

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-002304

James Boyd, Jr.

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Administrative Services, LLC; and
Fundamental Clinical and Operational Services, LLC,

Respondents.

RECORD ON APPEAL

CANTWELL LAW FIRM, LLC
Joshua P. Cantwell (SC Bar No. 76368)
P.O. Box 600
Charleston, South Carolina 29402
(843) 801-4104
Attorney for Appellant

CLEMENT RIVERS, LLP
Stephen L. Brown (SC Bar No. 66468)
D. Jay Davis Jr. (SC Bar No. 12084)
James D. Gandy III (SC Bar No. 11925)
Russell G. Hines (SC Bar No. 72100)
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5488
Attorneys for Respondents

RECEIVED

Sep 17 2026

SC Court of Appeals

INDEX

Orders

Order filed July 9, 2018, Denying Motion to Compel Arbitration Without Prejudice and Allowing Limited Discovery	0001
Order filed August 20, 2019, Granting Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's Motion to Compel Arbitration and Granting Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC's Motions to Stay ..	0018
Order filed October 19, 2019, Denying Motion to Reconsider	0045
Final Order of Arbitration, filed December 29, 2021	0048
Order filed October 16, 2025, Confirming Arbitration Award.....	0052

Pleadings

Summons and Complaint, filed March 27, 2018	0055
Second Amended Complaint	0097

Motions and Memoranda

Defendant's Motion to Dismiss and Compel Arbitration, filed May 2, 2018	0131
Exhibit, Arbitration Agreement	0135
Co-Defendants' Motions to Stay, filed May 2, 2018	0136
Memorandum of Law in Support of Defendant's Motion to Compel Arbitration, filed June 11, 2018.....	0142

Plaintiff's Memorandum in Opposition to Motion to Compel Arbitration	0201
Defendants' Motion to Dismiss and Compel Arbitration & Stay, filed October 4, 2018.....	0258
Defendant's Supplemental Memorandum of Law in Support of Motion to Compel Arbitration, filed February 19, 2019.....	0264
Plaintiff's Supplemental Memorandum in Opposition to Motion to Compel Arbitration	0284
Plaintiff's Motion to Reconsider, filed August 30, 2019	0318
Defendant's Motion to Confirm Arbitration Award and Grant Judgment for Defendants, filed February 14, 2022	0510
 Transcripts	
Transcript of Hearing held May 20, 2019.....	0523
 Depositions and Declarations	
Deposition Transcript of James Boyd, Jr., dated October 19, 2018	0558
Deposition Transcript of Leola Burt, Admissions Coordinator.....	0614
Deposition Transcript of Peggy Fields, Case Manager, Palmetto Health Baptist Hospital.....	0654
Sworn Declaration of Peggy Fields	0684
Deposition Transcript of Wilda Boyd.....	0686
 Notice of Appeal	
Notice of Appeal with Proof of Service, served/filed November 13, 2025.....	0726

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

James Boyd, Jr.,

Plaintiff,

v.

THI of South Carolina, LLC, d/b/a Magnolia Place-Greenville; Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; Fundamental Clinical and Operational Services LLC; Fundamental Administrative Services, LLC; Fundamental Clinical Consulting, LLC; Leonard Grunstein Both Individually and as Owner/Operator of Magnolia Place; Murray Forman Both Individually and as Owner/Operator of Magnolia Place; and Rusty Flathmann Both Individually and as Employee/Manager of Magnolia Place,

Defendants.

Case No: 2018-CP-23-01934

ORDER

This matter comes before the Court upon Defendant THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville (misidentified in Plaintiff's Complaint and hereinafter referred to as "Defendants" or "Facility") Motion to Dismiss and Compel Arbitration. Defendants Fundamental Administrative Services, LLC ("Administrative Services") and Fundamental Clinical and Operational Services, LLC ("Operational Services") also filed motions to stay any requirement to file further responsive pleadings, motions, or discovery filed or served by Plaintiff until the Court has made a final decision regarding the validity of the arbitration agreement. The hearing was held June 13, 2018 in Greenville, South Carolina. Present on behalf of Plaintiff James Boyd, Jr. ("Boyd" or "Plaintiff" or "Mr. Boyd") was Stefan B. Feidler, Esq. of Anastopoulos Law Firm, LLC. Present on behalf of Defendant THI

of South Carolina at Magnolia Place at Greenville d/b/a Magnolia Place of Greenville was Perry M. Buckner, IV, Esq. of Young Clement Rivers, LLP.

BACKGROUND

The Plaintiff was admitted to Defendants' nursing home facility on June 30, 2016 after he was rendered a quadriplegic in a car accident with an unidentified driver. Prior to his admission, Wilda Boyd – Plaintiff's Mother – entered into several contracts with the Defendants on behalf of the Plaintiff. The contracts were each signed by Wilda Boyd, as representative of the Plaintiff, during his admission. The executed contracts included an Admission Agreement and Arbitration Agreement. Both parties agree that the Plaintiff was oriented and competent at the time of his admission. During his stay at Defendants' facility, the Plaintiff developed a number of health problems which led to the filing of the present action.

FINDINGS

I. EQUITABLE ESTOPPEL

In its Motion, Defendants argue the Plaintiff should be estopped from denying the parties' mutual right to arbitrate. In the arbitration setting, the equitable estoppel doctrine estops a party from asserting the lack of his signature on a "written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him." Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 557-78, 813 S.E.2d 292, 299 (Ct. App. 2018) (quoting Thompson v. Pruitt Corp., 416 S.C. 43, 59, 784 S.E.2d 679, 688 (Ct. App. 2016)). "Restated, when a signatory seeks to enforce an arbitration agreement against a nonsignatory, the doctrine prevents the nonsignatory from averring he or she is not bound to the arbitration agreement when he or she receives a direct benefit from a contract that contains an arbitration clause." Id. With regard

to the party to be estopped, the elements of the doctrine of equitable estoppel are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. Id. (citing Thompson, 416 S.C. at 60, 784 S.E.2d at 688) (emphasis omitted).

In the present context, the Defendants' equitable estoppel argument is premised on the contention that the Admissions Agreement and Arbitration Agreement merged. Generally, "in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract." Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014) (quoting Klutts Resort Realty Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).

However, merger does not occur where the documents recognize the "separatedness" of the arbitration agreement, which is indicative of an intent that the common law doctrine of merger not apply. See Coleman, 407 S.C. at 355, 755 S.E.2d at 455. In Coleman, 407 S.C. at 350, 755 S.E.2d at 452, Ann Coleman signed several documents, including arbitration agreements, when admitting her sister to a health care facility. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. Id. The circuit court denied the motion to compel. Id. On appeal, the Coleman court found the language in the section titled "Entirety of Agreement" "recognizes the 'separatedness' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts." Coleman, 407 S.C. at 355, 755 S.E.2d at 455. The Court noted, in

addition to the "Entirety of Agreement" clause, the [arbitration agreement] could be disclaimed within thirty days of signing while the admissions agreement could not...." Id. Furthermore, the court noted that the "Entirety of Agreement" clause creates an ambiguity as to merger, and "the law is clear that any ambiguity...is construed against the drafter...." Id. at 355-56, 755 S.E.2d at 455. The Coleman court ruled the circuit court properly denied [the health care facility's] equitable estoppel arguments because no merger occurred. Id. at 356, 755 S.E.2d at 455.

Additionally, merger does not occur where an arbitration agreement and admission agreement are governed by different law, reference each other separately, provide different mechanisms by which they can be revoked, are separately paginated, and have their own signature page. See Hodge, 422 S.C. at 562-563, 813 S.E.2d at 302. In Hodge, 422 S.C. at 550, 813 S.E.2d at 295, Mable Hodge entered a rehabilitation facility. Id. She was "'well developed' and 'in no real distress' and had a full range of motion in her extremities when she entered the [f]acility." Id. Mable's husband executed various documents related to her admission, including an arbitration agreement and an admission agreement. Id. Mable was not present at the time her husband signed these documents on the day before her admission because she was still in the hospital. Id. However, Mable was competent at the time of her admission. Id. 422 S.C. at 550, 813 S.E.2d at 296. Three weeks after her admission, Mable became paralyzed from the waist down and died one year later as a result of her paralysis. Id. 422 S.C. at 553, 813 S.E.2d at 297.

The circuit court denied [the facility's] motion to dismiss or compel arbitration. Id. The facility appealed arguing the circuit court erred in finding the arbitration agreement was separate from the admissions agreement because the two documents were merged. Id. 422 S.C. at 556, 813 S.E.2d at 299. The Court of Appeals upheld the circuit court, finding the admissions agreement and arbitration agreement did not merge. Id. 422 S.C. at 563, 813 S.E.2d at 302. The

Court based its rulings on the fact that the "Admissions Agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law." Id. 422 S.C. at 562, 813 S.E.2d at 302. Additionally, similar to Coleman, the Arbitration Agreement recognized separatedness because it referenced the two documents separately, "stating '[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.'" Id. Furthermore, the arbitration agreement stated it could be revoked within thirty days, while the admission agreement did not contain such an indication; rather, it provided the admissions agreement could only be amended by the patient with written agreement executed by the facility and the patient. The Court noted that each document was separately paginated and had its own signature page. Finally, signing the arbitration agreement was not a precondition to admission. Id. 422 S.C. at 562-63, 813 S.E.2d at 302. Based on this, the Court of Appeals found the admissions agreement and arbitration agreement did not merge. Id. 422 S.C. at 563, 813 S.E.2d at 302. Therefore, because Mable received no benefit from the arbitration agreement, equitable estoppel did not bar Mable's claims. Id.

In contrast, merger would occur – and equitable estoppel would apply – when the admission agreement contains the arbitration provision. See THI of South Carolina at Magnolia Manor-Inman, LLC v. Gilbert, No. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. 2015). In that case, the District Court of South Carolina distinguished Coleman from the case before it, stating that "the admission agreement *contains* the arbitration provision." Id. at *2 (emphasis in original). Therefore, a signatory's authority to execute a separate, non-essential legal waiver was not implicated by the facts of that case. Id.

Counsel for Plaintiff cites McCutcheon v. THI of S.C. at Charleston, LLC, No. 2:11-CV-

02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011). In that case, the plaintiff was the husband of a resident to a nursing home facility who executed a number of documents on his wife's behalf upon her admission to the facility, including an arbitration agreement. Id. The arbitration agreement was a separate document and not a condition of admission to the facility. Id. In that case, the District Court determined the arbitration agreement and admissions agreement, while separate documents, merged because they were executed by the same parties, at the same time, and regarded the same transaction. Id. at *3. The Court noted it would be inequitable to allow plaintiff to assert that husband had authority to sign the admissions agreement on behalf of the plaintiff, but lacked the authority to sign the arbitration agreement. Id. Based on this, the District Court found the plaintiff was estopped from denying enforceability of the arbitration agreement.

In the present case, the documents present the hallmarks of "separatedness" stated in Coleman and Hodge. Here, the document entitled "Addressing Decisional Capacity" indicates that the Plaintiff was competent to make decisions on behalf of himself. However, despite his competency, Wilda Boyd signed the Admission Agreement and Arbitration Agreement as "Representative" on his behalf. The Arbitration Agreement refers to itself and the Admission Agreement separately.ⁱⁱ Additionally, the Arbitration Agreement states that it is governed by federal law, while the admissions agreement states it is governed by state law. The Admissions Agreement states that it can be terminated at any time, upon written notice; however, the Arbitration Agreement does not provide a means of termination. Rather, the Arbitration Agreement "remain[s] in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement." The Arbitration Agreement also contains a "merger clause" entitled "Entire Agreement," which states that the Admissions Agreement "represents the entire agreement and understanding between the parties."

Furthermore, each document is separately paginated and has its own signature page, and the Arbitration Agreement is not contained within the Admissions Agreement. Finally, the Arbitration Agreement is not a precondition to admission.

While the McCutchen case presents a factually analogous scenario, the case was decided several years prior to the Coleman and Hodge. Moreover, the McCutchen case is only persuasive whereas the Coleman and Hodge cases are binding on this Court. In light of this, the Court finds the Admission Agreement and Arbitration Agreement did not merge. Since the Agreements did not merge, it cannot be argued that the Plaintiff received a benefit from the Arbitration Agreement. Therefore, the court finds that equitable estoppel does not bar the Plaintiff from denying the validity of the Arbitration Agreement.

II. AGENCY

Defendants argue Wilda Boyd possessed the actual or apparent authority to bind the Plaintiff under the Arbitration Agreement, and that Plaintiff should be estopped from denying the validity of the arbitration agreement. "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control. Hodge, 422 S.C. at 564, 813 S.E.2d at 303 (quoting Froneberger v. Smith, 406 S.C. 37, 49, 748 S.E.2d 625 631 (Ct. App. 2013)). "An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the consequences of the relationship to follow." Agency may be proved by circumstantial evidence showing a course of dealing between the parties. Hodge, 422 S.C. at 565, 813 S.E.2d at 303 (quoting Peoples Fed. Sav. & Loan Ass'n, 310 S.C. 132, 145-46, 425 S.E.2d 764, 773 (Ct. App. 1992)). "A party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts."

Hodge, 422 S.C. at 565, 813 S.E.2d at 304 (quoting McCall v. Finley, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987)).

"A true agency relationship may be established by evidence of actual or apparent authority." Id. (quoting R & G Constr., Inc. v. Lowcountry Reg'l Transp. Autho., 343 S.E. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000)). "To establish apparent authority, the proponent must show (1) 'the purported principal consciously or impliedly represented another to be his agent; (2) the proponent relied on the representation; and (3) there was a change of position to the [proponent's] detriment." Hodge, 422 S.C. at 571-72, 813 S.E.2d at 307 (quoting Thompson, 416 S.C. at 54, 784 S.E.2d at 685). "Apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the *principal* which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him." Hodge, 422 S.C. at 572, 813 S.E.2d at 307 (quoting Froneberger, 406 S.C. at 47, 748 S.E.2d at 630).

However, agency may not be established solely by the declarations and conduct of an alleged agent. Id. (quoting Cowburn v. Leventis, 366 S.C. 20, 39-40, 619 S.E.2d 437, 448 (Ct. App. 2005)). In fact, "[t]he law is clear in this state that statements made by an agent concerning the existence or extent of his authority are insufficient standing alone to establish agency." Id. (quoting Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 128-31, 399 S.E.2d 163, 164-65 (Ct. App. 1990)).

Furthermore, "the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration...." Id. (quoting Thompson, 416 S.C. at 55, 784 S.E.2d at 686). In Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308, the Court of Appeals upheld the circuit court's finding that Husband

was not Mable's agent. In that case, the Court noted that "Husband's signing of the arbitration agreement, admissions agreement, and other forms does not make him Mable's agent." Hodge, 422 S.C. at 573-74, 813 S.E.2d at 308. While she was not present, the facility knew Mable was competent at the time of admission as indicated by the doctor's examination and allowed her to sign other forms. Hodge, 422 S.C. at 5774, 813 S.E.2d at 308. The record contained no evidence from the facility that Mable, as principal, represented Husband was her agent. Id. Furthermore, since Mable was competent, no argument could be made the Adult Health Care Consent Act gave Husband the right to sign medical forms. Id. The Court of Appeals noted that, "even if Husband had authority to handle finances or make health care decisions... 'the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration....'" Id. (quoting Thompson, 416 S.C. at 55, 784 S.E.2d at 686). Accordingly, the Court of Appeals held the circuit court did not err in finding husband was not Mable's agent. Id.

In the present case, the Defendant claims that it relied on the affirmative representations of Wilda Boyd and the Plaintiff in admitting Plaintiff to the its health care facility. Defendant further states that Wilda Boyd possessed sufficient inherent agency to render the agreement enforceable. However, "statements made by an agent concerning the existence or extent of his authority are insufficient standing alone to establish agency." Hodge, 422 S.C. at 572, 813 S.E.2d at 307 (quoting Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 128-31, 399 S.E.2d 163, 164-65 (Ct. App. 1990). Here, there is no evidence that Wilda Boyd possessed actual authority to sign the documents on behalf of the Plaintiff. Nor is there evidence that the Plaintiff explicitly represented to the Defendant that Wilda Boyd was authorized to sign the documents on his behalf. However, at the hearing, counsel for Defendants mentioned that the Plaintiff may have

been in the room while Wilda Boyd signed the papers for him.

In light of this and the lack of record regarding the agency relationship in this case, the Court will allow discovery on the issue of the agency relationship between the Plaintiff and Wilda Boyd at the time the Arbitration Agreement and Admissions Agreement were signed and executed.

III. SOUTH CAROLINA BILL OF RIGHTS

Defendant argues Wilda Boyd possessed statutory authority under the South Carolina Bill of Rights for Residents of Long-Term Care Facilities to Bind the Plaintiff under the Arbitration Agreement. South Carolina provides certain rights to residents of long-term care facilities under South Carolina's "Bill of Rights for Residents of Long-Term Care Facilities" ("Bill of Rights"). S.C. Code Ann. § 44-81-10 et seq. S.C. Code Ann. § 44-81-30 defines "resident" as a person who is receiving treatment or care in a long-term care facility, and "representative" as a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian. S.C. Code Ann. § 44-81-30(2)-(3). The Act defines "long-term care facility" as an intermediate care facility, nursing care facility or residential care facility subject to regulation and licensure by the State Department of Health and Environmental Control.

South Carolina's Bill of Rights provides residents and their representatives with certain rights, including written and oral explanations of: rights and grievance procedures, available services and related charges, refund policies, change in services, ability to choose attending physician, participate in treatment or changes in care, receive the physician's complete diagnosis, refuse to participate in experimental research, relocate if desired, manage personal finances, keep personal possessions, be treated with respect and dignity, and a number of other rights related to

the autonomy and self-determination of the resident. See S.C. Code Ann. § 44-81-40. However, South Carolina's Bill of Rights does not confer upon representatives the ability to enter into contracts, aside from those relating to sitter services. See S.C. Code Ann. § 44-81-10 et seq. But see S.C. Code Ann. 44-66-10 et seq. ("Adult Health Care Consent Act").

Here, Defendant argues that the Plaintiff falls within the definition of "resident" and Wilda Boyd within the definition of "representative." As such, the Defendant argues Wilda Boyd had the authority to contract with the Defendant on behalf of Mr. Boyd. However, the Defendant has not pointed to a specific statute prescribing the representative's authority to contract on behalf of a competent resident. In fact, the statute does not confer such a right aside from contracting individuals to perform sitter services. The fact that the Bill of Rights provides that a "resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provision...at the time of admission to a long-term care facility[, and] [w]ritten acknowledgement...must be made part of the resident's file" is of no consequence. Therefore, the Court finds South Carolina's Bill of Rights does not provide a basis to enforce the Arbitration Agreement against the Plaintiff.

IV. THIRD-PARTY BENEFICIARY

Defendant argues the Arbitration Agreement is enforceable because the Plaintiff was a third-party beneficiary. Where an arbitration agreement has not merged with the admissions agreement, a third-party beneficiary cannot be required to arbitrate when he has not attempted to enforce the contract containing the arbitration agreement. See Thompson v. Pruitt Corp., 416 S.C. 43, 57, 784 S.E.2d 679, 784 (Ct. App. 2016); see also Hodge, 422 S.C. at 574, 813 S.E.2d at 308. "A third-party beneficiary is a party that the contracting parties intend to directly benefit." Thompson, 416 S.C. at 57, 784 S.E.2d at 687 (quoting Helms Realty, Inc. v. Gibson-Wall Co.,

363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)). A third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third party is attempting to enforce the contract containing the arbitration agreement. Id.

In Thompson, 416 S.C. at 48, 784 S.E.2d at 682, Son signed an admission agreement and arbitration agreement on behalf of Mother when admitting Mother to a nursing home facility due to her dementia. Mother was not present at the time of the signing. Id. After Mother died as a result of falling out of a bed, Daughter brought suit for wrongful death against the nursing home facility. Id. The nursing home facility moved to compel arbitration, which the circuit court denied on the grounds that Son did not have authority to execute the arbitration agreement on Mother's behalf. Id. 416 S.C. at 48-49, 784 S.E.2d at 682. The Court of Appeals affirmed the circuit court, ruling that because Daughter was not attempting to enforce the arbitration agreement on behalf of Mother's estate, Mother's estate should not be required to arbitrate the claim. Thompson, 416 S.C. at 57, 784 S.E.2d at 687.

In this case, as discussed above, the admissions agreement and arbitration agreement did not merge. The Plaintiff has not attempted to enforce the arbitration agreement; rather, he has asserted claims against Facility arising out of the separate admissions agreement. Therefore, the Court finds the arbitration agreement cannot be enforced against the Plaintiff as a third-party beneficiary because he has not attempted to enforce the arbitration agreement.

V. UNCONSCIONABILITY

The Plaintiff, in his Response in Opposition to Defendant's Motion to Dismiss and Compel Arbitration, argues the Arbitration Agreement is unenforceable because it is unconscionable. "Arbitration is a matter of contract law and is available only when the parties involved agreed to arbitrate." Towles v. United HealthCare Corp., 338 S.C. 29, 37, 524 S.E.2d

839, 844-45 (Ct. App. 1999). Accordingly, a party may seek revocation of a contract under such grounds as exist at law or equity, including fraud, duress, and unconscionability. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). South Carolina defines unconscionability "as the absence of a meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Id. at 24-25, 644 S.E.2d at 668 (citing Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)). In analyzing a claim of unconscionability in the context of arbitration agreements, courts should focus on whether the arbitration clause is geared toward achieving an unbiased decision by a neutral decision-maker. Id. at 25, 644 S.E.2d at 668-69.

i. Meaningful Choice

"Absence of a meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." Id. at 25, 644 S.E.2d at 669. In determining whether a contract was "tainted by an absence of a meaningful choice, courts should take into account the nature of the injuries suffered by the plaintiff; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. Id. Furthermore, under general principles of state contract law, an adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 356 (2001). However, adhesion contracts are not per se unconscionable. Simpson. at 26, 644 S.E.2d at 669.

Here, the Plaintiff, already in a bad state of health, suffered severe injuries including sepsis, sacral wounds, and a stage IV pressure ulcer. It is unclear whether the Plaintiff and Wilda

Boyd are sophisticated; however, it is clear Mr. Boyd did not read the contract and it is not unfair to assume that there is a relative disparity in sophistication between the Plaintiff and Defendant. However, the arbitration agreement at issue is not complex, nor would it have come at a surprise to Wilda Boyd or the Plaintiff. The arbitration agreement is on its own separate page, and the entire agreement constitutes one page composed of four or five paragraphs. The arbitration agreement contains an express provision that he or she is not required to use the facility, and that there are numerous other healthcare providers. Moreover, the arbitration agreement states in conspicuous bolded letters "**I understand and agree that I am giving up and waiving my right to a jury trial.**" In light of this, it seems the Plaintiff was left with a meaningful choice regarding whether to sign the arbitration agreement. Therefore, the arbitration agreement is not unconscionable based on lack of a meaningful choice.

ii. Oppressive and one-sided terms

In considering whether terms are oppressive and one-sided, courts typically assess whether the contract requires waiver of rights, and whether there is a lack of mutuality of remedy. See York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 88-90, 749 S.E.2d 139, 150-151 (Ct. App. 2013). Here, the arbitration agreement provides that "the parties shall select an arbitrator from a panel having experience and knowledge of the health care industry." On its face this clause recognizes the benefit of an arbitrator who has experience with the health care industry. The neutrality of the arbitrator is bolstered by the fact that both parties must reach a mutual decision. If the parties cannot reach a mutual decision, the arbitration agreement provides that the arbitrator shall be selected by the Court. Based on the mutuality of the provision and absence of waiver of rights, the arbitration agreement is not unconscionable due to oppressive or one-sided terms.

CONCLUSION

In conclusion, the Court finds equitable estoppel does not prevent the Plaintiff from denying the validity of the Arbitration Agreement. The Court also finds that the South Carolina Bill of Rights does not provide Wilda Boyd with the authority to contract on behalf of the Plaintiff. Furthermore, the Court does not find the arbitration agreement unenforceable under the doctrine of unconscionability. However, the Court will allow discovery on the issue of agency to determine whether Wilda Boyd had actual or apparent authority to sign the arbitration agreement on behalf of Mr. Boyd. Finally, the Court will hold Defendants Administrative Services and Operational Services Motion to Stay in abeyance until final ruling on the Motion to Compel Arbitration.

IT IS SO ORDERED.

Perry H. Gravely
Presiding Judge

Greenville, South Carolina

July _____, 2018

Electronic Signature Page of Judge Gravely to Follow

ⁱ "This [a]greement, including all Exhibits hereto, and the [a]rbitration agreement between Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this agreement acknowledges that no

representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in the [a]greement or in the [a]rbitration [a]greement. This [a]greement may be amended only by a written agreement signed on behalf of the Facility and the Resident."

ii "This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of *this Agreement or the Admission Agreement*." (emphasis added).



Greenville Common Pleas

Case Caption: James Boyd Jr vs. Thi Of South Carolina Llc , defendant, et al

Case Number: 2018CP2301934

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-07-06 15:24:28 page 17 of 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	ORDER GRANTING DEFENDANT THI
	)	OF SOUTH CAROLINA AT MAGNOLIA
vs.	)	PLACE AT GREENVILLE, LLC'S
	)	MOTION TO COMPEL ARBITRATION
	)	AND GRANTING FUNDAMENTAL
THI OF SOUTH CAROLINA AT	)	ADMINISTRATIVE SERVICES, LLC AND
MAGNOLIA PLACE AT GREENVILLE,	)	FUNDAMENTAL CLINICAL AND
LLC; FUNDAMENTAL CLINICAL	)	OPERATIONAL SERVICES, LLC'S
AND OPERATIONAL SERVICES LLC;	)	MOTIONS TO STAY
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC ,	)	
	)	
DEFENDANTS.	)	
	)	

This matter came before the Court on Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's (hereinafter "Defendant" or "Magnolia Place") Motion to Dismiss and Compel Arbitration filed on May 2, 2018. Co-Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC filed Motions to Stay that were also before this Court.

On June 13, 2018, a hearing was held before this Court with regard to these motions. After considering the arguments of counsel, the Court denied Magnolia Place's Motion without prejudice by order dated July 9, 2018. Specifically, this Court granted the parties leave to conduct additional discovery on the issues of common law agency to determine whether the Plaintiff James Boyd, Jr.'s mother, Wilda Boyd, had the authority to bind him to the Arbitration Agreement at issue such that the claims he asserted in this action are subject to arbitration. Further, the Court ordered that the Motions to Stay filed by Defendants Fundamental

Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC be held in abeyance pending a final decision of Defendant's Motion.

The parties conducted additional discovery and procured deposition testimony from Plaintiff; Leola Burt, Admissions Coordinator for the Defendant's facility; Peggy Fields, case manager for Palmetto Health Baptist Hospital; and Wilda Boyd, Plaintiff's mother. Additionally, Defendant procured a sworn declaration from Ms. Fields that was submitted to this Court. After this additional discovery was completed, both parties submitted supplemental memoranda in support of their respective positions along with supporting exhibits and a second hearing was held on May 20, 2019. Eric Poulin was present for Plaintiff and Perry M. Buckner, IV was present for Defendants. After careful consideration of the arguments of counsel, the memoranda and exhibits submitted, and the record before the Court, the Court GRANTS Defendant's Motion to Compel Arbitration and Stay for the reasons set forth below.

FINDINGS OF FACT

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC operates a skilled nursing facility located in Greenville County known as Magnolia Place. On June 30, 2016, Plaintiff James Boyd was admitted to Magnolia Place for skilled nursing care. Prior to Plaintiff's admission, Plaintiff was involved in a car accident leaving him injured. As a result of the accident, Plaintiff was hospitalized at Palmetto Baptist Hospital where he remained until he was transferred to Magnolia Place.

As part of the admissions process to Magnolia Place, certain admissions paperwork, including an Admission Agreement itself, is presented to the patient or a representative on the patient's behalf. Included within the admissions paperwork for Mr. Boyd's residency was a separate, stand-alone Arbitration Agreement. By its terms, the Arbitration Agreement was not a

precondition to admission to the Facility and Plaintiff or a representative on his behalf could choose to whether to accept or refuse it.

To facilitate the admissions process, the Admissions Coordinator for Magnolia Place, Leola Burt, contacted Peggy Fields, case manager at Palmetto Health Baptist to inquire who would be completing Plaintiff's admissions paperwork prior to his arrival at the Defendant's facility. Regarding her conversations with Ms. Fields, Ms. Burt testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

After her initial conversation with Ms. Burt, Ms. Fields, per her sworn declaration and deposition testimony, confirmed that she spoke with Plaintiff, who directed her to his mother for the handling of all the admissions paperwork. After speaking with Plaintiff, Ms. Fields contacted Ms. Burt to inform her that Ms. Boyd would be handling the paperwork. In pertinent part, Ms. Fields testified as follows:

Q: Okay. Did Mr. Boyd ever make a representation to you that his Mother could handle the admission paperwork for Magnolia Place?

A: Yes.

Q: Okay. And what did he say?

A: Yes. Mother.

Q: He just said, yes, mother?

A: His mother.

Q: Okay. What did you ask him?

A: I asked him -- it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf...

Q: Did you tell Ms. Burt that she would need to contact James Boyd's mother?

A: Yes.

Q: Okay. Did you tell Ms. Burt that James Boyd's mother would be responsible for the admission paperwork?

A: We identified the mother as the responsible party.

Q: Okay. And you would have told Ms. Burt that she needed to contact Mr. Boyd's mother?

A: Yes. She would be his responsible party.

Q: Okay. And did you tell Ms. Burt that Mr. Boyd specifically told you that his mother would handle the paperwork?

A: Yes.

Q: Okay. Did you ever have a conversation with Ms. Boyd, who is Mr. Boyd's mother, about her signing the admission paperwork?

A: That was the – yes, that she had been identified.

Q: Okay. Did you tell Mr. Boyd that his mother would be filling out the admission paperwork for Magnolia Place?

A: He identified her as the contact for Magnolia Place.

Q: Did he know that his mother would be filling out the admission paperwork to Magnolia?

A: To the best of my knowledge.

After Ms. Burt spoke with Ms. Fields for a second time and confirmed that Ms. Boyd would be executing the admissions documents, Ms. Boyd executed the necessary admissions documents, including the Arbitration Agreement. Ms. Boyd testified she never gave Ms. Burt any reason to believe that she did not have the authority to sign the Arbitration Agreement. Ms. Boyd testified about her interaction with Ms. Burt as follows:

Q: And would you agree with me that you certainly gave Miss Coco Burt no indication that you couldn't sign [the arbitration agreement]?

A: No.

Q: [...] So you didn't say anything to Miss Burt that would make her believe that you lacked authority to sign [the arbitration agreement]?

A: No.

Q: All right. And as far as – and I realize that you can't put yourself entirely in her shoes, but as far as Miss Burt would have known based on this agreement you were authorized to enter it on your son's behalf?

A: I guess. Yeah...

Q: You represented to Magnolia Place of Greenville that you had the authority to enter into all admissions paperwork on behalf of your son, correct?

A: Yeah.

Ms. Burt even spoke with Plaintiff when he arrived at the Defendant's facility on June 30, 2016. According to Ms. Burt, Plaintiff knew his mother had executed the Arbitration Agreement on his behalf, did not object, and even authorized her to complete the remaining paperwork. Ms. Burt testified about this conversation with Plaintiff as follows:

Q: Okay. And during that conversation, I understood your testimony that you informed [Plaintiff] that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that she would finish the rest of it.

Further, Ms. Burt testified she had no doubt that Plaintiff authorized his mother to execute all of the admission paperwork, including the Arbitration Agreement and that she even provided the signed agreements to Mr. Boyd after his arrival to Magnolia Place.

Q: Okay. And what does that file include? And you can be comprehensive in telling me.

A: It includes the admission handbook, the resident's rights, channel guide, facility abuse policies, and all of the signed admissions paperwork.

Q: All right. And the signed admission paperwork includes the Arbitration Agreement?

A: Yes.

Q: Does it include the Admission Agreement?

A: Yes.

Q: And where – what do you do with that – the admissions file folder I'll call it for lack of a better term?

A: I give it to the resident.

Q: Okay. And in this case, that would be James Boyd?

A: Yes.

Q: So James Boyd was provided with a written copy of all of the agreements that his mother entered into on his behalf?

A: Yes.

Q: Okay. And you personally provided him with that file folder?

A: Yes.

Plaintiff filed the present action asserting claims for injuries he allegedly sustained while a resident at Defendant's Facility. Defendant filed the instant Motion maintaining that Plaintiff's claims must be submitted to arbitration pursuant to the Arbitration Agreement signed by Ms. Boyd. Defendant asserts that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement. As set forth below, the Court agrees and finds that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement.

DISCUSSION

Based on the above and a comprehensive review of all materials in the record before the Court, the Court finds that Wilda Boyd possessed the apparent authority to execute the Arbitration Agreement on Plaintiff's behalf. The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996). Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing." *Id.* If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, "either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(emphasis added).

Courts in South Carolina have found that even when an agent does not possess the actual authority to bind a principal, the agent can still possess the apparent authority to bind a principal based on a third party's reasonable interpretation of the agent's authority and its scope. *Horton v.*

Pyramid Masonry Contractors, Inc., No. 2008-UP-208, 2008 WL 9841237, at *6 (S.C. Ct. App. Mar. 27, 2008). An ancillary issue in *Horton* was whether an employee of a company who hired another employee had the apparent authority to negotiate company transportation as a specific condition of the other employee's employment. There, although the hiring employee did not have the actual authority to offer company transportation as a condition of employment, he expressly represented to the employee that company transportation would be provided with his position. The court found that while the hiring employee did not have the actual authority from the employer to offer company transportation as a term of employment, the employee reasonably believed the hiring employee had such authority. *Id.* at *6. Specifically, the court stated the following:

While [hiring employee's] offer of transportation may have exceeded the scope of the actual authority Employer conferred upon him, there is sufficient evidence in the record to support [employee's] belief that [hiring employee] had apparent authority to negotiate the terms of his employment, including Employer's provision of transportation. Employer is bound by [hiring employee's] representations to Employee concerning the conditions of his employment.

Id., at *6 (S.C. Ct. App. Mar. 27, 2008). Thus, while the hiring employee did not have the actual authority to make transportation a condition of employment specifically, the court found he had the broad authority to negotiate terms of employment. That broad authority necessarily encompassed the authority to make transportation a condition of employment.

In *Bookman v. Britthaven, Inc.*, a case involving facts substantially similar to the case at the bar, the North Carolina Court of Appeals found that there was sufficient evidence in the record to support a finding that a nursing home resident's representatives possessed the apparent authority to bind the resident to an arbitration agreement signed by the representatives upon the her admission to a nursing home. 233 N.C. App. 454, 460, 756 S.E.2d 890, 895 (2014). There, a

woman's husband, through his daughter, signed twelve documents, including an arbitration agreement on the woman's behalf prior to her admission to a nursing home *Id.*, at 455, 756 S.E.2d at 892. The admissions coordinator for the nursing home signed an affidavit averring that the husband and daughter presented themselves as having the authority to sign all documents needed on the woman's behalf prior to her admission. *Id.*

After the woman passed away, the daughter brought a wrongful death action against the nursing home. The nursing home filed a motion to compel arbitration and the trial court denied the motion finding that neither the daughter or father had the actual authority to sign the arbitration agreement on the woman's behalf. *Id.*, at 456, 756 S.E.2d at 892.

In reversing the trial court, the North Carolina Court of Appeals noted that the trial court failed to consider whether the woman conferred the authority to conduct the admissions process "in general" on her behalf and that the fact that the woman was admitted, showed "that at the very least, there may have been actual or apparent authority conferred on the husband or daughter to execute some or all of the contracts that were needed in order to complete the admissions process," including the arbitration agreement. *Id.* 233 N.C. App. at 460, 756 S.E.2d at 895. The court went on to note that under North Carolina law, a principal is liable "when the agent acts within the scope of his apparent authority, unless the third person has notice that the agent is exceeding his actual authority," and concluded that because the daughter and husband signed all of the admissions documents, including the arbitration agreement without objection or any indication to the admissions coordinator that their authority to sign the documents was limited in any way, there was evidence that the woman and daughter possessed the apparent authority to sign the arbitration agreement on her behalf. *Id.* at 460–61, 756 S.E.2d at 895 (2014).

Although *Bookman* is not controlling precedent, the Court finds it to be instructive and persuasive with regard to the case at bar.

Based on the record, including the testimony of Ms. Burt, Ms. Fields, and Ms. Boyd, the Court finds that Ms. Boyd possessed the apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf. The deposition testimony of and Peggy Fields and Leola Burt demonstrates that both reasonably understood that Plaintiff gave his mother the authority to sign all documents related to admission, including the Arbitration Agreement. Indeed, Ms. Burt's sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and Plaintiff explicitly confirmed to Ms. Fields and Ms. Burt that his mother would be responsible. In light of the near identical accounts offered by Ms. Fields and Ms. Burt, the Court is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork.

In effect, Plaintiff argues that Ms. Boyd possessed only the authority to execute to the other admissions paperwork but not the Arbitration Agreement. Plaintiff appears to conflate actual authority with apparent authority in that regard. As clearly indicated by authority from South Carolina and other states, apparent agency is derived from a principle's manifestations and a third party's reasonable understanding of those manifestations. When Plaintiff, the principal, authorized his mother to execute admissions paperwork on his behalf, he effectively placed her in a position where third parties, and in particular Ms. Burt, would believe she had authority to bind Plaintiff to all admissions documents, including the Arbitration Agreement. This belief was derived from Ms. Burt's conversations with Ms. Fields, Ms. Boyd, and ultimately Plaintiff himself.

While as in *Horton*, Ms. Boyd may not have possessed the actual authority to sign the arbitration agreement in particular, she possessed the apparent authority to complete and sign all necessary admissions paperwork, including the Arbitration Agreement. Furthermore, Plaintiff was expressly made aware that his mother signed the arbitration agreement on his behalf and like in *Bookman*, neither he nor his mother voiced any objection or indicated that his mother was not permitted to sign the Arbitration Agreement on his behalf as opposed to the other documents. Based on the record before the Court, Ms. Boyd possessed the apparent authority to sign the Arbitration Agreement on Plaintiff's behalf.

Because the court concludes that Ms. Boyd possessed the apparent authority to bind Mr. Boyd to the Arbitration Agreement, the Court declines to address whether Plaintiff subsequently ratified the Arbitration agreement.

Based on the foregoing, the Court finds that a valid arbitration agreement exists between the Plaintiff, Mr. Boyd, and Defendant Magnolia Place. As such, a stay of all state court proceedings is warranted until all arbitration proceedings are completed. This stay should not be limited solely to Defendant Magnolia Place and Plaintiff's claims against it. As asserted by Defendants Fundamental Clinical and Operational Services, LLC and Fundamental Administrative Services, LLC, § 3 of the Federal Arbitration Act ("FAA") provides that a stay of court proceedings can also be applicable to non-signatories who request such relief. 9 U.S.C. § 3; *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993). This Court finds that these Defendants are similarly entitled to a stay under the above provisions of the FAA.

CONCLUSION

For the reasons set forth herein, Defendant Magnolia Place's Motion to Compel Arbitration and Stay Court Proceedings is hereby **GRANTED**. Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC Motions to Stay are also **GRANTED** such that all state court proceedings in this case should be stayed until the arbitration between Plaintiff and Defendant Magnolia Place is completed.

IT IS SO ORDERED!

Honorable Perry H. Gravely
Presiding Judge

Greenville, South Carolina

August _____, 2019



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina At Magnolia Place At
Greenville LLC, defendant, et al
Case Number: 2018CP2301934
Type: Order/Stay

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-08-20 11:22:53 page 14 of 14

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	ORDER GRANTING DEFENDANT THI
	)	OF SOUTH CAROLINA AT MAGNOLIA
THI OF SOUTH CAROLINA AT	)	PLACE AT GREENVILLE LLC’S
MAGNOLIA PLACE AT GREENVILLE,	)	MOTION TO DISMISS AND COMPEL
LLC; FUNDAMENTAL CLINICAL	)	ARBITRATION
AND OPERATIONAL SERVICES LLC;	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC ,	)	
	)	
DEFENDANTS.	)	
	)	

This matter came before the Court on Defendant THI of South Carolina at Magnolia Place at Greenville, LLC’s (hereinafter “Defendant” or “Magnolia Place”) Motion to Dismiss and Compel Arbitration filed on May 2, 2018. On June 13, 2018, a hearing was held before this Court. After considering the arguments of counsel, the Court denied Defendant’s Motion without prejudice by order dated July 9, 2018. Specifically, this Court granted the parties leave to conduct additional discovery on the issues of common law agency to determine whether the Plaintiff James Boyd, Jr.’s mother, Wilda Boyd, had the authority to bind him to the Arbitration Agreement at issue such that the claims he asserted in this action are subject to arbitration. Further, the Court ordered that the Motions to Stay filed by Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC be held in abeyance pending a final decision of Defendant’s Motion.

The parties conducted additional discovery and procured deposition testimony from Plaintiff; Leola Burt, Admissions Coordinator for the Defendant’s facility; Peggy Fields, case

manager for Palmetto Health Baptist Hospital; and Wilda Boyd, Plaintiff's mother. Additionally, Defendant procured a sworn declaration from Ms. Fields that was submitted to this Court. After this additional discovery was completed, both parties submitted supplemental memoranda in support of their respective positions along with supporting exhibits and a second hearing was held on May 20, 2019. Eric Poulin was present for Plaintiff and Perry M. Buckner, IV was present for Defendant. After careful consideration of the arguments of counsel, the memoranda and exhibits submitted, and the record before the Court, the Court GRANTS Defendant's Motion to Dismiss and Compel Arbitration for the reasons set forth below.

FINDINGS OF FACT

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC operates a skilled nursing facility located in Greenville County known as Magnolia Place. On June 30, 2016, Plaintiff James Boyd was admitted to Magnolia Place for skilled nursing care. Prior to Plaintiff's admission, Plaintiff was involved in a car accident leaving him injured. As a result of the accident, Plaintiff was hospitalized at Palmetto Baptist Hospital where he remained until he was transferred to Magnolia Place.

As part of the admissions process to Magnolia Place, certain admissions paperwork, including an Admission Agreement itself, is presented to the patient or a representative on the patient's behalf. Included within the admissions paperwork for Mr. Boyd's residency was a separate, stand-alone Arbitration Agreement. By its terms, the Arbitration Agreement was not a precondition to admission to the Facility and Plaintiff or a representative on his behalf could choose to accept or refuse it.

To facilitate the admissions process, the Admissions Coordinator for Magnolia Place, Leola Burt, contacted Peggy Fields, case manager at Palmetto Health Baptist to inquire who would

be completing Plaintiff's admissions paperwork prior to his arrival at the Defendant's facility.

Regarding her conversations with Ms. Fields, Ms. Burt testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

After her initial conversation with Ms. Burt, Ms. Fields, per her sworn declaration and deposition testimony, confirmed that she spoke with Plaintiff, who directed her to his mother for the handling of all the admissions paperwork. After speaking with Plaintiff, Ms. Fields contacted Ms. Burt to inform her that Ms. Boyd would be handling the paperwork. In pertinent part, Ms. Fields testified as follows:

Q: Okay. Did Mr. Boyd ever make a representation to you that his Mother could handle the admission paperwork for Magnolia Place?

A: Yes.

Q: Okay. And what did he say?

A: Yes. Mother.

Q: He just said, yes, mother?

A: His mother.

Q: Okay. What did you ask him?

A: I asked him – it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf...

Q: Did you tell Ms. Burt that she would need to contact James Boyd's mother?

A: Yes.

Q: Okay. Did you tell Ms. Burt that James Boyd's mother would be responsible for the admission paperwork?

A: We identified the mother as the responsible party.

Q: Okay. And you would have told Ms. Burt that she needed to contact Mr. Boyd's mother?

A: Yes. She would be his responsible party.

Q: Okay. And did you tell Ms. Burt that Mr. Boyd specifically told you that his mother would handle the paperwork?

A: Yes.

Q: Okay. Did you ever have a conversation with Ms. Boyd, who is Mr. Boyd's mother, about her signing the admission paperwork?

A: That was the – yes, that she had been identified.

Q: Okay. Did you tell Mr. Boyd that his mother would be filling out the admission paperwork for Magnolia Place?

A: He identified her as the contact for Magnolia Place.

Q: Did he know that his mother would be filling out the admission paperwork to Magnolia?

A: To the best of my knowledge.

After Ms. Burt spoke with Ms. Fields for a second time and confirmed that Ms. Boyd would be executing the admissions documents, Ms. Boyd executed the necessary admissions documents, including the Arbitration Agreement. Ms. Boyd testified she never gave Ms. Burt any reason to believe that she did not have the authority to sign the Arbitration Agreement. Ms. Boyd testified about her interaction with Ms. Burt as follows:

Q: And would you agree with me that you certainly gave Miss Coco Burt no indication that you couldn't sign [the arbitration agreement]?

A: No.

Q: [...] So you didn't say anything to Miss Burt that would make her believe that you lacked authority to sign [the arbitration agreement]?

A: No.

Q: All right. And as far as – and I realize that you can't put yourself entirely in her shoes, but as far as Miss Burt would have known based on this agreement you were authorized to enter it on your son's behalf?

A: I guess. Yeah...

Q: You represented to Magnolia Place of Greenville that you had the authority to enter into all admissions paperwork on behalf of your son, correct?

A: Yeah.

Ms. Burt even spoke with Plaintiff when he arrived at the Defendant's facility on June 30, 2016. According to Ms. Burt, Plaintiff knew his mother had executed the Arbitration Agreement on his behalf, did not object, and even authorized her to complete the remaining paperwork. Ms. Burt testified about this conversation with Plaintiff as follows:

Q: Okay. And during that conversation, I understood your testimony that you informed [Plaintiff] that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that she would finish the rest of it.

Further, Ms. Burt testified she had no doubt that Plaintiff authorized his mother to execute all of the admission paperwork, including the Arbitration Agreement and that she even provided the signed agreements to Mr. Boyd after his arrival to Magnolia Place.

Q: Okay. And what does that file include? And you can be comprehensive in telling me.

A: It includes the admission handbook, the resident's rights, channel guide, facility abuse policies, and all of the signed admissions paperwork.

Q: All right. And the signed admission paperwork includes the Arbitration Agreement?

A: Yes.

Q: Does it include the Admission Agreement?

A: Yes.

Q: And where – what do you do with that – the admissions file folder I’ll call it for lack of a better term?

A: I give it to the resident.

Q: Okay. And in this case, that would be James Boyd?

A: Yes.

Q: So James Boyd was provided with a written copy of all of the agreements that his mother entered into on his behalf?

A: Yes.

Q: Okay. And you personally provided him with that file folder?

A: Yes.

Plaintiff filed the present action asserting claims for injuries he allegedly sustained while a resident at Defendant’s Facility. Defendant filed the instant Motion maintaining that Plaintiff’s claims must be submitted to arbitration pursuant to the Arbitration Agreement signed by Ms. Boyd. Defendant asserts that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement. As set forth below, the Court agrees and finds that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement.

DISCUSSION

Based on the above and a comprehensive review of all materials in the record before the Court, the Court finds that Wilda Boyd possessed the apparent authority to execute the Arbitration Agreement on Plaintiff’s behalf. The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996). Thus, the concept of apparent authority depends upon manifestations by

the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing.” *Id.* If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, “either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.” *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(emphasis added).

Courts in South Carolina have found that even when an agent does not possess the actual authority to bind a principal, the agent can still possess the apparent authority to bind a principal based on a third party’s reasonable interpretation of the agent’s authority and its scope. *Horton v. Pyramid Masonry Contractors, Inc.*, No. 2008-UP-208, 2008 WL 9841237, at *6 (S.C. Ct. App. Mar. 27, 2008). An ancillary issue in *Horton* was whether an employee of a company who hired another employee had the apparent authority to negotiate company transportation as a specific condition of the other employee’s employment. There, although the hiring employee did not have the actual authority to offer company transportation as a condition of employment, he expressly represented to the employee that company transportation would be provided with his position. The court found that while the hiring employee did not have the actual authority from the employer to offer company transportation as a term of employment, the employee reasonably believed the hiring employee had such authority. *Id.* at *6. Specifically, the court stated the following:

While [hiring employee's] offer of transportation may have exceeded the scope of the actual authority Employer conferred upon him, there is sufficient evidence in the record to support [employee's] belief that [hiring employee] had apparent authority to negotiate the terms of his employment, including Employer's provision of transportation. Employer is bound by [hiring employee's] representations to Employee concerning the conditions of his employment.

Id., at *6 (S.C. Ct. App. Mar. 27, 2008). Thus, while the hiring employee did not have the actual authority to make transportation a condition of employment specifically, the court found he had the broad authority to negotiate terms of employment. That broad authority necessarily encompassed the authority to make transportation a condition of employment.

In *Bookman v. Britthaven, Inc.*, a case involving facts substantially similar to the case at the bar, the North Carolina Court of Appeals found that there was sufficient evidence in the record to support a finding that a nursing home resident's representatives possessed the apparent authority to bind the resident to an arbitration agreement signed by the representatives upon the her admission to a nursing home. 233 N.C. App. 454, 460, 756 S.E.2d 890, 895 (2014). There, a woman's husband, through his daughter, signed twelve documents, including an arbitration agreement on the woman's behalf prior to her admission to a nursing home *Id.*, at 455, 756 S.E.2d at 892. The admissions coordinator for the nursing home signed an affidavit averring that the husband and daughter presented themselves as having the authority to sign all documents needed on the woman's behalf prior to her admission. *Id.*

After the woman passed away, the daughter brought a wrongful death action against the nursing home. The nursing home filed a motion to compel arbitration and the trial court denied the motion finding that neither the daughter or father had the actual authority to sign the arbitration agreement on the woman's behalf. *Id.*, at 456, 756 S.E.2d at 892.

In reversing the trial court, the North Carolina Court of Appeals noted that the trial court failed to consider whether the woman conferred the authority to conduct the admissions process “in general” on her behalf and that the fact that the woman was admitted, showed “that at the very least, there may have been actual or apparent authority conferred on the husband or daughter to execute some or all of the contracts that were needed in order to complete the admissions process,” including the arbitration agreement. *Id.* 233 N.C. App. at 460, 756 S.E.2d at 895. The court went on to note that under North Carolina law, a principal is liable “when the agent acts within the scope of his apparent authority, unless the third person has notice that the agent is exceeding his actual authority,” and concluded that because the daughter and husband signed all of the admissions documents, including the arbitration agreement without objection or any indication to the admissions coordinator that their authority to sign the documents was limited in any way, there was evidence that the woman and daughter possessed the apparent authority to sign the arbitration agreement on her behalf. *Id.* at 460–61, 756 S.E.2d at 895 (2014). Although *Bookman* is not controlling precedent, the Court finds it to be instructive and persuasive with regard to the case at bar.

Based on the record, including the testimony of Ms. Burt, Ms. Fields, and Ms. Boyd, the Court finds that Ms. Boyd possessed the apparent authority to execute the Arbitration Agreement on Mr. Boyd’s behalf. The deposition testimony of and Peggy Fields and Leola Burt demonstrates that both reasonably understood that Plaintiff gave his mother the authority to sign all documents related to admission, including the Arbitration Agreement. Indeed, Ms. Burt’s sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and Plaintiff explicitly confirmed to Ms. Fields and Ms. Burt that his mother would be responsible. In light of the near identical accounts offered by Ms. Fields and Ms.

Burt, the Court is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork.

In effect, Plaintiff argues that Ms. Boyd possessed only the authority to execute to the other admissions paperwork but not the Arbitration Agreement. Plaintiff appears to conflate actual authority with apparent authority in that regard. As clearly indicated by authority from South Carolina and other states, apparent agency is derived from a principle's manifestations and a third party's reasonable understanding of those manifestations. When Plaintiff, the principal, authorized his mother to execute admissions paperwork on his behalf, he effectively placed her in a position where third parties, and in particular, Ms. Burt would believe she had authority to bind Plaintiff to all admissions documents, including the Arbitration Agreement. This belief was derived from Ms. Burt's conversations with Ms. Fields, Ms. Boyd, and ultimately Plaintiff himself.

While as in *Horton*, Ms. Boyd may not have possessed the actual authority to sign the arbitration agreement in particular, she possessed the apparent authority to complete and sign all necessary admissions paperwork, including the Arbitration Agreement. Furthermore, Plaintiff was expressly made aware that his mother signed the arbitration agreement on his behalf and like in *Bookman*, neither he nor his mother voiced any objection or indicated that his mother was not permitted to sign the Arbitration Agreement on his behalf as opposed to the other documents. Based on the record before the Court, Ms. Boyd possessed the apparent authority to sign the Arbitration Agreement on Plaintiff's behalf.

Because the court concludes that Ms. Boyd possessed the apparent authority to bind Mr. Boyd to the Arbitration Agreement, the Court declines to address whether Plaintiff subsequently ratified the Arbitration agreement.

CONCLUSION

For the reasons set forth herein, Defendant's Motion to Compel Arbitration and Stay Court Proceedings is hereby **GRANTED**.

IT IS SO ORDERED!

Electronic signature of Judge Perry H. Gravely on following page

Greenville, South Carolina



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina At Magnolia Place At
Greenville LLC, defendant, et al
Case Number: 2018CP2301934
Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-07-03 11:10:46 page 13 of 13

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2301934

James Boyd, Jr
PLAINTIFF(S)

Fundamental Administrative Services LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

See following page.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/17/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

This matter comes before the Court upon Plaintiff's Motion to Reconsider. The Court granted Defendant's Motion to Dismiss and Compel Arbitration in an Order dated August 20, 2019. The Court has addressed all relevant issue in the underlying Order and does not see any basis for amending the previous Order. Furthermore, a Hearing is not necessary for the issuance of this Order. Therefore, the Court DENIES Plaintiff's Motion to Reconsider and Affirms its previous Order granting Defendant's Motion to Dismiss and Compel Arbitration.



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina LLC , defendant, et al

Case Number: 2018CP2301934

Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-10-17 11:20:11 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR.,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	FINAL ORDER OF ARBITRATION
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA PLACE AT GREENVILLE,	)	
LLC,	)	
	)	
DEFENDANTS.	)	
	)	

By consent of the parties I was ordered to arbitrate the above matter. The arbitration was conducted on October 26 and 27, 2021 in Greenville, South Carolina.

me #1

This is a medical malpractice action. Plaintiff alleges he sustained damage as a result of the substandard care he received by the Defendant's medical workers during his admission to their facility in 2016. He was transferred to this facility from Palmetto Health Richland Hospital where he had received emergent care for injuries he suffered in an accident on June 3, 2016. He was operating a bicycle that collided with a vehicle. This resulted in massive trauma, he underwent cervical decompression surgery and ended up with a central cord syndrome with quadriparesis. He was unable to fully move both of his upper and lower extremities. Unfortunately, he faced a host of medical complications generally associated with immobility such as incontinence, blood clots, pneumonia, infections and pressure ulcers. He was noted to be at high risk for pressure ulcers. He presented with a sacral wound that appeared to be a shear. He was discharged in late 2016 to the care of his family.

The Plaintiff's legal claim is straightforward; the Defendant failed to prevent pressure ulcers and once faced with a pressure ulcer they were inadequate in the intervention to heal the pressure ulcer.

As the Arbitrator, I must determine the credible facts in the case and then apply them to the applicable law to determine if the Plaintiff has proven his case by the preponderance or greater weight of the evidence.

I find the Plaintiff's assertion that the pressure ulcer first manifested itself at the Defendant's facility is not credible. The Plaintiff's admission records at Defendant's facility and discharge records of Palmetto Health note the Plaintiff has a small skin tear with a medical dressing in place at the time he was transferred. The Defendant on July 11, 2016 called in a wound care specialist, Dr. Violette, to manage the pressure ulcer. On his first visit, July 11, 2016, he identified a Stage 2 pressure ulcer on the sacrum with a duration of greater than 14 days. Dr. Davis, Defendant's expert, who has been a full time wound care physician since 2004 and is presently the medical director at Pardee Wound and Hyperbaric Medicine Center in Hendersonville, North Carolina, agreed with the treating physician's opinion that the wound was at least 14 days old. Dr. Violette continued to provide wound care/management of the pressure ulcer until Plaintiff's discharge. Dr. Saba, plaintiff's expert, who is a board certified Internal Medicine physician, testified all treatment ordered by Dr. Violette and administered by the nurses was within the standard of care. Plaintiff's nurse expert, Rebecca McCarthy, RN, BSN, did not disagree with Dr. Violette's opinion the pressure ulcers had existed for greater than 14 days when he first saw him. She said the record did not support his opinion, but she would not opine against him.

MAE
#2

Based on a review of the medical records and testimony of the witnesses I find as a fact the pressure ulcers were more than 14 days old when Dr. Violette first saw the Plaintiff on July 11, 2016 and thus existed at the time of his admission to Defendant's facility.

The Plaintiff further asserts the Defendant breached the standard of care by providing inadequate interventions to heal the pressure ulcers. All experts agreed the Plaintiff came to Defendant's facility with a very high risk of pressure ulcers because of his immobility. Dr. Saba testified that once the barrier (pressure ulcer) falls down, then it is downhill from there. As earlier found, the pressure ulcer had begun its development before Plaintiff arrived at Defendant's facility. Dr. Davis testified that the pressure ulcer issue is a big medical problem, he stated there's never been any firm evidence that there's any intervention which can completely prevent the incidence and prevalence of a pressure ulcer. He goes on to say when we lose the ability to move our bodies or take care of our bodies, things start to break down. Pressure ulcers are one manifestation of it, its reality. The Defendant utilized Dr. Violette, a wound care specialist, who is a member of Vohra, a group of specialists in wound care, who provide doctors for nursing homes to have the specialist go into the homes, rather than transporting the patient for treatment. Dr. Violette continued to see, examine, counsel with patient and his family and managed through treatment plans the Defendant until his discharge. All experts agreed the Defendant's staff performed each treatment in accordance with the doctor's orders and the orders were appropriate and met the standard of care.

I find the Plaintiff failed to meet his burden of proof that the Defendant breached the standard of care in their treatment and management of the Plaintiff's pressure ulcer.

I further find as a fact the Plaintiff failed to prove by the preponderance of the evidence any proximate cause of his injuries that was attributable to the Defendant. Nurse McCarthy stated

she was not able to testify to any medical causation. Dr. Saba was asked his opinion of what caused Mr. Boyd's pressure ulcer to develop. He replied 90 percent of the battle is to basically prevent those wounds from happening. He said you can do everything after a wound has occurred and still some of those people do not get better. The testimony of the Plaintiff's two experts fails to prove any causation.

Based on the above findings of fact, and applying these findings to the applicable law on medical malpractice law in South Carolina, I conclude that a verdict in favor of the Defendant is just and proper.

AND IT IS SO ORDERED.


D. A. Early, III
Arbitrator

Charleston, South Carolina

Dated: Dec 20, 2021

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2301934

James Boyd, Jr
PLAINTIFF(S)

Fundamental Administrative Services LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendants moved to confirm the arbitration judgment in this matter. During the pendency of arbitration, the causes of action as related to other defendants were stayed. These defendants, FAS and FCOS, were not present at this hearing. The court allowed additional time for responses by any defendants prior to issuing a ruling and has not received any filings or requests. Therefore, the findings and judgment from the arbitration are confirmed and apply to all defendants. IT IS SO ORDERED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/16/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina LLC , defendant, et al

Case Number: 2018CP2301934

Type: Order/Electronic Form 4

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)

Electronically signed on 2025-10-16 14:28:22 page 3 of 3

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-_____

JAMES BOYD, JR.,

Plaintiff,

v.

THI OF SOUTH CAROLINA, LLC, d/b/a
MAGNOLIA PLACE - GREENVILLE;
HUNT VALLEY HOLDINGS, LLC; THI
OF BALTIMORE, INC.;
FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC;
FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC; FUNDAMENTAL
CLINICAL CONSULTING, LLC;
LEONARD GRUNSTEIN Both
Individually and as Owner/Operator of
MAGNOLIA PLACE; MURRAY
FORMAN Both Individually and as
Owner/Operator of MAGNOLIA PLACE;
and RUSTY FLATHMANN Both
Individually and as Employee/Manager of
MAGNOLIA PLACE,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or attorneys, Stefan B. Feidler , Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Note: If Defendant(s) contend there is an Arbitration Agreement in question here, Plaintiff herewith demands a copy of same. The failure to provide a copy of any alleged Arbitration Agreement within sixty (60) days of service shall be deemed a waiver of same. Additionally, failure to file a motion to dismiss and compel arbitration within sixty (60) days of service shall be deemed a waiver of same.

Dated at Charleston, South Carolina on the __27__ day of __March_____, 2018_.

ANASTOPOULO LAW FIRM, LLC

__s/Stefan B. Feidler _____
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-_____

JAMES BOYD, JR.,

Plaintiff,

v.

THI OF SOUTH CAROLINA, LLC, d/b/a
MAGNOLIA PLACE - GREENVILLE;
HUNT VALLEY HOLDINGS, LLC; THI
OF BALTIMORE, INC.;
FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC;
FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC; FUNDAMENTAL
CLINICAL CONSULTING, LLC;
LEONARD GRUNSTEIN Both
Individually and as Owner/Operator of
MAGNOLIA PLACE; MURRAY
FORMAN Both Individually and as
Owner/Operator of MAGNOLIA PLACE;
and RUSTY FLATHMANN Both
Individually and as Employee/Manager of
MAGNOLIA PLACE,

Defendant(s).

**COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendant, alleges and says as follows:

CASE SYNOPSIS

1. James C. Boyd, Jr. was born and raised in Chapin, South Carolina. After high school, James made his living through hard work and manual labor. Before June 3, 2016, James was working for a refrigeration company. James moved in with his mother to help her with daily chores and give her some financial assistance. Unfortunately, James life has changed forever and he is now dependent on others for every aspect of his life.
2. On the morning of June 3, 2016, James was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch, eventually being rushed to

Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.

3. On June 30, 2016, James was admitted into Defendants' facility. By August 5, 2016, James had developed a sacral stage III/IV pressure wound(s), pressure ulcer of right and left heel - unstageable. On August 17, 2016, James was admitted into a hospital with fever, sacral wound, and sacral osteomyelitis and eventually diagnosed with sepsis, sacral wound, and stage IV pressure ulcer. By December 12, 2016, James was diagnosed with a stage III pressure ulcer of sacral region and unstageable pressure ulcer of left heel. By February 2, 2017, James was diagnosed with sepsis due to infected stage IV decubitus ulcer. James continues to struggle with these injuries. Liability is clear in this case.

PARTIES & JURISDICTION

4. That the Plaintiff, James Boyd, Jr., is a citizen and resident of Greenville County, State of South Carolina.
5. That upon information and belief, Defendant THI of South Carolina, LLC, d/b/a Magnolia Place – Greenville is incorporated in the State of Delaware with its principal place of business in Greenville County, and Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, State of South Carolina 29201.
6. That upon information and belief, Defendant Hunt Valley Holdings, LLC is incorporated in the State of Delaware, with its principal place of business in Delaware, and Corporation Service Company is the representative agent who can be served with process

at 251 Little Falls Drive, New Castle, State of Delaware 19808. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial revenue therefrom, in Greenville County, South Carolina, both through its individual actions and through those of its subsidiaries. Hunt Valley Holdings is the successor in interest and/or new name for the Fundamental Long Term Care Holdings, LLC. Upon information and belief, Hunt Valley Holdings assumed the assets and liabilities of Fundamental Long Term Care Holdings, LLC. These entities shall hereinafter be collectively referred to as “FLTCH”.

7. That upon information and belief, FLTCH is an entity related to and engaged in the operation and management of THI of South Carolina, LLC either directly or indirectly through its subsidiaries and agents.
8. Upon information and belief, at all times relevant herein, FLTCH is and was under the ownership of Leonard Grunstein and Murray Forman, who each hold 50% ownership stake in FLTCH and direct and control the actions of FLTCH.
9. Upon information and belief, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place are all subsidiaries, agents, and/or servants of FLTCH. At all relevant times herein, agents, employees, servants, and apparent agents of Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place acted on behalf of themselves and on behalf of FLTCH. Furthermore, at all times relevant herein, agents,

employees, servants and apparent agents of FLTCH acted on behalf of themselves and on behalf of FLTCH, Murray Forman and Leonard Grunstein.

10. That, upon information and belief, the Defendant, Murray Forman (hereinafter “Forman”) is a citizen and resident of Queens County, New York. At all times relevant herein, Forman holds or held a direct or indirect ownership interest in FLTCH and exercises direction and control over its operations and/or fiscal decisions. Additionally, upon information and belief, Forman holds or held direct or indirect ownership interests, and/or management/member interests and rights in one or more of the following corporations: Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place. Upon information and belief, Forman has been involved in directing operations and/or management of one or more of these companies, all of which are involved in the management and operation of Magnolia Place. At all times relevant herein, Forman acted on behalf of himself and on behalf of FLTCH, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place. That this Court has jurisdiction over Forman by virtue of his transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

11. That the Defendant Fundamental Clinical Consulting, LLC (hereinafter “Fundamental Clinical”) is a business organized and existing under the laws of the State of Delaware which regularly conducts and transacts business in Greenville County, South Carolina by employing physicians, nurses, dietary, therapy, administrative, nursing aide, and other related staff to provide health care services to patients and which represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing clinical care services to the residents of skilled nursing healthcare centers such as James Boyd. This defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial revenue therefrom, in Greenville County, South Carolina, both through its individual actions and through its affiliates and/or subsidiaries. At all times relevant herein, Fundamental Clinical was and is a wholly owned subsidiary of FLTCH and provided clinical providers, therapy services, and clinical oversight on behalf of Magnolia Place. Fundamental Clinical was formerly known as Baltimore Management, LLC. Fundamental Clinical’s operations were controlled, managed, and directed by THI of Baltimore, Inc., and FLTCH. Fundamental Clinical used its position to control and direct operations of Fundamental Administrative Services, LLC. At all times relevant herein, Fundamental Clinical acted on behalf of itself and on behalf of Fundamental Clinical, THI of Baltimore, LLC, Fundamental Administrative Services, LLC, and FLTCH. That this Court further has jurisdiction over Fundamental Clinical by virtue of it transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts

both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

12. That the Defendant Fundamental Administrative Services, LLC (hereinafter “FAS”) is a business organized and existing under the laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, nursing home management and administration, direction, operation and purchasing services as well as oversight in the hiring and firing of suppliers and vendors for FLTCH, Fundamental Clinical, THI of South Carolina, LLC and Magnolia Place and its subsidiary facilities and which represents itself to contracting agencies and to the public at large as being highly capable and skilled in providing oversight, management and administration for nursing home and rehabilitation facilities such as those operated by Magnolia Place. This Defendant, through its provision of services, maintains agents and transacts business, deriving substantial revenue therefrom, in Greenville County, South Carolina. This Defendant is a wholly owned subsidiary of THI of Baltimore, LLC and/or Fundamental Clinical. FLTCH, THI of Baltimore, Inc., Fundamental Clinical, Leonard Grunstein, and Murray Forman used their positions of management and control to direct the actions of FAS. Upon information and belief, through its individual actions and in concert with its affiliates, parent corporations and subsidiaries, this company engaged in oversight, management, and direction and operation of nursing home facilities in Greenville County, South Carolina, deriving substantial revenue therefrom. At all times relevant herein, employees, servants, and apparent agents of FAS acted on behalf of themselves and on behalf of FAS, FLTCH, Leonard, Grunstein, Murray Forman, THI of Baltimore, Inc., and Fundamental Clinical. That this Court further has jurisdiction over FAS by

virtue of it transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

13. That the Defendant Fundamental Clinical and Operational Services, LLC (hereinafter “FCOS”) is a business organized and existing under the laws of the State of Delaware providing clinical services to nursing home facilities by employing physicians, nurses, dietary, therapy, administrative, nursing aide, and other related staff to provide health services to patients and who represented itself to the Plaintiff and the public at large as being highly skilled in providing clinical consulting services to skilled nursing healthcare centers and to the residents of such skilled nursing healthcare centers such as James Boyd. This defendant owns property, advertises, maintains agents, and/or transacts business, deriving substantial revenue therefrom in Greenville County, South Carolina, both through its individual actions and through its affiliates and subsidiaries. At all times relevant herein FCOS was and is a wholly owned subsidiary of FLTCH, THI of Baltimore, Inc., Fundamental Clinical, or FAS and providing nursing, dietary, therapeutic, administrative, and other related services on behalf of Magnolia place. The acts of FCOS were directed by one or more of the above named parent and/or affiliated companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of FCOS acted on behalf of themselves and on behalf of FCOS, and FCOS acted on behalf of Magnolia Place, THI of South Carolina, LLC, THI of Baltimore, Inc., FLTCH, Leonard Grunstein, and Murray Forman. That this Court further

has jurisdiction over FCOS by virtue of its transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

14. That the Defendant THI of Baltimore, Inc. (hereinafter “THI Baltimore”), is a business organized and existing under the laws of the State of Delaware which regularly conducts and transacts business in Greenville County, South Carolina. At all times relevant herein, this Defendant was and is a business that employs and/or contracts for the employment of physicians, nurses, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and to persons such as James Boyd. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business deriving substantial revenue therefrom, in Greenville County, South Carolina, both through its individual actions and in concert with its subsidiaries, successors, affiliates and/or assigns, whether entities or individuals. At all times relevant herein, agents, employees, servants, and apparent agents of THI Baltimore, FAS, Fundamental Clinical, and THI of South Carolina, LLC, and Magnolia Place acted on behalf of themselves and on behalf of THI Baltimore. Furthermore, at all times relevant herein, THI Baltimore acted on behalf of itself and on FLTCH, FAS, Leonard Grunstein, and Murray Forman. That this Court further has jurisdiction over THI Baltimore by virtue of its transacting business in Greenville County, South Carolina, owning and/or leasing

property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

15. That the Defendant Magnolia Place is a business organized and existing under the laws of the State of Delaware, who, upon information and belief, is authorized to conduct and transact business in South Carolina and who does indeed conduct and transact business in Greenville County, South Carolina through its operation of the skilled nursing facility located in Greenville County. More specifically, this Defendant conducts and transacts business in Greenville County, South Carolina by employing physicians, nurses and related staff to provide health care services to patients which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing home and physician services and operated nursing home and rehabilitation facilities for persons such as James Boyd. Defendant Magnolia Place is an affiliate or subsidiary of THI of South Carolina, LLC, FAS, FCOS, Fundamental Clinical, THI Baltimore, and FLTCH. At all times relevant herein Magnolia Place has acted on behalf of itself or as agent for or on behalf of THI Baltimore, FAS, FLTCH, THI of South Carolina, LLC, Fundamental Clinical, FCOS, and Murray Forman. Also at all times relevant herein, agents, employees, servants and apparent agents of Magnolia Place acted on behalf of themselves and on behalf of Magnolia Place.
16. That the Defendant THI of South Carolina, LLC, (hereinafter "THI SC"), is a business organized and existing under the laws of the State of Delaware and who is authorized to conduct and transact business in South Carolina. This Defendant conducts business in Greenville County, South Carolina by employing physicians, nurses, and related staff to

provide health care services to patients. This Defendant either directly or indirectly was involved with the management and operations of Magnolia Place, or, in the alternative was a holding company. This Defendant acted at all times relevant herein at the direction and control of FLTCH, FAS, FCOS, Fundamental Clinical, THI Baltimore, Leonard Grunstein, and Murray Forman, and acted as their agent. Agent and employees of THI SC acted on behalf of themselves and on behalf of THI SC.

17. That Defendant Rusty Flathmann is a citizen and resident of South Carolina and was at all times relevant herein an agent, servant, or employee of one or more of the Defendants FLTCH, FAS, FCOS, Fundamental Clinical, THI of Baltimore, Leonard Grunstein, and Murray Forman. The Defendant Rust Flathmann, (hereinafter “Flathmann”) is and was a member of and/or head of governing body of Magnolia Place and such was charged by law with certain management and operational responsibilities. That further upon information and belief, Flathmann is and was Regional Director of Operations for one or more of the Defendants.
18. That the Defendants FLTCH, Leonard Grunstein, Murray Forman, Fundamental Clinical, FAS, FCOS, THI Baltimore, THI SC, Magnolia Place, and Rusty Flathmann shall hereinafter be collectively referred to as “Nursing Home Defendants” or “Defedants”.
19. That the Nursing Home Defendants collectively were aware of failures to provide adequate care as described both above and below and were aware of residents such as James Boyd and knew that the failures that existed at the facility resulted from the decisions made by the Nursing Home Defendants to purposefully under-staff and underfund the facility in a way that would maximize corporate profits for the Nursing Home Defendants rather than to provide adequate and proper care to residents such as

James Boyd. Furthermore, the acts, omissions, and decisions of the Nursing Home Defendants directly affected resident care such that of James Boyd and directly caused her injuries. That further all of the Nursing Home Defendants, even those aside from the licensee, used their position to directly or indirectly control or manage the budget, staff, and level of care at the facility which directly affected and caused injury to James Boyd. These Defendants acted as each other's alter ego, acted in a joint enterprise, acted in a common business purpose, and with an amalgamation of interest. Further, these Defendants are each directly liable for their own acts of negligence. The acts of the Nursing Home Defendants were negligent, willful, wanton, grossly negligent, and in reckless disregard for the safety and wellbeing of patients such as James Boyd. That upon information and belief, THI of Baltimore, Inc. is incorporated in the State of Maryland, with its principal place of business in Maryland, and CSC-Lawyers Incorporating Service Company is the representative agent who can be served with process at 7 St. Paul Street, Suite 820, Baltimore, State of Maryland 21202.

20. That upon information and belief, Defendant Fundamental Clinical and Operational Services, LLC is incorporated in the State of Delaware with its principal place of business in Delaware, and Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, State of South Carolina 29201.
21. That upon information and belief, Defendant Fundamental Administrative Services, LLC is incorporated in the State of Maryland, with its principal place of business in Maryland, and CSC-Lawyers Incorporating Service Company is the representative agent who can be served with process at 7 St. Paul Street, Suite 820, Baltimore, State of Maryland 21202.

22. That upon information and belief, Defendant Fundamental Clinical Consulting, LLC is incorporated in the State of Delaware with its principal place of business in Delaware, and Business Filings Incorporated is the representative agent who can be served with process at 108 West 13th Street, State of Delaware 19801.
23. That upon information and belief, Defendant Leonard Grunstein is a resident and citizen of the State of New York.
24. That upon information and belief, Murray Forman is a resident and citizen of the State of New York.
25. That upon information and belief, Defendant Rusty Flathmann (herein collectively referred to with THI of South Carolina, LLC, d/b/a Magnolia Place - Greenville; Hunt Valley Holdings, LLC; THI of Baltimore, Inc.; Fundamental Clinical And Operational Services, LLC; Fundamental Administrative Services, LLC; Clinical Consulting, LLC; Leonard Grunstein Both Individually and as Owner/Operator of Magnolia Place; Murray Forman Both Individually and as Owner/Operator of Magnolia Place; and Rusty Flathmann Both Individually and as Employee/Manager of Magnolia Place is a citizen and resident of Greenville County, State of South Carolina.
26. Upon information and belief, Defendant Rusty Flathmann is a regional director of operations for one or more of the corporate defendants.
27. That Plaintiff filed Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories. Pursuant to S.C. Code Ann § 15-36-100.
28. That the parties conducted pre-suit mediation and an ADR Report was filed with the Court. Pursuant to S.C. Code Ann § 15-36-10.

29. “[N]ot every action taken by a medical professional in a hospital or doctor’s office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125.” Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
30. “However, at all times, the medical professional must ‘exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.’” Id. at 178, 758 S.E.2d at 504 (further citations omitted).
31. “The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers’ ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care.” Id. (further citation omitted).
32. “Thus, medical providers are still subject to claims sounding in ordinary negligence.” Id. (further citations omitted).
33. That the nursing home abuse and neglect that is the subject of this action occurred in Greenville County, State of South Carolina.
34. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Greenville County, State of South Carolina.

BACKGROUND FACTS

35. That on or about June 30, 2016, James Boyd was admitted to Defendants’ nursing home and/or long-term care facility, Magnolia Place - Greenville, in Greenville, State of South Carolina.
36. That while residing at Defendants’ facility, James Boyd was improperly cared for and/or abused and/or neglected by Defendants’ staff.

37. That James Boyd's health rapidly declined while he was relying on Defendants' care at Defendants' facility.
38. That James Boyd was admitted to the hospital on multiple occasions from August 2016 to December 2016, while residing at Defendants' facility, for multiple injuries, including but not limited to sacral stage III/IV pressure wound, pressure ulcer of right and left heel – unstageable, high fever, sacral wounds, sacral osteomyelitis, sepsis, septic shock, urinary tract infection (“UTI”), and his condition worsened upon each hospital admission.
39. That sometime between James Boyd's hospital visits of August 2016, and December 2016, while at Defendants' facility, James Boyd sustained serious injuries including, but not limited to infected pressure wounds and Defendants':
- a. failed to prevent said injuries;
 - b. caused said injuries;
 - c. never acknowledged said injuries;
 - d. never documented said injuries;
 - e. failed to assist Plaintiff's decedent; and
 - f. failed to timely assist James Boyd in obtaining treatment for said injuries.
40. That upon information and belief, the Department of Health and Human Resources (hereinafter “DHEC”) conducted a survey of Defendants' facility shortly after James Boyd's residency and found multiple deficiencies, including, but not limited to:
- a. Providing care by qualified persons according to each resident's written plan of care;
 - b. Assisting those residents who need total help with eating/drinking, grooming and personal and oral hygiene;

- c. Making sure that residents with reduced range of motion get proper treatment and services to increase range of motion;
 - d. Making sure that the nursing home area is free from accident hazards and risks and provide supervision to prevent avoidable accidents; and
 - e. Setting up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action.
41. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to provide care by qualified persons according James Boyd's written plan of care.
42. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to assist James Boyd total help with eating/drinking, grooming and personal and oral hygiene.
43. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to make sure James Boyd received proper treatment and services to increase his range of motion.
44. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to set up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action as it pertains to James Boyd. During his residency at Defendants' facility while under Defendants' care.
45. That between August 2016 and December 2016, James Boyd was admitted to the hospital with serious injuries, which caused his to have to endure an extended stay at the hospital for several days and/or weeks as a result of Defendants' lack of care.

FOR A FIRST CAUSE OF ACTION
(Negligence / Gross Negligence)

46. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
47. That Defendants owed a duty to the Plaintiff as providers to act in a reasonable fashion, provide a safe and adequate facility and provide timely care to the Plaintiff in that of similar providers.
48. That the resulting injuries and damages to Plaintiff were caused proximately by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful acts, and/or omissions and/or breach of duty of Defendants in any one or more of the following respects:
- a. In deviating from the standard of care for medical and long-term care providers.
 - b. In violating the Omnibus Adult Protection Act for South Carolina §43-35-25 which requires that any “physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident.”
 - c. In violating the Nurse Practice Act of South Carolina §40-33-80 by failing to thoroughly investigate complaints and violations.

- d. In violating South Carolina Department of Health & Environmental Control (SC DHEC) Regulation Number 61-17, § 800 et. Seq., which requires that all entries in the medical record for each resident are to be adequate and complete.
- e. In violating 42 CFR §483.75 which requires that:
 - i. Medical records be maintained in accordance with acceptable professional standards and practices that are “complete, accurately documented, and readily accessible.”
 - ii. The facility be administered in a matter that allows the resident to maintain his/her highest level of physical well-being.
 - iii. The facility be operated and provide services in compliance with all applicable Federal, State, and local laws, regulations, and code and with accepted professional standards and principles that apply to professionals providing services in such a facility.
- f. In violating 42 CFR §483.10 regarding the Plaintiff’s right to a dignified existence including, but not limited to notification of changes, which required the Defendants to immediately consult with a resident’s physician and notify a resident’s legal representative when there is a significant change in the resident’s physical, mental, or psychosocial status or need to alter treatment significantly due to adverse consequences.
- g. In violating 42 CFR §483.25 regarding quality of care, which requires that:

- i. Each resident must receive and the facility must provide necessary care and services in accordance with the comprehensive assessment and plan of care.
 - ii. “A resident who is unable to carry out activities of daily living received the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.”
 - iii. The facility ensure a resident maintains acceptable parameters of nutritional status such as body with and protein levels and receives a therapeutic diet when there is a nutritional problem.
 - iv. “Each resident receives adequate supervision and assistance devised to prevent accidents.”
 - v. The facility provide the resident with sufficient fluids to maintain proper hydration and health.
- h. In violating 42 CFR §483.30, regarding nursing services, which requires nursing homes to have sufficient staff to provide nursing related services to attain or maintain the highest practicable physical well-being.
 - i. In failing to provide James Boyd with the reasonably required care expected of and typically exercised by similarly situated professional medical care providers.
 - j. In failing to acknowledge and/or properly document and/or record James Boyd’s injuries and/or physical conditions while in Defendants’ care.
 - k. In causing James Boyd and/or Plaintiff to incur medical costs associated with numerous visits and extended stays at the hospital.

- l. In causing James Boyd and/or Plaintiff to incur the costs of transferring James Boyd to another facility.
- m. In causing and/or refusing to alleviate James Boyd's severe pain and suffering.
- n. In causing James Boyd to suffer from anxiety and/or mental anguish and/or emotional and/or psychological pain and suffering as a result of Defendants' abuse and/or neglect during and/or after James Boyd resided at Defendants' facility.
- o. In causing Plaintiff's emotional and/or psychological pain and suffering and/or mental anguish;
- p. Failure to develop a plan of care for James Boyd at any time prior to or during his stay at Defendants' facility;
- q. Failure to conduct accurate assessments of James Boyd during his time at Defendants' facility;
- r. Failure to provide goods and services to prevent the development of UTI infection;
- s. Failure to provide sufficient fluids to maintain health and adequate hydration and/or develop a plan for provision of the same;
- t. Failure to provide the care, goods, and/or services necessary to maintain the health or safety of a vulnerable adult;
- u. Failure to properly and/or adequately and/or timely record and/or document and/or monitor patient's blood pressure and/or intake of fluids;

- v. Failure to properly and/or adequately and/or timely record and/or document patient's severe injuries;
- w. In any such other particulars as may be ascertained through discovery or shown at trial.
- x. Additionally, James Boyd's injuries were caused by the Defendants' deviations from the acceptable standards of care.

All of which were direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the Laws of the State of South Carolina.

49. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendants, as is set forth more fully above, James Boyd and his beneficiaries were injured, endured pain and suffering, have suffered mentally and emotionally, have incurred various expenses, and have otherwise been damaged and injured.
50. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of all Defendants, as is set forth more fully above, James Boyd suffered in various ways and wrongfully died because of receiving inadequate medical care while in Defendants' care.
51. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory, and exemplary or punitive damages for his personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that he may be entitled, to be determined by a jury.

52. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, James Boyd and his beneficiaries have been damaged and injured in the following respects:

- a. James Boyd endured physical pain and suffering as a result of the serious injuries he sustained while in Defendants' care.
- b. James Boyd endured physical pain and suffering as a result of his dehydration and dangerously low blood pressure which Defendant caused and/or exacerbated and/or failed to appropriately address and/or failed to properly monitor.
- c. James Boyd suffered from anxiety, mental anguish, and emotional and/or psychological pain and suffering as a direct result of Defendants' breach of duty and/or neglect and/or abuse.
- d. James Boyd incurred medical costs for the hospital visits and extended stay James Boyd endured.
- e. James Boyd incurred costs associated with transferring James Boyd to another facility.
- f. Plaintiff suffered from emotional and/or psychological pain and suffering as a result of the Defendants' neglect and/or abuse.

53. Notwithstanding undertaking that duty and while James Boyd was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of James Boyd and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to James Boyd, and they

are liable for one of more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care.

54. The Defendants deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding circumstances as those presented by James Boyd. In particular, without limitation, they deviated from the standard of care as set forth above.

55. That Defendants knew or should have known that James Boyd would suffer foreseeable financial injury, including hospital and/or medical expenses and costs of transfer to another health care facility, as a result of Defendants' failure to exercise ordinary care as set forth more fully above.

56. The Defendants further deviated:

- a. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- b. In failing to properly train and supervise the personnel and staff and employees at the Defendants' facility with regard to James Boyd's care;
- c. In failing to relieve incompetent and/or improperly trained and/or negligence staff and employees at the Defendants' facility;
- d. In failing to properly revise and modify plans of care for James Boyd in response to James Boyd's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of James Boyd, so as to constitute negligence per se;

- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate, and current training, credentials and skills to properly prevent James Boyd from suffering injury and pain;
- h. In failing to have in place proper and adequate policies, protocols, procedures, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, of if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and fall prevention procedures;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and fall prevention procedures were available to agents, servants and employees of the Defendant;
- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent judgment and skill;
- l. In failing to ensure that James Boyd had proper care;
- m. In failing to properly document the medical records of James Boyd;
- n. In failing to properly document significant clinical findings; and

- o. In any such other particulars as may be ascertained through discovery or shown at trial.

57. That as a direct and proximate cause of the Defendants' conduct, as aforesaid, James Boyd, for whom this action is brought, has experienced economic loss associated with medical expenses and is entitled to relief for the same.

FOR A SECOND CAUSE OF ACTION

Negligence per se

58. Plaintiff restates and re-alleges every allegation set forth above as if states herein verbatim.

59. The Defendants' facility is a long term health care provider who has a duty to abide by certain state regulations in the care and treatment of their residents.

60. The state regulations combine to form a minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, James Boyd.

61. The Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of James Boyd.

62. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which James Boyd was a member.

63. As a direct and proximate result of the Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, James Boyd suffered severe injuries as described above, constituting negligence *per se*.

FOR A THIRD CAUSE OF ACTION
Breach of Contract

64. The Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
65. James Boyd entered into a contract with Defendants for the adequate provision of his care, treatment, and safety.
66. Pursuant to such agreement, the Defendants promised to care for James Boyd, exercise due care, and follow all state and federal laws and regulations relating to care of residents of long-term health care facilities.
67. In exchange for such promises, James Boyd agreed to compensate the Defendants for such care.
68. This bargained-for exchange constitutes a contract.
69. The Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients/residents of long-term health care facilities, and by its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.
70. James Boyd was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

FOR A FOURTH CAUSE OF ACTION
(Fraud / Misrepresentation / Spoliation)

71. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

72. The Defendants, through deception, artifice and circumvention, successfully defrauded James Boyd, who trustingly submitted to Defendants' care and on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care;
- b. That the Defendants would adequately staff the long-term care facility and James Boyd would be served by adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

73. At the time of James Boyd's admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similarly situate consumers to believe the above representations were true.

74. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

75. The Defendants fraudulently concealed Defendants' inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
76. The representations made and concealments done by the Defendants were material to James Boyd and his family.
77. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
78. James Boyd and his family were unaware of the falsity of the representations made by the Defendants.
79. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
80. As a result of the Defendants' fraud, misrepresentations, and concealments, James Boyd subsequently suffered damages and injuries while living at Defendants' facility.
81. As a proximate cause of the Defendants' fraud and misrepresentation, James Boyd suffered physical injuries, pain and suffering as previously alleged.

FOR A FIFTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

82. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
83. James Boyd and Defendants are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.
84. The Defendants, by conducting business in the state of South Carolina, is engaged in commerce within the meaning of Code Section 39-5-10(b).

85. The Defendants' actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to James Boyd and his family that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care; that the Defendants would adequately staff the long-term care facility and James Boyd would enjoy adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and such other particulars as are set forth above in this Complaint or may be shown through discovery or at trial;
- b. Further, at the time of James Boyd's admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similar situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placing himself or his relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.
- c. The Defendants fraudulently concealed their inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.

- d. The representations made and concealments done by Defendants were material to James Boyd and his family.
 - e. At the time the Defendants made such representations, he/she/they knew such affirmative claims of service were false.
 - f. James Boyd and his family were unaware of the falsity of the representations made by Defendants.
 - g. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
 - h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, James Boyd subsequently suffered damages and injuries while a patient/resident at Defendants' facility.
86. The Defendants' acts are capable of repetition and, upon information and belief, have been repeated with other residents.
87. The Defendants' conduct adversely affects the public interest of South Carolina.
88. The Defendants knew or reasonably should have known Defendants' conduct violated the Unfair Trade Practices Act.
89. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, James Boyd suffered an ascertainable loss of money, physical injuries, and pain and suffering as previously alleged.
90. The Plaintiff is entitled to recover actual damages, which amount should be tripled, pursuant to South Carolina law together with interest and attorneys' fees.

FOR A SEVENTH CAUSE OF ACTION
(Elder Abuse)

91. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
92. Pursuant to §45-35-10(11) of the South Carolina Omnibus Adult Protection Act, a “vulnerable adult” means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for their own care or protection. This includes a person who is impaired in the ability to adequately provide for the person’s own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical mental or emotional dysfunction.
93. Given James Boyd’s age and health, the latter of which included, but is not limited to his quadriplegic state, at the time he was under the supervision and care of the Defendant(s), James Boyd met the classification for “vulnerable adult” under the South Carolina Omnibus Protection Act §45-35-10(11).
94. Pursuant to §45-35-10(2) of the South Carolina Omnibus Protection Act a “caregiver” is defined as a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.
95. The Defendants were and are caregivers under the South Carolina Omnibus Adult Protection Act §45-35-10(2) and were responsible for James Boyd’s care and well-being.
96. Under the South Carolina Omnibus Adult Protection Act §45-35-10(6), “neglect” means the failure or omission of a caregiver to provide the care, goods, or services necessary to

maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.

97. The Defendants as caregiver(s), neglected James Boyd within the meaning of the South Carolina Omnibus Adult Protection Act §45-35-10(6). The neglect of James Boyd was negligent, reckless, and malicious. The Defendants knew or should have known James Boyd's advanced age required an increased level of care.
98. Defendants knew or should have known that a heightened level of observation was necessary and critical to James Boyd's well-being, health and prognosis.
99. The Defendants knew or should have known that the patient care environment lacked the number of qualified staff necessary for proper observation and care critical to James Boyd's health and recovery.
100. The Defendants' knew or should have known that James Boyd's was left in a patient care environment where the resources that were critical for recovery and to prevent injury were unavailable constituting neglect under South Carolina Omnibus Adult Protection Act §45-35-10(6).
101. The neglect caused serious personal injuries resulting in conscious pain and suffering.
102. The Defendants' negligent, reckless, and malicious acts were a direct and proximate result of the damages herein.
103. As a result, punitive damages and attorneys' fees are appropriate pursuant to South Carolina Omnibus Adult Protection Act §43-35-80(A), which allows for private

civil causes of action to be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect or exploitation.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

104. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
105. The Defendants deliberately and knowingly participated in civil conspiracy in that they agree and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to obscure the true ownership of the corporations held which hold control of the facility and hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and of this they are jointly and severally liable.
106. As a direct and proximate result of the conspiracy as alleged herein, James Boyd suffered the following special damages:
- a. Loss of dignity;
 - b. Mental anguish;
 - c. Pain, suffering, humiliation;
 - d. Injuries to his body;
 - e. Infections;
 - f. Compromise to muscular system and tendons;
 - g. Compromise to mental status;
 - h. Severe physical injury and other damages outlined hereinabove;
 - i. Have incurred legal fees and costs; and

- j. In such other and further as discovery and trial shall prove.
107. As a result, Plaintiff is entitled to an award of actual, special, and punitive damages in the amount to be determined by the jury.

