff,)	
)	
v.)	
	)	SUMMONS
	)	(Jury Trial Demanded)
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia,)	
)	
Defendants.)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Jamie Rutkoski
 Jamie Rac Rutkoski (SC Bar No.:103270)
jrutkoski@kassellaw.com
 Theile B. McVey (SC Bar No.: 16682)
tmcvey@kassellaw.com
 John D. Kassel (SC Bar No.: 03286)
jkassel@kassellaw.com
 KASSEL McVEY ATTORNEYS AT LAW
 1330 Laurel Street
 Post Office Box 1476
 Columbia, South Carolina 29202
 803-256-4242
 803-256-1952 (Facsimile)
 Other email: cmoultrie@kassellaw.com

May 23rd, 2023
Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-CP-40-_____
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,)

v.)

Complaint
(Jury Trial Demanded)

All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and TWG)
Polo Road, LLC d/b/a Mill Creek)
Manor, LLC f/k/a Amara Place at)
Columbia,)

Defendants.)

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant TWG Polo Road d/b/a Amara Place (Amara Place) is a business or corporation formerly incorporated in the state of South Carolina. At all times relevant to this action, Amara Place provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.
- 7) On November 11, 2022, Plaintiff filed a Notice of Intent in Greenwood County (see, Exhibit 1). All parties were properly served.
- 8) Defendants were notified via certified mail of a scheduled mediation with mediator Robert McMahan. Mediation was held on April 20th, 2022, and neither defendant attended. Mr. McMahan filed his mediation report on May 24th, 2023. (see, Exhibit 2)
- 9) The Notice of Intent was errantly filed in Greenwood County. The proper venue for this action is Richland County.

Factual Background

- 10) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 11) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 12) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.

- 13) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 14) Between July and December of 2019, Ms. Gee's health continued to decline.
- 15) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 16) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.
- 17) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 18) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 19) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 20) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 21) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 22) There is no medical note or record showing the administration of either Ativan or Morphine.
- 23) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 24) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.

25) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:

- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

26) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

WHEREFORE, Plaintiff prays for judgment in this matter in a sum sufficient to adequately compensate them for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

{signature block on following page}

Respectfully submitted

s/Jamie Rutkoski
Jamie Rae Rutkoski (SC Bar No.:103270)
jrutkoski@kassellaw.com
Theile B. McVey (SC Bar No.: 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No.: 03286)
jkassel@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultrie@kassellaw.com

May 23rd, 2023

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,)	
)	
v.	)	Affidavit of Carl Grey, MD
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
Defendants.)	

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
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16. Records indicate this medication was not administered.

17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.

18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.

19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:

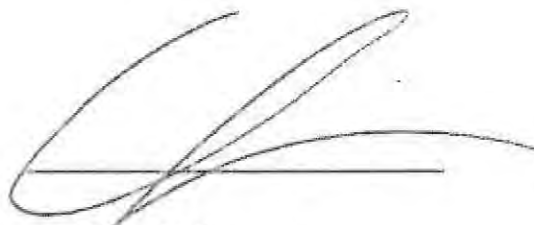
- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

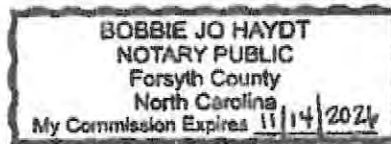
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7th day of November, 2022

Bobbie Jo Haydt
My Commission Expires 11/14/2024
Notary Public for North Carolina


Carl Grey, M.D.



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2023-CP-40-03086

Jennifer Murphy, as Personal Representative)
of the Estate of Phyllis Gee,)
)
Plaintiff,)

**ANSWER ON
BEHALF OF THE DEFENDANT, ALL
SEASONS HEALTHCARE, INC.**

v.)

All Season's Healthcare, LLC, All Seasons)
Healthcare, Inc., and TWG Polo Road, LLC)
d/b/a Mill Creek Manor, LLC f/k/a Amara)
Place at Columbia,)
)
Defendants.)

TO: JOHN D. KASSEL, ESQUIRE, THEILE B. MCVEY, ESQUIRE AND JAMIE RUTKOSKI, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, All Seasons Healthcare, Inc., (hereinafter "Defendant"), reserving all rights to file Rule 12 Motions, hereby answers the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

FOR A SECOND DEFENSE

2. Defendant admits on information and belief the allegations of paragraphs 1 and 2 of the Complaint.

3. Defendant admits so much of paragraph 3 of the Complaint, as Amara Place provided care and residence to Ms. Gee but has no information sufficient to formulate beliefs as to the remainder of the allegations, denies same, and would crave reference to the medical records

for a more complete and accurate response to said allegations.

3. Defendant admits so much of paragraph 4 of the Complaint as Plaintiff alleges it is a corporation created in the State of South Carolina but denies the remainder of the allegations as stated. Defendant has no information sufficient to formulate beliefs as to the remainder of the allegations, denies same.

4. Defendant admits so much of paragraph 5 of the Complaint as it is a South Carolina Corporation, but denies the remainder of the allegations, as stated, and would crave reference to the medical records for a more complete and accurate response.

5. Defendant denies the allegations of paragraph 6 of the Complaint.

6. Defendant has no information sufficient to formulate a belief as to the allegations of paragraphs 7, 8 and 9 of the Complaint, denies same.

7. Defendant admits the allegations of paragraph 10 of the Complaint.

8. Defendant admits so much of the allegations in paragraph 11 of the Complaint as Ms. Gee opted for hospice care but denies the remainder of the allegations.

9. Defendant admits so much of the allegations of paragraph 12 of the Complaint as Dr. McCloy visited her, but denies the remainder of the allegations as stated, and would crave reference to the medical records for a more complete and accurate response to said allegations.

10. Defendant admits the allegations of paragraphs 13 and 14 of the Complaint.

11. Defendant has no information to formulate a belief as to the allegations of paragraphs 15, 16 and 17 of the Complaint and denies same and would crave reference to the medical records for a more complete and accurate response to said allegations.

12. Defendant denies the allegations of paragraph 18 of the Complaint as stated but admits Ms. Gee was prescribed Atropine but would crave reference to the medical records for a more complete and accurate response to said allegation.

13. Defendant has no information to formulate a belief as to the allegations of paragraphs 19 and 20 of the Complaint and denies same but would crave reference to the medical records for a more complete and accurate response to said allegations.

14. Defendant admits the allegations of paragraphs 21 and 22 of the Complaint.

15. Defendant admits so much of paragraph 23 of the Complaint as Ms. Gee was dying from a terminal illness which was the reason for her hospice care.