FOR A NINTH CAUSE OF ACTION
(Corporate Negligence)

108. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
109. That Defendant Sava entities had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.
110. That the facility was negligently managed by Defendants FLTCH, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place, who were working together to manage and operate the facility.
111. That the facility was negligently administered in violation of 42 C.F.R. 483.75 by Defendants FLTCH, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place, who were working together to govern, administer, control, manage and operate the facility.
112. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of James Boyd. More particularly the Defendants were negligent in the following particulars:

- a. Failing to properly supervise as required, and as promised to the family upon admission;
- b. Failing to provide the care, supervision and monitoring of patients, residents, and in particular James Boyd, which was required by law and which was necessary for her health and safety;
- c. Failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, James Boyd;
- d. Failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of James Boyd;
- e. Failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- f. Failing to hire a sufficient number of trained and competent staff;
- g. Failing to follow the licensing and regulatory rules of the State of South Carolina;
- h. Failing to develop and follow an appropriate Plan of Care;
- i. Failing to properly train employees to deal with residents who were unable to care for themselves;
- j. Failing to follow physicians' orders;
- k. Failing to prevent decubitus ulcers from developing and/or failing to provide necessary and proper treatment of the ulcers;
- l. Failing to properly monitor James Boyd;
- m. Failing to appropriately diagnose James Boyd's condition;

- n. Failing to provide James Boyd with appropriate medications and/or nutrition which would promote the healing and resolve infection to the wound areas;
- o. Failing to turn and reposition James Boyd to prevent pressure ulcers from forming and to promote healing;
- p. Failing to ensure that James Boyd and her wounds were kept clean and dry;
- q. Failing to provide adequate nutrition and hydration;
- r. Failing to conduct weekly body audits to discover pressure ulcers;
- s. Failing to ensure that a pressure-relieving mattress was immediately provided for James Boyd;
- t. Failing to update the written plan of care to include necessary interventions to promote wound healing;
- u. Failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- v. Failing to consult with and/or report to the physician and/or the Registered Dietitian in a timely manner James Boyd's decrease in dietary intake;
- w. Failing to assist James Boyd with her meals in order to maintain her highest practicable level of physical well-being;
- x. Failing to keep James Boyd properly hydrated and nourished;
- y. Failing to keep James Boyd from suffering significant weight loss;
- z. Failing to keep a proper record of James Boyd's weight;
- aa. Failing to keep James Boyd's chart free of fraudulent documentation;
- bb. Failing to prevent James Boyd's multiple hospitalizations;
- cc. Failing to monitor and assess James Boyd adequately for pain and discomfort;

dd. Failing to treat James Boyd with dignity and respect;

ee. Failing to exercise due care; and

ff. By other negligent acts and/or omissions yet to be determined or defined.

113. That as a result, James Boyd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills.

114. That the aforesaid acts and delicts were a contributing cause of James Boyd's damages, injuries, and were the sole and proximate cause of the damage and injuries sustained by James Boyd.

FOR A TENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

115. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

116. That as a result of such intentional acts and omissions, James Boyd was inflicted with severe emotional distress.

117. That as a result of such extreme and outrageous conduct, James Boyd was also stripped of his dignity.

118. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered emotional distress.

119. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.

120. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

121. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
122. That as a result of such negligent acts and omissions, James Boyd was inflicted with severe emotional distress.
123. That as a result of such negligent conduct, James Boyd was also stripped of his dignity.
124. That as a result of Defendants' negligent actions, James Boyd suffered emotional distress.
125. That as a result of Defendants' negligent actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.
126. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR A TWELTH CAUSE OF ACTION
(Alter Ego/Piercing the Corporate Veil)

127. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
128. That upon information and belief, Magnolia Place of Greenville, as it has been known for many years under various corporate names, was dominated and controlled by Defendants FLTCH, Fundamental Clinical Consulting, LLC, Fundamental Administrative Services, LLC Fundamental Clinical and Operational Services, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC and Magnolia Place, before, during, and

after James Boyd's residency. These Defendants siphoned profits from the nursing homes chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries and suffering, including that of James Boyd at Magnolia Place of Greenville.

FOR A THIRTEENTH CAUSE OF ACTION
(Amalgamation of Interests)

129. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
130. That the Defendants are and have been operating as an amalgamation of interest creating a blurred corporate identity through an integrated enterprise and/or joint venture
131. That upon information and belief, the Defendants share a common internet website and intranet site.
132. That upon information and belief, the Defendants share a common location; common headquarters; common policies and procedures; and common in-house counsel.
133. That upon information and belief, Defendants share a common executives and officers.
134. That upon information and belief, Defendants participate in the commingling of funds and revenue and file one tax return for all Magnolia Place entities.

FOR A FOURTEENTH CAUSE OF ACTION
(Conversion)

135. Plaintiff restates and re-alleges every allegation set forth above as if fully stated in verbatim herein.
136. That James Boyd has a right to obtain copies of his medical treatment records.
137. That these records belong to James Boyd, not to Defendants, and James Boyd has a right to obtain a copy of these records.
138. That James Boyd hired Anastopoulo Law Firm ("Firm") to represent him.
139. That Firm required medical records from Defendants in order to prosecute a possible lawsuit.
140. That James Boyd executed a HIPAA release giving Defendant(s) permission to release the records to Firm.
141. That Firm requested the records, in writing, on November 9, 2016.
142. That Firm offered to pay the costs of copying and mailing the records.
143. That upon information and belief, Defendant(s) did not produce James Boyd's entire medical chart and records as requested.
144. That Defendants assumed and exercised the unauthorized right of ownership over the medical records of James Boyd to the exclusion of Plaintiff's rights.
145. That as a result of Defendant's conversion of Plaintiff's medical file, Plaintiff has suffered:
- a. The loss of use of these records for impending litigation;
 - b. Consequential and incidental damages;
 - c. Aggravation;
 - d. Inconvenience; and

e. Embarrassment.

146. That Defendants' conduct, as described above evidences a flagrant disregard of legal rights as to warrant the imposition of actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

____ s/Stefan B. Feidler _____
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina

This 27 day of March, 2018.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD, JR.,

Plaintiff,

v.

THE OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;
and FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or attorneys, Stefan B. Feidler , Eric M. Poulin, Roy T. Willey, IV, at his/their office, 32 Ann Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 19 day of 9, 2018.

ANASTOPOULO LAW FIRM, LLC

s/Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD, JR.,

Plaintiff,

v.

THE STATE OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;
and FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,

Defendant(s).

**SECOND AMENDED COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendant, alleges and says as follows:

CASE SYNOPSIS

1. James C. Boyd, Jr. was born and raised in Chapin, South Carolina. After high school, James made his living through hard work and manual labor. Before June 3, 2016, James was working for a refrigeration company. James moved in with his mother to help her with daily chores and give her some financial assistance. Unfortunately, James life has changed forever and he is now dependent on others for every aspect of his life.
2. On the morning of June 3, 2016, James was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch, eventually being rushed to Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.
3. On June 30, 2016, James was admitted into Defendants' facility. By August 5, 2016,

James had developed a sacral stage III/IV pressure wound(s), pressure ulcer of right and left heel - unstageable. On August 17, 2016, James was admitted into a hospital with fever, sacral wound, and sacral osteomyelitis and eventually diagnosed with sepsis, sacral wound, and stage IV pressure ulcer. By December 12, 2016, James was diagnosed with a stage III pressure ulcer of sacral region and unstageable pressure ulcer of left heel. By February 2, 2017, James was diagnosed with sepsis due to infected stage IV decubitus ulcer. James continues to struggle with these injuries. Liability is clear in this case.

PARTIES & JURISDICTION

4. That the Plaintiff, James Boyd, Jr., is a citizen and resident of Greenville County, State of South Carolina.
5. That upon information and belief, Defendant THI of South Carolina at Greenville at Magnolia, LLC, (hereinafter "Defendant Magnolia") is incorporated in the State of Delaware with its principal place of business in Greenville County, and Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, State of South Carolina 29201.
6. That the Defendant Fundamental Administrative Services, LLC (hereinafter "FAS") is a business organized and existing under the laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, nursing home management and administration, direction, operation and purchasing services as well as oversight in the hiring and firing of suppliers and vendors. This Defendant, through its provision of services, maintains agents and transacts business, deriving substantial revenue therefrom, in Greenville County, South Carolina. Upon information and belief, through its individual actions and in concert with its affiliates, parent corporations and

subsidiaries, this Defendant engaged in oversight, management, and direction and operation of nursing home facilities in Greenville County, South Carolina, deriving substantial revenue therefrom, and by virtue of it transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

7. That the Defendant Fundamental Clinical and Operational Services, LLC (hereinafter “FCOS”) is a business organized and existing under the laws of the State of Delaware providing clinical services to nursing home facilities by employing physicians, nurses, dietary, therapy, administrative, nursing aide, and other related staff to provide health services to patients and who represented itself to the Plaintiff and the public at large as being highly skilled in providing clinical consulting services to skilled nursing healthcare centers and to the residents of such skilled nursing healthcare centers such as James Boyd. This Defendant owns property, advertises, maintains agents, and/or transacts business, deriving substantial revenue therefrom in Greenville County, South Carolina, both through its individual actions and through its affiliates and subsidiaries. At all times relevant herein FCOS was and is a wholly owned subsidiary of FAS and provides nursing, dietary, therapeutic, administrative, and other related services on behalf of Magnolia place. The acts of FCOS were directed by one or more of the above named parent and/or affiliated companies. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of FCOS acted on behalf of themselves and on behalf of FCOS, and FCOS acted on behalf of Magnolia Place. That this Court further

has jurisdiction over FCOS by virtue of its transacting business in Greenville County, South Carolina, owning and/or leasing property directly or indirectly in Greenville County, South Carolina, maintaining agents and employees in Greenville County, South Carolina, and committing tortious acts both outside and inside South Carolina causing injury to the Plaintiff in Greenville County.

8. That Defendant Magnolia, FAS, and shall hereinafter be collectively referred to as “Nursing Home Defendants” or “Defendants”.
9. That the Nursing Home Defendants collectively were aware of failures to provide adequate care as described both above and below and were aware of residents such as James Boyd and knew that the failures that existed at the facility resulted from the decisions made by the Nursing Home Defendants to purposefully under-staff and underfund the facility in a way that would maximize corporate profits for the Nursing Home Defendants rather than to provide adequate and proper care to residents such as James Boyd. Furthermore, the acts, omissions, and decisions of the Nursing Home Defendants directly affected resident care such that of James Boyd and directly caused her injuries. That further all of the Nursing Home Defendants, even those aside from the licensee, used their position to directly or indirectly control or manage the budget, staff, and level of care at the facility which directly affected and caused injury to James Boyd. These Defendants acted as each other’s alter ego, acted in a joint enterprise, acted in a common business purpose, and with an amalgamation of interest. Further, these Defendants are each directly liable for their own acts of negligence. The acts of the Nursing Home Defendants were negligent, willful, wanton, grossly negligent, and in reckless disregard for the safety and wellbeing of patients such as James Boyd.

10. That Plaintiff filed Notice of Intent, Expert Affidavit, and Plaintiff's Responses to Standard and First Interrogatories. Pursuant to S.C. Code Ann § 15-36-100.
11. That the parties conducted pre-suit mediation and an ADR Report was filed with the Court. Pursuant to S.C. Code Ann § 15-36-10.
12. "[N]ot every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C. Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).
13. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).
14. "The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care." Id. (further citation omitted).
15. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).
16. That the nursing home abuse and neglect that is the subject of this action occurred in Greenville County, State of South Carolina.
17. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Greenville County, State of South Carolina.

BACKGROUND FACTS

18. That on or about June 30, 2016, James Boyd was admitted to Defendants' nursing home and/or long-term care facility, Magnolia Place, in Greenville, State of South Carolina.

19. That while residing at Defendants' facility, James Boyd was improperly cared for and/or abused and/or neglected by Defendants' staff.
20. That James Boyd's health rapidly declined while he was relying on Defendants' care at Defendants' facility.
21. That James Boyd was admitted to the hospital on multiple occasions from August 2016 to December 2016, while residing at Defendants' facility, for multiple injuries, including but not limited to sacral stage III/IV pressure wound, pressure ulcer of right and left heel – unstageable, high fever, sacral wounds, sacral osteomyelitis, sepsis, septic shock, urinary tract infection ("UTI"), and his condition worsened upon each hospital admission.
22. That sometime between James Boyd's hospital visits of August 2016, and December 2016, while at Defendants' facility, James Boyd sustained serious injuries including, but not limited to infected pressure wounds and Defendants':
 - a. failed to prevent said injuries;
 - b. caused said injuries;
 - c. never acknowledged said injuries;
 - d. never documented said injuries;
 - e. failed to assist Plaintiff's decedent; and
 - f. failed to timely assist James Boyd in obtaining treatment for said injuries.
23. That upon information and belief, the Department of Health and Human Resources (hereinafter "DHEC") conducted a survey of Defendants' facility shortly after James Boyd's residency and found multiple deficiencies, including, but not limited to:
 - a. Providing care by qualified persons according to each resident's written plan of care;

- b. Assisting those residents who need total help with eating/drinking, grooming and personal and oral hygiene;
 - c. Making sure that residents with reduced range of motion get proper treatment and services to increase range of motion;
 - d. Making sure that the nursing home area is free from accident hazards and risks and provide supervision to prevent avoidable accidents; and
 - e. Setting up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action.
24. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to provide care by qualified persons according James Boyd's written plan of care.
25. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to assist James Boyd total help with eating/drinking, grooming and personal and oral hygiene.
26. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to make sure James Boyd received proper treatment and services to increase his range of motion.
27. That upon information and belief, as referenced in the DHEC survey, and as it pertains to James Boyd, the Defendants failed to set up an ongoing quality assessment and assurance group to review quality deficiencies quarterly, and develop corrective plans of action as it pertains to James Boyd. During his residency at Defendants' facility while under Defendants' care.

28. That between August 2016 and December 2016, James Boyd was admitted to the hospital with serious injuries, which caused him to have to endure an extended stay at the hospital for several days and/or weeks as a result of Defendants' lack of care.

FOR A FIRST CAUSE OF ACTION
(Negligence / Gross Negligence)

29. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

30. That Defendants owed a duty to the Plaintiff as providers to act in a reasonable fashion, provide a safe and adequate facility and provide timely care to the Plaintiff in that of similar providers.

31. That the resulting injuries and damages to Plaintiff were caused proximately by one or more of the following negligent, grossly negligent, careless, reckless, willful, wanton, and unlawful acts, and/or omissions and/or breach of duty of Defendants in any one or more of the following respects:

- a. In deviating from the standard of care for medical and long-term care providers.
- b. In violating the Omnibus Adult Protection Act for South Carolina §43-35-25 which requires that any "physician, nurse, dentist, optometrist, medical examiner, coroner, other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher, counselor, psychologist, mental health or intellectual disability specialist, social or public assistance worker, caregiver, staff or volunteer of an adult day care center or of a facility, or law enforcement officer having reason to believe that a

vulnerable adult has been or is likely to be abused, neglected, or exploited shall report the incident.”

- c. In violating the Nurse Practice Act of South Carolina §40-33-80 by failing to thoroughly investigate complaints and violations.
- d. In violating South Carolina Department of Health & Environmental Control (SC DHEC) Regulation Number 61-17, § 800 et. Seq., which requires that all entries in the medical record for each resident are to be adequate and complete.
- e. In violating 42 CFR §483.75 which requires that:
 - i. Medical records be maintained in accordance with acceptable professional standards and practices that are “complete, accurately documented, and readily accessible.”
 - ii. The facility be administered in a matter that allows the resident to maintain his/her highest level of physical well-being.
 - iii. The facility be operated and provide services in compliance with all applicable Federal, State, and local laws, regulations, and code and with accepted professional standards and principles that apply to professionals providing services in such a facility.
- f. In violating 42 CFR §483.10 regarding the Plaintiff’s right to a dignified existence including, but not limited to notification of changes, which required the Defendants to immediately consult with a resident’s physician and notify a resident’s legal representative when there is a significant change in the

resident's physical, mental, or psychosocial status or need to alter treatment significantly due to adverse consequences.

- g. In violating 42 CFR §483.25 regarding quality of care, which requires that:
 - i. Each resident must receive and the facility must provide necessary care and services in accordance with the comprehensive assessment and plan of care.
 - ii. "A resident who is unable to carry out activities of daily living received the necessary services to maintain good nutrition, grooming, and personal and oral hygiene."
 - iii. The facility ensure a resident maintains acceptable parameters of nutritional status such as body weight and protein levels and receives a therapeutic diet when there is a nutritional problem.
 - iv. "Each resident receives adequate supervision and assistance devised to prevent accidents."
 - v. The facility provide the resident with sufficient fluids to maintain proper hydration and health.
- h. In violating 42 CFR §483.30, regarding nursing services, which requires nursing homes to have sufficient staff to provide nursing related services to attain or maintain the highest practicable physical well-being.
- i. In failing to provide James Boyd with the reasonably required care expected of and typically exercised by similarly situated professional medical care providers.

- j. In failing to acknowledge and/or properly document and/or record James Boyd's injuries and/or physical conditions while in Defendants' care.
- k. In causing James Boyd and/or Plaintiff to incur medical costs associated with numerous visits and extended stays at the hospital.
- l. In causing James Boyd and/or Plaintiff to incur the costs of transferring James Boyd to another facility.
- m. In causing and/or refusing to alleviate James Boyd's severe pain and suffering.
- n. In causing James Boyd to suffer from anxiety and/or mental anguish and/or emotional and/or psychological pain and suffering as a result of Defendants' abuse and/or neglect during and/or after James Boyd resided at Defendants' facility.
- o. In causing Plaintiff's emotional and/or psychological pain and suffering and/or mental anguish;
- p. Failure to develop a plan of care for James Boyd at any time prior to or during his stay at Defendants' facility;
- q. Failure to conduct accurate assessments of James Boyd during his time at Defendants' facility;
- r. Failure to provide goods and services to prevent the development of UTI infection;
- s. Failure to provide sufficient fluids to maintain health and adequate hydration and/or develop a plan for provision of the same;

- t. Failure to provide the care, goods, and/or services necessary to maintain the health or safety of a vulnerable adult;
- u. Failure to properly and/or adequately and/or timely record and/or document and/or monitor patient's blood pressure and/or intake of fluids;
- v. Failure to properly and/or adequately and/or timely record and/or document patient's severe injuries;
- w. In any such other particulars as may be ascertained through discovery or shown at trial.
- x. Additionally, James Boyd's injuries were caused by the Defendants' deviations from the acceptable standards of care.

All of which were direct and proximate cause of the injuries and damages suffered by the Plaintiff, said acts being in violation of the Laws of the State of South Carolina.

32. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of Defendants, as is set forth more fully above, James Boyd and his beneficiaries were injured, endured pain and suffering, have suffered mentally and emotionally, have incurred various expenses, and have otherwise been damaged and injured.
33. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and wantonness of all Defendants, as is set forth more fully above, James Boyd suffered in various ways and wrongfully died because of receiving inadequate medical care while in Defendants' care.

34. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory, and exemplary or punitive damages for his personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that he may be entitled, to be determined by a jury.
35. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, James Boyd and his beneficiaries have been damaged and injured in the following respects:
- a. James Boyd endured physical pain and suffering as a result of the serious injuries he sustained while in Defendants' care.
 - b. James Boyd endured physical pain and suffering as a result of his dehydration and dangerously low blood pressure which Defendant caused and/or exacerbated and/or failed to appropriately address and/or failed to properly monitor.
 - c. James Boyd suffered from anxiety, mental anguish, and emotional and/or psychological pain and suffering as a direct result of Defendants' breach of duty and/or neglect and/or abuse.
 - d. James Boyd incurred medical costs for the hospital visits and extended stay James Boyd endured.
 - e. James Boyd incurred costs associated with transferring James Boyd to another facility.

- f. Plaintiff suffered from emotional and/or psychological pain and suffering as a result of the Defendants' neglect and/or abuse.

36. Notwithstanding undertaking that duty and while James Boyd was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of James Boyd and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to James Boyd, and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care.

37. The Defendants deviated from the standard of care and skill exercised by nurses generally and under similar conditions and like surrounding circumstances as those presented by James Boyd. In particular, without limitation, they deviated from the standard of care as set forth above.

38. That Defendants knew or should have known that James Boyd would suffer foreseeable financial injury, including hospital and/or medical expenses and costs of transfer to another health care facility, as a result of Defendants' failure to exercise ordinary care as set forth more fully above.

39. The Defendants further deviated:

- a. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;
- b. In failing to properly train and supervise the personnel and staff and employees at the Defendants' facility with regard to James Boyd's care;
- c. In failing to relieve incompetent and/or improperly trained and/or negligence staff and employees at the Defendants' facility;

- d. In failing to properly revise and modify plans of care for James Boyd in response to James Boyd's needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of James Boyd, so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate, and current training, credentials and skills to properly prevent James Boyd from suffering injury and pain;
- h. In failing to have in place proper and adequate policies, protocols, procedures, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, of if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and fall prevention procedures;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and fall prevention procedures were available to agents, servants and employees of the Defendant;

- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent judgment and skill;
 - l. In failing to ensure that James Boyd had proper care;
 - m. In failing to properly document the medical records of James Boyd;
 - n. In failing to properly document significant clinical findings; and
 - o. In any such other particulars as may be ascertained through discovery or shown at trial.
40. That as a direct and proximate cause of the Defendants' conduct, as aforesaid, James Boyd, for whom this action is brought, has experienced economic loss associated with medical expenses and is entitled to relief for the same.

FOR A SECOND CAUSE OF ACTION

Negligence per se

41. Plaintiff restates and re-alleges every allegation set forth above as if states herein verbatim.
42. The Defendants' facility is a long term health care provider who has a duty to abide by certain state regulations in the care and treatment of their residents.
43. The state regulations combine to form a minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, James Boyd.
44. The Defendants failed to abide by said standards, rules and regulations promulgated by the State of South Carolina in their treatment and care of James Boyd.

45. The standards, rules and regulations promulgated by the state of South Carolina were specifically enacted for the benefit of the class of persons for which James Boyd was a member.

46. As a direct and proximate result of the Defendants' negligence, recklessness, carelessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations promulgated by the State of South Carolina, James Boyd suffered severe injuries as described above, constituting negligence *per se*.

FOR A THIRD CAUSE OF ACTION
Breach of Contract

47. The Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

48. James Boyd entered into a contract with Defendants for the adequate provision of his care, treatment, and safety.

49. Pursuant to such agreement, the Defendants promised to care for James Boyd, exercise due care, and follow all state and federal laws and regulations relating to care of residents of long-term health care facilities.

50. In exchange for such promises, James Boyd agreed to compensate the Defendants for such care.

51. This bargained-for exchange constitutes a contract.

52. The Defendants breached the contract by not exercising due care, by not following state or federal laws and regulations relating to care of patients/residents of long-term health care facilities, and by its acts and omissions as described in the Complaint or as may be proven through discovery or at trial.

53. James Boyd was deprived of the benefit of the bargain, and suffered damages which directly and proximately flowed from the breach, and were of the kind to arise and flow from such breach.

FOR A FOURTH CAUSE OF ACTION
(Fraud / Misrepresentation / Spoliation)

54. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

55. The Defendants, through deception, artifice and circumvention, successfully defrauded James Boyd, who trustingly submitted to Defendants' care and on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care;
- b. That the Defendants would adequately staff the long-term care facility and James Boyd would be served by adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and
- d. Such other misrepresentations as are set forth more fully above in this Complaint or may be ascertained through further discovery or proven at trial.

56. At the time of James Boyd's admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similarly situate consumers to believe the above representations were true.

57. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placement of themselves and/or of their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.
58. The Defendants fraudulently concealed Defendants' inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
59. The representations made and concealments done by the Defendants were material to James Boyd and his family.
60. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
61. James Boyd and his family were unaware of the falsity of the representations made by the Defendants.
62. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
63. As a result of the Defendants' fraud, misrepresentations, and concealments, James Boyd subsequently suffered damages and injuries while living at Defendants' facility.
64. As a proximate cause of the Defendants' fraud and misrepresentation, James Boyd suffered physical injuries, pain and suffering as previously alleged.

FOR A FIFTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

65. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

66. James Boyd and Defendants are “persons” within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

67. The Defendants, by conducting business in the state of South Carolina, is engaged in commerce within the meaning of Code Section 39-5-10(b).

68. The Defendants’ actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to James Boyd and his family that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure James Boyd received safe and adequate care; that the Defendants would adequately staff the long-term care facility and James Boyd would enjoy adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of James Boyd and the care rendered to her; and such other particulars as are set forth above in this Complaint or may be shown through discovery or at trial;
- b. Further, at the time of James Boyd’s admission to care, the Defendants promoted and disseminated the above representations and information which would lead James Boyd, his family, and other similar situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce James Boyd, his family and others like them into placing himself or his relatives in

the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

- c. The Defendants fraudulently concealed their inability to care for James Boyd according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by Defendants were material to James Boyd and his family.
- e. At the time the Defendants made such representations, he/she/they knew such affirmative claims of service were false.
- f. James Boyd and his family were unaware of the falsity of the representations made by Defendants.
- g. James Boyd and his family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, James Boyd subsequently suffered damages and injuries while a patient/resident at Defendants' facility.

69. The Defendants' acts are capable of repetition and, upon information and belief, have been repeated with other residents.

70. The Defendants' conduct adversely affects the public interest of South Carolina.

71. The Defendants knew or reasonably should have known Defendants' conduct violated the Unfair Trade Practices Act.

72. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, James Boyd suffered an ascertainable loss of money, physical injuries, and pain and suffering as previously alleged.

73. The Plaintiff is entitled to recover actual damages, which amount should be tripled, pursuant to South Carolina law together with interest and attorneys' fees.

FOR A SEVENTH CAUSE OF ACTION
(Elder Abuse)

74. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.

75. Pursuant to §45-35-10(11) of the South Carolina Omnibus Adult Protection Act, a "vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for their own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical mental or emotional dysfunction.

76. Given James Boyd's age and health, the latter of which included, but is not limited to his quadriplegic state, at the time he was under the supervision and care of the Defendant(s), James Boyd met the classification for "vulnerable adult" under the South Carolina Omnibus Protection Act §45-35-10(11).

77. Pursuant to §45-35-10(2) of the South Carolina Omnibus Protection Act a "caregiver" is defined as a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is

not limited to day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

78. The Defendants were and are caregivers under the South Carolina Omnibus Adult Protection Act §45-35-10(2) and were responsible for James Boyd's care and well-being.
79. Under the South Carolina Omnibus Adult Protection Act §45-35-10(6), "neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.
80. The Defendants as caregiver(s), neglected James Boyd within the meaning of the South Carolina Omnibus Adult Protection Act §45-35-10(6). The neglect of James Boyd was negligent, reckless, and malicious. The Defendants knew or should have known James Boyd's advanced age required an increased level of care.
81. Defendants knew or should have known that a heightened level of observation was necessary and critical to James Boyd's well-being, health and prognosis.
82. The Defendants knew or should have known that the patient care environment lacked the number of qualified staff necessary for proper observation and care critical to James Boyd's health and recovery.
83. The Defendants' knew or should have known that James Boyd's was left in a patient care environment where the resources that were critical for recovery and to prevent injury were unavailable constituting neglect under South Carolina Omnibus Adult Protection Act §45-35-10(6).

84. The neglect caused serious personal injuries resulting in conscious pain and suffering.
85. The Defendants' negligent, reckless, and malicious acts were a direct and proximate result of the damages herein.
86. As a result, punitive damages and attorneys' fees are appropriate pursuant to South Carolina Omnibus Adult Protection Act §43-35-80(A), which allows for private civil causes of action to be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect or exploitation.

FOR AN EIGHTH CAUSE OF ACTION
(Civil Conspiracy)

87. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
88. The Defendants deliberately and knowingly participated in civil conspiracy in that they agree and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to obscure the true ownership of the corporations held which hold control of the facility and hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and of this they are jointly and severally liable.
89. As a direct and proximate result of the conspiracy as alleged herein, James Boyd suffered the following special damages:
- a. Loss of dignity;
 - b. Mental anguish;
 - c. Pain, suffering, humiliation;
 - d. Injuries to his body;

- e. Infections;
 - f. Compromise to muscular system and tendons;
 - g. Compromise to mental status;
 - h. Severe physical injury and other damages outlined hereinabove;
 - i. Have incurred legal fees and costs; and
 - j. In such other and further as discovery and trial shall prove.
90. As a result, Plaintiff is entitled to an award of actual, special, and punitive damages in the amount to be determined by the jury.

FOR A NINTH CAUSE OF ACTION
(Corporate Negligence)

91. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
92. That Defendants had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.
93. That the facility was negligently managed by Defendants, who were working together to manage and operate the facility.
94. That the facility was negligently administered in violation of 42 C.F.R. 483.75 by Defendants who were working together to govern, administer, control, manage and operate the facility.
95. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of James Boyd. More particularly the Defendants were negligent in the following particulars:

- a. Failing to properly supervise as required, and as promised to the family upon admission;
- b. Failing to provide the care, supervision and monitoring of patients, residents, and in particular James Boyd, which was required by law and which was necessary for her health and safety;
- c. Failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, James Boyd;
- d. Failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of James Boyd;
- e. Failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
- f. Failing to hire a sufficient number of trained and competent staff;
- g. Failing to follow the licensing and regulatory rules of the State of South Carolina;
- h. Failing to develop and follow an appropriate Plan of Care;
- i. Failing to properly train employees to deal with residents who were unable to care for themselves;
- j. Failing to follow physicians' orders;
- k. Failing to prevent decubitus ulcers from developing and/or failing to provide necessary and proper treatment of the ulcers;
- l. Failing to properly monitor James Boyd;
- m. Failing to appropriately diagnose James Boyd's condition;

- n. Failing to provide James Boyd with appropriate medications and/or nutrition which would promote the healing and resolve infection to the wound areas;
- o. Failing to turn and reposition James Boyd to prevent pressure ulcers from forming and to promote healing;
- p. Failing to ensure that James Boyd and her wounds were kept clean and dry;
- q. Failing to provide adequate nutrition and hydration;
- r. Failing to conduct weekly body audits to discover pressure ulcers;
- s. Failing to ensure that a pressure-relieving mattress was immediately provided for James Boyd;
- t. Failing to update the written plan of care to include necessary interventions to promote wound healing;
- u. Failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;
- v. Failing to consult with and/or report to the physician and/or the Registered Dietitian in a timely manner James Boyd's decrease in dietary intake;
- w. Failing to assist James Boyd with her meals in order to maintain her highest practicable level of physical well-being;
- x. Failing to keep James Boyd properly hydrated and nourished;
- y. Failing to keep James Boyd from suffering significant weight loss;
- z. Failing to keep a proper record of James Boyd's weight;
- aa. Failing to keep James Boyd's chart free of fraudulent documentation;
- bb. Failing to prevent James Boyd's multiple hospitalizations;
- cc. Failing to monitor and assess James Boyd adequately for pain and discomfort;

- dd. Failing to treat James Boyd with dignity and respect;
 - ee. Failing to exercise due care; and
 - ff. By other negligent acts and/or omissions yet to be determined or defined.
96. That as a result, James Boyd experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills.
97. That the aforesaid acts and delicts were a contributing cause of James Boyd's damages, injuries, and were the sole and proximate cause of the damage and injuries sustained by James Boyd.

FOR A TENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

98. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
99. That as a result of such intentional acts and omissions, James Boyd was inflicted with severe emotional distress.
100. That as a result of such extreme and outrageous conduct, James Boyd was also stripped of his dignity.
101. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered emotional distress.
102. That as a result of Defendants' abusive and authoritative actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.
103. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR AN ELEVENTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

104. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
105. That as a result of such negligent acts and omissions, James Boyd was inflicted with severe emotional distress.
106. That as a result of such negligent conduct, James Boyd was also stripped of his dignity.
107. That as a result of Defendants' negligent actions, James Boyd suffered emotional distress.
108. That as a result of Defendants' negligent actions, James Boyd suffered severe distress which no reasonable person could be expected to endure.
109. That as a result of said behavior by Defendants, James Boyd alleges that Defendants did not act in good faith or in a reasonable manner, and so James Boyd was subjected to considerable distress and embarrassment.

FOR A TWELTH CAUSE OF ACTION
(Alter Ego/Piercing the Corporate Veil)

110. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
111. That upon information and belief, Magnolia Place of Greenville, as it has been known for many years under various corporate names, was dominated and controlled by Defendants and Magnolia Place, before, during, and after James Boyd's residency. These Defendants siphoned profits from the nursing homes chain through self-dealing between the entities, excessively compensated themselves and other

executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries and suffering, including that of James Boyd at Magnolia Place of Greenville.

FOR A THIRTEENTH CAUSE OF ACTION
(Amalgamation of Interests)

112. Plaintiff restates and re-alleges every allegation set forth above as if stated herein verbatim.
113. That the Defendants are and have been operating as an amalgamation of interest creating a blurred corporate identity through an integrated enterprise and/or joint venture.
114. That upon information and belief, the Defendants share a common internet website and intranet site.
115. That upon information and belief, the Defendants share a common location; common headquarters; common policies and procedures; and common in-house counsel.
116. That upon information and belief, Defendants share a common executives and officers.
117. That upon information and belief, Defendants participate in the commingling of funds and revenue and file one tax return for all Magnolia Place entities.

FOR A FOURTEENTH CAUSE OF ACTION
(Conversion)

118. Plaintiff restates and re-alleges every allegation set forth above as if fully stated in verbatim herein.
119. That James Boyd has a right to obtain copies of his medical treatment records.
120. That these records belong to James Boyd, not to Defendants, and James Boyd has a right to obtain a copy of these records.
121. That James Boyd hired Anastopoulo Law Firm ("Firm") to represent him.
122. That Firm required medical records from Defendants in order to prosecute a possible lawsuit.
123. That James Boyd executed a HIPAA release giving Defendant(s) permission to release the records to Firm.
124. That Firm requested the records, in writing, on November 9, 2016.
125. That Firm offered to pay the costs of copying and mailing the records.
126. That upon information and belief, Defendant(s) did not produce James Boyd's entire medical chart and records as requested.
127. That Defendants assumed and exercised the unauthorized right of ownership over the medical records of James Boyd to the exclusion of Plaintiff's rights.
128. That as a result of Defendant's conversion of Plaintiff's medical file, Plaintiff has suffered:
- a. The loss of use of these records for impending litigation;
 - b. Consequential and incidental damages;
 - c. Aggravation;
 - d. Inconvenience; and

e. Embarrassment.

129. That Defendants' conduct, as described above evidences a flagrant disregard of legal rights as to warrant the imposition of actual and punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina

This 19 day of September, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONN PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

JAMES BOYD, JR. ,) CASE NO. 2018-CP-23-01934
))
))

PLAINTIFF,)
))

vs.)
))

THI OF SOUTH CAROLINA, LLC,)
D/B/A MAGNOLIA PLACE-)
GREENVILLE; HUNT VALLEY)
HOLDINGS, LLC; THI OF)
BALTIMORE, INC.; FUNDAMENTAL)
CLINICAL AND OPERATIONAL)
SERVICES LLC; FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC;)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC; LEONARD)
GRUNSTEIN BOTH INDIVIDUALLY)
AND AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; MURRAY)
FORMAN BOTH INDIVIDUALLY AND)
AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; AND RUSTY)
FLATHMANN BOTH INDIVIDUALLY)
AND AS EMPLOYEE/MANAGER OF)
MAGNOLIA PLACE ,)
))
DEFENDANTS.)

**DEFENDANT THI OF SOUTH
CAROLINA AT MAGNOLIA PLACE AT
GREENVILLE, LLC’S (MISIDENTIFIED
IN PLAINTIFF’S COMPLAINT AS “THI
OF SOUTH CAROLINA, LLC D/B/A
MAGNOLIA PLACE-GREENVILLE)
MOTION TO DISMISS AND PETITION
TO COMPEL ARBITRATION AND STAY
PROCEEDINGS**

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville (misidentified in Plaintiff’s Complaint as “THI of South Carolina, LLC d/b/a Magnolia Place-Greenville” and hereinafter referred to as “this Defendant” or the “Facility”), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel

may be heard, for an Order dismissing this action pursuant to South Carolina Rules of Civil Procedure 12(b)(4), 12(b)(5), 12(b)(1), 12(b)(6), 4, and compelling this action to arbitration pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq.

Plaintiff has sued this Defendant for Negligence, Gross Negligence, and Negligence per Se, Breach of Contract, Fraud, Misrepresentation, “Spoliation”, Violation of the South Carolina Unfair Trade Practices Act, and Elder Abuse pursuant to the Plaintiff’s residency at the Facility.

As an initial matter, subject to and without waiving its right to compel this matter to arbitration, this Defendant has not been served with a copy of the Summons and Complaint and files this responsive pleading only out of an abundance of caution. Specifically, it appears that THI of South Carolina, LLC’s (“THISC”) registered agent was served with the Summons and Complaint on April 2, 2018 by certified mail. (See Certificate of Service, attached hereto as **Exhibit A**). The Certificate of Service lists the entity served as “THI of South Carolina, LLC d/b/a Magnolia Place-Greenville.” No such entity exists. THISC does not do business as “Magnolia Place-Greenville” and is not authorized to accept service on behalf of this Defendant, a licensed skilled nursing facility who operates as “Magnolia Place of Greenville.” However, as Plaintiff’s Complaint states allegations against both this Defendant and THISC, it is apparent that Plaintiff has unsuccessfully attempted to serve a copy of the Summons and Complaint upon each as a defendant in the present action. Accordingly, this Defendant has not been properly served with a copy of the Summons and Complaint and should be dismissed from the action pursuant to Rules 12(b)(4), 12(b)(5), and 4, SCRCF.

Additionally, prior to being admitted to the Facility, Plaintiff entered into an Arbitration Agreement with the Facility. (See Arbitration Agreement attached as **Exhibit B**). The parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not

apply; rather, the arbitration would be governed by the Federal Arbitration Act, because the services and reimbursement thereof to be provided to the Plaintiff upon his admission to the facility involved interstate commerce. *See* Ex. B. As a result, this action must be dismissed or stayed and compelled to arbitration pursuant to Sections 3 and 4 of the FAA. Further, this Defendant respectfully requests that this Honorable Court specifically stay any requirement to file any further responsive pleading as well as any requirement to respond to any other motions or discovery filed or served by Plaintiff while the current motion is pending.

This Motion and Petition are supported by the attached Certificate of Service, Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

(signature block on following page)

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant THI of South Carolina

at Magnolia Place at Greenville d/b/a Magnolia

Place of Greenville

Charleston, South Carolina

Dated: May 2, 2018

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Magnolia Place of Greenville ("Facility"), its agents, employees and servants, and James Boyd ("Resident") or ("Resident's Durable Power of Attorney" for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

The parties acknowledge and agree that, because the services and reimbursement thereof effect a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

I understand and agree that I am giving up and waiving my right to a jury trial.

This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement. By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.

X Willie Ann Boyd 6/30/16
Resident/Representative Signature Date
Leola Butts 6/30/16
Authorized Agent of Facility Date

Printed Name of Resident/Representative
Leola Butts
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONN PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

JAMES BOYD, JR. ,) CASE NO. 2018-CP-23-01934
))
))

PLAINTIFF,)
))

vs.)
))

THI OF SOUTH CAROLINA, LLC,)
D/B/A MAGNOLIA PLACE-)
GREENVILLE; HUNT VALLEY)
HOLDINGS, LLC; THI OF)
BALTIMORE, INC.; FUNDAMENTAL)
CLINICAL AND OPERATIONAL)
SERVICES LLC; FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC;)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC; LEONARD)
GRUNSTEIN BOTH INDIVIDUALLY)
AND AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; MURRAY)
FORMAN BOTH INDIVIDUALLY AND)
AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; AND RUSTY)
FLATHMANN BOTH INDIVIDUALLY)
AND AS EMPLOYEE/MANAGER OF)
MAGNOLIA PLACE ,)
))

DEFENDANTS.)
))

**DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC'S
MOTION TO STAY PROCEEDINGS**

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Fundamental Administrative Services, LLC, hereinafter referred to as "this Defendant", by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Place at Greenville d/b/a Magnolia Place of Greenville (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

[signature block on following page]

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant Fundamental
Administrative Services, LLC*

Charleston, South Carolina

Dated: May 2, 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONN PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

JAMES BOYD, JR.,) CASE NO. 2018-CP-23-01934
))
))

PLAINTIFF,)
))

vs.)
))

THI OF SOUTH CAROLINA, LLC,)
D/B/A MAGNOLIA PLACE-)
GREENVILLE; HUNT VALLEY)
HOLDINGS, LLC; THI OF)
BALTIMORE, INC.; FUNDAMENTAL)
CLINICAL AND OPERATIONAL)
SERVICES LLC; FUNDAMENTAL)
ADMINISTRATIVE SERVICES, LLC;)
FUNDAMENTAL CLINICAL)
CONSULTING, LLC; LEONARD)
GRUNSTEIN BOTH INDIVIDUALLY)
AND AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; MURRAY)
FORMAN BOTH INDIVIDUALLY AND)
AS OWNER/OPERATOR OF)
MAGNOLIA PLACE; AND RUSTY)
FLATHMANN BOTH INDIVIDUALLY)
AND AS EMPLOYEE/MANAGER OF)
MAGNOLIA PLACE,)
))

DEFENDANTS.)
))

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S MOTION TO STAY
PROCEEDINGS**

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Fundamental Clinical and Operational Services, LLC, hereinafter referred to as "this Defendant", by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Place at Greenville d/b/a Magnolia Place of Greenville (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

[signature block on following page]

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC*

Charleston, South Carolina

Dated: May 2, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA, LLC,	)	
D/B/A MAGNOLIA PLACE-	)	
GREENVILLE; HUNT VALLEY	)	
HOLDINGS, LLC; THI OF	)	DEFENDANT THI OF SOUTH
BALTIMORE, INC.; FUNDAMENTAL	)	CAROLINA AT MAGNOLIA PLACE AT
CLINICAL AND OPERATIONAL	)	GREENVILLE, LLC’S (MISIDENTIFIED
SERVICES LLC; FUNDAMENTAL	)	IN PLAINTIFF’S COMPLAINT AS “THI
ADMINISTRATIVE SERVICES, LLC;	)	OF SOUTH CAROLINA, LLC D/B/A
FUNDAMENTAL CLINICAL	)	MAGNOLIA PLACE-GREENVILLE)
CONSULTING, LLC; LEONARD	)	MEMORANDUM IN SUPPORT OF
GRUNSTEIN BOTH INDIVIDUALLY	)	MOTION TO DISMISS AND COMPEL
AND AS OWNER/OPERATOR OF	)	ARBITRATION
MAGNOLIA PLACE; MURRAY	)	
FORMAN BOTH INDIVIDUALLY AND	)	
AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; AND RUSTY	)	
FLATHMANN BOTH INDIVIDUALLY	)	
AND AS EMPLOYEE/MANAGER OF	)	
MAGNOLIA PLACE ,	)	
	)	
DEFENDANTS.	)	
	)	

INTRODUCTION

COMES NOW the Defendant, THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville (misidentified in Plaintiff’s Complaint as hereinafter referred to as “Magnolia Place”, “Facility”, or “this Defendant”) and submits the following Memorandum in Support of its Motion to Dismiss pursuant to the Federal Arbitration Act

(“FAA”), 9 U.S.C. § 1, et seq, and South Carolina Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Plaintiff has sued this Defendant for Negligence, Gross Negligence, Negligence *Per Se*, Breach of Contract, “Fraud / Misrepresentation / Spoliation”, Violation of the South Carolina Unfair Trade Practices Act, Elder Abuse, Civil Conspiracy, Corporate Negligence, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, “Alter Ego/Piercing the Corporate Veil”, “Amalgamation of Interests”, and Conversion based upon his residency at this Defendant’s skilled nursing facility. However, this Defendant and Plaintiff entered into an Arbitration Agreement prior to his admission at the Facility which covers all allegations raised in the Complaint. Accordingly and for the reasons set forth herein, this Defendant respectfully requests that Plaintiff’s Complaint be dismissed and/or stayed and for the Court to compel arbitration pursuant to the contract between the parties.

FACTUAL BACKGROUND

The Plaintiff in this action, James Boyd, was admitted to Magnolia Place on June 30, 2016. Prior to his admission, Mr. Boyd entered into a number of contracts with the Facility. The contracts were each signed by Mr. Boyd’s mother, Wilda Boyd, as representative of Mr. Boyd during his admission on June 30, 2016. (**Exhibit 1**, Admission Agreement; **Exhibit 2**, Arbitration Agreement; **Exhibit 3**, Other Signed Agreements). These executed contracts included an Admission Agreement and an Arbitration Agreement. (Ex.1, Ex. 2). Based on these contracts and pursuant to the agreements set forth therein, Mr. Boyd was admitted to Magnolia Place and received skilled nursing care for the treatment of his multiple, serious comorbidities. During his stay at Magnolia Place, Mr. Boyd accepted the benefits of the contracts entered into on his behalf by his

representative, Wilda Boyd, including his admission to the Facility and his receipt of the skilled nursing care provided therein.

The Arbitration Agreement at issue defines Magnolia Place as the “Facility,” Mr. Boyd as the “Resident,” and Ms. Boyd as the “Representative.” The relevant provisions of the Arbitration Agreement state the following:

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility’s Admission Agreement, or breach thereof, or relating in any way to Resident’s stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively “Disputes”), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

Ex. 2. The Arbitration Agreement further provides:

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

Ex. 2. Regarding Ms. Boyd’s authority to sign on behalf of her son, the Arbitration Agreement states:

By his/her signature below, the executing party represents that he/she has the authority to sign on Resident’s behalf so as to bind the Resident as well as the Representative.

Ex. 2.

The Arbitration Agreement was executed by Ms. Boyd as “Representative” and Leola Burt, the Admissions Director of the Facility, on behalf of Magnolia Place. Because the acts complained of by the Plaintiff fall within the scope of the Arbitration Agreement, the Court

should dismiss the Plaintiff's action, or stay these proceedings, and compel this matter to arbitration.

ARGUMENT AND CITATION TO AUTHORITY

There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. *O'Neil v. Hilton Head Hosp.*, 115 F.3d 272, 273 (4th Cir.1997). Indeed, both federal and state policy favor arbitrating disputes. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) (“The policy of the United States and this State is to favor arbitration of disputes.”). “This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration.” *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Therefore, “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.” *Id.*, 338 S.C. at 41, 524 S.E. 2d at 846 (internal quotations and citations omitted).

I. THE FEDERAL ARBITRATION ACT GOVERNS THE ARBITRATION AGREEMENT AND THE CLAIMS ASSERTED BY THE PLAINTIFF IN THE COMPLAINT

As an initial matter, the Arbitration Agreement, by its terms and by law, is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014)(holding that skilled nursing facility admission agreements and residencies implicate interstate commerce, and thus are governed by the FAA). Indeed, in the Arbitration Agreement at issue in this case, the parties acknowledged and agreed that their transaction involved interstate commerce and would be governed by the FAA. *See* Ex. 2.

Under the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2. The language of the Act is mandatory and requires the enforcement of all arbitration agreements. Section 4 of the FAA provides, in pertinent part, as follows:

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

9 U.S.C. § 4 (emphasis added). “By its terms, the act leaves no place for the exercise of discretion by a... court, but instead mandates that... courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Indeed, “the basic purpose of the FAA is to overcome courts’ refusals to enforce agreements to arbitrate and ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement.” *Dean, supra*, 759 S.E.2d at 731 (internal quotations, citations, and punctuation omitted).

Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. As discussed and further described herein, such a binding and enforceable written agreement to arbitrate disputes exists in this case and Plaintiff’s claims should be dismissed and compelled to arbitration.

II. THE ARBITRATION AGREEMENT IS VALID AND ENFORCEABLE

A. The Plain Language of the Agreement Binds Plaintiff

Mr. Boyd's mother, Wilda Boyd, represented herself to staff and admissions personnel at Magnolia Place as her son's representative, with the authority to sign documents on Mr. Boyd's behalf and bind Mr. Boyd and the Facility pursuant to those documents. It was clearly Ms. Boyd's intention to bind Mr. Boyd according to the terms of the Admissions Agreement and Arbitration Agreement and Mr. Boyd evinced no intentions or directions to the contrary. In fact, Mr. Boyd has explicitly embraced his mother's authority to enter into contracts on his behalf by pursuing a Breach of Contract action against this Defendant based on allegations that this Defendant breached the Admissions Agreement. *See* Pltf. Complaint, ¶¶ 65 – 70. Consequently, Plaintiff is bound under the Arbitration Agreement and his claims must be dismissed and compelled to arbitration.

B. Wilda Boyd Possessed the Actual or Apparent Authority to Bind James Boyd under the Arbitration Agreement, and Plaintiff Should be Estopped from Denying the Validity of the Arbitration Agreement

a. Agency Relationship

A true agency relationship may be established by evidence of actual or apparent authority. *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117 (Ct. App. 2000). "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013) (quoting Restatement (Third) of Agency § 1.01 (2006)). "An agreement may result in the creation of an agency relationship although the parties did not

call it an agency and did not intend the consequences of the relationship to follow. Agency may be proved by circumstantial evidence showing a course of dealing between the two parties *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145-146, 425 S.E.2d 764, 773 (Ct. App. 1992).

In *Carraway v. Beverly Enters. Ala., Inc.*, 978 So. 2d 27 (Ala. 2007), the facts are substantially similar to the case at bar. There, the plaintiff was the brother of a resident of a nursing home facility who executed a number of documents on his sister's behalf upon her admission to the facility, including an arbitration agreement. The brother signed the documents as his sister's authorized representative but did not have a power of attorney for his sister at the time. Nevertheless, as in this case, the admissions agreement in *Carraway* provided that plaintiff was his sister's legal representative for the purposes of admission as he was her next-of-kin represented himself to be authorized to make health care decisions on her behalf. The arbitration agreement in *Carraway* was a separate document and was not a condition of admission to the facility. *Id.*

When signing the arbitration agreement, the brother in *Carraway* left the resident signature line blank and signed it as the "authorized representative" of his sister. Suit was later filed and the facility moved to compel arbitration, which the trial court granted. On appeal, the Alabama Supreme Court affirmed the trial court's decision holding, relevant here, that the resident's brother possessed the apparent authority to enter into the arbitration agreement on his sister's behalf, as evidenced by the fact that she never objected to him signing on her behalf and the arbitration agreement specifically provided that any person authorized by the resident may execute it on her behalf. *Id.* See also, *Tenn. Health Mgmt. v. Johnson*, 49 So. 3d 175 (Ala.

2010)(holding that a daughter possessed the apparent authority to enter into an arbitration agreement on her mother's behalf).

Applying *Carraway* to the instant facts, Wilda Boyd executed various admission documents on behalf of her son including the Arbitration Agreement. She executed these documents in her capacity as “representative.” (See Ex. 1, 2, 3). Just as in *Carraway*, the Arbitration Agreement provides that signing was on behalf of the resident. (See Ex. 2). It was Magnolia Place’s reasonable and justified belief that Ms. Boyd was her sons’ authorized representative and had the authority to execute the documents on his behalf. Indeed, Plaintiff’s pursuit of a Breach of Contract action against this Defendant represents clear and cogent evidence that Ms. Boyd was her son’s actual or apparent agent such that Plaintiff is bound under the terms of the Arbitration Agreement.

Moreover, by allowing Ms. Boyd to procure Mr. Boyd’s admission to the Facility and thereafter by accepting the benefits of the contracts entered into in connection with that admission, Mr. Boyd represented that Ms. Boyd was his authorized representative to act on his behalf in connection with his admission. See *R&G, supra*, 343 S.C. at 433, 540 S.E.2d at 118 (“When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.”). There is no evidence that Mr. Boyd ever attempted to repudiate or invalidate his mother’s actions during his admission to the Facility. Instead, Mr. Boyd accepted the benefits of these contracts with Magnolia Place and, as such, he ratified them through his conduct (*i.e.*, remaining at the Facility and receiving care and other services pursuant to his preferences, as laid out in the admissions

paperwork).¹ If Mr. Boyd's mother was not authorized to act on Mr. Boyd's behalf in admitting him to the Facility, certainly Mr. Boyd would have not stayed at the Facility. One cannot ratify that part of the contract under which he has accepted the benefits and avoid that part which he later deems to be disadvantageous. *See Southern Bell Telephone & Telegraph Co. v. WRNO Inc.*, 216 S.C. 533, 535-36, 59 S.E.2d 146, 147 (1950).

In the face of Plaintiff and Ms. Boyd's joint representation that Ms. Boyd was authorized to execute the admission paperwork, including the documents providing for Mr. Boyd's stay and the skilled nursing care provided at the Facility, Magnolia Place reasonably relied upon these representations in allowing Ms. Boyd to execute the paperwork and admit Plaintiff into the Facility. It would be disingenuous for the Plaintiff to now claim he should not be bound by a contract he entered into via his appointment of his mother as his agent and representative and benefitted from during his residency at Magnolia Place.

b. Equitable Estoppel

"When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, **he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances.**"

R & G, supra, 343 S.C. at 433, 540 S.E.2d at 118. To properly show estoppel in South Carolina,

¹ *See Dean v. Heritage Healthcare of Ridgeway, LLC*, 2014 WL 11802563, at *4 (S.C. Com. Pl. September 8, 2014)("To the extent the Plaintiff is correct that [the resident] had capacity to contract, I find that [the resident] gave apparent authority to her daughter to contract on her behalf or she ratified both contracts during her two and a half years residency."); *See also Fuller v. Eastern Fire & Cas. Ins Co* 240 S.C.75, 86, 124 S.E.2d 602, 608 (1962)(holding "[r]atification as it relates to the law of agency may be defined as the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent.").

this Defendant must show: “(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006).

This Defendant had no knowledge that Ms. Boyd was not her son’s authorized agent for purposes of executing the Admissions Agreement, Arbitration Agreement, and other admitting paperwork. This Defendant relied on the affirmative representations of Ms. Boyd and Plaintiff in admitting Mr. Boyd to the Facility for the provision of the skilled nursing care.

In *McCutcheon v. THI of S.C. at Charleston, LLC*, No. 2:11-CV-02861, 2011 WL 6318575 (D.S.C. Dec. 15, 2011), the facts are also substantially similar to the case at bar. (See *McCutcheon*, attached hereto as **Exhibit 4**). There, the plaintiff was the husband of a resident of a nursing home facility in South Carolina who executed a number of documents on his wife’s behalf upon her admission to the facility, including an arbitration agreement. Like here, the husband signed the documents as his wife’s authorized representative but did not have a power of attorney for his sister at the time. Nevertheless, as in this case, the admissions agreement in *McCutcheon* provided that plaintiff was his wife’s legal representative for the purposes of admission as he was her next-of-kin and represented himself to be authorized to make health care decisions on her behalf. Also like here, the arbitration agreement in *McCutcheon* was a separate document and was not a condition of admission to the facility.

Because the Court in *McCutcheon* determined that the arbitration and admission agreements should be merged under general principles of contract law (See, merger argument in following section), the Court determined that the plaintiff was bound to arbitrate his claims under the federal doctrine of equitable estoppel. *Id.* at *4. However, the Court also ruled that,

Even if the Arbitration Agreement and Admissions Agreement constitute two separate contract, plaintiff takes inconsistent positions regarding these contracts, which were executed by the same parties under the same purported authority. [Accordingly,] [i]t would be inequitable [] to allow plaintiff to assert that Elijah McCutcheon had authority to sign the Admissions Agreement on behalf of [his wife], but lacked such authority to sign the Arbitration Agreement. For these reasons, the court finds that plaintiff is estopped from denying the enforceability of the Arbitration Agreement.

Id. at *5.

Like in *McCutcheon*, it would be disingenuous and inequitable to allow Plaintiff to admit that his mother was his authorized agent as to the Admissions Agreement, but not the Arbitration Agreement.

Furthermore, among other causes of action, Plaintiff alleges the Facility is liable for Breach of Contract due to its alleged failure to provide adequate health care services to Mr. Boyd pursuant to the promises set forth in the Admissions Agreement. See Pltf. Complaint ¶¶ 65 – 70. Specifically, Plaintiff unambiguously states that, in exchange for the provision of health care services, Mr. Boyd “agreed to compensate the Defendants for such care” and this “bargained-for exchange constitutes a contract.” Id. ¶ 67, 68. Should Plaintiff now seek to deny the validity of the Arbitration Agreement, which was signed and executed contemporaneously with the Admissions Agreement by Plaintiff’s mother on his behalf, he should be equitably estopped from doing so. Put another way, it would be inequitable to allow Plaintiff to assert that Wilda Boyd had authority to sign the Admissions Agreement on his behalf, but lacked such authority to sign the Arbitration Agreement. The fact that Plaintiff now pursues a Breach of Contract action against this Defendant only further bolsters the impropriety of Plaintiff’s denial of the validity of the Arbitration Agreement.

In summary, there is a duly implemented Arbitration Agreement in place executed by Wilda Boyd as her son's actual and apparent agent. Under the terms of the Arbitration Agreement, Plaintiff is bound to arbitrate this matter. Moreover, to the extent Ms. Boyd was not authorized to execute the Arbitration Agreement on behalf of Plaintiff, which is denied, it would be inequitable for this Honorable Court to allow Plaintiff to enforce the Admissions Agreement and bring a cause of action for Breach of Contract under the Admissions Agreement, while simultaneously denying the validity of the Arbitration Agreement.

C. Wilda Boyd Possessed Inherent Agency Powers to Bind James Boyd to the Arbitration Agreement

Assuming arguendo that Ms. Boyd, on behalf of her son, lacked actual or apparent authority to enter into the terms of the Admissions Agreement, she still possessed sufficient inherent agency powers to render the agreement enforceable. Such powers are recognized by South Carolina courts and are used to enforce agreements where supposed unauthorized actions “accompany or are incidental to transactions which the agent is authorized to conduct....” See, §§ 8A, 161 Restatement (Second) of Agency (1958); Smith v. Fitton & Pittman, Inc., 264 S.C. 129, 212 S.E.2d 925 (1975)(abrogated on unrelated grounds)(examining whether party had properly demonstrated the existence of inherent agency powers); Chicago Title Ins. Co. v. Washington State Office of Ins. Com'r, 309 P.3d 372 (Wash. 2013); Daly v. Aspen Ctr. for Women's Health, Inc., 134 P.3d 450, 452 (Colo. App. 2005); Menard, Inc. v. Dage-MTI, Inc., 726 N.E.2d 1206, 1210-11 (Ind. 2000); Cange v. Stotler & Co., 826 F.2d 581, 591 (7th Cir. 1987)(“[t]he powers of an agent are, prima facie, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he

deals.”)(citing Lumbermen's Mut. Ins. Co. v. Slide Rule & Scale Eng'g Co., 177 F.2d 305, 309 (7th Cir. 1949)).

The basis for this doctrine is that, as between an equally innocent principal and third party, the third party should prevail. This well-established law follows from one of the cardinal principles of agency law: that third parties, such as Magnolia Place, should not be disadvantaged because they dealt with an agent rather than a principal. As set forth above, there can be no uncertainty that Ms. Boyd was authorized to admit her son to Magnolia Place. To the extent James Boyd takes issue with his mother’s authority to bind him to the Admissions Agreement and the specific terms therein, such actions merely accompanied and were incidental to Ms. Boyd’s authority to admit Plaintiff as a resident at Magnolia Place. Magnolia Place should not be disadvantaged for acting in accordance with the express representations of Ms. Boyd regarding her authority.

D. Wilda Boyd Possessed Statutory Authority under the S.C. Bill of Rights for Residents of Long-Term Care Facilities to Bind James Boyd under the Arbitration Agreement

In addition to Wilda Boyd’s actual, apparent, or implied authority to sign the Arbitration Agreement on Plaintiff’s behalf, Ms. Boyd possessed the statutory authority to do so and the Arbitration Agreement is binding against Plaintiff.

Wilda Boyd possessed statutory authority as Mr. Boyd’s “representative” under the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (“Bill of Rights”), S.C. Code Ann. §44-81-10 et seq. to enter into the Arbitration Agreement. Under the Bill of Rights, a “representative” is defined as “a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code

Ann. § 44-81-30(3). The Bill of Rights further provides that a “resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions of this chapter before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of the explanation by the resident or the resident's representative must be made a part of the resident's file.” S.C. Code Ann. § 44-81-40. Since Mr. Boyd (upon information and belief) did not have a legally appointed guardian at the time of his admission, Ms. Boyd was his representative and agent pursuant to the Bill of Rights. This is evidenced by the fact that Ms. Boyd, as Mr. Boyd’s “legal representative,” received the statutorily required information from the facility at the time of Plaintiff's admission and signed a written acknowledgment reflecting the same. (*See* Ex. 3, p. 1). Acting as Mr. Boyd’s agent under the Bill of Rights, Wilda Boyd signed the Arbitration Agreement as Plaintiff’s “Representative,” binding Mr. Boyd to arbitration in the event of any and all claims against the Facility based on his residency.

In accordance with the foregoing, Ms. Boyd possessed the actual authority, pursuant to statute, to make health care decisions on behalf of Mr. Boyd as his agent, and this included executing the Arbitration Agreement as part of Mr. Boyd’s admission to Magnolia Manor.

E. The Arbitration Agreement and Admission Agreement Must be Construed Together, and Plaintiff Should Be Estopped from Denying the Parties’ Mutual Right to Arbitration

i. Merger

As additional grounds to compel arbitration and in the alternative, the Admissions Agreement and Arbitration Agreement should be construed together and Plaintiff is bounds to arbitrate his claims against the Facility.

In the instant case, the agreements at issue were executed by Wilda Boyd, Mr. Boyd's mother and representative, on behalf of Mr. Boyd. The validity of these agreements, including the Arbitration Agreement, must be determined in accordance with the general principles of contract law and agency law that would apply to any other contract. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010).

The Arbitration Agreement provides that "any controversy or dispute between the parties *arising out of or relating to Facility's Admission Agreement* . . . or relating in any way to Resident's stay at Facility" shall be resolved by arbitration pursuant to the terms of the Arbitration Agreement. (Ex. 2)(emphasis added). As described, the Arbitration Agreement and the Admission Agreement were both signed by Ms. Boyd on behalf of her son on the same day, at the same time, upon Mr. Boyd's admission to Magnolia Place.

Courts in South Carolina construe contemporaneous instruments together; if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977). Absent some evidence indicating a contrary intention, when instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will generally consider and construe them together on the theory that the instruments are effectively one instrument or contract. *Id. See also Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994) (holding that promissory notes and a mortgage agreement executed contemporaneously on the same date, must be construed together). Furthermore, even when instruments are entered into by the same parties at different times but relate to the same subject matter, the instruments will be

construed together to determine the entire agreement between the parties. See *Plaza Development Services v. Joe Hardin Builder, Inc.*, 294 S.C. 430, 365 S.E.2d 231 (Ct. App. 1988); accord *Cafe Associates, Ltd v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991).

As previously set forth, the United States District Court in *McCutcheon* analyzed facts almost identical to the case at bar and determined that the arbitration agreement and admissions agreement had merged for purposes of equitable estoppel. (Ex. 4, p. 4 - 5). Indeed, this Court has cited to *McCutcheon* on numerous occasions in holding that a nursing home arbitration agreement merged with the admissions agreement for purposes of equitable estoppel under precisely the same circumstances. See *Abrams v. Fundamental Long-term Care Holdings, LLC, et al*, Case No. 2010-CP-42-6861 (S.C. Com. Pls. Jun. 25, 2012); *Campsen v. Fundamental Long-Term Care Holdings, LLC et al*, Case No. 2011-CP-42-0438 (S.C. Com. Pls. Jun. 22, 2012). (See *Abrams*, *Campsen* attached hereto as **Exhibit 5**).

Accordingly, Mr. Boyd, by and through the acts of his representative, Wilda Boyd, and Magnolia Place both contemplated that the terms of the agreement to admit Mr. Boyd were contained in the Admissions Agreement and Arbitration Agreement. Mr. Boyd's mother executed the Arbitration Agreement at the same time as the Admissions Agreement; the Arbitration Agreement and the Admissions Agreement both covered the same subject matter and transaction (Mr. Boyd's residency at Magnolia Place); the Arbitration Agreement and Admissions Agreement were executed by the same parties; the Arbitration Agreement specifically makes citation to and incorporates the Admission Agreement; and thus the Arbitration Agreement and Admissions Agreement should be construed as part and parcel of the same agreement between the parties.

ii. Equitable Estoppel of Merged Agreement

“Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” *Int'l Paper Co. v. Schwabedissen Maschinen & Anlaeen GMBH*, 206 F.3d 411, 417-18 (4th Cir. 2000) (citation and internal quotation marks omitted). “A nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” *Id.* (quoting *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)). The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” *S. Ill. Bev., Inc. v. Hansen Bev. Co.*, 2007 U.S. Dist. LEXIS 76229 (S.D. Ill. 2007). Moreover, the Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” *United States v. Bankers Ins. Co.*, 245 F.3d 315, 323 (4th Cir. 2001).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” *E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates. S.A.S.*, 269 F.3d 187, 200 (3d Cir. 2001)(citing *Am. Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999) (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in *Jackson v. Iris.com*:

It is an axiomatic rule of contract law that a party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.

....

[W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007)(quoting in part *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bide. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981)(citing in part *Int'l Paper Co.*, 206 F.3d at 416)(internal quotations omitted).²

In the present case, Mr. Boyd embraced all aspects of the Admission Agreement with Magnolia Place. It would be manifestly inequitable to permit a party to claim the other is liable in tort based upon a contractual relationship, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. In other words, Plaintiff cannot “have it both ways” by relying upon certain terms of the Admissions Agreement when it works to his advantage and repudiating the Arbitration Agreement when it works to his disadvantage.

As described, the Plaintiff's allegations fall within the scope of the Arbitration Agreement. In accordance with the foregoing law, Plaintiff cannot assert claims against this Defendant based upon certain terms of the Admissions Agreement while repudiating the

² See also *THI of S .C. at Columbia, LLC v. Wiggins*, C/A No. 3:11–888–CMC, 2011 WL 4089435, at *6 (D.S.C. Sept.13, 2011) (“Hall's care was the essential purpose of the Contract. Thus, Hall was an intended third-party beneficiary of the Contract which was signed by Wiggins in her capacity as an immediate family member. It follows that Hall was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remains binding on his estate.”); accord *THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert*, No. 7:13-CV-2929-BHH, 2014 WL 6863550, at *4 (D.S.C. Oct. 31, 2014), report and recommendation adopted, No. CIV.A. 7:13-2929-BHH, 2015 WL 1268185 (D.S.C. Mar. 19, 2015).

Arbitration Agreement, and should be prevented from doing so pursuant to the doctrine of equitable estoppel. Moreover, as is cited above, numerous courts hold that where a plaintiff receives the benefits of the contract, which Mr. Boyd certainly did, the non-signatory is estopped from denying an arbitration agreement merely because he did not sign the contract under which he received all of the benefits.

As set forth, the Arbitration Agreement was executed by Mr. Boyd's mother, Wilda Boyd, on the same day and at the same time as the Admissions Agreement and all other contracts signed by Ms. Boyd on her son's behalf during his admission to the Facility. Ex. 1, Ex. 2, Ex. 3. Once again, it would be improper and incongruous to allow Plaintiff's counsel to argue that Mr. Jenkins engaged in a bargained for exchange in negotiating the Admissions Agreement while simultaneously arguing that Mr. Jenkins had no freedom of choice or bargaining power in signing the Arbitration Agreement.

iii. Coleman and Hodge are Distinguishable

To the extent Plaintiff argues the Admissions Agreement and Arbitration Agreement are not merged pursuant to *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018) and *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 350, 755 S.E.2d 450, 452 (2014), such reliance is misplaced.

In *Coleman*, Ann Coleman signed a number of documents, including arbitration agreements, when admitting her sister to a health care facility. 407 S.C. at 350, 755 S.E.2d at 452. Coleman brought suit after her sister's death, and the facility sought to compel arbitration. In determining that the arbitration and admission agreements in the case had not merged, the supreme court found, "On its face, this clause recognizes the 'separatedness' of the [arbitration agreement] and the admission agreement, not a merger of the two contracts. Moreover, the

[arbitration agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate.” *Id.* at 452. “By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply.” *Id.*

Similarly, in *Hodge*, the admissions agreement indicated it was governed by South Carolina law, whereas the Arbitration Agreement stated it was governed by federal law. 422 S.C. 544, 813 S.E.2d at 302. Furthermore, like in *Coleman*, the arbitration agreement in *Hodge* recognized a separateness as it referenced the two documents separately, stating “[a]ny and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement.” *Id.* Finally, the arbitration agreement in *Hodge* stated it could be revoked within thirty days, whereas the admission agreement contained no such indication. *Id.*

Unlike the arbitration agreements in *Coleman* and *Hodge*, the Arbitration Agreement and Admissions Agreement in the case at bar should not be considered “separate” for purposes of denying merger. Unlike *Coleman* and *Hodge*, the Arbitration Agreement in this case does not state that it can be revoked after it has been signed. Furthermore, it does not state that arbitration is a precondition to admission to the Facility.

Instead, in the present case, the agreements “were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction” and, therefore, the documents merged.” *Coleman*, 407 S.C. at 355, 755 S.E.2d at 455 (citing *Klutts, supra*, 268 S.C. at 88, 232 S.E.2d at 24). Specifically, the Admissions and Arbitration Agreements were signed by Ms. Boyd, on Plaintiff’s behalf, and the Facility on June 20, 2016. The documents were signed by the exact same people: Wilda Boyd as representative for Plaintiff and Leola Burt for

the Facility. The documents were signed for the same purpose and transaction of establishing James Boyd's residency at the facility. While the Admissions Agreement in this case does contain an "Entire Agreement" clause, unlike the admission agreements in *Hodge* and *Coleman*, the provision in this case does not separately reference the Arbitration Agreement (in fact, it doesn't refer to it at all). Accordingly, there is no language in either the Admission or Arbitration Agreement akin to the language in *Hodge* or *Coleman* to indicate the parties desired the documents be considered as separate contracts. As such, *Coleman* and *Hodge* are not controlling and this Honorable Court should compel Plaintiff's claims to arbitration pursuant to the contract.

iv. **The Arbitration Agreement is enforceable because Mr. Boyd was a Third Party Beneficiary**

Mr. Boyd, while not a signatory to the Admission Agreement, is a third party beneficiary of the Admissions Agreement. It is clear from the plain language of the Admission Agreement that Mr. Boyd was an intended beneficiary and the purpose of the Admission Agreement was to ensure Magnolia Manor would provide the services set forth therein. (See Ex. 1). Mr. Boyd did, in fact, receive those services.

Mr. Boyd was also a third party beneficiary of the Arbitration Agreement, which should be read contemporaneously with and incorporated into the Admission Agreement, as previously set forth. The Arbitration Agreement was signed by Wilda Boyd on Mr. Boyd's behalf as his "representative," in that Mr. Boyd obtained the benefit of the services to be provided in the Admission Agreement and also knew that if he ever became involved in a dispute with Magnolia Manor over his care or treatment, he had a right to demand arbitration of the dispute. That Mr. Boyd never invoked this right during the period of his residency, and now seeks to repudiate it,

does not alter the fact that arbitration was a bargained-for benefit that he enjoyed under the Arbitration Agreement, which this Defendant is equally entitled to enforce.

Mr. Boyd was an intended third party beneficiary of the Admissions Agreement and Arbitration Agreement between the parties and therefore Plaintiff, as Personal Representative, is obligated to arbitrate any claims within its scope, regardless of whether those claims are brought by a legal representative. *See McCutcheon, supra*, (holding that the plaintiff's decedent was the intended third-party beneficiary of the arbitration agreement where, like here, plaintiff was the signatory of the arbitration agreement and personal representative of the decedent's estate); *accord Trinity Mission Health & Rehab. of Clinton v. Estate of Scott*, 19 So. 3d 735, 739 (Miss. Ct. App. 2008) (holding that a non-signatory, deceased mother was an intended third party beneficiary of a nursing home admissions contract that included an arbitration provision; and the arbitration provisions were enforceable against her wife, who signed the admissions contract, since it was evident that the admissions agreement clearly was intended to provide benefits to her mother as a resident of the facility.).³

v. The Arbitration Agreement is Not Unconscionable

Should Plaintiff contend this Arbitration Agreement is unenforceable because it is unconscionable, the law and facts surrounding Mr. Boyd entering into this Arbitration Agreement and the clear language of the Agreement demonstrate this is clearly not the case.

As an initial matter, both state and federal courts in South Carolina have consistently ruled that arbitration agreements identical to the one *sub judice* are not unconscionable. *See*

³ *See also Wiggins, supra*, 2011 WL 4089435, at *6 ("Hall's care was the essential purpose of the Contract. Thus, Hall was an intended third-party beneficiary of the Contract which was signed by Wiggins in her capacity as an immediate family member. It follows that Hall was bound by the Arbitration Provision immediately prior to his death and, consequently, that it remains binding on his estate.").

McCutcheon, supra, at 6* - *8; *Benson v. THI of S.C. at Charleston, LLC*, No. C.A. No. 7:11-CV-2613-HMH (D.S.C. Nov. 30, 2011); *Abrams, supra*; *Campsen, supra* (See *Benson*, attached hereto as **Exhibit 6**).

Furthermore, anyone who enters into a written contract has a duty to read the contract which she signs. *Maw v. McAlister*, 252 S.C. 280, 284-285, 166 S.E.2d 203, 204 (1969). Anyone who is capable of reading and understanding, but fails to read a contract before signing is bound by the terms thereof. *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981). Furthermore, arbitration clauses are not unconscionable and will be enforced if a person who can read fails to read the contract, regardless of whether he was advised of the arbitration terms by the contracting party. *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (holding the plaintiff's failure to read an arbitration provision did not render it unconscionable even though the plaintiffs claimed they were not advised of those terms). Additionally, "inequality of bargaining power alone will not invalidate an arbitration agreement." *Id.*

The Arbitration Agreement clearly articulates that the resident entering into the Agreement is fully aware of his or her healthcare options and other potential providers of nursing home facilities. The Agreement states:

It is understood by Resident/Representative that he/she is not required to use the aforesaid Health Care Center for Resident's healthcare needs and that there are numerous other health care providers in the State where Health Care Center is located that are qualified to provide such care to Resident.

Ex. 2. Furthermore, on that same signature page, the Arbitration Agreement states clearly in bold lettering in a separate heading: **"I understand and agree that I am giving up and waiving my right to a jury trial."** Ex. 2 (emphasis in original).

Since Mr. Boyd's representative and agent, Wilda Boyd, had a duty to read and

understand the documents she was signing on Mr. Boyd's behalf under proper authority, she also had a duty to communicate those terms to Mr. Boyd as his agent. To the extent she did not, Plaintiff cannot now claim that Mr. Boyd was unaware of the terms of the Arbitration Agreement that Ms. Boyd voluntarily and with proper authority executed on her son's behalf.

Finally, should Plaintiff cite to 42 C.F.R. §483.10 in support of the assertion that a facility may not require additional consideration for admission to the facility, reliance upon this section of the federal regulations would be misplaced. The regulation states "[a] facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay." 42 C.F.R. § 483.10(c)(i)(B). Arbitration agreements are clearly not contemplated as "items or services" under this section (rather the regulation refers to things such as dietary services, room maintenance, television, personal comfort items, etc.). *Id.* As also described, the Arbitration Agreement makes clear that the resident is free to seek health care services from another provider should he or she so wish. As such, the Arbitration Agreement is not unconscionable and should be enforced by this Court.

III. FEDERAL AND STATE LAW FAVOR THE ARBITRATION AGREEMENT

As initially set forth, the FAA establishes "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24, 103 S. Ct. 927, 941 (1983); *Dockser v. Schwartzberg*, 433 F.3d 421, 423 (4th Cir. 2006). The purpose behind Congress' passage of the FAA "was to reverse the longstanding traditional hostility to arbitration agreements that had existed at English common law and had been adopted by American courts." *Dockser*, 433 F.3d at 425 (quoting *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24, 111 S. Ct. 1647 (1991)). Moreover, by its terms and by case law interpreting the same, the FAA "requires courts to place arbitration agreements 'on equal footing with all other

contracts.’” *Kindred Nursing Centers Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1424, 197 L. Ed. 2d 806 (2017)(quoting *DIRECTV, Inc. v. Imburgia*, 136 S.Ct. 463, 465, 193 L.Ed.2d 365 (2015)); see also 9 U.S.C. § 2. Accordingly, any doubts concerning the “scope of arbitrable issues” should be resolved in favor of arbitration. *Moses H. Cone*, 460 U.S. at 24-25, 103 S. Ct. at 941.

South Carolina courts similarly favor arbitration. “It is the policy of this state to favor arbitration of disputes.” *Toler's Cove Homeowners Ass'n v. Trident Constr. Co.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003). “The policy of the United States and this State is to favor arbitration of disputes.” *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). Accordingly, the Arbitration Agreement at issue in the present action should be enforced by the this Court and Plaintiff’s claims should be dismissed and compelled to arbitration

CONCLUSION

The FAA applies to this case as demonstrated by the arguments and authority set forth herein and, accordingly, arbitration must be compelled. Congress, through the FAA, established a strong federal policy in support of arbitration, requiring that courts “rigorously enforce agreements to arbitrate.” *Shearson/American Express v. McMahon*, 482 U.S. 220, 226, 107 S. Ct. 2332, 2337 (1987). Where the FAA governs, and where the dispute is fairly covered under the terms of a written arbitration provision, a court called upon to do so must compel arbitration of that dispute. Courts are not at liberty to ignore or decline to enforce a valid arbitration agreement. *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 105 S. Ct. 1238 (1985). The United States Supreme Court has stated:

By its terms, the [FAA] leaves no room for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on the issues as to which an arbitration agreement has been signed.

Id.

Furthermore, both state and federal courts in South Carolina have consistently upheld the validity and enforceability of arbitration agreements like the one at issue in this case. Mr. Boyd is bound to arbitrate his claims against the Facility under the theories previously set forth in this supporting Memorandum. Accordingly, this Defendant respectfully requests that this Court enter an Order either dismissing or staying the pending action and compelling arbitration.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.
D. Jay Davis, Jr.
Perry M. Buckner, IV
J. Joseph Owens
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com
*Attorneys for the Defendant THI of South Carolina
at Magnolia Place at Greenville d/b/a Magnolia
Place of Greenville*

Charleston, South Carolina

Dated: June 11, 2018

ADMISSION AGREEMENT - SOUTH CAROLINA

RESIDENT NAME:

James Boyd

RESIDENT NUMBER:

DATE OF ADMISSION:

6/30/2018

THIS ~~Magnolia Place of Greenville~~ AGREEMENT ("Agreement") as above dated is by and among
 35 South Pointe Drive ("Resident") and James Boyd ("Facility"),
 Greenville, SC 29607-5656 ("Resident's Durable Power of Attorney for
 864-288-1415 Fax 864-288-7271 Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively
 "Representative").

WHEREAS, the parties wish to admit Resident to Facility and hereto agree as follows:

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.
2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aides and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.
3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.
4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.
5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

II. AGREEMENT FOR CARE

A. FACILITY AGREES TO:

1. Admit Resident upon receipt of a physician's order; assist in obtaining physician services if a personal physician becomes unavailable; obtain emergency physician services when required. *Resident is not deemed admitted until such time as all agreements required by law and Facility have been appropriately executed.* This provision may be waived in writing by Facility, at its sole discretion.
2. Maintain written records of financial transactions with Resident and/or Representative responsible for payment. Resident has the right to have personal funds held in trust in accordance with applicable state and federal law, as may be amended from time-to-time.
3. Furnish room, routine meals, nursing care, personal care, or custodial care to Resident in accordance with applicable State and Federal law. This provision expressly excludes extraordinary services, including but not limited to, physician care, private duty nursing, private sitters, specialty foods and therapies not required by law. Resident will be placed in a semi-private room, absent medical need for a private room as determined by Facility staff. Residents residing in private rooms will be billed accordingly.
4. Assist in applying for private insurance benefits, but not to accept assignment thereof unless otherwise noted as an exception herein.
5. Assist Resident and/or Representative in applying for Medicare or Medicaid benefits where applicable.
6. Provide assistance in daily living and restorative nursing care in accordance with Resident's care plan, where appropriate. Resident and/or Representative reserves the right to refuse said treatment. If said treatment is refused, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
7. Arrange for transfer of Resident to a hospital upon physician's order or in an emergency situation. Expenses of transfer and care of Resident at the hospital are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment of those services.
8. Obtain and administer medication as prescribed. Expenses for the cost of obtaining the medications are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment for the medications. Resident and/or Representative has the right to refuse medication. If Resident refuses medication, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
9. Provide an activities program for Resident, components of which will be at the discretion of Facility.
10. Furnish Resident bed linens and hospital gowns. All personal clothing will be supplied by Resident or Representative and will be properly labeled as outlined in the *Admission Handbook* for identification purposes.

B. RESIDENT AND/OR REPRESENTATIVE AGREE(S) TO:

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.
2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.
3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative has the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.
5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.
6. Provide and be responsible for personal items of clothing and property.
7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.
8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.
9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.
11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.
12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.
13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.
14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.
15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.
16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.
17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.
18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.
19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

Original: Business File • Photocopy: Resident/Representative

20. Resident and/or Representative will be responsible for paying all costs, expenses and reasonable attorneys' fees, whether or not suit is brought, in the event costs, expenses, and/or attorneys' fees are incurred by Facility in the collection of sums due from and owed by Resident or any other party on Resident's behalf to Facility.

III. FINANCIAL AGREEMENT

Resident and/or Representative will be responsible for immediate payment of all charges incurred as follows:

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☒-semi-private) accommodations, for a basic fee of \$ 200.00 per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.
 - a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
 - b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
 - c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.
2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.
3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

Original: Business File • Photocopy: Resident/Representative

state and federal law. Any personal property belonging to Resident in Facility at the time of Resident's discharge or death will be released in accordance Section II-B-13 herein.

4. In the event Resident leaves Facility and has personal funds on account, Facility may deduct any outstanding monies due to Facility from said personal funds. The remainder will be distributed in accordance with applicable state and federal law.

5. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative shall pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

IV. TERMINATION

1. Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.

2. Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.

3. This Agreement may be terminate immediately upon the occurrence of any of the following:

- a. Resident's condition has improved sufficiently so that he/she no longer requires the services provided by Facility.
- b. Resident's physical or mental condition changes and he/she requires a higher level of care which cannot be provided by Facility.
- c. Resident's death
- d. The safety or health of individuals in the Facility is endangered.
- e. Resident and/or his/her legal representative has failed to pay for his/her stay.
- f. Facility ceases to operate or is no longer able to provide services to Resident.
- g. Sanctions or remedies imposed by the Department.

4. In the event Facility terminates this Agreement through an involuntary transfer or Discharge, Facility shall provide appropriate notice and discharge planning as required by State and Federal law.

V. MEDICAID BENEFICIARIES

1. **Eligibility.** Eligibility for Medicaid-sponsored long-term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission. This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The Department may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid-sponsored long-term care services.

2. **Covered Services.** If Resident is a Medicaid recipient, the Medicaid Program will reimburse Facility for certain skilled services ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to: hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, and basic personal laundry.

3. **Non-Covered Services.**

- a. Medicaid is a cost-sharing program. Resident's monthly income must be contributed to the cost of his or her care. Medicaid determines how much of the Resident's monthly income must be paid to the Facility (also called "patient liability"). To the extent permitted by law, Resident's monthly Social Security and pension funds, minus the personal allowance retained by Resident (or other allowance as set by law), will be paid to Facility.
- b. Resident and/or Representative may purchase from Facility certain miscellaneous products and services that are not covered by Medicaid. An itemized list of fees for these additional products and services is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office.

4. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicaid for services rendered by Facility and authorizes Facility to receive payments from Medicaid pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicaid refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative will remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicaid.

5. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

6. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VI. MEDICARE BENEFICIARIES

1. **Covered Services.** If Resident is a Medicare recipient, the Medicare Program will reimburse Facility for certain skilled services such as nursing services and certain therapies ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream,

Original: Business File • Photocopy: Resident/Representative

toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, basic personal laundry and medically related social services.

2. **Non-Covered Services.** Resident and/or Representative will be required to pay certain other "Allowable Charges" which include, but are not limited to:

- a. Fees for certain products and services not covered under the Medicare program. Fees for such services will be identical those charged to private pay residents of Facility for the same products and services.
- b. Fees for certain products and services that are more expensive than the products and services covered under the Medicare program (e.g., a private room), as requested by a Resident and/or Representative. Fees charged for the more expensive products and services will be based on the difference between the fees charged to private pay residents of Facility and the customary charge for the same products and services under Medicare. Facility staff will inform Resident and/or Representative requesting additional or more expensive products or services that there will be a specified charge.
- c. Certain deductibles and co-insurance amounts under the Medicare Program.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicare for services rendered by Facility and authorizes Facility to receive direct payments from Medicare pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicare refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicare.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VII. PRIVATE PAY/INSURANCE

1. **Routine Services.** If Resident is paying for his/her stay privately OR if he/she is having his/her stay paid for through a third-party insurance carrier, Resident and/or Representative will reimburse Facility for routine services ("Routine Services") which include: routine nursing services; routine dietary services; routine activities programs; and routine room and bed maintenance services. Beauty shop fees are not included in the daily rate. Resident and/or Representative shall pay a deposit of two months' basic room and board prior to admission. Each subsequent monthly payment is due on or before the 10th day of the month.

2. **Ancillary Services.** Resident and/or Representative may purchase services and products that are not included in Routine Services from Facility. An itemized list of fees for these additional services and products is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office. Resident and/or Representative shall pay for ancillary services at the end of the month in which such services are rendered.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from any insurance company paying benefits to Resident for services rendered by Facility and authorizes Facility to receive payments from such insurance company pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent such insurance company refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment for these services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from such insurance company.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VIII. NOTICES

All notices, consents, approvals and the like required to be given hereunder shall be given in writing to Facility to the address below or such other address as Facility may designate:

All notices, consents, approvals and the like required to be given to Resident and/or Representative shall be given in writing to Resident and/or Representative to the address below or at such other address as he/she may designate:

Notice may be given via facsimile, e-mail or U.S. Mail, certified mail return receipt requested.

Original: Business File • Photocopy: Resident/Representative

IX. GOVERNING LAW

This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located. This Agreement will be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

X. SEVERABILITY

If any provision(s) of this Agreement will be deemed to be illegal or otherwise unenforceable, all other provisions will remain in full force and effect as if the invalid provision had not been part of this Agreement.

XI. CAPTIONS

Captions are for the purpose of reference only and do not govern, limit, modify, enlarge or in any manner affect the scope, meaning and intent of the provisions of this Agreement, nor will such captions be given any legal effect.

XII. MODIFICATIONS

Facility reserves the right to unilaterally modify this Agreement to conform to law and regulations as may be passed from time to time. Reasonable notice, considering all of the circumstances, will be given to Resident and/or Representative when any change is made in accordance with this paragraph. Any other modification, except as otherwise specifically reserved herein, will be made in writing and signed by all relevant parties.

XIII. WAIVER

Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by Facility unless in writing, signed by Facility. Any waiver of any provision of this Agreement will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and/or Representative and this Agreement will remain in full force and effect.

XIV. RESIDENT

Use of the term "Resident" herein includes the Resident and any person with legal authority to handle Resident's funds or property and/or make medical decisions depending on the context in which the term is used.

XV. ASSIGNABILITY

This Agreement is fully assignable by Facility in the event that Facility is sold and/or the license is transferred such that a new licensee operates Facility. This Agreement, at Facility's option and without notice to Resident and/or Representative, may be automatically assigned to the new licensee and will be fully binding upon Resident and the new licensee.

XVI. INFORMATION RELEASE/BILLING AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required or permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.
2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.
3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.
4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.
2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.
3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.
4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.

Original: Business File • Photocopy: Resident/Representative

5. In the event that an individual voluntarily agrees to become legally responsible for payment for the care and treatment of Resident, said Representative will be fully bound to the terms of this Agreement. Please note, Facility does not require a third-party guarantor.

6. Facility reserves the right to apply its indigent care policy, as appropriate, in its sole discretion.

XVIII. ENTIRE AGREEMENT

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

By signing below, I/we further acknowledge that I/we have made the above promises and representations in order to induce Facility to enter into this Agreement. The parties further understand that, by signing this Agreement, Facility is relying upon the truthfulness of the promises and representations I/we have made. The parties further agree that if any term or provision of the Agreement is found by a court or agency of competent jurisdiction to be legally unenforceable, the term and provision will be deemed severed from this Agreement and the remaining terms or provisions will be fully enforceable.

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

Wilda A. Boyd 6/30/16
Signature of Resident Date

Printed Name of Resident

Resident Social Security Number

Witness Signature Date

Printed Name of Witness

OR

Signature of Representative, if any Date

Printed Name of Representative

Witness Signature Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

W. B.
Signature of Facility Official

Leola B.
Printed Name of Facility Official & Title

6/30/2016
Date

Original: Business File • Photocopy: Resident/Representative

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Magnolia Place of Greenville ("Facility"), its agents, employees and servants, and James Boyd ("Resident") or James Boyd ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

I understand and agree that I am giving up and waiving my right to a jury trial.

This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement. By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.

X Willa Ann Boyd 6/30/16
Resident/Representative Signature Date

Printed Name of Resident/Representative

Leola But
Authorized Agent of Facility

6/30/16
Date

Leola But
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

Attention Ms. Boyd
803-932-0003

From Koko Burt
Fax (864) 288-7271

**PATIENT CONSENT TO TREAT
AUTHORIZATION RELEASE OF INFORMATION
ASSIGNMENT OF BENEFITS/FINANCIAL AGREEMENT**

The following are the conditions for services provided by Magnolia Place Greenville and its physicians for the patient whose name appears at the bottom of this page.

CONSENT FOR MEDICAL TREATMENT

I, whether signing as patient, patient's guardian or legally authorized representative, voluntarily consent to medical treatment, diagnostic procedures and testing, including, but not limited to, infectious diseases and drug testing if deemed advisable by my physician, provided by Magnolia Place Greenville, and its associated physicians, nurse practitioners, clinicians and other personnel while a resident of this nursing home. I am aware that the practice of medicine and surgery is not an exact science and I acknowledge that no guarantees have been made as to the result of treatments or examinations.

XWA.B
Initials

AUTHORIZATION FOR RELEASE OF INFORMATION

Magnolia Place Greenville and attending physicians are authorized to release my medical information required in the processing of applications or submission of information for financial coverage, discharge planning and further medical treatment for services provided while I am a resident of this nursing home. I, whether signing as patient, patient's guardian or legally authorized representative, also agree to the release of medical or other information about patient to federal or state government regulatory agencies as required by law.

XWA.B
Initials

ASSIGNMENT OF INSURANCE BENEFITS

I, whether signing as patient, patient's guardian or legally authorized representative, assign all rights in any insurance benefits or other funding for applicable medical treatment to the physician.

XWA.B
Initials

FINANCIAL AGREEMENT

Patient is responsible for payment of any and all charges made for medical services on patient's behalf. In consideration of medical services to be rendered, I, the patient, understand I am responsible for any and all charges not covered by insurance or other forms of benefits and agree to pay physician for such services. As the patient's guardian or legally authorized representative I agree that to the extent patient has available funds, I will pay from patient funds any and all charges for medical services, not covered by insurance benefits, made for or on behalf of the patient by the Physician. All parties further understand that the physician can obtain patient's credit report for review in collection of this debt. In the event this debt is referred to a collection agency or attorney for collection, or collected through the S.C. Setoff Debt Collection Act, any and all reasonable attorney's fees and collection costs shall be paid by the patient from available patient funds.

XWA.B
Initials

6/30/2016
Date
Witness
6/30/16

James Calvin Boyd
Print Patient's Name
XWilla Ann Boyd
Signature of Patient
(Patient's Guardian or Legally Authorized Representative)

AUTHORIZATIONS, CONSENTS & ACKNOWLEDGMENTS

Please read, review and acknowledge each the following:

Treatment/Health Care Professionals:

Authorization for Treatment

WAB
(initial)

I hereby authorize Facility's professional staff to administer nursing procedures, podiatric procedures, therapies, skin scrapings, nonsurgical dental procedures and laboratory and x-ray procedures on me/Resident. I understand that I may withdraw this consent at any time by notifying Facility in writing. I further understand that an additional consent will be required for any surgical treatment or for any treatment requiring the use of general anesthesia.

Medical Treatment

WAB
(initial)

It is understood and agreed that Resident is under the control of his/her elected physician and/or his/her designee and that Facility is not liable for any act or omission as a result of following instructions of said physician(s)/designee(s). Resident consents to diagnostic imaging procedures, laboratory procedures, or medical treatment rendered to Resident under the general and special instructions of Resident's physician or physician's designee.

General Duty Nursing

WAB
(initial)

Facility provides general duty nursing care. Under this system, nurses are called to the resident's bedside by a signal system. If Resident is in such condition as to need continuous or special duty nursing care, it is agreed that Resident, Resident's legal representative or Resident's physician(s) will make the necessary arrangements for such care. It is understood and agreed that Facility shall not, in any way, be responsible for the failure to provide such care and is hereby released from any and all liability arising from the fact Resident is not provided with such care.

Independent Status of Health Care Providers and their Agents/Designees

WAB
(initial)

Resident and/or Resident's legal representative acknowledges that any and all health care providers and their agents/designees are not agents or employees of Facility. Resident and/or Resident's legal representative understands and agrees that each health care provider or their agent/designee who renders services to Resident will independently bill and collect fees for these services. Resident and/or Resident's legal representative agrees and understands that the health care provider's bills will be separate and apart from Facility's.

Selection of Medical Professionals:

You have the right to use your personal health care providers during your stay. In the event you do not have a current provider, the facility has a list of independent providers who are available to provide on-site care. If you have difficulty contacting any of these professionals, please notify our staff. Please indicate your choice of health care providers below, including the provider's phone number and address.

PHYSICIAN:

Name: _____

Address: _____

Phone: _____

Original; Business File • Photocopies: (1) Medical Chart; (1) Resident/Representative

Page 1 of 5

Acknowledgement

I acknowledge I have received the following information and/or documentation, which fully explains my rights under Federal and applicable state laws as a nursing home resident, and the rules and regulations governing my conduct as a resident. *(Resident/Representative should check and initial each item listed as it is furnished and explained.)*

- ☒ AB A written copy of Facility's Admission Agreement
- ☒ AB A written copy of Facility's Handbook, which includes the facility's rules/regulations governing resident conduct, as well as written explanations of the following: (Admission, Discharge and Readmission policies; Bed assignment, reservation, and refund policies; Protection of Resident Funds; Resident's Rights under Federal law; Bed Hold policies; Policies/procedures for bringing personal items into the facility and securing personal belongings, valuables and money; Special Services, such as laundry, barbers and activities; Policies/procedures for filing grievances; Medicare/Medicaid Funding; Smoking Policies)
- ☒ AB A written copy of resident's rights under applicable state laws.
- ☒ AB A written copy of facility's policy on Advance Directives.
- ☒ AB A written explanation of the charges for services provided by facility and outlined in the Handbook and those services offered on an as-needed basis.
- ☒ AB A separate listing of local and government resources as furnished by the state Ombudsman and any other advocacy groups as required by state/federal law.
- ☒ AB A separate listing of all medical professionals available to provide on-site services.
- ☒ AB A written copy of facility's policy on the use of physical or chemical restraints, including bed rails.

By my signature below, I agree to abide by all facility's rules, policies, terms and conditions as explained to me and provided above, as well as all federal and applicable state laws.

Resident Signature Date 7/7/16

Printed Name of Resident

Ann Boyd 7/7/16
Legal Representative Signature, if any Date

Printed Name of Representative

Witness Signature Date

Printed Name of Witness

I H B 7/7/2016
Legal Representative Signature Date

Leda B. Adhison
Printed Name and Title

DENTAL☒ Yes☐ No

Examination Charge \$ _____

I would like to receive dental services at the above charge and have selected the following provider:

Name: _____
 Address: _____
 Phone: _____

VISION☒ Yes☐ No

Examination Charge \$ _____

I would like to receive vision services at the above charge and have selected the following provider:

Name: _____
 Address: _____
 Phone: _____

PODIATRY☒ Yes☐ No

Examination Charge \$ _____

I would like to receive podiatry services at the above charge and have selected the following provider:

Name: _____
 Address: _____
 Phone: _____

Self-Administration of Medications

Please indicate whether or not you wish to invoke your right to self-administer medications prescribed by your physician as outlined in the Admission Handbook.

I _____ I wish to invoke my right to self-administer medications prescribed by my physician. I (initial) authorize and consent to an evaluation by the Interdisciplinary Team in order to determine my ability to carry out this responsibility.

I AB I wish to waive my right to self-administer medications. I request and authorize Facility's (initial) nursing staff to administer medications prescribed by my physician. I understand that I am entitled to this right and that I may invoke this right any time in the future by written notification to the facility.

Personal Property/Valuables/Money:

- ☒ AB I acknowledge that I have received, read or had read to me, and understand Facility's policy (initial) on personal property, valuables and money. I understand that all personal belongings should be labeled properly and entered on a personal inventory list. I understand that all items removed from or brought into the facility after admission should be documented on the inventory list and that missing items must be reported to appropriate staff as soon as possible.
- ☒ AB I acknowledge and understand that Facility is not responsible for damage to or theft/loss of (initial) any personal property/valuables/money not kept in compliance with Facility policies.

Deposit of Personal Funds:

Please indicate below whether or not you wish to deposit personal funds with Facility in accordance with the *Protection of Resident's Funds* policy outlined in the Admission Handbook. Please note that you are not required to deposit any funds with the facility.

- ☒ AB I do not wish to deposit personal funds with the facility at this time.
(initial)
- ☐ _____ I authorize Facility to accept, hold and account for my personal funds in accordance with the (initial) policies outlined herein. I acknowledge that I have the right to revoke this authorization at any time upon written notice to Facility. I acknowledge that authorized State agencies may audit this account, regardless of my payer source.

Beneficiary Designation: (THIS PORTION TO BE FILLED IN BY RESIDENT ONLY)

In the event of my death, I authorize Facility to transfer all personal funds and property held by Facility to the following person(s): Ana Boyd. If I have not named a beneficiary or the beneficiary cannot be located, I understand that Facility will hold and pay the funds in line with the State's regulations.

Advance Directive Acknowledgment:

☒ AB I acknowledge that I have received, read or have had read to me, and understand Facility's Policy (initial) and State Requirements for Advance Directives and have executed the following advance directive measures and a photocopy has been provided to the facility for inclusion with my Medical Records:

- ☐ Living Will
☐ Durable Power of Attorney for Health Care or similar agent designation
☐ "Do-Not-Resuscitate" Identification (CPR)
☐ Other: _____

AB I acknowledge that I have received, read or have had read to me, and understand Facility's Policy (initial) and State Requirements for Advance Directives and have elected NOT to execute any advance directive at this time, including DNR Identification. I understand that facility staff will respond to medical emergencies with CPR measures and a full code will be instituted.

Original: Business File • Photocopies: (1) Medical Chart; (1) Resident/Representative FTUS003

Special Services:

Please indicate whether or not you authorize the following services to be provided. All associated fees will be charged to your account.

Telephone	☒ Yes	☒ No	☐ N/A	Charge \$ <u>8</u>
Television	☒ Yes	☐ No	☐ N/A	Charge \$ <u>8</u>
Newspaper	☐ Yes	☐ No	☐ N/A	Charge \$ _____
Laundry	☒ Yes	☐ No	☐ N/A	Charge \$ <u>8</u>
Beauty Shop	☒ Yes	☐ No	☐ N/A	See charge list
Other(s) (Please Specify Below)				

_____	☐ Yes ☐ No	Charge \$ _____
_____	☐ Yes ☐ No	Charge \$ _____

Photographs by State/Federal Survey Agencies

I acknowledge and understand that, during my/Resident's stay, Federal and/or State surveyors (investigators) may take my/Resident's photograph as part of their independent survey/investigation process and in line with conditions of my/Resident's participation in the Medicare and/or Medicaid program. I understand that, in line with CMS guidelines, the surveyors must obtain written consent from Resident or his/her surrogate before any photographs are taken. I understand that the Federal/State Survey Agency is wholly responsible for acquiring and securing any photographs they may take.

☒ AB I acknowledge and understand that neither Facility nor its parent, affiliates, officers, directors, (initials) employees, attorneys, assigns or any other person acting on its behalf, has any oversight or responsibility for the surveyors actions or inactions as it relates to taking photographs for their independent investigations.

Photograph/Audiotape/Videotape ☐ Yes AB ☐ No _____
(initial) (initial)

I hereby authorize Facility to photograph/audiotape/videotape me/Resident for its use in resident identification, infection control, surveillance and/or other medical purposes. I understand that, if the facility wishes to photograph/audiotape/video tape me for any other reason, (activities, marketing, media coverage, etc.), the facility will secure permission from me through a separate written authorization.

Post Information ☐ Yes AB ☐ No _____
(initial) (initial)

To better serve you and meet your health care need, permission is needed to post information regarding your/Resident's health care needs within your room and the facility as needed. The information to be disclosed will be a minimum amount necessary and shall serve as a means of communication, enabling staff to provide service while, at the same time, ensuring your/Resident's rights to privacy. Information to be disclosed may include, but not be limited to, therapy schedules, activities of daily living, ambulation/mobility parameters, swallowing and aspiration precautions, do-not-resuscitate orders.

Original: Business File • Photocopies: (1) Medical Chart; (1) Resident/Representative FFUS003

Authorization to Release and Obtain Information ☐ Yes AB ☐ No
(initial) (initial)

I hereby authorize the facility to release and/or obtain medical information or other necessary data which may be necessary for my/Resident's continued treatment and care at the facility, including but not limited to the filing of insurance claims in my/Resident's/Facility's interest. I further authorize the release of information, medical or otherwise, to any government agency without my prior approval or that of my representative, if any.

Authorization to Receive/Open Mail ☐ Yes AB ☐ No _____
(initial) (initial)

I hereby authorize Facility to open all mail received by me/Resident. Further, I would like this mail to be read to me/Resident upon receipt. You have the right to revoke this authorization at any time upon written notice to the facility.

Resident Signature Ann Boyd Date 7/7/2016
Legal Representative Signature, if any _____ Date _____

Printed Name of Resident

Printed Name of Representative

Witness Signature _____ Date _____

hh B A 7/7/2016

Facility Representative Signature _____ Date _____

Printed Name of Witness

Leola Burt
Printed Name and Title

~~Original: Business File • Photocopies: (1) Medical Chart; (1) Resident/Representative EFUS003~~

Magnolia Place of Greenville
Family Admission Meeting

Patient: James Boyd Room: 103 B
Date: 7/12/2016 Time: 11:30
Place: Conference Room

This Admission is for:

Short Term: X

Long Term: _____

5 Day Respite: _____

**If you need to reschedule your meeting, please call Social Services
at 864.288.1415

Additional Information

- Family has been advised upon admission to apply for Medicaid for either co-pay purposes or long term placement needs.
- If resident does not qualify for Medicaid, it is understood patient may be billed private pay and may incur out of pocket expenses.
- Unite One is a Rehabilitation Unit. Therefore, if a resident needs long term placement, they will be placed in a long term bed at the end of rehab or when a long term bed becomes available.

Ann Boyd
Resident/Representative Signature

Date: 7/7/2016

hh R
Facility Representative Signature

Date: 7/7/2016

CONSENT FOR THE RELEASE OF MEDICAL RECORDS

NOTE: This form is to be used only when the facility needs to request a patient's/resident's medical records from another health care provider. This form does NOT authorize the facility to release a patient's/resident's medical record.

Patient/Resident Name James Boyd Medicare No. _____
 Provider _____ Social Security No. _____
 Service Dates: From _____ To _____ DOB: _____

By my signature below, I hereby authorize and request Provider to release the following information contained in the medical/financial record of: _____ ("Patient/Resident") to _____ ("Facility"). I understand these records will be made a permanent part of Patient's/Resident's medical record currently at Facility and that the information will be used for purposes of Patient's/Resident's continued treatment and care at Facility.

Information to be disclosed shall include:

I understand that this medical record may include information concerning psychiatric diagnoses, drug abuse,

- | | |
|---|---|
| ☐ complete record | ☐ history and physical |
| ☐ abstract | ☐ progress notes |
| ☐ clinical resume | ☐ emergency/urgent care |
| ☐ consultation reports | ☐ procedures: operative/anesthetic |
| ☐ therapy record | ☐ discharge summary |
| ☐ lab/x-ray/diagnostic results | ☐ other _____ |

Alcoholism or communicable or venereal diseases (including but not limited to diseases such as hepatitis, syphilis, gonorrhea or the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome ["AIDS"]). With this knowledge, I hereby give my consent to release the requested information from Patient's/Resident's medical record, including any information concerning Patient's/Resident's identity.

I understand that Provider will not condition Patient's/Resident's continued treatment, payment, enrollment or eligibility for benefits on my signing this authorization and that I may revoke this authorization at any time by notifying Provider in writing, except to the extent that action has been taken in reliance on this authorization prior to the revocation. I further understand that the Facility is bound by federal privacy regulations, and that the information described above may not be re-disclosed by them without proper authorization.

This authorization shall expire on _____ OR _____ (event).

If no expiration date or event, this authorization will expire six (6) months from the date on which it was signed.)

Signed By:

Ann Boyd on 7/7/2016 (date) Patient/Resident OR
 Legal Representative

Original: Medical Chart • Photocopy: Resident/Representative

Consent Form for Surgical Procedure(s) under Topical / Anesthetic

Patient Name:

Jane Boyd

Procedure(s): Debridements / Biopsy of wounds on trunk, pelvis, arms, legs or feet.

Physicians / Practitioners performing procedure(s):

Dr. Vishnu

Regarding planned procedure(s)

1. I consent to the procedures outlined above under local anesthetic.
2. I understand the procedures to be performed and that they will be performed on a weekly basis.
3. I understand the associated risks including infection, excessive bleeding, and discomfort.
4. I do not request further information on the planned procedures.
5. I understand that the procedures planned are intended to relieve discomfort, control infection, improve quality of life, promote wound healing or provide diagnostic information.
6. I understand that the practice of medicine and surgery is not an exact science, and I acknowledge that no guarantees or assurances have been made to me concerning the results of the above procedure. Furthermore, in the event of unforeseen conditions, I authorize whatever medical procedure or action deemed necessary by the above named physicians / practitioners.
7. I consent to the photographing of portions of my body relating to the above procedure for the sake of medical documentation, research, or publication.
8. In the event of litigation I agree to arbitration through an entity designated by Vohra Health Services.

Jane Boyd
Patient Signature

OR

[Signature]
Power of Attorney Signature

Verbal Consent: (yes / no)

[Signature]
Witness one name

Witness two name

signature

signature

Informed Consent:

I have explained to the patient / person authorized to consent for patient, the nature of the procedures, the possible complications and the alternatives to performing the procedures. The patient / authorized individual whose signature is shown above has indicated understanding of, and consent to above procedures.

Signature of Physician / Practitioner / Authorized Nurse

Date

7/18/18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA, LLC,	)	
D/B/A MAGNOLIA PLACE-	)	
GREENVILLE; HUNT VALLEY	)	
HOLDINGS, LLC; THI OF	)	
BALTIMORE, INC.; FUNDAMENTAL	)	
CLINICAL AND OPERATIONAL	)	
SERVICES LLC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; LEONARD	)	
GRUNSTEIN BOTH INDIVIDUALLY	)	
AND AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; MURRAY	)	
FORMAN BOTH INDIVIDUALLY AND	)	
AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; AND RUSTY	)	
FLATHMANN BOTH INDIVIDUALLY	)	
AND AS EMPLOYEE/MANAGER OF	)	
MAGNOLIA PLACE ,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC'S
MEMORANDUM IN SUPPORT OF
MOTION TO STAY**

COMES NOW, Defendant Fundamental Administrative Services, LLC (hereinafter “this Defendant”), by and through its undersigned attorneys and submits this Memorandum in Support of Motion to Stay.

BACKGROUND FACTS

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville (misidentified in Plaintiff’s Complaint as “THI of South Carolina, d/b/a/

Magnolia Place-Greenville and hereinafter, “Facility Defendant” or “Magnolia Place”), entered into a valid Arbitration Agreement with Plaintiff, James Boyd, Jr., (the “Arbitration Agreement”), around the time of Mr. Boyd’s admission to Magnolia Place. Per the Arbitration Agreement, Mr. Boyd and Magnolia Place agreed that the South Carolina Uniform Arbitration Act, S.C. Code §15-48-10, et seq., would not apply; rather, the arbitration would be governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq. (the “FAA”), because the services and reimbursement thereof to be provided to Mr. Boyd upon his admission to the facility affected and involved interstate commerce.

As set forth, Facility Defendant has filed a Motion with this Court to enforce the Arbitration Agreement against the Plaintiff. See Motion to Dismiss and Compel Arbitration, attached as **Exhibit 1**. Per this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter be stayed as to this Defendant until such time as the Court has made a final decision regarding Magnolia Place’s pending action to Compel Arbitration, and the appellate process, if any, has been exhausted. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, such a decision would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

The FAA, 9 U.S.C. § 3, entitled “Stay of proceedings where issue therein referable to arbitration,” states the following:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, **the court** in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the**

agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis added.)¹

Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002).

Both federal and state policy favor arbitration of disputes. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). Even when, as is the case here, a party to the lawsuit is not a party to the arbitration agreement, it “may be advisable to stay litigation among the nonarbitrating parties pending the outcome of the arbitration.” *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 21, 103 S. Ct. 927, 939 (1983). This Court also possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court’s discretion. *Id.* See also, *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936)(“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

The Court’s decision on whether to stay the pending action against this Defendant “should be motivated by the court’s ‘concern that litigation against a party not bound by an

¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See*, S.C. Code Ann. § 15-48-20(d)(“Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section...” (emphasis added)

arbitration provision may impair an arbitrator's consideration of claims against a party that is compelled to arbitrate.’” *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993).

In the instant matter, the Plaintiff’s claims against this Defendant arise out of the exact same factual underpinnings as his claims against Magnolia Place, a party and signatory to the Arbitration Agreement. To be sure, the claims against both this Defendant and Magnolia Place are solely concerned with Mr. Boyd’s stay at Magnolia Place and the provision of care and treatment provided to him. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration. Without the issuance of a stay, disposition of the Plaintiff’s claims against this Defendant may affect the disposition of the matter against Magnolia Place, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Plaintiff’s allegations of liability in the Complaint make no distinction between this Defendant and Magnolia Place. Rather, Plaintiff repeatedly alleges that the “Defendants” are liable to Plaintiff under the various causes of action set forth in the Complaint. See Pltf.’s Complaint at ¶¶ 35 – 146. In no uncertain terms, Plaintiff seeks to prove that this Defendant and Magnolia Place should be viewed as one in the same by this Court. If this Defendant is forced to continue with this litigation, the arbitration proceedings against Magnolia Place could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Magnolia Place. Should discovery and the trial of this matter continue against this Defendant in this Court, the right to arbitration of Magnolia Place would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000)(Stay granted to

defendant non-signatory to arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.)

Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant Fundamental

Administrative Services, LLC

Charleston, South Carolina

Dated: June 12, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA, LLC,	)	
D/B/A MAGNOLIA PLACE-	)	
GREENVILLE; HUNT VALLEY	)	
HOLDINGS, LLC; THI OF	)	
BALTIMORE, INC.; FUNDAMENTAL	)	
CLINICAL AND OPERATIONAL	)	
SERVICES LLC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; LEONARD	)	
GRUNSTEIN BOTH INDIVIDUALLY	)	
AND AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; MURRAY	)	
FORMAN BOTH INDIVIDUALLY AND	)	
AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; AND RUSTY	)	
FLATHMANN BOTH INDIVIDUALLY	)	
AND AS EMPLOYEE/MANAGER OF	)	
MAGNOLIA PLACE ,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC’S MEMORANDUM IN
SUPPORT OF MOTION TO STAY**

COMES NOW, Defendant Fundamental Clinical and Operational Services, LLC (hereinafter “this Defendant”), by and through its undersigned attorneys and submits this Memorandum in Support of Motion to Stay.

BACKGROUND FACTS

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville (misidentified in Plaintiff’s Complaint as “THI of South Carolina, d/b/a/

Magnolia Place-Greenville and hereinafter, “Facility Defendant” or “Magnolia Place”), entered into a valid Arbitration Agreement with Plaintiff, James Boyd, Jr., (the “Arbitration Agreement”), around the time of Mr. Boyd’s admission to Magnolia Place. Per the Arbitration Agreement, Mr. Boyd and Magnolia Place agreed that the South Carolina Uniform Arbitration Act, S.C. Code §15-48-10, et seq., would not apply; rather, the arbitration would be governed by the Federal Arbitration Act, 9 U.S.C. §1, et seq. (the “FAA”), because the services and reimbursement thereof to be provided to Mr. Boyd upon his admission to the facility affected and involved interstate commerce.

As set forth, Facility Defendant has filed a Motion with this Court to enforce the Arbitration Agreement against the Plaintiff. See Motion to Dismiss and Compel Arbitration, attached as **Exhibit 1**. Per this Court’s inherent power to manage its own docket, this Defendant respectfully requests that this matter be stayed as to this Defendant until such time as the Court has made a final decision regarding Magnolia Place’s pending action to Compel Arbitration, and the appellate process, if any, has been exhausted. As set forth more fully below, a stay is warranted pursuant to the express provisions of the FAA. Furthermore, such a decision would serve the interests of judicial economy, avoid duplicative litigation, and ensure consistency in adjudicating this case on its merits.

ARGUMENT

The FAA, 9 U.S.C. § 3, entitled “Stay of proceedings where issue therein referable to arbitration,” states the following:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, **the court** in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, **shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the**

agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(Emphasis added.)¹

Citing this statutory provision, the South Carolina Court of Appeals held the “FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties.” *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002).

Both federal and state policy favor arbitration of disputes. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). Even when, as is the case here, a party to the lawsuit is not a party to the arbitration agreement, it “may be advisable to stay litigation among the nonarbitrating parties pending the outcome of the arbitration.” *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 21, 103 S. Ct. 927, 939 (1983). This Court also possesses inherent authority to issue a stay, and the decision to stay a case for the non-arbitrating parties is left to this Court’s discretion. *Id.* See also, *Landis v. N. Am. Co.*, 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936)(“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.”).

The Court’s decision on whether to stay the pending action against this Defendant “should be motivated by the court’s ‘concern that litigation against a party not bound by an

¹ The South Carolina Uniform Arbitration Act likewise requires a stay in the circumstances of this case. *See*, S.C. Code Ann. § 15-48-20(d)(“Any action or proceeding involving an issue subject to arbitration **shall be stayed** if an order for arbitration or **an application therefore has been made** under this section...” (emphasis added)

arbitration provision may impair an arbitrator's consideration of claims against a party that is compelled to arbitrate.’” *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993).

In the instant matter, the Plaintiff’s claims against this Defendant arise out of the exact same factual underpinnings as his claims against Magnolia Place, a party and signatory to the Arbitration Agreement. To be sure, the claims against both this Defendant and Magnolia Place are solely concerned with Mr. Boyd’s stay at Magnolia Place and the provision of care and treatment provided to him. This Defendant is strongly in favor of staying this case pending the outcome of the arbitration. Without the issuance of a stay, disposition of the Plaintiff’s claims against this Defendant may affect the disposition of the matter against Magnolia Place, which has the power to enforce the Arbitration Agreement and has elected to enforce its contractual rights.

Plaintiff’s allegations of liability in the Complaint make no distinction between this Defendant and Magnolia Place. Rather, Plaintiff repeatedly alleges that the “Defendants” are liable to Plaintiff under the various causes of action set forth in the Complaint. See Pltf.’s Complaint at ¶¶ 35 – 146. In no uncertain terms, Plaintiff seeks to prove that this Defendant and Magnolia Place should be viewed as one in the same by this Court. If this Defendant is forced to continue with this litigation, the arbitration proceedings against Magnolia Place could become redundant and meaningless because of the substantial overlap in factual and legal underpinnings of the cases against this Defendant and Magnolia Place. Should discovery and the trial of this matter continue against this Defendant in this Court, the right to arbitration of Magnolia Place would be adversely affected, which would thwart the federal and state policies favoring arbitration. See *Harvey v. Joyce*, 199 F.3d 790, 795-796 (5th Cir. 2000)(Stay granted to

defendant non-signatory to arbitration agreement because continuing with litigation would adversely affect signatory's right to arbitrate.)

Furthermore, staying this action as to this Defendant will promote the public interest in conserving judicial resources and nullify the risk of inconsistent and divergent results.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests this Court stay this action until a final decision has been made on the validity of the Arbitration Agreement and the appellate process, if any, has been exhausted.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant THI of South Carolina
at Magnolia Place at Greenville d/b/a Magnolia
Place of Greenville*

Charleston, South Carolina

Dated: June 12, 2018

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD, JR.,

Plaintiff,

v.

THI OF SOUTH CAROLINA, LLC, d/b/a
MAGNOLIA PLACE - GREENVILLE;
HUNT VALLEY HOLDINGS, LLC; THI
OF BALTIMORE, INC.;
FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC;
FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC; FUNDAMENTAL
CLINICAL CONSULTING, LLC;
LEONARD GRUNSTEIN Both
Individually and as Owner/Operator of
MAGNOLIA PLACE; MURRAY
FORMAN Both Individually and as
Owner/Operator of MAGNOLIA PLACE;
and RUSTY FLATHMANN Both
Individually and as Employee/Manager of
MAGNOLIA PLACE,

Defendant(s).

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS AND COMPEL
ARBTRATION**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, James Boyd, Jr., by and through undersigned counsel, and does submit this memorandum of law in opposition to THI of South Carolina, LLC, d/b/a Magnolia Place – Greenville's (herein "Defendant") Motion to Dismiss and Compel Arbitration. In opposing this motion, Plaintiff would show that the Arbitration Agreement is unenforceable for the reasons set forth below:

BRIEF SUMMARY OF ARGUMENTS

- I. Plaintiff agrees the Federal Arbitration Act applies to the enforceability, or lack thereof, of the Arbitration Agreement.**
- II. The Arbitration Agreement is unenforceable where Wilda Boyd did not have authority to sign the Arbitration Agreement on behalf of James Boyd, and there is clear showing that Mr. Boyd was competent at admission when the Arbitration Agreement was executed.**
 - a. The plain language of the Arbitration Agreement does not bind Mr. Boyd to the Arbitration Agreement, where the Arbitration Agreement is unenforceable.**
 - b. Defendant cannot argue that Plaintiff should be estopped from denying the validity of the Arbitration Agreement, where there is no merger of the Admission Agreement and Arbitration Agreement, and Defendant fails to show the elements necessary to prove equitable estoppel.**
 - i. There is no merger of the Admission Agreement and Arbitration Agreement.**
 - ii. Defendant cannot show equitable estoppel where: 1) Ms. Boyd did not act in a way amounting to false representation; 2) Ms. Boyd did not intend that such false representation be acted on by Defendant; and 3) Ms. Boyd did not have actual or constructive knowledge of the real facts.**
 - c. The South Carolina Bill of Rights for Residents of Long-Term Care Facilities does not bind Mr. Boyd to the Arbitration Agreement simply because it defines “representative” and required Defendant to provide Mr. Boyd with the Bill of Rights.**
 - d. Wilda Boyd did not possess apparent authority to bind Plaintiff under the Arbitration Agreement where Defendant’s only rational argument is that Ms. Boyd signed the paperwork.**
 - e. The Arbitration Agreement is not enforceable where Mr. Boyd received no benefit from the Arbitration Agreement via Third Party Beneficiary.**
 - f. The Arbitration Agreement is unconscionable.**

g. The Arbitration Agreement unenforceable and void where it lacks valuable consideration.

STATEMENT OF FACTS

A. ARBITRATION IN NURSING HOMES

The choice of a nursing home is made in the midst of a crisis brought on by a precipitous deterioration in health status, disability level, or the loss of a care giver or spouse.¹ The need to find a placement arises quickly² and nursing home admissions are often unplanned; there is little time to investigate options or to wait for an opening at a nursing home of choice.³ Time pressure significantly impairs the ability to seek and carefully consider alternatives.⁴ Mr. Boyd had no choice or time in making such a decision.

Many facilities lack a coherent admissions process, adding to the chaos surrounding the admission of a resident.⁵ Residents and their family members do not have time to read and deliberate on the terms of the agreement. An arbitration clause is not part of the core transaction

¹ See, e.g., *Podolosky v. First Healthcare Corp.*, 58 Cal.Rptr. 2d 89, 101 (Cal. Ct. App. 1996) (citing Donna Ambrogio, Legal Issues in Nursing Home Admissions, 18 Law Med. & Health Care 254, 258 (1990)); see also Marshall B. Kapp, The “Voluntary” Status of Nursing Facility Admissions: Legal, Practical, and Public Policy Implications, 24 N.E. J. on Crim. & Civ. Confinement. 1, 3 (1998) (stating that an older person’s move to a nursing home also follows a period of acute hospitalization, when their care giving family is unable to adequately manage the demands of home care).

² In the 1980’s, the government changed the way hospitals were paid for their Medicare patients; since the change, hospital discharge planning occurs “quicker and sicker.” Linda S. Whitton, Navigating the Hazards of the Eldercare Continuum, 6 J. Mental Health and Aging 145, 150 (2000). See also Maureen Armour, A Nursing Home’s Good Faith Duty “to” Care: Redefining A Fragile Relationship Using the Law of Contract, 39 St. Louis L.J. 217, 222 (1994).

³ Denise Ashbugh Vlosky, et al., “Say-so” as a Predictor of Nursing Home Readiness, 93 J. of Family & Consumer Science 59 (2001).

⁴ Potential residents and their family members can experience panic when they feel there is insufficient time to consider different facilities, and they may choose a facility they would not have chosen if they had more time to weigh their options. Whitton, *supra*, at 150.

⁵ Donna Ambrogio & Frances Leonard, The Impact of Nursing Home Admission Agreements on Resident Autonomy, 28 The Gerontologist 82, 83-88 (1988).

involved in a contract for medical care or service.⁶ It is not, therefore, likely to get much attention from the non-drafting party.⁷ Mr. Boyd did not sign the admissions paperwork despite the fact that he was able and competent to do so. Mr. Boyd did not know what arbitration was, and Defendant did not explain the Arbitration Agreement to him. His mother, Wilda Boyd, who signed the Arbitration Agreement, did not know what arbitration was, and Defendant did not explain the cause to her either. Defendant has not produced any evidence that shows Ms. Boyd had legal authority to waive Mr. Boyd's constitutional right to a jury trial.

Nursing home admission agreements are typically pre-printed contracts of adhesion offered on a "take it or leave it" basis, giving residents no meaningful opportunity to negotiate the terms of the contract.⁸ In addition, these contracts have basic readability problems such as "small print size, awkward and lengthy sentence structure, use of obscure legal language, poor formatting and unclear reproduction."⁹ Even the most well informed and sophisticated consumer is ill equipped to effectively manage the admissions process.¹⁰

Ultimately, unlike the situation that may exist when sophisticated commercial entities contract for other products and services, older persons entering nursing homes and their families have to sign admissions contracts without time to comparison shop or to negotiate the best service and combination. "The pressures of deciding placement at such a time, coupled with

⁶ See Stanley D. Henderson, Contractual Problems in the Enforcement of Agreements to Arbitrate Medical Malpractice, 58 VA. L. REV. 947, 987 (1972) ("The arbitration provision, viewed from the perspective of the patient, is indeed subsidiary to the primary exchange of medical services for an undertaking of payment.")

⁷ The drafting party, on the other hand, has a great deal of information about these repetitive transactions and a great deal of incentive to prepare form contracts so that they are optimal from the drafter's perspective. James Aaron Eisenberg, The Limits of Cognition and the Limits of Contract, 47 Stan.L.Rev. 211, 243 (1995).

⁸ Rebecca J. Benson, Gerontology Institute, Check Your Rights at The Door, Consumer Protection Violations in Massachusetts Nursing Home Admission Agreements at 4 (Aug. 1997); Better Read the Small Print!, supra, at 2; Charles P. Sabatino, Nursing Home Admission Contracts: Undermining Rights the Old Fashioned Way, 24 Clearinghouse Rev. 553 (1990).

⁹ Sabatino, supra, at 553; see also Better Read the Small Print!, supra, at 2.

¹⁰ Benson, supra, at 3.

physical and/or mental infirmities, financial limitations, and/or lack of knowledge about long-term care options makes consumers vulnerable and dependent on full disclosure by facilities.”¹¹ In such an environment residents or their family members would not know that the contract contained an arbitration clause or comprehend its meaning and consequences to their rights.

No rules for arbitration were included in the Arbitration Agreement provided to Ms. Boyd. There was no “meeting of the minds” as to choice of arbitrator or as to rules to arbitration. For these reasons, there is growing resistance to the enforcement of pre-dispute arbitration clauses in printed “contracts” that disadvantage the weaker party in efforts to enforce contractual or statutory rights. For example, the Commission on Health Care Dispute Resolution¹² adopted recommended principles that would allow binding arbitration of disputes involving patients only where the parties agree to do so after the dispute has arisen.¹³ The American Arbitration Association has recently announced that it will no longer accept the administration of cases involving individual patients without a post-dispute agreement to arbitrate.¹⁴

Reported court opinions in this area reveal a law that is in disarray at both doctrinal and theoretical levels. Courts treat similar fact settings differently, apply the law inconsistently, and struggle with the case by case application of conflicting rules. The disorderly case law reflects deep discomfort with the presumptions favoring arbitration that the Supreme Court has created and imposed. *See, e.g., Timms v. Greene*, 427 S.E.2d 642 (S.C.1993) (rejecting Federal

¹¹ Better Read the Small Print! *supra*, at 2.

¹² This was a joint project of the American Arbitration Association, the American Bar Association, and the American Medical Association. See Health Care Due Process Protocol, Draft Final Report, July 27, 1998, available at <http://www.adr.org/upload/LIVESITE/focusArea/Healthcare/healthcare.pdf>.

¹³ *Id.*, Principle 3: Knowing and Voluntary Agreement to Use ADR.

¹⁴ AAA Health Care Policy Statement, at <http://www.adr.org/index2.1.jsp?JSPssid=13948&JSPaid=33494> (March 11, 2002) (policy effective January 1, 2003).(See Alan 2).

preemption and holding state law applicable despite affidavit of nursing home administrator that it was a division of a Delaware limited partnership, it marketed its services to persons residing outside South Carolina, it hired employees from outside South Carolina, it purchased a majority of goods outside South Carolina, and it was paid in part through Medicare).

B. FACTS RELATED TO PLAINTIFF'S CAUSES OF ACTION

On the morning of June 3, 2016, James was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch, eventually being rushed to Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.

On June 30, 2016, James was admitted into Defendants' facility. On admission James was oriented x 3 and noted to have appropriate judgment/insight. [See, Exhibit A] It was further noted that James had *decisional capacity*. *Id.* Particularly, it was noted that James did possess the decisional capacity to make decision himself. [See, Exhibit B] It was also noted at admission that James had no diagnosis of mental illness. [See, Exhibit C] James' mother, Wilda Boyd, was asked to sign all the admission paperwork including the unenforceable Arbitration Agreement. [See, Exhibit D] The Arbitration Agreement was not part of the Admission Agreement.¹⁵ [See, Exhibit E] This is evident where the "admission package" consists of 23 pages. The last page being the Acknowledgment where it was acknowledged that the Arbitration Agreement was not part of the Admission Agreement. [See, Exhibit E]

¹⁵ Defendant's Memorandum in Support of Defendant's Motion to Dismiss and Compel Arbitration filed June 11, 2018, two (2) days prior to the hearing date contained as Exhibit 1 merely 1 page of the 12 page admission paperwork.

By August 5, 2016, James had developed a sacral stage III/IV pressure wound(s), pressure ulcer of right and left heel - unstageable. On August 17, 2016, James was admitted into a hospital with fever, sacral wound, and sacral osteomyelitis and eventually diagnosed with sepsis, sacral wound, and stage IV pressure ulcer. By December 12, 2016, James was diagnosed with a stage III pressure ulcer of sacral region and unstageable pressure ulcer of left heel. By February 2, 2017, James was diagnosed with sepsis due to infected stage IV decubitus ulcer. James continues to struggle with these injuries.

Plaintiff requested any and all records from Defendant on November 9, 2016. [See, Exhibit F] Defendant failed to provide Plaintiff's entire record, including but not limited to the Admission Agreement and Arbitration Agreement, among other things. [See, Exhibit G] On November 30, 2016, Susan Cain, an employee of Defendant forwarded an Affidavit of Authenticity confirming the following:

- a. As Records Custodian, [she] received a request from Anastopoulo Law Firm, LLC, requesting a complete copy of any and all documents pertaining to Plaintiff.
- b. As the Records Custodian, the attached records consisting of _____ page(s) are hereby verified as true, accurate, and complete copy of records of the Plaintiff in the possession of the above named company.
- c. That these records were generated at or near the time of treatment by someone with knowledge of the treatment, are kept in [Defendant's] ordinary course of business and it is your practice to keep such records.
- d. That **no documents from the file have been omitted from the attachments.**

[See, Exhibit F]

On or about December 2, 2016, Plaintiff received Seven Hundred Eighty-Eight (788) pages of Plaintiff records, five (5) of which consisted of Plaintiff's request and the aforementioned Affidavit of Authenticity. It has become apparent to Plaintiff, based merely on

Defendant's Motion with exhibits, that Defendant failed to provide Plaintiff's entire record as sworn by Defendant's employee, Susan Cain. [See, Exhibit F] It has also become apparent that Defendant omits the entire Admission Agreement, which Plaintiff does not have possession of, by only filing as Exhibit 1 to its memorandum the very last page of the entire Admission Agreement. [See, Defendant's Exhibit 1; see also Exhibit G, page 12 of 12] Therefore, where Plaintiff's counsel has similar causes of action against the named Defendant - Plaintiff has provided a redacted version of the entire Admission Agreement from another cause of action. [See, Exhibit G excluding page 12 of 12]

LEGAL ANALYSIS

I. Plaintiff agrees the Federal Arbitration Act applies to the enforceability, or lack thereof the Arbitration Agreement.

While there is a presumption in favor of arbitration agreements, this presumption only applies where there is a valid arbitration agreement. EEOC v. Waffle House, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 D.E.2d 581 (2003). However, not all arbitration clauses are enforceable. Unless the parties have contracted otherwise, the FAA applies in federal and state courts to any arbitration agreement. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007).

Plaintiff agrees that the FAA applies. However, the Arbitration Agreement is subject to the same defenses applicable to all other contracts as discussed below. Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) (i.e. consideration). Furthermore, and more importantly, Mr. Boyd was perfectly competent and able to sign the Arbitration Agreement himself.

II. The Arbitration Agreement is unenforceable where Wilda Boyd did not have authority to sign the Arbitration Agreement on behalf of James Boyd, and there is clear showing that Mr. Boyd was competent at admission when the Arbitration Agreement was executed.

As an initial matter, Mr. Boyd was competent to sign the Arbitration Agreement at admission. On admission, Mr. Boyd was alert and oriented x 3. [See, Exhibit A]. It was also noted at admission that Mr. Boyd had *decisional capacity*. *Id.* (*emphasis added*) Additionally, Mr. Boyd was admitted with no diagnosis related to mental illness. [See, Exhibit C] (i.e. dementia, Alzheimer's) Furthermore, Defendant has failed to show that Mr. Boyd granted Ms. Boyd the authority to sign the Arbitration Agreement on his behalf. Based on this argument along, this court should deny Defendant's Motion. Furthermore, Defendant provided two (2) Federal orders whereby Defendant's motion to enforce arbitration was granted. However, Defendant failed to provide the important detail that neither Plaintiff, or Plaintiff's decedent, in those matters were competent to sign the Arbitration Agreement. [See, Exhibit H]

a. The plain language of the Arbitration Agreement does not bind Mr. Boyd to the Arbitration Agreement, where the Arbitration Agreement is unenforceable.

Defendant's first argument that "the plain language of the Agreement binds Plaintiff" puts the wagon before the horse. In theory, the plain language would bind Mr. Boyd but only if the Arbitration Agreement is deemed enforceable – which it is not because Mr. Boyd was competent at admission and on the date the Arbitration Agreement was executed. Therefore, Plaintiff will not entertain Defendant's first argument but instead focus on Arbitration Agreement's enforceability, or lack thereof, as opposed to Defendant's "procedural" argument.

- b. Defendant cannot argue that Plaintiff should be estopped from denying the validity of the Arbitration Agreement, where there is no merger of the Admission Agreement and Arbitration Agreement, and Defendant fails to show the elements necessary to prove equitable estoppel.**

- i. There is no merger of the Admission Agreement and Arbitration Agreement.**

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014); Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). [See, Exhibit D: Coleman]

In Coleman, the court examined the admission agreement and arbitration agreement ultimately deciding that there was no merger of the documents. Coleman v. Mariner Health Care, Inc., 407 S.C. at 355, 755 S.E.2d at 455. Ann Coleman signed a number of documents, including an arbitration agreement, when admitting her sister to a health care facility. Coleman, 407 S.C. at 350, 755 S.E.2d at 452. After her sister's death, Ms. Coleman brought suit and the facility sought to compel arbitration. Id. The circuit court denied the motion to compel arbitration and Ms. Coleman appealed. Id. On appeal, the Supreme Court found there was no merger of the admission agreement and arbitration agreement. The Supreme Court determined that the admission agreements contain this language in a section titled "Entirety of Agreement":

This Agreement, including all Exhibits hereto, and the Arbitration Agreement between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any

party, that are not contained in this Agreement or in the Arbitration Agreement. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

Coleman, 407 S.C. at 355, 755 S.E.2d at 455.

The Supreme Court determined:

On its face, this clause recognizes the “separatedness” of the AA [Arbitration Agreement] and the admission agreement, not a merger of the two contracts. Moreover, the AA could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate. By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. Klutts Resort, *supra*. Even if the “Entirety” clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants. See Davis v. KB Home of S.C., Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct.App.2011) fn. 4. Since there was no merger here, appellants' equitable estoppel argument was properly denied by the circuit court.

Coleman, 407 S.C. at 355–56, 755 S.E.2d at 455.

Furthermore, in invalidating the Arbitration Agreement, the Court held:

Here, Sister was presented with two documents at each of Decedent's admissions: a “RESIDENTIAL ADMISSION AND FINANCIAL AGREEMENT” and an “AGREEMENT FOR ARBITRATION.” The admission and financial agreement provides that it “sets forth the terms under which the Facility will provide long term care health services to [Decedent] and how the [Decedent] will pay for such services.” Assent to this contract was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. **The scope of Sister's authority to consent to “decisions concerning Decedent's health care” extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to**

pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement. We therefore affirm the circuit court's holding that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

-Coleman, 407 S.C. at 353-354 (emphasis added)

In the instant case, we can only assume that the Arbitration Agreement was not a pre-condition to admission. Therefore, it was separate and distinct from the Admission Agreement. Furthermore, Ms. Boyd had no authority to bind a competent Mr. Boyd to the Arbitration Agreement. Additionally, the Admission Agreement states the following:

- Page 6 of 12, Paragraph 1 under titled - IV Termination: Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.
- Page 6 of 12, Paragraph 2 under title - IV Termination: Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.
- Page 10 of 12 under title – IX Governing Law: This agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.
- Page 11 of 12, Paragraph 2 under title – XVII Miscellaneous: . . . Representative will by fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.
- Page 12 of 12, under Section XVIII titled - Entire Agreement, states in part that “this [Admission] Agreement represents the entire agreement and understanding between the parties.”

[See, Exhibit E: Defendant’s Exhibit 1 - Admission Agreement]

On the other hand, the Arbitration Agreement states that the “Arbitration Agreement is not subject to South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act – same in Coleman. [See, Exhibit F: Defendant’s Exhibit 2 – Arbitration Agreement] Furthermore, much like the Supreme Court found in Coleman the Admission Agreement could be terminated by the Resident at any time – by the Defendant’s facility with at least fifteen (15) days written notice. There is no termination provisions in the Arbitration Agreement. The Admission Agreement, much like Coleman also plainly states that the Admission Agreement represents the entire agreement and understanding between the parties.

Additionally, Ms. Boyd initialed an Acknowledgment – acknowledging that she received certain information and/or documentation. [See, Exhibit E: Acknowledgment] This acknowledgement acknowledged that Ms. Boyd received the Admission Agreement, Facility’s Handbook, etc., but not the Arbitration Agreement. Again, indicating that there was no merger of the Admission Agreement and Arbitration Agreement.

Coleman and Hodge are **not** distinguishable despite Defendant misguided argument:

COLEMAN:

- 1) Arbitration Agreement can be disclaimed within thirty (30) days.
- 2) Admission Agreement cannot be disclaimed.
- 3) Admission Agreement paginated with page numbers 1 through 12.
- 4) Arbitration Agreement paginated with page numbers 1 through 5
- 5) Separate signature page for both the Arbitration Agreement and Admission Agreement.
- 6) Arbitration Agreement governed by Federal Arbitration Act.
- 7) Admission Agreement can be modified within thirty (30) days of notice

8) Entirety of the Agreement clause in Admission Agreement

The Supreme Court determined the circuit court properly denied the equitable estoppel argument because *no merger occurred*. Coleman, 407 S.C. at 356. (*emphasis added*)

HODGE:

1) Admission Agreement governed by South Carolina Law

2) Arbitration Agreement governed by federal law.

3) Admission Agreement can be revoked within thirty (30) days.

4) Clause identifying separateness, stating “[a]ny and all claims or controversies arising . . . to this Agreement or . . . Admission Agreement.

5) Admission Agreement can be amended.

6) Each documents separately paginated with its own signature page.

Base on those facts, the Court of Appeals for South Carolina determined that the Admission Agreement and Arbitration Agreement did *not merge*. Hodge, 422 S.C. at 302. (*emphasis added*)

Therefore, where the facts of the case at hand are in-line with Coleman and there is no merger Defendant’s merger argument should be denied.

ii. Defendant cannot show equitable estoppel where: 1) Ms. Boyd did not act in a way amounting to false representation; 2) Ms. Boyd did not intend that such false representation be acted on by Defendant; and 3) Ms. Boyd did not have actual or constructive knowledge of the real facts.

Defendant argues that the Plaintiff should be estopped from denying the validity of the Arbitration Agreement because James Boyd accepted the benefits of the Admission Agreement and therefore should not be able to repudiate the agreement. However, the Defendant’s argument is misguided on the theory of merger. Additionally, Plaintiff finds it hard to believe that he

received any benefit from the Admission Agreement as after merely one (1) month of admission Plaintiff had developed several severe pressure wounds resulting in a potentially deadly infection and significant medical treatment and bills.

“Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements.” Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped: 1) acted in a way amounting to false representation; 2) intended that such conduct be acted on by the other party; and 3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must: 1) lack knowledge and the means of knowledge of the truth of the facts in questions; 2) rely on the conduct of the party estopped; and 3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. The Court in Hodge v. UniHealth Post Acute Care of Bamberg, LLC, also determined that Plaintiff arguably did not receive a benefit from the Admission Agreement, where she was admitted and the Defendant’s facility caused the Plaintiff’s injuries that later led to her death. Hodge v. UniHealth Post Acute Care of Bamberg, LLC, 2018 WL 1177630 (March 7, 2018).

In the case at hand, Defendant has not shown any evidence to establish the aforementioned elements required to prove equitable estoppel. First, there is no evidence that Defendant lacked knowledge that Ms. Boyd was not authorized to bind Mr. Boyd to the Arbitration Agreement. In fact, the opposite should be true. Defendant’s own staff documented in Mr. Boyd’s medical chart that he was: 1) alert and oriented x 3 at admission [See, Exhibit A]; Mr. Boyd also had *decisional capacity*. Id. (*emphasis added*); 3) Mr. Boyd was admitted with no diagnosis related to mental illness. [See, Exhibit C]

Additionally, Ms. Boyd did not have power of attorney over Mr. Boyd nor did Defendant produce evidence that Ms. Boyd represented the same to Defendant. Furthermore, Paragraph 1 on page 11 of the Admission Agreement under the title XVII Miscellaneous, states “[i]n the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark.” There is no mark; therefore, Mr. Boyd was both mentally and physically competent to sign the Admission Agreement and/or Arbitration Agreement on his own behalf.

Therefore, Defendant cannot argue merger of the Admission Agreement and Arbitration Agreement. Defendant can also not claim to have been misled and cannot rely on equitable estoppel if it, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in questions. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-909 (Ct. App. 2001). Furthermore, Defendant had the capacity to determine whether Ms. Boyd had authority to sign the Arbitration Agreement on Mr. Boyd’s behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission. Defendant is very familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Ms. Boyd for power of attorney documentation and certainly the power to review its own paperwork and documentation. Therefore, Defendant cannot argue merger nor estoppel and the court should deny Defendant’s Motion based on the same.

- c. The South Carolina Bill of Rights for Residents of Long-Term Care Facilities does not bind Mr. Boyd to the Arbitration Agreement simply because it defines “representative” and required Defendant to provide Mr. Boyd with the Bill of Rights.**

Defendant attempts to misguide the court by arguing that the S.C. Bill of Rights for Residents of Long-Term Care Facilities binds Mr. Boyd to the Arbitration Agreement where Ms.

Boyd signed a written acknowledgment of the Bill of Rights, the Bill of Rights defines representative, and Ms. Boyd received a copy of the Bill of Rights on Mr. Boyd's behalf. This argument has no merit where Mr. Boyd was perfectly capable and competent to sign the Arbitration Agreement, Admission Agreement, and the Acknowledgement – acknowledging Ms. Boyd received a copy of the Bill of Rights.

Therefore, where Defendant's argument that Ms. Boyd's receipt of the Bill of Rights binds Mr. Boyd to arbitration is not supported by case law and has no merit - the court should deny Defendant's Motion based on this meritless argument.

d. Wildae Boyd did not possess apparent authority to bind Plaintiff under the Arbitration Agreement where Defendant's only rational argument is that Ms. Boyd signed the paperwork.

A principal may be bound to an arbitration agreement by his agent if there is evidence of an expressed or implied agency relationship. Agency may be established by clear evidence of actual or apparent authority. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is “ . . . expressly conferred upon the agent by the principal.” Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). South Carolina places the burden of proof on a party asserting agency. Pee Dee Nursing Home, Inc. v. Florence Gen. Hosp., 309 S.C. 80, 85, 419 S.E.2d 834, 837 (Ct. App. 1992). The burden is not to make the mere prima facie showing but rather to show that agency is “clearly established by the facts.” Id. South Carolina law imposes this weighty burden because a person dealing with an alleged agent has a legal duty of care to determine the scope of the perceived agent's authority. Id. (citing McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)). The legal consequences of an agent's actions can only be attributed to the principal when the agent has actual or apparent

authority. Charleston, S.C. Registry v. Young Clement Rivers & Tisdale, 359 S.C. 635, 642 (2004) (*citations omitted*).

In the case at hand, Defendant has produced no evidence of any actual agency beyond Ms. Boyd's signature. In fact, the opposite is clear where Mr. Boyd was competent at admission and able to voice his demands, concerns, and needs. Please refer above to admission records and Paragraph 1 on page 11 of the Admission Agreement under the title XVII Miscellaneous, which states "[i]n the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark." Again, there is no mark. Therefore, Mr. Boyd was both mentally and physically competent to sign the Admission Agreement and/or Arbitration Agreement on his own behalf and did not convey any clear evidence of actual or apparent authority. Cowburn, 366 S.C. at 39, 619 S.E.2d at 448. [See, Exhibit H and I: re: McCutchen / Benson]

e. The Arbitration Agreement is not enforceable where Mr. Boyd received no benefit from the Arbitration Agreement via Third Party Beneficiary

The Court in Hodge v. UniHealth Post Acute Care of Bamberg, LLC, determined that Plaintiff arguably did not receive a benefit from the Admission Agreement, where she was admitted and the Defendant's facility caused the Plaintiff's injuries that later led to her death. Hodge, 2018 WL 1177630 (March 7, 2018). The same can be said here.

First, there is no merger of the Admission Agreement and Arbitration Agreement. Assuming there is, Mr. Boyd received no benefit from the Admission Agreement. He was admitted as a high fall risk. Upon information and belief, within approximately one month of his residency Mr. Boyd suffered multiple falls one eventually leading to a severe fracture. Therefore, as the court determined in Hodge, Plaintiff finds it hard to believe that Mr. Boyd received any benefit.

Furthermore, there is no benefit listed in the Arbitration Agreement. For instance, the Defendant facility does not offer to pay Plaintiff's arbitration expenses. The Arbitration Agreement was not, and cannot be a precondition to admission. In short, Mr. Boyd received no benefit from any agreement with Defendant.

f. The Arbitration Agreement is unconscionable.

Unconscionability is defined "as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." Herron v. Century BMW, 387 S.C. 525, 532, 693 S.E.2d 394, 398 (citing Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007)). In determining unconscionability, the court considers whether a contract is absent of meaningful choice and contains oppressive, one sided terms. "Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining power in the contract at issue." Id.

Here, the Arbitration Agreement at issue, and the circumstances surrounding its execution, meets the definition of unconscionable. For example, the bargaining powers between the parties in this case is severely disparate. Neither Mr. nor Ms. Boyd had any bargaining power as they had no input into the terms of the agreement nor any realistic opportunity to negotiate the terms of the Arbitration Agreement. In fact, Defendant presented the Arbitration Agreement to Ms. Boyd while Mr. Boyd was competent to make his own decisions.

In contrast, the Defendant is a sophisticated business and healthcare company, who presented Ms. Boyd with a form contract prepared solely by Defendant and/or its seasoned and experienced contract attorneys, with terms heavily weighted to Defendant's favor and with no opportunity for meaningful review, discussion, or negotiation of terms. Mr. Boyd on the other

hand, was an individual in need of Defendant's services lacking knowledge of the Arbitration Agreement, its terms, and the constitutional right he was being asked to waive via Ms. Boyd.

Therefore, in light of the one-sidedness of the terms of agreement and the relative disparity of the parties' bargaining power, and the Defendant's sophistication, it is apparent the Arbitration Agreement is unconscionable.

g. The Arbitration Agreement unenforceable and void where it lacks valuable consideration.

While federal law preempts state laws that would invalidate arbitration agreements on most public policy grounds, the FAA looks to state law to decide the threshold questions of contract formation. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'"). Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts. Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) Simpson, 373 S.C at 14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

The necessary elements of a contract are an offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 581 S.E.2d 161, 166 (S.C. 2003) "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Plantation A.D., LLC v. Gerald Builders of Conway, Inc., 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship., 331 S.C. 385,

389, 503 S.E.2d 184, 186 (Ct.App.1998)). Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

Our courts have held that where there is a mutual promise to arbitrate, there must be additional consideration. See Riedman Corp. v. Jarosh, 290 S.C. 252, 253, 349 S.E.2d 404, 405 (1986); see also O'Neil v. Hilton Head Hosp., 115 F.3d 272, 274-5 (4th Cir. 1997). However, in determining whether adequate consideration exists in a contract, or arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confines of the four corners of the instrument. State Acc. Fund v. S.C. Second Injury Fund, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts must assess whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate.

In the case at hand, assuming Ms. Boyd had authority there is no consideration in agreeing to the Arbitration Agreement. The one-page agreement contains no benefit or detriment to the parties. Therefore, where the Arbitration Agreement lacks consideration the court should deny Defendant's Motion.

CONCLUSION

For all the foregoing reasons, Defendant's Motion to Dismiss and Compel Arbitration shall be denied.

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

/s/ Stefan B. Feidler

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar Number: 101010

Stefan B. Feidler, Esquire

S.C. Bar Number: 101918

32 Ann Street

Charleston, South Carolina 29403

(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
June 12, 2018

Exhibit

A

PATIENT: BOYD, JAMES (7/18/1965)
 TREATED BY: Penny Mulberry
 DOS: 7/5/2016
 COMPANY: IPC Healthcare Mid-South (ECP)

FACILITY: MAGNOLIA PLACE OF GREENVILLE
 SNF
 GPM MRN: 8624471 (DID: 37774061)

HISTORY AND PHYSICAL HISTORY

Code Status: Full code

Room Number: 136b

Chief Complaint / Nature of Presenting Problem: I have been asked to see the patient for admission evaluation

History Of Present Illness: 50-year-old male with a history of tobacco use who was hospitalized from 6/3/2016 through 6/30/2016 at Richland Memorial and Columbia, South Carolina after presenting as a trauma patient from a motorcycle collision. He suffered a C4-C5 cord compression with contusion and central cord syndrome and was unable to move his extremities. Urine drug screen was positive for cocaine and cannabinoids and he had an elevated blood alcohol level at admission. He was taken for a C4-C6 anterior disc fusion on 6/4/2016 due to neurological deficits on admission. He did well postop and worked with physical therapy to regain motor motions all 4 extremities. At the time of discharge, he was able to move his upper extremities at 3 out of 5 strength as far as the distal to the hand and only 1/5 strength to bilateral lower extremities with slight flexion of both knees. He had repeat films done on 6/29/2016 that showed appropriate healing with hardware and appropriate placement. He was allowed to wear soft collar for comfort and will follow-up with ortho spine in 2 months as an outpatient. His pain was managed with oxycodone, Flexeril and Neurontin.

Postop he had significant dysphasia that was likely secondary to anterior cervical swelling and need for cervical collar but he felt several swallow studies and had an NG tube placed for tube feeds initially, and ultimately underwent PEG placement on 6/21/2016. He is to remain nothing by mouth at this time and continue to work with speech therapy. His last video swallow study test was on 6/29/2016 which showed evidence of aspiration. He temporarily required Midodrin postop to support his blood pressure, but his low blood pressure resolved and this was weaned off. He was evaluated by psychiatry during this consultation secondary to depression and insomnia and was started on Remeron and trazodone with improvement. He had some fever with tachycardia during his hospitalization, but infectious disease workup was negative. He was treated empirically with 7 days of vancomycin and Rocephin and at the time of discharge had been afebrile for 72 hours without leukocytosis. He was also found to have a boil on his right wrist on 6/20/2016 and had an I&D of this. Orthopedics consult to do no intervention was needed. This was treated with wound packing local wound care and appeared to be healing appropriately at the time of discharge. He was felt ready for transfer to Magnolia Place skilled nursing facility on 6/30/2016 for continued rehabilitation. He reports he is doing better at this time now that he has suction set up attached to his bed to use hands free and a call bell he can activate with his mouth.

Medication List:

1. Lovenox 40 mg subcutaneous every 12 hours
2. Gabapentin 300 mg, 3 capsules per tube 3 times a day
3. Oxycodone 5 mg per tube every 4 hours when necessary pain
4. Tylenol 650, 2 tablets per tube every 4 hours when necessary pain
5. Ibuprofen 600 mg, 1 per tube every 6 hours when necessary
6. Cyclobenzaprine 10 mg per tube 3 times a day
7. Mirtazapine 15 mg, one per tube daily at bedtime
8. Trazodone 50 mg, one per tube daily at bedtime
9. DuoNeb every 6 hours when necessary
10. Ergocalciferol 8000 units/mL, 1 mL per tube daily
11. Docusate 50 mg/5 mL, 10 mL per tube twice a day
12. Bisacodyl 10 mg suppository daily at bedtime

Allergy List: No known medication allergies.

Past Medical History: Hx Substance abuse

Past Surgical History: Prior to closure of lateral neck stabbing incision approximately 15-20 years ago.

C5-6 anterior cervical discectomy and fusion/C5-6 anterior cervical discectomy and fusion with structural allograft
 2016
 PEG placement 6/21/2016

PATIENT: BOYD, JAMES (7/18/1965)

EATED BY: Penny Mulberry

DOS: 7/5/2016

COMPANY: IPC Healthcare Mid-South (ECP)

FACILITY: MAGNOLIA PLACE OF GREENVILLE - SNF

GPM MRN: 8624471 (DID: 37774061)

Social History: Single. Lived with his mother in Columbia, SC. Has 4 children and at least one grandson. Worked for refrigeration company. Completed 11th grade

Tob use: 1.5ppd, started at age 13

Etoh use: occasional, ~2 16 ounce beers when he drinks

Illicits: +THC and crack cocaine

Family History: Mother: healthy

Father: d. from GSW when pt was 3yo

No hx DM, HTN, CAD

REVIEW OF SYSTEMS

General: No fever, chills, or sweats reported.

Eyes: No drainage.

Ears/Nose/Mouth/Throat: Reports sore throat for the last 5 days

Respiratory: Mild chronic cough with mild sputum production.. Denies shortness of breath

Cardiovascular: No chest pain, tightness or palpitations. No increased edema.

Gastrointestinal: No abdominal pain, nausea, vomiting, or change in bowel habits. Stools have been loose on tube feeds.

Genitourinary: He denies dysuria. He reports his urinary retention has improved since admission here. He does have some frequency. He has occasional incontinence.

Musculoskeletal: Has had left shoulder pain since the accident. He has intermittent increased neck pain. He reports he has feeling and can move both of his arms, but is unable to move his hands independently for the most part. He reports sometimes he can obtain very minimal movement in his hands.

Neurological: No loss of consciousness, transient ischemic symptoms, or seizures.

Psychiatric: No change in cognition.

VITAL SIGNS/CONSTITUTIONAL

Temperature: 97.8 Fahrenheit; **Pulse:** 78 BPM; **Respiratory Rate:** 18 Breaths per minute; **Blood**

Pressure: 110/72; **Weight:** 129.4 pounds; **Height:** 68 inches; **BMI:** 19.7;

PHYSICAL EXAM

General: Well-developed, thin middle-aged gentleman lying in bed in no acute distress.

Eyes: Conjunctivae and lids appear normal. Pupils equal and reactive to light.

Ears/Nose/Mouth/Throat: White plaques noted on tongue and back of throat.

Neck: No thyromegaly, lymphadenopathy, or masses.

Respiratory: Respirations unlabored. No wheezing, rales, or rhonchi audible. No cough

Cardiovascular: Regular rate and rhythm, without murmur, rub or gallop.

Arterial: Palpable pedal pulses bilaterally.

Edema/Varicosities of Extremities: No peripheral edema noted.

Gastrointestinal: Abdomen is soft, nontender, nondistended, and without masses. Bowel sounds active. No hepatosplenomegaly. PEG tube is in place in the left upper quadrant. No signs of erythema, fluctuance, or exudate.

Musculoskeletal: He was bilateral arms. No movement of his hands. Grip is 0 out of 5 bilaterally. He has some movement in the right leg. No movement of the left leg.

Skin: Scars noted over his left neck

Neurological: Voice weak. No weakness noted. Muscle atrophy

Psychiatric: Alert and oriented x3. Judgment/insight: Appropriate.

SUMMARY OF PLANS

Diagnostic: We will check labs routinely, and monitor for any other acute changes or complications and adjust

PATIENT: BOYD, JAMES (7/18/1965)
TREATED BY: Penny Mulberry
DOS: 7/5/2016
COMPANY: IPC Healthcare Mid-South (ECP)

FACILITY: MAGNOLIA PLACE OF GREENVILLE -
 SNF
GPM MRN: 8624471 (DID: 37774061)

medication regimen as appropriate.

Therapeutic: Continue to maintain a safe and comfortable environment.

Rehab: Patient will be evaluated by PT, OT, and speech therapy as needed.

Nursing: Nursing to monitor for falls, constipation, dehydration, pain control, adequate by mouth intake.

Goals: Improve and maximize functional and medical status, maintain overall safety and well-being.

Prognosis: Prognosis is fair

Rehabilitation Potential: Rehabilitation potential is fair.

End-of-Life Treatment Status: Patient does have decisional capacity and requests to be full code

LABS/RADIOLOGY/TESTS

Labs: Hospital labs

6/27/2016:

WBC 6.2, hemoglobin 9.9, hematocrit 31, platelets 306

Sodium 137, potassium 4.4, chloride 101, CO2 30, BUN 11, creatinine 0.3, glucose 94, calcium 8.3, magnesium 2.1

6/7/2016:

AST 71, ALT 31, alkaline phosphatase 50, total protein 6.6, albumin 2.7, total bili 0.4

6/6/2016:

WBC 10.2, hemoglobin 10.3, hematocrit 31.3, platelets 132

Sodium 146, potassium 3.8, chloride 112, CO2 29, BUN 11, creatinine 0.4, glucose 1:5, calcium 7.2

INR 1

Vitamin B12 598, folate 6.3

Vitamin D 25-OH 5.9 (L)

6/3/2016:

WBC 7.2, hemoglobin 12.4, hematocrit 37.2, platelets 204

Sodium 142, potassium 3.9, chloride 109, CO2 27, BUN 16, creatinine 1.3, glucose 129, calcium 8.8

Hemoglobin A1c 5.9

Acute hepatitis panel negative

Urine drug screen positive for cannabinoids and cocaine metabolites

DIAGNOSIS AND ASSESSMENT

Assessment:

CPT Codes:

99306

ICD Codes:

344.00 / G82.50: Quadriplegia, post-traumatic
 PT/OT

952.03 / S14.124A: Central cord syndrome at C4 level of cervical spinal cord

V15.29 / Z98.89: History of neck surgery

311 / F32.9: Depression

787.20 / R13.10: Dysphagia
 npo status

V44.1 / Z93.1: S/P percutaneous endoscopic gastrostomy (PEG) tube placement

112.0 / B37.0: Thrush

treat with Nystatin swab, gargle and spit.

729.2 / M79.2: Neuropathic pain
 cont current pain regimen.

PATIENT: BOYD, JAMES (7/18/1965)
EATED BY: Penny Mulberry
DOS: 7/5/2016
COMPANY: IPC Healthcare Mid-South (ECP)

FACILITY: MAGNOLIA PLACE OF GREENVILLE -
SNF
GPM MRN: 8624471 (DID: 37774061)

793.11 / R91.1: Incidental lung nodule
noted made of tiny nodular opacities in apices & RUL on ct chest in discharge paperwork, but no CT
report seen. Needs f/u imaging with pcp
268.9 / E55.9: Vitamin D deficiency
780.60 / R50.9: Pyrexia

Plan: This is a high complexity patient who is at high risk of complications secondary to acute issues, multiple comorbidities, recent hospitalization, and risk of side effects from medically necessary polypharmacy. The patient will require close monitoring and frequent followup for successful recovery and avoidance of further complications. We will continue to follow the patient very closely and monitor for any signs or symptoms of adverse reactions or underlying complications that may arise and adjust the plan of care as appropriate. See above plan for continued coordination of care.

OTHER

Other: Portions of this note have been dictated using voice recognition software. Variances in spelling and vocabulary are possible and unintentional. Not all errors are caught/corrected. Please notify the author if any discrepancies are noted or if the meaning of any statement is not clear.

***** Document e-signed by Penny Mulberry on Jul 9 2016 1:33AM EDT *****

Exhibit

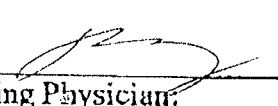
B

ADDRESSING DECISIONAL CAPACITY

Based upon my observation and involvement with this patient, it is my medical opinion that

Boyd, James Resident # _____

Check one of the following statements

☒ This patient DOES possess the decisional capacity to make healthcare decisions for self ☐ This patient DOES NOT meet all the criteria for decisional capacity, therefore is not able to make healthcare decisions for self. Furthermore, it is my opinion that due to the patient's medical conditions(s), this lack of capacity is not likely to change in the immediate future.	☐ This patient DOES possess the decisional capacity to make healthcare decisions for self ☐ This patient DOES NOT meet all the criteria for decisional capacity, therefore is not able to make healthcare decisions for self. Furthermore, it is my opinion that due to the patient's medical conditions(s), this lack of capacity is not likely to change in the immediate future.
Criteria not met: ☐ Oriented to ___ person ___ place ___ time ☐ Understands the nature of his/her illness ☐ Ability to understand that decisions need to be made ☐ Ability to communicate a decision ☐ Ability to understand and use information logically to reach a decision ☐ Ability to be realistic in decision making (i.e. understand the consequences of a decision)	Criteria not met: ☐ Oriented to ___ person ___ place ___ time ☐ Understands the nature of his/her illness ☐ Ability to understand that decisions need to be made ☐ Ability to communicate a decision ☐ Ability to understand and use information logically to reach a decision ☐ Ability to be realistic in decision making (i.e. understand the consequences of a decision)
Comments:	Comments:
Attending Physician:  Date: <u>7/5/16</u>	Second Physician involved in care: _____ Date: _____

Exhibit

C

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICESPASARR - Level I
SCREENING FORM

Name: JAMES, CALVIN, BOYD	Date of Review: 6/21/2018
SSN: [REDACTED]	Location at assessment: Palmetto Health Richland
Medicaid: ☒ Non-Medicaid:	CLTC#: 9724583
Date of birth: [REDACTED]	Referral source: Hospital
All Diagnosis (If dementia diagnosed or suspected, complete and attach the Mini-Mental Form):	
As fracture, quadriplegia, dysphagia	

I. SCREENING FOR MENTAL RETARDATION INDICATORS:

	YES	NO
1. Diagnosis of mental retardation or related disability made prior to age 22?		☒
2. IQ tested below 70?		☒
3. Was time of test prior to age 22?		☒
4. Does client have 3rd grade education? If not, state reason in Comments Section.	☒	
5. Adaptive behavior: Could client ever perform self care activities?	☒	
- Did he/she help care for spouse/parents/children?	☒	
- Was client ever able to cook and perform household duties?	☒	
- Was client gainfully employed? If not, explain in Comments Section.	☒	
- Did client have driver's license?	☒	
6. Cognitive Functioning:		
- Memory: Does client remember what he/she had for breakfast or lunch? N/A NAD		
- Simple math: Can client add (2 + 8)?	☒	
- Concept formation: Can client describe the difference between a fish and dog?	☒	

7. Comments:

II. SCREENING FOR MENTAL ILLNESS INDICATORS:

1. Diagnosis of mental illness: No ☒ Yes ☐ Diagnosis: _____

2. History of psychiatric hospitalization within previous two years. (Give dates of treatment) If no hospitalization, indicate here: _____
to to to

3. Current behavioral indicators:

Attempted suicide	Unrealistic fear of strangers
Assaultive	Self-mutilation
Incessant loud talking	Combative
Uncooperative	Social isolation
Hostile	Destruction of property
	None of these indicators

4. Comments: (Include explanation of major symptoms):

DHHS Form 234 (1/96) Previous Editions are Obsolete.

Exhibit

D

PLEASE READ CAREFULLY

FACILITY - RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

This Agreement is made between Magnolia Place of Greenville ("Facility"), its agents, employees and servants, and James Boyd ("Resident") or James Boyd ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative"). It is the intention of the parties to this Agreement to bind not only themselves, but also their successors, assigns, heirs, personal representatives, guardians or any persons deriving their claims through or on behalf of Resident.

It is understood by Resident/Representative that he/she is not required to use the aforesaid Facility for Resident's healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care to Resident.

It is further understood that in the event of any controversy or dispute between the parties arising out of or relating to Facility's Admission Agreement, or breach thereof, or relating in any way to Resident's stay at Facility, or to the provisions of care or services to Resident, including but not limited to any alleged tort, personal injury, negligence or other claim; or any federal or state statutory or regulatory claim of any kind; or whether or not there has been a violation of any right or rights granted under State law (collectively "Disputes"), and the parties are unable to resolve such through negotiation, then the parties agree that such Dispute(s) shall be resolved by arbitration, as provided by the South Carolina Alternate Dispute Resolution/Mediation Rules.

The parties shall select an arbitrator from a panel having experience and knowledge of the health care industry. If the parties cannot reach a mutual decision on the selection of an arbitrator, the parties agree that an arbitrator shall be selected by the Court. The arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.

The parties acknowledge and agree that, because the services and reimbursement thereof effects a transaction that involves interstate commerce, the enforcement of this Arbitration Agreement is not subject to the South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any contrary provision of this Agreement or contrary state law.

I understand and agree that I am giving up and waiving my right to a jury trial.

This Agreement shall remain in effect for all care rendered at Facility and shall survive any termination or breach of this Agreement or the Admission Agreement. By his/her signature below, the executing party represents that he/she has the authority to sign on Resident's behalf so as to bind the Resident as well as the Representative.

X Wella Ann Boyd 6/30/16
Resident/Representative Signature Date

Leola Butts 6/30/16
Authorized Agent of Facility Date

Printed Name of Resident/Representative

Leola Butts
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

Exhibit

E

Acknowledgement

I acknowledge I have received the following information and/or documentation, which fully explains my rights under Federal and applicable state laws as a nursing home resident, and the rules and regulations governing my conduct as a resident. (Resident/Representative should check and initial each item listed as it is furnished and explained.)

- ☐ AB A written copy of Facility's Admission Agreement
- ☐ AB A written copy of Facility's Handbook, which includes the facility's rules/regulations governing resident conduct, as well as written explanations of the following: (Admission/Discharge and Readmission policies; Bed assignment, reservation, and refund policies; Protection of Resident Funds; Resident's Rights under Federal law; Bed Hold policies; Policies/procedures for bringing personal items into the facility and securing personal belongings, valuables and money; Special Services, such as laundry, barbers and activities; Policies/procedures for filing grievances; Medicare/Medicaid Funding; Smoking Policies)
- ☐ AB A written copy of resident's rights under applicable state laws.
- ☐ AB A written copy of facility's policy on Advance Directives.
- ☐ AB A written explanation of the charges for services provided by facility and outlined in the Handbook and those services offered on an as-needed basis.
- ☐ AB A separate listing of local and government resources as furnished by the state Ombudsman and any other advocacy groups as required by state/federal law.
- ☐ AB A separate listing of all medical professionals available to provide on-site services.
- ☐ AB A written copy of facility's policy on the use of physical or chemical restraints, including bed rails.

By my signature below, I agree to abide by all facility's rules, policies, terms and conditions as explained to me and provided above, as well as all federal and applicable state laws.

Resident Signature _____ Date 7/7/16

Printed Name of Resident _____

Legal Representative Signature, if any Ann Boyd Date 7/7/16

Printed Name of Representative _____

Witness Signature _____ Date _____

Printed Name of Witness _____

Legal Representative Signature I. H. B. Date 7/7/2016 Printed Name and Title Leola B. Adams

Exhibit

F

Akim A. Anastopoulos (SC)
Garrett Brown (SC)
Marianthe L. Kolokithas (SC)
Byron V. Leary, II (SC)
Matthew L. Nail (SC)
Kimberly Phillips (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Edwin Whitner Slagsvol (SC)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

ANASTOPOULO

LAW FIRM

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkimLawFirm.com

November 09, 2016

Magnolia Place of Greenville
35 Southpoint Dr.
Greenville, SC 29607

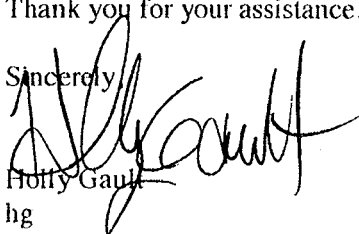
RE: My Client: James Boyd Jr
Date of Accident:
SSN:
Date of Birth:
Date(s) of service: June 3, 2016 - PRESENT

To Whom It May Concern,

Please be advised that our firm has been retained to represent the above for the injuries he suffered on the above date. Please forward a copy of all **medical bills and records** for James Boyd Jr for the above dates of service. We are requesting that these records be produced in an electronic format only. Enclosed please find a Medical Request, Authorization and Release for these documents. Please contact our office if the processing of this request exceeds \$50.00.

Thank you for your assistance.

Sincerely,


Holly Gault
hg

Enclosure

cc: James Boyd Jr

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418

Appointment Only: Myrtle Beach * Wilmington, North Carolina

ROA 0237

ELECTRONICALLY FILED - 2018 Jun 12 1:30 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

HIPAA Medical Request, Authorization, and Release

Patient Name: James Boyd Jr
 SS #:

Patient DOB:

Dates of Service: June 3, 2016 to present

I, James Boyd Jr, authorize Magnolia Place of Greenville to share medical records with Anastopoulos Law Firm, LLC.

The parts of the medical records that will be shared include:
Medical Records and Bills

The purpose of this release of information is:
Litigation

I understand that:

- I am authorizing the Anastopoulos Law Firm, LLC (herein referred to as “my attorneys” to be released and furnished with any and all information in your possession or under your control relating to my medical care, examinations, treatment, x-rays, hospitalizations, etc.
- I also hereby authorize and request that you permit any of the law firm attorneys and/or representatives to review any hospital or office records relating to my case including, but not limited to, copies of medical records or reports concerning my past, present, or future physical, mental, or emotional condition.
- I authorize you to confer with my attorney or his representatives and furnish copies of said records to them even though they may contain private information about: rape, abuse (sexual, physical, elder, spousal, etc), genetics, abortion, sexual diseases, illnesses like hepatitis or AIDS, HIV and AIDS testing, substance abuse, and/or mental illness.
- Magnolia Place of Greenville has no control over how my medical records will be used by the people who receive them. Once my health information and medical records are released, the recipient may disclose or share my information with others and my information may no longer be protected by federal and state privacy laws..
- My decision to sign this authorization will not affect my ability to get treatment provided to me by Magnolia Place of Greenville, payment, enrollment or eligibility for benefits.
- I may ask for and get a copy of this authorization.
- A readable photocopy or fax of this authorization shall have the same force and effect as this original.
- This authorization will expire on settlement of case. (This authorization will expire in six (6) months, unless a date or event is written in the blank provided.)

STATE OF South CAROLINA)
COUNTY OF Greenville)

AFFIDAVIT OF AUTHENTICITY

I, Susan Cain, hereby state as follows:

1. I am the Records Custodian for Magnolia Place and I am over the age of eighteen (18) years.
2. As Records Custodian, I received a request from Anastopoulo Law Firm, LLC, requesting a complete copy of any and all documents pertaining to Plaintiff, .
3. As the Records Custodian, the attached records consisting of 1 page(s) are hereby verified as true, accurate and complete copy of records of the Plaintiff in the possession of the above named company.
4. That these records were generated at or near the time of treatment by someone with knowledge of the treatment, are kept in our ordinary course of business and it is our practice to keep such records.
5. That no documents from the file have been omitted from the attachments.


Records Custodian

Susan Cain
Printed Name

Dated: 11/30/2016

SWORN to before me this 11
day of November, 201 6

Elizabeth W. Allman
Notary Public for South Carolina
My Commission Expires: 6/25/2017

Exhibit

G

RESIDENT NAME:

RESIDENT NUMBER:

DATE OF ADMISSION:

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among
 ("Resident") and/or ("Facility"),
 ("Resident's Durable Power of Attorney for
 Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively
 "Representative").

WHEREAS, the parties wish to admit Resident to Facility and hereto agree as follows:

I. GENERAL CONDITIONS

1. **Inducement:** Resident and/or Representative verifies that all information submitted to Facility, including without limitation, financial information, medical history and medical diagnosis, is true and correct and acknowledges that providing false information constitutes a breach of this Agreement.
2. **Personal Property:** It is understood that Facility is not responsible for either damage to or theft/loss of Resident's valuables, monies or clothing unless the item(s) are held in trust by Facility and the damage, theft, loss was caused by the negligent or willful conduct of Facility personnel. Personal property will not be considered to be held in trust unless the policies and procedures outlined in the *Admission Handbook*, which is made a part of this Agreement by reference herein, and any future amendments thereto, have been followed. Facility reserves the right to prohibit certain personal effects, funds or other property in accordance with state and federal law. Facility is not liable for either damages to or theft/loss of any personal belongings or personal care items, such as dentures, hearing aides and eyeglasses, except with respect to damage, theft or loss caused by the negligent or willful conduct of Facility personnel.
3. **Emergency Care:** In case of an emergency and Resident's personal physician is not available, Resident and/or Representative allows Facility to retain a physician on Resident's behalf. The physician will bill Resident directly and Facility will not be responsible for payment of the bill for such service.
4. **Representative:** When Resident has a Representative, Representative will act on Resident's behalf for all purposes permitted under applicable law. Representative will pay all fees and charges incurred hereunder by or on behalf of Resident using proceeds from Resident's assets or estate. Representative may act in more than one capacity and will be bound by the applicable terms and conditions of this Agreement. Except when Representative has access to Resident's assets, or as otherwise expressly provided to the contrary herein, or as permitted by state or federal law, Representative will not become personally liable for the payment of Resident's fees and charges by signing this Agreement. To the extent possible, Resident acknowledges and consents to the execution of this Agreement by Representative.
5. **Terms and Conditions:** By signing this Agreement, Resident and/or Representative agree(s) to comply with all terms and conditions set forth in this Agreement and Facility's policies, as same apply and as may change from time to time.

Original: Business File • Photocopy: Resident/Representative

B. ADMISSION POLICIES

A. ADMISSION AGREEMENT:

1. Admit Resident upon receipt of a physician's order; assist in obtaining physician services if a personal physician becomes unavailable; obtain emergency physician services when required. *Resident is not deemed admitted until such time as all agreements required by law and Facility have been appropriately executed.* This provision may be waived in writing by Facility, at its sole discretion.
2. Maintain written records of financial transactions with Resident and/or Representative responsible for payment. Resident has the right to have personal funds held in trust in accordance with applicable state and federal law, as may be amended from time-to-time.
3. Furnish room, routine meals, nursing care, personal care, or custodial care to Resident in accordance with applicable State and Federal law. This provision expressly excludes extraordinary services, including but not limited to, physician care, private duty nursing, private sitters, specialty foods and therapies not required by law. Resident will be placed in a semi-private room, absent medical need for a private room as determined by Facility staff. Residents residing in private rooms will be billed accordingly.
4. Assist in applying for private insurance benefits, but not to accept assignment thereof unless otherwise noted as an exception herein.
5. Assist Resident and/or Representative in applying for Medicare or Medicaid benefits where applicable.
6. Provide assistance in daily living and restorative nursing care in accordance with Resident's care plan, where appropriate. Resident and/or Representative reserves the right to refuse said treatment. If said treatment is refused, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
7. Arrange for transfer of Resident to a hospital upon physician's order or in an emergency situation. Expenses of transfer and care of Resident at the hospital are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment of those services.
8. Obtain and administer medication as prescribed. Expenses for the cost of obtaining the medications are not Facility's responsibility. Resident and/or Representative will be responsible for arranging payment for the medications. Resident and/or Representative has the right to refuse medication. If Resident refuses medication, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.
9. Provide an activities program for Resident, components of which will be at the discretion of Facility
10. Furnish Resident bed linens and hospital gowns. All personal clothing will be supplied by Resident or Representative and will be properly labeled as outlined in the *Admission Handbook* for identification purposes.

Original: Business File • Photocopy: Resident/Representative

1. PROVIDE COMPLETE AND ACCURATE INFORMATION REGARDING RESIDENT TO FACILITY AS REQUESTED

1. Provide complete and accurate information regarding Resident to Facility as requested. This information must be updated on a regular basis and when any substantial change occurs.

2. Provide Facility, prior to or at the time of admission, orders from Resident's attending physician for the immediate care of Resident, medical history, physical examination, current physician's orders and physician's statement that Resident is free from communicable disease at the time of Resident's admission or within the required time limitation. If Resident is suffering from communicable disease, Resident and/or Representative will provide a physician's certificate that the disease is not in a transferable stage, or that adequate or appropriate isolation measures are being carried out to control transmission of the disease. Facility retains the right to refuse admission to any Resident suffering from a communicable disease, whether that disease is in a transferable stage or not, so long as said refusal is in compliance with state and federal law. Resident's attending physician will provide, at Resident's expense, a physical examination performed either within five (5) days prior to admission or within forty-eight (48) hours following admission.

3. Allow Facility staff to perform such functions as may be necessary to maintain Resident's well-being, including but not limited to, assistance with bathing and hygiene, dressing, toileting, daily activities, performance of restorative nursing care as appropriate (including bowel and bladder training), and the performance of therapies determined necessary by a physician, but limited to those therapies for which Resident has funding. Resident and/or Representative has the right to refuse medication and treatment as prescribed by Resident's physician. In accordance with the policies of Facility, in the event that Resident and/or Representative refuses to abide by the physician's orders, Facility retains the right to discharge Resident from Facility if, in the judgment of appropriate Facility staff, it is determined that discharge or transfer is appropriate under applicable federal and state law. In addition, if Resident and/or Representative refuses to abide by the physician's order, Resident and/or Representative will hold Facility harmless from any injury or damage as a result thereof.

4. Pay all fees and charges described in this Agreement upon the terms agreed to herein.

5. Adhere to Facility's *Bed Reservation Policy* as outlined in the *Admission Handbook* and the *Facility's Policy and State Requirements for a Temporary Leave Bed-Hold*.

6. Provide and be responsible for personal items of clothing and property.

7. (a) Vacate/remove Resident from Facility within thirty (30) days, upon receipt of a Notice of Discharge and Transfer for any of the reasons required or allowable under state or federal law; (b) cooperate with Facility's efforts to locate alternative placement; (c) Vacate/remove Resident from Facility in less than thirty (30) days if the situation warrants immediate removal. All transfers and discharges will be carried out in accordance with state and federal law.

8. In the event Resident no longer requires Medicare or Medicaid services, Resident and/or Representative agree that Resident will be relocated to a bed certified for the appropriate level of care needed. Please note, room-to-room changes within the same certified unit of Facility are not considered a transfer for purposes of this section.

9. Notify Facility at least three (3) days in advance of Resident's voluntary discharge from Facility, excepting discharge as the result of an emergency. If advance notice is not provided, Resident and/or Representative will be liable for payment of three (3) days.

Original: Business File • Photocopy: Resident/Representative

10. Accept full responsibility for, absolve and release Facility, its agents, Medical Director and/or attending physicians from any liability for any event, including but not limited to, injury, illness, accident, or deterioration of medical condition suffered by Resident when Resident is not on Facility premises and is not under the care, custody and/or supervision of Facility and its staff.

11. Abide by Facility's policies and procedures as amended from time to time and outlined in the *Admission Handbook* and other Admissions materials, which are made a part of this Agreement by reference herein, as well as the Resident Rights under applicable state law and any future amendments. Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on Facility and are subject to change.

12. Cooperate with Facility in securing third-party payments, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments.

13. In the event Resident is transferred or discharged, Resident and/or Representative will be responsible for collecting and moving Resident's personal property within forty-eight (48) hours of the transfer/discharge. If the property is not moved, Facility will remove all property from the Resident's room and store same at Resident's and/or Representative's cost and risk. Facility is not responsible for any damage, theft or loss to Resident's property during this period of time. Unclaimed property will be disposed of in accordance with applicable state law.

14. Resident and/or Representative will be responsible for any damage caused to Facility property by Resident or his/her guests beyond normal wear and tear and will pay for such damage, based on the actual charge to Facility for repair or replacement.

15. Resident and/or Representative will be responsible for obtaining adequate information from Resident's attending physician before any extraordinary treatment. Absent knowledge that the consent was not informed, Facility staff may rely upon the physician's written order as evidence that the physician secured informed consent.

16. Resident and/or Representative will be responsible for any damages or injuries caused by Resident to other persons, and will indemnify and hold Facility harmless from any claims, actions or proceedings against Facility resulting from Resident's actions or omissions.

17. In the event of Resident's death, Representative agrees to authorize Facility to notify the person(s) designated by Resident and/or Representative. Additionally, Facility is authorized to transfer Resident's body to the designated funeral home. If Resident has not designated a funeral home, Resident's family will be consulted and Resident's body will be transferred in accordance with their wishes. All costs associated with the transfer and funeral expenses will be the responsibility of Resident's estate.

18. In the event Resident becomes incapable of making medical decisions and no guardian, proxy, surrogate or agent under a valid durable power of attorney for health care or no person qualified under the South Carolina Adult Health Code Consent Act is available, Facility is authorized to seek court appointment of a legal guardian. All associated costs and attorneys' fees will be borne by Resident or Resident's estate.

19. Resident and/or Representative agree that they will present grievances in an orderly manner. Information on Facility's Grievance Procedure can be found in the *Admission Handbook* and the *Resident Rights* under applicable state law. Nothing herein will preclude Resident or any other party from filing a complaint with any governmental agency, but will be ancillary thereto. Facility will review and investigate all complaints in a timely manner.

Original: Business File • Photocopy: Resident/Representative

20. Resident and/or Representative will be responsible for paying all costs, expenses and reasonable attorneys' fees, whether or not suit is brought, in the event costs, expenses, and/or attorneys' fees are incurred by Facility in the collection of sums due from and owed by Resident or any other party on Resident's behalf to Facility.

III. FINANCIAL AGREEMENT

Resident and/or Representative will be responsible for immediate payment of all charges incurred as follows:

1. Room and board, including meals, laundering of linens and bedding, nursing care, personal care or custodial care for the health, grooming and well-being of Resident in (☐-private) (☒-semi-private) accommodations, for a basic fee of \$_____ per day, payable one month in advance. In the event Resident is unable or unwilling to receive any of the services included in the room and board charge, such as meals, laundry, etc., no adjustment will be made to the daily rate. Payment for all invoices is due upon receipt. In the event public aid funds are denied for services for which coverage has been expected, Resident and/or Representative will be responsible for payment and will pay such charges upon receipt of invoice. Resident and/or Representative agree(s) to pay any rate change charged to Resident so long as each party to this Agreement is given at least thirty (30) days written notice of the new rate, including any increases or adjustments in Resident's liability by any financial third party or regulatory agency. Additional notice may be provided under applicable state regulations.

- a. Additional services and items may be provided at a separate charge. The current rates charged for additional services and items are set out in Exhibit B. These charges may change from time to time. Resident and/or Representative agree(s) to pay the charges in effect at the time that the service is performed or the item supplied. Facility agrees to give thirty (30) days advance notice to Resident and/or Representative of any price changes.
- b. Services or items not provided by Facility may be supplied by third-party vendors. Facility will assist Resident and/or Representative in securing such items or services, but will assume no liability for providing the services and makes no representations or warranties regarding the quality of such items or services. Facility assumes no liability for payment of any services provided by third-party vendors.
- c. The daily rate will be charged for the day of admission. Private pay residents will not be charged the daily charge for the day of discharge if discharge occurs before 12:00 p.m., unless the discharge is for emergency medical treatment. Medicare and Medicaid Residents will not be charged a daily charge for the day of discharge. The daily rate will be charged, if applicable, on the day of death.

2. Facility may charge a private pay resident a late payment fee of interest at a rate equal to the lesser of (a) eighteen percent (18%) per annum or, if lesser, the highest percentage allowed by law, on all charges (exclusive of interest) for which resident is liable that are outstanding for more than thirty (30) days from the date on which the resident was billed for said charges or (b) the amount set forth in any Agreement Addendum.

3. Refunds will be made for any prepaid room and board services for which payment has been received. The refund of the unused portion of prepaid fees and charges will be made within thirty (30) days following Resident's discharge. In the event of Resident's death, refunds will be made in accordance with

Original: Business File • Photocopy: Resident/Representative

state and federal law. Any personal property belonging to Resident in Facility at the time of Resident's discharge or death will be released in accordance Section II B-13 herein.

4. In the event Resident leaves Facility and has personal funds on account, Facility may deduct any outstanding monies due to Facility from said personal funds. The remainder will be distributed in accordance with applicable state and federal law.

5. If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative shall pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

IV. TERMINATION

1. Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.

2. Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.

3. This Agreement may be terminate immediately upon the occurrence of any of the following:

- a. Resident's condition has improved sufficiently so that he/she no longer requires the services provided by Facility.
- b. Resident's physical or mental condition changes and he/she requires a higher level of care which cannot be provided by Facility.
- c. Resident's death
- d. The safety or health of individuals in the Facility is endangered.
- e. Resident and/or his/her legal representative has failed to pay for his/her stay.
- f. Facility ceases to operate or is no longer able to provide services to Resident.
- g. Sanctions or remedies imposed by the Department.

4. In the event Facility terminates this Agreement through an involuntary transfer or Discharge, Facility shall provide appropriate notice and discharge planning as required by State and Federal law.