16. Defendant admits so much of paragraph 24 of the Complaint as Ms. Gee was declared dead.

17. Defendant admits so much of paragraph 25 of the Complaint as alleges Plaintiff has named an expert, but denies the remainder of the allegations as stated, including subparts.

18. Defendant denies paragraph 26 of the Complaint.

FOR A THIRD DEFENSE

19. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.

FOR A FOURTH DEFENSE

20. Defendant acted in accordance with accepted standards of care for a hospice provider, exercised sound medical judgment in their care and treatment of the Decedent and bears no liability to Plaintiffs for an unfortunate result from properly employed medical care, and is not an insurer of a cure or guarantors of results

FOR A FIFTH DEFENSE

21. This action is barred by the statute of limitations.

FOR A SIXTH DEFENSE

22. Defendant asserts improper service of process against it in that it has never been properly served and moves that the Complaint be dismissed.

FOR A SEVENTH DEFENSE

23. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Complaint were caused and occasioned by events over which this Defendant had no control or right of control, thereby relieving Defendant from any liability or responsibility herein and Defendant pleads an unavoidable accident as a complete bar to this action.

FOR AN EIGHTH DEFENSE

24. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Complaint were a proximate result of one or more independent, efficient and intervening causes which the Defendant affirmatively pleads as a complete bar to this action.

FOR A NINTH DEFENSE

25. Defendant avers that punitive damages are unconstitutional, have no meaningful standard by which they can be ascertained, subject Defendant to a double recovery and violate equal protection and due process of law.

FOR A TENTH DEFENSE

26. Defendant pleads all caps on damages and special defenses as set forth in the South Carolina Medical Malpractice Tort Reform Act. Defendant pleads all statutory caps on actual and punitive damages, including but not limited to the caps described in S.C. Code §15-32-210 and §15-32-220, et seq. and §15-32-530, et. seq., as amended.

FOR AN ELEVENTH DEFENSE

27. Defendant reserves any addition of further defenses as may be revealed by additional information during the course of discovery and investigation and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint, the Defendant prays that it be dismissed, with prejudice, for their costs and for such other and further relief as the Court deems just and proper.

/s/Julius W. McKay, II
Julius W. McKay, II
The McKay Firm, PA
3700 Forest Drive, Suite 404
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
(803) 765-1839 - Fax
jmckay@mckayfirm.com
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2023-CP-40-03086

Jennifer Murphy, as Personal Representative)
of the Estate of Phyllis Gee,)
)
Plaintiff,)

**MOTION FOR SUMMARY JUDGMENT
OR IN THE ALTERNATIVE
MOTION TO DISMISS ON
BEHALF OF THE DEFENDANT,
ALL SEASONS HEALTHCARE, INC.**

v.)

All Season's Healthcare, LLC, All Seasons)
Healthcare, Inc., and TWG Polo Road, LLC)
d/b/a Mill Creek Manor, LLC f/k/a Amara)
Place at Columbia,)
)
Defendants.)

TO: JOHN D. KASSEL, ESQUIRE, THEILE B. MCVEY, ESQUIRE AND JAMIE RUTKOSKI, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:

You will please take notice that within ten (10) days of the service hereof, the Defendant, All Seasons Healthcare, Inc., (hereinafter "Defendant"), hereby moves before the Court of Common Pleas for Richland County for an order dismissing Plaintiff's Complaint and all claims raised against them. This motion is made pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and §15-79-125 and §15-36-100, Code of Laws of South Carolina, as amended, and the Common Law of the State of South Carolina.

Specific grounds for this motion are as follows:

- 1. Failure to timely serve the Complaint pursuant to Rule 3 of the South Carolina Rules of Civil Procedure.**

The Complaint was filed on June 13, 2023. However, Defendant has never been properly served with a copy of the Summons and Complaint, as it was not served on the registered agent of the corporation.

2. Improper service of process pursuant to Rule 4 of the SCRCP.

Plaintiff has failed to ever serve Defendant by personal service, as required by the Rule or by statutory service by certified mail pursuant to Rule 4(d)(8) as this lawsuit was not properly served on the registered agent for the corporation.

As such, the registered agent has never been served but if the Court believes that service was proper, it was untimely in that it is after the one hundred twenty (120) days required from filing of the Complaint.

3. This action is barred by the statute of limitations.

South Carolina has a three (3) year statute of limitations which was not met against the Defendant.

Section 15-3-545(a) Code of Laws of South Carolina provides:
*"any action ...to recover damages for injury to the person arising out of any medical... treatment, omission... by any licensed healthcare provider...acting within the scope of his profession must be commenced within **three (3) years** from the date of treatment, omission or operation giving rise to the cause of action or three (3) years from the date of discovery or when it reasonably ought to have been discovered".*

The Complaint alleges the incident giving rise to this claim occurred on December 30, 2019, in Richland County, South Carolina where Decedent died. It is clear that Plaintiff was aware of the issues giving rise to this claim as of that date. Plaintiff filed a Notice of Intent to File Suit in Greenwood County Court of Common Pleas on November 11, 2022. This was not a county in which venue would be proper for filing this lawsuit. Moreover, All Seasons Healthcare, Inc., was never properly served with the Notice of Intent as required by statute. Plaintiff filed the Complaint

in this action in Richland County Court of Common Pleas on June 13, 2023, but the statute of limitations had already expired on December 30, 2022. As such, the lawsuit is time barred by the statute of limitations against this Defendant as it was never properly served or commenced against them.

For the reasons set forth herein, Defendant moves for summary judgment of the Complaint. Motion is based upon the pleadings, statutes and authorities, affidavits, and other documents to be filed.

/s/Julius W. McKay, II
Julius W. McKay, II
The McKay Firm, PA
3700 Forest Drive, Suite 404
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
(803) 765-1839 - Fax
jmckay@mckayfirm.com
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2023-CP-40-03086
Representative of the Estate of Phyllis)
Gee,)
Plaintiff,) Plaintiff's Response to Defendant All Season's
v.) Healthcare, Inc.'s Motion for Summary
All Season's Healthcare, LLC, All) Judgment or Motion to Dismiss
Seasons Healthcare, Inc., and TWG)
Polo Road, LLC d/b/a Mill Creek)
Manor, LLC. f/k/a Amara Place,)
Defendants.)