V. MEDICAID BENEFICIARIES

1. **Eligibility.** Eligibility for Medicaid-sponsored long-term care services is based on income and medical necessity. To qualify for assistance through the Medicaid program, a nursing home patient must need intermediate or skilled nursing care as determined through an assessment conducted by Medicaid program staff. The fact that a patient has already been admitted to a nursing home is not considered in this determination. It is possible that a patient could exhaust all other means of paying for nursing home care and meet Medicaid income criteria but still be denied assistance due to the lack of medical necessity.

It is recommended that all persons seeking admission to a nursing home be assessed by the Medicaid program prior to admission. This assessment will provide information about the level of care needed and the viability of community services as an alternative to admission. The Department may charge a fee, not to exceed the cost of the assessment, to persons not eligible for Medicaid-sponsored long-term care services.

Original: Business File • Photocopy: Resident/Representative

2. **Covered Services.** If Resident is a Medicaid recipient, the Medicaid Program will reimburse Facility for certain skilled services ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to: hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, and basic personal laundry.

3. **Non-Covered Services.**

- a. Medicaid is a cost-sharing program. Resident's monthly income must be contributed to the cost of his or her care. Medicaid determines how much of the Resident's monthly income must be paid to the Facility (also called "patient liability"). To the extent permitted by law, Resident's monthly Social Security and pension funds, minus the personal allowance retained by Resident (or other allowance as set by law), will be paid to Facility.
- b. Resident and/or Representative may purchase from Facility certain miscellaneous products and services that are not covered by Medicaid. An itemized list of fees for these additional products and services is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office.

4. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicaid for services rendered by Facility and authorizes Facility to receive payments from Medicaid pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicaid refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative will remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicaid.

5. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

6. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VI. MEDICARE BENEFICIARIES

1. **Covered Services.** If Resident is a Medicare recipient, the Medicare Program will reimburse Facility for certain skilled services such as nursing services and certain therapies ordered by a physician. Reimbursable routine services include: dietary services; activities programs; room and bed maintenance services; and customary personal hygiene items and services as required to meet the needs of residents, including, but not limited to, hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents (when indicated to treat special skin problems or to fight infection), razor, shaving cream,

Original: Business File • Photocopy: Resident/Representative

toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services (other than Beauty Shop fees), bathing, basic personal laundry and medically related social services.

2. **Non-Covered Services.** Resident and/or Representative will be required to pay certain other "Allowable Charges" which include, but are not limited to:

- a. Fees for certain products and services not covered under the Medicare program. Fees for such services will be identical those charged to private pay residents of Facility for the same products and services.
- b. Fees for certain products and services that are more expensive than the products and services covered under the Medicare program (e.g., a private room), as requested by a Resident and/or Representative. Fees charged for the more expensive products and services will be based on the difference between the fees charged to private pay residents of Facility and the customary charge for the same products and services under Medicare. Facility staff will inform Resident and/or Representative requesting additional or more expensive products or services that there will be a specified charge.
- c. Certain deductibles and co-insurance amounts under the Medicare Program.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from Medicare for services rendered by Facility and authorizes Facility to receive direct payments from Medicare pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent Medicare refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment of those services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from Medicare.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VII. PRIVATE PAY/INSURANCE

1. **Routine Services.** If Resident is paying for his/her stay privately OR if he/she is having his/her stay paid for through a third-party insurance carrier, Resident and/or Representative will reimburse Facility for routine services ("Routine Services") which include: routine nursing services; routine dietary services; routine activities programs; and routine room and bed maintenance services. Beauty shop fees are not included in the daily rate. Resident and/or Representative shall pay a deposit of two months' basic room and board prior to admission. Each subsequent monthly payment is due on or before the 10th day of the month.

Original: Business File • Photocopy: Resident/Representative

2. **Ancillary Services.** Resident and/or Representative may purchase services and products that are not included in Routine Services from Facility. An itemized list of fees for these additional services and products is available in the Admissions Office and may be reviewed by Resident and/or Representative upon request during normal business hours of the Admissions Office. Resident and/or Representative shall pay for ancillary services at the end of the month in which such services are rendered.

3. **Assignment of Benefits.** In consideration for services rendered by Facility to Resident, Resident and/or Representative hereby assigns to Facility, Resident's right to reimbursement from any insurance company paying benefits to Resident for services rendered by Facility and authorizes Facility to receive payments from such insurance company pursuant to this assignment. Resident and/or Representative acknowledges that, to the extent such insurance company refuses to pay for any services rendered to Resident at Facility, Resident and/or Representative shall remain liable for payment for these services to the extent permitted by applicable law. Resident and/or Representative agrees to cooperate with Facility in collecting all proceeds due from such insurance company.

4. **Benefit Disallowance.** If Resident's third-party eligibility or coverage is denied or terminated for any reason, Resident and/or Representative will pay, from Resident's assets, any and all unpaid charges for care previously rendered to the extent permitted by law.

5. **Application/ Appeals.** Resident and/or Representative authorizes Facility to apply for government or private benefits on Resident's behalf and to appeal the denial of such benefits. Resident and/or Representative agrees to cooperate fully in obtaining such benefits, including but not limited to promptly and thoroughly completing all required documentation necessary to obtain such payments. Resident and/or Representative remains responsible for and will continue to pay for services rendered during the pendency of any eligibility or benefit application.

VIII. NOTICES

All notices, consents, approvals and the like required to be given hereunder shall be given in writing to Facility to the address below or such other address as Facility may designate:

All notices, consents, approvals and the like required to be given to Resident and/or Representative shall be given in writing to Resident and/or Representative to the address below or at such other address as he/she may designate:

Notice may be given via facsimile, e-mail or U.S. Mail, certified mail return receipt requested

Original: Business File • Photocopy: Resident/Representative

12. GOVERNING LAW

This Agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located. This Agreement will be binding and inure to the benefit of each of the undersigned parties and their respective heirs, personal representatives, successors and assigns.

X. SEVERABILITY

If any provision(s) of this Agreement will be deemed to be illegal or otherwise unenforceable, all other provisions will remain in full force and effect as if the invalid provision had not been part of this Agreement.

XI. CAPTIONS

Captions are for the purpose of reference only and do not govern, limit, modify, enlarge or in any manner affect the scope, meaning and intent of the provisions of this Agreement, nor will such captions be given any legal effect.

XII. MODIFICATIONS

Facility reserves the right to unilaterally modify this Agreement to conform to law and regulations as may be passed from time to time. Reasonable notice, considering all of the circumstances, will be given to Resident and/or Representative when any change is made in accordance with this paragraph. Any other modification, except as otherwise specifically reserved herein, will be made in writing and signed by all relevant parties.

XIII. WAIVER

Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement will be deemed to have been waived by Facility unless in writing, signed by Facility. Any waiver of any provision of this Agreement will not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and/or Representative and this Agreement will remain in full force and effect.

XIV. RESIDENT

Use of the term "Resident" herein includes the Resident and any person with legal authority to handle Resident's funds or property and/or make medical decisions depending on the context in which the term is used.

XV. ASSIGNABILITY

This Agreement is fully assignable by Facility in the event that Facility is sold and/or the license is transferred such that a new licensee operates Facility. This Agreement, at Facility's option and without notice to Resident and/or Representative, may be automatically assigned to the new licensee and will be fully binding upon Resident and the new licensee.

Original: Business File • Photocopy: Resident/Representative

XVI. INFORMATION RELEASE/BILLING / AUTHORIZATION

1. Resident information included in Facility's records is confidential. Unauthorized persons will not be allowed to review these records without Resident's and/or Representative's consent, except as required or permitted by law. Resident's records are the sole property of Facility, but may be reviewed by authorized person(s) by appointment, in the presence of a Facility representative, as permitted by applicable state or federal law. Authorized persons may request and purchase photocopies of the medical record or any portion thereof with two (2) business days notice, unless a longer time period is permitted under state law. The fees for reproduction will be billed at the current rate permitted by applicable state or federal law.

2. Resident and/or Representative authorize(s) Facility to release all or part of Resident's protected health information ("PHI") as defined by the Health Information Protection and Portability Act of 1996 to any person or entity which has or may have a legal contractual obligation to pay all or a portion of the costs of care provided to Resident, including but not limited to Medicare, Medicaid, hospital or medical service companies, insurance companies, workers' compensation carriers, welfare funds and/or Resident's employer.

3. Resident and/or Representative authorize(s) Facility to release all or any part of Resident's PHI to any medical professional or institution responsible for Resident's medical or nursing care when Resident is receiving treatment, is transferring, or is discharged from Facility.

4. Resident and/or Representative authorize(s) Facility to send and release PHI to Medicare, Medicaid or other third-party payers for the purpose of receiving payment of covered services. Resident and/or Representative further authorize(s) and request(s) that Medicare, Medicaid, their representatives, their intermediaries and other third-party payers send payment for covered services directly to Facility. This authorization does not release Resident and/or Representative from financial responsibility for charges that may be non-covered or denied by Medicare or Medicaid, or other third party payer.

XVII. MISCELLANEOUS

1. In the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark. If this is the manner in which the Agreement is signed, the witness will verify that Resident was aware that he/she was signing an Agreement and that it was his/her intent to sign.

2. In the event Resident has appointed a Representative to control his/her assets and even if such appointment has not been made through a legal document, Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.

3. A copy of any court order appointing a guardian for the Resident's person or estate must be supplied to Facility. This court order must appoint the legal guardian to sign contracts on behalf of Resident. The legal guardian will only be given such rights under this Agreement as are set out in that court order. In addition, the legal guardian must file with Facility on an annual basis the same financial documents filed with the court showing the resources available to pay for Resident's care.

4. Representative will supply Facility with a copy of any power of attorney, durable power of attorney, durable power of attorney for health care or other legal documentation permitting him or her to act on Resident's behalf. It is understood that the Representative will pay for the care of Resident in accordance with this Agreement to the extent that he/she has access to Resident's income or resources. **Failure to utilize the Resident's income or resources for payment to Facility may subject Representative to legal action. Facility may require an accounting from time to time as to the type of said resources. Failure to supply such an accounting will be a breach of this Agreement.**

Original: Business File • Photocopy: Resident/Representative

5. In the event that an individual voluntarily agrees to become legally responsible for payment for the care and treatment of Resident, said Representative will be fully bound to the terms of this Agreement. Please note, Facility does not require a third-party guarantor.

6. Facility reserves the right to apply its indigent care policy, as appropriate, in its sole discretion.

XVIII. ENTIRE AGREEMENT

I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties.

By signing below, I/we further acknowledge that I/we have made the above promises and representations in order to induce Facility to enter into this Agreement. The parties further understand that, by signing this Agreement, Facility is relying upon the truthfulness of the promises and representations I/we have made. The parties further agree that if any term or provision of the Agreement is found by a court or agency of competent jurisdiction to be legally unenforceable, the term and provision will be deemed severed from this Agreement and the remaining terms or provisions will be fully enforceable.

The undersigned further acknowledges that he/she has received and read the *Admission Handbook* and other Admissions materials and understand that these documents are made a part of this Agreement by reference herein.

X Wilda A Boyd 6/30/16
Signature of Resident Date

Printed Name of Resident

Resident Social Security Number

Witness Signature Date

Printed Name of Witness

OR

Signature of Representative, if any Date

Printed Name of Representative

Witness Signature Date

Printed Name of Witness

Representative Social Security No. (Voluntary Info.)

W. A. Boyd
Signature of Facility Official

W. A. Boyd
Printed Name of Facility Official & Title

Date

Original: Business File • Photocopy: Resident/Representative

Exhibit

H

RECORDED
00 MAY 17 PM 2:54
R.M.S.
SPARTANBURG, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, GLADYS W. BENSON
of SPARTANBURG, S.C. have made, constituted and appointed
and do hereby make, constitute and appoint my children, MOZELLE F. BENSON JR. and GLADYS C. ANDERSON
as my true and lawful Attorney in Fact for me and in my name and stead to possess, manage,
control and dispose of any and all property of any description and kind, real and personal, for my
use and benefit; with power and authority to collect and receipt for any money that may be
owing to me, and to take any steps that may be necessary or proper to possess any property
that may be owing to me or that may belong to me; to sign any checks, drafts or other tokens of
transfer of money or withdrawal of money; to institute and defend in my name actions at law or
in equity; to make claim and/or defend in my name before any taxing or revenue authority,
including, but not limited to, making claim for refund against the Internal Revenue Service
and/or the South Carolina Department of Revenue; to compromise in my name any dispute
including, but not limited to, those involving taxes and/or revenue; to enter any "lock box," safe
deposit box, or the like, and remove and take possession of any or all of the contents therein; to
execute contracts with respect to property, real and personal, and to assign and transfer any
tokens evidencing ownership of property by certificate or otherwise, including U. S. Treasury
Bonds, certificates and securities, to carry on any business or business transaction, including, but
not limited to, management of all my real property interests, and to borrow money and to
execute notes and securities therefore in my name, and to sell at private sale any property I may
own, real and personal, and to make to purchaser good title therein in my name as fully and
completely as I could do were I in person present. And, it is the true intention and meaning of

WJ
CARL

this instrument that my said Attorney in Fact be, and (s)he hereby is, granted all the authority to act in any matter to the same extent I would have were I competent and acting in my own proper person.

My Attorney in Fact is further authorized to act for me and in my stead in relation to all Health Care needs required by me, including, but not limited to selection of physicians and Health Services providers, entitlement to information and copies of all my health records at whatever provider location and any and all other acts deemed necessary by my appointee to insure my health, safety and welfare.

IT IS SPECIFICALLY PROVIDED that this Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his/her own estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 17th day of

May, 2000

Gladys W. Benson SEAL
Principal

SIGNED, SEALED, PUBLISHED AND DECLARED BY Gladys W. Benson
to his/her Power of Attorney, who, in our presence, at his/her request and in his/her presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto the day and year above written.

Sharon J. Jantz

Charles A. Rief

NAMES

Spartanburg, SC

Hartley, S.C.

ADDRESSES

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

PERSONALLY APPEARED BEFORE ME the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named Gladys W. Bened sign, seal and as his/her act and deed deliver the within written Power of Attorney, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 17th day
OF MAY 2000

Shane A. Tice LS
Notary Public for South Carolina
My commission expires: 2-29-2010

Shana Jost

MEDICAL DECISIONAL CAPACITY

Patient Name: Carmela McCutchen

Decisional Capacity Is:

☐ Independent

☐ Needs Assistance

Comment: help a med
decision making

☐ All Decisions Made by Others

Reason/Diagnosis Requiring others to Assist or Decide: _____

MR D E. P. / Hx P 4.18.08

D E. P.
Attending Physician

4.18.08
Date

Decisional Capacity Is:

☐ Independent

☐ Needs Assistance

Comment: _____

☒ All Decisions Made by Others

Reason/Diagnosis Requiring others to Assist or Decide: _____

med cogn. impairment
P CVA

McCutchen
2nd Physician

5.8.08
Date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	DEFENDANT THI OF SOUTH
	)	CAROLINA AT MAGNOLIA PLACE AT
	)	GREENVILLE, LLC'S MOTION TO
THI OF SOUTH CAROLINA AT	)	DISMISS PLAINTIFF'S SECOND
MAGNOLIA PLACE AT GREENVILLE,	)	AMENDED COMPLAINTAND PETITION
LLC; FUNDAMENTAL CLINICAL	)	TO COMPEL ARBITRATION AND STAY
AND OPERATIONAL SERVICES LLC;	)	PROCEEDINGS
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place of Greenville and hereinafter referred to as "this Defendant" or the "Facility"), by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order dismissing this action pursuant to South Carolina Rules of Civil Procedure 12(b)(4), 12(b)(5), 12(b)(1), 12(b)(6), and compelling this action to arbitration pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq.

Plaintiff has sued this Defendant for Negligence, Gross Negligence, and Negligence per Se, Breach of Contract, Fraud, Misrepresentation, "Spoliation", Violation of the South Carolina Unfair Trade Practices Act, and Elder Abuse pursuant to the Plaintiff's residency at the Facility.

Prior to being admitted to the Facility, Plaintiff entered into an Arbitration Agreement with the Facility. (See Arbitration Agreement attached as **Exhibit A**). The parties to the Arbitration Agreement agreed that the South Carolina Uniform Arbitration Act would not apply; rather, the arbitration would be governed by the Federal Arbitration Act, because the services and reimbursement thereof to be provided to the Plaintiff upon his admission to the facility involved interstate commerce. *See* Ex. B. As a result, this action must be dismissed or stayed and compelled to arbitration pursuant to Sections 3 and 4 of the FAA. Further, this Defendant respectfully requests that this Honorable Court specifically stay any requirement to file any further responsive pleading as well as any requirement to respond to any other motions or discovery filed or served by Plaintiff while the current motion is pending.

This Motion and Petition are supported by the attached Certificate of Service, Arbitration Agreement, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

*Attorneys for the Defendant THI of South Carolina
at Magnolia Place at Greenville d/b/a Magnolia
Place of Greenville*

Charleston, South Carolina

Dated: October 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	DEFENDANT FUNDAMENTAL
MAGNOLIA PLACE AT GREENVILLE,	)	ADMINISTRATIVE SERVICES, LLC'S
LLC; FUNDAMENTAL CLINICAL	)	MOTION TO STAY PROCEEDINGS
AND OPERATIONAL SERVICES LLC;	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC,	)	
	)	
DEFENDANTS.	)	
	)	

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Fundamental Administrative Services, LLC, hereinafter referred to as “this Defendant”, by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Place at Greenville d/b/a Magnolia Place of Greenville (“Facility Defendant”) has filed a Motion in this case to compel Plaintiff’s claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr.
D. Jay Davis, Jr.
Perry M. Buckner, IV
J. Joseph Owens
P.O. Box 993, Charleston, SC 29402
(843) 720-5406; jdavis@ycrlaw.com
*Attorneys for the Defendant Fundamental
Administrative Services, LLC*

Charleston, South Carolina

Dated: October 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA PLACE AT GREENVILLE,	)	
LLC; FUNDAMENTAL CLINICAL	)	
AND OPERATIONAL SERVICES LLC;	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC,	)	
	)	
DEFENDANTS.	)	
	)	

**DEFENDANT FUNDAMENTAL
CLINICAL AND OPERATIONAL
SERVICES, LLC'S MOTION TO STAY
PROCEEDINGS**

TO: STEFAN B. FEIDLER, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that Defendant Fundamental Clinical and Operational Services, LLC, hereinafter referred to as "this Defendant", by and through its undersigned attorneys, will move before this Honorable Court, at a time and place to be designated by the Court, and as soon as counsel may be heard, for an Order staying this action.

Defendant THI of South Carolina at Magnolia Place at Greenville d/b/a Magnolia Place of Greenville ("Facility Defendant") has filed a Motion in this case to compel Plaintiff's claims to arbitration pursuant to a valid and enforceable arbitration agreement entered into between those parties.

This Defendant respectfully requests this Honorable Court specifically stay any requirement to file any further responsive pleadings as well as any requirement to respond to any motions or discovery filed or served by Plaintiff until such time as this Court has made a final

decision on the validity of the arbitration agreement and the appellate process, if any, has been exhausted and the arbitration proceedings, if any, are completed in their entirety.

This Motion and Petition will be supported by the pleadings filed in this case, the Motion filed by Facility Defendant and all supporting exhibits, the statutory and case law of the State of South Carolina and the United States, any subsequent memoranda of law, affidavits or other evidence which may be submitted prior to the hearing on this motion, as well as any oral argument to be presented by counsel at the hearing on this matter.

YOUNG CLEMENT RIVERS, LLP

By: s/D. Jay Davis, Jr._____

D. Jay Davis, Jr.

Perry M. Buckner, IV

J. Joseph Owens

P.O. Box 993, Charleston, SC 29402

(843) 720-5406; jdavis@ycrlaw.com

Attorneys for the Defendant Fundamental Clinical
and Operational Services, LLC

Charleston, South Carolina

Dated: October 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	SUPPLEMENTAL MEMORANDUM OF
	)	LAW IN SUPPORT OF DEFENDANT THI
	)	OF SOUTH CAROLINA AT MAGNOLIA
THI OF SOUTH CAROLINA AT	)	PLACE AT GREENVILLE, LLC'S
MAGNOLIA PLACE AT GREENVILLE,	)	MOTION TO COMPEL ARBITRATION
LLC; FUNDAMENTAL CLINICAL	)	
AND OPERATIONAL SERVICES LLC;	)	
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC ,	)	
	)	
DEFENDANTS.	)	
	)	

TO: STEFAN B. FEIDLER, ATTORNEY FOR THE PLAINTIFF:

The Defendant, THI of South Carolina at Magnolia Place at Greenville, LLC, by and through its undersigned counsel, hereby respectfully submits its Supplemental Memorandum of Law in Support of its Motion to Compel Arbitration and requests that this Court enter an Order Compelling Arbitration as to this Defendant and Staying further proceedings in the case. For the reasons set forth below, discovery conducted in this case supports Defendant's Motion and confirms that Wilda Boyd had actual and apparent authority to bind her son, James Boyd, to the Arbitration Agreement at issue. Furthermore, regardless of any authority by Wilda Boyd, James Boyd has ratified the Arbitration Agreement at issue such that it is now binding upon him.

PROCEDURAL BACKGROUND

On May 2, 2018, the Defendant filed the instant Motion asserting its rights to compel arbitration against the Plaintiff, James Boyd. On June 11, 2018, a Memorandum in Support of the instant Motion was submitted to the Court for consideration. On June 13, 2018, a hearing

was held before the Court with regard to the instant Motion and Co-Defendants' Motions to Stay. By order dated July 9, 2018, the Court denied the instant Motion without prejudice, permitting the parties to conduct discovery with respect to issues concerning agency law to further develop a record.

Since the Court's Order, the following depositions have been completed: the deposition of this Defendant's Admissions Coordinator, Leola Burt; the deposition of the Plaintiff, James Boyd; and the deposition of Plaintiff's mother, Wilda Boyd. This Defendant submits that the deposition testimony of Leola Burt firmly demonstrates that the Plaintiff provided actual and apparent authority to his mother to execute the Arbitration Agreement at issue and that he subsequently ratified the Arbitration Agreement such that its validity cannot be questioned.

ARGUMENT & CITATION TO AUTHORITY

I. Wilda Boyd Possessed Actual, Express Authority to Execute the Arbitration Agreement, or at a Minimum, Possessed Apparent Authority

"An agent's authority is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying. Thus, an agent's authority must be either expressed, implied, or apparent. While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority." *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 10–11, 615 S.E.2d 112, 115 (2005)(internal citations omitted).

The deposition testimony of Leola Burt demonstrates actual, express authority given by Plaintiff, James Boyd, to his mother, Wilda Boyd. Indeed, Ms. Burt's sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and James Boyd explicitly confirmed to Peggy Fields, case manager at

Palmetto Baptist Hospital that it should be his mother. In pertinent part, Ms. Boyd testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

(See Deposition Excerpt of Leola Burt (Page 32, Line 9 to Page 33, Line 25), attached hereto as **Exhibit A**).

Ms. Burt carefully explained her rationale for reaching out to Ms. Peggy Fields when questioned by Plaintiff's counsel about why Mr. Boyd himself was not asked to sign when he was otherwise competent:

Q: Perfect. And so knowing that Mr. Boyd was competent, why did he not sign the admissions paperwork?

A: I reached out to the case manager prior to him coming because of his condition and asked her who would assist him with his admission paperwork, and she told me she'd get back with me, and she did, and then [Wilda Boyd] made contact with me.

(See Deposition Excerpt of Leola Burt (Page 31, Line 16 to 22), attached hereto as **Exhibit A**).

The above testimony expressly portrays the conferring of actual, express authority by Plaintiff James Boyd to his mother, Wilda Boyd, to execute all admissions paperwork. To the extent Plaintiff might assert that these representations by Plaintiff only dealt with admissions paperwork generally, and not the Arbitration Agreement itself, Plaintiff's "holding out" of his mother is sufficient to establish apparent agency for such specific authority. *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982)(the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption). Certainly, when James Boyd, the principal, authorized his mother to execute admissions paperwork on his behalf, he has effectively placed

her in a position where third parties would believe she had authority to bind Mr. Boyd to all admission documents, including the Arbitration Agreement.

II. James Boyd Ratified the Arbitration Agreement Such that the Authority of Wilda Boyd is Irrelevant

Ratification is “the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time was assumed to act as his agent.” *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989); *Brazell Bros. Contractors v. Hill*, 245 S.C. 69, 74, 138 S.E.2d 835, 837 (1964) (“Ratification ... is the adoption by one person of an act done or bargain made for him by another under such circumstances that he would not have been bound but for his subsequent assent.”). “One asserting ratification must establish the following three elements: (1) acceptance by the principal of the benefits of the agent's acts, (2) the principal's full knowledge of the facts, and (3) circumstances or an affirmative election demonstrating the principal's intent to accept the unauthorized arrangements.” *Stiltner v. USAA Cas. Ins. Co.*, 395 S.C. 183, 191, 717 S.E.2d 74, 78 (Ct. App. 2011) (citing *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989)).

While silence or a failure of the principal to repudiate the act does not necessarily constitute ratification, ratification is apparent when “*the silence or acquiescence in question cannot be explained on any other theory than that of ratification.*” *Stiltner*, 395 S.C. at 191-92, 717 S.E.2d at 78 (quoting 2A C.J.S. Agency § 71 (2003))(emphasis added). “Ratification can occur when a principal, with knowledge of the material facts of an unauthorized transaction, ***takes a position inconsistent with non-affirmation of the transaction***, or retains the benefits of the unauthorized transaction. *Schulze and Burch Biscuit Co. v. Tree Top, Inc.*, 1985 WL 4099

(N.D. Ill.1985)(emphasis added). “Under some circumstances failure to disaffirm may constitute ratification of the agent's acts.” *Bradshaw v. McBride*, 649 P.2d 74, 78 (Utah 1982).

Here, Plaintiff has undoubtedly ratified the Arbitration Agreement because he was informed of his mother's execution of the Arbitration Agreement by Ms. Leola Burt and later was even provided a copy of the Arbitration Agreement to review. After being made aware of the Arbitration Agreement, Plaintiff voiced no objection to it and not only authorized, but encouraged, Defendant's staff to continue to use his mother for completing and executing paperwork. Moreover, Plaintiff has been afforded all the rights provided under the agreements signed by his mother ever since. Leola Burt's testimony confirms as much:

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

Q: And at that point, you meet him in person for the first time?

A: Yes.

Q: Okay. And during that conversation, I understood your testimony that you informed him that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that [Wilda Boyd] would finish the rest of it.

Q: Okay. And during that conversation on June 30th, 2016 in person at Magnolia Place, did you actually have an opportunity to call Ms. Boyd in James' presence?

A: He did. I had to dial the number and hold the telephone for him.

Q: Okay. And what did you discuss with Ms. Boyd?

A: She was going somewhere. James said that she would complete all of his paperwork, so I needed to schedule a time that she was going to complete all of it.

Q: Okay. And during the time period that you're speaking with Ms. Boyd in James' presence on June 30th, 2016, did Mr. Boyd ever interject or say stop doing this, or anything of that nature?

A: No.

Q: Okay. As far as you know, Mr. Boyd had full and complete knowledge that his mother was handling his admissions paperwork, including the Arbitration Agreement?

A: Yes.

(Deposition Excerpt of Leola Burt (Page 33, Line 23 to Page 35, Line 10), attached hereto as **Exhibit A**). Ms. Burt went on to explain that a file folder with all admissions paperwork, including the Arbitration Agreement signed by Wilda Boyd, was provided personally to the Plaintiff on July 7, 2016 when the last paperwork was completed by his mother. (Deposition Excerpt of Leola Burt (Page 36, Line 7 to Page 38, Line 13), attached hereto as **Exhibit A**). Plaintiff, despite actual knowledge and physical possession of the executed Arbitration Agreement, voiced no concerns and continued to identify his mother as the person responsible for handling completion and execution of all his admissions paperwork. Accordingly, Plaintiff has ratified the Arbitration Agreement.¹

¹ “Subsequent affirmance by a principal of a contract made on his behalf by one who had at the time neither actual nor apparent authority constitutes a ratification, which in general, is as effectual as original authorization, provided such affirmance and ratification are not against public policy. Not only is a contract formed between the principal and the third person, but the agent is absolved from liability for the loss which may happen because of his unauthorized action. Ratification like original authority need not be express. Any conduct which indicates assent by the purported principal to become a party to the transaction or which is justifiable only if there is ratification is sufficient. Even silence with full knowledge of the facts may manifest affirmance and thus operate as a ratification. The person with whom the agent dealt will so obviously be deceived by assuming the professed agent was authorized to act as such, that the

III. Plaintiff's Deposition Testimony Should Not Be Credited By This Court

Defendant submits that Plaintiff's deposition testimony should not be given any credence by the Court. In contrast to Ms. Burt's specific, detailed account of every single step of Mr. Boyd's admission process, the Plaintiff simply resorted to general denials, alternating between "not recalling" certain events and trying to confirm the lack of their occurrence. This testimony, when juxtaposed with Ms. Burt's testimony, is remarkably unreliable.

Plaintiff's credibility as a witness must be assessed by this Court. Mr. Boyd has been arrested on 17 separate occasions from 1997 to 2014 on matters ranging from drug charges to violent crimes to giving false information to police officers. (See SLED Report of Plaintiff, attached hereto as **Exhibit B**). Indeed, Mr. Boyd was convicted of violating S.C. Code Ann. § 16-17-725(B)² on three different occasions from 2002 to 2005. The Court must factor Plaintiff's credibility when considering the veracity of the agency issues before this Court. Plaintiff denies ever speaking with Leola Burt, the Admissions Coordinator at Magnolia Place, with regard to his admission paperwork despite the fact that Ms. Burt cites to two separate, and very specific, instances on which Mr. Boyd was informed of what admissions paperwork, including the Arbitration Agreement, had been executed by his mother. Mr. Boyd apparently would have this Court believe that Ms. Burt concocted a remarkably detailed narrative of speaking with Mr. Boyd in his room, with his mother on the phone (and her holding the phone to Mr. Boyd's ear),

principal is under a duty to undeceive him. * * * So a purported principal may not be willfully ignorant, nor may he purposely shut his eyes to means of information within his possession and control and thereby escape ratification if the circumstances are such that he could reasonably have been expected to dissent unless he were willing to be a party to the transaction." *Moses v. Archie McFarland & Son*, 119 Utah 602, 607, 230 P.2d 571, 573-74 (1951)(quoting *Williston on Contracts*, Rev.Ed., Vol. I., pg. 805)(internal quotations omitted).

² Under S.C. Code Ann. § 16-17-725(B): "It is unlawful for a person to misrepresent his identification to a law enforcement officer during a traffic stop or for the purpose of avoiding arrest or criminal charges."

and discussing the admissions process, including the Arbitration Agreement. The Court must consider the credibility of each story and the credibility of each witness.

CONCLUSION

For the foregoing reasons, this Defendant respectfully requests that the Court GRANT its Motion to Compel Arbitration and Stay all proceeding in this case until arbitration is complete.

YOUNG CLEMENT RIVERS, LLP

By: s/D.Jay Davis, Jr.

D. Jay Davis, Jr.

Perry M. Buckner, IV

P.O. Box 993, Charleston, SC 29402

(843) 720-5415; pbuckner@ycrlaw.com

Attorneys for the Defendant THI of South Carolina
at Magnolia Place at Greenville, LLC

Charleston, South Carolina

Dated: February 19, 2019

Leola Michella Burt

November 20, 2018

Page 30

1 agreement is to residents coming in?
 2 A. No.
 3 Q. Okay. Looking at the Arbitration Agreement -- I
 4 don't mean to reach over you, Ms. Koko. Let's
 5 flip over it. Do you see that X right there? Do
 6 we know who put that X there?
 7 A. No.
 8 Q. And then we see Wilda Ann Boyd's name; is that
 9 correct?
 10 A. Yes.
 11 Q. And who dated it on her signature line? Was that
 12 your signature, or was that her date?
 13 A. Her date.
 14 Q. Okay. If a person is incompetent to sign the
 15 admission paperwork, what do you do as the
 16 director of admission? If a person is just not,
 17 I guess, able to sign their own Arbitration
 18 Agreement, what do you do at that point? Do you
 19 try to reach out to a family member?
 20 A. Yes.
 21 Q. Okay. And is that about the extent of it? You
 22 just try to find a legal representative, or can
 23 you explain that process?
 24 A. No. I go through the case manager to see who is
 25 going to assist with that prior to the admission

Page 31

1 to the facility.
 2 Q. Okay. So that would have been -- well, it's
 3 probably not always going to be Ms. Peggy,
 4 because it depends on what facility they're
 5 coming from?
 6 A. Correct.
 7 Q. Is Ms. Peggy -- where is she the case manager?
 8 Is she the case manager at --
 9 A. Palmetto Baptist.
 10 Q. Is there any other case managers up there? I'm
 11 assuming there is.
 12 A. I'm sure.
 13 Q. Okay. Do you ever deal with anybody besides Ms.
 14 Peggy?
 15 A. She's the only one that I've dealt with.
 16 Q. Perfect. And so knowing Mr. Boyd was competent,
 17 why did he not sign the admission paperwork?
 18 A. I reached out to the case manager prior to him
 19 coming because of his condition and asked her who
 20 would assist him with his admission paperwork,
 21 and she told me she'd get back with me, and she
 22 did, and then the mom made contact with me.
 23 Q. Perfect.
 24 A. After admission, Mr. Boyd -- not with Ms. Fields
 25 anymore, with me, I went in to see him for myself

Page 32

1 about the paperwork.
 2 MR. FIEDLER: Okay. I'm sorry. We can go off the
 3 record for a second.
 4 (Recess taken.)
 5 MR. FIEDLER: I don't have any more questions for you.
 6 Please answer any questions Mr. Buckner may have
 7 for you.
 8 EXAMINATION
 9 BY MR. BUCKNER:
 10 Q. Ms. Burt, in responding to a couple of
 11 plaintiff's counsel's questions about
 12 conversations with Ms. Fields at Palmetto
 13 Baptist, you had indicated that you spoke with
 14 Ms. Fields on a couple of occasions; is that
 15 correct?
 16 A. Yes.
 17 Q. Okay. And that one of those conversations or
 18 phone calls was a phone call that you initiated
 19 to her inquiring about who should handle James
 20 Boyd's admissions paperwork, correct?
 21 A. Yes.
 22 Q. And you testified that Ms. Fields got back to you
 23 and indicated that Wilda Boyd would be the person
 24 who would be handling it; is that correct?
 25 A. Yes.

Page 33

1 Q. All right. Do you know why you were informed
 2 that Wilda Boyd would be the person who would be
 3 doing it?
 4 A. She had to check with James.
 5 Q. Okay. And when you say she, you mean Ms. Fields
 6 had to check with James?
 7 A. Yes.
 8 Q. Okay. And is it your understanding that Mr. Boyd
 9 directed Ms. Fields to his mother for admissions
 10 paperwork to Magnolia Place?
 11 A. Yes.
 12 Q. Okay. And did Ms. Fields tell you that?
 13 A. Yes.
 14 Q. All right. Ms. Fields told you that James Boyd
 15 indicated that Wilda Boyd, his mother, would be
 16 the appropriate person to handle the admissions
 17 paperwork?
 18 A. Yes.
 19 Q. When Mr. Boyd -- and that conversation occurred
 20 while he was at Palmetto Baptist prior to June
 21 30th, 2016?
 22 A. Correct.
 23 Q. And Mr. Boyd then comes to Magnolia Place, I
 24 believe, on by June 30th, 2016?
 25 A. Yes.

Page 34

1 Q. And at that point, you meet him in person for the
2 first time?
3 A. Yes.
4 Q. Okay. And during that conversation, I understood
5 your testimony that you informed him that his
6 mother had already signed three separate
7 agreements on his behalf, including the
8 Arbitration Agreement, correct?
9 A. Yes.
10 Q. All right. At that time, on June 30th, 2016 when
11 you were with him in person, did he raise any
12 objection to her doing that?
13 A. No. He told me that she would finish the rest of
14 it.
15 Q. Okay. And during that conversation on June 30th,
16 2016 in person at Magnolia Place, did you
17 actually have an opportunity to call Ms. Boyd in
18 James' presence?
19 A. He did. I had to dial the number and hold the
20 telephone for him.
21 Q. Okay. And what did you discuss with Ms. Boyd?
22 A. She was going somewhere. James said that she
23 would complete all of his paperwork, so I needed
24 to schedule a time that she was going to complete
25 all of it.

Page 35

1 Q. Okay. And during the time period that you're
2 speaking with Ms. Boyd in James' presence on June
3 30th, 2016, did Mr. Boyd ever interject or say,
4 stop doing this, or anything of that nature?
5 A. No.
6 Q. Okay. As far as you know, Mr. Boyd had full and
7 complete knowledge that his mother was handling
8 his admissions paperwork, including the
9 Arbitration Agreement?
10 A. Yes.
11 Q. And I understood your testimony earlier that you
12 even specifically informed him that an
13 Arbitration Agreement had been signed by Wilda
14 Boyd; is that correct?
15 A. Yes.
16 Q. Do you know what date, approximately, that Wilda
17 Boyd came to Magnolia place in person to complete
18 the rest of the paperwork?
19 A. It was July 7th.
20 Q. Okay. On July 7, 2016, was anyone else present
21 with Wilda Boyd?
22 A. It was Wilda, another woman, which was his
23 sister, and then there was a man.
24 Q. Okay. Do you remember his sister's name?
25 A. No.

Page 36

1 Q. And the man was a relative insofar as you knew?
2 A. Yes.
3 Q. All right. The mother, Wilda Boyd, completed the
4 remaining admissions paperwork that day that
5 you're referencing?
6 A. Yes.
7 Q. Okay. And tell me after the admissions
8 paperwork, the remaining admissions paperwork,
9 was completed, is a file created for James Boyd?
10 A. Yes.
11 Q. Okay. And what does that file include? And you
12 can be comprehensive in telling me.
13 A. It includes the admissions handbook, the
14 resident's rights, channel guide, facility abuse
15 policies, and all of the signed admissions
16 paperwork.
17 Q. All right. And the signed admissions paperwork
18 includes the Arbitration Agreement?
19 A. Yes.
20 Q. Does it include the Admission Agreement?
21 A. Yes.
22 Q. And where -- what do you do with that -- the
23 admissions file folder I'll call it for lack of a
24 better term?
25 A. I give it to the resident.

Page 37

1 Q. Okay. And in this case, that would be James
2 Boyd?
3 A. Yes.
4 Q. So James Boyd was provided with a written copy of
5 all of the agreements that his mother entered
6 into on his behalf?
7 A. Yes.
8 Q. Okay. And you personally provided him with that
9 file folder?
10 A. Yes.
11 Q. Okay. And when you personally provided that file
12 folder to him, did he, on that day or any day
13 thereafter, voice any objection to his mother's
14 signing these contracts on this behalf?
15 A. No.
16 Q. Okay. And as far as you know, Mr. Boyd had full
17 and complete knowledge of all of these agreements
18 and his mother's activity in entering them,
19 correct?
20 A. Yes.
21 Q. How many times did you see, approximately, James
22 Boyd after that? And when I say, after that, I
23 mean whatever date that you provided the
24 admissions file folder to him.
25 A. I provided it to him on July 7th, the day of



SLED CATCH

Citizens Access to Criminal Histories

Results

Name JAMES BOYD
 DOB [REDACTED]
 Gender Male
 Maiden Name
 SSN [REDACTED]
 Transaction 219115731E
 Date of Check February 19, 2019 at 11:57

ARREST RECORD
 S.C. Law Enforcement Division
 WWW

The record is based on a search using Last Name, First Initial, Gender, and Date of Birth, and SSN Only. Compare all identifying data given for record subject with screening subject. Fingerprint comparison is recommended as the most reliable means to identify a record subject.

INTERNET RAP SHEET REQUEST
 ORI-SCLED0000 SID [REDACTED] FBI-***** PUR-E
 ATN-WEB, ACCOUNT

AUTHORIZED USE ONLY. ***** CONTACT CONTRIBUTING
 AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
 BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
 SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-02/19/2019 TIME-11:57:33
 REQ ORI-SCLED0000 S C LAW ENF DIV
 SID- [REDACTED]
 NAME-BOYD, JAMES CALVIN SEX-M RACE-B
 HEIGHT-508 WEIGHT-143 EYES-BRO HAIR-BLK SKIN- BORN-SC
 FPC- HENRY-
 PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--N/A DATE OF LAST UPDATE--10/05/2017

ADDITIONAL IDENTIFIERS	BIRTH				
NAME	DATES	MARKS	SOC	SEC	MISC NUM
BOYD, JAMES C	[REDACTED]				
BOYD, POOCHIE	[REDACTED]				
BOYD, JAMES C JR					
BOYD, JAMES CALVIN JR					

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

BOYD, JAMES CALVIN 09/04/1987
 SC0400000 RICHLAND CNTY SO
 WARR-B795647

ARREST CHARGE -PETTY LARCENY
 ARREST INFO-RELEASED ON BOND
 OR RECOG
 COURT CHARGE 01-PETTY LARCENY
 COURT DISP-NON-CONVICTION;
 NOT GUILTY
 COURT DATE-10/02/1987

WARR-B795647

BOYD, JAMES CALVIN 01/10/1991
 SC0360100 NEWBERRY PD
 CASE-15991

ARREST CHARGE -INTERFERING
 W/POLICE OFFICER SERVING
 PROCESS
 OFFENSE DATE-01/10/1991
 PHOTOGRAPH AVAILABLE
 COURT CHARGE 01-INTERFERING
 W/POLICE SERVING PROCESS

2/19/2019

COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-03/29/1991

BOYD, JAMES CALVIN
SC0320000 LEXINGTON CNTY SO
CASE-940489B

02/06/1994

ARREST CHARGE -CRIMINAL DOMES
TIC VIOLENCE
PHOTOGRAPH AVAILABLE
ARREST CHARGE -RESISTING
ARREST
COURT CHARGE 01-RESISTING
ARREST
COURT DISP-CONVICTED;\$700
FINE PLUS COST OR 90D
PUBLIC SERVICE
COURT CHARGE 02-RESISTING
ARREST
COURT DISP-CONVICTED;\$700
FINE PLUS COST OR 90 DAYS
PUBLIC SERVICE
COURT CHARGE 03-CRIMINAL
DOMESTIC VIOLENCE
COURT DISP-CONVICTED;\$250
FINE
COURT DATE-07/12/1994

BOYD, JAMES CALVIN
SC0320000 LEXINGTON CNTY SO
CASE-9628880

07/25/1996

ARREST CHARGE -CRIMINAL DOMES
TIC VIOLENCE 2ND
OFFENSE DATE-07/25/1996
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE 2ND
COURT DISP-CONVICTED;10 DAYS
SUSPENDED \$188
COURT DATE-02/28/1997

WARR-E526517

BOYD, JAMES CALVIN JR
SC0360000 NEWBERRY CNTY SO
CASE-810196
WARR-E457255

12/14/1996

ARREST CHARGE -POSSESSION
W/I TO DISTRIBUTE CRACK
COCAINE
OFFENSE DATE-12/14/1996
PHOTOGRAPH AVAILABLE

WARR-30817AJ

ARREST CHARGE -POSSESSION OF
DRUG PARAPHERNALIA
OFFENSE DATE-12/14/1996

CIT-44-53-370 (B) (2) FELONY
DOC-97GS3600039
WARR-E451255

COURT CHARGE 01-MANUFT, POSSES
S OTHER SUB SCH I, II, III
WITD-1ST
COURT DISP-CONVICTED;5 YRS &
5000.00 SUSP 2 1/2 MONTHS
PROB 2 YRS, CREDIT FOR 2
1/2 MONTHS, COMPLETE SUB
COURT DATE-02/28/1997
COURT CHARGE 02-POSSESSION
DRUG PARAPHERNALIA
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-01/23/1997

WARR-30817AJ

BOYD, JAMES CALVIN JR

06/05/1997

ROA 0276

2/9

2/19/2019

SC0360000 NEWBERRY CNTY SO
CASE-337097
WARR-31092AJ

ARREST CHARGE -POSSESSION OF
DRUG PARAPHERNALIA
OFFENSE DATE-06/05/1997
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-POSSESSION
OF DRUG PARAPHERNALIA
COURT DISP-CONVICTED;SENTENCE
UNKNOWN
COURT DATE-06/19/1997

WARR-31092AJ

BOYD, JAMES CALVIN
SC0320000 LEXINGTON CNTY SO
CASE-9833008
WARR-F850401

03/01/1999

ARREST CHARGE -DISTRIBUTION
OF CRACK COCAINE
PHOTOGRAPH AVAILABLE

CIT-44-53-375 (B) (1) FELONY
DOC-99GS3202097
WARR-F850401

COURT CHARGE 01-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-CONVICTED;30 MONTH
S. CONCURRENT. CREDIT 4
MONTHS SERVED.
COURT DATE-09/14/1999

SC040055C R & E CENTER COLA
CASE-261672
CIT-44-53-375 (A) -FELONY

10/13/1999 CUSTODY STATUS-RECEIVED
START DATE-10/13/1999

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED;4Y AND
5M SUSPENDED UPON SERV OF
3Y REV SS/ (PROB VIOLATION
)
ATN-

CIT-44-53-375 (B) (1) -FELONY

COURT CHARGE 02-MANUF,DISTRIB
,ETC,ICE/CRANK/CRACK COCAI
NE-1ST
COURT DISP-CONVICTED;30M
CONCURRENT

BOYD, JAMES CALVIN JR
SC0360000 NEWBERRY CNTY SO
CASE-3801-02
ATN-
WARR-66924CB
CIT-44-53-960-MISDEMEANOR

05/22/2002

ARREST CHARGE -POSSESSION OF
DRUG PARAPHERNALIA
PHOTOGRAPH AVAILABLE

WARR-66923CB
CIT-C/O-MISDEMEANOR

ARREST CHARGE -MOLESTING/HARR
ASSING OF ANOTHER

WARR-64097BO
CIT-56-1-460-MISDEMEANOR

ARREST CHARGE -DUS (LICENSE
NOT SUSP DUI) -2ND

WARR-64098BU
CIT-16-17-725 (B) -MISDEMEANOR

ARREST CHARGE -GIVING FALSE
INFORMATION

WARR-H236054
CIT-44-53-375 (A) -FELONY

ROA 0277

2/19/2019

CIT-16-17-725 (B) -MISDEMEANOR
DOC-R84
WARR-64098BO

ARREST CHARGE -POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST

COURT CHARGE 01-GIVING FALSE
INFORMATION
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-06/05/2002
ATN-

CIT-56-1-460-MISDEMEANOR
DOC-R84
WARR-64097BO

COURT CHARGE 02-DUS (LICENSE
NOT SUSP DUI)-2ND
COURT DISP-NON-CONVICTION;
NOT GUILTY
COURT DATE-06/05/2002

CIT-C/O-MISDEMEANOR
DOC-R84
WARR-66923CB

COURT CHARGE 03-MOLESTING/HAR
ASSING OF ANOTHER
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-06/05/2002

CIT-44-53-960-MISDEMEANOR
DOC-R84
WARR-66924CB

COURT CHARGE 04-POSSESSION
OF DRUG PARAPHERNALIA
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-06/05/2002

CIT-44-53-375 (A) -FELONY
DOC-02GS3600264
WARR-H236054

COURT CHARGE 05-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED; 5 YRS
SUSP 154 DAS. PROB 2 YRS
CREDIT FOR 154 DAYS. COUNS
ELIN DURG/ALCOHOL TESTING
COURT DATE-10/23/2002

SC040015G CENTRAL PPP
CASE-360000
CIT-44-53-375 (A) -FELONY
WARR-H236054

10/23/2002 CUSTODY STATUS-PROBATION
START DATE-10/23/2002

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED; 5Y SUSPE
NDED ON SERVICE OF 154D,
PROBATION 2Y, CREDIT FOR
154D

ATN-

BOYD, JAMES CALVIN JR
SC0360000 NEWBERRY CNTY SO
CASE-181204
ATN-980000497422
WARR-67340CB
CIT-16-17-725 (B) -MISDEMEANOR

03/09/2004

ARREST CHARGE -GIVING FALSE
INFORMATION
OFFENSE DATE-03/09/2004
PHOTOGRAPH AVAILABLE

WARR-67341CB
CIT-16-23-20-MISDEMEANOR

ARREST CHARGE -UNLAWFUL CARRY
ING OF WEAPON
OFFENSE DATE-03/09/2004

CIT-16-17-725 (B) -MISDEMEANOR
DOC-R84
WARR-67340CB

COURT CHARGE 01-GIVING FALSE
INFORMATION
COURT DISP-CONVICTED; SENTENCE
UNKNOWN

ROA 0278

2/19/2019

CIT-16-23-20-MISDEMEANOR
DOC-R84
WARR-67341CB

COURT DATE-04/15/2004
ATN-980000497422

COURT CHARGE 02-UNLAWFUL
CARRYING OF WEAPON
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-04/15/2004

SC040015C SC DEPT CORRECTIONS 08/25/2004 CUSTODY STATUS-RECEIVED
CASE-261672 START DATE-08/25/2004
CIT-44-53-375 (A) -FELONY

COURT CHARGE 01-POSS LESS
THAN ONE GRAM ICE/CRACK
COCAINE 1ST
COURT DISP-CONVICTED; 12 MOS
ATN-500200038385

BOYD, JAMES CALVIN JR 07/30/2005
SC0320600 CHAPIN PD
CASE-NA
ATN-990000099071
WARR-NA @
CIT-16-17-725 (B) -MISDEMEANOR

ARREST CHARGE -GIVING FALSE
INFORMATION
OFFENSE DATE-07/30/2005
PHOTOGRAPH AVAILABLE

CIT-16-17-725 (B) -MISDEMEANOR

COURT CHARGE 01-GIVING FALSE
INFORMATION
COURT DISP-CONVICTED; TIME
SERVED
COURT DATE-08/25/2005
ATN-990000099071

BOYD, JAMES CALVIN JR 06/12/2006
SC0360000 NEWBERRY CNTY SO
CASE-SO-0004982
ATN-36C300004182
WARR-I319337
CIT-16-3-620 (2) -FELONY

ARREST CHARGE -ASSAULT AND
BATTERY WITH INTENT TO
KILL
OFFENSE DATE-06/12/2006
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE
ARREST INFO- DOCUMENT IN
JACKET

CIT-16-3-620 (2) -MISDEMEANOR
WARR-I319337

COURT CHARGE 01-ASSAULT WITH
INTENT TO KILL
COURT DISP-NON-CONVICTION;
NOT GUILTY/BENCH TRIAL
COURT DATE-12/15/2006
ATN-36C300004182

CIT-16-17-530-MISDEMEANOR
WARR-11647DJ

COURT CHARGE 02-PUBLIC DISORD
ERLY CONDUCT
COURT DISP-CONVICTED; TIME
SERVED

BOYD, JAMES CALVIN JR 10/12/2006
SC0360000 NEWBERRY CNTY SO
CASE-SO-0005548
ATN-36C300005345
WARR-72509CY
CIT-16-17-725 (B) -MISDEMEANOR

ARREST CHARGE -GIVING FALSE

ROA 0279

2/19/2019

INFORMATION
 OFFENSE DATE-10/12/2006
 PHOTOGRAPH AVAILABLE
 PALM PRINTS AVAILABLE

CIT--MISDEMEANOR
 DOC-36
 WARR-72509CY

COURT CHARGE 01-GIVING FALSE
 INFORMATION
 COURT DISP-CONVICTED;Fine
 \$0.00 / Jail 0 Days /
 TIME SERVED.
 COURT DATE-11/01/2006
 ATN-36C300005345

BOYD, JAMES CALVIN
 SC0320000 LEXINGTON CNTY SO
 CASE-24475110
 ATN-032024475110
 WARR-12152006 @
 CIT-44-53-370 (B) (1)-FELONY

12/15/2006

ARREST CHARGE -MDP,DRUGS SCH
 I B,C,LSA AND SCH II,COCAI
 NE-1ST
 OFFENSE DATE-12/15/2006
 PALM PRINTS AVAILABLE

WARR-12152006 @
 CIT-44-53-370 (B) (1)-FELONY

ARREST CHARGE -MDP,DRUGS SCH
 I B,C,LSA AND SCH II,COCAI
 NE-1ST
 OFFENSE DATE-12/15/2006

SC040015C SC DEPT CORRECTIONS
 CASE-200703
 CIT-44-53-375 (B) (1)-FELONY

03/14/2007 CUSTODY STATUS-RECEIVED
 START DATE-03/14/2007

COURT CHARGE 01-DRUGS/MAN,DIS
 T,ETC OF COCAINE BASE 1ST
 COURT DISP-CONVICTED;3YRS
 COURT DATE-03/14/2007
 ATN-500300042283

BOYD, JAMES CALVIN
 SC0320600 CHAPIN PD
 CASE-26805209
 ATN-032026805209
 WARR-46248EA
 CIT-56-1-460-MISDEMEANOR

08/31/2008

ARREST CHARGE -DRIVING UNDER
 SUSPENSION
 OFFENSE DATE-08/31/2008
 PALM PRINTS AVAILABLE

CIT--MISDEMEANOR
 DOC-32
 WARR-46248EA

COURT CHARGE 01-DRIVING UNDER
 SUSPENSION
 COURT DISP-CONVICTED;Fine or
 Jail Time
 COURT DATE-10/24/2008
 ATN-032026805209

BOYD, JAMES CALVIN
 SC0320600 CHAPIN PD
 CASE-28382812
 ATN-032028382812
 WARR-18817FA
 CIT-44-53-370 (D) (4)-MISDEMEANOR

05/02/2011

ARREST CHARGE -POSS 28G OR
 LESS MARIJ/10G OR LESS
 HASH 1ST
 OFFENSE DATE-05/02/2011
 PALM PRINTS AVAILABLE

WARR-18819FA

ROA 0280

2/19/2019

CIT-44-53-391-UNCLASSIFIED

ARREST CHARGE -PARAPHERNALIA/
UNLAWFUL POSS, SELL, ADVERTI
SE ETC
OFFENSE DATE-05/02/2011

WARR-18816FA

CIT-56-1-460-MISDEMEANOR

ARREST CHARGE -DRIVING UNDER
SUSPENSION
OFFENSE DATE-05/02/2011

WARR-18815FA

CIT-4-9-180-UNCLASSIFIED

ARREST CHARGE -FAIL TO DISCLO
SE INTEREST BY COUNTY
OFFICER
OFFENSE DATE-05/02/2011

BOYD, JAMES CALVIN JR
SC0410000 SALUDA CNTY SO
CASE-21100
ATN-41D000003562
WARR-43736 FK
CIT-56-1-460-MISDEMEANOR

09/19/2011

ARREST CHARGE -DRIVING UNDER
SUSPENSION
OFFENSE DATE-09/19/2011
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-43737 FK
CIT-56-05-6190-MISDEMEANOR

ARREST CHARGE -TRAFFIC/DRIVIN
G ON WRONG SIDE OF ROAD
OFFENSE DATE-09/19/2011

WARR-43738 FK
CIT-56-5-5040-MISDEMEANOR

ARREST CHARGE -VEHICULAR
TIRE VIOLATION
OFFENSE DATE-09/19/2011

WARR-43738 FK
CIT-N/A-UNCLASSIFIED

ARREST CHARGE -VIOLATION
COUNTY DRUG PARAPHERNALIA
ORDINANCE
OFFENSE DATE-09/19/2011

BOYD, JAMES CALVIN
SC0320000 LEXINGTON CNTY SO
CASE-SC0320000
ATN-032000145348
WARR-M11020202
CIT-14-25-45-MISDEMEANOR

01/13/2012

ARREST CHARGE -CONTEMPT OF
MUNICIPAL COURT
OFFENSE DATE-01/13/2011
PALM PRINTS AVAILABLE

WARR-22460FY
CIT-44-53-370 (D) (4) -MISDEMEANOR

ARREST CHARGE -POSS 28G OR
LESS MARIJ/10G OR LESS
HASH 1ST
OFFENSE DATE-01/13/2012

CIT--MISDEMEANOR
DOC-32
WARR-22460FY

COURT CHARGE 01-POSS 28G OR
LESS MARIJ/10G OR LESS
HASH 1ST
COURT DISP-CONVICTED
COURT DATE-02/07/2012
ATN-032000145348

BOYD, JAMES CALVIN JR

03/16/2012

ROA 0281

2/19/2019

SC0320000 LEXINGTON CNTY SO
CASE-000000000000
ATN-032000147828
WARR-2012020025 @
CIT-22-3-950-MISDEMEANOR

ARREST CHARGE -CONTEMPT OF
MAGISTRATES COURT
OFFENSE DATE-03/16/2012
PALM PRINTS AVAILABLE

BOYD, JAMES CALVIN
SC0320600 CHAPIN PD
CASE-06212013
ATN-032000164911
WARR-41866FW
CIT-61-9-87-MISDEMEANOR

06/21/2013

ARREST CHARGE -OPEN CONTAINER
OF BEER/WINE
OFFENSE DATE-06/21/2013
PALM PRINTS AVAILABLE

WARR-41865FW
CIT-56-1-460-MISDEMEANOR

ARREST CHARGE -DRIVING UNDER
SUSPENSION
OFFENSE DATE-06/21/2013

WARR-06212013 @
CIT-44-53-370 (D) (4) -MISDEMEANOR

ARREST CHARGE -POSS 28G OR
LESS MARIJ/10G OR LESS
HASH 1ST
OFFENSE DATE-06/21/2013

CIT--MISDEMEANOR
DOC-32
WARR-41865FW

COURT CHARGE 01-DUS (LICENSE
NOT SUSP DUI)-3RD OR MORE
COURT DISP-CONVICTED;Fine or
Jail Time
COURT DATE-05/13/2014
ATN-032000164911

CIT--MISDEMEANOR
DOC-32
WARR-41866FW

COURT CHARGE 02-OPEN CONTAIN
R OF BEER/WINE
COURT DISP-CONVICTED;Fine or
Jail Time
COURT DATE-05/13/2014

BOYD, JAMES CALVIN
SC0320000 LEXINGTON CNTY SO
CASE-A3210201783
ATN-032000181935
WARR-F140431
CIT-20-7-1350-MISDEMEANOR

10/16/2014

ARREST CHARGE -CONTEMPT OF
FAMILY COURT BY ADULT (CIVI
L
OFFENSE DATE-10/15/2014
PALM PRINTS AVAILABLE

WARR-F140430
CIT-20-7-1350-MISDEMEANOR

ARREST CHARGE -CONTEMPT OF
FAMILY COURT BY ADULT (CIVI
L
OFFENSE DATE-10/15/2014

WARR-A3210201783
CIT-16-3-600 (B) (2) -FELONY

ARREST CHARGE -ASSAULT/BATTER
Y HIGH AND AGGRAVATED
NATURE
OFFENSE DATE-10/15/2014

@ - WARRANT OCCURS WITH MORE THAN ONE SID NUMBER

ROA 0282

2/19/2019

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC00604452
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** S C CJIS END OF RECORD **^L

ELECTRONICALLY FILED - 2019 Feb 19 5:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD, JR.,

Plaintiff,

v.

THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC; FUNDAMENTAL
ADMINISTRATIVE SERVIES, LLC; and
FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,

Defendants.

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT
AND COMPEL ARBTRATION AND
STAY PROCEEDINGS**

**TO: THE HONORABLE COURT AND JAY DAVIS, ESQUIRE AS COUNSEL FOR
DEFENDANT THI OF SOUTH CAROLINA AT MAGNOLIA PLACE AT
GREENVILLE:**

COMES NOW the Plaintiff, James Boyd, Jr., by and through undersigned counsel, and does submit this memorandum of law in opposition to THI of South Carolina, LLC, d/b/a Magnolia Place – Greenville's (herein "Defendant") Motion to Dismiss Plaintiff's Second Amended Complaint and Compel Arbitration and Stay Proceedings. In opposing this motion, Plaintiff would show that the Arbitration Agreement is unenforceable for the reasons set forth below:

BRIEF SUMMARY OF ARGUMENTS

- I. Plaintiff agrees the Federal Arbitration Act applies to the enforceability, or lack thereof, of the Arbitration Agreement.**
- II. The Arbitration Agreement is unenforceable where Wilda Boyd did not have authority to sign the Arbitration Agreement on behalf of James Boyd, and there is**

clear showing that Mr. Boyd was competent at admission when the Arbitration Agreement was executed.

- a. The plain language of the Arbitration Agreement does not bind Mr. Boyd to the Arbitration Agreement, where the Arbitration Agreement is unenforceable.
- b. Defendant cannot argue that Plaintiff should be estopped from denying the validity of the Arbitration Agreement, where there is no merger of the Admission Agreement and Arbitration Agreement, and Defendant fails to show the elements necessary to prove equitable estoppel.
 - i. There is no merger of the Admission Agreement and Arbitration Agreement.
 - ii. Defendant cannot show equitable estoppel where: 1) Ms. Boyd did not act in a way amounting to false representation; 2) Ms. Boyd did not intend that such false representation be acted on by Defendant; and 3) Ms. Boyd did not have actual or constructive knowledge of the real facts.
- c. The South Carolina Bill of Rights for Residents of Long-Term Care Facilities does not bind Mr. Boyd to the Arbitration Agreement simply because it defines “representative” and required Defendant to provide Mr. Boyd with the Bill of Rights.
- d. Wilda Boyd did not possess apparent authority to bind Plaintiff under the Arbitration Agreement where Defendant’s only rational argument is that Ms. Boyd signed the paperwork.
- e. The Arbitration Agreement is not enforceable where Mr. Boyd received no benefit from the Arbitration Agreement via Third Party Beneficiary.
- f. The Arbitration Agreement is unconscionable.
- g. The Arbitration Agreement unenforceable and void where it lacks valuable consideration.

STATEMENT OF FACTS

A. ARBITRATION IN NURSING HOMES

The choice of a nursing home is made in the midst of a crisis brought on by a precipitous deterioration in health status, disability level, or the loss of a care giver or spouse.¹ The need to find a placement arises quickly² and nursing home admissions are often unplanned; there is little time to investigate options or to wait for an opening at a nursing home of choice.³ Time pressure significantly impairs the ability to seek and carefully consider alternatives.⁴ Mr. Boyd had no choice or time in making such a decision.

Many facilities lack a coherent admissions process, adding to the chaos surrounding the admission of a resident.⁵ Residents and their family members do not have time to read and deliberate on the terms of the agreement. An arbitration clause is not part of the core transaction involved in a contract for medical care or service.⁶ It is not, therefore, likely to get much attention from the non-drafting party.⁷ Mr. Boyd did not sign the admissions paperwork despite

¹ See, e.g., *Podolosky v. First Healthcare Corp.*, 58 Cal.Rptr. 2d 89, 101 (Cal. Ct. App. 1996) (citing Donna Ambrogio, Legal Issues in Nursing Home Admissions, 18 Law Med. & Health Care 254, 258 (1990)); see also Marshall B. Kapp, The “Voluntary” Status of Nursing Facility Admissions: Legal, Practical, and Public Policy Implications, 24 N.E. J. on Crim. & Civ. Confinement. 1, 3 (1998) (stating that an older person’s move to a nursing home also follows a period of acute hospitalization, when their care giving family is unable to adequately manage the demands of home care).

² In the 1980’s, the government changed the way hospitals were paid for their Medicare patients; since the change, hospital discharge planning occurs “quicker and sicker.” Linda S. Whitton, Navigating the Hazards of the Eldercare Continuum, 6 J. Mental Health and Aging 145, 150 (2000). See also Maureen Armour, A Nursing Home’s Good Faith Duty “to” Care: Redefining A Fragile Relationship Using the Law of Contract, 39 St. Louis L.J. 217, 222 (1994).

³ Denise Ashbugh Vlosky, et al., “Say-so” as a Predictor of Nursing Home Readiness, 93 J. of Family & Consumer Science 59 (2001).

⁴ Potential residents and their family members can experience panic when they feel there is insufficient time to consider different facilities, and they may choose a facility they would not have chosen if they had more time to weigh their options. Whitton, *supra*, at 150.

⁵ Donna Ambrogio & Frances Leonard, The Impact of Nursing Home Admission Agreements on Resident Autonomy, 28 The Gerontologist 82, 83-88 (1988).

⁶ See Stanley D. Henderson, Contractual Problems in the Enforcement of Agreements to Arbitrate Medical Malpractice, 58 VA. L. REV. 947, 987 (1972) (“The arbitration provision, viewed from the perspective of the patient, is indeed subsidiary to the primary exchange of medical services for an undertaking of payment.”)

⁷ The drafting party, on the other hand, has a great deal of information about these repetitive transactions and a great deal of incentive to prepare form contracts so that they are optimal from the drafter’s perspective. James Aaron Eisenberg, The Limits of Cognition and the Limits of Contract, 47 Stan.L.Rev. 211, 243 (1995).

the fact that he was able and competent to do so. Mr. Boyd did not know what arbitration was, and Defendant did not explain the Arbitration Agreement to him. His mother, Wilda Boyd, who signed the Arbitration Agreement, did not know what arbitration was, and Defendant did not explain the cause to her either. Defendant has not produced any evidence that shows Ms. Boyd had legal authority to waive Mr. Boyd's constitutional right to a jury trial.

Nursing home admission agreements are typically pre-printed contracts of adhesion offered on a "take it or leave it" basis, giving residents no meaningful opportunity to negotiate the terms of the contract.⁸ In addition, these contracts have basic readability problems such as "small print size, awkward and lengthy sentence structure, use of obscure legal language, poor formatting and unclear reproduction."⁹ Even the most well informed and sophisticated consumer is ill equipped to effectively manage the admissions process.¹⁰

Ultimately, unlike the situation that may exist when sophisticated commercial entities contract for other products and services, older persons entering nursing homes and their families have to sign admissions contracts without time to comparison shop or to negotiate the best service and combination. "The pressures of deciding placement at such a time, coupled with physical and/or mental infirmities, financial limitations, and/or lack of knowledge about long-term care options makes consumers vulnerable and dependent on full disclosure by facilities."¹¹ In such an environment residents or their family members would not know that the contract contained an arbitration clause or comprehend its meaning and consequences to their rights.

⁸ Rebecca J. Benson, Gerontology Institute, Check Your Rights at The Door, Consumer Protection Violations in Massachusetts Nursing Home Admission Agreements at 4 (Aug. 1997); Better Read the Small Print!, supra, at 2; Charles P. Sabatino, Nursing Home Admission Contracts: Undermining Rights the Old Fashioned Way, 24 Clearinghouse Rev. 553 (1990).

⁹ Sabatino, supra, at 553; see also Better Read the Small Print!, supra, at 2.

¹⁰ Benson, supra, at 3.

¹¹ Better Read the Small Print! supra, at 2.

No rules for arbitration were included in the Arbitration Agreement provided to Ms. Boyd. There was no “meeting of the minds” as to choice of arbitrator or as to rules to arbitration. For these reasons, there is growing resistance to the enforcement of pre-dispute arbitration clauses in printed “contracts” that disadvantage the weaker party in efforts to enforce contractual or statutory rights. For example, the Commission on Health Care Dispute Resolution¹² adopted recommended principles that would allow binding arbitration of disputes involving patients only where the parties agree to do so after the dispute has arisen.¹³ The American Arbitration Association has recently announced that it will no longer accept the administration of cases involving individual patients without a post-dispute agreement to arbitrate.¹⁴

Reported court opinions in this area reveal a law that is in disarray at both doctrinal and theoretical levels. Courts treat similar fact settings differently, apply the law inconsistently, and struggle with the case by case application of conflicting rules. The disorderly case law reflects deep discomfort with the presumptions favoring arbitration that the Supreme Court has created and imposed. See, e.g., Timms v. Greene, 427 S.E.2d 642 (S.C.1993) (rejecting Federal preemption and holding state law applicable despite affidavit of nursing home administrator that it was a division of a Delaware limited partnership, it marketed its services to persons residing outside South Carolina, it hired employees from outside South Carolina, it purchased a majority of goods outside South Carolina, and it was paid in part through Medicare).

¹² This was a joint project of the American Arbitration Association, the American Bar Association, and the American Medical Association. See Health Care Due Process Protocol, Draft Final Report, July 27, 1998, available at <http://www.adr.org/upload/LIVESITE/focusArea/Healthcare/healthcare.pdf>.

¹³ Id., Principle 3: Knowing and Voluntary Agreement to Use ADR.

¹⁴ AAA Health Care Policy Statement, at <http://www.adr.org/index2.1.jsp?JSPssid=13948&JSPaid=33494> (March 11, 2002) (policy effective January 1, 2003).(See Alan 2).

B. FACTS RELATED TO PLAINTIFF'S CAUSES OF ACTION

On the morning of June 3, 2016, James was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch, eventually being rushed to Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.

On June 30, 2016, James was admitted into Defendants' facility. On admission James was oriented x 3 and noted to have appropriate judgment/insight. [See, Exhibit A] It was further noted that James had *decisional capacity*. *Id.* Particularly, it was noted that James did possess the decisional capacity to make decision himself. [See, Exhibit B] It was also noted at admission that James had no diagnosis of mental illness. [See, Exhibit C] James' mother, Wilda Boyd, was asked to sign all the admission paperwork including the unenforceable Arbitration Agreement. [See, Exhibit D] The Arbitration Agreement was not part of the Admission Agreement.¹⁵ [See, Exhibit E] This is evident where the "admission package" consists of 23 pages. The last page being the Acknowledgment where it was acknowledged that the Arbitration Agreement was not part of the Admission Agreement. [See, Exhibit E]

By August 5, 2016, James had developed a sacral stage III/IV pressure wound(s), pressure ulcer of right and left heel - unstageable. On August 17, 2016, James was admitted into a hospital with fever, sacral wound, and sacral osteomyelitis and eventually diagnosed with sepsis, sacral wound, and stage IV pressure ulcer. By December 12, 2016, James was diagnosed

¹⁵ Defendant's Memorandum in Support of Defendant's Motion to Dismiss and Compel Arbitration filed June 11, 2018, two (2) days prior to the hearing date contained as Exhibit 1 merely 1 page of the 12 page admission paperwork.

with a stage III pressure ulcer of sacral region and unstageable pressure ulcer of left heel. By February 2, 2017, James was diagnosed with sepsis due to infected stage IV decubitus ulcer. James continues to struggle with these injuries.

Plaintiff requested any and all records from Defendant on November 9, 2016. [See, Exhibit F] Defendant failed to provide Plaintiff's entire record, including but not limited to the Admission Agreement and Arbitration Agreement, among other things. [See, Exhibit G] On November 30, 2016, Susan Cain, an employee of Defendant forwarded an Affidavit of Authenticity confirming the following:

- a. As Records Custodian, [she] received a request from Anastopoulo Law Firm, LLC, requesting a complete copy of any and all documents pertaining to Plaintiff.
- b. As the Records Custodian, the attached records consisting of _____ page(s) are hereby verified as true, accurate, and complete copy of records of the Plaintiff in the possession of the above named company.
- c. That these records were generated at or near the time of treatment by someone with knowledge of the treatment, are kept in [Defendant's] ordinary course of business and it is your practice to keep such records.
- d. That **no documents from the file have been omitted from the attachments.**

[See, Exhibit F]

On or about December 2, 2016, Plaintiff received Seven Hundred Eighty-Eight (788) pages of Plaintiff records, five (5) of which consisted of Plaintiff's request and the aforementioned Affidavit of Authenticity. It has become apparent to Plaintiff, based merely on Defendant's Motion with exhibits, that Defendant failed to provide Plaintiff's entire record as sworn by Defendant's employee, Susan Cain. [See, Exhibit F] It has also become apparent that Defendant omits the entire Admission Agreement, which Plaintiff does not have possession of, by only filing as Exhibit 1 to its memorandum the very last page of the entire Admission

Agreement. [See, Defendant's Exhibit 1; see also Exhibit G, page 12 of 12] Therefore, where Plaintiff's counsel has similar causes of action against the named Defendant - Plaintiff has provided a redacted version of the entire Admission Agreement from another cause of action. [See, Exhibit G excluding page 12 of 12].

LEGAL ANALYSIS

I. Plaintiff agrees the Federal Arbitration Act applies to the enforceability, or lack thereof the Arbitration Agreement.

While there is a presumption in favor of arbitration agreements, this presumption only applies where there is a valid arbitration agreement. EEOC v. Waffle House, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014); Toler's Cove Homeowners Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 D.E.2d 581 (2003). However, not all arbitration clauses are enforceable. Unless the parties have contracted otherwise, the FAA applies in federal and state courts to any arbitration agreement. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007).

Plaintiff agrees that the FAA applies. However, the Arbitration Agreement is subject to the same defenses applicable to all other contracts as discussed below. Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) (i.e. consideration). Furthermore, and more importantly, Mr. Boyd was perfectly competent and able to sign the Arbitration Agreement himself.

II. The Arbitration Agreement is unenforceable where Wilda Boyd did not have authority to sign the Arbitration Agreement on behalf of James Boyd, and there is clear showing that Mr. Boyd was competent at admission when the Arbitration Agreement was executed.

As an initial matter, Mr. Boyd was competent to sign the Arbitration Agreement at admission. On admission, Mr. Boyd was alert and oriented x 3. [See, Exhibit A]. It was also noted at admission that Mr. Boyd had *decisional capacity*. *Id.* (*emphasis added*) Additionally, Mr. Boyd was admitted with no diagnosis related to mental illness. [See, Exhibit C] (i.e. dementia, Alzheimer's) Furthermore, Defendant has failed to show that Mr. Boyd granted Ms. Boyd the authority to sign the Arbitration Agreement on his behalf. Based on this argument along, this court should deny Defendant's Motion. Furthermore, Defendant provided two (2) Federal orders whereby Defendant's motion to enforce arbitration was granted. However, Defendant failed to provide the important detail that neither Plaintiff, or Plaintiff's decedent, in those matters were competent to sign the Arbitration Agreement. [See, Exhibit H]

a. The plain language of the Arbitration Agreement does not bind Mr. Boyd to the Arbitration Agreement, where the Arbitration Agreement is unenforceable.

Defendant's first argument that "the plain language of the Agreement binds Plaintiff" puts the wagon before the horse. In theory, the plain language would bind Mr. Boyd but only if the Arbitration Agreement is deemed enforceable – which it is not because Mr. Boyd was competent at admission and on the date the Arbitration Agreement was executed. Therefore, Plaintiff will not entertain Defendant's first argument but instead focus on Arbitration Agreement's enforceability, or lack thereof, as opposed to Defendant's "procedural" argument.

b. Defendant cannot argue that Plaintiff should be estopped from denying the validity of the Arbitration Agreement, where there is no merger of the Admission Agreement and Arbitration Agreement, and Defendant fails to show the elements necessary to prove equitable estoppel.

i. There is no merger of the Admission Agreement and Arbitration Agreement.

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that the instruments are effectively one instrument or contract. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014); Klutts Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). [See, Exhibit D: Coleman]

In Coleman, the court examined the admission agreement and arbitration agreement ultimately deciding that there was no merger of the documents. Coleman v. Mariner Health Care, Inc., 407 S.C. at 355, 755 S.E.2d at 455. Ann Coleman signed a number of documents, including an arbitration agreement, when admitting her sister to a health care facility. Coleman, 407 S.C. at 350, 755 S.E.2d at 452. After her sister's death, Ms. Coleman brought suit and the facility sought to compel arbitration. Id. The circuit court denied the motion to compel arbitration and Ms. Coleman appealed. Id. On appeal, the Supreme Court found there was no merger of the admission agreement and arbitration agreement. The Supreme Court determined that the admission agreements contain this language in a section titled "Entirety of Agreement":

This Agreement, including all Exhibits hereto, and the Arbitration Agreement between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement or in the Arbitration Agreement. This Agreement may be amended only by a written agreement signed on behalf of the Facility and the Resident.

Coleman, 407 S.C. at 355, 755 S.E.2d at 455.

The Supreme Court determined:

On its face, this clause recognizes the “separatedness” of the AA [Arbitration Agreement] and the admission agreement, not a merger of the two contracts. Moreover, the AA could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate. By their own terms, the contracts between these parties indicated an intent that the common law doctrine of merger not apply. Klutts Resort, supra. Even if the “Entirety” clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants. See Davis v. KB Home of S.C., Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct.App.2011) fn. 4. Since there was no merger here, appellants' equitable estoppel argument was properly denied by the circuit court.

Coleman, 407 S.C. at 355–56, 755 S.E.2d at 455.

Furthermore, in invalidating the Arbitration Agreement, the Court held:

Here, Sister was presented with two documents at each of Decedent's admissions: a “RESIDENTIAL ADMISSION AND FINANCIAL AGREEMENT” and an “AGREEMENT FOR ARBITRATION.” The admission and financial agreement provides that it “sets forth the terms under which the Facility will provide long term care health services to [Decedent] and how the [Decedent] will pay for such services.” Assent to this contract was a condition for Decedent's admission to Facility. On the other hand, the AA was not required for Decedent's admission, contained no provision for medical, nursing, or health care services to be provided for Decedent, and did not require any financial commitment to pay for such services. **The scope of Sister's authority to consent to “decisions concerning Decedent's health care” extended to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent or Sister should issues arise in the future. Under the Act, Sister did not have the capacity to bind Decedent to this voluntary arbitration agreement.** We therefore affirm the circuit court's holding

that the Act did not confer authority on Sister to execute a document which involved neither health care nor financial terms for payment of such care.

-Coleman, 407 S.C. at 353-354 (**emphasis added**)

In the instant case, we can only assume that the Arbitration Agreement was not a pre-condition to admission. Therefore, it was separate and distinct from the Admission Agreement. Furthermore, Ms. Boyd had no authority to bind a competent Mr. Boyd to the Arbitration Agreement. Additionally, the Admission Agreement states the following:

- Page 6 of 12, Paragraph 1 under titled - IV Termination: Resident and/or his/her legal representative may terminate this Agreement at any time, upon written notice to Facility.
- Page 6 of 12, Paragraph 2 under title - IV Termination: Except as otherwise provided herein, Facility may terminate this Agreement by providing at least fifteen (15) days advance notice to Resident and/or his/her legal representative.
- Page 10 of 12 under title – IX Governing Law: This agreement will be governed by and construed in accordance with applicable Federal regulations and those laws of the State in which Facility is located.
- Page 11 of 12, Paragraph 2 under title – XVII Miscellaneous: . . . Representative will be fully bound to the extent of those assets to the terms of this Agreement, to the extent allowed by law in the State where Facility is located.
- Page 12 of 12, under Section XVIII titled - Entire Agreement, states in part that “this [Admission] Agreement represents the entire agreement and understanding between the parties.”

[See, Exhibit E: Defendant’s Exhibit 1 - Admission Agreement]

On the other hand, the Arbitration Agreement states that the “Arbitration Agreement is not subject to South Carolina Uniform Arbitration Act and shall be governed by the Federal Arbitration Act – same in Coleman. [See, Exhibit F: Defendant’s Exhibit 2 – Arbitration Agreement] Furthermore, much like the Supreme Court found in Coleman the Admission

Agreement could be terminated by the Resident at any time – by the Defendant’s facility with at least fifteen (15) days written notice. There is no termination provisions in the Arbitration Agreement. The Admission Agreement, much like Coleman also plainly states that the Admission Agreement represents the entire agreement and understanding between the parties.

Additionally, Ms. Boyd initialed an Acknowledgment – acknowledging that she received certain information and/or documentation. [See, Exhibit E: Acknowledgment] This acknowledgement acknowledged that Ms. Boyd received the Admission Agreement, Facility’s Handbook, etc., but not the Arbitration Agreement. Again, indicating that there was no merger of the Admission Agreement and Arbitration Agreement.

Coleman and Hodge are **not** distinguishable despite Defendant misguided argument:

COLEMAN:

- 1) Arbitration Agreement can be disclaimed within thirty (30) days.
- 2) Admission Agreement cannot be disclaimed.
- 3) Admission Agreement paginated with page numbers 1 through 12.
- 4) Arbitration Agreement paginated with page numbers 1 through 5
- 5) Separate signature page for both the Arbitration Agreement and Admission Agreement.
- 6) Arbitration Agreement governed by Federal Arbitration Act.
- 7) Admission Agreement can be modified within thirty (30) days of notice
- 8) Entirety of the Agreement clause in Admission Agreement

The Supreme Court determined the circuit court properly denied the equitable estoppel argument because *no merger occurred*. Coleman, 407 S.C. at 356. (*emphasis added*)

HODGE:

- 1) Admission Agreement governed by South Carolina Law
- 2) Arbitration Agreement governed by federal law.
- 3) Admission Agreement can be revoked within thirty (30) days.
- 4) Clause identifying separateness, stating “[a]ny and all claims or controversies arising . . . to this Agreement or . . . Admission Agreement.
- 5) Admission Agreement can be amended.
- 6) Each documents separately paginated with its own signature page.

Base on those facts, the Court of Appeals for South Carolina determined that the Admission Agreement and Arbitration Agreement did *not merge*. Hodge, 422 S.C. at 302. (*emphasis added*)

Therefore, where the facts of the case at hand are in-line with Coleman and there is no merger Defendant’s merger argument should be denied.

- ii. **Defendant cannot show equitable estoppel where: 1) Ms. Boyd did not act in a way amounting to false representation; 2) Ms. Boyd did not intend that such false representation be acted on by Defendant; and 3) Ms. Boyd did not have actual or constructive knowledge of the real facts.**

Defendant argues that the Plaintiff should be estopped from denying the validity of the Arbitration Agreement because James Boyd accepted the benefits of the Admission Agreement and therefore should not be able to repudiate the agreement. However, the Defendant’s argument is misguided on the theory of merger. Additionally, Plaintiff finds it hard to believe that he received any benefit from the Admission Agreement as after merely one (1) month of admission Plaintiff had developed several severe pressure wounds resulting in a potentially deadly infection and significant medical treatment and bills.

“Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements.” Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped: 1) acted in a way amounting to false representation; 2) intended that such conduct be acted on by the other party; and 3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must: 1) lack knowledge and the means of knowledge of the truth of the facts in questions; 2) rely on the conduct of the party estopped; and 3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id. The Court in Hodge v. UniHealth Post Acute Care of Bamberg, LLC, also determined that Plaintiff arguably did not receive e benefit from the Admission Agreement, where she was admitted and the Defendant’s facility caused the Plaintiff’s injuries that later led to her death. Hodge v. UniHealth Post Acute Care of Bamberg, LLC, 2018 WL 1177630 (March 7, 2018).

In the case at hand, Defendant has not shown any evidence to establish the aforementioned elements required to prove equitable estoppel. First, there is no evidence that Defendant lacked knowledge that Ms. Boyd was not authorized to bind Mr. Boyd to the Arbitration Agreement. In fact, the opposite should be true. Defendant’s own staff documented in Mr. Boyd’s medical chart that he was: 1) alert and oriented x 3 at admission [See, Exhibit A]; Mr. Boyd also had *decisional capacity*. Id. (*emphasis added*); 3) Mr. Boyd was admitted with no diagnosis related to mental illness. [See, Exhibit C]

Additionally, Ms. Boyd did not have power of attorney over Mr. Boyd nor did Defendant produce evidence that Ms. Boyd represented the same to Defendant. Furthermore, Paragraph 1 on page 11 of the Admission Agreement under the title XVII Miscellaneous, states “[i]n the

event Resident is unable to physically sign his/her name, Resident will sign below by making a mark.” There is no mark; therefore, Mr. Boyd was both mentally and physically competent to sign the Admission Agreement and/or Arbitration Agreement on his own behalf.

Therefore, Defendant cannot argue merger of the Admission Agreement and Arbitration Agreement. Defendant can also not claim to have been misled and cannot rely on equitable estoppel if it, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in questions. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-909 (Ct. App. 2001). Furthermore, Defendant had the capacity to determine whether Ms. Boyd had authority to sign the Arbitration Agreement on Mr. Boyd’s behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission. Defendant is very familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Ms. Boyd for power of attorney documentation and certainly the power to review its own paperwork and documentation. Therefore, Defendant cannot argue merger nor estoppel and the court should deny Defendant’s Motion based on the same.

c. The South Carolina Bill of Rights for Residents of Long-Term Care Facilities does not bind Mr. Boyd to the Arbitration Agreement simply because it defines “representative” and required Defendant to provide Mr. Boyd with the Bill of Rights.

Defendant attempts to misguide the court by arguing that the S.C. Bill of Rights for Residents of Long-Term Care Facilities binds Mr. Boyd to the Arbitration Agreement where Ms. Boyd signed a written acknowledgment of the Bill of Rights, the Bill of Rights defines representative, and Ms. Boyd received a copy of the Bill of Rights on Mr. Boyd’s behalf. This argument has no merit where Mr. Boyd was perfectly capable and competent to sign the

Arbitration Agreement, Admission Agreement, and the Acknowledgement – acknowledging Ms. Boyd received a copy of the Bill of Rights.

Therefore, where Defendant’s argument that Ms. Boyd’s receipt of the Bill of Rights binds Mr. Boyd to arbitration is not supported by case law and has no merit - the court should deny Defendant’s Motion based on this meritless argument.

d. Wilda Boyd did not possess apparent authority to bind Plaintiff under the Arbitration Agreement where Defendant’s only rational argument is that Ms. Boyd signed the paperwork.

A principal may be bound to an arbitration agreement by his agent if there is evidence of an expressed or implied agency relationship. Agency may be established by clear evidence of actual or apparent authority. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is “ . . . expressly conferred upon the agent by the principal.” Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). South Carolina places the burden of proof on a party asserting agency. Pee Dee Nursing Home, Inc. v. Florence Gen. Hosp., 309 S.C. 80, 85, 419 S.E.2d 834, 837 (Ct. App. 1992). The burden is not to make the mere prima facie showing but rather to show that agency is “clearly established by the facts.” Id. South Carolina law imposes this weighty burden because a person dealing with an alleged agent has a legal duty of care to determine the scope of the perceived agent’s authority. Id. (citing McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)). The legal consequences of an agent’s actions can only be attributed to the principal when the agent has actual or apparent authority. Charleston, S.C. Registry v. Young Clement Rivers & Tisdale, 359 S.C. 635, 642 (2004) (*citations omitted*).

In the case at hand, Defendant has produced no evidence of any actual agency beyond Ms. Boyd’s signature. In fact, the opposite is clear where Mr. Boyd was competent at admission

and able to voice his demands, concerns, and needs. Please refer above to admission records and Paragraph 1 on page 11 of the Admission Agreement under the title XVII Miscellaneous, which states “[i]n the event Resident is unable to physically sign his/her name, Resident will sign below by making a mark.” Again, there is no mark. Therefore, Mr. Boyd was both mentally and physically competent to sign the Admission Agreement and/or Arbitration Agreement on his own behalf and did not convey any clear evidence of actual or apparent authority. Cowburn, 366 S.C. at 39, 619 S.E.2d at 448. [See, Exhibit H and I: re: McCutchen / Benson]

e. The Arbitration Agreement is not enforceable where Mr. Boyd received no benefit from the Arbitration Agreement via Third Party Beneficiary

The Court in Hodge v. UniHealth Post Acute Care of Bamberg, LLC, determined that Plaintiff arguably did not receive a benefit from the Admission Agreement, where she was admitted and the Defendant’s facility caused the Plaintiff’s injuries that later led to her death. Hodge, 2018 WL 1177630 (March 7, 2018). The same can be said here.

First, there is no merger of the Admission Agreement and Arbitration Agreement. Assuming there is, Mr. Boyd received no benefit from the Admission Agreement. He was admitted as a high fall risk. Upon information and belief, within approximately one month of his residency Mr. Boyd suffered multiple falls one eventually leading to a severe fracture. Therefore, as the court determined in Hodge, Plaintiff finds it hard to believe that Mr. Boyd received any benefit.

Furthermore, there is no benefit listed in the Arbitration Agreement. For instance, the Defendant facility does not offer to pay Plaintiff’s arbitration expenses. The Arbitration Agreement was not, and cannot be a precondition to admission. In short, Mr. Boyd received no benefit from any agreement with Defendant.

f. The Arbitration Agreement is unconscionable.

Unconscionability is defined “as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” Herron v. Century BMW, 387 S.C. 525, 532, 693 S.E.2d 394, 398 (citing Simpson v. MSA of Myrtle Beach, Inc, 373 S.C. 14, 644 S.E.2d 663 (2007)). In determining unconscionability, the court considers whether a contract is absent of meaningful choice and contains oppressive, one sided terms. “Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining power in the contract at issue.” Id.

Here, the Arbitration Agreement at issue, and the circumstances surrounding its execution, meets the definition of unconscionable. For example, the bargaining powers between the parties in this case is severely disparate. Neither Mr. nor Ms. Boyd had any bargaining power as they had no input into the terms of the agreement nor any realistic opportunity to negotiate the terms of the Arbitration Agreement. In fact, Defendant presented the Arbitration Agreement to Ms. Boyd while Mr. Boyd was competent to make his own decisions.

In contrast, the Defendant is a sophisticated business and healthcare company, who presented Ms. Boyd with a form contract prepared solely by Defendant and/or its seasoned and experienced contract attorneys, with terms heavily weighted to Defendant’s favor and with no opportunity for meaningful review, discussion, or negotiation of terms. Mr. Boyd on the other hand, was an individual in need of Defendant’s services lacking knowledge of the Arbitration Agreement, its terms, and the constitutional right he was being asked to waive via Ms. Boyd.

Therefore, in light of the one-sidedness of the terms of agreement and the relative disparity of the parties' bargaining power, and the Defendant's sophistication, it is apparent the Arbitration Agreement is unconscionable.

g. The Arbitration Agreement unenforceable and void where it lacks valuable consideration.

While federal law preempts state laws that would invalidate arbitration agreements on most public policy grounds, the FAA looks to state law to decide the threshold questions of contract formation. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) ("the court should apply 'ordinary state-law principles that govern the formation of contracts.'"). Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts. Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 130 S. Ct 2772, 2776, 177 L.Ed.2d 403 (2010) Simpson, 373 S.C at 14, 644 S.E.2d at 663 ("general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.").

The necessary elements of a contract are an offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 581 S.E.2d 161, 166 (S.C. 2003) "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Plantation A.D., LLC v. Gerald Builders of Conway, Inc., 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship., 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998)). Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

Our courts have held that where there is a mutual promise to arbitrate, there must be additional consideration. See Riedman Corp. v. Jarosh, 290 S.C. 252, 253, 349 S.E.2d 404, 405 (1986); see also O'Neil v. Hilton Head Hosp., 115 F.3d 272, 274-5 (4th Cir. 1997). However, in determining whether adequate consideration exists in a contract, or arbitration agreement under the FAA guided by principles of contract law, our courts must examine and stay within the confines of the four corners of the instrument. State Acc. Fund v. S.C. Second Injury Fund, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)). Therefore, our courts must assess whether the arbitration agreement itself contains sufficient consideration in the form of a mutual exchange of promises to arbitrate.

In the case at hand, assuming Ms. Boyd had authority there is no consideration in agreeing to the Arbitration Agreement. The one-page agreement contains no benefit or detriment to the parties. Therefore, where the Arbitration Agreement lacks consideration the court should deny Defendant's Motion.

CONCLUSION

For all the foregoing reasons, Defendant's Motion to Dismiss and Compel Arbitration shall be denied.

[SIGNATURE BLOCK ON THE FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar Number: 101010
Stefan B. Feidler, Esquire
S.C. Bar Number: 101918
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
_____, 2019

1 started his admission process. She signed the
2 initial admission paperwork.
3 Q. Okay. And when did she sign that initial
4 paperwork? Do you recall the date?
5 A. Day of admission.
6 Q. Okay. I have date of admission on June 3rd,
7 2016. Is that correct?
8 A. Correct.
9 Q. And so she started the admission paperwork before
10 he was even admitted into the facility?
11 A. Yes.
12 Q. Okay. And why did -- how did she start it before
13 he was even admitted? Did you reach out to her?
14 A. Well, reached out to the case manager when we
15 were coordinating the admission to see who would
16 assist him.
17 Q. So the case manager said here's, I guess, Wilda
18 Boyd's contact information? How did that work?
19 A. The case manager said she would get back to me,
20 and she put Wilda Boyd in touch with me.
21 Q. Okay. And then what happened next?
22 A. The case manager called back and informed me that
23 it would be his mom.
24 Q. Okay. It would be his mom what?
25 A. Assisting with his admission paperwork.

- 1 Q. Okay. And then what happened next?
- 2 A. I spoke with the mom. She informed me that she
3 couldn't come to do the paperwork, that I would
4 have to fax it to her.
- 5 Q. Okay. Did you fax it to her?
- 6 A. I did. I faxed it to her, and she called me back
7 and told me that she had it. I told her just
8 review it, read over it, sign it, and send it
9 back.
- 10 Q. Perfect. Had you talked to Mr. Boyd prior to
11 faxing this paperwork?
- 12 A. No. He was not there yet.
- 13 Q. What was the case manager's name?
- 14 A. Peggy.
- 15 Q. What is Peggy's last name?
- 16 A. Fields.
- 17 Q. Field, like --
- 18 A. Uh-huh.
- 19 Q. -- Stream and Field?
- 20 A. Uh-huh.
- 21 Q. That's the only example I could think of. It's a
22 popular magazine, for me, at least. So you faxed
23 that paperwork to her, correct?
- 24 A. Yes.
- 25 Q. Do you recall if it was at a business, at a house

1 Agreement via return fax, had you talked to James
2 Boyd at that point?

3 A. No.

4 Q. Okay. And I believe -- let me just go ahead and
5 show y'all this.

6 MR. FIEDLER: I'm just going to hand you everything I
7 might turn in, that way I'm not going through.

8 MR. BUCKNER: He'll give you a copy. Oh, okay. Do you
9 have a copy for her, too?

10 MR. FIEDLER: I do.

11 MR. BUCKNER: Okay.

12 MR. FIEDLER: I just wanted to get you out of the way
13 so I don't -- I'm not very good at being
14 organized. We can go off the record for a
15 second.

16 (Plaintiff's Exhibit Number 1 was marked for
17 identification.)

18 EXAMINATION RESUMED

19 BY MR. FIEDLER:

20 Q. KoKo, I'm going to hand you what I have stapled
21 together and I believe is the Admission
22 Agreement, Consent to Treat, and the Arbitration
23 Agreement. Please review this and make sure this
24 is everything that I'm presenting on record that
25 I'm giving to you, and also, please verify --

- 1 Q. And where page two should be is actually the
2 Acknowledgement, which is page 23 of 23?
- 3 A. This shouldn't be there.
- 4 Q. Right. Well, that's what I'm saying. So then
5 page 2, 3, 4, 5 follows -- let me make sure it
6 follows from there as well.
- 7 A. 3, 4, 5. Yes.
- 8 Q. And so that was signed on the -- what date was
9 that signed on?
- 10 A. The 7th.
- 11 Q. Okay. And so did you explain the Consent to
12 Release to Ms. Boyd?
- 13 A. No. I had her to read it.
- 14 Q. Okay. And what about the Arbitration Agreement?
- 15 A. No.
- 16 Q. Did you explain the Admission Agreement to Mr.
17 Boyd?
- 18 A. No.
- 19 Q. What about the Consent to Release? Did you
20 explain that to Mr. Boyd?
- 21 A. No.
- 22 Q. What about the Arbitration Agreement? Did you
23 explain that to Mr. Boyd?
- 24 A. No.
- 25 Q. Did you believe Mr. Boyd was competent to make

1 alternatively, you don't know?

2 A. I don't know.

3 Q. So it's fair to say that if Ms. Burt
4 testified that she recalls that, you wouldn't have any
5 memory or evidence --

6 A. No.

7 Q. -- to say that was false?

8 A. Let me rephrase that. Because I want to
9 get this right. When I got to Magnolia Place I didn't
10 talk to anybody about my admission. Nobody came to me
11 and asked me anything about my admission. All I knew
12 was I was there. And my caseworker handled all the
13 paperwork. Whatever happened in between, they never
14 came and asked me anything.

15 Q. When you say caseworker, at Richland
16 Memorial?

17 A. Uh-huh.

18 Q. Now, a Richland Memorial caseworker, they
19 can't sign you into a nursing home. You understand
20 that?

21 A. I know they can't sign me into a nursing
22 home. I don't know how that came to happen, but it
23 did. All I knew is that they came to my room and
24 shipped me from Richland Memorial to Greenville.

25 Q. Okay. And I've got -- and we can mark this

1 QUESTIONS BY MR. BUCKNER:

2 Q. And did she have authority to execute all
3 paperwork necessary to admit you to the nursing home?

4 A. No.

5 Q. Okay. And what was it -- you told me she
6 had authority to admit you. What was it that she
7 didn't have authority to do in your eyes?

8 A. In my eyes, I mean, she had authority to me
9 because she's my mother, but, in my eyes, anything
10 like any medical things that I needed, she didn't have
11 authority for none of that.

12 Q. And why is that?

13 A. Because I'm a grown man and I want to know
14 what I need for myself before I let anybody do
15 anything for me. I was fully conscious. I had all my
16 right mind. I didn't see any reason for anybody to
17 have authority over my body like that if I couldn't --
18 unless I couldn't do it myself.

19 Q. And so you believe that your mother did
20 this wrongfully when she executed medical paperwork on
21 your behalf that admitted you to Magnolia Place of
22 Greenville?

23 MR. FEIDLER: Objection.

24 THE WITNESS: Repeat the question.

25 QUESTIONS BY MR. BUCKNER:

Deposition of James Boyd, Jr.

1 Q. Do you think your mother was wrong to do
2 what she did when she executed certain admission
3 paperwork to admit you to Magnolia Place in
4 Greenville?

5 A. Yeah. Uh-huh.

6 Q. Did you ever tell any staff member at
7 Magnolia Place of Greenville what you just said to my
8 previous question about how you wanted to look at
9 everything?

10 A. No. Because nobody ever came and asked me
11 about any papers, so I can't -- I mean, not to my
12 knowledge.

13 Q. Okay. I just want to make sure that --
14 because this is the only time I get to talk to you
15 about this whole deal. Right? Well, when I say whole
16 deal, I mean the arbitration issue. But you're not
17 testifying that there was a time that you looked at a
18 staff member at Magnolia Place and said I just want
19 you to know that my mother shouldn't be handling
20 admission paperwork, it should be me? You don't
21 remember anything like that? I understand you feel
22 that way now, but you didn't say that to any staff
23 member at Magnolia Place?

24 A. No.

25 Q. Okay. Tell me just generally -- I mean,

1 A. Yeah.

2 Q. You don't remember or you didn't have one,
3 a conversation with Coco after your mother had signed
4 the paperwork?

5 MR. FEIDLER: Objection. Asked and
6 answered.

7 THE WITNESS: Repeat the question.

8 QUESTIONS BY MR. BUCKNER:

9 Q. Yeah. Are you testifying that you don't
10 remember a conversation with Coco after the admission
11 paperwork was executed or are you testifying that a
12 conversation with Coco after the admission paperwork
13 did not happen?

14 MR. FEIDLER: Same objection.

15 THE WITNESS: I can't answer that question
16 because I don't know when the paper was signed, and I
17 never talked to Coco about any papers that --

18 QUESTIONS BY MR. BUCKNER:

19 Q. After?

20 A. After. I never talked to Coco about any
21 paper pertaining to me being at Magnolia Place.

22 Q. Afterward?

23 A. After I got there.

24 Q. Okay.

25 MR. BUCKNER: Can we go off the record?

1 (A short recess was taken.)

2 QUESTIONS BY MR. BUCKNER:

3 Q. Mr. Boyd, going back on the record, we
4 talked a little bit earlier about some medical
5 paperwork and admissions. Regarding like financial
6 stuff like, you know, who would be handling your money
7 and things of that nature while you were in the
8 nursing home, do you remember whether any paperwork
9 regarding that issue was executed by your mother?

10 A. No.

11 Q. All right. And I understood your testimony
12 earlier about your mother's execution of admission
13 paperwork. Do you believe that she had authority to
14 execute any financial authorizations on your behalf?

15 A. No.

16 Q. Okay. I don't think I have any further
17 questions, but I'm going to think about it a little
18 bit longer. Thank you for your time. I appreciate
19 it.

20 A. Okay.

21 MR. FEIDLER: My go?

22 MR. BUCKNER: Your go.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. FEIDLER:

25 Q. Mr. Boyd, were you competent June 30th,

Deposition of James Boyd, Jr.

1 2016, when you were admitted into Magnolia?

2 A. Say again.

3 Q. Were you competent when you were admitted
4 into Magnolia Place on June 30th, 2016?

5 A. When you say competent, what do you mean?

6 Q. Were you able to make your own decisions?

7 A. Yes, I was.

8 Q. Did you, on June 30th, 2016, ever represent
9 to your mother that she could sign paperwork for you?

10 A. No.

11 Q. Did you, on June 30th, 2016, ever represent
12 to any employee of Magnolia Place that your mother
13 could sign paperwork for you?

14 MR. BUCKNER: Object to the form of the
15 question.

16 QUESTIONS BY MR. FEIDLER:

17 Q. You can answer.

18 A. Repeat the question.

19 Q. On June 30th, 2016, did you represent to
20 any employee at Magnolia that your mother could sign
21 paperwork on your behalf?

22 MR. BUCKNER: Object to the form --

23 THE WITNESS: No.

24 MR. BUCKNER: -- and asked and answered.

25 QUESTIONS BY MR. FEIDLER:

1 Q. Mr. Boyd, Exhibit 2 --

2 MR. BUCKNER: Was there an answer?

3 MR. FEIDLER: He said no.

4 THE WITNESS: I said no.

5 QUESTIONS BY MR. FEIDLER:

6 Q. Exhibit 2 appears to be the arbitration
7 agreement. Can you confirm that?

8 A. It's the arbitration agreement?

9 Q. Yes.

10 A. Yeah.

11 Q. Have you ever seen this arbitration
12 agreement?

13 A. No.

14 Q. Did anyone from Magnolia Place bring this
15 to you?

16 A. No.

17 Q. If someone at Magnolia Place came up to you
18 and said that your mother on your behalf was signing
19 this arbitration agreement and taking away your
20 constitutional right to a jury trial, would you agree
21 to that?

22 MR. BUCKNER: Objection to form. Leading.

23 THE WITNESS: No.

24 QUESTIONS BY MR. FEIDLER:

25 Q. And I believe you said you don't remember,

1 but do you remember any employee of Magnolia coming to
2 you, whether on June 30th, 2016, and asking if your
3 mother can sign paperwork on your behalf?

4 A. No.

5 MR. BUCKNER: Object to the form. What was
6 the answer?

7 THE WITNESS: No.

8 MR. FEIDLER: No.

9 QUESTIONS BY MR. FEIDLER:

10 Q. And when your mother did sign this
11 paperwork, was she in the room with you when she was
12 signing this paperwork?

13 A. No.

14 Q. Did anybody ask you if it was okay that
15 your mother sign this paperwork on your behalf?

16 MR. BUCKNER: Object to the form.

17 THE WITNESS: No.

18 MR. FEIDLER: I don't think I have any
19 further questions.

20 MR. BUCKNER: I don't have any further
21 questions.

22 (Wherein, the deposition was concluded.)
23
24
25

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
CASE NO: 2018-CP-23-01934

JAMES BOYD,

Plaintiff,

v.

THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC;
and FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,

Defendant(s).

**MOTION TO RECONSIDER ORDER
GRANTING DEFENDANT THI OF
SOUTH CAROLINA AT MAGNOLIA
PLACE AT GREENVILLE, LLC'S
MOTION TO DISMISS AND COMPEL
ARBITRATION**

TO: THE HONORABLE PERRY H. GRAVELY AND ALL COUNSEL OF RECORD:

The Court should reconsider the Order and deny Defendant THI of South Carolina, LLC, d/b/a Magnolia Place – Greenville's (herein "Defendant") Motion to Dismiss and Compel Arbitration based on the reasons set for below.

If the Court is inclined to deny Plaintiff's Motion to Reconsider, this matter must not be dismissed but rather stayed to protect Plaintiff's statute of limitations. Widener v. Fort Mill Ford, Opinion No. 4490 (S.C. Ct. of Appeals, January 27, 2009).

BRIEF SUMMARY OF ARGUMENTS

- I. The Court erred when it found an agency relationship was created based on Peggy Fields' message to Defendant that Wilda Boyd would be the contact person for James Boyd's admission to Defendant's facility.
- II. Wilda Boyd did not possess apparent authority to enter into the Arbitration Agreement on James Boyd's behalf.

SHORT STATEMENT OF FACTS AND PROCEDURAL HISTORY

On the morning of June 3, 2016, James Boyd was riding his bicycle when he was violently hit by an unidentified driver. James lay helpless in the ditch before being discovered and rushed to Richland Memorial. Once at Richland Memorial, a MRI of James' cervical spine showed both cord contusion and compression at the C4-C5 level with asymmetrical disk bulging at the C5-C6 level. Emergency surgery was conducted, but unfortunately it was determined that James was permanently paralyzed because of this accident.

On June 30, 2016, James was admitted into Defendant's facility. On admission James was oriented x 3 and noted to have appropriate judgment/insight. It was further noted that James had *decisional capacity*. Particularly, it was noted that James did possess the decisional capacity to make decision himself. It was also noted at admission that James had no diagnosis of mental illness.

Shortly after filing suit, Defendant moved to dismiss and compel arbitration. On July 9, 2018, Judge Gravely granted limited discovery on the issue of agency to determine whether Wilda Boyd had actual or apparent authority to sign the Arbitration Agreement on behalf of James Boyd. The following individuals were deposed: 1) Plaintiff James Boyd; 2) Wilda Boyd (mother of Plaintiff); 3) Defendant's Director of Admissions, Leola Burt; and 4) Peggy Fields, the case manager at the discharging hospital.

On August 20, 2019, the Court granted Defendant's Motion finding Wilda Boyd possessed apparent authority to execute the Arbitration Agreement on James Boyd's behalf. [See, Exhibit A: Order]. Plaintiff timely moved to reconsider the Order.

ARGUMENTS AND LEGAL ANALYSIS

I. The Court erred when it found an agency relationship was created based on Peggy Fields' message to Defendant that Wilda Boyd would be the contact person for James Boyd's admission to Defendant's facility.

The Court erred when it found apparent authority based on Peggy Field's (case manager at the discharging hospital) message to Leola Burt (Defendant's Admission Coordinator) that James Boyd's mother, Wilda Boyd "would be the contact person for" James Boyd's admission. [See, Exhibit B Peggy Fields Depo: 19: 19-25].

Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The principal must make a direct representation to the third party that another has authority to act on his behalf. Froneberger v. Smith, 406 S.C. 37, 48, 748 S.E.2d 625, 630 (Ct. App. 2013)(*emphasis added*).

In the case at hand, Defendant argues an apparent agency relationship was created when Leola Burt contacted Peggy Fields to determine who would be filling out James Boyd's initial admission paperwork. However, Defendant and the Order misconstrues facts that are not based on evidence in the record. For instance, the Order relies on misconstrued facts surrounding James Boyd's representations to Peggy Fields. In fact, Peggy Fields testified she never asked James Boyd if his mother Wilda Boyd could sign the Arbitration Agreement on James Boyd's behalf:

Question: Okay, Did Mr. Boyd ever make a representation to you that his mother could handle the admission paperwork for Magnolia Place?

Answer: Yes.

Question: Okay, And what did he say?

Answer: Yes. Mother.

Question: He just said , yes, mother?

Answer: His mother.

Question: Okay. What did you ask him?

Answer: I asked him - - it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf.

[See, Fields Depo: 16: 20-25; 17: 1-4].

.....

Question: Do you recall if you asked Mr. Boyd if his mother or anyone else could sign the arbitration agreement on his behalf?

Answer: I do not.

....

[See, Fields Depo: 18: 23-25; 19: 1].

Question: Okay, And what did you tell Ms. Burt after the conversation with Mr. Boyd? Leola Burt.

Answer: As far as the mother would be the contact person for him.

Question: Okay. Did you tell [Leola Burt] that the mother would be signing the admission paperwork on [James Boyd's] behalf?

Answer: That is out of my scope. I tell them the contact person and then the facility takes over.

[See, Exhibit B Peggy Fields Depo: 19: 19-25; 20: 1].

Clearly Peggy Fields representations to Leola Burt that Wilda Boyd “would be the contact person for” James Boyd did not create an apparent agency relationship, because James Boyd did not make a direct representation to Defendant that Wilda Boyd was authorized to enter into the Arbitration Agreement on his behalf. Froneberger, 406 S.C. at 48, 748 S.E.2d at 630. This is further evident by Leola Burt, Wilda Boyd, and James Boyd’s testimony as outlined below.

Therefore the Court erred when it found apparent authority based on Peggy Field's message to Leola Burt that James Boyd's mother "would be the contact person for" James Boyd's admission because there was no direct representations by James Boyd to Defendant. [See, Exhibit B Peggy Fields Depo: 19: 19-25].

II. Wilda Boyd did not possess apparent authority to enter into the Arbitration Agreement on James Boyd's behalf.

The Court erred when it found Defendant met its burden of clear evidence to establish that Wilda Boyd possessed apparent authority.

A principal may be bound to an arbitration agreement by his agent if there is clear evidence of an expressed, actual or apparent agency relationship. The burden of establishing agency is upon the party asserting that a principal-agent relationship exists. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). The burden is not to make the mere prima facie showing, but rather to show that agency is "*clearly established by the facts.*" Pee Dee Nursing Home, Inc. v. Florence Gen. Hosp., 309 S.C. 80, 85, 419 S.E.2d 834, 837 (Ct. App. 1992)(*emphasis added*). South Carolina law imposes this weighty burden because a person dealing with an alleged agent has a legal duty of care to determine the scope of the perceived agent's authority. Id. (citing McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)).

Actual authority is "expressly conferred upon the agent by the principal." Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). On the other hand, apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." Young, 374 S.C. at 367, 649 S.E.2d at 491. The principal must make direct representations to the third party that another has authority to act on his behalf. Froneberger, 406 S.C. at 48, 748 S.E.2d at 630.

“The elements which must be proven to establish apparent agency are: (1) that the purported principal consciously or impliedly represented another to be her agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment.” Cowburn v. Leventis, 366 S.C. 20, 40, 619 S.E.2d 437, 448 (Ct. App. 2005); Graves v. Serbin Farms, Inc., 306 S.C. 60, 62, 409 S.E.2d 769, 771 (1991) (citation omitted). “[A]n agency may not be established solely by the declarations and conduct of an alleged agent.” Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct.App.1996) (citation omitted). Our courts have further refined the definition of apparent authority by stating:

The doctrine of apparent authority focuses on the principal's manifestation to a third party that the agent has certain authority. Concomitantly, the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. Id. Thus, the concept of apparent authority depends upon *manifestations by the principal to a third party* and the reasonable belief by the third party that the agent is authorized to bind the principal.

R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 432, 540 S.E.2d 113, 117–18 (Ct.App.2000) (citations omitted) (emphasis added). Accordingly, “[t]he proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on that between the principal and the third party.” Id. at 432, 540 S.E.2d at 118.

First, as outlined above Peggy Fields merely relayed to Leola Burt that Wilda Boyd would be the point of contact. [See, Exhibit B Peggy Fields Depo: 19: 19-25; 20: 1]. It is clear by Peggy Fields’ testimony that James Boyd, as the principal, did not make a direct representation to Defendant that Wilda Boyd had authority to execute the Arbitration Agreement on his behalf.

Smith, 406 S.C. at 48, 748 S.E.2d at 630 (the principal must make direct representations to the third party that another has authority to act on his behalf). In fact, the opposite is true.

Second, Leola Burt testified that she never asked James Boyd if Wilds Boyd could execute the Arbitration Agreement on his behalf, and admitted that she never explained the Arbitration Agreement to a competent James Boyd at admission:

Question: Did you explain the Admission Agreement to Mr. Boyd?

Answer: No.

....

Question: What about the Arbitration Agreement? Did you explain that to Mr. Boyd?

Answer: No.

Question: Do you believe Mr. Boyd was competent to make his own decisions upon admission?

Answer: Yes.

[See, Exhibit C Leola Burt Depo: 28: 11-25; 29: 1-2].

Third, Wilda Boyd testified that she never talked to James Boyd as it pertains to her authority to sign the Arbitration Agreement on James Boyd's behalf:

Question: I need to know, because this is my last chance to talk to you, and you're under oath, if you and your son ever talked about your authority to execute documents, admissions paperwork, on his behalf?

Answer: No

[See, Exhibit D Wilda Boyd Depo: 29: 4-9].

Fourth, James Boyd's testimony verifies that Wilda Boyd was not authorized to execute the Arbitration Agreement on his behalf and he was competent to handle his own paperwork:

Question: All right. And I understand your testimony earlier about your mother's execution of admission paperwork. Do you believe that she had authority to execute any financial authorizations on your behalf?

Answer: No.

[See, Exhibit E James Boyd Depo: 42: 11-15].

....

Question: Were you competent when you were admitted into Magnolia Place on June 30th, 2016?

Answer: When you say competent, what do you mean?

Question: Were you able to make your own decisions?

Answer: Yes, I was.

Question: Did you, on June 30th, 2016, ever represent to your mother that she could sign paperwork for you?

Answer: No.

Questions: Did you, on June 30th, 2016, ever represent to any employee of Magnolia Place that your mother could sign paperwork for you?

Answer: No.

[See, Exhibit E James Boyd Depo: 43: 3-23]

....

Question: Exhibit 2 appears to be the arbitration agreement. Can you confirm that?

Answer: It's the arbitration agreement?

Question: Yes.

Answer: Yeah.

Question: Have you ever seen this arbitration agreement?

Answer: No.

Question: Did anyone from Magnolia Place bring this to you?

Answer: No.

Question: If someone at Magnolia Place came up to you and said that your mother on your behalf was signing this arbitration agreement and taking away your constitutional right to a jury trial, would you agree to that?

Answer: No.

[See, Exhibit E James Boyd Depo: 44: 6-23].

....

Question: [] . . . do you remember any employee of Magnolia coming to you, whether on June 30th, 2016, and asking if your mother can sign paperwork on your behalf?

Answer: No.

....

Question: Did anybody ask you if it was okay that your mother sign this paperwork on your behalf?

Answer: No.

In Thompson v. Pruitt Corp., Judge S. Jackson Kimball denied defendant's motion to dismiss and compel arbitration where the defendant failed to meet its burden of clear evidence to prove agency. Thompson v Pruitt Corp., No. 2013CP46-2930, 2014 WL 8238881, at *3 (S.C.Com.Pl. Apr. 11, 2014). Judge Kimball found that there was no evidence that the principal made a representation of agency to the defendant, because the principal never spoke to the defendant concerning her admission. Id. The court rightfully determined that "evidence [was] lacking to satisfy [Defendant's] burden in th[e] case." Id. The same can be true in the case at hand.

Leola Burt testified that she never spoke to James Boyd prior to his admission nor prior to the execution of the Arbitration Agreement. [See, Exhibit C Leola Burt Depo: 28: 11-25; 29: 1-2]. Additionally, Leola Burt never inquired into Wilda Boyd's authority despite having

multiple opportunities to confer the same with Wilda Boyd, but more importantly James Boyd. McCall v. Finley, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987)(citing Justus v. Universal Credit Co., 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939))("[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority.").

The following testimony by James Boyd also shows that James Boyd did not give Wilda Boyd authority to enter into the Arbitration Agreement on his behalf:

Answer: When I got to Magnolia Place I didn't talk to anybody about my admission. Nobody came to me and asked me anything about my admission. All I knew was I was there and my caseworker handled all the paperwork. Whatever happened in between, they never came and asked me anything. [See, Exhibit E James Boyd Deposition: 18: 8-14].

Question: Did [Wilda Boyd] have authority to execute all paperwork necessary to admit you to the nursing home?

Answer: No. I was fully conscious. I had all my right mind. I didn't see any reasons for anybody to have authority over my body like that . . . unless I couldn't do it myself." [See, Exhibit E James Boyd Deposition: 30: 2-4, 15-18].

Question: Do you think your mother was wrong to do what she did when she executed certain admission paperwork to admit you to Magnolia Place in Greenville?

Answer: Yeah. Nobody ever came and asked me about any papers. [See, Exhibit E James Boyd Deposition: 31: 1-5, 10-11]. She didn't have no authority to sign any papers on my behalf because I never gave her authority to sign any papers on my behalf. [See, Exhibit E James Boyd Deposition: 41: 20-21]. I never talked to Koko [aka Leola Burt] about any papers pertaining to me being at Magnolia Place. [See, Exhibit E James Boyd Deposition: page 41: 20-21].

Question: Do you remember any employee of Magnolia coming to you, whether on June 30th, 2016, and asking if your mother can sign paperwork on your behalf?

Answer: No. [See, Exhibit E James Boyd Deposition: page 44: 25; 45: 1-4].

Question: Were you and your mother in the same room when she signed the paperwork?

Answer: No. [See, Exhibit E James Boyd Deposition: 45: 10-13].

Question: Did anybody ask you if it was okay that your mother sign this paperwork on your behalf?

Answer: No. [See, Exhibit E James Boyd Deposition: page 45: 14-17].

In summary, **Peggy Fields** merely instructed Leola Burt that Wilda Boyd would be the contact person. [See, Exhibit B Fields Depo: 19: 19-25; 20: 1]. **Leola Burt** testified that she did not explain the Arbitration Agreement to Mr. Boyd and that Mr. Boyd was competent to make his own decisions upon admission. [See, Exhibit C Leola Burt Depo: 28: 11-25; 29: 1-2]. **Wilda Boyd** testified she never heard James Boyd tell anyone Wilda Boyd had authority to act on my behalf and she never spoke with James Boyd about her authority to execute documents, admissions paperwork, etc. on his behalf. [See, Exhibit D Wilda Boyd Depo: 28: 2-5]. Finally, **James Boyd** testified that Wilda Boyd did not have authority to execute any financial authorizations on his behalf, was competent and able to make his own decisions at admission into Defendant's facility, did not represent to Wilda Boyd nor Defendant that Wilda Boyd could execute the Arbitration Agreement, and did not view nor was the Arbitration Agreement presented to him for his consideration and signature. [See, Exhibit E James Boyd Depo: 42: 11-15; 43: 3-23; 44: 6-23].

Therefore, based on the aforementioned Defendant failed to meet its burden of clear evidence to establish that Wilda Boyd possessed apparent authority and the Court should reconsider its Order and then deny Defendant's Motion.

CONCLUSION

For all the foregoing reasons, this Court should reconsider its previous Order and deny Defendant's Motion to Dismiss and Compel Arbitration should be denied. If the Court is inclined

to deny Plaintiff's Motion to Reconsider, this matter must not be dismissed but rather stayed to protect Plaintiff's statute of limitations. Widener, Opinion No. 4490.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

_____/s/ Stefan B. Feidler_____
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar Number: 101010
Stefan B. Feidler, Esquire
S.C. Bar Number: 101918
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
_____August 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
	)	
PLAINTIFF,	)	ORDER GRANTING DEFENDANT THI
	)	OF SOUTH CAROLINA AT MAGNOLIA
vs.	)	PLACE AT GREENVILLE, LLC’S
	)	MOTION TO COMPEL ARBITRATION
	)	AND GRANTING FUNDAMENTAL
THI OF SOUTH CAROLINA AT	)	ADMINISTRATIVE SERVICES, LLC AND
MAGNOLIA PLACE AT GREENVILLE,	)	FUNDAMENTAL CLINICAL AND
LLC; FUNDAMENTAL CLINICAL	)	OPERATIONAL SERVICES, LLC’S
AND OPERATIONAL SERVICES LLC;	)	MOTIONS TO STAY
FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC ,	)	
	)	
DEFENDANTS.	)	
	)	

This matter came before the Court on Defendant THI of South Carolina at Magnolia Place at Greenville, LLC’s (hereinafter “Defendant” or “Magnolia Place”) Motion to Dismiss and Compel Arbitration filed on May 2, 2018. Co-Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC filed Motions to Stay that were also before this Court.

On June 13, 2018, a hearing was held before this Court with regard to these motions. After considering the arguments of counsel, the Court denied Magnolia Place’s Motion without prejudice by order dated July 9, 2018. Specifically, this Court granted the parties leave to conduct additional discovery on the issues of common law agency to determine whether the Plaintiff James Boyd, Jr.’s mother, Wilda Boyd, had the authority to bind him to the Arbitration Agreement at issue such that the claims he asserted in this action are subject to arbitration. Further, the Court ordered that the Motions to Stay filed by Defendants Fundamental

Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC be held in abeyance pending a final decision of Defendant's Motion.

The parties conducted additional discovery and procured deposition testimony from Plaintiff; Leola Burt, Admissions Coordinator for the Defendant's facility; Peggy Fields, case manager for Palmetto Health Baptist Hospital; and Wilda Boyd, Plaintiff's mother. Additionally, Defendant procured a sworn declaration from Ms. Fields that was submitted to this Court. After this additional discovery was completed, both parties submitted supplemental memoranda in support of their respective positions along with supporting exhibits and a second hearing was held on May 20, 2019. Eric Poulin was present for Plaintiff and Perry M. Buckner, IV was present for Defendants. After careful consideration of the arguments of counsel, the memoranda and exhibits submitted, and the record before the Court, the Court GRANTS Defendant's Motion to Compel Arbitration and Stay for the reasons set forth below.

FINDINGS OF FACT

Defendant THI of South Carolina at Magnolia Place at Greenville, LLC operates a skilled nursing facility located in Greenville County known as Magnolia Place. On June 30, 2016, Plaintiff James Boyd was admitted to Magnolia Place for skilled nursing care. Prior to Plaintiff's admission, Plaintiff was involved in a car accident leaving him injured. As a result of the accident, Plaintiff was hospitalized at Palmetto Baptist Hospital where he remained until he was transferred to Magnolia Place.

As part of the admissions process to Magnolia Place, certain admissions paperwork, including an Admission Agreement itself, is presented to the patient or a representative on the patient's behalf. Included within the admissions paperwork for Mr. Boyd's residency was a separate, stand-alone Arbitration Agreement. By its terms, the Arbitration Agreement was not a

precondition to admission to the Facility and Plaintiff or a representative on his behalf could choose to whether to accept or refuse it.

To facilitate the admissions process, the Admissions Coordinator for Magnolia Place, Leola Burt, contacted Peggy Fields, case manager at Palmetto Health Baptist to inquire who would be completing Plaintiff's admissions paperwork prior to his arrival at the Defendant's facility. Regarding her conversations with Ms. Fields, Ms. Burt testified as follows:

Q: Ms. Burt, in responding to a couple of plaintiff's counsel's questions about conversations with Ms. Fields at Palmetto Baptist, you had indicated that you spoke with Ms. Fields on a couple of occasions; is that correct?

A: Yes.

Q: Okay. And that one of those conversations or phone calls was a phone call that you initiated to her inquiring about who should handle James Boyd's admissions paperwork, correct?

A: Yes.

Q: And you testified that Ms. Fields got back to you and indicated that Wilda Boyd would be the person who would be handling it; is that correct?

A: Yes.

Q: All right. Do you know why you were informed that Wilda Boyd would be the person who would be doing it?

A: She had to check with James.

Q: Okay. And when you say she, you mean Ms. Fields had to check with James?

A: Yes.

Q: Okay. And is it your understanding that Mr. Boyd directed Ms. Fields to his mother for admissions paperwork to Magnolia Place?

A: Yes.

Q: Okay. And did Ms. Fields tell you that?

A: Yes.

Q: All right. Ms. Fields told you that James Boyd indicated that Wilda Boyd, his mother, would be the appropriate person to handle the admissions paperwork?

A: Yes.

Q: When Mr. Boyd -- and that conversation occurred while he was at Palmetto Baptist prior to June 30th, 2016?

A: Correct.

Q: And Mr. Boyd then comes to Magnolia Place, I believe, on by June 30th, 2016?

A: Yes.

After her initial conversation with Ms. Burt, Ms. Fields, per her sworn declaration and deposition testimony, confirmed that she spoke with Plaintiff, who directed her to his mother for the handling of all the admissions paperwork. After speaking with Plaintiff, Ms. Fields contacted Ms. Burt to inform her that Ms. Boyd would be handling the paperwork. In pertinent part, Ms. Fields testified as follows:

Q: Okay. Did Mr. Boyd ever make a representation to you that his Mother could handle the admission paperwork for Magnolia Place?

A: Yes.

Q: Okay. And what did he say?

A: Yes. Mother.

Q: He just said, yes, mother?

A: His mother.

Q: Okay. What did you ask him?

A: I asked him -- it is a requirement that a patient be signed in prior to the arrival to a facility. So in that case I asked him who would be that person that would be signing paperwork on his behalf...

Q: Did you tell Ms. Burt that she would need to contact James Boyd's mother?

A: Yes.

Q: Okay. Did you tell Ms. Burt that James Boyd's mother would be responsible for the admission paperwork?

A: We identified the mother as the responsible party.

Q: Okay. And you would have told Ms. Burt that she needed to contact Mr. Boyd's mother?

A: Yes. She would be his responsible party.

Q: Okay. And did you tell Ms. Burt that Mr. Boyd specifically told you that his mother would handle the paperwork?

A: Yes.

Q: Okay. Did you ever have a conversation with Ms. Boyd, who is Mr. Boyd's mother, about her signing the admission paperwork?

A: That was the – yes, that she had been identified.

Q: Okay. Did you tell Mr. Boyd that his mother would be filling out the admission paperwork for Magnolia Place?

A: He identified her as the contact for Magnolia Place.

Q: Did he know that his mother would be filling out the admission paperwork to Magnolia?

A: To the best of my knowledge.

After Ms. Burt spoke with Ms. Fields for a second time and confirmed that Ms. Boyd would be executing the admissions documents, Ms. Boyd executed the necessary admissions documents, including the Arbitration Agreement. Ms. Boyd testified she never gave Ms. Burt any reason to believe that she did not have the authority to sign the Arbitration Agreement. Ms. Boyd testified about her interaction with Ms. Burt as follows:

Q: And would you agree with me that you certainly gave Miss Coco Burt no indication that you couldn't sign [the arbitration agreement]?

A: No.

Q: [...] So you didn't say anything to Miss Burt that would make her believe that you lacked authority to sign [the arbitration agreement]?

A: No.

Q: All right. And as far as – and I realize that you can't put yourself entirely in her shoes, but as far as Miss Burt would have known based on this agreement you were authorized to enter it on your son's behalf?

A: I guess. Yeah...

Q: You represented to Magnolia Place of Greenville that you had the authority to enter into all admissions paperwork on behalf of your son, correct?

A: Yeah.

Ms. Burt even spoke with Plaintiff when he arrived at the Defendant's facility on June 30, 2016. According to Ms. Burt, Plaintiff knew his mother had executed the Arbitration Agreement on his behalf, did not object, and even authorized her to complete the remaining paperwork. Ms. Burt testified about this conversation with Plaintiff as follows:

Q: Okay. And during that conversation, I understood your testimony that you informed [Plaintiff] that his mother had already signed three separate agreements on his behalf, including the Arbitration Agreement, correct?

A: Yes.

Q: All right. At that time, on June 30th, 2016 when you were with him in person, did he raise any objection to her doing that?

A: No. He told me that she would finish the rest of it.

Further, Ms. Burt testified she had no doubt that Plaintiff authorized his mother to execute all of the admission paperwork, including the Arbitration Agreement and that she even provided the signed agreements to Mr. Boyd after his arrival to Magnolia Place.

Q: Okay. And what does that file include? And you can be comprehensive in telling me.

A: It includes the admission handbook, the resident's rights, channel guide, facility abuse policies, and all of the signed admissions paperwork.

Q: All right. And the signed admission paperwork includes the Arbitration Agreement?

A: Yes.

Q: Does it include the Admission Agreement?

A: Yes.

Q: And where – what do you do with that – the admissions file folder I'll call it for lack of a better term?

A: I give it to the resident.

Q: Okay. And in this case, that would be James Boyd?

A: Yes.

Q: So James Boyd was provided with a written copy of all of the agreements that his mother entered into on his behalf?

A: Yes.

Q: Okay. And you personally provided him with that file folder?

A: Yes.

Plaintiff filed the present action asserting claims for injuries he allegedly sustained while a resident at Defendant's Facility. Defendant filed the instant Motion maintaining that Plaintiff's claims must be submitted to arbitration pursuant to the Arbitration Agreement signed by Ms. Boyd. Defendant asserts that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement. As set forth below, the Court agrees and finds that Ms. Boyd possessed the apparent authority to bind Plaintiff to the Arbitration Agreement.

DISCUSSION

Based on the above and a comprehensive review of all materials in the record before the Court, the Court finds that Wilda Boyd possessed the apparent authority to execute the Arbitration Agreement on Plaintiff's behalf. The doctrine of apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 171, 470 S.E.2d 397, 401 (Ct. App. 1996). Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal. *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004). While actual authority is that which is expressly conferred upon the agent by the principal, apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise, or which the principal holds the agent out as possessing." *Id.* If a principal holds another out as having the authority to act on his behalf or knowingly permits another to act as his agent, "either **generally** or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)(emphasis added).

Courts in South Carolina have found that even when an agent does not possess the actual authority to bind a principal, the agent can still possess the apparent authority to bind a principal based on a third party's reasonable interpretation of the agent's authority and its scope. *Horton v.*

Pyramid Masonry Contractors, Inc., No. 2008-UP-208, 2008 WL 9841237, at *6 (S.C. Ct. App. Mar. 27, 2008). An ancillary issue in *Horton* was whether an employee of a company who hired another employee had the apparent authority to negotiate company transportation as a specific condition of the other employee's employment. There, although the hiring employee did not have the actual authority to offer company transportation as a condition of employment, he expressly represented to the employee that company transportation would be provided with his position. The court found that while the hiring employee did not have the actual authority from the employer to offer company transportation as a term of employment, the employee reasonably believed the hiring employee had such authority. *Id.* at *6. Specifically, the court stated the following:

While [hiring employee's] offer of transportation may have exceeded the scope of the actual authority Employer conferred upon him, there is sufficient evidence in the record to support [employee's] belief that [hiring employee] had apparent authority to negotiate the terms of his employment, including Employer's provision of transportation. Employer is bound by [hiring employee's] representations to Employee concerning the conditions of his employment.

Id., at *6 (S.C. Ct. App. Mar. 27, 2008). Thus, while the hiring employee did not have the actual authority to make transportation a condition of employment specifically, the court found he had the broad authority to negotiate terms of employment. That broad authority necessarily encompassed the authority to make transportation a condition of employment.

In *Bookman v. Britthaven, Inc.*, a case involving facts substantially similar to the case at the bar, the North Carolina Court of Appeals found that there was sufficient evidence in the record to support a finding that a nursing home resident's representatives possessed the apparent authority to bind the resident to an arbitration agreement signed by the representatives upon the her admission to a nursing home. 233 N.C. App. 454, 460, 756 S.E.2d 890, 895 (2014). There, a

woman's husband, through his daughter, signed twelve documents, including an arbitration agreement on the woman's behalf prior to her admission to a nursing home *Id.*, at 455, 756 S.E.2d at 892. The admissions coordinator for the nursing home signed an affidavit averring that the husband and daughter presented themselves as having the authority to sign all documents needed on the woman's behalf prior to her admission. *Id.*

After the woman passed away, the daughter brought a wrongful death action against the nursing home. The nursing home filed a motion to compel arbitration and the trial court denied the motion finding that neither the daughter or father had the actual authority to sign the arbitration agreement on the woman's behalf. *Id.*, at 456, 756 S.E.2d at 892.

In reversing the trial court, the North Carolina Court of Appeals noted that the trial court failed to consider whether the woman conferred the authority to conduct the admissions process "in general" on her behalf and that the fact that the woman was admitted, showed "that at the very least, there may have been actual or apparent authority conferred on the husband or daughter to execute some or all of the contracts that were needed in order to complete the admissions process," including the arbitration agreement. *Id.* 233 N.C. App. at 460, 756 S.E.2d at 895. The court went on to note that under North Carolina law, a principal is liable "when the agent acts within the scope of his apparent authority, unless the third person has notice that the agent is exceeding his actual authority," and concluded that because the daughter and husband signed all of the admissions documents, including the arbitration agreement without objection or any indication to the admissions coordinator that their authority to sign the documents was limited in any way, there was evidence that the woman and daughter possessed the apparent authority to sign the arbitration agreement on her behalf. *Id.* at 460–61, 756 S.E.2d at 895 (2014).

Although *Bookman* is not controlling precedent, the Court finds it to be instructive and persuasive with regard to the case at bar.

Based on the record, including the testimony of Ms. Burt, Ms. Fields, and Ms. Boyd, the Court finds that Ms. Boyd possessed the apparent authority to execute the Arbitration Agreement on Mr. Boyd's behalf. The deposition testimony of and Peggy Fields and Leola Burt demonstrates that both reasonably understood that Plaintiff gave his mother the authority to sign all documents related to admission, including the Arbitration Agreement. Indeed, Ms. Burt's sworn testimony indicates that she inquired as to who should be executing the admissions paperwork, including the Arbitration Agreement, and Plaintiff explicitly confirmed to Ms. Fields and Ms. Burt that his mother would be responsible. In light of the near identical accounts offered by Ms. Fields and Ms. Burt, the Court is persuaded by their recollection of events as opposed to Plaintiff's more general denial about any and all conversations about admissions paperwork.

In effect, Plaintiff argues that Ms. Boyd possessed only the authority to execute to the other admissions paperwork but not the Arbitration Agreement. Plaintiff appears to conflate actual authority with apparent authority in that regard. As clearly indicated by authority from South Carolina and other states, apparent agency is derived from a principle's manifestations and a third party's reasonable understanding of those manifestations. When Plaintiff, the principal, authorized his mother to execute admissions paperwork on his behalf, he effectively placed her in a position where third parties, and in particular Ms. Burt, would believe she had authority to bind Plaintiff to all admissions documents, including the Arbitration Agreement. This belief was derived from Ms. Burt's conversations with Ms. Fields, Ms. Boyd, and ultimately Plaintiff himself.

While as in *Horton*, Ms. Boyd may not have possessed the actual authority to sign the arbitration agreement in particular, she possessed the apparent authority to complete and sign all necessary admissions paperwork, including the Arbitration Agreement. Furthermore, Plaintiff was expressly made aware that his mother signed the arbitration agreement on his behalf and like in *Bookman*, neither he nor his mother voiced any objection or indicated that his mother was not permitted to sign the Arbitration Agreement on his behalf as opposed to the other documents. Based on the record before the Court, Ms. Boyd possessed the apparent authority to sign the Arbitration Agreement on Plaintiff's behalf.

Because the court concludes that Ms. Boyd possessed the apparent authority to bind Mr. Boyd to the Arbitration Agreement, the Court declines to address whether Plaintiff subsequently ratified the Arbitration agreement.

Based on the foregoing, the Court finds that a valid arbitration agreement exists between the Plaintiff, Mr. Boyd, and Defendant Magnolia Place. As such, a stay of all state court proceedings is warranted until all arbitration proceedings are completed. This stay should not be limited solely to Defendant Magnolia Place and Plaintiff's claims against it. As asserted by Defendants Fundamental Clinical and Operational Services, LLC and Fundamental Administrative Services, LLC, § 3 of the Federal Arbitration Act ("FAA") provides that a stay of court proceedings can also be applicable to non-signatories who request such relief. 9 U.S.C. § 3; *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 329 (5th Cir. 1999), citing *Kroll v. Doctor's Associates, Inc.*, 3 F.3d 1167, 1171 (7th Cir. 1993). This Court finds that these Defendants are similarly entitled to a stay under the above provisions of the FAA.

CONCLUSION

For the reasons set forth herein, Defendant Magnolia Place's Motion to Compel Arbitration and Stay Court Proceedings is hereby **GRANTED**. Defendants Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC Motions to Stay are also **GRANTED** such that all state court proceedings in this case should be stayed until the arbitration between Plaintiff and Defendant Magnolia Place is completed.

IT IS SO ORDERED!

Honorable Perry H. Gravely
Presiding Judge

Greenville, South Carolina

August _____, 2019



Greenville Common Pleas

Case Caption: James Boyd Jr vs. THI Of South Carolina At Magnolia Place At
Greenville LLC, defendant, et al
Case Number: 2018CP2301934
Type: Order/Stay

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2019-08-20 11:22:53 page 14 of 14

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT
3 CASE NO.: 2018-CP-23-01934
4
5 JAMES BOYD, JR.,)
6 PLAINTIFF,)
7 v.)
8 THI OF SOUTH CAROLINA, LLC,) DEPOSITION TRANSCRIPT
9 D/B/A/ MAGNOLIA PLACE) PEGGY FIELDS
10 GREENVILLE; HUNT VALLEY)
11 HOLDINGS, LLC, THI OF)
12 BALTIMORE, INC; FUNDAMENTAL) MAY 7, 2018
13 CLINICAL AND OPERATIONAL)
14 SERVICES, LLC; FUNDAMENTAL)
15 ADMINISTRATIVE SERVICES, LLC;)
16 FUNDAMENTAL CLINICAL)
17 CONSULTING, LLC; LEAONARD)
18 GRUNSTEIN BOTH INDIVIDUALLY)
19 AND AS OWNER/OPERATOR OF)
20 MAGNOLIA PLACE; AND RUSTY)
21 FLATHMANN BOTH INDIVIDUALLY)
22 AND AS EMPLOYEE/MANAGER OF)
23 MAGNOLIA PLACE,)
24 _____ DEFENDANTS.)
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION ON THE ORAL EXAMINATION OF PEGGY
FIELDS, REPORTED BY KRISTA GIBSON, COURT REPORTER AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA;
SAID DEPOSITION TAKEN PURSUANT TO NOTICE AND IN
ACCORDANCE WITH THE SOUTH CAROLINA RULES OF CIVIL
PROCEDURE AT THE ANASTOPOULO LAW FIRM, 1201 MAIN STREET,
SUITE 1100, COLUMBIA, SOUTH CAROLINA ON TUESDAY, THE 7TH
DAY OF MAY, 2019; SCHEDULED FOR 10:00 A.M. AND COMMENCING
AT 10:14 A.M.

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

2

3 REPRESENTING THE PLAINTIFF:

4

5 STEFAN FEIDLER, ESQUIRE

6 ANASTOPOULO LAW FIRM

7 1201 MAIN STREET, SUITE 1100

8 COLUMBIA, SOUTH CAROLINA 29201

9

10 REPRESENTING THE DEFENDANT:

11

12 PERRY M. BUCKNER, IV, ESQUIRE

13 YOUNG CLEMENT RIVERS, LLP

14 25 CALHOUN STREET, SUITE 400

15 CHARLESTON, SOUTH CAROLINA 29401

16

17 REPRESENTING THE WITNESS:

18

19 ELIZABETH BRADLEY, ESQUIRE

20 PRISMA HEALTH

21 1600 MANOR STREET

22 COLUMBIA, SOUTH CAROLINA 29201

23

24 ALSO PRESENT: NONE

25

1	C O N T E N T S	
2	(DEPOSITION OF PEGGY FIELDS)	
3		PAGE
4	EXHIBIT INDEX	4
5	LEGEND	4
6	DIRECT EXAMINATION BY MR. FEILDER	5
7	CROSS EXAMINATION BY MR. BUCKNER	28
8	CERTIFICATE OF REPORTER	30
9	<hr/>	
10	E X H I B I T I N D E X	
11		
12	EXHIBITS:	IDENTIFIED AT PAGE:
13	PLAINTIFF'S EXHIBIT NO. 1	10
14		
15	<hr/>	
16	L E G E N D	
17	DASHES [--]	INDICATES INTERRUPTION; INCOMPLETE
18		PHRASES; UNFINISHED SENTENCES.
19	[sic]	WRITTEN AS SAID.
20	[ph]	WRITTEN PHONETICALLY.
21		
22		
23		
24		
25		

DEPOSITION OF PEGGY FIELDS

1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and signing of
5 the deposition by the deponent is expressly waived.

6 WHEREUPON:

7 PEGGY FIELDS, having been duly sworn and
8 cautioned to speak the truth, the whole truth and
9 nothing but the truth, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. FEIDLER:

12 Q. Will you please state your full name for the
13 record.

14 A. Peggy Sons, S-O-N-S, Fields.

15 Q. Ms. Fields, we briefly met off the record but for
16 the record my name is Stefan Feidler and I
17 represent the plaintiff, James Boyd, who has filed
18 a lawsuit against Magnolia Place Greenville.

19 Have you ever given your deposition before?

20 A. No.

21 Q. Let me go over a couple grounds rules that are, of
22 course, required of me to tell witnesses
23 regardless if you've been through a deposition or
24 not. As you can see, the court reporter is taking
25 down everything that we're saying today so it's

DEPOSITION OF PEGGY FIELDS

6

1 important that we answer with words rather than
2 head nods and shakes. It's bound to happen. I'm
3 doing it as I speak right now.

4 But, Ms. Fields, if you do give me a nod
5 instead of a verbal answer I may ask you, you
6 know, Ms. Fields, was that a yes or a no? Please
7 know that I'm not trying to be rude. I'm just
8 trying to make her job easier and I'm trying to
9 have a clear record. Okay?

10 A. (Nonverbal response)

11 Q. Also, to ensure that we have an accurate record
12 and to ensure that she has an easier job, it's
13 important that we not talk over each other. I am
14 very slow with my questioning at times. I may
15 pause and then continue my question, I just ask
16 that you do your best not to speak over me and on
17 the same token I'll do my best not to speak over
18 you when you are answering. Do you understand
19 that?

20 A. Yes.

21 Q. Do you understand that you're under oath today?

22 A. Yes.

23 Q. And do you understand that while we aren't in a
24 formal setting, your testimony has the same force
25 and effect as if we were in front of a judge and

DEPOSITION OF PEGGY FIELDS

1 jury?

2 A. (Nonverbal response)

3 Q. Do you understand that?

4 A. Yes.

5 Q. And if you don't understand one of my questions,

6 please just ask me to reiterate. If you need to

7 take a break, let me know. This is not a

8 marathon. I don't intend on having you in here

9 more than 15 or 20 minutes tops, but I want to be

10 respectful of your time so if you need to answer

11 the phone, use the restroom, stretch your legs,

12 you just say, Stephen, can we please take a time

13 out please. Okay?

14 A. (Nonverbal response)

15 Q. Are you prepared to answer my questions today?

16 A. Yes.

17 Q. And is there any reason you won't be able to give

18 me full, complete, and truthful answers to my

19 questions today?

20 A. No.

21 Q. Are you taking any medications or suffering from

22 any illnesses that would prevent you from

23 understanding my questions or answering them

24 fully?

25 A. No.

DEPOSITION OF PEGGY FIELDS

8

- 1 Q. Okay. And when did you first learn about this
2 deposition?
- 3 A. Since --
- 4 Q. And I don't need an --
- 5 A. -- maybe April.
- 6 Q. April. Okay. And how did you learn about this
7 deposition?
- 8 A. I received an email from Ms. Bradley.
- 9 Q. Okay. And what did you do to prepare for today's
10 deposition?
- 11 A. I reviewed the hospital record.
- 12 Q. You say you reviewed the hospital record. Is that
13 the hospital record of Mr. James Boyd?
- 14 A. Yes.
- 15 Q. And when you say that you reviewed the record, was
16 there any particular section or did you, kind of,
17 review the entire record?
- 18 A. My section that I'm involved with.
- 19 Q. Okay. What's your section?
- 20 A. I am the discharge planner.
- 21 Q. Okay. So what section would you have reviewed?
- 22 A. Basically my notes as the discharge planner. And
23 then we have a referral tool called Allscripts --
- 24 Q. Okay.
- 25 A. So I reviewed where -- what facilities referrals

DEPOSITION OF PEGGY FIELDS

1 were sent to.

2 Q. Okay. Did you speak to anybody about today's

3 deposition from Young Clement Rivers?

4 A. No.

5 Q. Okay. And so other than those documents you said,

6 a discharge plan and also your notes, did you

7 review anything else?

8 A. Just the discharge summary --

9 Q. Discharge summary.

10 A. -- of the physician.

11 Q. How many pages did that consist of?

12 A. Three.

13 Q. Three or four?

14 A. (Nonverbal response)

15 Q. Okay. And what was the purpose of reviewing those

16 documents?

17 A. Just to refresh my memory as far as what the

18 patient's diagnosis was.

19 Q. Okay. Any diagnosis stick out to you?

20 A. No.

21 Q. Okay. Do you remember Mr. Boyd?

22 A. A little.

23 Q. Okay. If you had to describe him today, how would

24 you describe him?

25 A. He was a black male, rather large.

DEPOSITION OF PEGGY FIELDS

10

1 Q. Large, black male. Okay. What do you mean by
2 large?

3 A. Like just muscular, big. Not obese or anything.

4 Q. Okay.

5 A. Just a big male.

6 Q. Okay. And other than counsel sitting next to you,
7 did you communicate with any other lawyers about
8 today's deposition?

9 A. No.

10 Q. Okay. What about the affidavit -- or the
11 declaration that you signed, is that something
12 that you drafted?

13 A. Yes.

14 Q. Okay. So you drafted -- I'm going to go ahead and
15 get this into the record as plaintiff's exhibit
16 one. I enter this into the record as Plaintiff's
17 Exhibit No. 1.

18 [PLAINTIFF'S EXHIBIT NO. 1; MARKED FOR IDENTIFICATION]

19 BY MR. FEIDLER: (Resuming)

20 Q. So Ms. Fields, did you draft this document?

21 A. Yes.

22 Q. Okay. So you drafted the caption as well?

23 A. No, not this.

24 Q. Okay.

25 A. I drafted the body, starting with No. 1.

DEPOSITION OF PEGGY FIELDS

11

1 Q. So you drafted, "I, Peggy Fields, respectfully" --

2 A. Yes.

3 Q. Okay. And what about No. 2? You drafted all of
4 that language or was that already sent to you?

5 MS. BRADLEY: Can we go off the record
6 for a second?

7 MR. FEIDLER: Yeah, absolutely. Let's
8 go off the record.

9 [OFF THE RECORD DISCUSSION]

10 MR. FEIDLER: All right. We're back on
11 the record.

12 BY MR. FEIDLER:

13 Q. Let's start with No. 3.

14 It says, "The information contained in this sworn
15 declaration is based on the review of certain
16 documents."

17 A. Yes.

18 Q. Again, what were those documents?

19 A. My notes in the medical record, which are under
20 Case Management, and Allscripts.

21 Q. Okay. What is Allscripts?

22 A. Allscripts is our referral tool that we use to
23 send out referrals to various facilities
24 throughout the state.

25 Q. Is that the only referral tool that Palmetto

DEPOSITION OF PEGGY FIELDS

12

1 Health would have used back in -- what was this,
2 2016?

3 A. Yes.

4 Q. Okay. This may seem like a silly question and
5 there may be more silly questions, but it's also
6 an obvious question that I need to ask.

7 How did you get access to these documents?

8 A. Which documents?

9 Q. The documents you reviewed for --

10 A. Oh, the medical record.

11 Q. Okay. What I'm asking is if there's a system --
12 is there a computer system? Is it --

13 A. Computer.

14 Q. -- hard files?

15 A. It's on the computer.

16 Q. Okay. Perfect. And why were you referring to
17 certain documents?

18 A. To refresh my memory regarding this case.

19 Q. Okay. And No. 4 of this declaration -- excuse me
20 -- says, "The patient was admitted to Palmetto
21 Health Richland in June of 2016."

22 Is that information you figured out from
23 reviewing --

24 A. From the medical records.

25 Q. Okay. And you're a case manager at Palmetto

DEPOSITION OF PEGGY FIELDS

13

1 Health Richland; is that correct?

2 A. That is correct.

3 Q. And currently you're a case manager at Palmetto
4 Health Richland?

5 A. Currently we're called Acute Care Coordination,
6 but -- case management.

7 Q. Back in 2016, though, you were a case manager at
8 Palmetto Health?

9 A. Yes.

10 Q. Perfect. Paragraph No. 5 says, "I spoke on
11 multiple occasions with Leola Burt, the Admissions
12 Coordinator at Magnolia Place of Greenville."

13 Multiple occasions, does that pertain to this
14 case only or does that pertain to -- as general
15 working practice?

16 A. Depending on the needs of the patient, the
17 location of the patient, is who -- are the
18 facilities we talk to. So in this case, Magnolia
19 Place was discussed with Mr. Boyd.

20 Q. Okay. And do you recall how many times you talked
21 to Mr. Boyd about his placement into Magnolia
22 Place?

23 A. I do not.

24 Q. Okay. Do you know how many times you talked to
25 Leola Burt about Mr. Boyd's placement into

DEPOSITION OF PEGGY FIELDS

14

1 Magnolia Place?

2 A. Not a specific number.

3 Q. Okay. It says -- again, Paragraph 5, reading the
4 last sentence.

5 "I provided her with certain information to
6 determine if Magnolia Place of Greenville could
7 accept the referral."

8 What does that mean? What certain
9 information?

10 A. That means, one, we have to refer -- we have to
11 notify the facilities of the funding source.

12 Q. Okay.

13 A. Two, the clinical information as far as therapy
14 notes and medical information as to whether they -
15 -- that facility, per say, can manage that
16 person's medical care at the time of transfer.

17 Q. Okay. Knowing Mr. Boyd's diagnosis at that time,
18 did you, as the case manager, find Magnolia Place
19 an appropriate referral for his conditions?

20 A. Yes.

21 Q. All right. Paragraph 6 says, "I do recall speaking
22 with Ms. Burt when she inquired as to who would be
23 responsible for handling admission paperwork for
24 the patient's admission to Magnolia Place of
25 Greenville. This is a common inquiry in my line

DEPOSITION OF PEGGY FIELDS

15

1 of work."

2 What were Ms. Burke's exact words to you as
3 it pertains to Mr. Boyd?

4 A. Now I do not remember that.

5 Q. Okay. Do you have any recollection of that
6 conversation?

7 A. No.

8 Q. Okay. So how do you know that she inquired into
9 who would be responsible for handling the
10 admission paperwork for patients?

11 A. Because that is a standard question of any acute
12 care or skilled nursing facility as to who the
13 responsible party will be in terms of paperwork.

14 Q. Okay. So sitting here today, do you recall
15 anything about the conversation with Ms. Burt as
16 it pertains to Mr. Boyd's placement into Magnolia
17 Place?

18 A. No.

19 Q. Okay. Now it says, Paragraph 7, "In response to
20 that inquiry by Ms. Burt, I personally asked
21 patient ho should be handling the admission
22 paperwork for Magnolia Place of Greenville.

23 It says, I personally asked patient. Who was
24 the patient?

25 A. Mr. Boyd.

DEPOSITION OF PEGGY FIELDS

16

1 Q. Okay. Do you know the exact words of that
2 conversation?

3 A. No.

4 Q. Okay. It says, "The patient specifically informed
5 me that the mother would handle all such
6 paperwork."

7 Do you specifically recall that conversation?

8 A. I remember his mother.

9 Q. You remember his mother but you don't remember a
10 conversation with him saying that she could do the
11 admission paperwork for him?

12 A. I remember talking to him but I do not remember
13 the specific wording of the conversation.

14 Q. Okay. So you don't recall a conversation with Ms.
15 Burt about Mr. Boyd's admission into --

16 A. I did --

17 Q. Go ahead.

18 A. I remember a conversation because that is typical
19 with any facility. Exact words, no.

20 Q. Okay. Did Mr. Boyd ever make a representation to
21 you that his mother could handle the admission
22 paperwork for Magnolia Place?

23 A. Yes.

24 Q. Okay. And what did he say?

25 A. Yes. Mother.

DEPOSITION OF PEGGY FIELDS

17

1 Q. He just said, yes, mother?

2 A. His mother.

3 Q. Okay. What did you ask him?

4 A. I asked him -- it is a requirement that a patient
5 be signed in prior to the arrival to a facility.

6 So in that case I asked him who would be that
7 person that would be signing paperwork on his
8 behalf.

9 Q. Okay. Did you ask if you would be that person
10 signing paperwork on his behalf?

11 A. They do not -- they have to have family members do
12 it prior to admission, so -- the majority of the
13 time patients are not able to complete that
14 paperwork.

15 Q. Okay. Why was he not able to complete that
16 paperwork?

17 A. One, he wasn't physically there with the facility.

18 Q. Okay.

19 A. Two, he had deficits in the upper extremities in
20 terms of signing.

21 Q. Okay.

22 A. It's just not standard.

23 Q. What about his mental capacity? Was he mentally
24 competent to sign paperwork?

25 A. Yes.

DEPOSITION OF PEGGY FIELDS

18

1 Q. Okay.

2 A. As I remember.

3 Q. So, physically, he was not at the Magnolia Place
4 signing paperwork, correct?

5 A. Uh-uh.

6 Q. Mentally, he was competent to sign paperwork.

7 A. To the best of my knowledge.

8 Q. Okay.

9 A. I don't declare competency.

10 Q. And you said his upper extremities. Do you recall
11 what was going on?

12 A. I recall that he had deficits related to his
13 activities the day we moved him --

14 Q. Okay.

15 A. -- and he was total care.

16 Q. Okay. And do you recall if he could sign a piece
17 of paper with either hand?

18 A. No.

19 Q. Okay. Was anybody present when you had this
20 conversation with Mr. Boyd about his mother
21 signing the admission paperwork?

22 A. I don't remember.

23 Q. Do you recall if you asked Mr. Boyd if his mother
24 or anyone else could sign the arbitration
25 agreement on his behalf?

DEPOSITION OF PEGGY FIELDS

19

1 A. I do not.

2 Q. Okay. Now Magnolia Place, before a patient is
3 admitted into their facility, that paperwork, as
4 far as you know, is required to be filled out
5 prior to admission?

6 A. As far as I know.

7 Q. Okay. In your line of work as a case manager for
8 Palmetto Health, have you ever -- or do you recall
9 a patient signing their own paperwork before
10 admission into Magnolia Manor?

11 A. Very rarely. Oh, and Magnolia Manor specifically,
12 no.

13 Q. Okay. Other than that one conversation with Mr.
14 Boyd where he stated Mom, paperwork, any other
15 conversations with him or the family as it
16 pertains to signing admission paperwork to
17 Magnolia Manor?

18 A. No.

19 Q. Okay. And what did you tell Mr. Burt after that
20 conversation with Mr. Boyd? Leola Burt.

21 A. As far as the mother would be the contact person
22 for him.

23 Q. Okay. Did you tell her that the mother would be
24 signing the admission paperwork on his behalf?

25 A. That is out of my scope. I tell them the contact

1 person and then the facility takes over.

2 Q. So how do you tell them the contact person? Is it
3 via email, phone call?

4 A. Sometimes it is via Allscripts. Sometimes it's
5 via phone.

6 Q. Okay. Do you recall which one it was in this
7 particular --

8 A. No.

9 Q. -- case?

10 A. No.

11 Q. Would you have documentation showing you that is
12 was via Allscripts?

13 A. There is documentation in Allscripts of the
14 referral process.

15 Q. Okay.

16 A. It probably happened by phone but I cannot 100
17 percent say that.

18 Q. When you all make phone calls such as this, do you
19 all record those phone calls?

20 A. No.

21 Q. Do you all make notes about those phone calls?

22 A. Yes.

23 Q. And where are those notes saved?

24 A. In the case -- in the medical record in the case
25 management section.

DEPOSITION OF PEGGY FIELDS

21

1 Q. And so your only conversation with Ms. Burt -- and
2 I don't want to put words in your mouth obviously
3 -- was A) Ms. Burt inquired as to who would be
4 responsible for the admission paperwork. Correct?

5 A. Yes.

6 Q. And then B) you either said his mother would be
7 handling it or --

8 A. Yes.

9 Q. Okay. Now did you say James Boyd's mother will be
10 handling admission paperwork or did you just say
11 this is who you need to contact?

12 A. I --

13 MR. BUCKNER: Object to the form.

14 Q. You can answer. He's going to object sometimes.
15 He's just preserving it for the record.

16 A. Okay.

17 Q. Well, I don't think he, technically, can tell you
18 not to answer but if he does do that we'll figure
19 it out between us, but you can answer.

20 A. Rephrase the question for me.

21 Q. Did you tell Ms. Burt that she would need to
22 contact James Boyd's mother?

23 A. Yes.

24 Q. Okay. Did you tell Ms. Burt that James Boyd's
25 mother would be responsible for the admission

1 paperwork?

2 A. We identified the mother as the responsible party.

3 Q. Okay. I gotcha. Did Ms. Burt ever ask you if Mr.

4 Boyd was competent?

5 A. Not to my knowledge.

6 Q. Okay. Did Ms. Burt ever ask you if Mr. Boyd was

7 unable to sign paperwork?

8 A. Not to my knowledge.

9 Q. Have you talked to Ms. Burt about this case or
10 about Mr. Boyd since around this June 2016 period?

11 A. No.

12 Q. Okay. Do you all still have a professional
13 working relationship to this day?

14 THE WITNESS: Think being on this --

15 MS. BRADLEY: I cannot answer any
16 questions.

17 BY MR. FEIDLER: (Resuming)

18 Q. It's all right.

19 A. My professional relationship with any facility is
20 based on funding to patient need. So I have not
21 recently had the need to refer anyone to Magnolia
22 Place because of the location of the facility.

23 He -- he fell under what we call Complex Care
24 Medicaid. We are limited by the facilities that
25 the state has approved to participate in that

1 program.

2 Q. Okay. Perfect. We used to have a case manager
3 that worked at our office and she was very, very
4 helpful to our clients and went over and beyond
5 her duties as a paralegal. So I really appreciate
6 what you do for a living and the help you
7 provided.

8 A. Oh, okay.

9 Q. Do you know who signed the paperwork for Mr. Boyd
10 when he was admitted into Palmetto Health
11 Richland?

12 A. I do not.

13 Q. Okay. Other than Mr. Boyd being, I guess, a big
14 man, was he respectful to you?

15 A. Yes.

16 Q. Okay. Did you have any issues with him or his
17 family?

18 A. No.

19 Q. Did you ever speak to anyone outside of Mr. Boyd?
20 His mother or sister, anybody like that?

21 A. No.

22 Q. Did you ever --

23 A. Well, we made referrals to other facilities that
24 we provided -- we gave Mr. Boyd -- or I gave Mr.
25 Boyd a choice of facilities so the information was

DEPOSITION OF PEGGY FIELDS

24

1 provided to those facilities so does that classify
2 as speaking to someone?

3 Q. Yeah, that's perfect. This is my only chance to
4 ask you every question under the sun, so --

5 A. No, no. That's fine.

6 Q. I just want to cover my bases.

7 A. We just usually have a procedure that we follow,
8 so --

9 Q. Okay. Did Ms. Burt ever forward you the admission
10 paperwork?

11 A. Not that I recall.

12 Q. Okay. And during this process, did you ever hear
13 anybody mention any arbitration agreement?

14 A. No.

15 MR. FEIDLER: We can go off the record
16 for a second. I'm going to just review
17 my notes.

18 [OFF THE RECORD DISCUSSION]

19 BY MR. FEIDLER: (Resuming)

20 Q. Let's go back on the record.

21 Paragraph 8 says, I relayed that information to
22 Ms. Burt and to the best of my knowledge the
23 patient was ultimately discharged to Magnolia
24 Place of Greenville.

25 Again, what information did you relay to Ms. Burt?

- 1 A. The above-stated information.
- 2 Q. Okay.
- 3 A. As far as paperwork, facility availability.
- 4 Q. So you just told --
- 5 A. I confirmed date of admission with Ms. Burt and
- 6 relayed that back to the family.
- 7 Q. Okay. And you don't recall if it was via phone or
- 8 via --
- 9 A. I'm sure it was phone.
- 10 Q. Okay. And you would have told Ms. Burt that she
- 11 needed to contact Mr. Boyd's mother?
- 12 A. Yes. She would be his responsible party.
- 13 Q. Okay. And did you tell Ms. Burt that Mr. Boyd
- 14 specifically told you that his mother would handle
- 15 the paperwork?
- 16 A. Yes.
- 17 Q. Do you recall if Ms. Burt asked any other
- 18 questions outside of that conversation?
- 19 A. In terms of responsible party or paperwork?
- 20 Q. Anything. Anything in that conversation.
- 21 A. Well, final dispositions. Any type of sub-acute
- 22 skilled nursing home, we have to provide the level
- 23 of care and in his position -- or condition, we
- 24 provided the complex care approval form --
- 25 Q. Okay.

- 1 A. -- and just the discharge summary, med rec.
- 2 Q. Has Ms. Burt ever forwarded you admission
- 3 paperwork for patients to sign prior to admission?
- 4 A. Not to my knowledge.
- 5 Q. Has any other facility ever forwarded you
- 6 admission paperwork?
- 7 A. They have and -- but I do not like it because that
- 8 is their paperwork and they need to be responsible
- 9 for it.
- 10 Q. Okay. Did you ever have a conversation with Ms.
- 11 Boyd, who is Mr. Boyd's mother, about her signing
- 12 the admission paperwork?
- 13 A. That was the -- yes, that she had been identified.
- 14 Q. But did you speak to her specifically about the
- 15 admission --
- 16 A. No.
- 17 Q. -- paperwork?
- 18 A. No. Other than that the facility would contact
- 19 her.
- 20 Q. Okay. Did you tell Mr. Boyd that his mother would
- 21 be filling out the admission paperwork for
- 22 Magnolia Place?
- 23 A. He identified her as the contact for Magnolia
- 24 Place.
- 25 Q. Okay. Do you -- did you tell him that his mother

1 would be signing the admission paperwork on his
2 behalf?

3 A. He identified her so that's where we left it.

4 Q. I understand that. So did you, after that, tell
5 Mr. Boyd --

6 A. No.

7 Q. Okay. And did you ask Mr. Boyd if he wanted to
8 fill out the admission paperwork to Magnolia
9 Manor?

10 A. No.

11 Q. And so your question, when asking him, was it who
12 will be filling out this admission paperwork?

13 A. He identified his mother as the contact for
14 Magnolia.

15 Q. Okay. So he identified her as the contact or as
16 the person filling out the admission paperwork?

17 MR. BUCKNER: Object to the form.

18 MS. BRADLEY: Object to the form.

19 A. The --

20 Q. You can answer.

21 A. The contact.

22 Q. Okay. But did he know --

23 A. Yes.

24 Q. Let me finish my question.

25 A. Okay.

DEPOSITION OF PEGGY FIELDS

28

1 Q. Did he know that his mother would be filling out
2 the admission paperwork to Magnolia?

3 A. To the best of my knowledge.
4

5 MR. FEIDLER: No further questions.

6 Please answer any questions Mr. Buckner
7 may have for you.

8 CROSS-EXAMINATION

9 BY MR. BUCKNER:

10 Q. Ma'am, I think I've only got two questions and
11 then we'll be done. My name is Perry Buckner and
12 I represent Magnolia Greenville. I appreciate you
13 being here today.

14 I just want to make sure that I understand
15 your testimony so far. Regarding the conversation
16 that you had with Mr. Boyd when he was still at
17 the hospital -- and I understand that you do not
18 determine competency, but presuming he was
19 competent, was there anything that would have
20 prevented Mr. James Boyd from suggesting that he
21 wanted to handle all of the paperwork himself if
22 he wanted to?

23 MR. FEIDLER: Objection. You can
24 answer.

25 A. No, not to my knowledge.

DEPOSITION OF PEGGY FIELDS

29

1 MR. BUCKNER: I don't have any further
2 questions.

3 MR. FEIDLER: That's it. Thank you.

4 (FURTHER DEPONENT SAYETH NOT.)

5 (THERE BEING NOTHING FURTHER, THE DEPOSITION OF
6 PEGGY FIELDS CONCLUDED AT 11:06 A.M.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF PEGGY FIELDS

30

1 CERTIFICATE OF REPORTER

2 I, KRISTA GIBSON, COURT REPORTER AND NOTARY
3 PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY
4 CERTIFY THAT I REPORTED THE DEPOSITION OF PEGGY FIELDS ON
5 TUESDAY, MAY 7, 2019; THAT THE WITNESS WAS FIRST DULY
6 SWORN BY ME AND THAT THE FOREGOING 29 PAGES CONSTITUTE A
7 TRUE AND CORRECT TRANSCRIPTION OF MY VERBATIM REPORT OF
8 SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY
10 NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID
14 TRANSCRIPT WAS SEALED AND DELIVERED TO STEFAN FEILDER,
15 1201 MAIN STREET, SUITE 1100, COLUMBIA, SOUTH CAROLINA,
16 WHO WILL RETAIN THE SEALED ORIGINAL TRANSCRIPT AND SHALL
17 BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO
18 TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER
19 ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
21 THIS 18TH DAY OF MAY, 2019.

22

23

24 KRISTA GIBSON, COURT REPORTER

25 MY COMMISSION EXPIRES JUNE 20, 2022

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE CASE NO. 2018-CP-23-01934
3
4 James Boyd, Jr.,
5 Plaintiff,
6 vs.
7 THI of South Carolina at
8 Magnolia Place at Greenville, LLC,
9 Fundamental Administrative Services,
10 LLC, and Fundamental Clinical and
11 Operational Services, LLC,
12 Defendants.

12 DEPOSITION OF LEOLA MICHELLA BURT

13
14 DATE TAKEN: November 20, 2018
15 TIME BEGAN: 10:04 a.m.
16 TIME ENDED: 10:44 a.m.
17 LOCATION: Anastopoulo Law Firm
18 418 River Street
19 Greenville, South Carolina 29601
20 REPORTED BY: Kaylyn K. Brantner
21 Verbatim Reporter
22
23
24
25

1 APPEARANCES:

2

3 STEFAN B. FIEDLER, ESQUIRE
4 Anastopoulo Law Firm
5 32 Ann Street
6 Charleston, South Carolina 29403
7 Stefan@akimlawfirm.com
8 (843) 614-8888

6

.....On behalf of the Plaintiff

7

8 PERRY M. BUCKNER, IV, ESQUIRE
9 Young, Clement, Rivers, LLP
10 25 Calhoun Street, Suite 400
11 Charleston, South Carolina 29401
12 Pbuckner@ycrlaw.com
13 (843) 720-5406

11

.....On behalf of the Defendants

12

13 ALSO ATTENDING: (None.)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

Stipulation.....	4
Examination by Mr. Fiedler.....	4
Examination by Mr. Buckner.....	32
Certificate of Reporter.....	40

EXHIBITS (Attached)

Plaintiff's Exhibit 1 (Document).....	20
---------------------------------------	----

1 (It is hereby stipulated and agreed by
2 and among counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Rules of
5 Civil Procedure, and that the deponent does
6 waive reading and signing of this
7 deposition.)

8 - - -

9 LEOLA MICHELLA BURT, after having been
10 first duly sworn, was examined and testified
11 as follows:

12 - - -

13 EXAMINATION

14 BY MR. FIEDLER:

15 Q. Ms. Burt, we previously met off the record, but
16 for the record, can you please state your full
17 name?

18 A. Leola Michella Burt.

19 Q. And from what I gathered, you go by KoKo?

20 A. I do.

21 Q. And that's spelled, from your name tag, K-O-K-O?

22 A. Correct.

23 Q. I was using a C, so I apologize. Now I know. Is
24 it okay if I call you Ms. Burt or KoKo? What do
25 you prefer?

1 A. KoKo.

2 Q. Okay. KoKo, what is your current address?

3 A. [REDACTED].

4 Q. And is that in Greenville?

5 A. Uh-huh. 29611.

6 Q. And how long have you been at that address?

7 A. 13 years.

8 Q. Okay. Perfect. And I know this is rude to ask
9 young ladies, but I need to know. What is your
10 date of birth?

11 A. [REDACTED].

12 Q. Missed me by nine days. All right. And a couple
13 years. Much younger than I am.

14 And can I either get the last four digits of your
15 Social or your driver's license number? This
16 will be off the record, but I don't need your
17 full Social.

18 (Discussion held off the record.)

19 EXAMINATION RESUMED

20 BY MR. FIEDLER:

21 Q. Have you ever given your deposition before?

22 A. No.

23 Q. Okay. Perfect. Let me go over a couple of
24 ground rules.

25 A. Okay.

1 Q. As you can see, the court reporter is here taking
2 down everything we say, so it's important that we
3 answer with words rather than head nods and
4 shakes. I think previously you did say uh-huh or
5 uh-uh. Make sure that we are saying yes, no. If
6 you do say uh-uh or if you do give me a head
7 shake, I might say, KoKo, is that a yes or a no.
8 Please know I'm not trying to be rude. I'm just
9 trying to have a clear record because she's going
10 to eventually type everything out.
11 Also, to make her job easier and also to have a
12 clearer record, it's important that we not talk
13 over each other. I can almost bet you a dollar
14 it's going to happen because we're going to get
15 in a conversation. I'm really good at
16 interrupting and not listening to people, and I
17 just ask that you just let me finish my
18 questions, and I'll try my best to let you finish
19 your answers.
20 You understand that you're under oath today,
21 correct?
22 A. Correct.
23 Q. And you understand that while we are in an
24 informal setting, your testimony has the same
25 force and effect as if we were in front of a

1 judge and jury. Do you understand that?

2 A. Yes.

3 Q. If you don't understand one of my questions,
4 simply just say, Stefan, can you please ask me
5 that again or reiterate, and I'll try my best to
6 get the question out clearer. If you need to
7 take a break, let me know. If you need something
8 to drink. The bathrooms are right here to the
9 left. All that good stuff. I'm on your time,
10 not my time, so just let me know if you need to
11 take a break or if you need something to drink,
12 and we'll go get that for you.

13 Are you prepared to answer my questions today?

14 A. Yes.

15 Q. Is there any reason you won't be able to give me
16 full, complete, and truthful answers to my
17 questions today?

18 A. No.

19 Q. Are you currently taking any medications or
20 suffering from any illnesses that would prevent
21 you from understanding my questions or answering
22 them fully?

23 A. No.

24 Q. When did you first learn about this deposition?
25 And when I ask you this next set of questions, I

1 don't want to know anything you talked about with
2 Mr. Buckner or his office. I just want to know a
3 little detail of when you first learned about
4 this deposition.
5 A. Let me think.
6 Q. And exact --
7 A. October.
8 Q. October. Okay. I was going to say exact date is
9 not necessary. So I'm assuming defense counsel's
10 office reached out to you, or did you receive
11 something in the mail?
12 A. Office reached out to me.
13 Q. Okay. Perfect. Other than talking to defense
14 counsel or his office, what did you do to prepare
15 for today's deposition? Did you review any
16 documents?
17 A. Nothing.
18 Q. You didn't review any documents?
19 A. Yes.
20 Q. Okay. What did you review?
21 A. I reviewed the admission packet.
22 Q. Okay. And in the admission packet, was -- is
23 this something about the same thing you
24 reviewed --
25 A. Yes.

1 Q. -- the Admission Agreement?

2 A. Uh-huh.

3 Q. And you say, admission packet. Is there any

4 other documents that were in the Admission

5 Agreement? Would it have been the Arbitration

6 Agreement?

7 A. The entire -- yeah. The entire admission packet.

8 Q. Okay. I'll get to this here in a little bit.

9 Anything else besides the admission packet, so to

10 speak?

11 A. A deposition packet.

12 Q. Okay. And what depositions were those?

13 A. James Boyd.

14 Q. Okay. And who else?

15 A. Wilda.

16 Q. All right. Anything else besides the admission

17 packet and then the depositions of James and

18 Wilda Boyd?

19 A. No.

20 Q. Perfect. Other than defense counsel and/or his

21 office, did you have any communications with

22 anyone about today's deposition?

23 A. My administrator.

24 Q. Okay. And I'm assuming you just told your

25 administrator, hey --

1 A. Yes.

2 Q. -- I need to go to this deposition today?

3 A. Yes.

4 Q. Did you have any other conversations with the
5 administrator other than, I won't be at work this
6 morning?

7 A. No.

8 Q. Okay. The next set of questions, I'm going to go
9 quickly through those. I just need to know a
10 little bit of background on you. Please know I'm
11 not trying to get into your personal business.
12 Just in case we do get to a jury trial, I just
13 want to know exactly who you know because
14 obviously, I don't want to put some of your
15 friends on there and loved ones.

16 Where are you from originally?

17 A. Greenville.

18 Q. Are you married?

19 A. Yes.

20 Q. What is your spouse's name?

21 A. Joseph Burt.

22 Q. Do you have any children over the age of 18?

23 A. No.

24 Q. Perfect. So I'm assuming you've lived your whole
25 life in Greenville?

- 1 A. Yes.
- 2 Q. Do you attend church?
- 3 A. Yes.
- 4 Q. Where do you attend church at?
- 5 A. New Poplar Springs.
- 6 Q. Is New Poplar two words?
- 7 A. It is.
- 8 Q. And what's the -- is it Baptist?
- 9 A. Baptist, uh-huh.
- 10 Q. Perfect. And real quick, I see your last name is
- 11 Burt. What about relatives in Greenville County?
- 12 Any -- what was your maiden name, for instance?
- 13 A. Kirksey.
- 14 Q. How do you spell that?
- 15 A. K-I-R-K-S-E-Y.
- 16 Q. Other than Burt and Kirksey, any other last names
- 17 for relatives that stand out? Sometimes
- 18 attorneys will literally ask you first name and
- 19 last name. I'm just kind -- a general last name.
- 20 A. My mother's maiden name was Gordon.
- 21 Q. Okay. Perfect. Do you have any siblings?
- 22 A. Yes.
- 23 Q. Are all of their last names Burt, did some of the
- 24 sisters get married?
- 25 A. No.

1 Q. Okay. So what are their last names?

2 A. Wright.

3 Q. What's --

4 A. W-R-I-G-H-T. Uh-huh. The other is Andrews,

5 A-N-D-R-E-W-S.

6 Q. Okay. So Burt, Wright, Andrews, and then your

7 maiden name. Anything else that stands out for

8 relatives in the Greenville County area?

9 A. No.

10 Q. Another rude question I shouldn't ask, but I have

11 to. Have you ever been convicted or pled guilty

12 to a crime other than a minor traffic violation?

13 A. Yes.

14 Q. And what was that crime?

15 A. Disorderly conduct.

16 Q. Okay. And were you found guilty? Did you plead?

17 What was the outcome?

18 A. I paid a fine.

19 Q. Anything else?

20 A. No.

21 Q. And have you ever been part of a civil lawsuit,

22 whether the named party or nonparty?

23 A. No.

24 Q. Perfect. So what is your role at Magnolia Place?

25 Can you please describe that role?

- 1 A. I'm director of admissions.
- 2 Q. Okay. And what do you do as director of
3 admissions?
- 4 A. I'm the initial contact for the hospitals.
- 5 Q. And what do you mean, initial contact?
- 6 A. I receive all of the referrals.
- 7 Q. So a hospital says, hey, we have a potential
8 resident we would like to refer to your facility?
- 9 A. Uh-huh.
- 10 Q. Do you take the intake from there, or how does
11 that work?
- 12 A. Yes. It comes across the computer from several
13 different sites, and I review the referrals, and
14 if we can accommodate, then I offer a bid. If
15 the patient accepts, then they get back with me
16 and let me know they accept, and then we proceed
17 with the admission.
- 18 Q. Okay. And what do you mean you offer a bid? Is
19 it a price bid, or is it this is what we can
20 provide at this rate for this particular person?
- 21 A. No. Generally, it's Medicare, Medicaid.
- 22 Q. Right. What percentage of the residents are on
23 either Medicare or Medicaid?
- 24 MR. BUCKNER: Stefan, I don't want to object or
25 interject, but when I took your folks'

1 deposition, we had an agreement that it would be
2 limited. In fact, it was your proposal to the
3 subjects that Judge Gravely authorized us to go
4 into regarding the agency.

5 MR. FEIDLER: I agree.

6 MR. BUCKNER: And I'm fine with you asking her
7 background stuff, stuff about credibility, but
8 now we're getting into populations, payor source,
9 and I think we're getting a little bit beyond the
10 scope. I'm not particularly sensitive if you
11 want to finish this out. I just want to make
12 sure that we're not taking discovery now that's
13 going to aid the case rather than the arbitration
14 issue, because I agreed to the same with your
15 folks.

16 MR. FEIDLER: Right. I'm going to get to what she does
17 at the facility as her role. Is that okay?

18 MR. BUCKNER: Yes. I don't have a problem with that.
19 I'm just -- I'm talking about if we're talking
20 about all the patients and what the majority is,
21 that's a little outside of the order is all I'm
22 suggesting.

23 MR. FEIDLER: That was an automatic question. That
24 just came out. I -- and I agree with you.

25 EXAMINATION RESUMED

1 BY MR. FEIDLER:

2 Q. So you do an intake. What's the next step?

3 A. I wait to -- and if -- to see if they accept the
4 bid. Once they accept the bid, then I start the
5 process to make the communication with my
6 facility that we are going to accommodate this
7 person. Depending on what stage they are, what
8 things are going on, whether they need
9 assistance, I coordinate all of those pieces with
10 the case managers, get those pieces set up ahead
11 of time, and then we proceed from there.

12 Q. So you receive a request from the hospital, and
13 then you reach out to the case manager at the
14 hospital or at your place?

15 A. Case manager at the hospital. I'm communicating
16 with the case manager the entire time.

17 Q. Perfect. When's the first time you make contact
18 with the person that's going to be admitted into
19 Magnolia Place?

20 A. Once they admit.

21 Q. Okay. Perfect. And so they're brought in,
22 whether by ambulance or however they're brought
23 in to the facility. Can you kind of explain that
24 procedure? Do you immediately say, all right,
25 this person is here, let me go talk to them right

1 away?

2 A. Yes.

3 Q. Perfect. Can you explain that admissions process
4 to me?

5 A. It varies from person to person.

6 Q. Okay. Let's -- for purposes of this, let's
7 assume under James Boyd's circumstances.

8 A. Okay.

9 Q. I'm just going to say assuming he was competent
10 when he was admitted, and I guess we can go from
11 there. So how would you admit somebody such as
12 James Boyd?

13 A. I go in, and I introduce myself, welcome them to
14 the facility.

15 Q. Okay. Anything else?

16 A. We talk about admissions paperwork. I give them
17 time to get settled off the stretcher, and then I
18 come back with my spiel.

19 Q. With your spiel. All right. And does your spiel
20 include filling out the admission paperwork?

21 A. Yes.

22 Q. Okay. And so I'm assuming that's -- what did you
23 do for James Boyd's particular case?

24 A. I went in to introduce myself, welcome him to the
25 facility, go over with him that his mom had

- 1 started his admission process. She signed the
2 initial admission paperwork.
- 3 Q. Okay. And when did she sign that initial
4 paperwork? Do you recall the date?
- 5 A. Day of admission.
- 6 Q. Okay. I have date of admission on June 3rd,
7 2016. Is that correct?
- 8 A. Correct.
- 9 Q. And so she started the admission paperwork before
10 he was even admitted into the facility?
- 11 A. Yes.
- 12 Q. Okay. And why did -- how did she start it before
13 he was even admitted? Did you reach out to her?
- 14 A. Well, reached out to the case manager when we
15 were coordinating the admission to see who would
16 assist him.
- 17 Q. So the case manager said here's, I guess, Wilda
18 Boyd's contact information? How did that work?
- 19 A. The case manager said she would get back to me,
20 and she put Wilda Boyd in touch with me.
- 21 Q. Okay. And then what happened next?
- 22 A. The case manager called back and informed me that
23 it would be his mom.
- 24 Q. Okay. It would be his mom what?
- 25 A. Assisting with his admission paperwork.

- 1 Q. Okay. And then what happened next?
- 2 A. I spoke with the mom. She informed me that she
3 couldn't come to do the paperwork, that I would
4 have to fax it to her.
- 5 Q. Okay. Did you fax it to her?
- 6 A. I did. I faxed it to her, and she called me back
7 and told me that she had it. I told her just
8 review it, read over it, sign it, and send it
9 back.
- 10 Q. Perfect. Had you talked to Mr. Boyd prior to
11 faxing this paperwork?
- 12 A. No. He was not there yet.
- 13 Q. What was the case manager's name?
- 14 A. Peggy.
- 15 Q. What is Peggy's last name?
- 16 A. Fields.
- 17 Q. Field, like --
- 18 A. Uh-huh.
- 19 Q. -- Stream and Field?
- 20 A. Uh-huh.
- 21 Q. That's the only example I could think of. It's a
22 popular magazine, for me, at least. So you faxed
23 that paperwork to her, correct?
- 24 A. Yes.
- 25 Q. Do you recall if it was at a business, at a house

- 1 fax number, or --
- 2 A. She had to pay for it because when it came time
3 to fax it back, she called me and said she
4 couldn't afford to send it all back.
- 5 Q. So maybe it was, like, a -- I don't know -- one
6 of those services you use. Okay. So anyway, you
7 faxed the paperwork, and then she said she's
8 going to fax it back, but she has to pay for it;
9 is that correct?
- 10 A. Correct. She said she could not afford to fax it
11 all back.
- 12 Q. Okay. Did she end up faxing it all back?
- 13 A. No. I informed her that it was okay, that she
14 was going to receive a copy of the Admission
15 Agreement anyway, so she didn't have to send
16 those pages back.
- 17 Q. What did you send her via fax exactly?
- 18 A. The Admission Agreement. I sent her Consent to
19 Treats, two Consent to Treats, and the
20 Arbitration Agreement.
- 21 Q. And what did she sign and return via fax?
- 22 A. The Admission Agreement, Consent to Treat, and
23 the Arbitration Agreement.
- 24 Q. And when you received these, the Admission
25 Agreement, Consent to Treat, and the Arbitration

1 Agreement via return fax, had you talked to James
2 Boyd at that point?

3 A. No.

4 Q. Okay. And I believe -- let me just go ahead and
5 show y'all this.

6 MR. FIEDLER: I'm just going to hand you everything I
7 might turn in, that way I'm not going through.

8 MR. BUCKNER: He'll give you a copy. Oh, okay. Do you
9 have a copy for her, too?

10 MR. FIEDLER: I do.

11 MR. BUCKNER: Okay.

12 MR. FIEDLER: I just wanted to get you out of the way
13 so I don't -- I'm not very good at being
14 organized. We can go off the record for a
15 second.

16 (Plaintiff's Exhibit Number 1 was marked for
17 identification.)

18 EXAMINATION RESUMED

19 BY MR. FIEDLER:

20 Q. KoKo, I'm going to hand you what I have stapled
21 together and I believe is the Admission
22 Agreement, Consent to Treat, and the Arbitration
23 Agreement. Please review this and make sure this
24 is everything that I'm presenting on record that
25 I'm giving to you, and also, please verify --

1 what I'm trying to do is assume this is
2 everything that she faxed back to you, but
3 basically just look over that and make sure
4 that's everything.

5 A. Too many pages.

6 Q. Too many pages?

7 A. Uh-huh.

8 Q. Okay. And why?

9 A. She could not afford to fax it all back to me.
10 She did not fax all of this back to me.

11 Q. Okay. But sitting here today, do you know what
12 she faxed and what she did not fax?

13 A. This.

14 Q. So this bundle she did not fax?

15 A. No. No. This bundle she did not. These she
16 did.

17 MR. BUCKNER: Why don't we identify what this bundle is
18 for the record? That's going to be pretty
19 confusing.

20 MR. FIEDLER: Yes. Absolutely.

21 EXAMINATION RESUMED

22 BY MR. FIEDLER:

23 Q. This bundle is identified as page 23 of 23, the
24 Acknowledgement; is that correct, KoKo?

25 A. Correct.

- 1 Q. It is also page 2 of 5. Do you know what that
2 page 2 of 5 is?
- 3 A. Yes. It goes along with -- yes. Authorizations.
- 4 Q. So the first -- 1 of 5, Authorization, Consents,
5 and Acknowledgments was sent via fax?
- 6 A. Yes.
- 7 Q. But not the second page?
- 8 A. It was all sent. She could not afford to fax it
9 all back.
- 10 Q. It was all sent. How?
- 11 A. I faxed it to her, but she could not afford to
12 fax me all the pages back.
- 13 Q. Right. So what she could not or what she did not
14 fax back was the Acknowledgment, correct?
- 15 A. Correct.
- 16 Q. Page 2 of 5?
- 17 A. May I have the packet, please?
- 18 Q. Yes. Absolutely.
- 19 A. Thank you.
- 20 Q. I'm not trying to trick you. I just want to have
21 a good record.
- 22 A. The Admission Agreement, Consent to Treat -- the
23 Acknowledgment form shouldn't be in there.
- 24 Q. It shouldn't be in the middle like that?
- 25 A. It shouldn't be with this at all. It never got

1 sent to her.