To: Julius W. McKay, III, Esq., attorney for Defendant All Season's Healthcare, Inc.:

Plaintiff, by and through undersigned counsel, respectfully requests this court deny Defendant All Seasons Healthcare, Inc.'s, Motion for Dismissal or Summary Judgment, as the defendant was properly served with Notice of Intent to File Suit within the statute of limitations. This action tolled the statute of limitations. Plaintiff then filed and served the complaint on Defendant within the statutorily prescribed time period. Thus, Defendant's motion should be denied.

Facts

Phyllis Gee was admitted to a nursing facility called Amara Place in 2019. She was receiving hospice care through All Season's Healthcare, LLC. Ms. Gee suffered from advanced dementia and between July and December of 2019, her health significantly deteriorated. Ms. Gee's hospice healthcare plan indicated she would receive comfort care and pain reduction as her

health deteriorated. However, Defendants failed to adhere to the standard of care and did not provide pain relief to Ms. Gee as she was dying. She suffered for hours without proper medication, as prescribed in her medical chart. On December 30th, 2019, Ms. Gee passed.

On November 11th, 2022, Plaintiff filed her Notice of Intent to File Suit with the statutorily required expert affidavit attached in Greenwood County. (see, Exhibit 1) On December 16th, 2022, Defendant All Season's Healthcare, Inc, was served via certified mail. Proof of service was returned to Plaintiff's counsel. (see, Exhibit 2).

Defendants did not obtain counsel at this time. On March 16th, 2023, Plaintiff mailed a letter to All Season's Healthcare, Inc. informing them that Plaintiff had scheduled the procedurally required pre-suit mediation prior to filing a complaint for March 30th, 2023. (see, Exhibit 3).

On March 27th, 2023, a woman by the name of Trish who identified herself as an employee of All Season's Healthcare, Inc., called Plaintiff's counsel's office to inquire about the pre-suit mediation. At that time, Elizabeth Moultrie, paralegal to Plaintiff's counsel, sent an email to Trish attaching the Cover Letter, Notice of Intent, and Proof of Service. (see, Exhibit 4).

On April 20th, mediator Robert McMahon, Esq., conducted pre-suit mediation with Plaintiff's counsel and Stuart Mottern, CFO of Mill Creek Manor, LLC. On May 24th, 2023, Proof of ADR was filed with Greenwood County Clerk of Court (see, Exhibit 5).

On June 6th, 2023, Plaintiff's Counsel filed a Motion to Change Venue from Greenwood County to Richland County, as all parties are domiciled in Richland County and all of the events related to this lawsuit occurred in Richland County. The motion was granted.

On June 13th, 2023, Plaintiff filed their Complaint with Richland County Clerk of Court. On June 26th, 2023, All Seasons Healthcare was served by registered agent, Heather McCloy, via certified mail return receipt requested. (see, Exhibit 6).

On July 25th, 2023, Heather McCloy, Chief Executive Officer and Registered Agent for All Seasons Healthcare, Inc., emailed Plaintiff's counsel indicating she was in receipt of "documentation" and that her insurance carrier of record was denying coverage. (see, Exhibit 7). In the email, Ms. McCloy also requested a 30-day extension to retain an attorney and file an answer. Plaintiff's counsel agreed to the extension.

Statute of Limitations

All Season's Healthcare, LLC, is a privately owned corporation and any claims of negligence against them carries a three-year statute of limitations. Thus, the statute of limitations would run on December 30th, 2022.

On November 11th, 2022, more than a month before the statute of limitations would run on Plaintiff's claims, Plaintiff filed the Notice of Intent against both defendants with the statutorily required expert affidavit. Pursuant to Section 15-79-125(A) of the South Carolina Code Annotated, "[f]iling the Notice of Intent to File Suit tolls all applicable statutes of limitations." The filing of the Notice of Intent to File Suit on November 11th, 2022, tolled the statute of limitations. Section 15-79-125(E)(1) requires the Plaintiff's complaint to be filed "within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end." Mediation was held on April 20th, 2023. Proof of ADR was filed May 24th, 2023. Using either the date of the mediation or the date Proof of ADR was

filed, Plaintiff's filing of the Complaint on June 13th, 2023, was within sixty days of the mediator's determination. Thus, the complaint was timely filed within the statute of limitations.

Plaintiff's initial filing of the Notice of Intent to File Suit with the Greenwood County Clerk of Court is not relevant in determining timeliness of filing. Rule 82(b) of the South Carolina Rules of Civil Procedure states "[w]hen an action is brought in the wrong county or in the wrong court, the court *shall not dismiss* the action but shall transfer it to any proper county or court in which it could have been brought." SCRCP 82, emphasis added. Although Greenwood County was an improper venue, the South Carolina Rules of Civil Procedure explicitly state this is not reason for dismissal. The Court acted properly in transferring the case to the proper county.

Service

Defendant All Seasons Healthcare, Inc., argues they were not properly served with the Summons and Complaint in this case. As noted above, All Seasons Healthcare, Inc.'s registered agent, Heather McCloy, was served on June 26th, 2023, thirteen days after the Complaint was filed. She was served by certified mail, return receipt requested, restricted delivery as required by rule 4(d)(8) of the South Carolina Rules of Civil Procedure.

Ms. McCloy emailed Plaintiff's counsel on July 26th, 2023, requesting an extension to answer the Complaint indicating she had tendered the summons and complaint to her insurance company. However, the insurance company denied coverage. Plaintiff's counsel agreed to the extension to allow Defendant All Seasons to obtain counsel.

The plaintiff need only show compliance with the rules. *Roche v. Young Bros., Inc., of Florence, S.C.*, 456 S.E.2d 897 (1995). When the civil rules on service are followed, there is a

presumption of proper service. *Id.* "When the civil rules on service are followed, there is a presumption of proper service." *Id.*, 318 S.C. at 211, 456 S.E.2d at 900.

When Plaintiff became aware of Defendant's position regarding service of process, Plaintiff requested to depose their corporate representative on the issue. Plaintiff noticed the deposition for February 7th, 2024. Defendant requested the deposition be pushed to March 27th, 2024. Thus, there is a pending deposition to determine the facts and circumstances surrounding service of process.

Conclusion

Pursuant to the foregoing, Plaintiff filed the Notice of Intent to File Suit within the statute of limitations, which tolled the statute of limitations. Plaintiff then filed the Complaint within the statutorily required time frame of sixty days from the date mediation was deemed unsuccessful. The registered agent of Defendant All Seasons Healthcare, Inc. was timely and properly served by restricted certified mail, return receipt requested. As a result, Defendant's Motion to Dismiss and Motion for Summary Judgment should be denied.

s/Jamie Rae Rutkoski

Jamie Rae Rutkoski (SC Bar No.: 103270)

jrutkoski@kasselaw.com

Theile B. McVey (SC Bar No.: 16682)

tmevey@kasselaw.com

John D. Kassel (SC Bar No.: 3286)

KASSEL McVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

803-256-4242

803-256-1952 (Facsimile)

Other email: emoultrie@kasselaw.com

March 6, 2024

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)
)
)
Plaintiff,)
)
)
v.)
)
All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)
)
)
Defendants.)