2 MR. FIEDLER: I'm going to take the Acknowledgment out
3 of this Exhibit 1.

4 MR. BUCKNER: Has this already been marked?

5 MR. FIEDLER: Yes. Do you have any preference how else
6 we should do this.

7 MR. BUCKNER: I was just thinking this is going to be
8 tough to understand when we go back.

9 (Discussion held off the record.)

10 EXAMINATION RESUMED

11 BY MR. FIEDLER:

12 Q. All right. Let's just go through it.

13 A. Okay.

14 Q. So we have the Admission Agreement; is that
15 correct?

16 A. Yes.

17 Q. And that was sent back via fax, correct?

18 A. She kept this. She faxed this back.

19 Q. And you said, she faxed this back. What is this?

20 A. She faxed back the signature page for the
21 Admission Agreement. She faxed back the Consent
22 to Treat.

23 Q. The entire consent to re-treat package?

24 A. The faxed back Consent to Treat form number one,
25 and Consent to Treat form number two, and the

1 Arbitration Agreement is what she faxed back.

2 Q. Okay. Perfect. So we'll still keep that as
3 Plaintiff's Exhibit 1.

4 A. Do you want to take this out?

5 Q. No. We're going to keep it in there. And so did
6 you explain the Admission Agreement to her via
7 phone?

8 A. No.

9 Q. Okay. Just faxed it to her?

10 A. Yes.

11 Q. What did you tell her? Did you give her any
12 instruction?

13 A. Yes. I told her to read over it, sign it, and
14 call me with questions.

15 Q. Perfect. Had you talked to James Boyd, again,
16 prior to receiving the return faxes?

17 A. No.

18 Q. Okay. Did she have any questions for you?

19 A. No.

20 Q. Okay. And then the Consent to Release, again,
21 she faxed that back. Looking at the Consent to
22 Release, who put these little Xs there where the
23 initials are?

24 A. I don't know.

25 Q. Okay. So you don't know who put the Xs where the

1 signature of patient is on the first page?

2 A. No.

3 Q. Okay. And so that's something that we just don't
4 know who would've put those Xs there?

5 A. No.

6 Q. Okay. Would you not have done that to mark where
7 she needs to initial and sign before faxing?

8 A. No.

9 Q. Okay. Looking at the admission paperwork --
10 Admission Agreement -- excuse me -- page 12 of
11 12, who would've marked an X there on page 12 of
12 12 where it says signature of resident?

13 A. I don't know.

14 Q. Okay. And so we don't know who marked those Xs,
15 but we do -- we're assuming Wilda did sign on
16 page 12 of 12 or the Admission Agreement,
17 correct?

18 A. Yes.

19 MR. BUCKNER: Object to the form.

20 EXAMINATION RESUMED

21 BY MR. FIEDLER:

22 Q. And same thing with the -- this -- oh, this is
23 the Consent to Treat, assuming that WAB is Wilda
24 Boyd's initials, correct?

25 A. Yes.

1 Q. Okay. Now, the Acknowledgement, can we look at
2 the acknowledgment in there? Did she tell you
3 why to fax it to her? Did she say she couldn't
4 come up to there to fill out the paperwork, or
5 what --

6 A. She did. She said that she was going to be out
7 of town and she couldn't come right away.

8 Q. Okay. So when was this Acknowledgment completed?

9 A. Once she -- once she came.

10 Q. Okay. And so she signed, obviously, I think this
11 is July 7th, 2016; is that correct?

12 A. Yes.

13 Q. And you were present for this?

14 A. Yes.

15 Q. And that's your signature and your printed name
16 on the bottom?

17 A. Yes.

18 Q. By the time that Ms. Wilda Boyd signed the
19 Acknowledgement, had you spoken to Mr. Boyd?

20 A. Yes.

21 Q. What did you talk to Mr. Body about?

22 A. I talked to him -- I welcomed him to the
23 facility. I spoke with him about what I had sent
24 his mom and told him that she had started the
25 admissions process and that I sent her the

1 Admission Agreement, and the Consent to Treats,
2 and the Arbitration Agreement, and I told him we
3 still have a lot more to complete.

4 Q. Okay. And when did you have that conversation
5 with him?

6 A. The day of admission.

7 Q. And what day was that?

8 A. June 30th.

9 Q. You previously testified, though, that you had
10 not talked to Mr. Boyd when you received the
11 return fax?

12 A. Yes.

13 Q. Okay. So did you talk to him before the fax or
14 after the fax?

15 A. After.

16 Q. Okay. And that includes after receiving the
17 signed arbitration agreement back, too, correct?

18 A. Yes.

19 Q. Okay. And this -- I know I put it in the middle
20 of the Consent -- where was it? What is this
21 page that I'm looking at?

22 A. It's Consents -- Authorizations, Consents, and
23 Acknowledgments.

24 Q. Okay. So this is 1 of 5 pages?

25 A. Yes.

- 1 Q. And where page two should be is actually the
2 Acknowledgement, which is page 23 of 23?
- 3 A. This shouldn't be there.
- 4 Q. Right. Well, that's what I'm saying. So then
5 page 2, 3, 4, 5 follows -- let me make sure it
6 follows from there as well.
- 7 A. 3, 4, 5. Yes.
- 8 Q. And so that was signed on the -- what date was
9 that signed on?
- 10 A. The 7th.
- 11 Q. Okay. And so did you explain the Consent to
12 Release to Ms. Boyd?
- 13 A. No. I had her to read it.
- 14 Q. Okay. And what about the Arbitration Agreement?
- 15 A. No.
- 16 Q. Did you explain the Admission Agreement to Mr.
17 Boyd?
- 18 A. No.
- 19 Q. What about the Consent to Release? Did you
20 explain that to Mr. Boyd?
- 21 A. No.
- 22 Q. What about the Arbitration Agreement? Did you
23 explain that to Mr. Boyd?
- 24 A. No.
- 25 Q. Did you believe Mr. Boyd was competent to make

1 his own decisions upon admission?

2 A. Yes.

3 Q. Okay. What do you think -- what do you think
4 about Mr. Boyd? Was he ever rude to you? Was he
5 a nice gentleman? Do you have any opinion on
6 him?

7 A. No. He was a nice gentleman.

8 Q. Okay. Do you -- during your job as the director
9 of admissions, do you, at times, explain this
10 paperwork to residents at the facility?

11 A. Yes.

12 Q. Okay. Can you briefly tell me exactly what you
13 say when you describe the Arbitration Agreement
14 to those folks?

15 A. I read it to them.

16 Q. Okay. So verbatim, you read it to them?

17 A. Yes.

18 Q. And if they have any questions, you obviously try
19 your best to answer those?

20 A. Yes.

21 Q. Has there ever been a scenario where you couldn't
22 answer one of their questions?

23 A. No.

24 Q. Okay. And so other than read it verbatim, do you
25 present any other explanation of what this

1 agreement is to residents coming in?

2 A. No.

3 Q. Okay. Looking at the Arbitration Agreement -- I
4 don't mean to reach over you, Ms. Koko. Let's
5 flip over it. Do you see that X right there? Do
6 we know who put that X there?

7 A. No.

8 Q. And then we see Wilda Ann Boyd's name; is that
9 correct?

10 A. Yes.

11 Q. And who dated it on her signature line? Was that
12 your signature, or was that her date?

13 A. Her date.

14 Q. Okay. If a person is incompetent to sign the
15 admission paperwork, what do you do as the
16 director of admission? If a person is just not,
17 I guess, able to sign their own Arbitration
18 Agreement, what do you do at that point? Do you
19 try to reach out to a family member?

20 A. Yes.

21 Q. Okay. And is that about the extent of it? You
22 just try to find a legal representative, or can
23 you explain that process?

24 A. No. I go through the case manager to see who is
25 going to assist with that prior to the admission

1 to the facility.

2 Q. Okay. So that would have been -- well, it's
3 probably not always going to be Ms. Peggy,
4 because it depends on what facility they're
5 coming from?

6 A. Correct.

7 Q. Is Ms. Peggy -- where is she the case manager?
8 Is she the case manager at --

9 A. Palmetto Baptist.

10 Q. Is there any other case managers up there? I'm
11 assuming there is.

12 A. I'm sure.

13 Q. Okay. Do you ever deal with anybody besides Ms.
14 Peggy?

15 A. She's the only one that I've dealt with.

16 Q. Perfect. And so knowing Mr. Boyd was competent,
17 why did he not sign the admission paperwork?

18 A. I reached out to the case manager prior to him
19 coming because of his condition and asked her who
20 would assist him with his admission paperwork,
21 and she told me she'd get back with me, and she
22 did, and then the mom made contact with me.

23 Q. Perfect.

24 A. After admission, Mr. Boyd -- not with Ms. Fields
25 anymore, with me, I went in to see him for myself

1 about the paperwork.

2 MR. FIEDLER: Okay. I'm sorry. We can go off the
3 record for a second.

4 (Recess taken.)

5 MR. FIEDLER: I don't have any more questions for you.
6 Please answer any questions Mr. Buckner may have
7 for you.

8 EXAMINATION

9 BY MR. BUCKNER:

10 Q. Ms. Burt, in responding to a couple of
11 plaintiff's counsel's questions about
12 conversations with Ms. Fields at Palmetto
13 Baptist, you had indicated that you spoke with
14 Ms. Fields on a couple of occasions; is that
15 correct?

16 A. Yes.

17 Q. Okay. And that one of those conversations or
18 phone calls was a phone call that you initiated
19 to her inquiring about who should handle James
20 Boyd's admissions paperwork, correct?

21 A. Yes.

22 Q. And you testified that Ms. Fields got back to you
23 and indicated that Wilda Boyd would be the person
24 who would be handling it; is that correct?

25 A. Yes.

- 1 Q. All right. Do you know why you were informed
2 that Wilda Boyd would be the person who would be
3 doing it?
- 4 A. She had to check with James.
- 5 Q. Okay. And when you say she, you mean Ms. Fields
6 had to check with James?
- 7 A. Yes.
- 8 Q. Okay. And is it your understanding that Mr. Boyd
9 directed Ms. Fields to his mother for admissions
10 paperwork to Magnolia Place?
- 11 A. Yes.
- 12 Q. Okay. And did Ms. Fields tell you that?
- 13 A. Yes.
- 14 Q. All right. Ms. Fields told you that James Boyd
15 indicated that Wilda Boyd, his mother, would be
16 the appropriate person to handle the admissions
17 paperwork?
- 18 A. Yes.
- 19 Q. When Mr. Boyd -- and that conversation occurred
20 while he was at Palmetto Baptist prior to June
21 30th, 2016?
- 22 A. Correct.
- 23 Q. And Mr. Boyd then comes to Magnolia Place, I
24 believe, on by June 30th, 2016?
- 25 A. Yes.

1 Q. And at that point, you meet him in person for the
2 first time?

3 A. Yes.

4 Q. Okay. And during that conversation, I understood
5 your testimony that you informed him that his
6 mother had already signed three separate
7 agreements on his behalf, including the
8 Arbitration Agreement, correct?

9 A. Yes.

10 Q. All right. At that time, on June 30th, 2016 when
11 you were with him in person, did he raise any
12 objection to her doing that?

13 A. No. He told me that she would finish the rest of
14 it.

15 Q. Okay. And during that conversation on June 30th,
16 2016 in person at Magnolia Place, did you
17 actually have an opportunity to call Ms. Boyd in
18 James' presence?

19 A. He did. I had to dial the number and hold the
20 telephone for him.

21 Q. Okay. And what did you discuss with Ms. Boyd?

22 A. She was going somewhere. James said that she
23 would complete all of his paperwork, so I needed
24 to schedule a time that she was going to complete
25 all of it.

1 Q. Okay. And during the time period that you're
2 speaking with Ms. Boyd in James' presence on June
3 30th, 2016, did Mr. Boyd ever interject or say,
4 stop doing this, or anything of that nature?

5 A. No.

6 Q. Okay. As far as you know, Mr. Boyd had full and
7 complete knowledge that his mother was handling
8 his admissions paperwork, including the
9 Arbitration Agreement?

10 A. Yes.

11 Q. And I understood your testimony earlier that you
12 even specifically informed him that an
13 Arbitration Agreement had been signed by Wilda
14 Boyd; is that correct?

15 A. Yes.

16 Q. Do you know what date, approximately, that Wilda
17 Boyd came to Magnolia place in person to complete
18 the rest of the paperwork?

19 A. It was July 7th.

20 Q. Okay. On July 7, 2016, was anyone else present
21 with Wilda Boyd?

22 A. It was Wilda, another woman, which was his
23 sister, and then there was a man.

24 Q. Okay. Do you remember his sister's name?

25 A. No.

1 Q. And the man was a relative insofar as you knew?

2 A. Yes.

3 Q. All right. The mother, Wilda Boyd, completed the
4 remaining admissions paperwork that day that
5 you're referencing?

6 A. Yes.

7 Q. Okay. And tell me after the admissions
8 paperwork, the remaining admissions paperwork,
9 was completed, is a file created for James Boyd?

10 A. Yes.

11 Q. Okay. And what does that file include? And you
12 can be comprehensive in telling me.

13 A. It includes the admissions handbook, the
14 resident's rights, channel guide, facility abuse
15 policies, and all of the signed admissions
16 paperwork.

17 Q. All right. And the signed admissions paperwork
18 includes the Arbitration Agreement?

19 A. Yes.

20 Q. Does it include the Admission Agreement?

21 A. Yes.

22 Q. And where -- what do you do with that -- the
23 admissions file folder I'll call it for lack of a
24 better term?

25 A. I give it to the resident.

1 Q. Okay. And in this case, that would be James
2 Boyd?

3 A. Yes.

4 Q. So James Boyd was provided with a written copy of
5 all of the agreements that his mother entered
6 into on his behalf?

7 A. Yes.

8 Q. Okay. And you personally provided him with that
9 file folder?

10 A. Yes.

11 Q. Okay. And when you personally provided that file
12 folder to him, did he, on that day or any day
13 thereafter, voice any objection to his mother's
14 signing these contracts on this behalf?

15 A. No.

16 Q. Okay. And as far as you know, Mr. Boyd had full
17 and complete knowledge of all of these agreements
18 and his mother's activity in entering them,
19 correct?

20 A. Yes.

21 Q. How many times did you see, approximately, James
22 Boyd after that? And when I say, after that, I
23 mean whatever date that you provided the
24 admissions file folder to him.

25 A. I provided it to him on July 7th, the day of

1 completion.

2 Q. And that would not have been the last day that
3 you saw him?

4 A. No.

5 Q. All right. And you were certainly available by
6 phone?

7 A. Yes.

8 Q. How was it that Mr. Boyd, on June 30th, 2016,
9 made you aware that he wanted his mother to
10 handle the admissions paperwork?

11 A. When I went in to tell him about the paperwork
12 and still having to complete more, he told me
13 that his mother handles all of that.

14 Q. Okay. Do you have any doubt -- and I want you to
15 remember in answering this question that you're
16 under oath --

17 A. Okay.

18 Q. -- and obligated to give full and complete truths
19 to my questions. Do you understand that?

20 A. Yes.

21 Q. Do you have any doubt that James Boyd authorized
22 his mother to enter into all of the admissions
23 paperwork, including the Arbitration Agreement,
24 in this case?

25 A. No.

1 MR. BUCKNER: I don't think I have any other questions.

2 (Deposition concluded at 10:44 a.m.)

3 - - -

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, Kaylyn K. Brantner,
Notary Public in and for the State of South
Carolina, do hereby certify that the deposition
of LEOLA MICHELLA BURT was taken on the 20th day
of November, 2018, that the within deponent was
sworn to tell the truth, and that the foregoing
is an accurate transcription of the testimony
taken under oath; that all exhibits entered
herein are attached hereto (if requested by
counsel) and made a part of this deposition.

I further certify that I am neither counsel
nor solicitor to any of the parties in said suit,
nor interested in the event of the cause.

In witness whereof, I have hereunto set my
hand and seal this 5th day of December, 2018.

Kaylyn K. Brantner

Notary Public for South Carolina

My Commission Expires: 4/12/20

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES BOYD, JR.,
Plaintiff,

VS.

)
)
)
)
)
) Case No.
) 2018-CP-23-01934

THI OF SOUTH CAROLINA
AT MAGNOLIA PLACE AT
GREENVILLE, LLC;
FUNDAMENTAL CLINICAL
AND OPERATIONAL
SERVICES, LLC;
FUNDAMENTAL
ADMINISTRATIVE
SERVICES, LLC,

Defendants.

)
)
)
)
)
)
)
)
)
)

DEPOSITION OF WILDA BOYD, produced, sworn and examined on the 19th day of October, 2018, between the hours of 3:39 p.m. and 4:10 p.m., at the Anastopoulo Law Firm, 418 River Street, Greenville, South Carolina, 29601, before Mindy Vislay, a Notary Public within and for the State of South Carolina, in a certain cause now pending in the Court of Common Pleas, Thirteenth Judicial Circuit, in the County of Greenville, State of South Carolina, wherein JAMES BOYD, JR., is Plaintiff and THI OF SOUTH CAROLINA AT MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, are Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Plaintiff:

Anastopoulo Law Firm
By: Stefan B. Feidler
32 Ann Street
Charleston, South Carolina 29403
843-614-8888
stefan@akimlawfirm.com

For the Defendants:

Young, Clement, Rivers, LLP
By: Perry M. Buckner, IV
25 Calhoun Street
Suite 400
Charleston, South Carolina 29401
843-720-5406
pbuckner@ycrlaw.com

Also present: James Boyd, Jr., Plaintiff

INDEX

QUESTIONS BY:

PAGE NO.

MR. BUCKNER

4

PREVIOUSLY MARKED EXHIBITS

DEFENDANT'S

DESCRIPTION

REFERENCED

EXHIBIT 1

ADMISSION AGREEMENT - SOUTH
CAROLINA

19

EXHIBIT 2

FACILITY-RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

22

(Original exhibits were retained by the court
reporter and will be copied and attached to copies of
the transcript.)

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Mindy Vislay, a Notary Public, and
5 afterwards transcribed into typewriting; and the
6 signature of the witness is expressly waived.

7 * * * * *

8 WILDA BOYD,
9 of lawful age, produced, sworn and examined on behalf
10 of the Defendants, deposes and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. BUCKNER:

13 Q. Ms. Boyd, my understanding is that your
14 full name is Wilda Ann Boyd?

15 A. It's Stevens now.

16 Q. Stevens now? Okay. You've recently been
17 married?

18 A. Uh-huh.

19 Q. Congratulations.

20 A. Thank you.

21 Q. Who is the lucky gentleman?

22 A. Barnett Stevens.

23 Q. And where do y'all live?

24 A. [REDACTED].

25 Q. In Lexington County?

1 A. In Lexington.

2 Q. But I'm close, right? It's only a couple
3 miles. I think Little Mountain, and I think Newberry.

4 A. Yeah, we're almost on the county line.

5 Q. Well, unfortunately, I know you sat through
6 a portion of my spiel today, but the rules require me
7 to go over the same things with you.

8 If you want to take a break at any time just let
9 me know and we'll go off the record. It doesn't
10 matter what it is, a phone call, a drink of water, a
11 bathroom break, just say the words and we'll do it.

12 A. Okay.

13 Q. Let me finish the question before you
14 answer so we don't talk over each other. Is that
15 agreeable?

16 A. Uh-huh.

17 Q. And that helps make her job a lot easier.
18 Verbal answers. No head nods. No uh-huhs and uh-uhs.
19 Is that agreeable?

20 A. Yes.

21 Q. If I ask a question, and you don't
22 understand it, direct your question about my question
23 to me not anybody else, whether it be your son or his
24 attorney. Is that agreeable?

25 A. Yes.

1 Q. The rules don't allow you now that you've
2 been sworn under oath to talk to anybody about these
3 issues.

4 Have you ever given a deposition before?

5 A. No.

6 Q. And when I say the phrase "give a
7 deposition," that means exactly what we're doing right
8 now. We're parties in a room, and you're giving
9 testimony under oath. That hasn't happened?

10 A. No.

11 Q. Have you ever filed a lawsuit before?

12 A. No.

13 Q. Have you ever been sued?

14 A. No.

15 Q. And have you ever been charged with any
16 crime before or convicted of a crime?

17 A. No.

18 Q. And I'm not talking about traffic tickets
19 or anything like that. Have you ever declared
20 bankruptcy before?

21 A. No.

22 Q. All right. Well, now that you're under
23 oath, you're obviously under an obligation to recall
24 all information that you currently have about your
25 son's admission to Magnolia Manor [sic]. Do you

1 understand that?

2 A. Yes.

3 Q. And, you know, it's okay for you to let me
4 know that you're not a hundred percent sure about
5 something, but if you have some recollection or
6 memory, you can qualify it and tell me what you're
7 recalling. Is that understood?

8 A. Yes.

9 Q. And now that you are in fact under oath
10 under penalty of perjury, I just want to make sure
11 that the answers you give today will be the same that
12 you would give in front of a judge at a later time in
13 this case. Is that fair?

14 A. Yes.

15 Q. And if you answer my question that I ask,
16 I'm going to assume that you've understood it. Is
17 that fair?

18 A. Yes.

19 Q. All right. When your son was admitted to
20 Richland Memorial after this accident in June of 2016
21 did you complete his admission paperwork to that
22 hospital?

23 A. To be honest, I can't recall.

24 Q. Okay. Well, do you think that more likely
25 than not you did?

1 A. More likely not.

2 Q. More likely than not you did or did not?

3 A. Did not.

4 Q. Okay. So your son was admitted to Richland
5 Memorial for a month, and according to his testimony
6 was incapacitated for 24 hours or more.

7 A. Uh-huh.

8 Q. And it's your testimony that he signed that
9 paperwork?

10 A. No.

11 MR. FEIDLER: Objection.

12 QUESTIONS BY MR. BUCKNER:

13 Q. Okay. What is your testimony?

14 A. Whenever he was first admitted to the
15 hospital the night of the accident, me and -- at the
16 time it was my boyfriend, well, it was my fiance --
17 went to the hospital. They had him in a pod for --
18 the accident happened around three in the morning.
19 They had him in a pod until probably seven o'clock
20 that night, and I know I didn't do any paperwork that
21 day, and the next morning they called me and told me
22 they had to do surgery on him, and I went to the
23 hospital. They did surgery. That's the reason why I
24 say I can't remember signing no papers.

25 Q. Okay. Do you believe that ultimately

1 papers were signed by someone on behalf of your son?

2 A. Then my daughter came, Jackie, and I told
3 her that she knows more about this kind of stuff than
4 I did, because she'd had caseworkers before, and the
5 caseworker came, and they did do some -- they talked,
6 and I can't remember signing the papers. It was a
7 terrible time in my life at that time.

8 Q. Okay. And if those records are subpoenaed
9 from Richland Memorial, if you had to speculate, which
10 you're free to do as long as you tell me you're
11 speculating, who do you think's signature is on the
12 paperwork at Richland Memorial regarding the care and
13 treatment that your son received there?

14 A. I don't know. It may be Jackie's.

15 Q. Is it more likely Jackie's than yourself?

16 A. Probably.

17 Q. Okay. And what is Jackie -- Jackie you
18 said used to be a caseworker?

19 A. No.

20 Q. Is she a nurse?

21 A. No.

22 Q. You said that you thought she was more
23 familiar with this kind of stuff. Why did you say
24 that?

25 A. Because she's been -- she dealt with a lot

1 of caseworkers before, and she knows more about that
2 kind of stuff than I did, so she handled most of the
3 stuff.

4 Q. And why does she know more about
5 caseworkers?

6 A. Because she's been disabled and she had
7 caseworkers before. I've never had to dealt with a
8 caseworker. And she was always there. Most of the
9 time when I went to the hospital she went. She was
10 there, too.

11 Q. Now, would you agree that your son Mr. Boyd
12 was in no shape to be executing paperwork at the
13 beginning of June 2016 right after the accident,
14 right?

15 A. What do you mean?

16 Q. Well, in other words, he had obviously had
17 a traumatic accident, correct?

18 A. Uh-huh.

19 Q. And it impaired him physically, correct?

20 A. Yeah. He was in a lot of pain.

21 Q. And do you think that it would have been
22 appropriate for him to be presented with paperwork and
23 make decisions and things like that after he had just
24 had that traumatic accident?

25 A. No.

1 Q. And you would agree that it would have been
2 better to have that delegated to someone else,
3 correct?

4 A. Yes.

5 Q. And I presume that you and your son have a
6 good relationship?

7 A. Yeah.

8 Q. And that y'all love one another?

9 A. Yeah.

10 Q. And that in no way as his mother you would
11 do anything against his wishes or interest; is that
12 correct?

13 MR. FEIDLER: Objection. You can answer.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. BUCKNER:

16 Q. He's going to object from time to time, but
17 you've got to answer my question just like he's not
18 objecting unless he tells you otherwise. All right?

19 And I want to make sure, not just regarding
20 Richland Memorial, but also any paperwork that was
21 completed at Magnolia Place, was there ever a time
22 that your son Mr. Boyd came to you and said I don't
23 want you to execute admissions paperwork on my behalf?

24 A. No.

25 Q. And he recalled in his deposition a time

1 where you actually told him that you were going to be
2 signing some admissions paperwork at Magnolia Place.
3 Do you recall that conversation?

4 A. No.

5 MR. FEIDLER: Objection.

6 QUESTIONS BY MR. BUCKNER:

7 Q. But you don't dispute that it occurred?

8 A. No.

9 Q. Do you remember Miss Coco Burt or Leola
10 Burt?

11 A. Do I remember her?

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. And do you remember her because you dealt
15 with her for the admissions process at Magnolia Place
16 at Greenville?

17 A. Yes.

18 Q. And what memory or recollection, if any, do
19 you have of the admissions process at Magnolia Place?

20 A. Whenever James was first admitted to the
21 hospital, I didn't go there for a couple of days
22 because I was going out of town the same day he was
23 being transferred to Magnolia Place, and whenever I
24 came back I came up there, and they told me that I
25 needed to go see -- go to administration.

1 Q. Okay.

2 A. So I went to the administration and met
3 her, and she told me her name was whatever, but she
4 said everybody called her Coco.

5 Q. And they do. I just used her formal name
6 Leola because it's on the paperwork. Everybody does
7 call her Coco. Coco is in Jamaica right now, in case
8 you're interested, otherwise she would be being
9 deposed today here as well. Can you picture Coco
10 right now?

11 A. Uh-huh.

12 Q. If she walked in you would know who she is?

13 A. I think I would. She was pregnant at the
14 time.

15 Q. Okay. Well, that will be easy to confirm.
16 And was she nice and pleasant?

17 A. Yes.

18 Q. And easy to deal with?

19 A. Yeah.

20 Q. And seemed honest?

21 A. Yeah.

22 Q. No reason for her to mislead or
23 misrepresent anything that happened with you or your
24 son about the admissions process, correct?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: Correct.

2 QUESTIONS BY MR. BUCKNER:

3 Q. That you know of?

4 A. That I know of.

5 Q. And when she went through this admissions
6 paperwork with you did she take the opportunity to
7 explain things about it to you?

8 A. Not really. She had a stack of papers like
9 that, and she would --

10 Q. Like that is not going to read well. So it
11 looks like you've got what I would consider about a
12 half an inch?

13 A. She had a thick pile of papers --

14 Q. Okay. There you go.

15 A. -- and, you know, I don't know, and she
16 would give me each sheet, and she would say this is
17 for this and this is for this, you know, and just sign
18 where the X is.

19 Q. Well, when you said this is for this and
20 this is for this, she was explaining the purpose of
21 those documents, right?

22 A. Yes.

23 MR. FEIDLER: Objection.

24 QUESTIONS BY MR. BUCKNER:

25 Q. And she was there to answer questions that

1 you had also, correct?

2 A. Yes.

3 MR. FEIDLER: Objection.

4 QUESTIONS BY MR. BUCKNER:

5 Q. She never told you not to ask questions or
6 anything like that?

7 A. No.

8 Q. All right. And I assume that you read
9 these agreements before you signed them?

10 A. No.

11 Q. You did not?

12 A. No, I did not.

13 Q. Did anyone tell you not to read them?

14 A. No.

15 Q. And you weren't prevented from reading them
16 by Miss Coco?

17 A. No.

18 Q. Okay. And do you remember -- you said that
19 she would explain this is for this and this is for
20 that. Do you remember what she said to you when you
21 executed the arbitration agreement?

22 A. No. Because all I was signing papers to
23 make sure my son had somewhere to be and get
24 treatments. And it's just like going to buy a car.
25 You go buy a car. The dealer be telling you stuff.

1 You don't read all that stuff on that paper. You're
2 trying to get you a car.

3 Q. I understand that, but you would agree with
4 me that you obviously had an opportunity to read it,
5 correct?

6 A. Yes.

7 Q. And if you wanted to you could have,
8 correct?

9 A. Yes.

10 Q. And no one forced you to sign these
11 documents, correct?

12 A. Right.

13 Q. And if you wanted to leave and take your
14 son somewhere else, you could have done that, correct?

15 A. Yes.

16 Q. No one was keeping you there against your
17 will in any way, correct?

18 A. Correct.

19 Q. All right. And if you did not read any of
20 these documents, that's your own fault, correct?

21 A. Correct.

22 Q. Nobody else's fault, right?

23 A. Correct.

24 Q. And, so, there was nothing that Coco Burt
25 did that prevented you from reading these or

1 understanding these documents, correct?

2 A. Correct.

3 Q. And if you had a question about any of
4 these documents she was there to answer it. Fair?

5 A. Fair.

6 Q. All right. And you don't have an
7 independent recollection of what she told you about
8 the arbitration agreement, correct?

9 A. Right.

10 Q. And, again, same thing as earlier, you have
11 to give verbal answers. It's hard to remember, and we
12 all forget.

13 Did Miss Coco Burt ever discuss, to the best of
14 your recollection, anything that she and your son had
15 talked about?

16 A. No.

17 Q. Do you remember talking with Mrs. Burt on
18 the phone before you came up there?

19 A. I can't remember.

20 Q. Okay. Did you use a cellphone back then?

21 A. Yes.

22 Q. What was that cellphone number?

23 A. [REDACTED] 1184.

24 Q. And is that the same number you use today?

25 A. Yes.

1 Q. Well, I'm not trying to get it because I
2 want to bother you. You're not going to be getting a
3 call from me, but we can look at phone records from
4 the facility for that number to determine that.

5 A. Okay.

6 Q. You're not saying that she didn't talk with
7 you, you're just saying that you don't remember?

8 A. Right.

9 Q. All right. And, ma'am, you're not aware --
10 you weren't aware back then or now of your son telling
11 any staff member of Magnolia Place of Greenville that
12 he did not want you to execute admissions paperwork,
13 including the arbitration agreement, right?

14 A. Right.

15 Q. All right. And you don't have any
16 recollection -- or scratch that. I told you I'm going
17 to mess up some questions. That was one of them.

18 Were you present for a conversation between your
19 son and any admissions person at Magnolia Place of
20 Greenville?

21 A. Was I present with -- was my son and myself
22 present with any member at the same time?

23 Q. Correct.

24 A. No.

25 Q. Okay. So, when Miss Burt testifies about

1 conversations that she may or may not have had with
2 your son --

3 A. Uh-huh.

4 Q. -- you're not going to know anything about
5 those?

6 A. Correct.

7 Q. All right. Now, in the admissions
8 agreement that's been marked as **Exhibit 1** your son
9 wasn't able to, but can you verify that that is your
10 signature on the last page?

11 A. Yes.

12 Q. And you did sign it on June 30th, 2016?

13 A. June 30th?

14 Q. Yes. Or you don't know, you just know it
15 was back then when he was admitted?

16 A. I didn't sign on June 30th.

17 Q. Okay.

18 A. I do know that.

19 Q. When did you sign?

20 A. After I came back from Biloxi after the 4th
21 was the first time I went to Magnolia Place.

22 Q. All right. What were you down in Biloxi
23 for?

24 A. A trip. Pleasure. Vacation.

25 Q. So do you think that the date was already

1 supplied on there when you signed it? That is your
2 signature, correct?

3 A. Uh-huh.

4 Q. And did you not scratch out the date and
5 put the new one, or was the date not on there, or do
6 you think it's just an instance of someone putting the
7 wrong date?

8 A. All I can say is they must have put in the
9 wrong date, because I was not --

10 Q. All right. And what I want to know is
11 whether they put in the wrong date before or after you
12 signed it, and you don't recall?

13 A. I don't recall.

14 Q. It could have been that that date was there
15 when you signed it and you didn't change it?

16 A. Could be. I wouldn't -- can I say
17 something?

18 Q. Of course.

19 A. I wouldn't have put June the 30th if I
20 wasn't --

21 Q. Yeah. Afterward?

22 A. Yes.

23 Q. I understand. I'm not accusing you of
24 doing that.

25 A. So the date must have been already there

1 and I just signed the papers.

2 Q. But you certainly could have changed it to
3 reflect the current date if you wanted to?

4 A. Yeah. Evidently I didn't pay the date no
5 attention, because I know that I didn't sign no papers
6 on June 30th.

7 Q. But you were present with Mrs. Burt when
8 you signed it?

9 A. Yes.

10 Q. Okay. And were you in the admissions
11 office at Magnolia Place when you signed it?

12 A. Yes.

13 Q. Was your daughter present, too?

14 A. No.

15 Q. Had your daughter been present at the
16 facility at any time prior to that date that you know
17 of?

18 A. No, not that I know of.

19 Q. And she visited your son a lot, correct?

20 A. Yes.

21 Q. So there could be times when she was there
22 and you didn't know about it, or would you know about
23 it?

24 A. There could have been, but I don't -- I
25 don't know.

1 Q. I know these questions sound funny to some
2 extent because it's hard to remember. And this is the
3 only time I get to talk to you. I wasn't around back
4 then. I'm a stranger to this whole thing, just as
5 your son's lawyer is. So I'm just trying to figure
6 out, you know, what I can derive from this paperwork.
7 Do you understand?

8 A. The reason why I say that, I don't think
9 she was there, because I went up three to four times a
10 week, and I don't think Jackie went up there whenever
11 I didn't go, but, just like I said, it's been a long
12 time. She may have and I don't know.

13 Q. Now, **Exhibit 2** is the main reason we're
14 here to talk today, and **Exhibit 2** is an arbitration
15 agreement that was signed by you on your son's behalf,
16 correct?

17 A. Uh-huh.

18 Q. And would you agree with me there's
19 certainly no indication on the face of this document
20 that you didn't have authority to sign it, correct?

21 A. That I didn't have authority to sign it?

22 Q. Yeah. Is there anything on this document
23 that would make someone at Magnolia Place believe that
24 you didn't have authority to sign it?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: No.

2 QUESTIONS BY MR. BUCKNER:

3 Q. And would you agree with me that you
4 certainly gave Miss Coco Burt no indication that you
5 couldn't sign this document?

6 A. No.

7 Q. And that was probably a double negative.
8 So you didn't say anything to Miss Burt that would
9 make her believe that you lacked authority to sign
10 this?

11 A. No.

12 Q. All right. And as far as -- and I realize
13 that you can't put yourself entirely in her shoes, but
14 as far as Miss Burt would have known based on this
15 agreement you were authorized to enter it on your
16 son's behalf?

17 A. I guess. Yeah.

18 Q. Okay. And if we look at the first
19 paragraph on **Exhibit 1**, can you read that out loud for
20 me?

21 A. "Inducement: Resident and/or
22 representative verifies that all information submitted
23 to facility, including without limitation, financial
24 information, medical history and medical diagnosis, is
25 true and correct and acknowledges that providing false

1 information constitutes a breach of this agreement."

2 Q. And you represented to Magnolia Place that
3 you had authority to sign all admissions paperwork for
4 your son, correct?

5 MR. FEIDLER: Objection.

6 THE WITNESS: Did I -- say that again.

7 QUESTIONS BY MR. BUCKNER:

8 Q. You represented to Magnolia Place of
9 Greenville that you had authority to enter into all
10 admissions paperwork on behalf of your son, correct?

11 A. Yeah.

12 MR. FEIDLER: Same objection.

13 QUESTIONS BY MR. BUCKNER:

14 Q. I mean, I know that -- I have my own
15 children. I'm assuming that you were trying to in
16 every way, shape or form look out for your son's best
17 interest, correct?

18 A. Correct.

19 Q. And that you wouldn't sign something that
20 you thought was not in his best interest, correct?

21 A. Correct.

22 Q. And if there was anything in this
23 admissions paperwork that gave you any pause, what
24 would you have done?

25 A. I wouldn't have signed. But, once again, I

1 don't think -- she did not -- she probably told me
2 what this --

3 Q. We're flipping through the 12 pages of
4 **Exhibit 1**.

5 A. Yeah. And all she said was, you know, you
6 sign here. So, you know, I didn't read over this
7 stuff. I didn't read -- I would have been there all
8 day if I had read over all that stuff that she gave --

9 Q. But you could have done that? You had the
10 opportunity to do that?

11 A. Yes.

12 Q. So when your son was in the hospital and
13 the nursing home, I guess if we take -- what is the
14 time together of his hospitalization plus his
15 residency at Magnolia Place? In other words, how long
16 was he admitted as a patient at those two places
17 collectively?

18 A. You mean the time he was at Richland
19 Memorial?

20 Q. Let's start the clock from June 3rd, 2016,
21 until he was discharged from Magnolia Place of
22 Greenville.

23 A. Seven months.

24 Q. Okay. And during those seven months I
25 would imagine that, you know, he was focused on his

1 recovery. Were you tending to personal matters for
2 him like his finances and things of that nature?

3 MR. FEIDLER: Objection. You can answer.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. BUCKNER:

6 Q. Okay. Tell me about that. Would you go to
7 the bank and sign things on his behalf?

8 A. I did go to the bank and signed his check
9 one time.

10 Q. Okay. And did your son give you authority
11 to do that?

12 A. No.

13 Q. Okay. Now, when I asked that question, are
14 you assuming that I mean that he called you and told
15 you you could do it?

16 A. Say that again.

17 Q. Well, let me backtrack. Why did you go to
18 the bank and sign a check for your son?

19 A. Because I needed money to pay his bills and
20 gas money for going up and down the road.

21 Q. You were trying to help him, correct?

22 A. Yeah.

23 Q. You're not a crook, correct?

24 A. No.

25 Q. You weren't trying to do anything other

1 than what was best for your son, correct?

2 A. Correct.

3 Q. And he trusted you to do those things,
4 correct?

5 A. I hope so.

6 Q. And certainly when other people were
7 dealing with him, as far as you know he gave them the
8 impression that you had the ability to do that, right?

9 MR. FEIDLER: Objection.

10 THE WITNESS: Ask the question again.

11 QUESTIONS BY MR. BUCKNER:

12 Q. Sure. As far as you know, did your son
13 give others, including the staff at Magnolia Place,
14 the impression that you had the ability to act on his
15 behalf?

16 A. I don't know what he gave other people.

17 Q. Okay. And did you ever witness -- I think
18 you've already answered this, but let me confirm for
19 the record. You never witnessed a conversation
20 between your son and Coco Burt, correct?

21 A. No.

22 Q. Did you ever witness any statement or
23 conversation or any sort of thing whatsoever where
24 your son told or informed someone else that you were
25 not authorized to act on his behalf?

1 A. Say that again.

2 Q. Sure. It was a terrible question. Was
3 there ever a time that you heard your son tell someone
4 else my mother has no authority to act on my behalf?

5 A. No.

6 Q. Was there ever a time that you saw your son
7 do something that would give another person an
8 indication that you weren't authorized to act on his
9 behalf?

10 A. That were or were not?

11 Q. Were not.

12 A. Ask the question again.

13 Q. Was there ever something that you saw your
14 son do that would give another person the impression
15 that you were not authorized to act on his behalf?

16 A. No.

17 Q. Okay. When you executed certain paperwork
18 at Magnolia Place, at Richland Memorial, at the bank,
19 and all these other places where you were signing,
20 potentially, documents on his behalf, I know we
21 haven't confirmed Richland Memorial, but you're
22 telling me that that was a result of happenstance and
23 no specific conversation whatsoever with your son?

24 A. No.

25 Q. All right. What are you telling me?

1 A. What am I telling you about --

2 Q. Yes, ma'am.

3 A. -- signing papers that --

4 Q. I need to know, because this is my last
5 chance to talk to you, and you're under oath, if you
6 and your son ever talked about your authority to
7 execute documents, admissions paperwork, on his
8 behalf.

9 A. No.

10 Q. And you never talked with him about
11 executing bank-related financial documents on his
12 behalf?

13 A. I told him that he had a check that I
14 needed to get cashed, and he told me that I would take
15 it to the bank to see could I get it cashed.

16 Q. Was that around the time when he was
17 admitted to Magnolia Place or --

18 A. Uh-uh.

19 Q. When was that? Before?

20 MR. FEIDLER: Is that a no? I'm sorry.

21 THE WITNESS: I can't remember. I really
22 can't. I can't remember.

23 QUESTIONS BY MR. BUCKNER:

24 Q. All right.

25 A. It seemed like it was before. And then

1 again, it seems like it was after.

2 Q. Fair enough. When you would come to the
3 nursing home to see your son would you speak with the
4 nursing staff about his condition?

5 A. Yes.

6 Q. Okay. Did you speak with the medical
7 director about his condition?

8 A. Who is the medical director?

9 Q. Did you ever speak with a doctor at all
10 when you were there?

11 A. Yes.

12 Q. How about a nurse practitioner?

13 A. I can't remember speaking to a nurse
14 practitioner. What do a nurse practitioner do?

15 Q. Helps the doctor. She's authorized to
16 prescribe medication but would be someone between a
17 nurse and a doctor is the best way to describe it in
18 terms of authority.

19 A. Maybe. Maybe. I can't -- maybe. I talked
20 to a lot of people at Magnolia Place.

21 Q. Would they call you, too, when you weren't
22 in the building?

23 A. On my phone?

24 Q. Uh-huh.

25 A. Yeah, they have.

1 Q. All right. And what would they call you
2 about, that Mr. Boyd had a fall or --

3 A. I can't remember, but I do remember talking
4 to -- I do remember them calling me several times on
5 my phone. Just like you said, you can pull phone
6 records and see.

7 Q. And they were calling you to tell you what
8 was going on or asking you for your input or what? Or
9 both?

10 A. I don't know. I can't remember.

11 Q. Okay. Fair enough.

12 MR. BUCKNER: I think that's all the
13 questions I have.

14 MR. FEIDLER: I have no questions.

15 (Wherein, the deposition was concluded.)

16

17

18

19

20

21

22

23

24

25

WORD INDEX

< 1 >

1 3:10 19:8 23:19
25:4**12** 25:3**19** 3:10**19th** 1:14

< 2 >

2 3:12 22:13, 14**2016** 7:20 10:13

19:12 25:20

2018 1:14**2018-CP-23-01934**

1:6

22 3:12**24** 8:6**25** 2:10**29401** 2:11**29403** 2:5**29601** 1:17

< 3 >

3:39 1:15**30th** 19:12, 13, 16

20:19 21:6

32 2:5**325** 4:24**3rd** 25:20

< 4 >

4 3:4**4:10** 1:15**400** 2:10**418** 1:16**4th** 19:20

< 8 >

803-422-1184 17:23**843-614-8888** 2:6**843-720-5406** 2:11

< A >

ability 27:8, 14**able** 19:9**accident** 7:20 8:15,

18 10:13, 17, 24

accusing 20:23**acknowledges** 23:25**act** 27:14, 25 28:4,
8, 15**administration**

12:25 13:2

ADMINISTRATIVE

1:10, 25

ADMISSION 3:10

6:25 7:21

admissions 11:23

12:2, 15, 19 13:24

14:5 18:12, 19 19:7

21:10 24:3, 10, 23

29:7

admitted 7:19 8:4,

14 12:20 19:15

25:16 29:17

Afterward 20:21**age** 4:9**agree** 10:11 11:1

16:3 22:18 23:3

agreeable 5:15, 19,

24

AGREED 4:1**AGREEMENT** 3:10,

13 15:21 17:8

18:13 19:8 22:15

23:15 24:1

agreements 15:9**allow** 6:1**Anastopoulos** 1:16

2:4

Ann 2:5 4:14**answer** 5:14 7:15

11:13, 17 13:25

14:25 17:4 22:25

26:3

answered 27:18**answers** 5:18 7:11

17:11

anybody 5:23 6:2**appropriate** 10:22**ARBITRATION**

3:13 15:21 17:8

18:13 22:14

asked 26:13**asking** 31:8**assume** 7:16 15:8**assuming** 24:15

26:14

attached 3:18**attention** 21:5**attorney** 5:24**authority** 22:20, 21,

24 23:9 24:3, 9

26:10 28:4 29:6

30:18

authorized 23:15

27:25 28:8, 15

30:15

aware 18:9, 10

< B >

back 12:24 17:20

18:10 19:15, 20

22:3

backtrack 26:17**bank** 26:7, 8, 18

28:18 29:15

bank-related 29:11**bankruptcy** 6:20**Barnett** 4:22**based** 23:14**bathroom** 5:11**beginning** 10:13**behalf** 4:9 9:1

11:23 22:15 23:16

24:10 26:7 27:15,

25 28:4, 9, 15, 20

29:8, 12

believe 8:25 22:23

23:9

best 17:13 24:16,

20 27:1 30:17

better 11:2**bills** 26:19**Biloxi** 19:20, 22**bother** 18:2**BOYD** 1:2, 13, 22

2:15 4:8, 13, 14

10:11 11:22 31:2

boyfriend 8:16**breach** 24:1**break** 5:8, 11**Buckner** 2:9 3:4

4:12 8:12 11:15

12:6 14:2, 24 15:4

23:2 24:7, 13 26:5

27:11 29:23 31:12

building 30:22**Burt** 12:9, 10 16:24

17:13, 17 18:25

21:7 23:4, 8, 14

27:20

buy 15:24, 25

< C >

Calhoun 2:10**call** 5:10 13:7 18:8

30:21 31:1

called 8:21 13:4

26:14

calling 31:4, 7**car** 15:24, 25 16:2**care** 9:12**CAROLINA** 1:2, 7,

17, 18, 21, 22 2:5, 1

3:12

Case 1:5 7:13 13:8**caseworker** 9:5, 18

10:8

caseworkers 9:4

10:1, 5, 7

cashed 29:14, 15**cause** 1:19**cellphone** 17:20, 22**certain** 1:19 28:17**certainly** 21:2

22:19 23:4 27:6

chance 29:5**change** 20:15**changed** 21:2**charged** 6:15**Charleston** 2:5, 11**check** 26:8, 18

29:13

children 24:15**CIRCUIT** 1:1, 20**Clement** 2:9**CLINICAL** 1:8, 24**clock** 25:20**close** 5:2**Coco** 12:9 13:4, 7,

7, 9 15:16 16:24

17:13 23:4 27:20

collectively 25:17**come** 30:2**COMMON** 1:1, 19**complete** 7:21

completed 11:21
concluded 31:15
condition 30:4, 7
confirm 13:15
 27:18
confirmed 28:21
Congratulations
 4:19
consider 14:11
constitutes 24:1
conversation 12:3
 18:18 27:19, 23
 28:23
conversations 19:1
convicted 6:16
copied 3:18
copies 3:18
correct 10:17, 19
 11:3, 12 13:24 14:1
 15:1 16:5, 8, 11, 14,
 17, 18, 20, 21, 23
 17:1, 2, 8 18:23
 19:6 20:2 21:19
 22:16, 20 23:25
 24:4, 10, 17, 18, 20,
 21 26:21, 23 27:1, 2,
 4, 20
counsel 4:2, 2
COUNTY 1:2, 20
 4:25 5:4
couple 5:2 12:21
course 20:18
COURT 1:1, 19
 3:18
crime 6:16, 16
crook 26:23
current 21:3
currently 6:24

< D >

date 19:25 20:4, 5,
 7, 9, 11, 14, 25 21:3,
 4, 16
daughter 9:2 21:13,
 15
day 1:14 8:21
 12:22 25:8
days 12:21
deal 13:18

dealer 15:25
dealing 27:7
dealt 9:25 10:7
 12:14
decisions 10:23
declared 6:19
Defendants 1:12, 25
 2:8 4:3, 10
DEFENDANT'S
 3:10
delegated 11:2
deposed 13:9
deposes 4:10
DEPOSITION 1:13
 4:3 6:4 11:25
 31:15
deposition, 6:7
derive 22:6
describe 30:17
DESCRIPTION
 3:10
determine 18:4
diagnosis 23:24
DIRECT 4:11 5:22
director 30:7, 8
disabled 10:6
discharged 25:21
discuss 17:13
dispute 12:7
doctor 30:9, 15, 17
document 22:19, 22
 23:5
documents 14:21
 16:11, 20 17:1, 4
 28:20 29:7, 11
doing 6:7 20:24
double 23:7
drink 5:10

< E >

earlier 17:10
easier 5:17
easy 13:15, 18
else's 16:22
enter 23:15 24:9
entirely 23:13
everybody 13:4, 6
Evidently 21:4
exactly 6:7

EXAMINATION

4:11
examined 1:14 4:9
execute 11:23
 18:12 29:7
executed 15:21
 28:17
executing 10:12
 29:11
EXHIBIT 3:10, 12
 19:8 22:13, 14
 23:19 25:4
EXHIBITS 3:8, 18
explain 14:7 15:19
explaining 14:20
expressly 4:6
extent 22:2

< F >

face 22:19
facility 18:4 21:16
 23:23
FACILITY-RESIDE
NT 3:12
fact 7:9
fair 7:13, 17 17:4, 5
 30:2 31:11
fall 31:2
false 23:25
familiar 9:23
far 23:12, 14 27:7,
 12
fault 16:20, 22
Feidler 2:4 8:11
 11:13 12:5 13:25
 14:23 15:3 22:25
 24:5, 12 26:3 27:9
 29:20 31:14
fiance 8:16
figure 22:5
filed 6:11
finances 26:2
financial 23:23
 29:11
finish 5:13
Firm 1:16 2:4
first 8:14 12:20
 19:21 23:18
flipping 25:3

focused 25:25
forced 16:10
forget 17:12
form 24:16
formal 13:5
four 22:9
free 9:10
front 7:12
full 4:14
FUNDAMENTAL
 1:8, 10, 23, 24
funny 22:1

< G >

gas 26:20
gentleman 4:21
getting 18:2
give 6:6 7:11, 12
 14:16 17:11 26:10
 27:13 28:7, 14
given 6:4
giving 6:8
go 5:7, 9 12:21, 25
 25 14:14 15:25
 22:11 26:6, 8, 17
going 7:16 11:16
 12:1, 22 14:10
 15:24 18:2, 16 19:4
 26:20 31:8
good 11:6
GREENVILLE 1:2
 8, 16, 21, 23 12:16
 18:11, 20 24:9
 25:22
guess 23:17 25:13

< H >

half 14:12
handled 10:2
happened 6:9 8:18
 13:23
happenstance 28:22
hard 17:11 22:2
head 5:18
heard 28:3
help 26:21
helps 5:17 30:15
history 23:24
home 25:13 30:3

honest 7:23 13:20
hope 27:5
hospital 7:22 8:15, 17, 23 10:9 12:21 25:12
hospitalization 25:14
hours 1:15 8:6
hundred 7:4

< I >

imagine 25:25
impaired 10:19
impression 27:8, 14 28:14
incapacitated 8:6
inch 14:12
including 18:13 23:23 27:13
independent 17:7
INDEX 3:1
indication 22:19 23:4 28:8
Inducement 23:21
information 6:24 23:22, 24 24:1
informed 27:24
input 31:8
instance 20:6
interest 11:11 24:17, 20
interested 13:8
issues 6:3
IV 2:9

< J >

Jackie 9:2, 17, 17 22:10
Jackie's 9:14, 15
Jamaica 13:7
JAMES 1:2, 21 2:15 12:20
job 5:17
JR 1:2, 22 2:15
judge 7:12
JUDICIAL 1:1, 20
June 7:20 10:13 19:12, 13, 16 20:19 21:6 25:20

< K >

keeping 16:16
kind 9:3, 23 10:2
know 5:5, 9 7:3, 4 8:20 9:14 10:4 13:12 14:3, 4, 15, 15, 17 19:4, 14, 14, 18 20:10 21:5, 16, 18, 22, 22, 25 22:1, 6, 12 24:14 25:5, 6, 25 27:7, 12, 16 28:20 29:4 31:10
known 23:14
knows 9:3 10:1

< L >

lacked 23:9
Law 1:16 2:4
lawful 4:9
lawsuit 6:11
lawyer 22:5
leave 16:13
Leola 12:9 13:6
Lexington 4:25 5:1
life 9:7
limitation 23:23
line 5:4
Little 4:24 5:3
live 4:23
LLC 1:8, 9, 11, 23, 24, 25
LLP 2:9
long 9:10 22:11 25:15

look 18:3 23:18

24:16
looks 14:11
lot 5:17 9:25 10:20 21:19 30:20
loud 23:19
love 11:8
lucky 4:21

< M >

ma'am 12:12 18:9 29:2
MAGNOLIA 1:7, 23 6:25 11:21 12:2, 15, 19, 23 18:11, 19 19:21 21:11 22:23

24:2, 8 25:15, 21 27:13 28:18 29:17 30:20
main 22:13
Manor 6:25
MARKED 3:8 19:8
married 4:17
matter 5:10
matters 26:1
Meadowlark 4:24
mean 10:15 24:14 25:18 26:14
means 6:7
medical 23:24, 24 30:6, 8
medication 30:16
member 18:11, 22
Memorial 7:20 8:5 9:9, 12 11:20 25:19 28:18, 21
memory 7:6 12:18
mess 18:17
met 13:2
miles 5:3
Mindy 1:17 4:4
mislead 13:22
misrepresent 13:23
money 26:19, 20
month 8:5
months 25:23, 24
morning 8:18, 21
mother 11:10 28:4
Mountain 4:24 5:3

< N >

name 4:14 13:3, 5
nature 26:2
need 29:4
needed 12:25 26:19 29:14
negative 23:7
never 10:7 15:5 27:19 29:10
new 20:5
Newberry 5:3
nice 13:16
night 8:15, 20
nods 5:18
Notary 1:17 4:4

number 17:22, 24 18:4
nurse 9:20 30:12, 13, 14, 17
nursing 25:13 30:3 4

< O >

oath 6:2, 9, 23 7:9 29:5
object 11:16
objecting 11:18
Objection 8:11 11:13 12:5 13:25 14:23 15:3 22:25 24:5, 12 26:3 27:9
obligation 6:23
obviously 6:23 10:16 16:4
occurred 12:7
o'clock 8:19
October 1:14
office 21:11
Okay 4:16 5:12 7:3, 24 8:4, 13, 25 9:8, 17 13:1, 15 14:14 15:18 17:20 18:5, 25 19:17 21:10 23:18 25:24 26:6, 10, 13 27:17 28:17 30:6 31:11
once 24:25
OPERATIONAL 1:9, 24
opportunity 14:6 16:4 25:10
Original 3:18

< P >

p.m 1:15, 15
PAGE 3:3 19:10
pages 25:3
pain 10:20
paper 16:1
papers 8:24 9:1, 6 14:8, 13 15:22 21:1, 5 29:3
paperwork 7:21 8:9, 20 9:12 10:12, 22 11:20, 23 12:2

13:6 14:6 18:12
 22:6 24:3, 10, 23
 28:17 29:7
paragraph 23:19
parties 6:8
patient 25:16
pause 24:23
pay 21:4 26:19
pbuckner@ycrlaw.co
m 2:12
penalty 7:10
pending 1:19
people 27:6, 16
 30:20
percent 7:4
perjury 7:10
Perry 2:9
person 18:19 28:7,
 14
personal 26:1
phone 5:10 17:18
 18:3 30:23 31:5, 5
phrase 6:6
physically 10:19
picture 13:9
pile 14:13
PLACE 1:7, 23
 11:21 12:2, 15, 19,
 23 18:11, 19 19:21
 21:11 22:23 24:2, 8
 25:15, 21 27:13
 28:18 29:17 30:20
places 25:16 28:19
Plaintiff 1:4, 22 2:3,
 15 4:2
PLEAS 1:1, 20
pleasant 13:16
Pleasure 19:24
plus 25:14
pod 8:17, 19
portion 5:6
potentially 28:20
practitioner 30:12,
 14, 14
pregnant 13:13
prescribe 30:16
present 2:15 18:18,
 21, 22 21:7, 13, 15
presented 10:22
presume 11:5

prevented 15:15
 16:25
PREVIOUSLY 3:8
prior 21:16
probably 8:19 9:16
 23:7 25:1
process 12:15, 19
 13:24
produced 1:13 4:9
providing 23:25
Public 1:18 4:4
pull 31:5
purpose 14:20
put 20:5, 8, 11, 19
 23:13
putting 20:6

< Q >
qualify 7:6
question 5:13, 21, 22,
 22 7:15 11:17 17:3
 26:13 27:10 28:2,
 12
QUESTIONS 3:3
 4:12 8:12 11:15
 12:6 14:2, 24, 25
 15:4, 5 18:17 22:1
 23:2 24:7, 13 26:5
 27:11 29:23 31:13,
 14

< R >
read 14:10 15:8, 13
 16:1, 4, 19 23:19
 25:6, 7, 8
reading 15:15 16:25
realize 23:12
really 14:8 29:21
reason 8:23 13:22
 22:8, 13
recall 6:23 7:23
 12:3 20:12, 13
recalled 11:25
recalling 7:7
received 9:13
recollection 7:5
 12:18 17:7, 14
 18:16
record 5:9 27:19

records 9:8 18:3
 31:6
recovery 26:1
REFERENCED
 3:10
reflect 21:3
regarding 9:12
 11:19
relationship 11:6
remember 8:24 9:6
 12:9, 11, 14 15:18,
 20 17:11, 17, 19
 18:7 22:2 29:21, 22
 30:13 31:3, 3, 4, 10
reporter 3:18

REPRESENTATIVE
 3:12 23:22
represented 24:2, 8
require 5:6
residency 25:15
Resident 23:21
result 28:22
retained 3:18
Richland 7:20 8:4
 9:9, 12 11:20 25:18
 28:18, 21
right 5:2 6:7, 22
 7:19 10:13, 14
 11:18 13:7, 10
 14:21 15:8 16:12,
 19, 22 17:6, 9 18:8,
 9, 13, 14, 15 19:7, 22
 20:10 23:12 27:8
 28:25 29:24 31:1
River 1:16
Rivers 2:9
Road 4:24 26:20
room 6:8
rules 5:6 6:1

< S >
sat 5:5
saw 28:6, 13
saying 18:6, 7
says 4:10
scratch 18:16 20:4
see 12:25 29:15
 30:3 31:6

SERVICES 1:9, 11
 24, 25
seven 8:19 25:23, 24
shape 10:12 24:16
she'd 9:4
sheet 14:16
shoes 23:13
shorthand 4:4
sic 6:25
sign 14:17 16:10
 19:12, 16, 19 21:5
 22:20, 21, 24 23:5,
 24:3, 19 25:6 26:7
 18
signature 4:6 9:11
 19:10 20:2
signed 8:8 9:1
 15:9 20:1, 12, 15
 21:1, 8, 11 22:15
 24:25 26:8
signing 8:24 9:6
 12:2 15:22 28:19
 29:3
son 5:23 7:19 8:4
 9:1, 13 10:11 11:5
 22 13:24 15:23
 16:14 17:14 18:10
 19, 21 19:2, 8 21:1
 24:4, 10 25:12
 26:10, 18 27:1, 12,
 20, 24 28:3, 6, 14, 24
 29:6 30:3
son's 6:25 22:5, 15
 23:16 24:16
sorry 29:20
sort 27:23
sound 22:1
SOUTH 1:2, 7, 17,
 18, 21, 22 2:5, 11
 3:10
speak 30:3, 6, 9
speaking 30:13
specific 28:23
speculate 9:9
speculating 9:11
spiel 5:6
stack 14:8
staff 18:11 27:13
 30:4

Deposition of Wilda Boyd

start 25:20
STATE 1:2, 18, 21
statement 27:22
Stefan 2:4
stefan@akimlawfirm.com 2:6
Stevens 4:15, 16, 22
STIPULATED 4:1
stranger 22:4
Street 1:16 2:5, 10
stuff 9:3, 23 10:2, 3 15:25 16:1 25:7, 8
submitted 23:22
subpoenaed 9:8
sued 6:13
Suite 2:10
supplied 20:1
sure 7:4, 10 11:19 15:23 27:12 28:2
surgery 8:22, 23
sworn 1:13 4:9 6:2

< T >
take 5:8 14:6 16:13 25:13 29:14
taken 4:3
talk 5:14 6:2 18:6 22:3, 14 29:5
talked 9:5 17:15 29:6, 10 30:19
talking 6:18 17:17 31:3
tell 7:6 9:10 15:13 26:6 28:3 31:7
telling 15:25 18:10 28:22, 25 29:1
tells 11:18
tending 26:1
terms 30:18
terrible 9:7 28:2
testifies 18:25
testimony 6:9 8:5, 8, 13
Thank 4:20
THI 1:7, 22
thick 14:13
thing 17:10 22:4 27:23
things 5:7 10:23 14:7 26:2, 7 27:3

think 5:3, 3 7:24 10:21 13:13 19:25 20:6 22:8, 10 25:1 27:17 31:12
think's 9:11
THIRTEENTH 1:1, 20
thought 9:22 24:20
three 8:18 22:9
tickets 6:18
time 5:8 7:12 8:16 9:7, 7 10:9 11:16, 16, 21, 25 13:14 18:22 19:21 21:16 22:3, 12 25:14, 18 26:9 28:3, 6 29:16
times 21:21 22:9 31:4
today 5:6 7:11 13:9 17:24 22:14
told 8:21 9:2 12:1, 24 13:3 15:5 17:7 18:16 25:1 26:14 27:24 29:13, 14
town 12:22
traffic 6:18
transcribed 4:5
transcript 3:19
transferred 12:23
traumatic 10:17, 24
treatment 9:13
treatments 15:24
trip 19:24
true 23:25
trusted 27:3
trying 16:2 18:1 22:5 24:15 26:21, 25
two 25:16
typewriting 4:5

< U >
Uh-huh 4:18 5:16 8:7 10:18 13:11 19:3 20:3 22:17 30:24
uh-huhs 5:18
Uh-uh 29:18
uh-uhs 5:18
ultimately 8:25

understand 5:22 7:1 16:3 20:23 22:7
understanding 4:13 17:1
understood 7:7, 16
unfortunately 5:5
use 17:20, 24

< V >
Vacation 19:24
Verbal 5:18 17:11
verifies 23:22
verify 19:9
visited 21:19
Vislay 1:17 4:4
vs 1:5

< W >
waived 4:6
walked 13:12
want 5:8 7:10 11:19, 23 18:2, 12 20:10
wanted 16:7, 13 21:3
water 5:10
way 11:10 16:17 24:16 30:17
week 22:10
Well 5:5 6:22 7:24 8:16 10:16 13:9, 15 14:10, 19 18:1 26:17
went 8:17, 22 10:9, 9 13:2 14:5 19:21 22:9, 10
we're 5:4 6:7, 8 22:13 25:3
whatsoever 27:23 28:23
WILDA 1:13 4:8, 14
wishes 11:11
witness 4:6 11:14 14:1 23:1 24:6 26:4 27:10, 17, 22 29:21
witnessed 27:19

words 5:11 10:16 25:15
wrong 20:7, 9, 11

< Y >
y'all 4:23 11:8
Yeah 5:4 10:20 11:7, 9 13:19, 21 20:21 21:4 22:22 23:17 24:11 25:5 26:22 30:25
Young 2:9

WORD LIST

< 1 >

1 (4)
12 (1)
19 (1)
19th (1)

< 2 >

2 (3)
2016 (4)
2018 (1)
2018-CP-23-01934
(1)
22 (1)
24 (1)
25 (1)
29401 (1)
29403 (1)
29601 (1)

< 3 >

3:39 (1)
30th (5)
32 (1)
325 (1)
3rd (1)

< 4 >

4 (1)
4:10 (1)
400 (1)
418 (1)
4th (1)

< 8 >



< A >

ability (2)
able (1)
accident (6)
accusing (1)
acknowledges (1)
act (5)
administration (2)
ADMINISTRATIVE

(2)
ADMISSION (3)
admissions (14)
admitted (7)
Afterward (1)
age (1)
agree (5)
agreeable (3)
AGREED (1)
AGREEMENT (9)
agreements (1)
allow (1)
Anastopoulos (2)
Ann (2)
answer (9)
answered (1)
answers (3)
anybody (2)
appropriate (1)
ARBITRATION (5)
asked (1)
asking (1)
assume (2)
assuming (2)
attached (1)
attention (1)
attorney (1)
authority (10)
authorized (5)
aware (2)

< B >

back (6)
backtrack (1)
bank (5)
bank-related (1)
bankruptcy (1)
Barnett (1)
based (1)
bathroom (1)
beginning (1)
behalf (15)
believe (3)
best (5)
better (1)
bills (1)
Biloxi (2)
bother (1)
BOYD (10)

boyfriend (1)
breach (1)
break (2)
Buckner (16)
building (1)
Burt (11)
buy (2)

< C >

Calhoun (1)
call (5)
called (3)
calling (2)
car (3)
care (1)
CAROLINA (9)
Case (3)
caseworker (3)
caseworkers (4)
cashed (2)
cause (1)
cellphone (2)
certain (2)
certainly (4)
chance (1)
change (1)
changed (1)
charged (1)
Charleston (2)
check (3)
children (1)
CIRCUIT (2)
Clement (1)
CLINICAL (2)
clock (1)
close (1)
Coco (10)
collectively (1)
come (1)
COMMON (2)
complete (1)
completed (1)
concluded (1)
condition (2)
confirm (2)
confirmed (1)
Congratulations (1)
consider (1)
constitutes (1)

conversation (5)
conversations (1)
convicted (1)
copied (1)
copies (1)
correct (38)
counsel (2)
COUNTY (4)
couple (2)
course (1)
COURT (3)
crime (2)
crook (1)
current (1)
currently (1)

< D >

date (11)
daughter (3)
day (4)
days (1)
deal (1)
dealer (1)
dealing (1)
dealt (3)
decisions (1)
declared (1)
Defendants (5)
DEFENDANT'S (1)
delegated (1)
deposed (1)
deposes (1)
DEPOSITION (5)
deposition, (1)
derive (1)
describe (1)
DESCRIPTION (1)
determine (1)
diagnosis (1)
DIRECT (2)
director (2)
disabled (1)
discharged (1)
discuss (1)
dispute (1)
doctor (3)
document (3)
documents (8)
doing (2)

double (1)
 drink (1)

 < E >
 earlier (1)
 easier (1)
 easy (2)
 else's (1)
 enter (2)
 entirely (1)
 everybody (2)
 Evidently (1)
 exactly (1)
 EXAMINATION (1)
 examined (2)
 execute (3)
 executed (2)
 executing (2)
 EXHIBIT (7)
 EXHIBITS (2)
 explain (2)
 explaining (1)
 expressly (1)
 extent (1)

 < F >
 face (1)
 facility (3)
 FACILITY-RESIDE
 NT (1)
 fact (1)
 fair (6)
 fall (1)
 false (1)
 familiar (1)
 far (4)
 fault (2)
 Feidler (14)
 fiancé (1)
 figure (1)
 filed (1)
 finances (1)
 financial (2)
 finish (1)
 Firm (2)
 first (4)
 flipping (1)
 focused (1)
 forced (1)

forget (1)
 form (1)
 formal (1)
 four (1)
 free (1)
 front (1)
 full (1)
 FUNDAMENTAL
 (4)
 funny (1)

 < G >
 gas (1)
 gentleman (1)
 getting (1)
 give (9)
 given (1)
 giving (1)
 go (11)
 going (11)
 good (1)
 GREENVILLE (10)
 guess (2)

 < H >
 half (1)
 handled (1)
 happened (3)
 happenstance (1)
 hard (2)
 head (1)
 heard (1)
 help (1)
 helps (2)
 history (1)
 home (2)
 honest (2)
 hope (1)
 hospital (7)
 hospitalization (1)
 hours (2)
 hundred (1)

 < I >
 imagine (1)
 impaired (1)
 impression (3)
 incapacitated (1)
 inch (1)

including (3)
 independent (1)
 INDEX (1)
 indication (3)
 Inducement (1)
 information (4)
 informed (1)
 input (1)
 instance (1)
 interest (3)
 interested (1)
 issues (1)
 IV (1)

 < J >
 Jackie (4)
 Jackie's (2)
 Jamaica (1)
 JAMES (4)
 job (1)
 JR (3)
 judge (1)
 JUDICIAL (2)
 June (8)

 < K >
 keeping (1)
 kind (3)
 know (37)
 known (1)
 knows (2)

 < L >
 lacked (1)
 Law (2)
 lawful (1)
 lawsuit (1)
 lawyer (1)
 leave (1)
 Leola (2)
 Lexington (2)
 life (1)
 limitation (1)
 line (1)
 Little (2)
 live (1)
 LLC (6)
 LLP (1)
 long (3)

look (3)
 looks (1)
 lot (5)
 loud (1)
 love (1)
 lucky (1)

 < M >
 ma'am (3)
 MAGNOLIA (21)
 main (1)
 Manor (1)
 MARKED (2)
 married (1)
 matter (1)
 matters (1)
 Meadowlark (1)
 mean (4)
 means (1)
 medical (4)
 medication (1)
 member (2)
 Memorial (8)
 memory (2)
 mess (1)
 met (1)
 miles (1)
 Mindy (2)
 mislead (1)
 misrepresent (1)
 money (2)
 month (1)
 months (2)
 morning (2)
 mother (2)
 Mountain (2)

 < N >
 name (3)
 nature (1)
 need (1)
 needed (3)
 negative (1)
 never (4)
 new (1)
 Newberry (1)
 nice (1)
 night (2)
 nods (1)

Notary (2)
 number (3)
 nurse (5)
 nursing (3)

 < O >
 oath (5)
 object (1)
 objecting (1)
 Objection (11)
 obligation (1)
 obviously (3)
 occurred (1)
 o'clock (1)
 October (1)
 office (1)
 Okay (27)
 once (1)
 OPERATIONAL (2)
 opportunity (3)
 Original (1)

 < P >
 p.m (2)
 PAGE (2)
 pages (1)
 pain (1)
 paper (1)
 papers (9)
 paperwork (18)
 paragraph (1)
 parties (1)
 patient (1)
 pause (1)
 pay (2)
 pbuckner@ycrlaw.co
 m (1)
 penalty (1)
 pending (1)
 people (3)
 percent (1)
 perjury (1)
 Perry (1)
 person (3)
 personal (1)
 phone (6)
 phrase (1)
 physically (1)
 picture (1)

pile (1)
 PLACE (20)
 places (2)
 Plaintiff (5)
 PLEAS (2)
 pleasant (1)
 Pleasure (1)
 plus (1)
 pod (2)
 portion (1)
 potentially (1)
 practitioner (3)
 pregnant (1)
 prescribe (1)
 present (7)
 presented (1)
 presume (1)
 prevented (2)
 PREVIOUSLY (1)
 prior (1)
 probably (4)
 process (3)
 produced (2)
 providing (1)
 Public (2)
 pull (1)
 purpose (1)
 put (5)
 putting (1)

 < Q >
 qualify (1)
 question (11)
 QUESTIONS (20)

 < R >
 read (10)
 reading (2)
 realize (1)
 really (2)
 reason (4)
 recall (5)
 recalled (1)
 recalling (1)
 received (1)
 recollection (5)
 record (2)
 records (3)
 recovery (1)

REFERENCED (1)
 reflect (1)
 regarding (2)
 relationship (1)
 remember (19)
 reporter (1)

 REPRESENTATIVE
 (2)
 represented (2)
 require (1)
 residency (1)
 Resident (1)
 result (1)
 retained (1)
 Richland (8)
 right (29)
 River (1)
 Rivers (1)
 Road (2)
 room (1)
 rules (2)

 < S >
 sat (1)
 saw (2)
 saying (2)
 says (1)
 scratch (2)
 see (4)
 SERVICES (4)
 seven (3)
 shape (2)
 she'd (1)
 sheet (1)
 shoes (1)
 shorthand (1)
 sic (1)
 sign (16)
 signature (4)
 signed (12)
 signing (6)
 son (33)
 son's (5)
 sorry (1)
 sort (1)
 sound (1)
 SOUTH (9)
 speak (3)

speaking (1)
 specific (1)
 speculate (1)
 speculating (1)
 spiel (1)
 stack (1)
 staff (3)
 start (1)
 STATE (3)
 statement (1)
 Stefan (1)
 stefan@akimlawfirm.
 com (1)
 Stevens (3)
 STIPULATED (1)
 stranger (1)
 Street (3)
 stuff (8)
 submitted (1)
 subpoenaed (1)
 sued (1)
 Suite (1)
 supplied (1)
 sure (6)
 surgery (2)
 sworn (3)

 < T >
 take (5)
 taken (1)
 talk (6)
 talked (5)
 talking (3)
 tell (6)
 telling (5)
 tells (1)
 tending (1)
 terms (1)
 terrible (2)
 testifies (1)
 testimony (4)
 Thank (1)
 THI (2)
 thick (1)
 thing (3)
 things (6)
 think (12)
 think's (1)
 THIRTEENTH (2)

thought (2)
three (2)
tickets (1)
time (22)
times (3)
today (5)
told (13)
town (1)
traffic (1)
transcribed (1)
transcript (1)
transferred (1)
traumatic (2)
treatment (1)
treatments (1)
trip (1)
true (1)
trusted (1)
trying (6)
two (1)
typewriting (1)

< U >

Uh-huh (9)
uh-huhs (1)
Uh-uh (1)
uh-uhs (1)
ultimately (1)
understand (5)
understanding (2)
understood (2)
unfortunately (1)
use (2)

< V >

Vacation (1)
Verbal (2)
verifies (1)
verify (1)
visited (1)
Vislay (2)
vs (1)

< W >

waived (1)
walked (1)
want (7)
wanted (3)
water (1)

way (4)
week (1)
Well (11)
went (9)
we're (5)
whatsoever (2)
WILDA (3)
wishes (1)
witness (10)
witnessed (1)
words (3)
wrong (3)

< Y >

y'all (2)
Yeah (14)
Young (1)

Deposition of James Boyd, Jr.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES BOYD, JR.,
Plaintiff,

VS.

)
)
)
)
)
) Case No.
) 2018-CP-23-01934

THI OF SOUTH CAROLINA
AT MAGNOLIA PLACE AT
GREENVILLE, LLC;
FUNDAMENTAL CLINICAL
AND OPERATIONAL
SERVICES, LLC;
FUNDAMENTAL
ADMINISTRATIVE
SERVICES, LLC,

Defendants.

$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

DEPOSITION OF JAMES BOYD, JR., produced,
sworn and examined on the 19th day of October, 2018,
between the hours of 2:45 p.m. and 3:36 p.m., at the
Anastopoulo Law Firm, 418 River Street, Greenville,
South Carolina, 29601, before Mindy Vislay, a Notary
Public within and for the State of South Carolina, in
a certain cause now pending in the Court of Common
Pleas, Thirteenth Judicial Circuit, in the County of
Greenville, State of South Carolina, wherein JAMES
BOYD, JR., is Plaintiff and THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL
CLINICAL AND OPERATIONAL SERVICES, LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC, are Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Plaintiff:

Anastopoulo Law Firm
By: Stefan B. Feidler
32 Ann Street
Charleston, South Carolina 29403
843-614-8888
stefan@akimlawfirm.com

For the Defendants:

Young, Clement, Rivers, LLP
By: Perry M. Buckner, IV
25 Calhoun Street
Suite 400
Charleston, South Carolina 29401
843-720-5406
pbuckner@ycrlaw.com

Also present: Wilda Boyd

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

QUESTIONS BY:

PAGE NO.

MR. BUCKNER
MR. FEIDLER4
42

EXHIBITS

DEFENDANT'S

DESCRIPTION

PAGE MKD.

EXHIBIT 1

ADMISSION AGREEMENT - SOUTH
CAROLINA

34

EXHIBIT 2

FACILITY-RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

36

(Original exhibits were retained by the court
reporter and will be copied and attached to copies of
the transcript.)

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Mindy Vislay, a Notary Public, and
5 afterwards transcribed into typewriting; and the
6 signature of the witness is expressly waived.

7 * * * * *

8 JAMES BOYD, JR.,
9 of lawful age, produced, sworn and examined on behalf
10 of the Defendants, deposes and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. BUCKNER:

13 Q. Mr. Boyd, my name is Perry Buckner. We
14 just met briefly for the first time off the record,
15 and I am here today to ask you some questions about
16 your admission to a healthcare facility that I
17 represent in Greenville, South Carolina. Is that your
18 understanding as well?

19 A. Yes, sir.

20 Q. The rules of civil procedure in South
21 Carolina require me to go over some things with you
22 before we get started. Some sort of background kind
23 of stuff.

24 Have you ever given a deposition like you're doing
25 here today before?

1 A. Yes, I have.

2 Q. Okay. When did you do that?

3 A. When was that? The last time we came up
4 here, I think.

5 MR. FEIDLER: Mediation, I think.

6 MR. BUCKNER: Motor vehicle?

7 MR. FEIDLER: Mediation.

8 MR. BUCKNER: I gotcha. With Tom
9 Stevenson? Okay.

10 QUESTIONS BY MR. BUCKNER:

11 Q. Let me ask you the question a different
12 way. Have you ever been in a room where you were
13 under oath like you are now giving testimony?

14 A. No.

15 Q. Well, I'll be asking you questions, and
16 you'll have to give a verbal answer to my questions.
17 It will be pretty much like a conversation. The one
18 thing you need to be mindful of is to give -- it's
19 very common in ordinary conversation to go uh-huh and
20 uh-uh. I do that, too. But because she has a job to
21 take down everything we say, try to say yes, no and
22 all that kind of stuff.

23 If you want a break at any time you're entitled to
24 it. As long as I'm not in the middle of a question or
25 you're, like, in the middle of an answer you can take

1 a break and I'll accommodate you.

2 A. Okay.

3 Q. Also, if you don't understand a question
4 that I ask you, you can ask me to rephrase it, and I
5 will. I'm usually pretty slow and deliberate, but I'm
6 guilty of asking a confusing question all the time.
7 So just ask me and I'll clarify it.

8 Now that you've been sworn in, however, you cannot
9 talk with your lawyer about this case. You can talk
10 with him about anything else in the world you want to,
11 but you can't talk about the case with anybody now
12 that you're under oath.

13 Does that sound fair?

14 A. Yes.

15 Q. There you go. That's a good example of
16 what I was talking about. It is very normal to head
17 nod and say uh-huh, but you can't do that today.

18 A. Okay.

19 Q. And I'll try to help you along the way.
20 Also, if you answer a question that I ask you, I'm
21 going to assume, unless you've asked me to clarify,
22 that you understood my question. Is that fair?

23 A. Yes, sir.

24 Q. And I'm also going to assume that the
25 answers you give here today under oath will be the

1 same that you'll give if called to testify in court in
2 front of a judge. Is that fair?

3 A. Yes, sir.

4 Q. Okay. Tell me what your full name is,
5 please.

6 A. My full name is James Calvin Boyd, Jr.

7 Q. And when were you born?

8 A. [REDACTED].

9 Q. Okay. And where do you currently live?

10 A. [REDACTED]
11 [REDACTED].

12 Q. Is that in Newberry County?

13 A. Yes, sir.

14 Q. All right.

15 A. Oh, no. Lexington County. Lexington
16 County.

17 Q. Is part of Little Mountain in Newberry
18 County?

19 A. Part of Little Mountain is, but we live in
20 the Lexington County part of it.

21 Q. Do you ever go eat at Wise Bar-B-Q?

22 A. Cannons BBQ you mean?

23 Q. No. Wise is in --

24 MR. FEIDLER: Newberry.

25 MR. BUCKNER: Yeah. Do you know where --

1 it's good. It's only open like two days a week,
2 though.

3 QUESTIONS BY MR. BUCKNER:

4 Q. And were you born in Newberry County -- or
5 Lexington County?

6 A. Yes. Lexington.

7 Q. Where are you originally from, Little
8 Mountain?

9 A. I'm originally from Chapin.

10 Q. Okay. Near the lake?

11 A. No. I ain't too far from the lake, though.

12 Q. When did you leave Chapin and move to
13 Little Mountain?

14 A. Ten, 15 years ago. Something like that.

15 Q. And it's my understanding, and you correct
16 me if I'm wrong, that what led to your admission to
17 the nursing home was a motor vehicle accident?

18 A. Yes.

19 Q. Were you a pedestrian and were hit by a
20 motor vehicle?

21 A. Yes.

22 Q. And when did that occur?

23 A. June 16th, 2000 -- June 16th, 2000 -- I
24 mean June 3rd, 2016.

25 Q. Okay.

1 A. June 3rd.

2 Q. It's my understanding that you suffered
3 some injuries as a result of that, right?

4 A. Yes.

5 Q. And what happened to you?

6 A. Well, I was riding my bike, and I woke up
7 the next day and I was in the hospital, and I couldn't
8 move. And they told me I was paralyzed at first, but
9 then the nurse came to give me a bath, and I told her
10 I could feel it. And she's like, you can feel all
11 this? And I was like, yes. So she went back and told
12 the doctor, and he came back and told me that, well,
13 maybe I can -- I probably won't be able to walk like I
14 used to or whatever, but I can get some of my
15 functions back, it's just up to me and the Lord, I
16 guess.

17 Q. So you never suffered any -- and I use the
18 term because it's in the medical chart. You never had
19 any cognitive deficit, like you never lost any ability
20 to think or -- like that?

21 A. No.

22 Q. And that remains true today --

23 A. Yeah.

24 Q. -- from a mental standpoint you're still
25 the same baseline as it was before the accident?

1 A. Yes.

2 Q. Okay. And that would have been true when
3 you were admitted to the nursing home however many
4 weeks after this incident, right?

5 A. Yes.

6 Q. All right. Well, first, I'm thankful that
7 you're okay. I understand that we're not on the same
8 side of this lawsuit, but I've got a job to do,
9 obviously. I don't wish, you know, poorly of anyone.
10 I'm glad that things have at least improved from the
11 initial diagnosis or prognosis. So, that's good.

12 How long were you hospitalized after the accident?

13 A. A month.

14 Q. Okay. And the paperwork that I have shows
15 that you were admitted to Magnolia Manor of Greenville
16 on or around June 30th, 2016. Does that sound right?

17 A. June the 30th you said?

18 Q. That's what I have.

19 A. Somewhere up in there. June, July.
20 Somewhere up in there.

21 Q. Now, I see you, for the record, looking
22 over at your mother, which, again, is something normal
23 that you would do in conversation, but for purposes of
24 this conversation you can't do that.

25 A. All right.

1 Q. You can't look to someone else for an
2 answer. And I'm not trying to jump on you. I know
3 I'm asking fairly background stuff, but try not to do
4 that. For the record, Miss Wilda was not being
5 suggestive or anything untoward going on. I just want
6 it to be clear. And I know why you're doing it,
7 because you're just trying to look to her to see if
8 she remembers.

9 A. The reason I did that is because I wasn't
10 quite sure if it was in June or July, but it was in
11 that time frame. I was in the hospital at least about
12 a month.

13 Q. And as a result of the incident that
14 happened in early June of 2016 where you were struck
15 as a pedestrian did you lose some function with your
16 hands?

17 A. Did I lose some function with my hands? I
18 couldn't do nothing at first.

19 Q. Okay. And just so I know, because we
20 obviously did not know each other before that, before
21 June of 2016 when this incident occurred, did you have
22 any disabilities or health issues?

23 A. Before my accident? No.

24 Q. Okay. And what exactly -- after the
25 accident you underwent -- I assume suffered some

1 fractures?

2 A. Yeah.

3 Q. Tell me basically what the doctors told
4 you, after they figured out that you were not
5 paralyzed, what you actually suffered injury-wise.

6 A. I think it's C4 and C5, my spinal injury.

7 Q. What else?

8 A. That was pretty much it. They said that
9 the surgery was good and it was just left up to me and
10 how much therapy they give me or whatever I can do.

11 Q. So you had a fracture of those two
12 vertebrae, correct?

13 A. Uh-huh. Yes, sir. Yes, sir.

14 Q. You didn't have any broken legs or broken
15 arms?

16 A. No.

17 Q. And the surgery that you referenced was
18 solely to repair the fractured vertebrae, correct?

19 A. Yes.

20 Q. How was it that you came to be admitted to
21 Magnolia Manor of Greenville?

22 A. Well, they assigned me a caseworker while I
23 was at Richland Memorial, and they were trying to find
24 a nursing home for me to go in because I had the
25 spinal injury, and she was looking into a nursing home

1 that specified into the spinal injuries, and she came
2 up with Magnolia Place in Greenville.

3 Q. I'm sorry. I've been saying Magnolia Manor
4 of Greenville. What I meant is Magnolia Place --

5 A. Place. Yeah.

6 Q. -- of Greenville. There are two Magnolias
7 in Greenville, and I'm referring to Magnolia Place
8 when I said Magnolia Manor.

9 A. Well, I gotcha.

10 Q. And did you have a conversation with the
11 caseworker about Magnolia Place other than what you've
12 already described?

13 A. No.

14 Q. Okay. And at that time you were able to
15 make your own decisions, correct?

16 A. Yes.

17 Q. You didn't have a power of attorney or
18 conservator or guardian or anything like that,
19 correct?

20 A. No.

21 Q. All right. And you could make your needs
22 known?

23 A. Yes.

24 Q. And your mother, it's my understanding, was
25 assisting you with some matters, correct?

1 A. Yes.

2 Q. And obviously this was a life changing
3 injury. Is that fair?

4 A. Yes.

5 Q. And it was a traumatic time for you?

6 A. Yes.

7 Q. Okay. And did it cause stress on you and
8 your family?

9 A. Yes.

10 Q. Does it still today?

11 A. Yes.

12 Q. And because of that stress and that
13 pressure did it make sense to you at the time to have
14 your mother help you with certain matters pertaining
15 to the admission to the nursing home?

16 MR. FEIDLER: Objection. You can answer.

17 QUESTIONS BY MR. BUCKNER:

18 Q. There are going to be times today where
19 your lawyer objects to the form of the question. As
20 long as he doesn't instruct you not to answer you
21 still have to answer. And I know, again, it's one of
22 these things if someone talks over you in normal
23 conversation you would stop, but answer as if he did
24 not.

25 A. What was the question?

1 Q. I'm going to rephrase it for you. In light
2 of the stress and the pressure that was put on your
3 family by this injury did it appear appropriate for
4 you at the time in 2016 to allow your mother to take
5 care of certain matters regarding your admission to
6 the nursing home?

7 MR. FEIDLER: Same objection. You can
8 answer.

9 THE WITNESS: I have to answer?

10 QUESTIONS BY MR. BUCKNER:

11 Q. You do.

12 A. Okay. During that time? Yeah, I believe
13 my mom, it would have been appropriate for her to help
14 me in certain things. Certain things.

15 Q. Would one of those things have been getting
16 you admitted to Magnolia Place of Greenville?

17 A. I don't know about that, because the
18 caseworker was handling all that.

19 Q. You're talking about the Richland Memorial
20 caseworker?

21 A. Yes, sir.

22 Q. But, obviously, discharging from Richland
23 Memorial and going to Magnolia Place requires
24 paperwork and things of that nature to be
25 accomplished, right?

1 A. Uh-huh.

2 Q. And was your mother someone who was
3 delegated to take care of those items?

4 A. Not really. No.

5 Q. Okay. When you were admitted to Magnolia
6 Place of Greenville do you recall meeting with an
7 individual by the name of Leola Burt?

8 A. No, I don't.

9 Q. You don't remember Ms. Burt at all?

10 A. No, I don't.

11 Q. Do you remember someone by the first name
12 of Coco?

13 A. I do remember Coco.

14 Q. Coco and Leola are the same person.

15 A. Okay. Well, if they are the same person
16 then I know Coco.

17 Q. And you met Coco Burt at Magnolia Place?

18 A. Yeah, I have.

19 Q. And what is it that you know about
20 Ms. Burt?

21 A. Not a whole lot really, just that I think
22 she worked at like an intake or something like that,
23 but other than that I don't really know nothing about
24 her.

25 Q. When you say intake you mean admissions?

1 A. Yeah. Admissions.

2 Q. So you saw her during the admissions
3 process?

4 A. Not my admission process I didn't.

5 Q. Well, then how is it that you came to know
6 her and that she did admissions?

7 A. When I was in there. I mean, whenever I
8 was in there, I mean, she would come around sometimes
9 to people's rooms and say how are you doing and talk
10 to us.

11 Q. Did you ever meet her during the admissions
12 process?

13 A. Not that I recall.

14 Q. If Ms. Burt would testify that she did meet
15 you during the admission process would you assert that
16 she would be lying?

17 A. I would say yes because I don't remember
18 anything about --

19 Q. Well, I understand you may not remember,
20 and that's fair. It's been more than two-and-a-half
21 years.

22 A. Yeah, but --

23 Q. I'm asking if not only do you not remember,
24 but are you suggesting that you in fact did not meet
25 with her during the admissions process, or,

1 alternatively, you don't know?

2 A. I don't know.

3 Q. So it's fair to say that if Ms. Burt
4 testified that she recalls that, you wouldn't have any
5 memory or evidence --

6 A. No.

7 Q. -- to say that was false?

8 A. Let me rephrase that. Because I want to
9 get this right. When I got to Magnolia Place I didn't
10 talk to anybody about my admission. Nobody came to me
11 and asked me anything about my admission. All I knew
12 was I was there. And my caseworker handled all the
13 paperwork. Whatever happened in between, they never
14 came and asked me anything.

15 Q. When you say caseworker, at Richland
16 Memorial?

17 A. Uh-huh.

18 Q. Now, a Richland Memorial caseworker, they
19 can't sign you into a nursing home. You understand
20 that?

21 A. I know they can't sign me into a nursing
22 home. I don't know how that came to happen, but it
23 did. All I knew is that they came to my room and
24 shipped me from Richland Memorial to Greenville.

25 Q. Okay. And I've got -- and we can mark this

1 in a little bit -- both your admissions agreement,
2 arbitration agreement and the more general business
3 file that has to do with your admission to Magnolia
4 Place of Greenville, and I'll represent to you, and I
5 think you'll agree, that there's no document in there
6 that's signed by any Richland Memorial caseworker --

7 A. Okay. That's fine.

8 Q. -- correct?

9 A. That's correct, I guess.

10 Q. All right. You don't recall -- there was
11 no caseworker from Richland Memorial that was present
12 at Magnolia Place of Greenville?

13 A. No.

14 Q. And, so, when you said that they handled
15 your admission, you mean they made arrangements for
16 you to get there?

17 A. I guess.

18 Q. Okay. Now, I assume that throughout all of
19 this your mother has been someone who you trusted to
20 assist you, correct?

21 A. Yes.

22 Q. And that your mother is someone who has
23 effectuated and ensured that your wishes and desires
24 are met, correct?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: I can't answer that.

2 QUESTIONS BY MR. BUCKNER:

3 Q. Why not? Are you not answering it because
4 he's objecting?

5 A. No. I can't answer that because I don't
6 know the whole facts behind what her motivation was
7 for doing it. All I know is she loves me and she's my
8 son -- I'm her son, and that's it.

9 Q. And she has no ill will toward you,
10 correct?

11 A. No.

12 Q. And she would never do something against
13 your will, correct?

14 A. No.

15 Q. Okay. And did you object to being admitted
16 to Magnolia Place at any time yourself?

17 A. No. Because I was under the impression
18 that it was one of the best spinal injury nursing
19 homes in the state.

20 Q. And did you ever tell your mother or
21 anybody at Magnolia Place of Greenville that you did
22 not want to be there?

23 A. Yes. I told my mom I didn't want to be
24 there, and I also told a couple nurses,
25 administration. Josh. I forgot his last name. A

1 couple guys.

2 Q. I told you I was going to mess up some
3 questions. That was a poor question. Did you ever
4 tell anyone that before you were admitted to Magnolia
5 Place?

6 A. No.

7 Q. Do you remember what time of day it was
8 when you arrived at Magnolia Place in Greenville?

9 A. I want to say it was in the evening.
10 That's what I want to say, that it was sometime around
11 four or five, if I'm not mistaken.

12 Q. And what kind of medications were you on at
13 that time?

14 A. None that I know of. I mean, except for
15 what the doctors gave me when I was at Richland
16 Memorial, but I wasn't --

17 Q. I would imagine three or four weeks after a
18 significant spinal fracture you were on some type of
19 medication, sir.

20 MR. FEIDLER: Objection. You can answer
21 if --

22 QUESTIONS BY MR. BUCKNER:

23 Q. Is that the case?

24 A. Yeah. I had to be on something.

25 Q. Do you remember what you were on?

1 A. No. It had to be pain pills, though. Some
2 kind of pain pills. Something to keep my pain down.
3 But, to my knowledge, I don't recall them giving me
4 any medication, but I'm assuming that they had to, but
5 I don't remember them giving me medication.

6 Q. And just a couple things. I should have
7 asked you this in the beginning. Are you under any
8 medications today?

9 A. No.

10 Q. You're not on anything --

11 A. I mean yeah. I'm on my medication that my
12 family doctor put me on and some medication that
13 Magnolia had put me on.

14 Q. And what is that?

15 A. Baclofen. Tramadol. What else? I don't
16 know the rest of them. It's just quite a few.

17 Q. Any of those medications that you're
18 currently taking, would they affect your ability to
19 give accurate testimony today?

20 A. No.

21 Q. What is your sister's full name?

22 A. Jackie Annette Boyd.

23 Q. And what was her involvement, if any, with
24 your admission to Magnolia Place of Greenville?

25 A. Repeat the question.

1 Q. What was her involvement, if any, with your
2 admission process to Magnolia Place of Greenville?

3 A. None that I know of.

4 Q. Okay. Do you recall her being present the
5 day you were admitted?

6 A. No.

7 Q. And I want to going back to what you said
8 earlier. First you said you did not remember, but --
9 well, hold on. Let me finish my question. You said
10 you did not remember, and then later maybe amended
11 that somewhat possibly, but you have no recollection
12 of speaking with Leola "Coco" Burt on June 30th, 2016,
13 whatsoever?

14 A. On June what, 30th?

15 Q. Of 2016. The day you admitted to Magnolia
16 Place.

17 A. I have no recollection of that.

18 Q. Okay. Now, are you testifying under oath
19 that you in fact did not speak with her on June 30th,
20 2016, or is it just simply that you do not recall?

21 A. June 30th. I don't recall. I really
22 don't.

23 Q. And do you remember what room number you
24 were assigned to initially upon admission to Magnolia
25 Place?

1 A. Oh, my God. I've been in three different
2 rooms in that place. I started in -- I want to say I
3 was on the -- I want to say I was on blue wing, room
4 13 or something like that. I want to say that. I'm
5 not sure that's the right --

6 Q. You said blue wing?

7 A. I was on the blue hall.

8 Q. Room 113?

9 A. No. Just 13.

10 Q. I'm sorry. And if I walk in the front door
11 at Magnolia Place do I take a left?

12 A. You take a right.

13 Q. Okay. I take a right. And then how far do
14 I go down that hallway?

15 A. You go down that hall maybe -- probably
16 four doors down on the left and you're probably in my
17 room.

18 Q. And when you arrived at Magnolia Place of
19 Greenville on June 30th, 2016, was your mother or
20 sister present that day with you?

21 A. No.

22 Q. Were you transported by EMS to get there,
23 an ambulance?

24 A. Yes.

25 Q. And did anyone ride in the ambulance with

1 you besides the --

2 A. No.

3 Q. -- paramedic? Okay. That's another thing.
4 I'm not jumping on you, but let me finish my question.
5 You're a sharp enough guy to see where I'm going, and
6 it's very natural in conversation to jump ahead. We
7 would do it if we weren't on the record. But make
8 sure you let me finish my question before you answer,
9 again, for the purpose of building a record.

10 My understanding from your testimony is that no
11 one else was in the EMS besides the paramedic and
12 yourself; is that correct?

13 A. Yes.

14 Q. Did your mom and sister come to the
15 facility later that day, or you don't recall?

16 A. No.

17 Q. Okay. When you were admitted -- and you
18 had told me earlier that you presumedly blacked out or
19 have no memory of the incident that occurred in early
20 June of 2016, but you woke up the next day at the
21 hospital, correct?

22 A. Yes.

23 Q. And you were in the hospital for the better
24 part of a month after that, correct?

25 A. Yes.

1 Q. And at times when you were in the hospital,
2 including, you know, during those three to four weeks
3 and at discharge, I presume that paperwork had to be
4 completed at Richland Memorial, too, correct?

5 A. Repeat that question again.

6 Q. Yeah. When you were at Richland Memorial
7 for a month, and I know you obviously didn't, you
8 know, execute or sign any paperwork upon admission
9 because it sounds like you were not conscious,
10 however, I'm wondering if at any time while you were
11 there, you know, during your stay at Richland Memorial
12 up until when you were discharged to Magnolia Place of
13 Greenville, do you remember signing anything while you
14 were there?

15 A. I didn't sign anything while I was there.

16 Q. Do you recall your mother or your sister
17 signing anything on your behalf?

18 A. No.

19 Q. Do you believe that more likely than not
20 something was signed on your behalf by your mother?

21 A. I don't know.

22 Q. Did you ever communicate to anybody at
23 Richland Memorial, whether it be admission staff there
24 or a nurse or a physician, that your mother was in
25 charge of paperwork?

1 A. No.

2 Q. Okay. You don't recall or your answer is
3 no?

4 MR. FEIDLER: Objection. Asked and
5 answered.

6 THE WITNESS: No.

7 QUESTIONS BY MR. BUCKNER:

8 Q. You're saying that on any day you were at
9 Richland Memorial a statement like that never
10 happened?

11 MR. FEIDLER: Objection. Asked and
12 answered.

13 THE WITNESS: What was the question again?

14 QUESTIONS BY MR. BUCKNER:

15 Q. Sure. On any day that you were at Richland
16 Memorial you're testifying under oath that you never
17 told a staff member at Richland Memorial that your
18 mother was in charge of completing paperwork for you?

19 MR. FEIDLER: Objection. Asked and
20 answered. You can answer.

21 THE WITNESS: No, not that I can recall.
22 No.

23 QUESTIONS BY MR. BUCKNER:

24 Q. And your attorney's objecting, but that's
25 what I'm trying to pin down. I understand what you've

1 said so far, but what I want to know is that you're
2 telling me you don't recall or you're telling me that
3 you're 100 percent sure that that didn't happen?

4 MR. FEIDLER: Objection.

5 THE WITNESS: Nobody came and asked me do I
6 want my mom to sign anything or something like that?

7 QUESTIONS BY MR. BUCKNER:

8 Q. Well, not just that. I mean, obviously you
9 would agree with me that there was paperwork completed
10 for you to be admitted to Richland Memorial, right?

11 A. There had to be some kind of paperwork for
12 me to be there.

13 Q. Yeah. And you didn't do that paperwork?
14 We've already discussed that.

15 A. No.

16 Q. And do you presume that your mother did
17 that paperwork?

18 A. I presume she did.

19 Q. All right. And you didn't tell anybody at
20 Richland Memorial that she shouldn't have done that,
21 that was without my permission and I want to talk to
22 you guys about that, did you?

23 MR. FEIDLER: Objection.

24 THE WITNESS: Well, first of all, no one at
25 Richland Memorial hospital came and asked me or

1 explained to me about any kind of paperwork that she
2 may have been getting or that she may have signed. No
3 one ever came to me and said, well, this is what
4 you -- you or your mom need to sign this, this is what
5 it's for, this is what -- blah blah blah. Nobody ever
6 did that not once.

7 QUESTIONS BY MR. BUCKNER:

8 Q. Do you believe that -- and I think I'm
9 correct in saying that your mother's name is Wilda?

10 A. Uh-huh.

11 MR. BUCKNER: My grandmother's name is
12 Wilda.

13 MS. BOYD: Really?

14 QUESTIONS BY MR. BUCKNER:

15 Q. Did your mother Wilda Boyd have authority
16 to at least enter you and admit you to a nursing home
17 like Magnolia Place?

18 MR. FEIDLER: Objection.

19 THE WITNESS: Did she have authority?

20 QUESTIONS BY MR. BUCKNER:

21 Q. Yes, sir. Just to admit you.

22 MR. FEIDLER: Same objection. You can
23 answer.

24 THE WITNESS: I'm trying to get this right.
25 Did she have the authority to -- yeah.

1 QUESTIONS BY MR. BUCKNER:

2 Q. And did she have authority to execute all
3 paperwork necessary to admit you to the nursing home?

4 A. No.

5 Q. Okay. And what was it -- you told me she
6 had authority to admit you. What was it that she
7 didn't have authority to do in your eyes?

8 A. In my eyes, I mean, she had authority to me
9 because she's my mother, but, in my eyes, anything
10 like any medical things that I needed, she didn't have
11 authority for none of that.

12 Q. And why is that?

13 A. Because I'm a grown man and I want to know
14 what I need for myself before I let anybody do
15 anything for me. I was fully conscious. I had all my
16 right mind. I didn't see any reason for anybody to
17 have authority over my body like that if I couldn't --
18 unless I couldn't do it myself.

19 Q. And so you believe that your mother did
20 this wrongfully when she executed medical paperwork on
21 your behalf that admitted you to Magnolia Place of
22 Greenville?

23 MR. FEIDLER: Objection.

24 THE WITNESS: Repeat the question.

25 QUESTIONS BY MR. BUCKNER:

1 Q. Do you think your mother was wrong to do
2 what she did when she executed certain admission
3 paperwork to admit you to Magnolia Place in
4 Greenville?

5 A. Yeah. Uh-huh.

6 Q. Did you ever tell any staff member at
7 Magnolia Place of Greenville what you just said to my
8 previous question about how you wanted to look at
9 everything?

10 A. No. Because nobody ever came and asked me
11 about any papers, so I can't -- I mean, not to my
12 knowledge.

13 Q. Okay. I just want to make sure that --
14 because this is the only time I get to talk to you
15 about this whole deal. Right? Well, when I say whole
16 deal, I mean the arbitration issue. But you're not
17 testifying that there was a time that you looked at a
18 staff member at Magnolia Place and said I just want
19 you to know that my mother shouldn't be handling
20 admission paperwork, it should be me? You don't
21 remember anything like that? I understand you feel
22 that way now, but you didn't say that to any staff
23 member at Magnolia Place?

24 A. No.

25 Q. Okay. Tell me just generally -- I mean,

1 I'm with you here today, and I'm obviously observing
2 you, and I can imagine what kind of condition you were
3 in right after this accident happened, and I'm sure it
4 was rough.

5 A. It was.

6 Q. When you were admitted to Magnolia Place
7 what kind of shape were you in? Were you alert and
8 oriented?

9 A. Yes.

10 Q. All right. And you could hold a
11 conversation, correct?

12 A. Yes.

13 Q. And if you made a statement to a staff
14 member at Magnolia Place they could rely on it, right?

15 A. Yes.

16 Q. And they wouldn't -- you know, when they
17 were engaged with you -- and when I say they, I mean
18 that hypothetical staff member at Magnolia Place.
19 They wouldn't have any reason to suspect that you
20 weren't sound of mind or anything like that?

21 A. They had no reason to think that I wasn't
22 sane or whatever you want to call it. I had all my
23 senses.

24 Q. All right.

25 MR. BUCKNER: Can we go off the record real

1 quick?

2 MR. FEIDLER: Yeah.

3 (A short recess was taken.)

4 QUESTIONS BY MR. BUCKNER:

5 Q. Now, Mr. Boyd, you don't have any reason to
6 believe that your mother would have misled Magnolia
7 Place's staff, do you?

8 A. No.

9 Q. All right. And if she, you know, made
10 representations that she was authorized to admit you
11 and execute certain paperwork, you're not testifying
12 that she was misleading the staff, are you?

13 A. Repeat the question --

14 Q. If she --

15 A. -- in a different way.

16 Q. Yes. If your mother made representations
17 about her authority to Magnolia Place's staff, you
18 don't believe that she was misleading them, do you?

19 A. In what way? Like what? I mean --

20 Q. Well, misleading them about the nature of
21 her authority to execute the paperwork.

22 A. Do I think she was misleading them?

23 Q. Yes, sir.

24 A. No.

25 Q. Okay.

1 MR. BUCKNER: And let's go ahead and mark
2 this as Exhibit 1.

3 (Defendant's Exhibit No. 1 was then marked
4 for identification by the reporter.)

5 QUESTIONS BY MR. BUCKNER:

6 Q. What Madam Court Reporter is marking as
7 Exhibit 1 is an admission agreement pertaining to your
8 admission on June 30th, 2016, to Magnolia Place of
9 Greenville. And have you ever seen this agreement
10 before?

11 A. No.

12 Q. Even in preparing for today's deposition
13 you didn't see that agreement?

14 A. No.

15 Q. What did you do to prepare for today's
16 deposition?

17 MR. FEIDLER: I'll object to --

18 THE WITNESS: Nothing.

19 MR. FEIDLER: -- the extent it gets into
20 attorney/client privilege.

21 MR. BUCKNER: Fair enough.

22 QUESTIONS BY MR. BUCKNER:

23 Q. I don't want to know what you talked about
24 with Mr. Feidler, but if you looked at any document --

25 A. No, I ain't seen any documents.

1 Q. Did you talk with Mr. Feidler in
2 preparation for today?

3 A. No.

4 Q. You haven't had any conversation with him
5 about this case -- excuse me -- about this deposition?

6 MR. FEIDLER: I'm Mr. Feidler.

7 THE WITNESS: Who?

8 MR. FEIDLER: I'm Mr. Feidler.

9 THE WITNESS: Oh, yeah.

10 QUESTIONS BY MR. BUCKNER:

11 Q. You did talk with him?

12 A. Yeah.

13 MR. FEIDLER: We're on a first name basis.

14 QUESTIONS BY MR. BUCKNER:

15 Q. And if you go to the last page, page 12 --
16 and I'm trying to be quick so that we can move
17 along -- that is your mother's signature, correct?

18 A. I wouldn't know. I mean --

19 Q. You're not suggesting that it's not hers?

20 A. Again, I'm gonna say again I wouldn't know
21 because I --

22 Q. Yeah. And that's fine. I just want to
23 make sure that you're not testifying that that is not
24 her signature.

25 A. No, I'm not testifying that it's not.

1 Q. You don't know one way or the other?

2 A. I don't know.

3 Q. Fair enough.

4 MR. BUCKNER: Let's mark this as Exhibit 2.

5 (Defendant's Exhibit No. 2 was then marked
6 for identification by the reporter.)

7 QUESTIONS BY MR. BUCKNER:

8 Q. Mr. Boyd, this is the arbitration
9 agreement. And the same question as the last
10 signature page that we talked about. Wilda Ann Boyd's
11 signature is at the bottom, which I have presumed is
12 the signature of your mother. Is that in fact her
13 signature, or you don't know one way or the other?

14 A. I don't know one way or the other.

15 Q. Fair enough. But, again, same question as
16 the last document, you are not testifying that that is
17 not her signature?

18 A. I'm not saying that it is, because I don't
19 know.

20 Q. Fair enough. Now, you testified earlier
21 that you did agree that your mother had authority to
22 admit you to the nursing home, but you took issue with
23 certain documents that -- you've taken issue currently
24 with certain documents that were executed on your
25 behalf. Can you tell me which documents, if any, your

1 mother did not have authority to sign on your behalf?

2 A. Really, she didn't have no authority to
3 sign any papers on my behalf because I never gave her
4 authority to sign any papers on my behalf.

5 Q. Okay. You and your mother never had any
6 conversation where you discussed her looking after you
7 and taking care of you and signing paperwork because
8 you weren't in the condition to do that kind of thing?

9 MR. FEIDLER: Objection. You can answer.

10 THE WITNESS: Say that -- repeat the
11 question.

12 QUESTIONS BY MR. BUCKNER:

13 Q. You and your mother Ms. Boyd who is at the
14 end of the table never had any conversation about her
15 taking care of things and doing paperwork on your
16 behalf and looking after you so that you didn't have
17 to do it because you'd had what I would imagine would
18 be a pretty traumatic accident?

19 MR. FEIDLER: Same objection.

20 THE WITNESS: What I do recall is my mom
21 saying to me that the people up there want her to come
22 sign some papers on my behalf, you know, but what
23 papers I don't know because they never explained to me
24 what she was gonna be signing or none of that.

25 QUESTIONS BY MR. BUCKNER:

1 Q. When you say up there, you're talking about
2 Magnolia Place?

3 A. Magnolia Place.

4 Q. When your mother said that, that she was
5 going to be signing some paperwork on your behalf, did
6 you say to your mother no, no, no, wait, wait, wait,
7 don't do that, I don't want you to sign that, and you
8 don't have authority, or anything like that?

9 A. No. I never knew what papers that was
10 being signed, whether it was admission papers to be
11 admitted to Magnolia Place or what. They never asked
12 me.

13 Q. Well, did you ask your mother to clarify?
14 What are you talking about, mom? Tell me what you
15 mean when you say that you have to sign some
16 paperwork. Did you ask her anything like that?

17 A. No. Because -- no.

18 Q. Okay. And, again, I want to make sure the
19 record's clear. When she informed you that she was
20 going to sign the admission paperwork for Magnolia
21 Place of Greenville on your behalf you did not tell
22 her not to do that?

23 A. I did not tell her not to do it. I didn't
24 tell her to do it. I didn't tell her not to do it.

25 Q. But she did say she was going to do it?

1 A. She said they wanted her to come sign some
2 papers. They never got back to me. She never came
3 back to me. Nobody never came back and said anything,
4 so I don't know if she signed any papers or not.

5 Q. And do you have any reason to believe that
6 your mother would sign something on your behalf that
7 wasn't in your best interest?

8 A. I don't think she would sign nothing that
9 wasn't in my best interest, no.

10 Q. At any time -- and I know that we've talked
11 about the conversation where she said -- do you
12 remember where you were, by the way, when that
13 conversation happened? Were you on the phone or in
14 person with your mom?

15 A. What conversation?

16 Q. The conversation where she said I'm going
17 to sign some admission papers.

18 A. I was in my room laying in my bed.

19 Q. At Magnolia Place?

20 A. At Magnolia Place.

21 Q. And she was on the phone?

22 A. Who was on the phone?

23 Q. Your mother.

24 A. No.

25 Q. She was there in person?

1 A. In person.

2 Q. Was Ms. Burt there?

3 A. Coco?

4 Q. Coco. I'm sorry.

5 A. I'm not sure if she was there that day or
6 not.

7 Q. Okay.

8 A. I'm not sure if she was there that day or
9 not.

10 Q. And is that day more likely than not that
11 we're talking about the day you were admitted since
12 we're talking about admission paperwork?

13 A. Not the day I was admitted. It was
14 probably a day or two later or something like that
15 when she finally got a chance to come up there.

16 Q. At any time after whenever that
17 conversation with your mother took place about the
18 admission paperwork did you and your mother have a
19 conversation about what had been signed?

20 A. No.

21 Q. Okay. Did you ever have any conversation
22 with Coco about what had been signed?

23 A. No.

24 Q. And, again, I'm talking about after the
25 fact.

1 A. Yeah.

2 Q. You don't remember or you didn't have one,
3 a conversation with Coco after your mother had signed
4 the paperwork?

5 MR. FEIDLER: Objection. Asked and
6 answered.

7 THE WITNESS: Repeat the question.

8 QUESTIONS BY MR. BUCKNER:

9 Q. Yeah. Are you testifying that you don't
10 remember a conversation with Coco after the admission
11 paperwork was executed or are you testifying that a
12 conversation with Coco after the admission paperwork
13 did not happen?

14 MR. FEIDLER: Same objection.

15 THE WITNESS: I can't answer that question
16 because I don't know when the paper was signed, and I
17 never talked to Coco about any papers that --

18 QUESTIONS BY MR. BUCKNER:

19 Q. After?

20 A. After. I never talked to Coco about any
21 paper pertaining to me being at Magnolia Place.

22 Q. Afterward?

23 A. After I got there.

24 Q. Okay.

25 MR. BUCKNER: Can we go off the record?

1 (A short recess was taken.)

2 QUESTIONS BY MR. BUCKNER:

3 Q. Mr. Boyd, going back on the record, we
4 talked a little bit earlier about some medical
5 paperwork and admissions. Regarding like financial
6 stuff like, you know, who would be handling your money
7 and things of that nature while you were in the
8 nursing home, do you remember whether any paperwork
9 regarding that issue was executed by your mother?

10 A. No.

11 Q. All right. And I understood your testimony
12 earlier about your mother's execution of admission
13 paperwork. Do you believe that she had authority to
14 execute any financial authorizations on your behalf?

15 A. No.

16 Q. Okay. I don't think I have any further
17 questions, but I'm going to think about it a little
18 bit longer. Thank you for your time. I appreciate
19 it.

20 A. Okay.

21 MR. FEIDLER: My go?

22 MR. BUCKNER: Your go.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. FEIDLER:

25 Q. Mr. Boyd, were you competent June 30th,

1 2016, when you were admitted into Magnolia?

2 A. Say again.

3 Q. Were you competent when you were admitted
4 into Magnolia Place on June 30th, 2016?

5 A. When you say competent, what do you mean?

6 Q. Were you able to make your own decisions?

7 A. Yes, I was.

8 Q. Did you, on June 30th, 2016, ever represent
9 to your mother that she could sign paperwork for you?

10 A. No.

11 Q. Did you, on June 30th, 2016, ever represent
12 to any employee of Magnolia Place that your mother
13 could sign paperwork for you?

14 MR. BUCKNER: Object to the form of the
15 question.

16 QUESTIONS BY MR. FEIDLER:

17 Q. You can answer.

18 A. Repeat the question.

19 Q. On June 30th, 2016, did you represent to
20 any employee at Magnolia that your mother could sign
21 paperwork on your behalf?

22 MR. BUCKNER: Object to the form --

23 THE WITNESS: No.

24 MR. BUCKNER: -- and asked and answered.

25 QUESTIONS BY MR. FEIDLER:

1 Q. Mr. Boyd, Exhibit 2 --

2 MR. BUCKNER: Was there an answer?

3 MR. FEIDLER: He said no.

4 THE WITNESS: I said no.

5 QUESTIONS BY MR. FEIDLER:

6 Q. Exhibit 2 appears to be the arbitration
7 agreement. Can you confirm that?

8 A. It's the arbitration agreement?

9 Q. Yes.

10 A. Yeah.

11 Q. Have you ever seen this arbitration
12 agreement?

13 A. No.

14 Q. Did anyone from Magnolia Place bring this
15 to you?

16 A. No.

17 Q. If someone at Magnolia Place came up to you
18 and said that your mother on your behalf was signing
19 this arbitration agreement and taking away your
20 constitutional right to a jury trial, would you agree
21 to that?

22 MR. BUCKNER: Objection to form. Leading.

23 THE WITNESS: No.

24 QUESTIONS BY MR. FEIDLER:

25 Q. And I believe you said you don't remember,

1 but do you remember any employee of Magnolia coming to
2 you, whether on June 30th, 2016, and asking if your
3 mother can sign paperwork on your behalf?

4 A. No.

5 MR. BUCKNER: Object to the form. What was
6 the answer?

7 THE WITNESS: No.

8 MR. FEIDLER: No.

9 QUESTIONS BY MR. FEIDLER:

10 Q. And when your mother did sign this
11 paperwork, was she in the room with you when she was
12 signing this paperwork?

13 A. No.

14 Q. Did anybody ask you if it was okay that
15 your mother sign this paperwork on your behalf?

16 MR. BUCKNER: Object to the form.

17 THE WITNESS: No.

18 MR. FEIDLER: I don't think I have any
19 further questions.

20 MR. BUCKNER: I don't have any further
21 questions.

22 (Wherein, the deposition was concluded.)
23
24
25

WORD INDEX

< 1 >

1 3:11 34:2, 3, 7
 100 28:3
 113 24:8
 12 35:15
 13 24:4, 9
 15 8:14
 16th 8:23, 23
 18th 7:8
 1965 7:8
 19th 1:14

< 2 >

2 3:12 36:4, 5 44:1, 6
 2:45 1:15
 2000 8:23, 23
 2016 8:24 10:16
 11:14, 21 15:4
 23:12, 15, 20 24:19
 25:20 34:8 43:1, 4, 8, 11, 19 45:2
 2018 1:14
 2018-CP-23-01934 1:6
 25 2:10
 29401 2:11
 29403 2:5
 29601 1:17

< 3 >

3:36 1:15
 30th 10:16, 17
 23:12, 14, 19, 21
 24:19 34:8 42:25
 43:4, 8, 11, 19 45:2
 32 2:5
 325 7:10
 34 3:11
 36 3:12
 3rd 8:24 9:1

< 4 >

4 3:4
 400 2:10
 418 1:16
 42 3:4

< 8 >

843-614-8888 2:6
 843-720-5406 2:11

< A >

ability 9:19 22:18
 able 9:13 13:14
 43:6
 accident 8:17 9:25
 10:12 11:23, 25
 32:3 37:18
 accommodate 6:1
 accomplished 15:25
 accurate 22:19
 administration 20:25
 ADMINISTRATIVE 1:10, 25
 ADMISSION 3:11
 4:16 8:16 14:15
 15:5 17:4, 15 18:10,
 11 19:3, 15 22:24
 23:2, 24 26:8, 23
 31:2, 20 34:7, 8
 38:10, 20 39:17
 40:12, 18 41:10, 12
 42:12
 admissions 16:25
 17:1, 2, 6, 11, 25
 19:1 42:5
 admit 29:16, 21
 30:3, 6 31:3 33:10
 36:22
 admitted 10:3, 15
 12:20 15:16 16:5
 20:15 21:4 23:5, 15
 25:17 28:10 30:21
 32:6 38:11 40:11,
 13 43:1, 3
 affect 22:18
 Afterward 41:22
 age 4:9
 ago 8:14
 agree 19:5 28:9
 36:21 44:20
 AGREED 4:1
 AGREEMENT 3:11,
 12 19:1, 2 34:7, 9,
 13 36:9 44:7, 8, 12,

19

ahead 25:6 34:1
 ain't 8:11 34:25
 alert 32:7
 allow 15:4
 alternatively 18:1
 ambulance 24:23, 25
 amended 23:10
 Anastopoulo 1:16
 2:4
 Ann 2:5 36:10
 Annette 22:22
 answer 5:16, 25
 6:20 11:2 14:16, 20,
 21, 23 15:8, 9 19:25
 20:1, 5 21:20 25:8
 27:2, 20 29:23 37:9
 41:15 43:17 44:2
 45:6
 answered 27:5, 12,
 20 41:6 43:24
 answering 20:3
 answers 6:25
 anybody 6:11
 18:10 20:21 26:22
 28:19 30:14, 16
 45:14
 appear 15:3
 appears 44:6
 appreciate 42:18
 appropriate 15:3, 13
 ARBITRATION 3:12 19:2 31:16
 36:8 44:6, 8, 11, 19
 arms 12:15
 arrangements 19:15
 arrived 21:8 24:18
 asked 6:21 18:11,
 14 22:7 27:4, 11, 19
 28:5, 25 31:10
 38:11 41:5 43:24
 asking 5:15 6:6
 11:3 17:23 45:2
 assert 17:15
 assigned 12:22
 23:24
 assist 19:20
 assisting 13:25
 assume 6:21, 24

11:25 19:18

assuming 22:4
 attached 3:16
 attorney 13:17
 34:20
 attorney's 27:24
 authority 29:15, 19,
 25 30:2, 6, 7, 8, 11,
 17 33:17, 21 36:21
 37:1, 2, 4 38:8
 42:13
 authorizations 42:14
 authorized 33:10

< B >

back 9:11, 12, 15
 23:7 39:2, 3, 3 42:5
 background 4:22
 11:3
 Baclofen 22:15
 Bar-B-Q 7:21
 baseline 9:25
 basically 12:3
 basis 35:13
 bath 9:9
 BBQ 7:22
 bed 39:18
 beginning 22:7
 behalf 4:9 26:17,
 20 30:21 36:25
 37:1, 3, 4, 16, 22
 38:5, 21 39:6 42:15
 43:21 44:18 45:3,
 15
 believe 15:12 26:15
 29:8 30:19 33:6, 18
 39:5 42:13 44:25
 best 20:18 39:7, 9
 better 25:23
 bike 9:6
 bit 19:1 42:4, 18
 blacked 25:18
 blah 29:5, 5, 5
 blue 24:3, 6, 7
 body 30:17
 born 7:7 8:4
 bottom 36:11
 BOYD 1:2, 13, 22
 2:15 4:8, 13 7:6
 22:22 29:13, 15

33:5 36:8 37:13
42:3, 25 44:1
Boyd's 36:10
break 5:23 6:1
briefly 4:14
bring 44:14
broken 12:14, 14
Buckner 2:9 3:4
4:12, 13 5:6, 8, 10
7:25 8:3 14:17
15:10 20:2 21:22
27:7, 14, 23 28:7
29:7, 11, 14, 20 30:1,
25 32:25 33:4 34:1,
5, 21, 22 35:10, 14
36:4, 7 37:12, 25
41:8, 18, 25 42:2, 22
43:14, 22, 24 44:2,
22 45:5, 16, 20
building 25:9
Burt 16:7, 9, 17, 20
17:14 18:3 23:12
40:2
business 19:2

< C >
C4 12:6
C5 12:6
Calhoun 2:10
call 32:22
called 7:1
Calvin 7:6
Cannons 7:22
care 15:5 16:3
37:7, 15
CAROLINA 1:2, 7,
17, 18, 21, 22 2:5, 11
3:11 4:17, 21 7:11
Case 1:5 6:9, 11
21:23 35:5
caseworker 12:22
13:11 15:18, 20
18:12, 15, 18 19:6,
11
cause 1:19 14:7
certain 1:19 14:14
15:5, 14, 14 31:2
33:11 36:23, 24
chance 40:15

changing 14:2
Chapin 8:9, 12
charge 26:25 27:18
Charleston 2:5, 11
chart 9:18
CIRCUIT 1:1, 20
civil 4:20
clarify 6:7, 21 38:13
clear 11:6 38:19
Clement 2:9
client 34:20
CLINICAL 1:8, 24
Coco 16:12, 13, 14,
16, 17 23:12 40:3, 4,
22 41:3, 10, 12, 17,
20
cognitive 9:19
come 17:8 25:14
37:21 39:1 40:15
coming 45:1
COMMON 1:1, 19
5:19
communicate 26:22
competent 42:25
43:3, 5
completed 26:4
28:9
completing 27:18
concluded 45:22
condition 32:2 37:8
confirm 44:7
confusing 6:6
conscious 26:9
30:15
conservator 13:18
constitutional 44:20
conversation 5:17,
19 10:23, 24 13:10
14:23 25:6 32:11
35:4 37:6, 14 39:11,
13, 15, 16 40:17, 19,
21 41:3, 10, 12
copied 3:16
copies 3:16
correct 8:15 12:12,
18 13:15, 19, 25
19:8, 9, 20, 24 20:10,
13 25:12, 21, 24
26:4 29:9 32:11

35:17
counsel 4:2, 2
COUNTY 1:2, 20
7:12, 15, 16, 18, 20
8:4, 5
couple 20:24 21:1
22:6
COURT 1:1, 19
3:16 7:1 34:6
**CROSS-EXAMINAT
ION** 42:23
currently 7:9 22:18
36:23

< D >
day 1:14 9:7 21:7
23:5, 15 24:20
25:15, 20 27:8, 15
40:5, 8, 10, 11, 13, 14
days 8:1
deal 31:15, 16
decisions 13:15 43:6
Defendants 1:12, 25
2:8 4:3, 10
DEFENDANT'S
3:10 34:3 36:5
deficit 9:19
delegated 16:3
deliberate 6:5
deposes 4:10
DEPOSITION 1:13
4:3, 24 34:12, 16
35:5 45:22
described 13:12
DESCRIPTION
3:10
desires 19:23
diagnosis 10:11
different 5:11 24:1
33:15
DIRECT 4:11
disabilities 11:22
discharge 26:3
discharged 26:12
discharging 15:22
discussed 28:14
37:6
doctor 9:12 22:12
doctors 12:3 21:15

document 19:5
34:24 36:16
documents 34:25
36:23, 24, 25
doing 4:24 11:6
17:9 20:7 37:15
door 24:10
doors 24:16

< E >
earlier 23:8 25:18
36:20 42:4, 12
early 11:14 25:19
eat 7:21
effectuated 19:23
employee 43:12, 20
45:1
EMS 24:22 25:11
engaged 32:17
ensured 19:23
enter 29:16
entitled 5:23
evening 21:9
evidence 18:5
exactly 11:24
EXAMINATION
4:11
examined 1:14 4:9
example 6:15
excuse 35:5
execute 26:8 30:2
33:11, 21 42:14
executed 30:20
31:2 36:24 41:11
42:9
execution 42:12
EXHIBIT 3:11, 12
34:2, 3, 7 36:4, 5
44:1, 6
EXHIBITS 3:8, 16
explained 29:1
37:23
expressly 4:6
extent 34:19
eyes 30:7, 8, 9

< F >
facility 4:16 25:15
**FACILITY-RESIDE
NT** 3:12

fact 17:24 23:19
 36:12 40:25
facts 20:6
fair 6:13, 22 7:2
 14:3 17:20 18:3
 34:21 36:3, 15, 20
fairly 11:3
false 18:7
family 14:8 15:3
 22:12
far 8:11 24:13 28:1
feel 9:10, 10 31:21
Feidler 2:4 3:4 5:5,
 7 7:24 14:16 15:7
 19:25 21:20 27:4,
 11, 19 28:4, 23
 29:18, 22 30:23
 33:2 34:17, 19, 24
 35:1, 6, 6, 8, 8, 13
 37:9, 19 41:5, 14
 42:21, 24 43:16, 25
 44:3, 5, 24 45:8, 9,
 18
figured 12:4
file 19:3
finally 40:15
financial 42:5, 14
find 12:23
fine 19:7 35:22
finish 23:9 25:4, 8
Firm 1:16 2:4
first 4:14 9:8 10:6
 11:18 16:11 23:8
 28:24 35:13
five 21:11
forgot 20:25
form 14:19 43:14,
 22 44:22 45:5, 16
four 21:11, 17
 24:16 26:2
fracture 12:11
 21:18
fractured 12:18
fractures 12:1
frame 11:11
front 7:2 24:10
full 7:4, 6 22:21
fully 30:15
function 11:15, 17
functions 9:15

FUNDAMENTAL
 1:8, 10, 23, 24
further 42:16 45:19,
 20
 < G >
general 19:2
generally 31:25
getting 15:15 29:2
give 5:16, 18 6:25
 7:1 9:9 12:10
 22:19
given 4:24
giving 5:13 22:3, 5
glad 10:10
go 4:21 5:19 6:15
 7:21 12:24 24:14,
 15 32:25 34:1
 35:15 41:25 42:21,
 22
God 24:1
going 6:21, 24 11:5
 14:18 15:1, 23 21:2
 23:7 25:5 38:5, 20,
 25 39:16 42:3, 17
gonna 35:20 37:24
good 6:15 8:1
 10:11 12:9
gotcha 5:8 13:9
grandmother's 29:11
GREENVILLE 1:2,
 8, 16, 21, 23 4:17
 10:15 12:21 13:2, 4,
 6, 7 15:16 16:6
 18:24 19:4, 12
 20:21 21:8 22:24
 23:2 24:19 26:13
 30:22 31:4, 7 34:9
 38:21
grown 30:13
guardian 13:18
guess 9:16 19:9, 17
guilty 6:6
guy 25:5
guys 21:1 28:22
 < H >
hall 24:7, 15
hallway 24:14

handled 18:12
 19:14
handling 15:18
 31:19 42:6
hands 11:16, 17
happen 18:22 28:3
 41:13
happened 9:5
 11:14 18:13 27:10
 32:3 39:13
head 6:16
health 11:22
healthcare 4:16
help 6:19 14:14
 15:13
hit 8:19
hold 23:9 32:10
home 8:17 10:3
 12:24, 25 14:15
 15:6 18:19, 22
 29:16 30:3 36:22
 42:8
homes 20:19
hospital 9:7 11:11
 25:21, 23 26:1
 28:25
hospitalized 10:12
hours 1:15
hypothetical 32:18
 < I >
identification 34:4
 36:6
ill 20:9
imagine 21:17 32:2
 37:17
impression 20:17
improved 10:10
incident 10:4 11:13,
 21 25:19
including 26:2
INDEX 3:1
individual 16:7
informed 38:19
initial 10:11
initially 23:24
injuries 9:3 13:1
injury 12:6, 25
 14:3 15:3 20:18

injury-wise 12:5
instruct 14:20
intake 16:22, 25
interest 39:7, 9
involvement 22:23
 23:1
issue 31:16 36:22,
 23 42:9
issues 11:22
items 16:3
IV 2:9
 < J >
Jackie 22:22
JAMES 1:2, 13, 21
 4:8 7:6
job 5:20 10:8
Josh 20:25
JR 1:2, 13, 22 4:8
 7:6
judge 7:2
JUDICIAL 1:1, 20
July 7:8 10:19
 11:10
jump 11:2 25:6
jumping 25:4
June 8:23, 23, 24
 9:1 10:16, 17, 19
 11:10, 14, 21 23:12
 14, 19, 21 24:19
 25:20 34:8 42:25
 43:4, 8, 11, 19 45:2
jury 44:20
 < K >
keep 22:2
kind 4:22 5:22
 21:12 22:2 28:11
 29:1 32:2, 7 37:8
knew 18:11, 23 38:9
know 7:25 10:9
 11:2, 6, 19, 20 14:21
 15:17 16:16, 19, 23
 17:5 18:1, 2, 21, 22
 20:6, 7 21:14 22:16
 23:3 26:2, 7, 8, 11,
 21 28:1 30:13
 31:19 32:16 33:9
 34:23 35:18, 20
 36:1, 2, 13, 14, 19

37:22, 23 39:4, 10
41:16 42:6
knowledge 22:3
31:12
known 13:22

< L >
lake 8:10, 11
Law 1:16 2:4
lawful 4:9
lawsuit 10:8
lawyer 6:9 14:19
laying 39:18
Leading 44:22
leave 8:12
led 8:16
left 12:9 24:11, 16
legs 12:14
Leola 16:7, 14
23:12
Lexington 7:15, 15,
20 8:5, 6
life 14:2
light 15:1
Little 7:10, 17, 19
8:7, 13 19:1 42:4,
17
live 7:9, 19
LLC 1:8, 9, 11, 23,
24, 25
LLP 2:9
long 5:24 10:12
14:20
longer 42:18
look 11:1, 7 31:8
looked 31:17 34:24
looking 10:21
12:25 37:6, 16
Lord 9:15
lose 11:15, 17
lost 9:19
lot 16:21
loves 20:7
lying 17:16

< M >
Madam 34:6
MAGNOLIA 1:7,
23 10:15 12:21
13:2, 3, 4, 7, 8, 11

15:16, 23 16:5, 17
18:9 19:3, 12 20:16,
21 21:4, 8 22:13, 24
23:2, 15, 24 24:11,
18 26:12 29:17
30:21 31:3, 7, 18, 23
32:6, 14, 18 33:6, 17
34:8 38:2, 3, 11, 20
39:19, 20 41:21
43:1, 4, 12, 20 44:14,
17 45:1
Magnolias 13:6
man 30:13
Manor 10:15 12:21
13:3, 8
mark 18:25 34:1
36:4
marked 34:3 36:5
marking 34:6
matters 13:25
14:14 15:5
Meadowlark 7:10
mean 7:22 8:24
16:25 17:7, 8 19:15
21:14 22:11 28:8
30:8 31:11, 16, 25
32:17 33:19 35:18
38:15 43:5
meant 13:4
Mediation 5:5, 7
medical 9:18 30:10,
20 42:4
medication 21:19
22:4, 5, 11, 12
medications 21:12
22:8, 17
meet 17:11, 14, 24
meeting 16:6
member 27:17 31:6,
18, 23 32:14, 18
Memorial 12:23
15:19, 23 18:16, 18,
24 19:6, 11 21:16
26:4, 6, 11, 23 27:9,
16, 17 28:10, 20, 25
memory 18:5 25:19
mental 9:24
mess 21:2
met 4:14 16:17

19:24
middle 5:24, 25
mind 30:16 32:20
mindful 5:18
Mindy 1:17 4:4
misleading 33:12, 18,
20, 22
misled 33:6
mistaken 21:11
MKD 3:10
mom 15:13 20:23
25:14 28:6 29:4
37:20 38:14 39:14
money 42:6
month 10:13 11:12
25:24 26:7
mother 10:22 13:24
14:14 15:4 16:2
19:19, 22 20:20
24:19 26:16, 20, 24
27:18 28:16 29:15
30:9, 19 31:1, 19
33:6, 16 36:12, 21
37:1, 5, 13 38:4, 6,
13 39:6, 23 40:17,
18 41:3 42:9 43:9,
12, 20 44:18 45:3,
10, 15
mother's 29:9
35:17 42:12
motivation 20:6
Motor 5:6 8:17, 20
Mountain 7:10, 17,
19 8:8, 13
move 8:12 9:8
35:16

< N >
name 4:13 7:4, 6
16:7, 11 20:25
22:21 29:9, 11
35:13
natural 25:6
nature 15:24 33:20
42:7
Near 8:10
necessary 30:3
need 5:18 29:4
30:14

needed 30:10
needs 13:21
never 9:17, 18, 19
18:13 20:12 27:9,
16 37:3, 5, 14, 23
38:9, 11 39:2, 2, 3
41:17, 20
Newberry 7:12, 17,
24 8:4
nod 6:17
normal 6:16 10:22
14:22
Notary 1:17 4:4
number 23:23
nurse 9:9 26:24
nurses 20:24
nursing 8:17 10:3
12:24, 25 14:15
15:6 18:19, 21
20:18 29:16 30:3
36:22 42:8

< O >
oath 5:13 6:12, 25
23:18 27:16
object 20:15 34:17
43:14, 22 45:5, 16
objecting 20:4
27:24
Objection 14:16
15:7 19:25 21:20
27:4, 11, 19 28:4, 20
29:18, 22 30:23
37:9, 19 41:5, 14
44:22
objects 14:19
observing 32:1
obviously 10:9
11:20 14:2 15:22
26:7 28:8 32:1
occur 8:22
occurred 11:21
25:19
October 1:14
Oh 7:15 24:1 35:9
Okay 5:2, 9 6:2, 18
7:4, 9 8:10, 25 10:2,
7, 14 11:19, 24
13:14 14:7 15:12
16:5, 15 18:25 19:7,

18 20:15 23:4, 18
 24:13 25:3, 17 27:2
 30:5 31:13, 25
 33:25 37:5 38:18
 40:7, 21 41:24
 42:16, 20 45:14
once 29:6
open 8:1
OPERATIONAL
 1:9, 24
ordinary 5:19
oriented 32:8
Original 3:16
originally 8:7, 9

< P >
p.m 1:15, 15
PAGE 3:3, 10
 35:15, 15 36:10
pain 22:1, 2, 2
paper 41:16, 21
papers 31:11 37:3,
 4, 22, 23 38:9, 10
 39:2, 4, 17 41:17
paperwork 10:14
 15:24 18:13 26:3, 8,
 25 27:18 28:9, 11,
 13, 17 29:1 30:3, 20
 31:3, 20 33:11, 21
 37:7, 15 38:5, 16, 20
 40:12, 18 41:4, 11,
 12 42:5, 8, 13 43:9,
 13, 21 45:3, 11, 12,
 15
paralyzed 9:8 12:5
paramedic 25:3, 11
part 7:17, 19, 20
 25:24
pbuckner@ycrlaw.co
m 2:12
pedestrian 8:19
 11:15
pending 1:19
people 37:21
people's 17:9
percent 28:3
permission 28:21
Perry 2:9 4:13
person 16:14, 15
 39:14, 25 40:1

pertaining 14:14
 34:7 41:21
phone 39:13, 21, 22
physician 26:24
pills 22:1, 2
pin 27:25
PLACE 1:7, 23
 13:2, 4, 5, 7, 11
 15:16, 23 16:6, 17
 18:9 19:4, 12 20:16,
 21 21:5, 8 22:24
 23:2, 16, 25 24:2, 11,
 18 26:12 29:17
 30:21 31:3, 7, 18, 23
 32:6, 14, 18 34:8
 38:2, 3, 11, 21 39:19,
 20 40:17 41:21
 43:4, 12 44:14, 17
Place's 33:7, 17
Plaintiff 1:4, 22 2:3
 4:2
PLEAS 1:1, 20
please 7:5
poor 21:3
poorly 10:9
possibly 23:11
power 13:17
preparation 35:2
prepare 34:15
preparing 34:12
present 2:15 19:11
 23:4 24:20
pressure 14:13 15:2
presume 26:3
 28:16, 18
presumed 36:11
presumably 25:18
pretty 5:17 6:5
 12:8 37:18
previous 31:8
privilege 34:20
probably 9:13
 24:15, 16 40:14
procedure 4:20
process 17:3, 4, 12,
 15, 25 23:2
produced 1:13 4:9
prognosis 10:11
Public 1:18 4:4

purpose 25:9
purposes 10:23
put 15:2 22:12, 13

< Q >
question 5:11, 24
 6:3, 6, 20, 22 14:19,
 25 21:3 22:25 23:9
 25:4, 8 26:5 27:13
 30:24 31:8 33:13
 36:9, 15 37:11 41:7,
 15 43:15, 18
QUESTIONS 3:3
 4:12, 15 5:10, 15, 16
 8:3 14:17 15:10
 20:2 21:3, 22 27:7,
 14, 23 28:7 29:7, 14,
 20 30:1, 25 33:4
 34:5, 22 35:10, 14
 36:7 37:12, 25 41:8,
 18 42:2, 17, 24
 43:16, 25 44:5, 24
 45:9, 19, 21
quick 33:1 35:16
quite 11:10 22:16

< R >
real 32:25
really 16:4, 21, 23
 23:21 29:13 37:2
reason 11:9 30:16
 32:19, 21 33:5 39:5
recall 16:6 17:13
 19:10 22:3 23:4, 20,
 21 25:15 26:16
 27:2, 21 28:2 37:20
recalls 18:4
recess 33:3 42:1
recollection 23:11,
 17
record 4:14 10:21
 11:4 25:7, 9 32:25
 41:25 42:3
record's 38:19
referenced 12:17
referring 13:7
regarding 15:5
 42:5, 9
rely 32:14
remains 9:22

remember 16:9, 11,
 13 17:17, 19, 23
 21:7, 25 22:5 23:8
 10, 23 26:13 31:21
 39:12 41:2, 10 42:8
 44:25 45:1
remembers 11:8
repair 12:18
Repeat 22:25 26:5
 30:24 33:13 37:10
 41:7 43:18
rephrase 6:4 15:1
 18:8
reporter 3:16 34:4
 6 36:6
represent 4:17 19:
 43:8, 11, 19
representations
 33:10, 16

REPRESENTATIVE
 3:12
require 4:21
requires 15:23
rest 22:16
result 9:3 11:13
retained 3:16
Richland 12:23
 15:19, 22 18:15, 18
 24 19:6, 11 21:15
 26:4, 6, 11, 23 27:9
 15, 17 28:10, 20, 25
ride 24:25
riding 9:6
right 7:14 9:3
 10:4, 6, 16, 25 13:21
 15:25 18:9 19:10
 24:5, 12, 13 28:10,
 19 29:24 30:16
 31:15 32:3, 10, 14,
 24 33:9 42:11
 44:20
River 1:16
Rivers 2:9
Road 7:10
room 5:12 18:23
 23:23 24:3, 8, 17
 39:18 45:11
rooms 17:9 24:2

rough 32:4
rules 4:20

< S >

sane 32:22
saw 17:2
saying 13:3 27:8
29:9 36:18 37:21
says 4:10
see 10:21 11:7
25:5 30:16 34:13
seen 34:9, 25 44:11
sense 14:13
senses 32:23
SERVICES 1:9, 11,
24, 25
shape 32:7
sharp 25:5
shipped 18:24
short 33:3 42:1
shorthand 4:4
shows 10:14
side 10:8
sign 18:19, 21 26:8,
15 28:6 29:4 37:1,
3, 4, 22 38:7, 15, 20
39:1, 6, 8, 17 43:9,
13, 20 45:3, 10, 15
signature 4:6 35:17,
24 36:10, 11, 12, 13,
17
signed 19:6 26:20
29:2 38:10 39:4
40:19, 22 41:3, 16
significant 21:18
signing 26:13, 17
37:7, 24 38:5 44:18
45:12
simply 23:20
sir 4:19 6:23 7:3,
13 12:13, 13 15:21
21:19 29:21 33:23
sister 24:20 25:14
26:16
sister's 22:21
slow 6:5
solely 12:18
somewhat 23:11
son 20:8, 8

sorry 13:3 24:10
40:4
sort 4:22
sound 6:13 10:16
32:20
sounds 26:9
SOUTH 1:2, 7, 17,
18, 21, 22 2:5, 11
3:11 4:17, 20 7:10
speak 23:19
speaking 23:12
specified 13:1
spinal 12:6, 25 13:1
20:18 21:18
staff 26:23 27:17
31:6, 18, 22 32:13,
18 33:7, 12, 17
standpoint 9:24
started 4:22 24:2
STATE 1:2, 18, 21
20:19
statement 27:9
32:13
stay 26:11
Stefan 2:4
stefan@akimlawfirm.
com 2:6
Stevenson 5:9
STIPULATED 4:1
stop 14:23
Street 1:16 2:5, 10
stress 14:7, 12 15:2
struck 11:14
stuff 4:23 5:22
11:3 42:6
suffered 9:2, 17
11:25 12:5
suggesting 17:24
35:19
suggestive 11:5
Suite 2:10
sure 11:10 24:5
25:8 27:15 28:3
31:13 32:3 35:23
38:18 40:5, 8
surgery 12:9, 17
suspect 32:19
sworn 1:14 4:9 6:8

< T >

table 37:14
take 5:21, 25 15:4
16:3 24:11, 12, 13
taken 4:3 33:3
36:23 42:1
talk 6:9, 9, 11 17:9
18:10 28:21 31:14
35:1, 11
talked 34:23 36:10
39:10 41:17, 20
42:4
talking 6:16 15:19
38:1, 14 40:11, 12,
24
talks 14:22
Tell 7:4 12:3
20:20 21:4 28:19
31:6, 25 36:25
38:14, 21, 23, 24, 24
telling 28:2, 2
Ten 8:14
term 9:18
testified 18:4 36:20
testify 7:1 17:14
testifying 23:18
27:16 31:17 33:11
35:23, 25 36:16
41:9, 11
testimony 5:13
22:19 25:10 42:11
Thank 42:18
thankful 10:6
therapy 12:10
THI 1:7, 22
thing 5:18 25:3
37:8
things 4:21 10:10
14:22 15:14, 14, 15,
24 22:6 30:10
37:15 42:7
think 5:4, 5 9:20
12:6 16:21 19:5
29:8 31:1 32:21
33:22 39:8 42:16,
17 45:18
THIRTEENTH 1:1,
20
three 21:17 24:1
26:2

time 4:14 5:3, 23
6:6 11:11 13:14
14:5, 13 15:4, 12
20:16 21:7, 13
26:10 31:14, 17
39:10 40:16 42:18
times 14:18 26:1
today 4:15, 25 6:1
25 9:22 14:10, 18
22:8, 19 32:1 35:2
today's 34:12, 15
told 9:8, 9, 11, 12
12:3 20:23, 24 21:
25:18 27:17 30:5
Tom 5:8
Tramadol 22:15
transcribed 4:5
transcript 3:17
transported 24:22
traumatic 14:5
37:18
trial 44:20
true 9:22 10:2
trusted 19:19
try 5:21 6:19 11:3
trying 11:2, 7
12:23 27:25 29:24
35:16
two 8:1 12:11 13:
40:14
two-and-a-half 17:2
type 21:18
typewriting 4:5

< U >

uh-huh 5:19 6:17
12:13 16:1 18:17
29:10 31:5
uh-uh 5:20
understand 6:3
10:7 17:19 18:19
27:25 31:21
understanding 4:18
8:15 9:2 13:24
25:10
understood 6:22
42:11
underwent 11:25
untoward 11:5

use 9:17
usually 6:5

< V >
vehicle 5:6 8:17, 20
verbal 5:16
vertebrae 12:12, 18
Vislay 1:17 4:4
vs 1:5

< W >
wait 38:6, 6, 6
waived 4:6
walk 9:13 24:10
want 5:23 6:10
 11:5 18:8 20:22, 23
 21:9, 10 23:7 24:2,
 3, 4 28:1, 6, 21
 30:13 31:13, 18
 32:22 34:23 35:22
 37:21 38:7, 18
wanted 31:8 39:1
way 5:12 6:19
 31:22 33:15, 19
 36:1, 13, 14 39:12
week 8:1
weeks 10:4 21:17
 26:2
well 4:18 5:15 9:6,
 12 10:6 12:22 13:9
 16:15 17:5, 19 23:9
 28:8, 24 29:3 31:15
 33:20 38:13
went 9:11
we're 10:7 35:13
 40:11, 12
We've 28:14 39:10
whatsoever 23:13
Wilda 2:15 11:4
 29:9, 12, 15 36:10
wing 24:3, 6
Wise 7:21, 23
wish 10:9
wishes 19:23
witness 4:6 15:9
 20:1 27:6, 13, 21
 28:5, 24 29:19, 24
 30:24 34:18 35:7, 9
 37:10, 20 41:7, 15

43:23 44:4, 23 45:7,
 17
woke 9:6 25:20
wondering 26:10
worked 16:22
world 6:10
wrong 8:16 31:1
wrongfully 30:20

< Y >
Yeah 7:25 9:23
 12:2 13:5 15:12
 16:18 17:1, 22
 21:24 22:11 26:6
 28:13 29:25 31:5
 33:2 35:9, 12, 22
 41:1, 9 44:10
years 8:14 17:21
Young 2:9

WORD LIST

< 1 >	accident (7)	attached (1)	Cannons (1)
1 (4)	accommodate (1)	attorney (2)	care (4)
100 (1)	accomplished (1)	attorney's (1)	CAROLINA (12)
113 (1)	accurate (1)	authority (17)	Case (5)
12 (1)	administration (1)	authorizations (1)	caseworker (9)
13 (2)	ADMINISTRATIVE (2)	authorized (1)	cause (2)
15 (1)	ADMISSION (28)	< B >	certain (9)
16th (2)	admissions (8)	back (8)	chance (1)
18th (1)	admit (7)	background (2)	changing (1)
1965 (1)	admitted (18)	Baclofen (1)	Chapin (2)
19th (1)	affect (1)	Bar-B-Q (1)	charge (2)
	Afterward (1)	baseline (1)	Charleston (2)
	age (1)	basically (1)	chart (1)
< 2 >	ago (1)	basis (1)	CIRCUIT (2)
2 (5)	agree (4)	bath (1)	civil (1)
2:45 (1)	AGREED (1)	BBQ (1)	clarify (3)
2000 (2)	AGREEMENT (12)	bed (1)	clear (2)
2016 (17)	ahead (2)	beginning (1)	Clement (1)
2018 (1)	ain't (2)	behalf (18)	client (1)
2018-CP-23-01934 (1)	alert (1)	believe (9)	CLINICAL (2)
25 (1)	allow (1)	best (3)	Coco (14)
29401 (1)	alternatively (1)	better (1)	cognitive (1)
29403 (1)	ambulance (2)	bike (1)	come (5)
29601 (1)	amended (1)	bit (3)	coming (1)
	Anastopoulos (2)	blacked (1)	COMMON (3)
	Ann (2)	blah (3)	communicate (1)
< 3 >	Annette (1)	blue (3)	competent (3)
3:36 (1)	answer (23)	body (1)	completed (2)
30th (14)	answered (5)	born (2)	completing (1)
32 (1)	answering (1)	bottom (1)	concluded (1)
325 (1)	answers (1)	BOYD (16)	condition (2)
34 (1)	anybody (8)	Boyd's (1)	confirm (1)
36 (1)	appear (1)	break (2)	confusing (1)
3rd (2)	appears (1)	briefly (1)	conscious (2)
	appreciate (1)	bring (1)	conservator (1)
< 4 >	appropriate (2)	broken (2)	constitutional (1)
4 (1)	ARBITRATION (8)	Buckner (48)	conversation (21)
400 (1)	arms (1)	building (1)	copied (1)
418 (1)	arrangements (1)	Burt (8)	copies (1)
42 (1)	arrived (2)	business (1)	correct (19)
	asked (13)	< C >	counsel (2)
< 8 >	asking (5)	C4 (1)	COUNTY (9)
843-614-8888 (1)	assert (1)	C5 (1)	couple (3)
843-720-5406 (1)	assigned (2)	Calhoun (1)	COURT (5)
	assist (1)	call (1)	CROSS-EXAMINAT
< A >	assisting (1)	called (1)	ION (1)
ability (2)	assume (4)	Calvin (1)	currently (3)
able (3)	assuming (1)		< D >

day (16)	executed (5)	general (1)	incident (4)
days (1)	execution (1)	generally (1)	including (1)
deal (2)	EXHIBIT (9)	getting (2)	INDEX (1)
decisions (2)	EXHIBITS (2)	give (7)	individual (1)
Defendants (5)	explained (2)	given (1)	informed (1)
DEFENDANT'S (3)	expressly (1)	giving (3)	initial (1)
deficit (1)	extent (1)	glad (1)	initially (1)
delegated (1)	eyes (3)	go (13)	injuries (2)
deliberate (1)	< F >	God (1)	injury (5)
deposes (1)	facility (2)	going (15)	injury-wise (1)
DEPOSITION (7)	FACILITY-RESIDE	gonna (2)	instruct (1)
described (1)	NT (1)	good (4)	intake (2)
DESCRIPTION (1)	fact (4)	gotcha (2)	interest (2)
desires (1)	facts (1)	grandmother's (1)	involvement (2)
diagnosis (1)	fair (10)	GREENVILLE (28)	issue (4)
different (3)	fairly (1)	grown (1)	issues (1)
DIRECT (1)	false (1)	guardian (1)	items (1)
disabilities (1)	family (3)	guess (3)	IV (1)
discharge (1)	far (3)	guilty (1)	< J >
discharged (1)	feel (3)	guy (1)	Jackie (1)
discharging (1)	Feidler (41)	guys (2)	JAMES (5)
discussed (2)	figured (1)	< H >	job (2)
doctor (2)	file (1)	hall (2)	Josh (1)
doctors (2)	finally (1)	hallway (1)	JR (5)
document (3)	financial (2)	handled (2)	judge (1)
documents (4)	find (1)	handling (3)	JUDICIAL (2)
doing (5)	fine (2)	hands (2)	July (3)
door (1)	finish (3)	happen (3)	jump (2)
doors (1)	Firm (2)	happened (6)	jumping (1)
< E >	first (8)	head (1)	June (23)
earlier (5)	five (1)	health (1)	jury (1)
early (2)	forgot (1)	healthcare (1)	< K >
eat (1)	form (6)	help (3)	keep (1)
effectuated (1)	four (4)	hit (1)	kind (9)
employee (3)	fracture (2)	hold (2)	knew (3)
EMS (2)	fractured (1)	home (12)	know (45)
engaged (1)	fractures (1)	homes (1)	knowledge (2)
ensured (1)	frame (1)	hospital (6)	known (1)
enter (1)	front (2)	hospitalized (1)	< L >
entitled (1)	full (3)	hours (1)	lake (2)
evening (1)	fully (1)	hypothetical (1)	Law (2)
evidence (1)	function (2)	< I >	lawful (1)
exactly (1)	functions (1)	identification (2)	lawsuit (1)
EXAMINATION (1)	FUNDAMENTAL	ill (1)	lawyer (2)
examined (2)	(4)	imagine (3)	laying (1)
example (1)	further (3)	impression (1)	Leading (1)
excuse (1)	< G >	improved (1)	
execute (5)			

leave (1)
 led (1)
 left (3)
 legs (1)
 Leola (3)
 Lexington (5)
 life (1)
 light (1)
 Little (8)
 live (2)
 LLC (6)
 LLP (1)
 long (3)
 longer (1)
 look (3)
 looked (2)
 looking (4)
 Lord (1)
 lose (2)
 lost (1)
 lot (1)
 loves (1)
 lying (1)

 < M >
 Madam (1)
 MAGNOLIA (55)
 Magnolias (1)
 man (1)
 Manor (4)
 mark (3)
 marked (2)
 marking (1)
 matters (3)
 Meadowlark (1)
 mean (18)
 meant (1)
 Mediation (2)
 medical (4)
 medication (5)
 medications (3)
 meet (3)
 meeting (1)
 member (6)
 Memorial (19)
 memory (2)
 mental (1)
 mess (1)
 met (3)

middle (2)
 mind (2)
 mindful (1)
 Mindy (2)
 misleading (4)
 misled (1)
 mistaken (1)
 MKD (1)
 mom (8)
 money (1)
 month (4)
 mother (42)
 mother's (3)
 motivation (1)
 Motor (3)
 Mountain (5)
 move (3)

< N >
 name (10)
 natural (1)
 nature (3)
 Near (1)
 necessary (1)
 need (3)
 needed (1)
 needs (1)
 never (18)
 Newberry (4)
 nod (1)
 normal (3)
 Notary (2)
 number (1)
 nurse (2)
 nurses (1)
 nursing (13)

< O >
 oath (5)
 object (6)
 objecting (2)
 Objection (17)
 objects (1)
 observing (1)
 obviously (7)
 occur (1)
 occurred (2)
 October (1)
 Oh (3)

Okay (40)
 once (1)
 open (1)
 OPERATIONAL (2)
 ordinary (1)
 oriented (1)
 Original (1)
 originally (2)

< P >
 p.m (2)
 PAGE (5)
 pain (3)
 paper (2)
 papers (11)
 paperwork (38)
 paralyzed (2)
 paramedic (2)
 part (4)
 pbuckner@ycrlaw.co
 m (1)
 pedestrian (2)
 pending (1)
 people (1)
 people's (1)
 percent (1)
 permission (1)
 Perry (2)
 person (5)
 pertaining (3)
 phone (3)
 physician (1)
 pills (2)
 pin (1)
 PLACE (48)
 Place's (2)
 Plaintiff (4)
 PLEAS (2)
 please (1)
 poor (1)
 poorly (1)
 possibly (1)
 power (1)
 preparation (1)
 prepare (1)
 preparing (1)
 present (4)
 pressure (2)
 presume (3)

presumed (1)
 presumably (1)
 pretty (4)
 previous (1)
 privilege (1)
 probably (4)
 procedure (1)
 process (6)
 produced (2)
 prognosis (1)
 Public (2)
 purpose (1)
 purposes (1)
 put (3)

< Q >
 question (25)
 QUESTIONS (41)
 quick (2)
 quite (2)

< R >
 real (1)
 really (6)
 reason (6)
 recall (13)
 recalls (1)
 recess (2)
 recollection (2)
 record (8)
 record's (1)
 referenced (1)
 referring (1)
 regarding (3)
 rely (1)
 remains (1)
 remember (20)
 remembers (1)
 repair (1)
 Repeat (7)
 rephrase (3)
 reporter (4)
 represent (5)
 representations (2)

 REPRESENTATIVE
 (1)
 require (1)
 requires (1)

rest (1)
 result (2)
 retained (1)
 Richland (19)
 ride (1)
 riding (1)
 right (25)
 River (1)
 Rivers (1)
 Road (1)
 room (8)
 rooms (2)
 rough (1)
 rules (1)

 < S >
 sane (1)
 saw (1)
 saying (5)
 says (1)
 see (5)
 seen (3)
 sense (1)
 senses (1)
 SERVICES (4)
 shape (1)
 sharp (1)
 shipped (1)
 short (2)
 shorthand (1)
 shows (1)
 side (1)
 sign (23)
 signature (8)
 signed (9)
 significant (1)
 signing (7)
 simply (1)
 sir (10)
 sister (3)
 sister's (1)
 slow (1)
 solely (1)
 somewhat (1)
 son (2)
 sorry (3)
 sort (1)
 sound (3)
 sounds (1)

SOUTH (12)
 speak (1)
 speaking (1)
 specified (1)
 spinal (5)
 staff (10)
 standpoint (1)
 started (2)
 STATE (4)
 statement (2)
 stay (1)
 Stefan (1)
 stefan@akimlawfirm.
 com (1)
 Stevenson (1)
 STIPULATED (1)
 stop (1)
 Street (3)
 stress (3)
 struck (1)
 stuff (4)
 suffered (4)
 suggesting (2)
 suggestive (1)
 Suite (1)
 sure (11)
 surgery (2)
 suspect (1)
 sworn (3)

 < T >
 table (1)
 take (7)
 taken (4)
 talk (9)
 talked (6)
 talking (7)
 talks (1)
 Tell (13)
 telling (2)
 Ten (1)
 term (1)
 testified (2)
 testify (2)
 testifying (9)
 testimony (4)
 Thank (1)
 thankful (1)
 therapy (1)

THI (2)
 thing (3)
 things (11)
 think (14)
 THIRTEENTH (2)
 three (3)
 time (19)
 times (2)
 today (11)
 today's (2)
 told (11)
 Tom (1)
 Tramadol (1)
 transcribed (1)
 transcript (1)
 transported (1)
 traumatic (2)
 trial (1)
 true (2)
 trusted (1)
 try (3)
 trying (6)
 two (4)
 two-and-a-half (1)
 type (1)
 typewriting (1)

 < U >
 uh-huh (7)
 uh-uh (1)
 understand (6)
 understanding (5)
 understood (2)
 underwent (1)
 untoward (1)
 use (1)
 usually (1)

 < V >
 vehicle (3)
 verbal (1)
 vertebrae (2)
 Vislay (2)
 vs (1)

 < W >
 wait (3)
 waived (1)
 walk (2)

want (24)
 wanted (2)
 way (9)
 week (1)
 weeks (3)
 well (17)
 went (1)
 we're (4)
 We've (2)
 whatsoever (1)
 Wilda (6)
 wing (2)
 Wise (2)
 wish (1)
 wishes (1)
 witness (23)
 woke (2)
 wondering (1)
 worked (1)
 world (1)
 wrong (2)
 wrongfully (1)

 < Y >
 Yeah (21)
 years (2)
 Young (1)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	CASE NO. 2018-CP-23-01934
JAMES BOYD, JR.,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR ORDER
vs.	)	CONFIRMING ARBITRATION AWARD
	)	AND GRANTING JUDGMENT
	)	FOR DEFENDANTS
THI OF SOUTH CAROLINA AT	)	
MAGNOLIA PLACE AT GREENVILLE,	)	
LLC; FUNDAMENTAL ADMINISTRATIVE	)	
SERVICES, LLC; and FUNDAMENTAL	)	
CLINICAL AND OPERATIONAL	)	
SERVICES, LLC.	)	
	)	
Defendants.	)	

TO: THE COURT and Plaintiff, JAMES BOYD, JR., by and through his attorneys of record

NOW COME Defendants, THI of South Carolina at Magnolia Place at Greenville, LLC (the “Facility”); Fundamental Administrative Services, LLC (“FAS”); and Fundamental Clinical and Operational Services, LLC (“FCOS”) (collectively, “Defendants”), pursuant to the Federal Arbitration Act, 9 U.S.C §§ 1–16 (the “FAA”), and/or, to the extent applicable, South Carolina’s Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 to -240 (the “SCAA”); Rule 56, SCRCF; and any other applicable substantive or procedural law, and, on the grounds set forth below, hereby move this Honorable Court for an order confirming the attached Final Order of Arbitration (the “Arbitration Award”)¹ and, in accordance therewith, granting judgment for the Facility and, in turn, for FAS and FCOS, as to all claims in this action.

¹ Made by arbitrator D.A. Early, III, Esquire (the “Arbitrator”), the Arbitration Award is dated December 20, 2021; Defendants received a copy of it on or about December 22, 2021; and it was filed with the Court on December 29, 2021. A copy of the filed Arbitration Award is attached hereto as **Exhibit A**.

BACKGROUND

Plaintiff, James Boyd (“Mr. Boyd”), filed this nursing home malpractice action on March 27, 2018. (*See* Summons & Compl.) The operative complaint, namely, Mr. Boyd’s Second Amended Complaint, filed September 19, 2018 (the “Complaint”)², asserts a number of claims against Defendants for money damages premised on Mr. Boyd’s contention that he suffered injuries because of deficient care he received during his residency at the Facility³. (*See* 2d Am. Compl. [**Ex. B**].) The Complaint asserts the same claims against all Defendants, in other words, all of the claims asserted in the Complaint are asserted against all Defendants,⁴ all of whom are collectively referred to as the “Nursing Home Defendants” or the “Defendants” from the eighth paragraph on. (2d Am. Compl. [**Ex. B**] ¶ 8 (“That Defendant Magnolia, FAS, and [FCOS⁵] shall hereinafter be collectively referred to as ‘Nursing Home Defendants’ or ‘Defendants.’”).)

By order filed August 20, 2019, this Court, the Honorable Perry H. Gravely presiding, granted the Facility’s motion to compel Mr. Boyd’s claims to arbitration and FAS and FCOS’s related motions to stay this action pending the completion of arbitration between Mr. Boyd and the Facility. (*See* Order Granting the Facility’s Mot. to Compel Arbitration & Granting FAS and FCOS’s Mots. to Stay.⁶) By order filed October 17, 2019, the Court affirmed its order of August

² A copy of the Complaint is attached hereto as **Exhibit B**.

³ The Facility is a skilled nursing facility in Greenville County.

⁴ (*See* 2d Am. Compl. [**Ex. B**] ¶¶ 29–129 (asserting all claims against the “Defendants,” plural); *see also id.* at Prayer for Relief (“pray[ing] for judgment against *the Defendants*” as to all claims) (emphasis added).)

⁵ Context makes clear that FCOS’s omission from this sentence is mere scrivener’s error and that FCOS is intended to be included in the collective references the “Nursing Home Defendants” and the “Defendants.” Indeed, there is no separate reference to FCOS in the remainder of the Complaint. (*See* 2d Am. Compl. [**Ex. B**] ¶¶ 9–129.)

⁶ A copy of this order is attached hereto as **Exhibit C**. A copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

20, 2019, denying Mr. Boyd's motion to reconsider. (See Order Denying Pl.'s Mot. to Reconsider.⁷) Mr. Boyd's claims against the Facility then proceeded in arbitration.

The arbitration hearing was conducted in late October 2021, and the Arbitrator issued the Arbitration Award about two months later, concluding that the Facility was not liable to Mr. Boyd. (See Arbitration Award [**Ex. A**].) In so doing, the Arbitrator expressly found that Mr. Boyd did not carry his burden of proof on two critical issues: (1) he failed to prove breach of the standard of care (the "Breach Issue") and (2) he failed to prove proximate cause as to his alleged injuries (the "Proximate Cause Issue"). (Arbitration Award [**Ex. A**] pp. 3–4.)

Defendants now ask that the Arbitration Award be confirmed as an order of this Court and that, in accordance therewith, judgment be granted to the Facility and, in turn, to FAS and FCOS, such that this action is, and all claims herein are, fully and finally adjudicated in favor of Defendants.

ARGUMENT

- 1. The Arbitration Award should be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120; judgment thereon should be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160; and, in turn, judgment should be granted to FAS and FCOS pursuant to res judicata and/or collateral estoppel.**

First off, a word about the applicability of the FAA and/or the SCAA: "[T]he basic purpose of the [FAA] is to overcome courts' refusals to enforce agreements to arbitrate,"⁸ by "ensur[ing] that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement." *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). Without question, the FAA applies here to preempt any provision of state law

⁷ A copy of this order is attached hereto as **Exhibit E**.

⁸ *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 270 (1995).

that would subject the Arbitration Agreement to disfavored treatment relative other contracts. The Arbitration Agreement expressly states that the FAA applies, and this must be enforced like any other contract term. *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 196, 844 S.E.2d 66, 70 (Ct. App. 2020). Moreover, the FAA applies “to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction,”⁹ and, as our state Supreme Court has recognized, nursing home residency agreements implicate interstate commerce and, thus, the FAA. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). All that said, however, in *Toler’s Cove Homeowners Association, Inc. v. Trident Construction Company, Inc.*, our Supreme Court ruled that, even in cases where the FAA applies to preempt substantive state law, it does not preempt state procedural law that disallows an immediate appeal from the grant of a motion to compel arbitration. 355 S.C. 605, 611, 586 S.E.2d 581, 585–86 (2003). So, perhaps, to the extent they are considered in the same vein as the procedural law distinguished by the *Toler’s Cove* Court, SCAA §§ 15-48-120, -150, and -160 could apply here. But as a practical matter, any question about the applicability of the FAA and/or the SCAA is immaterial, because the relief requested herein (confirmation of the Arbitration Award and judgment in accordance therewith) is proper under either (or both) the FAA and the SCAA.

(a) The Arbitration Award should be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120.

In pertinent part, FAA § 9 provides:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the

⁹ *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001).

arbitration, and shall specify the court^[10], then at any time within one year after the award is made^[11] any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10^[12] and 11^[13] of this title.

Similarly, SCAA § 15-48-120 provides: “Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130^[14] and 15-48-140^[15].”

There being no cause to vacate, modify, or correct the Arbitration Award (and no motion for any such relief having been made), the Facility is entitled to an order confirming the Arbitration Award under FAA § 9 and/or SCAA § 15-48-120, if not immediately, then upon the expiration of the three-month/90-day deadline (running from the date of delivery of the Arbitration Award to Mr. Boyd) for Mr. Boyd to move to vacate, modify, and/or correct the Arbitration Award under

¹⁰ The Arbitration Agreement expressly states that “[t]he arbitrator shall hear and decide the controversy, and the decision shall be binding on all parties, and may be enforced by a court of competent jurisdiction.” (Arbitration Agreement [**Ex. D**].)

¹¹ Dated December 20, 2021, the Arbitration Agreement is not yet two months old.

¹² FAA § 10 allows a party to the arbitration to move to vacate an arbitration award on certain narrow grounds. FAA § 12 requires such a motion to be served within three months after the award is filed or delivered.

¹³ FAA § 11 allows a party to the arbitration to move to modify or correct an arbitration award on certain narrow grounds. FAA § 12 requires such a motion to be served within three months after the award is filed or delivered.

¹⁴ SCAA § 15-48-130 allows a party to the arbitration to move to vacate an arbitration award on certain narrow grounds and requires such a motion, except where predicated on corruption, fraud, or other undue means (in which case it must be made within 90 days after such grounds are known or should have been known to the movant), to be made within 90 days after a copy of the award is delivered to the movant.

¹⁵ SCAA § 15-48-140 allows a party to the arbitration to move to modify or correct an arbitration award on certain narrow grounds and requires such a motion to be made within 90 days after a copy of the award is delivered to the movant.

the FAA and/or the SCAA or, in the event that Mr. Boyd makes such a motion within the aforementioned deadline, then pending the Court's decision on the motion.

(b) Judgment should be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160.

FAA § 13 provides:

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

- (a) The agreement^[16]; the selection or appointment, if any, of an additional arbitrator or umpire^[17]; and each written extension of the time, if any, within which to make the award^[18].
- (b) The award^[19].
- (c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award^[20], and a copy of each order of the court upon such an application^[21]. The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Essentially, the SCAA breaks the provisions of FAA § 13 into two sections, SCAA §§ 15-48-150 and -160. In pertinent part, SCAA § 15-48-150 provides: "Upon the granting of an order

¹⁶ Again, a copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

¹⁷ As stated on the first page of the Arbitration Award [**Ex. A**], the Arbitrator was selected by consent of the parties. There was no "additional arbitrator or umpire."

¹⁸ There was no such extension.

¹⁹ Again, a copy of the Arbitration Award is attached hereto as **Exhibit A**.

²⁰ The instant motion is the only such application and, along with its attachments, it comprises all such papers.

²¹ The order requested by the instant motion would be the only such order.

confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree.” And SCAA § 15-48-160 provides:

- (a) On entry of judgment or decree, the clerk of court shall prepare the judgment roll consisting, to the extent filed, of the following:
 - (1) The agreement^[22] and each written extension of the time within which to make the award^[23];
 - (2) The award^[24];
 - (3) A copy of the order confirming, modifying or correcting the award^[25]; and
 - (4) A copy of the judgment or decree^[26];
- (b) The judgment or decree may be docketed as if rendered in an action.

The Facility being entitled, as explained above, to an order confirming the Arbitration Award under both FAA § 9 and/or SCAA § 15-48-120, and the instant motion either providing to or requesting from the Court all relevant papers for entry/enrollment of the judgment, the Facility is entitled to judgment in its favor as to all claims asserted against it in this action under FAA § 13 and/or SCAA §§ 15-48-150 and -160.

- (c) **Judgment should be granted to FAS and FCOS pursuant to res judicata and/or collateral estoppel.**

As explained above, the Facility is entitled to judgment in its favor as to all claims. Under FAA § 13, the judgment to which the Facility is entitled “shall have the same force and effect, in

²² Again, a copy of the Arbitration Agreement is attached hereto as **Exhibit D**.

²³ Again, there was no such extension.

²⁴ Again, a copy of the Arbitration Award is attached hereto as **Exhibit A**.

²⁵ Again, the order requested by the instant motion would be the only such order.

²⁶ The judgment or decree that the Court is now asked to render in favor of the Facility (and, in turn, in favor of FAS and FCOS) would be such judgment or decree.

all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.” Likewise, the SCAA provides, in § 15-48-150, that such judgment “shall . . . be enforced as any other judgment or decree” and, in § 15-48-160(b), that “[t]he judgment or decree may be docketed as if rendered in an action.”

“Under the doctrine of res judicata, a final judgment on the merits rendered by a court of competent jurisdiction, without fraud or collusion, is conclusive as to the rights of the parties and their privies.” *Griggs v. Griggs*, 214 S.C. 177, 184, 51 S.E.2d 622, 626 (1949). To establish res judicata, three elements must be shown: (1) the parties must be the same as a prior litigation or their privies; (2) the subject matter must be the same as the prior litigation; and (3) there must have been a prior adjudication of the issue by a court of competent jurisdiction. *Pye v. Aycock*, 325 S.C. 426, 432, 480 S.E.2d 455, 458 (Ct. App. 1997). Where it applies, the doctrine of res judicata bars a litigant from raising any issues that were adjudicated in the former suit and any issues that might have been raised in the former suit. *Id.*

To be clear, and as more fully set forth in their respective filings in the case, Defendants deny the alter ego/amalgamated etc. relationship Mr. Boyd alleges between them; however, *Mr. Boyd himself* is bound by those allegations. *See Kitchen Planners, LLC v. Friedman*, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) (“However, ‘[i]t is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise.’”) (quoting *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)); *see also Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015) (“Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions.”); *Postal*, 308 S.C. at 387, 418 S.E.2d at 323 (“The allegations, statements, or

admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.”).

As against Mr. Boyd himself, all the elements of res judicata are present here. By virtue of his own averments, Mr. Boyd cannot deny that FAS and FCOS are the same as the Facility or its privies; nor can he deny that the subject matter at issue is the same (Mr. Boyd having alleged the same claims against all Defendants and all of his claims having been compelled to arbitration); and, of course, because, as explained above, the Arbitration Award must be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120 and judgment must be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160, this Court’s confirmation of the Arbitration Award and judgment for the Facility thereon (which, under both the FAA and the SCAA, must be given the same force and effect as any other judgment entered in an action) constitutes adjudication by a court of competent jurisdiction. Res judicata thus bars Mr. Boyd from relitigating all claims that were, as well as any claims that could have been, so adjudicated, which claims, of course, include not only Mr. Boyd’s claims against the Facility but also (since they are the same claims) his claims against FAS and FCOS, and accordingly, FAS and FCOS, too, are entitled to judgment as a matter of law as to all claims.

But even assuming, *arguendo* that, FAS and FCOS are not entitled to judgment as a matter of law pursuant to res judicata, they are nonetheless entitled to such a judgment pursuant to collateral estoppel.

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was previously decided, even if the “new” litigation involves different claims. *Judy v.*

Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009); *see also Pye*, 325 S.C. at 436, 480 S.E.2d at 460 (“[C]ollateral estoppel bars relitigation of the same facts or issues necessarily determined in [a] former proceeding.”). The party asserting collateral estoppel must demonstrate that the issue in question was: (1) actually litigated previously, (2) directly determined previously, and (3) necessary to support the prior judgment. *Beall v. Doe*, 281 S.C. 363, 369, 315 S.E.2d 186, 189–90 n.1 (Ct. App. 1984). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” *Snaveley v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008).

Here, the issues in question are the Breach Issue and the Proximate Cause Issue, both of which the Arbitrator determined in favor of the Facility and against Mr. Boyd. Because, as explained above, the Arbitration Award must be confirmed pursuant to FAA § 9 and/or SCAA § 15-48-120 and judgment must be granted to the Facility pursuant to FAA § 13 and/or SCAA §§ 15-48-150 and -160 and, under both the FAA and the SCAA, such judgment must be given the same force and effect as any other judgment entered in an action, the Breach Issue and the Proximate Cause Issue have thus been actually litigated. It is clear from the face of the Arbitration Award that the Breach Issue and the Proximate Cause Issue were directly determined and that, because these issues go to necessary elements of Mr. Boyd’s claims, the Arbitrator’s findings as to them provide necessary support for the Arbitration Award and, in turn, the confirmation thereof and judgment thereon. And, of course, to be clear, the party against whom collateral estoppel is asserted, Mr. Boyd, is the very same party who had a full and fair opportunity to litigate these

issues by virtue of his participation in the arbitration and court proceedings leading up to the Arbitration Award and, in turn, the confirmation thereof and judgment thereon.

Therefore, because, as explained, the Arbitration Award must be confirmed and judgment must be granted to the Facility thereon and, in turn, Mr. Boyd is collaterally estopped to relitigate the Breach Issue and the Proximate Cause Issue against FAS and FCOS, which issues, between them, go to and preclude Mr. Boyd from meeting his burden of proof as to at least one essential element of all his claims against FAS and FCOS, judgment must be granted to FAS and FCOS, too. (See 2d Am. Compl. [**Ex. B**] ¶¶ 29–40 (asserting a cause of action for Negligence/Gross Negligence and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 41–46 (asserting a cause of action for Negligence *Per Se* and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 47–53 (asserting a cause of action for Breach of Contract and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 54–64 (asserting a cause of action for Fraud/Misrepresentation/Spoliation²⁷ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 65–73 (asserting a cause of action for violation of the South Carolina Unfair Trade Practice Act and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 74–86 (asserting a cause of action for Elder Abuse²⁸ and

²⁷ Defendants would note that spoliation is not even a recognized cause of action. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 151, 714 S.E.2d 537, 541 (2011) (“We hold that while Hobbs may continue to assert Cole Vision’s failure to maintain the document at issue as a defense to its claim for indemnification, the circuit court properly held that South Carolina does not recognize an independent tort for the negligent spoliation of evidence, third-party or otherwise.”).

²⁸ Defendants do not concede that this is even a recognized cause of action.

alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 87–90 (asserting a cause of action for Civil Conspiracy and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 91–97 (asserting a cause of action for Corporate Negligence²⁹ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 98–103 (asserting a cause of action for Intentional Infliction of Emotional Distress and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 104–109 (asserting a cause of action for Negligent Infliction of Emotional Distress and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 110–111 (asserting a cause of action for Alter Ego/Piercing the Corporate Veil³⁰ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 112–117 (asserting a cause of action for Amalgamation of Interests³¹ and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim); *id.* at ¶¶ 118–129 (asserting a cause of action for Conversion and alleging what is or is tantamount to breach of the standard of care and/or proximate cause as essential elements of the claim).

²⁹ Defendants do not concede that this is even a recognized cause of action.

³⁰ Defendants would note that, by itself, an attempt such as this to disregard the corporate form is not even a recognized cause of action “but rather a means of imposing liability on an underlying cause of action.” *Drury Dev. Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 103, 668 S.E.2d 798, 801 (2008) (quoting 1 William Meade Fletcher et al., *Fletcher Cyclopedic of the Law of Private Corporations* § 41.10 (per. ed., rev. vol. 2006)).

³¹ Here again, Defendants would note that, by itself, an attempt such as this to disregard the corporate form is not even a recognized cause of action. *Drury*, 380 S.C. at 103, 668 S.E.2d at 801.

CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants ask the Court to confirm the Arbitration Award and, in conformity with the express language and necessary implications of thereof, to grant and direct the entry of judgment thereon for the Facility as to all claims in this action and, in turn, grant and direct the entry of judgment thereon for FAS and FCOS as to all claims in this action, such that the action is, and all claims asserted herein are, fully and finally adjudicated in favor of Defendants.

PLEASE NOTE: Defendants reserve all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,
CLEMENT RIVERS, LLP

By: s/ D. Jay Davis, Jr.
D. Jay Davis, Jr.
James D. Gandy, III
25 Calhoun Street, Suite 400
Charleston, South Carolina 29401
P.O. Box 993 (29402)
(843) 720-5406
jdavis@ycrlaw.com

Attorneys for Defendants

Charleston, South Carolina

Date: February 14, 2022

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2018-CP-23-01934

JAMES BOYD,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE,
LLC, FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC,
AND FUNDAMENTAL CLINICAL AND
OPERATIONAL SERVICES, LLC,
DEFENDANTS.

ORIGINAL

May 20, 2019
Greenville, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE.

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

ERIC M. POULIN, ESQ.
Attorney for the Plaintiff

PERRY M. BUCKNER, IV, ESQ.
Attorney for Defendant THI of South Carolina at
Magnolia Place at Greenville, LLC

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: All right. This is a motion to compel
3 arbitration after a previous -- my previous order saying
4 that y'all could do some discovery so it could be
5 determined whether there was some appropriate authority,
6 et cetera.

7 So I'll be glad to hear from you, Mr. Buckner.

8 What's your name?

9 MR. POULIN: Eric Poulin, Your Honor, P-O-U-L-I-N.

10 THE COURT: All right.

11 MR. BUCKNER: Thank you, Your Honor.

12 May it please the Court, Your Honor.

13 Perry Buckner on behalf of the moving party today,
14 THI of South Carolina at Magnolia Place at Greenville,
15 LLC.

16 There, also, were two co-defendants that had sort of
17 collateral motions to stay, Fundamental Administrative
18 Service and Fundamental Clinical and Operational Services.
19 Those were held in abeyance by Your Honor pending the
20 outcome --

21 THE COURT: Okay.

22 MR. BUCKNER: -- of discovery, and everything. But I
23 did want to remind the Court about those.

24 As Your Honor stated briefly, we were before the
25 Court last summer on a motion to compel arbitration, which

1 was denied without prejudice. You granted us leave to
2 conduct discovery, which we have now completed both the
3 written discovery and taking four depositions, the
4 Plaintiff, Mr. Boyd, his mother, the admissions
5 coordinator or director and my client, Ms. Leola Burt, and
6 Peggy, Fields, who is a case manager -- a caseworker for
7 Palmetto Baptist, which I understand has now become Prisma
8 in Columbia as well as up here.

9 But what we have learned, Your Honor -- Your Honor
10 granted us leave to conduct discovery of these issues of
11 actual authority and apparent authority. And just to be
12 candid and forthright with the Court, you know, when
13 you -- when -- sometimes, when you write your briefs, you
14 convince yourself of every argument. And then you read
15 the other sides opposition and you start to reconsider
16 things.

17 I think to be entirely forthright what we've
18 established by record is apparent authority. We've argued
19 actual, but I'm -- I'm willing to tell the Court that I
20 think what -- what the record has established is apparent
21 authority for Ms. Wilda Boyd to execute this arbitration
22 agreement on behalf of her son.

23 And I want to say at the outset, this is not a motion
24 for summary judgment where all the Plaintiff has to do is
25 show a scintilla. This is not a 12(B) motion to dismiss

1 where the facts are viewed in the light most favorable to
2 the Plaintiff. There's no pleading here at issue. This
3 is a motion to compel arbitration.

4 I bear the burden. I welcome the -- you know, the
5 burden to -- to prove. But it is, you know, my burden.
6 But it is a preponderance of the evidence standard that I
7 have to show. Your -- Your Honor will be the fact finder
8 for it.

9 And what the record from discovery has established in
10 this case very specifically and very clearly is that
11 Ms. Coco [phonetic] Burt -- she goes by -- I identified her
12 as Leola, but everybody calls her Coco at Magnolia Place.
13 She was inquiring about receiving this patient from the
14 hospital in Columbia. Mr. Boyd was hospitalized in
15 Columbia.

16 He had a traumatic, I believe, motor vehicle accident
17 and was in some pretty rough shape and was probably on
18 significant pain medications. I think the records
19 established that. He was competent. I do not dispute
20 that. I, obviously, think he was competent. Because if
21 you're going to have someone appointed an agent, you're
22 going to have to have capacity. I think the Plaintiff's
23 would agree with that.

24 So Ms. Burt contacted the hospital, the caseworker,
25 Ms. Fields. And both Ms. Fields, by way of affidavit and

1 now deposition, and Ms. Burt both recall this phone call
2 very clearly. And Ms. Burt was inquiring, as she should,
3 in this case as to who would be handling the admissions
4 paperwork. And Ms. Fields informed Ms. Burt that she
5 would need to get back to her and consult with the
6 patient, Mr. James Boyd.

7 Ms. Fields did that, again, by sworn affidavit and
8 deposition testimony. She has confirmed that Ms. Burt
9 called her and that she went into the patient's room to
10 speak with Mr. Boyd, at which time he directed Ms. Fields
11 to tell Ms. Burt that "his mother would be the point of
12 contact, and that she would handle all the paperwork."

13 And Ms. Fields then called Ms. Burt and told her the
14 same thing. And Ms. Burt then both spoke and faxed
15 admissions paperwork to Wilda Boyd, at which time, Wilda
16 Boyd executed that paperwork.

17 Now, we have an apparent authority argument. But,
18 obviously, ratification is, also, something we briefed,
19 Your Honor, by way of our supplemental memorandum.
20 Obviously, it's a -- a -- you know, sort of a secondary
21 issue here. Because we think we've established properly
22 apparent authority.

23 THE COURT: Well, let me ask you this, though,
24 normally, you have an apparent authority situation that
25 comes up in a -- kind of a employer -- employer sort of an

1 agent-type relationship here. I mean, without a power of
2 attorney or something, can a parent bind a child -- an
3 adult child on an agreement like this?

4 MR. BUCKNER: Absolutely.

5 THE COURT: With apparent authority?

6 MR. BUCKNER: Absolutely. And I think that that is
7 exactly why Your Honor correctly allowed us to conduct
8 discovery. Common law agency exists. You do not need a
9 power of attorney to create agency. Common law agency
10 doctrines have been around in this state and every other
11 state for hundreds of years.