Notice of Intent to File Suit

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.



- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

Josh Gee
c/o Kassel McVey Attorneys
at Law
P O Box 1476
Columbia, SC 29202-1476

Judy Price
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Jennifer Murphy
c/o Kassel McVey Attorneys
at Law
P O Box 1476
Columbia, SC 29202-1476

Krista Kell
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Debra Reigle
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Mackie Carter
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Stanley McCloy, MD
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Allison Woods
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Andrea Hansche
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Juanita Watts, RN
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Santana Staten
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Mikisha Smith, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Trista Gollman, Med Tec
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Robin Lawson, ED
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lanita Long, MCRA
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Destiny Sabb, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lavern Stewart, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Kimberly Young, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Nikechia Foskey, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lekeish Waller, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Kamaleh Wilson, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

M Kisha Smith, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Rose Davis, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Trista Gollman, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Guinichard Fuzeme, ALRA
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Patricia Henderson, ALMT
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

**All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)**

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

ANSWER: See, Answer Number 1 and Answer Number 2.

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Plaintiff is unaware of the insurer for Defendant.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: There are no medical bills associated with the claim.

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER: Carl Grey, MD
Department of Medicine
Section of Gerontology and Geriatrics
Wake Forest School of Medicine
Medical Center Boulevard
Winston-Salem, NC 27157
(336) 713-9022
cgrey@wakehealth.edu**

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski
John D. Kassel (SC Bar 3286)
jkassel@kassellaw.com
Theile B. McVey (16682)
tmcvey@kasselalw.com
Jamie Rutkoski (103270)
jrutkoski@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P.O. Box 1476
Columbia, SC 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultire@kassellaw.com

November 10, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)
)
)
Plaintiff,) Notice of Intent to File Suit
)
)
v.)
)
All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)
)

Defendants.

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 12-18-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was “shivering and clammy” and “making a sound like she was going to vomit.” As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate “Debra” and “Katie” from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

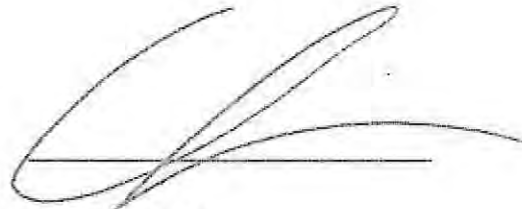
17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

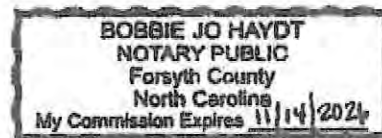
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7th day of November, 2022

Bobbie Jo Haydt
My Commission Expires 11/14/2024
Notary Public for North Carolina

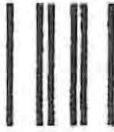

Carl Grey, M.D.



USPS TRACKING#



9590 9402 7396 2055 4955 28



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
Columbia SC 29202-1476



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

H. McCloy, as RA for Service of
Process for All Season' Healthcare
Inc.
7142 Woodrow St
Irmo, South Carolina 29063



9590 9402 7396 2055 4955 28

2. Article Number (Transfer from service label)

7017 0660 0000 1954 2299

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X *H. McCloy* Agent
 Addressee
- B. Received by (Printed Name) *H. McCloy* C. Date of Delivery *12-16*
- D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- Adult Signature
 - Adult Signature Restricted Delivery
 - Certified Mail®
 - Certified Mail Restricted Delivery
 - Collect on Delivery
 - Collect on Delivery Restricted Delivery
 - Priority Mail Express®
 - Registered Mail™
 - Registered Mail Restricted Delivery
 - Signature Confirmation™
 - Signature Confirmation Restricted Delivery
 - Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt



ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

JOHN D. KASSEL
ATTORNEY AT LAW
JKASSEL@KASELLAW.COM

THEILE B. McVEY
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TMCVEY@KASELLAW.COM

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TEL 803-256-4242
FAX 803-256-1952
WWW.KASELLAW.COM

March 16, 2022

H. McCloy, as Registered Agent for Service of Process
for All Season's Healthcare, Inc.
7142 Woodrow St
Irmo, South Carolina 29063

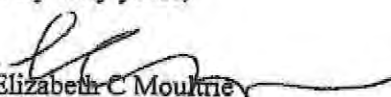
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,
deceased v. All Seasons Healthcare, LLC, et al.*
C/A No.: 2022-NI-24-00012

Dear Mr. McCloy:

On December 16, 2022, you were served with Plaintiffs' Notice of Intent and Expert Affidavit. To date, no attorney has appeared on your behalf; therefore, I have scheduled the pre-suit mediation to take place at 9:30 AM on March 30, 2023. In order to participate as required by law, you must join the mediation via Zoom at <https://us02web.zoom.us/j/83404496044?pwd=VGO4bXFmRTJYY1Z5RXFoZkIDbENhdz09>.

Thank you for your kind consideration and attention. If you have any questions or concerns, please do not hesitate to contact your liability carrier or attorney.

Very truly yours,


Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel,
Theile B. McVey, and Jamie Rae Rutkoski
emoultrie@kassellaw.com

ECM:brmh



JOHN D. KASSEL, ATTORNEY AT LAW, LLC

Elizabeth Moultrie

From: Elizabeth Moultrie
Sent: Monday, March 27, 2023 4:59 PM
To: trish@allseasonshealthsc.com
Cc: Jamie Rutkoski; John Kassel
Subject:
Attachments: Letter serving NOI on McCloy as RA for All Season's Healthcare.pdf, Filed NOI - Gee.pdf, Proof of Service on All Seasons.pdf

Categories: LEAP
Tracking:

Recipient	Delivery
trish@allseasonshealthsc.com	
Jamie Rutkoski	Delivered: 3/27/2023 4:59 PM
John Kassel	Delivered: 3/27/2023 4:59 PM

Dear Trish:

Attached please find my cover letter, the filed Notice of Intend, and my Proof of Service of service on Mr. McCloy who you confirmed to me works in your office. I want to make sure you have anything you should to send to your liability carrier and your attorney. You advised that today you received your notice of Pre-Suit Mediation. Please provide me with the name of your attorney and I will be happy to provide him or her with all of the documents and information you have been provided with.

Yours very truly,

	<p>Elizabeth C. Moultrie Senior Paralegal 1330 Laurel Street P.O Box 1476 Columbia, South Carolina 29202 Phone: (803) 256-4242 Fax: (803) 256-1952 emoultrie@kasselaw.com www.KasselLaw.com</p> <p>KASSEL  McVEY PERSONAL INJURY LAWYERS</p>
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~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments. All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.





JOHN D. KASSEL  
ATTORNEY AT LAW  
JKASSEL@KASSELLAW.COM

THEILE B. McVEY  
ATTORNEY AT LAW  
TMCVEY@KASSELLAW.COM

JAMIE R. RUTKOSKI  
ATTORNEY AT LAW  
JRUTKOSKI@KASSELLAW.COM

KASSEL  McVEY

1330 LAUREL STREET  
POST OFFICE BOX 1476  
COLUMBIA, SC 29202

TEL 803-256-4242  
FAX 803-256-1952  
WWW.KASSELLAW.COM

December 9, 2022

**VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED—RESTRICTED DELIVERY**  
Article Number 7017 0660 0000 1954 2299

H. McCloy, as Registered Agent for Service of Process  
for All Season' Healthcare, Inc.  
7142 Woodrow St  
Irmo, South Carolina 29063

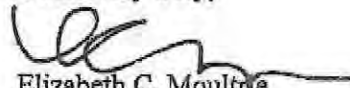
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,  
deceased v. All Season's Healthcare, LLC, et al.*  
C/A No.: 2022-NI-24-00012

Dear H. McCloy:

Enclosed herewith and served upon you as Registered Agent for Service of Process please find Plaintiff's Notice of Intent to File Suit against Defendants named in the pleadings. Please note that this matter must be mediated within 90 days, but no more than 120 days, of the date of filing. Please provide a copy of the enclosed immediately to your liability carrier and/or legal counsel.

Thank you for your kind consideration and cooperation. If you have any questions or concerns, please contact your attorney.

Yours very truly,



Elizabeth C. Moultrie  
Senior Paralegal to John D. Kassel,  
Theile B. McVey, and Jamie Rae Rutkoski

ECM:bmh

Enclosures

JOHN D. KASSEL, ATTORNEY AT LAW, LLC

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

|                                                                                                           |   |                                 |
|-----------------------------------------------------------------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                                                                                   | ) | IN THE COURT OF COMMON PLEAS    |
|                                                                                                           | ) |                                 |
| COUNTY OF GREENWOOD                                                                                       | ) | FOR THE EIGHTH JUDICIAL CIRCUIT |
|                                                                                                           | ) |                                 |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                 | ) | Civil Action No.: 2022-NI-40-   |
|                                                                                                           | ) |                                 |
| Plaintiff,                                                                                                | ) | Notice of Intent to File Suit   |
|                                                                                                           | ) |                                 |
| v.                                                                                                        | ) |                                 |
|                                                                                                           | ) |                                 |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC, f/k/a Amara Place, | ) |                                 |
|                                                                                                           | ) |                                 |
| Defendants.                                                                                               | ) |                                 |

Plaintiff would respectfully show that:

**Parties**

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

#### **Factual Background**

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25<sup>th</sup>, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28<sup>th</sup>, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29<sup>th</sup> at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30<sup>th</sup>, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
  - a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;  
and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

### MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

\_\_\_\_\_  
Primary Mediator

\_\_\_\_\_  
Secondary Mediator

### INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

**ANSWER:** Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

Josh Gee  
c/o Kassel McVey Attorneys  
at Law  
P O Box 1476  
Columbia, SC 29202-1476

Judy Price  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Jennifer Murphy  
c/o Kassel McVey Attorneys  
at Law  
P O Box 1476  
Columbia, SC 29202-1476

Krista Kell  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Debra Reigle  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Mackie Carter  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Stanley McCloy, MD  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Allison Woods  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

**Andrea Hansche**  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

**Juanita Watts, RN**  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

**Santana Staten**  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

**Mikisha Smith, HSD**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Trista Gollman, Med Tec**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Robin Lawson, ED**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Lanita Long, MCRA**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Destiny Sabb, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Lavern Stewart, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Kimberly Young, HSD**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Nikechia Foskey, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Lekeish Waller, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Kamaleh Wilson, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**M Kisha Smith, HSD**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Rose Davis, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Trista Gollman, Med Tech**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Guinichard Fuzeme, ALRA**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

**Patricia Henderson, ALMT**  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

**ANSWER: Medical Records:**

All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)  
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

**ANSWER: See, Answer Number 1 and Answer Number 2.**

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

**ANSWER: Plaintiff is unaware of the insurer for Defendant.**

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**ANSWER: There are no medical bills associated with the claim.**

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER:** Carl Grey, MD  
Department of Medicine  
Section of Gerontology and Geriatrics  
Wake Forest School of Medicine  
Medical Center Boulevard  
Winston-Salem, NC 27157  
(336) 713-9022  
[cgrey@wakehealth.edu](mailto:cgrey@wakehealth.edu)

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**ANSWER:** There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski  
John D. Kassel (SC Bar 3286)  
[jkassel@kasselaw.com](mailto:jkassel@kasselaw.com)  
Theile B. McVey (16682)  
[tmcvey@kasselaw.com](mailto:tmcvey@kasselaw.com)  
Jamie Rutkoski (103270)  
[jrutkoski@kasselaw.com](mailto:jrutkoski@kasselaw.com)  
KASSEL McVEY ATTORNEYS AT LAW  
1330 Laurel Street  
P.O. Box 1476  
Columbia, SC 29202  
803-256-4242  
803-256-1952 (Facsimile)  
Other email: [emoultire@kasselaw.com](mailto:emoultire@kasselaw.com)

November 10, 2021

Columbia, South Carolina.



4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
  - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
  - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

- true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.
11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
  12. On December 28<sup>th</sup>, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was "shivering and clammy" and "making a sound like she was going to vomit." As a result, All Seasons Healthcare was notified.
  13. On December 29<sup>th</sup>, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
  14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
  15. At 9:39 PM, records indicate "Debra" and "Katie" from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
  16. Records indicate this medication was not administered.


- 17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
- 18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
- 19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
  - a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

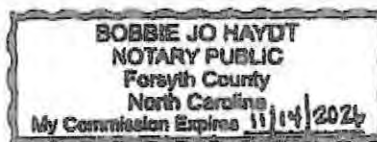
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7<sup>th</sup> day of November, 2022

Bobbie Jo Haydt  
My Commission Expires 11/14/2026  
Notary Public for North Carolina

  
Carl Grey, M.D.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENWOOD )  
 )  
Jennifer Murphy, as Personal )  
Representative of the Estate of Phyllis )  
Gee, )  
Plaintiff, )  
 )  
vs )  
 )  
All Season's Healthcare LLC, All )  
Seasons Healthcare, Inc. and Mill Creek )  
Manor, LLC. f/k/a Amara Place )  
 )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

PROOF OF ADR

Docket No. 2022 NI 24 00012

*(Within 10 days of the conclusion of ADR and no later than 300 days after filing, an original must be filed with the Clerk of Court and a copy forwarded to the attorneys for the parties.)*

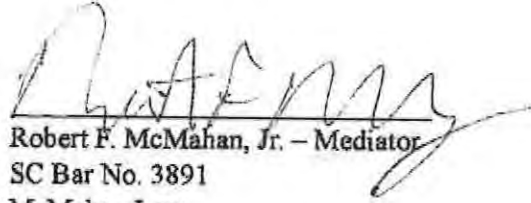
PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR)

1. Alternative Dispute Resolution (ADR) was conducted on the 20<sup>th</sup> day of April, 2023 in the form of
  - a.  X  mediation
  - b. \_\_\_\_\_ non-binding arbitration
  - c. \_\_\_\_\_ binding arbitration (attached appropriate order of dismissal)
2. The neutral was Robert F. McMahan, Jr.
3. Present at the ADR conference were:
  - a. \_\_\_\_\_ Plaintiff
  - b.  X  Defendant Stuart Mottern CFO of Mill Creek Manor, LLC
  - c.  X  Lawyers for Plaintiff Jamie Rutkoski, Esq.
  - d. \_\_\_\_\_ Lawyer for Defendant
  - e. \_\_\_\_\_ Representative for Insurance Carrier
  - f. \_\_\_\_\_ Guardian *ad litem*
  - g. \_\_\_\_\_ Expert(s)
  - h. \_\_\_\_\_ Others
4. As a result of ADR, this case should be considered (check one)
  - a. \_\_\_\_\_ fully settled by Consent Judgment to be filed by \_\_\_\_\_
  - b. \_\_\_\_\_ fully settled Voluntary Dismissal to be filed by \_\_\_\_\_



c.  Partially settled  
d.  at an impasse

Submitted this 20 day of April, 2023



Robert F. McMahan, Jr. – Mediator

SC Bar No. 3891

McMahan Law

PO Box 26314

Greenville, SC 29616

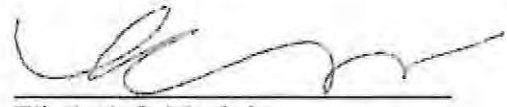
803-261-1299

[rfm@robertmcmahanlaw.com](mailto:rfm@robertmcmahanlaw.com)

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
ELECTRONICALLY FILED - 2023 May 24 2:09 PM - GREENWOOD - COMMON PLEAS - CASE#2022NI2400012  
ELECTRONICALLY FILED - 2023 Jun 13 8:55 AM - RICHLAND - COMMON PLEAS - CASE#2023NI4000043

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2023-CP-40-03086 |
|                                                                                                                                               | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | PROOF OF SERVICE                   |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

I, Elizabeth C. Moultrie, do hereby certify that on the 26th day of June 2023, I served upon Defendant ALL SEASONS HEALTHCARE, INC., a true and correct copy of the SUMMONS & COMPLAINT and Plaintiff's First Discovery Requests by Certified Mail, Return Receipt Requested, Restricted Delivery to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, INC., as evidenced by United States Postal Form 3811, postmarked 26 June 2023, and received in my office on 28 June 2023, attached hereto and incorporated herein by reference.

  
Elizabeth C. Moultrie

June 30, 2023  
Columbia, South Carolina.



USPS TRACKING #



9590 9402 7396 2055 4958 94

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USPS  
Permit No. G-10

United States  
Postal Service

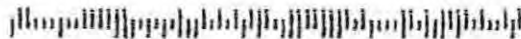
• Sender: Please print your name, address, and ZIP+4® in this box.®

Elizabeth C Moultrie, Senior Paralegal  
KASSEL McVEY ATTORNEYS  
P O Box 1476  
Columbia SC 29202-1476

*Jee*

RECEIVED JUN 28 2023

02-147676



| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                           | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>      | <p>A. Signature<br/> <input checked="" type="checkbox"/> Agent<br/> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1?<br/>           If YES, enter delivery address below:<br/> <input type="checkbox"/> Yes<br/> <input type="checkbox"/> No</p>                                                                                                                                                                                                                                                                                                                                           |
| <p>1. Article Addressed to:</p> <p>H. McCloy, as Registered Agent for<br/>           Service of Process<br/>           for All Season' Healthcare, Inc.<br/>           7142 Woodrow St<br/>           Irmo, South Carolina 29063</p> <p>9590 9402 7396 2055 4958 87</p> | <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature<br/> <input type="checkbox"/> Adult Signature Restricted Delivery<br/> <input type="checkbox"/> Certified Mail®<br/> <input checked="" type="checkbox"/> Certified Mail Restricted Delivery<br/> <input type="checkbox"/> Collect on Delivery<br/> <input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express®<br/> <input type="checkbox"/> Registered Mail™<br/> <input type="checkbox"/> Registered Mail Restricted Delivery<br/> <input type="checkbox"/> Signature Confirmation™<br/> <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> |
| <p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0001 3098 4865</p>                                                                                                                                                                                  | <p>Restricted Delivery</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
ELECTRONICALLY FILED - 2023 Jun 30 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2022-CP-40-_____ |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | <b>SUMMONS</b>                     |
|                                                                                                                                               | ) | (Jury Trial Demanded)              |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Jamie Rutkoski  
 Jamie Rae Rutkoski (SC Bar No.:103270)  
[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
 Theile B. McVey (SC Bar No.: 16682)  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)  
 John D. Kassel (SC Bar No.: 03286)  
[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)  
 KASSEL McVEY ATTORNEYS AT LAW  
 1330 Laurel Street  
 Post Office Box 1476  
 Columbia, South Carolina 29202  
 803-256-4242  
 803-256-1952 (Facsimile)  
 Other email: [cmoultrie@kassellaw.com](mailto:cmoultrie@kassellaw.com)

May 23<sup>rd</sup>, 2023  
Columbia, South Carolina.

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2022-CP-40-_____ |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | <b>Complaint</b>                   |
|                                                                                                                                               | ) | <b>(Jury Trial Demanded)</b>       |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

Plaintiff would respectfully show that:

**Parties**

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant TWG Polo Road d/b/a Amara Place (Amara Place) is a business or corporation formerly incorporated in the state of South Carolina. At all times relevant to this action, Amara Place provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.
- 7) On November 11, 2022, Plaintiff filed a Notice of Intent in Greenwood County (see, Exhibit 1). All parties were properly served.
- 8) Defendants were notified via certified mail of a scheduled mediation with mediator Robert McMahan. Mediation was held on April 20<sup>th</sup>, 2022, and neither defendant attended. Mr. McMahan filed his mediation report on May 24<sup>th</sup>, 2023. (see, Exhibit 2)
- 9) The Notice of Intent was errantly filed in Greenwood County. The proper venue for this action is Richland County.

#### **Factual Background**

- 10) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 11) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 12) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.

- 13) On July 25<sup>th</sup>, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 14) Between July and December of 2019, Ms. Gee's health continued to decline.
- 15) On December 28<sup>th</sup>, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 16) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.
- 17) The following day, on December 29<sup>th</sup> at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 18) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 19) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 20) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 21) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 22) There is no medical note or record showing the administration of either Ativan or Morphine.
- 23) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 24) Ms. Gee was declared dead at 12:47 AM on the morning of December 30<sup>th</sup>, 2019.

25) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:

- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

26) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

**WHEREFORE**, Plaintiff prays for judgment in this matter in a sum sufficient to adequately compensate them for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

**{signature block on following page}**

Respectfully submitted

s/Jamie Rutkoski

Jamie Rae Rutkoski (SC Bar No.: 103270)

[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)

Theile B. McVey (SC Bar No.: 16682)

[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)

John D. Kassel (SC Bar No.: 03286)

[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)

KASSEL McVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202

803-256-4242

803-256-1952 (Facsimile)

Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

May 23<sup>rd</sup>, 2023

Columbia, South Carolina.

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
ELECTRONICALLY FILED - 2023 Jun 13 2:24 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086



4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
  - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
  - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28<sup>th</sup>, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was "shivering and clammy" and "making a sound like she was going to vomit." As a result, All Seasons Healthcare was notified.
13. On December 29<sup>th</sup>, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate "Debra" and "Katie" from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

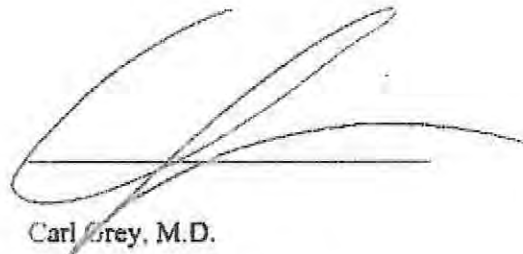
17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
- a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;  
and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

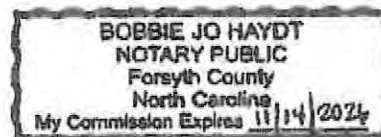
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7<sup>th</sup> day of November, 2022

Bobbie Jo Haydt  
My Commission Expires 11/14/2026  
Notary Public for North Carolina

  
Carl Grey, M.D.



**Elizabeth Moultrie**

---

**From:** H McCloy <hmccloy@allseasonshealthsc.com>  
**Sent:** Tuesday, July 25, 2023 5:37 PM  
**To:** Jamie Rutkoski; John Kassel; Elizabeth Moultrie  
**Subject:** Extension Requested

Good Afternoon-

Upon receipt of documentation (6/2023), our insurance carrier of record at time of coverage was notified. This afternoon at approximately 4:45pm we received a phone call in the office notifying us they are denying coverage for this claim. By my calculations, our answer is due tomorrow. We are requesting a 30-day extension.

All Seasons disagrees with denial of coverage, however, All Seasons will need a 30 day extension to retain an attorney to handle this matter.

H.McCloy

Chief Executive Officer

All Seasons Healthcare

7142 Woodrow Street

Irmo, South Carolina 29063

(803) 602-0300



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Jennifer Murphy, as Personal Representative )  
 of the Estate of Phyllis Gee, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 All Season's Healthcare, LLC, All Seasons )  
 Healthcare, Inc., and TWG Polo Road, LLC )  
 d/b/a Mill Creek Manor, LLC f/k/a Amara )  
 Place at Columbia, )  
 )  
 Defendants. )  
 )

---

IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2023-CP-40-03086

**MEMORANDUM IN SUPPORT OF  
 MOTION FOR SUMMARY JUDGMENT  
 OR IN THE ALTERNATIVE  
 MOTION TO DISMISS ON  
 BEHALF OF THE DEFENDANT,  
 ALL SEASONS HEALTHCARE, INC.**

**PRELIMINARY STATEMENT**

Pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and §15-79-125 and §15-36-100, Code of Laws of South Carolina, as amended, and the Common Law of the State of South Carolina on the ground that Defendant All Seasons Healthcare, Inc. (herein "Defendant"), has not been properly served with the Notice of Intent to File Suit or Summons and Complaint pursuant to Rule 3 SCRCF, that there was improper service pursuant to Rule 4 SCRCF and that if this action were properly served, it is barred by the statute of limitations.

**FACTUAL BACKGROUND**

All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. It provides nursing hospice care services to patients who have been deemed appropriate for end of life hospice care. Its employees

work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place but did provide hospice care to patients there.

At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc. [See Exhibit A].

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff. [See Exhibit B].

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. She requested that the Amara Place med tech administer medications, but they refused. Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt. [Exhibit C].

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. On or about June 12, 2023, the “Notice of Intent” action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. [Exhibit D].

### DISCUSSION

Defendant’s Motion must be granted because Plaintiff failed to serve Complaint as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. Proper service by certified mail under SCRCP Rule 4(d)(8) is effected when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery **restricted to the addressee.**” Rule 4(d)(8) SCRCP. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation. In *Zanin*, the plaintiff attempted service by mail upon defendant ABP. *Zanin v. Carolina Specialty Products, Inc.*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff’s certified mailing was addressed to ABP’s owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a “D. Reilly.” *Id* at 1.

The Court in *Zanin* ruled that the plaintiff’s attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain

meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id.* The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

Our case is nearly identical to *Zanin*. Here, Plaintiff's filed Proof of Service for the Notice of Intent dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." [Exhibit C]. This return receipt, though marked for restricted delivery, is clearly not marked for restricted delivery *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. [Exhibit D]. The affidavit of Elizabeth C. Moultrie confirms that counsel for Plaintiff did not restrict delivery to the addressee only. *See* Affidavit of Elizabeth C. Moultrie ¶¶ 4, 7.

Further, Defendant's registered agent Heather McCloy did not sign the return receipt, and Defendant does not know who signed the return receipts. [See Exhibit B]. Defendants cannot be sure what employee signed the return receipts, or if any employee or agent of Defendant signed them at all, as the signature block only reads "ALL SEASONS." This occurred because Plaintiff did not serve either the Notice of Intent or the Summons and Complaint as required by Rule 4 and *Langley*; as a result, Defendant was never properly put on notice of Plaintiff's claims. The goal of Rules 3 and 4 of the South Carolina Rules of Civil Procedure, and service of process rules in general, is to require the plaintiff to provide sufficient notice to the defendant of what their claims are and the basis for those claims. Here, Plaintiff's failure to adhere to SCRCP Rule 4(d)(8) thwarted this goal, and Defendant would now suffer prejudice in having to defend claims served

out of time due to Plaintiff's own error.

The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure. S.C. Code § 15-79-125(a). If a Summons and Complaint are not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing. Rule 3(a) SCRPC. Emailing process to an employee of a defendant is not sufficient service under the civil rules. *See Rule 4 SCRPC generally.*

Here, the three-year statute of limitations ran on December 30, 2022. Plaintiff filed their Notice of Intent to File Suit less than two months before the expiration of their statutory period and in an improper county where no party was domiciled and no events related to the allegations occurred. This action was not properly initiated in Richland County until June 12, 2023; 164 days after the running of the statute of limitations.

Also, since Plaintiff did not serve the Notice prior to December 30, 2022, Plaintiff was required to serve it within 120 days of filing; in this case, before April 29, 2023. Plaintiff filed her Summons and Complaint on June 13, 2023, and since the statute of limitations expired on December 30, 2022, Plaintiff had 120 days to serve this as well.

Plaintiff may attempt to argue that service was proper under Rule 4(d)(3) and that delivery restricted to an "agent" is sufficient. However, Rule 4(d)(3) does not govern service by mail, and service by mail requires delivery restricted to the addressee only. Also, Plaintiff cannot show that any officer, managing or general agent, or any other agent authorized to receive service of process actually received and "signed" for the Complaint. Plaintiff may also argue that service was proper under South Carolina's long arm statute similar which allows service to non-residents "by any form of mail addressed to the person to be served and requiring a signed receipt." *See generally*

*Jacobson v. Sternberg*, 305 S.C. 337, 408 S.E.2d 245, 246 (1991). However, this broader rule only applies to non-resident defendants. Defendant here is domiciled and incorporated in South Carolina, so Rule 4(d)(8)'s restricted delivery rule governs.

To this day, neither the Notice of Intent to File Suit nor the Summons and Complaint have been properly served on Defendant. Plaintiff, as the party asserting proper service, bears the burden of proving such proper service. Plaintiff here plainly failed to restrict delivery of their Notice of Intent to File Suit and Complaint to the addressee as shown by the return receipt, and thus created the scenario where no addressee listed on Plaintiff's initial service attempt, registered agent of Defendant, nor proper agent authorized to accept service on behalf of Defendant received any timely notice of Plaintiff's claims or filing. Plaintiff also cannot provide any evidence that the addressee herself ever received the mailed Notice of Intent or Summons and Complaint or wrote "ALL SEASONS" in the signature block due to failure to sufficiently restrict delivery. Therefore, Defendant's Motion for Summary Judgment must be granted, and Plaintiff's claims must be dismissed due to failure to comply with Rule 4(d)(8), and dismissal must be with prejudice as Plaintiff's claims are barred by the applicable statute of limitations.

Respectfully submitted,

/s/Julius W. McKay, II  
Julius W. McKay, II  
The McKay Firm, PA  
3700 Forest Drive, Suite 404  
P.O. Drawer 7217  
Columbia, SC 29202  
(803) 256-4645 - Phone  
(803) 765-1839 - Fax  
[jmckay@mckayfirm.com](mailto:jmckay@mckayfirm.com)  
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina  
March 12, 2024

# EXHIBIT A

# Business Entities Online

File, Search, and Retrieve Documents Electronically

## ALL SEASONS HEALTHCARE, INC.

### Corporate Information

Entity Id: 00571432  
Entity Type: Corporation  
Status: Good Standing  
Domestic/Foreign: Domestic  
Incorporated State: South Carolina

### Important Dates

Effective Date: 01/01/2014  
Expiration Date: N/A  
Term End Date: N/A  
Dissolved Date: N/A

### Registered Agent

Agent: H. McCloy  
Address: 7142 WOODROW STREET  
IRMO, South Carolina 29063

### Official Documents On File

| Filing Type                                                                                       | Filing Date |
|---------------------------------------------------------------------------------------------------|-------------|
| Notice of Change of Registered Office or Registered Agent or Both of a South Carolina Corporation | 02/05/2020  |
| Change of Agent or Office                                                                         | 04/16/2014  |
| Incorporation                                                                                     | 12/13/2013  |

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**IN THE COURT OF COMMON PLEAS**

Civil Action No. 2023-CP-40-03086

Jennifer Murphy, as Personal )  
Representative of the Estate of Phyllis )  
Gee, )

**AFFIDAVIT OF  
HEATHER MCCLOY**

Plaintiff, )

v. )

All Season's Healthcare, LLC, All )  
Seasons Healthcare, Inc., and TWG Polo )  
Road, LLC d/b/a Mill Creek Manor, )  
LLC f/k/a Amara Place at Columbia, )

Defendants. )  
 )  
\_\_\_\_\_ )

PERSONALLY APPEARED before me, Heather McCloy., who being duly sworn, deposes and says:

1. My name is Heather McCloy, and I am the President of All Season's Healthcare, Inc., a South Carolina Corporation with its principal place of business in Irmo, South Carolina. I am over eighteen years of age and competent to give this testimony.

2. All Seasons Healthcare, Inc. provides hospice nursing care to patients who have elected to receive hospice care in nursing homes throughout the Midlands of South Carolina.

3. I was the registered agent for All Seasons Healthcare, Inc. from February 25, 2020, to December 14, 2023. A true and correct copy of my registration as a registered agent attached hereto is Exhibit B.

4. Decedent Phyllis Gee was not housed or admitted to a facility owned and operated by All Seasons Healthcare, Inc. Instead, personnel employed by All Seasons