12 Someone who has mental capacity -- now, if Mr. Boyd
13 didn't have capacity -- I believe Plaintiff's would
14 stipulate that he did -- certainly, the questioning in all
15 of these depositions suggests as much. But if someone has
16 capacity, you, I, Plaintiff's counsel, or anybody else in
17 this courtroom can appoint someone to be their agent,
18 including signing an arbitration agreement.

19 The United States Supreme Court most recently in the
20 Marvin [phonetic] Healthcare case and on, at least, three
21 other occasions in the last five or six years has made it
22 very clear that courts need to put arbitration contracts
23 on equal footing as other contracts.

24 And so if someone goes into a patient's room and asks
25 that patient -- competent patient who should sign your

1 admissions paperwork at the nursing home and he says, my
2 mother should be the person that does that, that's exactly
3 what apparent authority is. That's a holding out.

4 And I realize that Mr. Boyd did not call Ms. Burt or
5 anybody at the nursing home directly and say, this is who
6 I want to deal with. But once Mr. Boyd holds his mother
7 out expressly -- it can happen through words or it can
8 happen through conduct.

9 In this case, we don't have to go into conduct. We
10 don't have to go into any implied actions. We have
11 expressed words that were cited to both Ms. Burt, an
12 employee of my client, but, more importantly, for Your
13 Honor for purposes of today, from Ms. Peggy Fields, a
14 third party who works for a company that I do not
15 represent, has nothing to do with this and just by, you
16 know, fortune in this case appears to have an incredible
17 memory. And both Ms. Burt and Ms. Fields story is exactly
18 the same. And they have made it clear that the reason
19 they were directed to deal with Ms. Boyd is because of
20 Mr. Boyd's direct representations.

21 And so here, we have a case where arbitration should
22 be granted. And I think it's incredibly important from a
23 policy standpoint because they're trying to do the right
24 thing. Arbitration agreements, specifically, in the
25 nursing home arena, you know, as Your Honor is well aware

1 and -- and discussed the brief extensively in the order in
2 this case, have come under a lot of scrutiny. And most of
3 that scrutiny has to do with when someone is
4 incapacitated. And the Court's are very concerned and I
5 think, you know, should be about having the waiver of a
6 right to a jury trial with an incapacitated person.

7 But when someone has just had the kind of accident
8 that Mr. Boyd did -- and he'd been hospitalized for a long
9 time in Greenville and was, you know, obviously, in a
10 severe situation. I think an admissions coordinator in a
11 nursing home is right to do her homework and due diligence
12 and make sure that we're not submitting this paperwork
13 directly to Mr. Boyd if he doesn't want it.

14 Mr. Boyd had every right -- Peggy Fields confirmed
15 this in her deposition as well, that if Mr. Boyd had told
16 her, I want to do the paperwork, there was nothing that
17 would have stopped him. And that's exactly what she would
18 have relayed to Ms. Burt. But that didn't happen.

19 And so here, we have the nursing home trying to do
20 the right thing. Because, as we know, Your Honor, if
21 Mr. Boyd had signed this, we'd probably be hearing an
22 argument of procedural unconscionability, duress, all
23 those kinds of things. They asked who should be directed
24 and dealt with. They got an answer. They did that. And
25 now, that's being held against them and -- or held against

1 us.

2 And I think it's critically important that
3 arbitration agreements be given the same treatment as all
4 other contracts. And that a competent person can appoint
5 an agent. And they can do that by the holding out of
6 someone as their agent, which is exactly what the record
7 has established in this case.

8 But getting to your point, Your Honor, obviously, the
9 Plaintiff and their good counsel has not just thrown up
10 their hands. They have deposed all these folks and tried
11 to point out inconsistencies and things in their favor as
12 well.

13 And here's what I'd say about that to try to persuade
14 Your Honor and show that we can meet our burden. Ms. Burt
15 and Ms. Fields recollection is identical. It's extremely
16 specific. They've walked through the phone calls that
17 were made, the faxes that were made. And Ms. Burt's
18 recollection is even, I remember sitting in Mr. Boyd's
19 room after all this happened, after some of the paperwork
20 has been signed and when I still needed to get additional
21 paperwork signed. I remember going in the room, holding
22 the phone to his ear while we talked to his mother. And
23 we talked about additional paperwork. And at that time,
24 he directed me again to deal with his mother for the rest
25 of that.

1 She will testify and has testified that she explained
2 to him that all the other agreements that had already been
3 signed included an arbitration agreement at that time. He
4 did not object. He did not protest. He was provided with
5 those materials. He could have seen them at any time
6 after. But, again, he directed his mother to handle all
7 the paperwork, which is exactly what happened in the first
8 instance, which is confirmed by Ms. Fields.

9 The idea or notion that Ms. Burt has concocted this
10 story about being in the room, holding the phone to his
11 ear, calling Ms. Fields, remembering talking to
12 Ms. Fields, Ms. Fields remembering the same thing is just
13 not possible. The kind of specificity that she used
14 should -- Ms. Fields -- Burt used should in and of itself
15 be enough to convince the Court of apparent agency.

16 But we went out and got Ms. Fields, got her deposed.
17 She gave an affidavit confirming the exact thing. And
18 Mr. Boyd's response to all this has just been, I don't
19 remember talking to them about any of this. And no one
20 ever asked me about any of it. And that's it.

21 He doesn't deny -- he just denies it all. He doesn't
22 say, well, we had a conversation, but this was talking
23 about -- it wasn't. He just says it didn't happen. And
24 if anybody had come to him, he would have said, me, which
25 directly refutes both Ms. Fields and Ms. Burt and, quite

1 frankly, doesn't make any sense given the level of
2 specificity that's been laid out.

3 And for someone to bring an arbitration agreement
4 that's already been signed by his mother to his room, tell
5 him that it's happened, and then to ask him who should
6 sign the rest of the paperwork, and he tells them his
7 mother, again, to Ms. Burt that should be the party
8 handling it is what ratification is for as well, if we
9 couldn't meet apparent agency, but we think we absolutely
10 can.

11 I agree, I have not established actual authority in
12 these depositions so far. I would need Mr. and
13 Mrs. Boyd's deposition testimony to be different. They
14 weren't. But we think we've established apparent
15 authority very clearly.

16 I know there has been some argument. We had cited
17 Mr. Boyd's prior criminal convictions as an additional
18 grounds for the Court to consider the credibility of him
19 as a witness. I know that was attacked in some of the
20 Plaintiff's responsive briefing that was submitted back in
21 February. And the only thing I want to say is there was
22 some commentary about the rules of evidence and what would
23 apply.

24 I am happy to have Ms. Burt come before Your Honor,
25 along with Ms. Fields. Ms. Fields has been drug into this

1 more than she would ever want to. I was hoping to avoid
2 that and put them under oath and have an evidentiary
3 hearing. I don't think that's necessary. But if we want
4 to talk about what the rules of evidence would and would
5 not permit, I think we need to do it all or nothing on
6 that end. And, certainly, there are some of these prior
7 convictions to Mr. -- Mr. Boyd that would apply, that the
8 Court could consider if we had an evidentiary hearing.

9 THE COURT: But is Mr. Boyd -- does he deny that any
10 of this happened, or he just doesn't recall?

11 MR. BUCKNER: Both. He, certainly, denies -- I will
12 admit to Your Honor that he granted his mother authority.
13 But he doesn't remember Ms. Fields generally, which that
14 in and of itself doesn't surprise me. But he doesn't
15 remember a conversation in the room with Ms. Boyd. He
16 just flatly says, I don't remember it, but I would
17 remember it if I told anybody.

18 And I don't think that's enough, Your Honor. If this
19 were a motion for summary judgment or something like that,
20 yeah, I think I'd -- I'd lose every time.

21 But in this case, I think that in order for
22 arbitration agreements to get a fair shake, you've got to
23 do more than just come and say, I didn't do that when
24 you've got two witnesses who have a very exacting and
25 detailed recollection of what occurred both in his

1 hospital room and thereafter. The idea that that just
2 didn't occur once you read this deposition testimony, I
3 don't think that should be given any credence by the
4 Court.

5 THE COURT: All right.

6 MR. BUCKNER: Thank you, Your Honor.

7 THE COURT: Mr. Poulin.

8 MR. POULIN: Good morning, Your Honor.

9 Again, my name's Eric Poulin. I represent the
10 Plaintiff in this matter.

11 Your Honor, as an initial matter, I don't believe
12 that the record is as clear as Mr. Buckner thinks that it
13 is, or that some of these witnesses memories were as clear
14 as he remembers them being.

15 As an initial matter, Mr. Boyd does deny that -- that
16 any of this happened. His testimony -- the most pertinent
17 testimony starting on Page 26 of his deposition, Did you
18 ever communicate to anybody at Richland Memorial whether
19 it be the admission staff there, or a nurse, or a
20 physician that your mother was in charge of paperwork?

21 Answer: No.

22 Question: Okay. You don't recall, or your answer is
23 no?

24 Answer: No.

25 Question: On June 30th, 2016, did you represent to

1 any employee at Magnolia that your mother can sign
2 paperwork on your behalf?

3 Answer: No.

4 So that's Mr. -- that's Mr. Boyd's testimony. And,
5 Judge, I really think that should stop the inquiry right
6 there. Mr. Buckner is correct that he has the burden of
7 proof in this case.

8 And I don't know that the Court's ever come out and
9 said exactly what the burden of proof is. I guess it sort
10 of is a preponderance of the evidence. But the way
11 that -- that the Court of Appeals framed it in the McCall
12 vs. Finley, which is 294 S.C. 1, is that a party asserting
13 agency as a basis of liability must prove the existence of
14 the agency and the agency must be clearly established by
15 the facts.

16 So that's -- I guess that's kind of the burden that
17 Your Honor is operating under is they must clearly
18 establish the existence of agency under the facts. And
19 that's the McCall vs. Finley case.

20 THE COURT: That's somewhere between preponderance
21 and clear and convincing.

22 MR. POULIN: I -- I guess. That's -- that's the only
23 guidance they've given us.

24 So, Your Honor, it's -- so it's undisputed that
25 Mr. Boyd did not directly give authority to the Defendant

1 facility. Their argument is that he told somebody at the
2 hospital that his mom could handle the paperwork. And
3 then that person at the hospital passed along to the
4 facility that Mr. Boyd said his mom could handle the
5 paperwork.

6 So we're dealing with sort of a step removed here.
7 And, Your Honor, this is problematic for a number of
8 reasons. First of all, it's not clear that it's even
9 reasonable for the facility to rely upon what the case
10 manager at the hospital says.

11 If we go back to the McCall case, the Court there
12 held that it is the duty of one dealing with an agent to
13 use due care to ascertain the scope of the agent's
14 authority. And, again, I have that cite for you, Your
15 Honor. It's 294 S.C. 1. So there, the Court said that
16 it's the duty of a person dealing with an agent to use due
17 care to ascertain the scope of the agency.

18 Now, they don't explain what due care is. And I
19 don't know if due care is relying on the admissions
20 coordinator at the hospital or not.

21 But what I do know is that Mr. Boyd during this
22 entire time was perfectly competent, including the day
23 that he came into the facility and up until this very
24 date. And that, in fact, people at the facility -- at the
25 Defendant's facility spoke with him on multiple occasions.

1 And they, certainly, could have very easily, if they were
2 to use due diligence, asked Mr. Boyd directly prior to the
3 arbitration agreement being signed whether or not his mom
4 had authority. And it's undisputed that that did not
5 happen.

6 The sole basis of authority here rests on the
7 allegation that he told the hospital lady who then told
8 the lady at the facility. But there's -- there's
9 additional problems with that. Because this is where I
10 see a different record than Mr. Buckner.

11 Ms. Fields is the lady at the hospital, the
12 admissions coordinator at the hospital. And Ms. Burt
13 is -- Leola Burt is the lady at the -- at the facility.
14 And the allegation is that Ms. Fields called Ms. Burt and
15 told Ms. Burt that my client said his mom was his agent
16 for signing paperwork.

17 The problem is that Ms. Fields, actually, in her
18 testimony does not recall having that conversation. She
19 doesn't, actually, recall that conversation. She just
20 assumes that she had that conversation because that's what
21 she normally does. Here's the testimony, Your Honor. We
22 filed these transcripts. It starts on Page 15 of
23 Ms. Burt's deposition, Line 2 -- sorry, Ms. Fields
24 deposition.

25 So this is the lady at the hospital that allegedly

1 called the facility and told them about --

2 MR. BUCKNER: I do have to interject. We got Ms. --
3 we have Ms. Fields affidavit and took her deposition about
4 two weeks ago. But she -- we just got her transcript, I
5 believe, last night. It has not been filed. We had a
6 little bit of a snafu --

7 MR. POULIN: I think Stefan filed it this morning
8 on -- it -- it should be there, Your Honor.

9 THE COURT: Okay.

10 MR. BUCKNER: All right.

11 MR. POULIN: So what -- the question is: What were
12 Ms. Burk -- Burt's exact words to you as it pertains to
13 Mr. Boyd?

14 Answer: Now, I do not remember them.

15 Question: Okay. Do you have any recollection of
16 that conversation?

17 Answer: No.

18 Question: So how do you know that she inquired into
19 who would be responsible for handling the admission
20 paperwork for patients?

21 Answer: Because that is a standard question of any
22 acute care or skilled nursing facility as to who the
23 responsible party will be in terms of paperwork.

24 Question: Okay. So sitting here today, do you
25 recall anything about the conversation with Ms. Burt as it

1 pertains to Mr. Boyd's placement into Magnolia Place?

2 Answer: No.

3 So Ms. Fields, the lady at the hospital, doesn't even
4 recall having any specifics about this conversation with
5 the facility about Mr. Boyd's, apparently, giving
6 authority to his mom. She just believes that she probably
7 would have done that because that's what she does in every
8 case.

9 Now, here -- this is important, I think, as well.
10 Because later on in her deposition Ms. Fields, the same
11 lady at the hospital, goes on to say that even if she did
12 have that conversation with the facility, she would have
13 only told them that -- that Mr. Boyd's mom was his contact
14 person and not his agent. And this comes from Page 19 of
15 her deposition, Your Honor.

16 Question, starting on Line 19: Okay. And what did
17 you tell Ms. Burt, who's the lady at the facility, after
18 that conversation with Mr. Boyd?

19 Answer: As far as the mother would be the contact
20 person for him.

21 Question: Okay. Did you tell her that the mother
22 would be signing the admission paperwork on his behalf?

23 Answer: That is out of my scope. I tell them the
24 contact person and the facility takes it over from there.

25 So even if this conversation did happen between the

1 lady in the hospital and the lady at the facility, the
2 lady at the hospital has testified under oath, the most I
3 would have told them is that the mom is the contact
4 person. And they need to contact the mom and take it from
5 there.

6 Now, even with all that, Your Honor, let's assume
7 that Mr. Boyd did tell the lady at the hospital that his
8 mom was his agent and that the lady at the hospital did
9 pass that on to the facility. We still have another big
10 problem here. And that is that Your Honor, in your --
11 your previous order, has already found that there was no
12 merger between the admission agreement and the arbitration
13 agreement. You applied the Hodge and the Coleman
14 reasoning and said that the two documents did not merge.

15 So we're dealing with separate documents here. In
16 fact, the -- the language from your order is: "In the
17 present case, the documents present the hallmarks of
18 separateness stated in Coleman and Hodge." You go on to
19 find that, In light of this, the Court finds that the
20 admission agreement and the arbitration agreement did not
21 merge.

22 Now, that's important, Your Honor. Because that's
23 not the law of the case, that these two documents didn't
24 merge. The admission agreement and the arbitration
25 agreement are separate. In Thompson vs. Pruitt Corp,

1 which is 416 S.C. 43, the Court of Appeals held as
2 follows, "The authority conveyed by a principle to an
3 agent to handle finances or make healthcare decisions does
4 not encompass executing an agreement to resolve legal
5 claims by arbitration."

6 THE COURT: What's that cite again?

7 MR. POULIN: That is 416 S.C. 43. It's the Court of
8 Appeals. I'm sorry, Your Honor. I don't have the year in
9 front of me.

10 THE COURT: That's fine.

11 MR. POULIN: But it's 416 S.C. 43.

12 So the Court of Appeals there said that even if
13 there's authority, actual, or apparent, or whatever kind
14 of authority, for an agent to handle finances and make
15 healthcare decisions, that does not encompass the separate
16 step of executing an agreement to resolve legal claims by
17 arbitration.

18 So even if we concede that Mr. Boyd told the lady at
19 the hospital that his mom could execute the admission
20 agreement, and even if we concede that the lady at the
21 hospital passed that along to Magnolia, to the facility,
22 that authority alone does not extend to the arbitration
23 agreement, which was a separate document.

24 So we asked the lady at the hospital whether they had
25 ever even discussed the -- arbitration at all. And, of

1 course, it would seem to strain [phonetic] reality that
2 they would, that the lady at the hospital would be like,
3 okay, who's going to sign you into the -- into the nursing
4 home? And, oh, by the way, she's going to sign an
5 arbitration agreement for you. You know, that -- that
6 kind of strains logic.

7 But we asked her about it. The question was --
8 question -- this is on Page 18 of Ms. Fields deposition,
9 Line 23. Question: Do you recall if you asked Mr. Boyd
10 if his mother or anyone else could sign the arbitration
11 agreement on his behalf?

12 Answer: I do not.

13 Page 24, Line 12. Question: Okay. And during this
14 process, did you ever hear anybody mention any arbitration
15 agreement?

16 Answer: No.

17 So even if there was some authority conveyed from my
18 client to the lady at the hospital which was then conveyed
19 to the facility that he wanted his mother to handle his
20 admission to the nursing home, there was never any
21 discussion about arbitration. He had no knowledge that
22 the admission to the nursing home would even contain an
23 arbitration agreement until after the fact and until that
24 was already signed.

25 So for all these reasons -- Your Honor, I think that

1 there was no authority to begin with for those reasons.

2 THE COURT: How about for ratification?

3 MR. POULIN: So that brings us to ratification,
4 Judge. And, initially, I'm not entirely sure that
5 ratification is before the Court, based on Your Honor's
6 previous order. Your order said that in light of this
7 lack of record regarding the agency relationship in this
8 case, the Court will allow discovery on the issue of the
9 agency relationship between the Plaintiff and Wilda Boyd
10 at the time the arbitration agreement and admissions
11 agreement were signed and executed, which we -- that's
12 what we've been talking about. All of that happened prior
13 to the execution of the documents.

14 So, now, they -- they want to make a new argument.
15 They want to go beyond that. And they want to talk about
16 what happened afterward and whether there was -- there was
17 ratification by Mr. -- Mr. Boyd.

18 I will say, Your Honor, ratification and estoppel,
19 strictly speaking, are separate legal theories to some
20 extent. But when applied to the facts of this case and
21 the similar instances, estoppel and ratification are --
22 are kind of almost exactly the same legal analysis.
23 And -- and the Court has already found that there is no
24 estoppel here. And that's the law of the case.

25 But ratification is slightly different than estoppel.

1 They -- they are arguing for implied ratification.
2 There's two ways you can ratify. You can either come
3 right out and say, yes, this happened. In the business
4 sense a lot of times, people will, actually, sign a
5 ratification document.

6 They're arguing implied ratification. And they're --
7 they're saying that it was impliedly ratified only because
8 of Mr. Boyd's silence. In other words, that once he found
9 out about it, he was silent. That's their argument. It's
10 ratification through silence.

11 Unfortunately, for them, the case law seems to
12 suggest that mere silence enough is -- is not -- standing
13 alone enough necessarily to establish implied
14 ratification. There's got to be some act accompanying the
15 silence to indicate or suggest acceptance.

16 So, Your Honor, really, the key case I think on -- on
17 ratification is Stilt -- the Stiltner vs. USAA case, which
18 is 395 S.C. -- I think I probably typed this in wrong. I
19 have 395 S.C. 395. But I -- I think that's probably
20 incorrect. It's cited --

21 THE COURT: Stiltner, how do you spell it?

22 MR. POULIN: S-T-I-L-T-N-E-R.

23 THE COURT: All right.

24 MR. POULIN: versus USAA. And in that case, the
25 Court set forth three elements that a party asserting

1 ratification has to prove.

2 So the three elements for there to be ratification
3 is, one, acceptance by the principle of the benefits of
4 the agent's act. Two, the principle's full knowledge of
5 the facts. And, three, circumstances or an affirmative
6 election demonstrating the principle's intent to accept
7 the unauthorized arrangements.

8 So if we look at the first element, the first element
9 is did Mr. Boyd ratify the arbitration agreement by
10 accepting the benefits of that agreement? Well, Your
11 Honor, again, if the arbitration agreement and the
12 admission agreement are separate, Mr. Boyd didn't receive
13 any benefits from the arbitration agreement.

14 He may have received some benefits from the admission
15 agreement whereby he was admitted to the facility and
16 allowed to stay there, and whatnot. But the arbitration
17 agreement was separate from the admission agreement. And,
18 in fact, in your prior order, Your Honor already
19 acknowledged as much. You said, "Since the agreements did
20 not merge, it cannot be argued that the Plaintiff received
21 a benefit from the arbitration agreement." That's in your
22 prior order. And that's already the law of the case.

23 So even if Mr. Boyd did find out about the
24 arbitration agreement after the fact, he didn't -- he
25 didn't receive any benefit from it. And that fails the

1 first prong.

2 By the way, Your Honor, I believe the way I read the
3 Stiltner case, they have to prove all three prongs. It's
4 not just one of the three. They have to prove all three.
5 So I think that ends ratification right there.

6 But if we turn to the second element, which is that
7 the principle, in this case, Mr. Boyd, has full knowledge
8 of the facts, there's no evidence here that Mr. Boyd had
9 full knowledge of the facts.

10 Even if we assume that he knew that an admission
11 agreement had been signed as part of his admission, which
12 I think is a logical assumption, we have to assume that if
13 he's in a facility, he probably knows that somebody signed
14 something to get him in there.

15 But even if we assume that he knew an admission
16 agreement had been signed, there's no evidence that he,
17 also, knew an arbitration agreement had been signed or,
18 more specifically, that he understood the concept of
19 arbitration.

20 So, now, I want to turn to Ms. Burt's deposition
21 testimony. This is the lady at the facility. So she's
22 the admissions coordinator at the facility.

23 Ms. Burt's deposition on Page 28 starting on Line 16,
24 Question: Did you ever explain the admission agreement to
25 Mr. Boyd?

1 Answer: No.

2 Question: What about the consent to release, did you
3 explain that to Mr. Boyd?

4 Answer: No.

5 Question: What about the arbitration agreement, did
6 you explain that to Mr. Boyd?

7 Answer: No.

8 So the lady at the facility now has testified that
9 she never explained any of these documents to Mr. Boyd.
10 Now, she does say that after they were all signed, she put
11 them into a little packet and gave them to Mr. Boyd to
12 keep. So everything gets signed. She puts them all
13 together. She hands them to the patient to keep. She
14 does say that. He disputes that. He says that didn't
15 happen. But she says it did.

16 Even if that's true, Your Honor, under the case law,
17 I don't think that merely being provided with copies of
18 the documents and remaining silent about them establishes
19 ratification.

20 So if we look back at the Stiltner case, what that
21 Stiltner case was about is you've got this guy that has a
22 couple of cars that are titled in his name, Mr. Stiltner.
23 He gets married. He adds his wife to the policy. It's
24 a -- it's a USAA policy. She goes down there and she's
25 got authority -- actual authority from him to go

1 effectuate whatever needs to be done to put her on the
2 policy. But she doesn't have authority to make any
3 changes.

4 She goes down there, rejects UIM on the policy. Six
5 years go by. And then he gets in a wreck and realizes
6 there's no UIM on the policy. And he sues to reform the
7 policy to add UIM. USAA says, no, you ratified her
8 actions because you, literally, were getting -- you got a
9 debt page for six years that said you don't have UIM. You
10 got renewal notices for six years that came to your
11 address that you should have read that said you don't have
12 UIM.

13 And what the Court said is, "Mere silence or failure
14 of a principle to repudiate the unauthorized act of an
15 agent does not necessarily constitute a ratification,
16 unless the silence or acquiescence in question cannot be
17 explained on any other theory than that of ratification."

18 In the Stiltner case, they said that Stiltner
19 presented evidence that he did not understand the
20 difference between UM and UIM coverage. And that he was
21 unaware that his wife had reported to reject it on his
22 behalf, even though he had been receiving declaration
23 pages for six years.

24 So --

25 THE COURT: All right. And I've got your memo.

1 We've got to wrap -- we've got -- I think y'all have
2 15 minutes for you hearing.

3 MR. POULIN: I'm sorry, Your Honor. Could I touch on
4 the third --

5 THE COURT: Yeah, quickly.

6 MR. POULIN: -- just on the third prong very quickly?

7 Your Honor, so then the third prong is -- the third
8 prong is some actual step demonstrating the agent's
9 authority, or -- or whatever. So, again, if I own some
10 rental properties and somebody rents a property without
11 my -- without my saying that they can and then for the
12 next year I collect rent from the tenant, I can't come
13 back later and say, oh, no, you don't have a lease because
14 I never authorized that contract.

15 It -- it kind of ties in with element one. I'm
16 receiving a benefit from what's happening. I can't come
17 back later and say it didn't happen after I've received
18 the benefit. That's just not the case here, Your Honor.

19 Mr. Boyd received no benefit from the arbitration
20 agreement. That's already been found. And there's no
21 evidence that he even really knew or understood about the
22 arbitration agreement, such that silence is enough for
23 ratification. He didn't take any other act, other than
24 silence. And I don't think that's enough for
25 ratification, Your Honor.

1 Thank you very much.

2 THE COURT: And I -- and I do note there's no
3 deposition excerpts or anything that has been filed that's
4 showing up on the system.

5 MR. POULIN: Okay. Your Honor, I asked --
6 Mr. Feidler was supposed to file all four this morning --

7 THE COURT: And I don't want full depositions. I
8 mean, I'm going to take this under advisement. Y'all need
9 to send me relevant portions. Because I don't have -- I
10 mean, I'm not going to read the whole thing.

11 MR. POULIN: Understood.

12 THE COURT: All right. Brief response, Mr. Buckner.

13 MR. BUCKNER: Thank you, Your Honor.

14 I'll try to be as brief as possible. Your Honor has
15 some deposition excerpts and the affidavits.

16 THE COURT: Right. I have those that were cited
17 already.

18 MR. BUCKNER: And in fairness to --

19 THE COURT: The only thing filed this morning was a
20 motion to quash.

21 MR. BUCKNER: Yeah. And in fairness to Mr. Poulin,
22 this -- through no fault of Plaintiff's counsel or myself,
23 the court reporter had something personal come up. We
24 were supposed --

25 THE COURT: That's fine.

1 MR. BUCKNER: -- to get the deposition last week and
2 it just got there last night. So if Your Honor were
3 inclined to consider the cited testimony, I haven't even
4 had a chance to look at it. And I can tell you, I was
5 there, Mr. Poulin was not. The testimony about her being
6 a mere contact person was later clarified.

7 But here's what I want to touch on in brief reply.
8 First of all, the Thompson case and your orders previously
9 about merger have nothing to do with this case whatsoever.

10 Thompson, Hodge, all of those cases dealt with an
11 incapacitated person. And then the lawyer arguing for
12 arbitration said, we have an admission agreement. An
13 incapacitated person who's admitted to the nursing home is
14 admitted validly pursuant to the South Carolina Healthcare
15 Authority Act. Well, the Court says that legal authority
16 granted by a statute does not merely automatically extend
17 to arbitration rights.

18 We don't have an incapacitated person. We have a
19 person who by all accounts was competent. And that person
20 has the authority to appoint someone as an agent. And if
21 you ask someone who is competent and has that authority
22 who you do want to handle your admissions paperwork, not
23 just admission to the nursing home -- that's not what the
24 testimony was -- admissions paperwork, then that person
25 has a light -- a right to rely on and enter validly into

1 those contracts.

2 The idea -- because, remember, Your Honor, what's not
3 being talked about is there are eight other agreements
4 that were signed in this admissions paperwork by Ms. Boyd.
5 None of the other ones are in dispute. None of the other
6 ones are being argued to be invalid. It's just the
7 arbitration agreement.

8 And if you ask someone who should fill out the
9 admissions paperwork -- and the argument is they didn't
10 include the word arbitration so that's not valid authority
11 is ridiculous. You don't have to say, oh, by the way,
12 there's an arbitration agreement included in there, such
13 that you will have authority for everything else but that.
14 That is putting arbitration agreements on unequal footing
15 in violation of the United States Supreme Court precedent.

16 If someone says, who should fill out your admissions
17 paperwork, the contracts therein, and includes an
18 arbitration agreement, apparent agency applies equally as
19 it would to the litany of other documents that Ms. Boyd
20 signed and nobody has a problem with, including her son,
21 James.

22 Also, regarding, specifically, this idea -- because,
23 Your Honor, again, we have what's -- it's the
24 preponderance of the evidence. The idea that Ms. Fields
25 walked into a room, had a conversation with Ms. Boyd that

1 he says didn't happen -- she walked out of that room
2 convinced that his mother was the person with authority.
3 She called Ms. Burt. Ms. Burt remembers that conversation
4 very well regardless of -- of course, Ms. Fields doesn't
5 remember the exact details of it. Ms. Burt can testify to
6 exactly what she said.

7 And then based on that call -- this is undisputed
8 because Ms. Boyd and Mr. Boyd weren't there -- then called
9 directly to Ms. Wilda Boyd to deal with her. The idea
10 that this was all made up and concocted without James Boyd
11 knowing about it -- and the only thing Mr. Boyd has to do
12 to defeat this motion is say, no, it didn't happen. And
13 he's someone who, obviously, has some credibility issues.

14 And if Your Honor needs to have an evidentiary
15 hearing, again, we will welcome it, because those will
16 come up. But more is needed than just saying, no, that it
17 didn't happen. This is not an incident where we are
18 trying to bootstrap authority to the admissions agreement.
19 We have independent authority vis-à-vis common law agency.

20 That's all, Your Honor.

21 Thank you.

22 THE COURT: All right. Let me -- let me do this --
23 because I need to look at this. Because I have had two
24 arbitration claims in nursing homes just today. And if
25 y'all have some deposition excerpts -- like I said, not

1 the whole -- I mean, I -- you know, send whatever.

2 Is it -- is it a deposition of Ms. Fields? Is
3 that -- I mean, Ms. -- is that whose deposition you just
4 got?

5 MR. BUCKNER: Correct, Your Honor, Ms. Fields.

6 MR. POULIN: Yes, sir, Your Honor.

7 THE COURT: And I've got the other stuff that you
8 reference in affidavit. So any relevant portions of that.
9 I don't need any arguments or any additional legal, just
10 submit those in the next day or so.

11 MR. BUCKNER: Okay.

12 THE COURT: And then I'll take a look at all -- I'll
13 take a look at everything and let y'all know what I come
14 up with.

15 *****END OF TRANSCRIPT OF RECORD*****
16
17
18
19
20
21
22
23
24
25

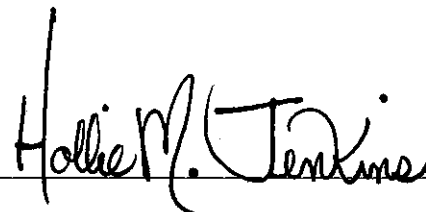
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 20th day of May, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 3, 2022

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

JAMES BOYD, JR.,
Plaintiff,

VS.

)
)
)
)
)
) Case No.
) 2018-CP-23-01934

THI OF SOUTH CAROLINA
AT MAGNOLIA PLACE AT
GREENVILLE, LLC;
FUNDAMENTAL CLINICAL
AND OPERATIONAL
SERVICES, LLC;
FUNDAMENTAL
ADMINISTRATIVE
SERVICES, LLC,

Defendants.

)
)
)
)
)
)
)
)
)
)

DEPOSITION OF JAMES BOYD, JR., produced,
sworn and examined on the 19th day of October, 2018,
between the hours of 2:45 p.m. and 3:36 p.m., at the
Anastopoulo Law Firm, 418 River Street, Greenville,
South Carolina, 29601, before Mindy Vislay, a Notary
Public within and for the State of South Carolina, in
a certain cause now pending in the Court of Common
Pleas, Thirteenth Judicial Circuit, in the County of
Greenville, State of South Carolina, wherein JAMES
BOYD, JR., is Plaintiff and THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL
CLINICAL AND OPERATIONAL SERVICES, LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC, are Defendants.

A P P E A R A N C E S

For the Plaintiff:

Anastopoulo Law Firm
By: Stefan B. Feidler
32 Ann Street
Charleston, South Carolina 29403
843-614-8888
stefan@akimlawfirm.com

For the Defendants:

Young, Clement, Rivers, LLP
By: Perry M. Buckner, IV
25 Calhoun Street
Suite 400
Charleston, South Carolina 29401
843-720-5406
pbuckner@ycrlaw.com

Also present: Wilda Boyd

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

QUESTIONS BY:

PAGE NO.

MR. BUCKNER
MR. FEIDLER4
42

EXHIBITS

DEFENDANT'S

DESCRIPTION

PAGE MKD.

EXHIBIT 1

ADMISSION AGREEMENT - SOUTH
CAROLINA

34

EXHIBIT 2

FACILITY-RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

36

(Original exhibits were retained by the court
reporter and will be copied and attached to copies of
the transcript.)

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Mindy Vislay, a Notary Public, and
5 afterwards transcribed into typewriting; and the
6 signature of the witness is expressly waived.

7 * * * * *

8 JAMES BOYD, JR.,
9 of lawful age, produced, sworn and examined on behalf
10 of the Defendants, deposes and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. BUCKNER:

13 Q. Mr. Boyd, my name is Perry Buckner. We
14 just met briefly for the first time off the record,
15 and I am here today to ask you some questions about
16 your admission to a healthcare facility that I
17 represent in Greenville, South Carolina. Is that your
18 understanding as well?

19 A. Yes, sir.

20 Q. The rules of civil procedure in South
21 Carolina require me to go over some things with you
22 before we get started. Some sort of background kind
23 of stuff.

24 Have you ever given a deposition like you're doing
25 here today before?

1 A. Yes, I have.

2 Q. Okay. When did you do that?

3 A. When was that? The last time we came up
4 here, I think.

5 MR. FEIDLER: Mediation, I think.

6 MR. BUCKNER: Motor vehicle?

7 MR. FEIDLER: Mediation.

8 MR. BUCKNER: I gotcha. With Tom
9 Stevenson? Okay.

10 QUESTIONS BY MR. BUCKNER:

11 Q. Let me ask you the question a different
12 way. Have you ever been in a room where you were
13 under oath like you are now giving testimony?

14 A. No.

15 Q. Well, I'll be asking you questions, and
16 you'll have to give a verbal answer to my questions.
17 It will be pretty much like a conversation. The one
18 thing you need to be mindful of is to give -- it's
19 very common in ordinary conversation to go uh-huh and
20 uh-uh. I do that, too. But because she has a job to
21 take down everything we say, try to say yes, no and
22 all that kind of stuff.

23 If you want a break at any time you're entitled to
24 it. As long as I'm not in the middle of a question or
25 you're, like, in the middle of an answer you can take

1 a break and I'll accommodate you.

2 A. Okay.

3 Q. Also, if you don't understand a question
4 that I ask you, you can ask me to rephrase it, and I
5 will. I'm usually pretty slow and deliberate, but I'm
6 guilty of asking a confusing question all the time.
7 So just ask me and I'll clarify it.

8 Now that you've been sworn in, however, you cannot
9 talk with your lawyer about this case. You can talk
10 with him about anything else in the world you want to,
11 but you can't talk about the case with anybody now
12 that you're under oath.

13 Does that sound fair?

14 A. Yes.

15 Q. There you go. That's a good example of
16 what I was talking about. It is very normal to head
17 nod and say uh-huh, but you can't do that today.

18 A. Okay.

19 Q. And I'll try to help you along the way.
20 Also, if you answer a question that I ask you, I'm
21 going to assume, unless you've asked me to clarify,
22 that you understood my question. Is that fair?

23 A. Yes, sir.

24 Q. And I'm also going to assume that the
25 answers you give here today under oath will be the

1 same that you'll give if called to testify in court in
2 front of a judge. Is that fair?

3 A. Yes, sir.

4 Q. Okay. Tell me what your full name is,
5 please.

6 A. My full name is James Calvin Boyd, Jr.

7 Q. And when were you born?

8 A. [REDACTED].

9 Q. Okay. And where do you currently live?

10 A. [REDACTED]
11 [REDACTED].

12 Q. Is that in Newberry County?

13 A. Yes, sir.

14 Q. All right.

15 A. Oh, no. Lexington County. Lexington
16 County.

17 Q. Is part of Little Mountain in Newberry
18 County?

19 A. Part of Little Mountain is, but we live in
20 the Lexington County part of it.

21 Q. Do you ever go eat at Wise Bar-B-Q?

22 A. Cannons BBQ you mean?

23 Q. No. Wise is in --

24 MR. FEIDLER: Newberry.

25 MR. BUCKNER: Yeah. Do you know where --

1 it's good. It's only open like two days a week,
2 though.

3 QUESTIONS BY MR. BUCKNER:

4 Q. And were you born in Newberry County -- or
5 Lexington County?

6 A. Yes. Lexington.

7 Q. Where are you originally from, Little
8 Mountain?

9 A. I'm originally from Chapin.

10 Q. Okay. Near the lake?

11 A. No. I ain't too far from the lake, though.

12 Q. When did you leave Chapin and move to
13 Little Mountain?

14 A. Ten, 15 years ago. Something like that.

15 Q. And it's my understanding, and you correct
16 me if I'm wrong, that what led to your admission to
17 the nursing home was a motor vehicle accident?

18 A. Yes.

19 Q. Were you a pedestrian and were hit by a
20 motor vehicle?

21 A. Yes.

22 Q. And when did that occur?

23 A. June 16th, 2000 -- June 16th, 2000 -- I
24 mean June 3rd, 2016.

25 Q. Okay.

1 A. June 3rd.

2 Q. It's my understanding that you suffered
3 some injuries as a result of that, right?

4 A. Yes.

5 Q. And what happened to you?

6 A. Well, I was riding my bike, and I woke up
7 the next day and I was in the hospital, and I couldn't
8 move. And they told me I was paralyzed at first, but
9 then the nurse came to give me a bath, and I told her
10 I could feel it. And she's like, you can feel all
11 this? And I was like, yes. So she went back and told
12 the doctor, and he came back and told me that, well,
13 maybe I can -- I probably won't be able to walk like I
14 used to or whatever, but I can get some of my
15 functions back, it's just up to me and the Lord, I
16 guess.

17 Q. So you never suffered any -- and I use the
18 term because it's in the medical chart. You never had
19 any cognitive deficit, like you never lost any ability
20 to think or -- like that?

21 A. No.

22 Q. And that remains true today --

23 A. Yeah.

24 Q. -- from a mental standpoint you're still
25 the same baseline as it was before the accident?

1 A. Yes.

2 Q. Okay. And that would have been true when
3 you were admitted to the nursing home however many
4 weeks after this incident, right?

5 A. Yes.

6 Q. All right. Well, first, I'm thankful that
7 you're okay. I understand that we're not on the same
8 side of this lawsuit, but I've got a job to do,
9 obviously. I don't wish, you know, poorly of anyone.
10 I'm glad that things have at least improved from the
11 initial diagnosis or prognosis. So, that's good.

12 How long were you hospitalized after the accident?

13 A. A month.

14 Q. Okay. And the paperwork that I have shows
15 that you were admitted to Magnolia Manor of Greenville
16 on or around June 30th, 2016. Does that sound right?

17 A. June the 30th you said?

18 Q. That's what I have.

19 A. Somewhere up in there. June, July.
20 Somewhere up in there.

21 Q. Now, I see you, for the record, looking
22 over at your mother, which, again, is something normal
23 that you would do in conversation, but for purposes of
24 this conversation you can't do that.

25 A. All right.

1 Q. You can't look to someone else for an
2 answer. And I'm not trying to jump on you. I know
3 I'm asking fairly background stuff, but try not to do
4 that. For the record, Miss Wilda was not being
5 suggestive or anything untoward going on. I just want
6 it to be clear. And I know why you're doing it,
7 because you're just trying to look to her to see if
8 she remembers.

9 A. The reason I did that is because I wasn't
10 quite sure if it was in June or July, but it was in
11 that time frame. I was in the hospital at least about
12 a month.

13 Q. And as a result of the incident that
14 happened in early June of 2016 where you were struck
15 as a pedestrian did you lose some function with your
16 hands?

17 A. Did I lose some function with my hands? I
18 couldn't do nothing at first.

19 Q. Okay. And just so I know, because we
20 obviously did not know each other before that, before
21 June of 2016 when this incident occurred, did you have
22 any disabilities or health issues?

23 A. Before my accident? No.

24 Q. Okay. And what exactly -- after the
25 accident you underwent -- I assume suffered some

1 fractures?

2 A. Yeah.

3 Q. Tell me basically what the doctors told
4 you, after they figured out that you were not
5 paralyzed, what you actually suffered injury-wise.

6 A. I think it's C4 and C5, my spinal injury.

7 Q. What else?

8 A. That was pretty much it. They said that
9 the surgery was good and it was just left up to me and
10 how much therapy they give me or whatever I can do.

11 Q. So you had a fracture of those two
12 vertebrae, correct?

13 A. Uh-huh. Yes, sir. Yes, sir.

14 Q. You didn't have any broken legs or broken
15 arms?

16 A. No.

17 Q. And the surgery that you referenced was
18 solely to repair the fractured vertebrae, correct?

19 A. Yes.

20 Q. How was it that you came to be admitted to
21 Magnolia Manor of Greenville?

22 A. Well, they assigned me a caseworker while I
23 was at Richland Memorial, and they were trying to find
24 a nursing home for me to go in because I had the
25 spinal injury, and she was looking into a nursing home

1 that specified into the spinal injuries, and she came
2 up with Magnolia Place in Greenville.

3 Q. I'm sorry. I've been saying Magnolia Manor
4 of Greenville. What I meant is Magnolia Place --

5 A. Place. Yeah.

6 Q. -- of Greenville. There are two Magnolias
7 in Greenville, and I'm referring to Magnolia Place
8 when I said Magnolia Manor.

9 A. Well, I gotcha.

10 Q. And did you have a conversation with the
11 caseworker about Magnolia Place other than what you've
12 already described?

13 A. No.

14 Q. Okay. And at that time you were able to
15 make your own decisions, correct?

16 A. Yes.

17 Q. You didn't have a power of attorney or
18 conservator or guardian or anything like that,
19 correct?

20 A. No.

21 Q. All right. And you could make your needs
22 known?

23 A. Yes.

24 Q. And your mother, it's my understanding, was
25 assisting you with some matters, correct?

1 A. Yes.

2 Q. And obviously this was a life changing
3 injury. Is that fair?

4 A. Yes.

5 Q. And it was a traumatic time for you?

6 A. Yes.

7 Q. Okay. And did it cause stress on you and
8 your family?

9 A. Yes.

10 Q. Does it still today?

11 A. Yes.

12 Q. And because of that stress and that
13 pressure did it make sense to you at the time to have
14 your mother help you with certain matters pertaining
15 to the admission to the nursing home?

16 MR. FEIDLER: Objection. You can answer.

17 QUESTIONS BY MR. BUCKNER:

18 Q. There are going to be times today where
19 your lawyer objects to the form of the question. As
20 long as he doesn't instruct you not to answer you
21 still have to answer. And I know, again, it's one of
22 these things if someone talks over you in normal
23 conversation you would stop, but answer as if he did
24 not.

25 A. What was the question?

1 Q. I'm going to rephrase it for you. In light
2 of the stress and the pressure that was put on your
3 family by this injury did it appear appropriate for
4 you at the time in 2016 to allow your mother to take
5 care of certain matters regarding your admission to
6 the nursing home?

7 MR. FEIDLER: Same objection. You can
8 answer.

9 THE WITNESS: I have to answer?

10 QUESTIONS BY MR. BUCKNER:

11 Q. You do.

12 A. Okay. During that time? Yeah, I believe
13 my mom, it would have been appropriate for her to help
14 me in certain things. Certain things.

15 Q. Would one of those things have been getting
16 you admitted to Magnolia Place of Greenville?

17 A. I don't know about that, because the
18 caseworker was handling all that.

19 Q. You're talking about the Richland Memorial
20 caseworker?

21 A. Yes, sir.

22 Q. But, obviously, discharging from Richland
23 Memorial and going to Magnolia Place requires
24 paperwork and things of that nature to be
25 accomplished, right?

1 A. Uh-huh.

2 Q. And was your mother someone who was
3 delegated to take care of those items?

4 A. Not really. No.

5 Q. Okay. When you were admitted to Magnolia
6 Place of Greenville do you recall meeting with an
7 individual by the name of Leola Burt?

8 A. No, I don't.

9 Q. You don't remember Ms. Burt at all?

10 A. No, I don't.

11 Q. Do you remember someone by the first name
12 of Coco?

13 A. I do remember Coco.

14 Q. Coco and Leola are the same person.

15 A. Okay. Well, if they are the same person
16 then I know Coco.

17 Q. And you met Coco Burt at Magnolia Place?

18 A. Yeah, I have.

19 Q. And what is it that you know about
20 Ms. Burt?

21 A. Not a whole lot really, just that I think
22 she worked at like an intake or something like that,
23 but other than that I don't really know nothing about
24 her.

25 Q. When you say intake you mean admissions?

1 A. Yeah. Admissions.

2 Q. So you saw her during the admissions
3 process?

4 A. Not my admission process I didn't.

5 Q. Well, then how is it that you came to know
6 her and that she did admissions?

7 A. When I was in there. I mean, whenever I
8 was in there, I mean, she would come around sometimes
9 to people's rooms and say how are you doing and talk
10 to us.

11 Q. Did you ever meet her during the admissions
12 process?

13 A. Not that I recall.

14 Q. If Ms. Burt would testify that she did meet
15 you during the admission process would you assert that
16 she would be lying?

17 A. I would say yes because I don't remember
18 anything about --

19 Q. Well, I understand you may not remember,
20 and that's fair. It's been more than two-and-a-half
21 years.

22 A. Yeah, but --

23 Q. I'm asking if not only do you not remember,
24 but are you suggesting that you in fact did not meet
25 with her during the admissions process, or,

1 alternatively, you don't know?

2 A. I don't know.

3 Q. So it's fair to say that if Ms. Burt
4 testified that she recalls that, you wouldn't have any
5 memory or evidence --

6 A. No.

7 Q. -- to say that was false?

8 A. Let me rephrase that. Because I want to
9 get this right. When I got to Magnolia Place I didn't
10 talk to anybody about my admission. Nobody came to me
11 and asked me anything about my admission. All I knew
12 was I was there. And my caseworker handled all the
13 paperwork. Whatever happened in between, they never
14 came and asked me anything.

15 Q. When you say caseworker, at Richland
16 Memorial?

17 A. Uh-huh.

18 Q. Now, a Richland Memorial caseworker, they
19 can't sign you into a nursing home. You understand
20 that?

21 A. I know they can't sign me into a nursing
22 home. I don't know how that came to happen, but it
23 did. All I knew is that they came to my room and
24 shipped me from Richland Memorial to Greenville.

25 Q. Okay. And I've got -- and we can mark this

1 in a little bit -- both your admissions agreement,
2 arbitration agreement and the more general business
3 file that has to do with your admission to Magnolia
4 Place of Greenville, and I'll represent to you, and I
5 think you'll agree, that there's no document in there
6 that's signed by any Richland Memorial caseworker --

7 A. Okay. That's fine.

8 Q. -- correct?

9 A. That's correct, I guess.

10 Q. All right. You don't recall -- there was
11 no caseworker from Richland Memorial that was present
12 at Magnolia Place of Greenville?

13 A. No.

14 Q. And, so, when you said that they handled
15 your admission, you mean they made arrangements for
16 you to get there?

17 A. I guess.

18 Q. Okay. Now, I assume that throughout all of
19 this your mother has been someone who you trusted to
20 assist you, correct?

21 A. Yes.

22 Q. And that your mother is someone who has
23 effectuated and ensured that your wishes and desires
24 are met, correct?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: I can't answer that.

2 QUESTIONS BY MR. BUCKNER:

3 Q. Why not? Are you not answering it because
4 he's objecting?

5 A. No. I can't answer that because I don't
6 know the whole facts behind what her motivation was
7 for doing it. All I know is she loves me and she's my
8 son -- I'm her son, and that's it.

9 Q. And she has no ill will toward you,
10 correct?

11 A. No.

12 Q. And she would never do something against
13 your will, correct?

14 A. No.

15 Q. Okay. And did you object to being admitted
16 to Magnolia Place at any time yourself?

17 A. No. Because I was under the impression
18 that it was one of the best spinal injury nursing
19 homes in the state.

20 Q. And did you ever tell your mother or
21 anybody at Magnolia Place of Greenville that you did
22 not want to be there?

23 A. Yes. I told my mom I didn't want to be
24 there, and I also told a couple nurses,
25 administration. Josh. I forgot his last name. A

1 couple guys.

2 Q. I told you I was going to mess up some
3 questions. That was a poor question. Did you ever
4 tell anyone that before you were admitted to Magnolia
5 Place?

6 A. No.

7 Q. Do you remember what time of day it was
8 when you arrived at Magnolia Place in Greenville?

9 A. I want to say it was in the evening.
10 That's what I want to say, that it was sometime around
11 four or five, if I'm not mistaken.

12 Q. And what kind of medications were you on at
13 that time?

14 A. None that I know of. I mean, except for
15 what the doctors gave me when I was at Richland
16 Memorial, but I wasn't --

17 Q. I would imagine three or four weeks after a
18 significant spinal fracture you were on some type of
19 medication, sir.

20 MR. FEIDLER: Objection. You can answer
21 if --

22 QUESTIONS BY MR. BUCKNER:

23 Q. Is that the case?

24 A. Yeah. I had to be on something.

25 Q. Do you remember what you were on?

1 A. No. It had to be pain pills, though. Some
2 kind of pain pills. Something to keep my pain down.
3 But, to my knowledge, I don't recall them giving me
4 any medication, but I'm assuming that they had to, but
5 I don't remember them giving me medication.

6 Q. And just a couple things. I should have
7 asked you this in the beginning. Are you under any
8 medications today?

9 A. No.

10 Q. You're not on anything --

11 A. I mean yeah. I'm on my medication that my
12 family doctor put me on and some medication that
13 Magnolia had put me on.

14 Q. And what is that?

15 A. Baclofen. Tramadol. What else? I don't
16 know the rest of them. It's just quite a few.

17 Q. Any of those medications that you're
18 currently taking, would they affect your ability to
19 give accurate testimony today?

20 A. No.

21 Q. What is your sister's full name?

22 A. Jackie Annette Boyd.

23 Q. And what was her involvement, if any, with
24 your admission to Magnolia Place of Greenville?

25 A. Repeat the question.

1 Q. What was her involvement, if any, with your
2 admission process to Magnolia Place of Greenville?

3 A. None that I know of.

4 Q. Okay. Do you recall her being present the
5 day you were admitted?

6 A. No.

7 Q. And I want to going back to what you said
8 earlier. First you said you did not remember, but --
9 well, hold on. Let me finish my question. You said
10 you did not remember, and then later maybe amended
11 that somewhat possibly, but you have no recollection
12 of speaking with Leola "Coco" Burt on June 30th, 2016,
13 whatsoever?

14 A. On June what, 30th?

15 Q. Of 2016. The day you admitted to Magnolia
16 Place.

17 A. I have no recollection of that.

18 Q. Okay. Now, are you testifying under oath
19 that you in fact did not speak with her on June 30th,
20 2016, or is it just simply that you do not recall?

21 A. June 30th. I don't recall. I really
22 don't.

23 Q. And do you remember what room number you
24 were assigned to initially upon admission to Magnolia
25 Place?

1 A. Oh, my God. I've been in three different
2 rooms in that place. I started in -- I want to say I
3 was on the -- I want to say I was on blue wing, room
4 13 or something like that. I want to say that. I'm
5 not sure that's the right --

6 Q. You said blue wing?

7 A. I was on the blue hall.

8 Q. Room 113?

9 A. No. Just 13.

10 Q. I'm sorry. And if I walk in the front door
11 at Magnolia Place do I take a left?

12 A. You take a right.

13 Q. Okay. I take a right. And then how far do
14 I go down that hallway?

15 A. You go down that hall maybe -- probably
16 four doors down on the left and you're probably in my
17 room.

18 Q. And when you arrived at Magnolia Place of
19 Greenville on June 30th, 2016, was your mother or
20 sister present that day with you?

21 A. No.

22 Q. Were you transported by EMS to get there,
23 an ambulance?

24 A. Yes.

25 Q. And did anyone ride in the ambulance with

1 you besides the --

2 A. No.

3 Q. -- paramedic? Okay. That's another thing.
4 I'm not jumping on you, but let me finish my question.
5 You're a sharp enough guy to see where I'm going, and
6 it's very natural in conversation to jump ahead. We
7 would do it if we weren't on the record. But make
8 sure you let me finish my question before you answer,
9 again, for the purpose of building a record.

10 My understanding from your testimony is that no
11 one else was in the EMS besides the paramedic and
12 yourself; is that correct?

13 A. Yes.

14 Q. Did your mom and sister come to the
15 facility later that day, or you don't recall?

16 A. No.

17 Q. Okay. When you were admitted -- and you
18 had told me earlier that you presumedly blacked out or
19 have no memory of the incident that occurred in early
20 June of 2016, but you woke up the next day at the
21 hospital, correct?

22 A. Yes.

23 Q. And you were in the hospital for the better
24 part of a month after that, correct?

25 A. Yes.

1 Q. And at times when you were in the hospital,
2 including, you know, during those three to four weeks
3 and at discharge, I presume that paperwork had to be
4 completed at Richland Memorial, too, correct?

5 A. Repeat that question again.

6 Q. Yeah. When you were at Richland Memorial
7 for a month, and I know you obviously didn't, you
8 know, execute or sign any paperwork upon admission
9 because it sounds like you were not conscious,
10 however, I'm wondering if at any time while you were
11 there, you know, during your stay at Richland Memorial
12 up until when you were discharged to Magnolia Place of
13 Greenville, do you remember signing anything while you
14 were there?

15 A. I didn't sign anything while I was there.

16 Q. Do you recall your mother or your sister
17 signing anything on your behalf?

18 A. No.

19 Q. Do you believe that more likely than not
20 something was signed on your behalf by your mother?

21 A. I don't know.

22 Q. Did you ever communicate to anybody at
23 Richland Memorial, whether it be admission staff there
24 or a nurse or a physician, that your mother was in
25 charge of paperwork?

1 A. No.

2 Q. Okay. You don't recall or your answer is
3 no?

4 MR. FEIDLER: Objection. Asked and
5 answered.

6 THE WITNESS: No.

7 QUESTIONS BY MR. BUCKNER:

8 Q. You're saying that on any day you were at
9 Richland Memorial a statement like that never
10 happened?

11 MR. FEIDLER: Objection. Asked and
12 answered.

13 THE WITNESS: What was the question again?

14 QUESTIONS BY MR. BUCKNER:

15 Q. Sure. On any day that you were at Richland
16 Memorial you're testifying under oath that you never
17 told a staff member at Richland Memorial that your
18 mother was in charge of completing paperwork for you?

19 MR. FEIDLER: Objection. Asked and
20 answered. You can answer.

21 THE WITNESS: No, not that I can recall.
22 No.

23 QUESTIONS BY MR. BUCKNER:

24 Q. And your attorney's objecting, but that's
25 what I'm trying to pin down. I understand what you've

1 said so far, but what I want to know is that you're
2 telling me you don't recall or you're telling me that
3 you're 100 percent sure that that didn't happen?

4 MR. FEIDLER: Objection.

5 THE WITNESS: Nobody came and asked me do I
6 want my mom to sign anything or something like that?

7 QUESTIONS BY MR. BUCKNER:

8 Q. Well, not just that. I mean, obviously you
9 would agree with me that there was paperwork completed
10 for you to be admitted to Richland Memorial, right?

11 A. There had to be some kind of paperwork for
12 me to be there.

13 Q. Yeah. And you didn't do that paperwork?
14 We've already discussed that.

15 A. No.

16 Q. And do you presume that your mother did
17 that paperwork?

18 A. I presume she did.

19 Q. All right. And you didn't tell anybody at
20 Richland Memorial that she shouldn't have done that,
21 that was without my permission and I want to talk to
22 you guys about that, did you?

23 MR. FEIDLER: Objection.

24 THE WITNESS: Well, first of all, no one at
25 Richland Memorial hospital came and asked me or

1 explained to me about any kind of paperwork that she
2 may have been getting or that she may have signed. No
3 one ever came to me and said, well, this is what
4 you -- you or your mom need to sign this, this is what
5 it's for, this is what -- blah blah blah. Nobody ever
6 did that not once.

7 QUESTIONS BY MR. BUCKNER:

8 Q. Do you believe that -- and I think I'm
9 correct in saying that your mother's name is Wilda?

10 A. Uh-huh.

11 MR. BUCKNER: My grandmother's name is
12 Wilda.

13 MS. BOYD: Really?

14 QUESTIONS BY MR. BUCKNER:

15 Q. Did your mother Wilda Boyd have authority
16 to at least enter you and admit you to a nursing home
17 like Magnolia Place?

18 MR. FEIDLER: Objection.

19 THE WITNESS: Did she have authority?

20 QUESTIONS BY MR. BUCKNER:

21 Q. Yes, sir. Just to admit you.

22 MR. FEIDLER: Same objection. You can
23 answer.

24 THE WITNESS: I'm trying to get this right.
25 Did she have the authority to -- yeah.

1 QUESTIONS BY MR. BUCKNER:

2 Q. And did she have authority to execute all
3 paperwork necessary to admit you to the nursing home?

4 A. No.

5 Q. Okay. And what was it -- you told me she
6 had authority to admit you. What was it that she
7 didn't have authority to do in your eyes?

8 A. In my eyes, I mean, she had authority to me
9 because she's my mother, but, in my eyes, anything
10 like any medical things that I needed, she didn't have
11 authority for none of that.

12 Q. And why is that?

13 A. Because I'm a grown man and I want to know
14 what I need for myself before I let anybody do
15 anything for me. I was fully conscious. I had all my
16 right mind. I didn't see any reason for anybody to
17 have authority over my body like that if I couldn't --
18 unless I couldn't do it myself.

19 Q. And so you believe that your mother did
20 this wrongfully when she executed medical paperwork on
21 your behalf that admitted you to Magnolia Place of
22 Greenville?

23 MR. FEIDLER: Objection.

24 THE WITNESS: Repeat the question.

25 QUESTIONS BY MR. BUCKNER:

1 Q. Do you think your mother was wrong to do
2 what she did when she executed certain admission
3 paperwork to admit you to Magnolia Place in
4 Greenville?

5 A. Yeah. Uh-huh.

6 Q. Did you ever tell any staff member at
7 Magnolia Place of Greenville what you just said to my
8 previous question about how you wanted to look at
9 everything?

10 A. No. Because nobody ever came and asked me
11 about any papers, so I can't -- I mean, not to my
12 knowledge.

13 Q. Okay. I just want to make sure that --
14 because this is the only time I get to talk to you
15 about this whole deal. Right? Well, when I say whole
16 deal, I mean the arbitration issue. But you're not
17 testifying that there was a time that you looked at a
18 staff member at Magnolia Place and said I just want
19 you to know that my mother shouldn't be handling
20 admission paperwork, it should be me? You don't
21 remember anything like that? I understand you feel
22 that way now, but you didn't say that to any staff
23 member at Magnolia Place?

24 A. No.

25 Q. Okay. Tell me just generally -- I mean,

1 I'm with you here today, and I'm obviously observing
2 you, and I can imagine what kind of condition you were
3 in right after this accident happened, and I'm sure it
4 was rough.

5 A. It was.

6 Q. When you were admitted to Magnolia Place
7 what kind of shape were you in? Were you alert and
8 oriented?

9 A. Yes.

10 Q. All right. And you could hold a
11 conversation, correct?

12 A. Yes.

13 Q. And if you made a statement to a staff
14 member at Magnolia Place they could rely on it, right?

15 A. Yes.

16 Q. And they wouldn't -- you know, when they
17 were engaged with you -- and when I say they, I mean
18 that hypothetical staff member at Magnolia Place.
19 They wouldn't have any reason to suspect that you
20 weren't sound of mind or anything like that?

21 A. They had no reason to think that I wasn't
22 sane or whatever you want to call it. I had all my
23 senses.

24 Q. All right.

25 MR. BUCKNER: Can we go off the record real

1 quick?

2 MR. FEIDLER: Yeah.

3 (A short recess was taken.)

4 QUESTIONS BY MR. BUCKNER:

5 Q. Now, Mr. Boyd, you don't have any reason to
6 believe that your mother would have misled Magnolia
7 Place's staff, do you?

8 A. No.

9 Q. All right. And if she, you know, made
10 representations that she was authorized to admit you
11 and execute certain paperwork, you're not testifying
12 that she was misleading the staff, are you?

13 A. Repeat the question --

14 Q. If she --

15 A. -- in a different way.

16 Q. Yes. If your mother made representations
17 about her authority to Magnolia Place's staff, you
18 don't believe that she was misleading them, do you?

19 A. In what way? Like what? I mean --

20 Q. Well, misleading them about the nature of
21 her authority to execute the paperwork.

22 A. Do I think she was misleading them?

23 Q. Yes, sir.

24 A. No.

25 Q. Okay.

1 MR. BUCKNER: And let's go ahead and mark
2 this as Exhibit 1.

3 (Defendant's Exhibit No. 1 was then marked
4 for identification by the reporter.)

5 QUESTIONS BY MR. BUCKNER:

6 Q. What Madam Court Reporter is marking as
7 Exhibit 1 is an admission agreement pertaining to your
8 admission on June 30th, 2016, to Magnolia Place of
9 Greenville. And have you ever seen this agreement
10 before?

11 A. No.

12 Q. Even in preparing for today's deposition
13 you didn't see that agreement?

14 A. No.

15 Q. What did you do to prepare for today's
16 deposition?

17 MR. FEIDLER: I'll object to --

18 THE WITNESS: Nothing.

19 MR. FEIDLER: -- the extent it gets into
20 attorney/client privilege.

21 MR. BUCKNER: Fair enough.

22 QUESTIONS BY MR. BUCKNER:

23 Q. I don't want to know what you talked about
24 with Mr. Feidler, but if you looked at any document --

25 A. No, I ain't seen any documents.

1 Q. Did you talk with Mr. Feidler in
2 preparation for today?

3 A. No.

4 Q. You haven't had any conversation with him
5 about this case -- excuse me -- about this deposition?

6 MR. FEIDLER: I'm Mr. Feidler.

7 THE WITNESS: Who?

8 MR. FEIDLER: I'm Mr. Feidler.

9 THE WITNESS: Oh, yeah.

10 QUESTIONS BY MR. BUCKNER:

11 Q. You did talk with him?

12 A. Yeah.

13 MR. FEIDLER: We're on a first name basis.

14 QUESTIONS BY MR. BUCKNER:

15 Q. And if you go to the last page, page 12 --
16 and I'm trying to be quick so that we can move
17 along -- that is your mother's signature, correct?

18 A. I wouldn't know. I mean --

19 Q. You're not suggesting that it's not hers?

20 A. Again, I'm gonna say again I wouldn't know
21 because I --

22 Q. Yeah. And that's fine. I just want to
23 make sure that you're not testifying that that is not
24 her signature.

25 A. No, I'm not testifying that it's not.

1 Q. You don't know one way or the other?

2 A. I don't know.

3 Q. Fair enough.

4 MR. BUCKNER: Let's mark this as Exhibit 2.

5 (Defendant's Exhibit No. 2 was then marked
6 for identification by the reporter.)

7 QUESTIONS BY MR. BUCKNER:

8 Q. Mr. Boyd, this is the arbitration
9 agreement. And the same question as the last
10 signature page that we talked about. Wilda Ann Boyd's
11 signature is at the bottom, which I have presumed is
12 the signature of your mother. Is that in fact her
13 signature, or you don't know one way or the other?

14 A. I don't know one way or the other.

15 Q. Fair enough. But, again, same question as
16 the last document, you are not testifying that that is
17 not her signature?

18 A. I'm not saying that it is, because I don't
19 know.

20 Q. Fair enough. Now, you testified earlier
21 that you did agree that your mother had authority to
22 admit you to the nursing home, but you took issue with
23 certain documents that -- you've taken issue currently
24 with certain documents that were executed on your
25 behalf. Can you tell me which documents, if any, your

1 mother did not have authority to sign on your behalf?

2 A. Really, she didn't have no authority to
3 sign any papers on my behalf because I never gave her
4 authority to sign any papers on my behalf.

5 Q. Okay. You and your mother never had any
6 conversation where you discussed her looking after you
7 and taking care of you and signing paperwork because
8 you weren't in the condition to do that kind of thing?

9 MR. FEIDLER: Objection. You can answer.

10 THE WITNESS: Say that -- repeat the
11 question.

12 QUESTIONS BY MR. BUCKNER:

13 Q. You and your mother Ms. Boyd who is at the
14 end of the table never had any conversation about her
15 taking care of things and doing paperwork on your
16 behalf and looking after you so that you didn't have
17 to do it because you'd had what I would imagine would
18 be a pretty traumatic accident?

19 MR. FEIDLER: Same objection.

20 THE WITNESS: What I do recall is my mom
21 saying to me that the people up there want her to come
22 sign some papers on my behalf, you know, but what
23 papers I don't know because they never explained to me
24 what she was gonna be signing or none of that.

25 QUESTIONS BY MR. BUCKNER:

1 Q. When you say up there, you're talking about
2 Magnolia Place?

3 A. Magnolia Place.

4 Q. When your mother said that, that she was
5 going to be signing some paperwork on your behalf, did
6 you say to your mother no, no, no, wait, wait, wait,
7 don't do that, I don't want you to sign that, and you
8 don't have authority, or anything like that?

9 A. No. I never knew what papers that was
10 being signed, whether it was admission papers to be
11 admitted to Magnolia Place or what. They never asked
12 me.

13 Q. Well, did you ask your mother to clarify?
14 What are you talking about, mom? Tell me what you
15 mean when you say that you have to sign some
16 paperwork. Did you ask her anything like that?

17 A. No. Because -- no.

18 Q. Okay. And, again, I want to make sure the
19 record's clear. When she informed you that she was
20 going to sign the admission paperwork for Magnolia
21 Place of Greenville on your behalf you did not tell
22 her not to do that?

23 A. I did not tell her not to do it. I didn't
24 tell her to do it. I didn't tell her not to do it.

25 Q. But she did say she was going to do it?

1 A. She said they wanted her to come sign some
2 papers. They never got back to me. She never came
3 back to me. Nobody never came back and said anything,
4 so I don't know if she signed any papers or not.

5 Q. And do you have any reason to believe that
6 your mother would sign something on your behalf that
7 wasn't in your best interest?

8 A. I don't think she would sign nothing that
9 wasn't in my best interest, no.

10 Q. At any time -- and I know that we've talked
11 about the conversation where she said -- do you
12 remember where you were, by the way, when that
13 conversation happened? Were you on the phone or in
14 person with your mom?

15 A. What conversation?

16 Q. The conversation where she said I'm going
17 to sign some admission papers.

18 A. I was in my room laying in my bed.

19 Q. At Magnolia Place?

20 A. At Magnolia Place.

21 Q. And she was on the phone?

22 A. Who was on the phone?

23 Q. Your mother.

24 A. No.

25 Q. She was there in person?

1 A. In person.

2 Q. Was Ms. Burt there?

3 A. Coco?

4 Q. Coco. I'm sorry.

5 A. I'm not sure if she was there that day or
6 not.

7 Q. Okay.

8 A. I'm not sure if she was there that day or
9 not.

10 Q. And is that day more likely than not that
11 we're talking about the day you were admitted since
12 we're talking about admission paperwork?

13 A. Not the day I was admitted. It was
14 probably a day or two later or something like that
15 when she finally got a chance to come up there.

16 Q. At any time after whenever that
17 conversation with your mother took place about the
18 admission paperwork did you and your mother have a
19 conversation about what had been signed?

20 A. No.

21 Q. Okay. Did you ever have any conversation
22 with Coco about what had been signed?

23 A. No.

24 Q. And, again, I'm talking about after the
25 fact.

1 A. Yeah.

2 Q. You don't remember or you didn't have one,
3 a conversation with Coco after your mother had signed
4 the paperwork?

5 MR. FEIDLER: Objection. Asked and
6 answered.

7 THE WITNESS: Repeat the question.

8 QUESTIONS BY MR. BUCKNER:

9 Q. Yeah. Are you testifying that you don't
10 remember a conversation with Coco after the admission
11 paperwork was executed or are you testifying that a
12 conversation with Coco after the admission paperwork
13 did not happen?

14 MR. FEIDLER: Same objection.

15 THE WITNESS: I can't answer that question
16 because I don't know when the paper was signed, and I
17 never talked to Coco about any papers that --

18 QUESTIONS BY MR. BUCKNER:

19 Q. After?

20 A. After. I never talked to Coco about any
21 paper pertaining to me being at Magnolia Place.

22 Q. Afterward?

23 A. After I got there.

24 Q. Okay.

25 MR. BUCKNER: Can we go off the record?

1 (A short recess was taken.)

2 QUESTIONS BY MR. BUCKNER:

3 Q. Mr. Boyd, going back on the record, we
4 talked a little bit earlier about some medical
5 paperwork and admissions. Regarding like financial
6 stuff like, you know, who would be handling your money
7 and things of that nature while you were in the
8 nursing home, do you remember whether any paperwork
9 regarding that issue was executed by your mother?

10 A. No.

11 Q. All right. And I understood your testimony
12 earlier about your mother's execution of admission
13 paperwork. Do you believe that she had authority to
14 execute any financial authorizations on your behalf?

15 A. No.

16 Q. Okay. I don't think I have any further
17 questions, but I'm going to think about it a little
18 bit longer. Thank you for your time. I appreciate
19 it.

20 A. Okay.

21 MR. FEIDLER: My go?

22 MR. BUCKNER: Your go.

23 CROSS-EXAMINATION

24 QUESTIONS BY MR. FEIDLER:

25 Q. Mr. Boyd, were you competent June 30th,

1 2016, when you were admitted into Magnolia?

2 A. Say again.

3 Q. Were you competent when you were admitted
4 into Magnolia Place on June 30th, 2016?

5 A. When you say competent, what do you mean?

6 Q. Were you able to make your own decisions?

7 A. Yes, I was.

8 Q. Did you, on June 30th, 2016, ever represent
9 to your mother that she could sign paperwork for you?

10 A. No.

11 Q. Did you, on June 30th, 2016, ever represent
12 to any employee of Magnolia Place that your mother
13 could sign paperwork for you?

14 MR. BUCKNER: Object to the form of the
15 question.

16 QUESTIONS BY MR. FEIDLER:

17 Q. You can answer.

18 A. Repeat the question.

19 Q. On June 30th, 2016, did you represent to
20 any employee at Magnolia that your mother could sign
21 paperwork on your behalf?

22 MR. BUCKNER: Object to the form --

23 THE WITNESS: No.

24 MR. BUCKNER: -- and asked and answered.

25 QUESTIONS BY MR. FEIDLER:

1 Q. Mr. Boyd, Exhibit 2 --

2 MR. BUCKNER: Was there an answer?

3 MR. FEIDLER: He said no.

4 THE WITNESS: I said no.

5 QUESTIONS BY MR. FEIDLER:

6 Q. Exhibit 2 appears to be the arbitration
7 agreement. Can you confirm that?

8 A. It's the arbitration agreement?

9 Q. Yes.

10 A. Yeah.

11 Q. Have you ever seen this arbitration
12 agreement?

13 A. No.

14 Q. Did anyone from Magnolia Place bring this
15 to you?

16 A. No.

17 Q. If someone at Magnolia Place came up to you
18 and said that your mother on your behalf was signing
19 this arbitration agreement and taking away your
20 constitutional right to a jury trial, would you agree
21 to that?

22 MR. BUCKNER: Objection to form. Leading.

23 THE WITNESS: No.

24 QUESTIONS BY MR. FEIDLER:

25 Q. And I believe you said you don't remember,

1 but do you remember any employee of Magnolia coming to
2 you, whether on June 30th, 2016, and asking if your
3 mother can sign paperwork on your behalf?

4 A. No.

5 MR. BUCKNER: Object to the form. What was
6 the answer?

7 THE WITNESS: No.

8 MR. FEIDLER: No.

9 QUESTIONS BY MR. FEIDLER:

10 Q. And when your mother did sign this
11 paperwork, was she in the room with you when she was
12 signing this paperwork?

13 A. No.

14 Q. Did anybody ask you if it was okay that
15 your mother sign this paperwork on your behalf?

16 MR. BUCKNER: Object to the form.

17 THE WITNESS: No.

18 MR. FEIDLER: I don't think I have any
19 further questions.

20 MR. BUCKNER: I don't have any further
21 questions.

22 (Wherein, the deposition was concluded.)
23
24
25

WORD INDEX

< 1 >

1 3:11 34:2, 3, 7
 100 28:3
 113 24:8
 12 35:15
 13 24:4, 9
 15 8:14
 16th 8:23, 23
 18th 7:8
 1965 7:8
 19th 1:14

< 2 >

2 3:12 36:4, 5 44:1, 6
 2:45 1:15
 2000 8:23, 23
 2016 8:24 10:16
 11:14, 21 15:4
 23:12, 15, 20 24:19
 25:20 34:8 43:1, 4, 8, 11, 19 45:2
 2018 1:14
 2018-CP-23-01934 1:6
 25 2:10
 29401 2:11
 29403 2:5
 29601 1:17

< 3 >

3:36 1:15
 30th 10:16, 17
 23:12, 14, 19, 21
 24:19 34:8 42:25
 43:4, 8, 11, 19 45:2
 32 2:5
 325 7:10
 34 3:11
 36 3:12
 3rd 8:24 9:1

< 4 >

4 3:4
 400 2:10
 418 1:16
 42 3:4

< 8 >

843-614-8888 2:6
 843-720-5406 2:11

< A >

ability 9:19 22:18
 able 9:13 13:14
 43:6
 accident 8:17 9:25
 10:12 11:23, 25
 32:3 37:18
 accommodate 6:1
 accomplished 15:25
 accurate 22:19
 administration 20:25
 ADMINISTRATIVE 1:10, 25
 ADMISSION 3:11
 4:16 8:16 14:15
 15:5 17:4, 15 18:10, 11 19:3, 15 22:24
 23:2, 24 26:8, 23
 31:2, 20 34:7, 8
 38:10, 20 39:17
 40:12, 18 41:10, 12
 42:12
 admissions 16:25
 17:1, 2, 6, 11, 25
 19:1 42:5
 admit 29:16, 21
 30:3, 6 31:3 33:10
 36:22
 admitted 10:3, 15
 12:20 15:16 16:5
 20:15 21:4 23:5, 15
 25:17 28:10 30:21
 32:6 38:11 40:11, 13 43:1, 3
 affect 22:18
 Afterward 41:22
 age 4:9
 ago 8:14
 agree 19:5 28:9
 36:21 44:20
 AGREED 4:1
 AGREEMENT 3:11, 12 19:1, 2 34:7, 9, 13 36:9 44:7, 8, 12,

19

ahead 25:6 34:1
 ain't 8:11 34:25
 alert 32:7
 allow 15:4
 alternatively 18:1
 ambulance 24:23, 25
 amended 23:10
 Anastopoulo 1:16
 2:4
 Ann 2:5 36:10
 Annette 22:22
 answer 5:16, 25
 6:20 11:2 14:16, 20, 21, 23 15:8, 9 19:25
 20:1, 5 21:20 25:8
 27:2, 20 29:23 37:9
 41:15 43:17 44:2
 45:6
 answered 27:5, 12, 20 41:6 43:24
 answering 20:3
 answers 6:25
 anybody 6:11
 18:10 20:21 26:22
 28:19 30:14, 16
 45:14
 appear 15:3
 appears 44:6
 appreciate 42:18
 appropriate 15:3, 13
 ARBITRATION 3:12 19:2 31:16
 36:8 44:6, 8, 11, 19
 arms 12:15
 arrangements 19:15
 arrived 21:8 24:18
 asked 6:21 18:11, 14 22:7 27:4, 11, 19
 28:5, 25 31:10
 38:11 41:5 43:24
 asking 5:15 6:6
 11:3 17:23 45:2
 assert 17:15
 assigned 12:22
 23:24
 assist 19:20
 assisting 13:25
 assume 6:21, 24

11:25 19:18

assuming 22:4
 attached 3:16
 attorney 13:17
 34:20
 attorney's 27:24
 authority 29:15, 19, 25 30:2, 6, 7, 8, 11, 17 33:17, 21 36:21
 37:1, 2, 4 38:8
 42:13
 authorizations 42:14
 authorized 33:10

< B >

back 9:11, 12, 15
 23:7 39:2, 3, 3 42:5
 background 4:22
 11:3
 Baclofen 22:15
 Bar-B-Q 7:21
 baseline 9:25
 basically 12:3
 basis 35:13
 bath 9:9
 BBQ 7:22
 bed 39:18
 beginning 22:7
 behalf 4:9 26:17, 20 30:21 36:25
 37:1, 3, 4, 16, 22
 38:5, 21 39:6 42:15
 43:21 44:18 45:3, 15
 believe 15:12 26:15
 29:8 30:19 33:6, 18
 39:5 42:13 44:25
 best 20:18 39:7, 9
 better 25:23
 bike 9:6
 bit 19:1 42:4, 18
 blacked 25:18
 blah 29:5, 5, 5
 blue 24:3, 6, 7
 body 30:17
 born 7:7 8:4
 bottom 36:11
 BOYD 1:2, 13, 22
 2:15 4:8, 13 7:6
 22:22 29:13, 15

33:5 36:8 37:13
42:3, 25 44:1
Boyd's 36:10
break 5:23 6:1
briefly 4:14
bring 44:14
broken 12:14, 14
Buckner 2:9 3:4
4:12, 13 5:6, 8, 10
7:25 8:3 14:17
15:10 20:2 21:22
27:7, 14, 23 28:7
29:7, 11, 14, 20 30:1,
25 32:25 33:4 34:1,
5, 21, 22 35:10, 14
36:4, 7 37:12, 25
41:8, 18, 25 42:2, 22
43:14, 22, 24 44:2,
22 45:5, 16, 20
building 25:9
Burt 16:7, 9, 17, 20
17:14 18:3 23:12
40:2
business 19:2

< C >
C4 12:6
C5 12:6
Calhoun 2:10
call 32:22
called 7:1
Calvin 7:6
Cannons 7:22
care 15:5 16:3
37:7, 15
CAROLINA 1:2, 7,
17, 18, 21, 22 2:5, 11
3:11 4:17, 21 7:11
Case 1:5 6:9, 11
21:23 35:5
caseworker 12:22
13:11 15:18, 20
18:12, 15, 18 19:6,
11
cause 1:19 14:7
certain 1:19 14:14
15:5, 14, 14 31:2
33:11 36:23, 24
chance 40:15

changing 14:2
Chapin 8:9, 12
charge 26:25 27:18
Charleston 2:5, 11
chart 9:18
CIRCUIT 1:1, 20
civil 4:20
clarify 6:7, 21 38:13
clear 11:6 38:19
Clement 2:9
client 34:20
CLINICAL 1:8, 24
Coco 16:12, 13, 14,
16, 17 23:12 40:3, 4,
22 41:3, 10, 12, 17,
20
cognitive 9:19
come 17:8 25:14
37:21 39:1 40:15
coming 45:1
COMMON 1:1, 19
5:19
communicate 26:22
competent 42:25
43:3, 5
completed 26:4
28:9
completing 27:18
concluded 45:22
condition 32:2 37:8
confirm 44:7
confusing 6:6
conscious 26:9
30:15
conservator 13:18
constitutional 44:20
conversation 5:17,
19 10:23, 24 13:10
14:23 25:6 32:11
35:4 37:6, 14 39:11,
13, 15, 16 40:17, 19,
21 41:3, 10, 12
copied 3:16
copies 3:16
correct 8:15 12:12,
18 13:15, 19, 25
19:8, 9, 20, 24 20:10,
13 25:12, 21, 24
26:4 29:9 32:11

35:17
counsel 4:2, 2
COUNTY 1:2, 20
7:12, 15, 16, 18, 20
8:4, 5
couple 20:24 21:1
22:6
COURT 1:1, 19
3:16 7:1 34:6
**CROSS-EXAMINAT
ION** 42:23
currently 7:9 22:18
36:23

< D >
day 1:14 9:7 21:7
23:5, 15 24:20
25:15, 20 27:8, 15
40:5, 8, 10, 11, 13, 14
days 8:1
deal 31:15, 16
decisions 13:15 43:6
Defendants 1:12, 25
2:8 4:3, 10
DEFENDANT'S
3:10 34:3 36:5
deficit 9:19
delegated 16:3
deliberate 6:5
deposes 4:10
DEPOSITION 1:13
4:3, 24 34:12, 16
35:5 45:22
described 13:12
DESCRIPTION
3:10
desires 19:23
diagnosis 10:11
different 5:11 24:1
33:15
DIRECT 4:11
disabilities 11:22
discharge 26:3
discharged 26:12
discharging 15:22
discussed 28:14
37:6
doctor 9:12 22:12
doctors 12:3 21:15

document 19:5
34:24 36:16
documents 34:25
36:23, 24, 25
doing 4:24 11:6
17:9 20:7 37:15
door 24:10
doors 24:16

< E >
earlier 23:8 25:18
36:20 42:4, 12
early 11:14 25:19
eat 7:21
effectuated 19:23
employee 43:12, 20
45:1
EMS 24:22 25:11
engaged 32:17
ensured 19:23
enter 29:16
entitled 5:23
evening 21:9
evidence 18:5
exactly 11:24
EXAMINATION
4:11
examined 1:14 4:9
example 6:15
excuse 35:5
execute 26:8 30:2
33:11, 21 42:14
executed 30:20
31:2 36:24 41:11
42:9
execution 42:12
EXHIBIT 3:11, 12
34:2, 3, 7 36:4, 5
44:1, 6
EXHIBITS 3:8, 16
explained 29:1
37:23
expressly 4:6
extent 34:19
eyes 30:7, 8, 9

< F >
facility 4:16 25:15
**FACILITY-RESIDE
NT** 3:12

fact 17:24 23:19
 36:12 40:25
facts 20:6
fair 6:13, 22 7:2
 14:3 17:20 18:3
 34:21 36:3, 15, 20
fairly 11:3
false 18:7
family 14:8 15:3
 22:12
far 8:11 24:13 28:1
feel 9:10, 10 31:21
Feidler 2:4 3:4 5:5,
 7 7:24 14:16 15:7
 19:25 21:20 27:4,
 11, 19 28:4, 23
 29:18, 22 30:23
 33:2 34:17, 19, 24
 35:1, 6, 6, 8, 8, 13
 37:9, 19 41:5, 14
 42:21, 24 43:16, 25
 44:3, 5, 24 45:8, 9,
 18
figured 12:4
file 19:3
finally 40:15
financial 42:5, 14
find 12:23
fine 19:7 35:22
finish 23:9 25:4, 8
Firm 1:16 2:4
first 4:14 9:8 10:6
 11:18 16:11 23:8
 28:24 35:13
five 21:11
forgot 20:25
form 14:19 43:14,
 22 44:22 45:5, 16
four 21:11, 17
 24:16 26:2
fracture 12:11
 21:18
fractured 12:18
fractures 12:1
frame 11:11
front 7:2 24:10
full 7:4, 6 22:21
fully 30:15
function 11:15, 17
functions 9:15

FUNDAMENTAL
 1:8, 10, 23, 24
further 42:16 45:19,
 20
 < G >
general 19:2
generally 31:25
getting 15:15 29:2
give 5:16, 18 6:25
 7:1 9:9 12:10
 22:19
given 4:24
giving 5:13 22:3, 5
glad 10:10
go 4:21 5:19 6:15
 7:21 12:24 24:14,
 15 32:25 34:1
 35:15 41:25 42:21,
 22
God 24:1
going 6:21, 24 11:5
 14:18 15:1, 23 21:2
 23:7 25:5 38:5, 20,
 25 39:16 42:3, 17
gonna 35:20 37:24
good 6:15 8:1
 10:11 12:9
gotcha 5:8 13:9
grandmother's 29:11
GREENVILLE 1:2,
 8, 16, 21, 23 4:17
 10:15 12:21 13:2, 4,
 6, 7 15:16 16:6
 18:24 19:4, 12
 20:21 21:8 22:24
 23:2 24:19 26:13
 30:22 31:4, 7 34:9
 38:21
grown 30:13
guardian 13:18
guess 9:16 19:9, 17
guilty 6:6
guy 25:5
guys 21:1 28:22
 < H >
hall 24:7, 15
hallway 24:14

handled 18:12
 19:14
handling 15:18
 31:19 42:6
hands 11:16, 17
happen 18:22 28:3
 41:13
happened 9:5
 11:14 18:13 27:10
 32:3 39:13
head 6:16
health 11:22
healthcare 4:16
help 6:19 14:14
 15:13
hit 8:19
hold 23:9 32:10
home 8:17 10:3
 12:24, 25 14:15
 15:6 18:19, 22
 29:16 30:3 36:22
 42:8
homes 20:19
hospital 9:7 11:11
 25:21, 23 26:1
 28:25
hospitalized 10:12
hours 1:15
hypothetical 32:18
 < I >
identification 34:4
 36:6
ill 20:9
imagine 21:17 32:2
 37:17
impression 20:17
improved 10:10
incident 10:4 11:13,
 21 25:19
including 26:2
INDEX 3:1
individual 16:7
informed 38:19
initial 10:11
initially 23:24
injuries 9:3 13:1
injury 12:6, 25
 14:3 15:3 20:18

injury-wise 12:5
instruct 14:20
intake 16:22, 25
interest 39:7, 9
involvement 22:23
 23:1
issue 31:16 36:22,
 23 42:9
issues 11:22
items 16:3
IV 2:9
 < J >
Jackie 22:22
JAMES 1:2, 13, 21
 4:8 7:6
job 5:20 10:8
Josh 20:25
JR 1:2, 13, 22 4:8
 7:6
judge 7:2
JUDICIAL 1:1, 20
July 7:8 10:19
 11:10
jump 11:2 25:6
jumping 25:4
June 8:23, 23, 24
 9:1 10:16, 17, 19
 11:10, 14, 21 23:12
 14, 19, 21 24:19
 25:20 34:8 42:25
 43:4, 8, 11, 19 45:2
jury 44:20
 < K >
keep 22:2
kind 4:22 5:22
 21:12 22:2 28:11
 29:1 32:2, 7 37:8
knew 18:11, 23 38:9
know 7:25 10:9
 11:2, 6, 19, 20 14:21
 15:17 16:16, 19, 23
 17:5 18:1, 2, 21, 22
 20:6, 7 21:14 22:16
 23:3 26:2, 7, 8, 11,
 21 28:1 30:13
 31:19 32:16 33:9
 34:23 35:18, 20
 36:1, 2, 13, 14, 19

37:22, 23 39:4, 10
41:16 42:6
knowledge 22:3
31:12
known 13:22

< L >
lake 8:10, 11
Law 1:16 2:4
lawful 4:9
lawsuit 10:8
lawyer 6:9 14:19
laying 39:18
Leading 44:22
leave 8:12
led 8:16
left 12:9 24:11, 16
legs 12:14
Leola 16:7, 14
23:12
Lexington 7:15, 15,
20 8:5, 6
life 14:2
light 15:1
Little 7:10, 17, 19
8:7, 13 19:1 42:4,
17
live 7:9, 19
LLC 1:8, 9, 11, 23,
24, 25
LLP 2:9
long 5:24 10:12
14:20
longer 42:18
look 11:1, 7 31:8
looked 31:17 34:24
looking 10:21
12:25 37:6, 16
Lord 9:15
lose 11:15, 17
lost 9:19
lot 16:21
loves 20:7
lying 17:16

< M >
Madam 34:6
MAGNOLIA 1:7,
23 10:15 12:21
13:2, 3, 4, 7, 8, 11

15:16, 23 16:5, 17
18:9 19:3, 12 20:16,
21 21:4, 8 22:13, 24
23:2, 15, 24 24:11,
18 26:12 29:17
30:21 31:3, 7, 18, 23
32:6, 14, 18 33:6, 17
34:8 38:2, 3, 11, 20
39:19, 20 41:21
43:1, 4, 12, 20 44:14,
17 45:1
Magnolias 13:6
man 30:13
Manor 10:15 12:21
13:3, 8
mark 18:25 34:1
36:4
marked 34:3 36:5
marking 34:6
matters 13:25
14:14 15:5
Meadowlark 7:10
mean 7:22 8:24
16:25 17:7, 8 19:15
21:14 22:11 28:8
30:8 31:11, 16, 25
32:17 33:19 35:18
38:15 43:5
meant 13:4
Mediation 5:5, 7
medical 9:18 30:10,
20 42:4
medication 21:19
22:4, 5, 11, 12
medications 21:12
22:8, 17
meet 17:11, 14, 24
meeting 16:6
member 27:17 31:6,
18, 23 32:14, 18
Memorial 12:23
15:19, 23 18:16, 18,
24 19:6, 11 21:16
26:4, 6, 11, 23 27:9,
16, 17 28:10, 20, 25
memory 18:5 25:19
mental 9:24
mess 21:2
met 4:14 16:17

19:24
middle 5:24, 25
mind 30:16 32:20
mindful 5:18
Mindy 1:17 4:4
misleading 33:12, 18,
20, 22
misled 33:6
mistaken 21:11
MKD 3:10
mom 15:13 20:23
25:14 28:6 29:4
37:20 38:14 39:14
money 42:6
month 10:13 11:12
25:24 26:7
mother 10:22 13:24
14:14 15:4 16:2
19:19, 22 20:20
24:19 26:16, 20, 24
27:18 28:16 29:15
30:9, 19 31:1, 19
33:6, 16 36:12, 21
37:1, 5, 13 38:4, 6,
13 39:6, 23 40:17,
18 41:3 42:9 43:9,
12, 20 44:18 45:3,
10, 15
mother's 29:9
35:17 42:12
motivation 20:6
Motor 5:6 8:17, 20
Mountain 7:10, 17,
19 8:8, 13
move 8:12 9:8
35:16

< N >
name 4:13 7:4, 6
16:7, 11 20:25
22:21 29:9, 11
35:13
natural 25:6
nature 15:24 33:20
42:7
Near 8:10
necessary 30:3
need 5:18 29:4
30:14

needed 30:10
needs 13:21
never 9:17, 18, 19
18:13 20:12 27:9,
16 37:3, 5, 14, 23
38:9, 11 39:2, 2, 3
41:17, 20
Newberry 7:12, 17,
24 8:4
nod 6:17
normal 6:16 10:22
14:22
Notary 1:17 4:4
number 23:23
nurse 9:9 26:24
nurses 20:24
nursing 8:17 10:3
12:24, 25 14:15
15:6 18:19, 21
20:18 29:16 30:3
36:22 42:8

< O >
oath 5:13 6:12, 25
23:18 27:16
object 20:15 34:17
43:14, 22 45:5, 16
objecting 20:4
27:24
Objection 14:16
15:7 19:25 21:20
27:4, 11, 19 28:4, 26
29:18, 22 30:23
37:9, 19 41:5, 14
44:22
objects 14:19
observing 32:1
obviously 10:9
11:20 14:2 15:22
26:7 28:8 32:1
occur 8:22
occurred 11:21
25:19
October 1:14
Oh 7:15 24:1 35:9
Okay 5:2, 9 6:2, 18
7:4, 9 8:10, 25 10:2,
7, 14 11:19, 24
13:14 14:7 15:12
16:5, 15 18:25 19:7,

18 20:15 23:4, 18
 24:13 25:3, 17 27:2
 30:5 31:13, 25
 33:25 37:5 38:18
 40:7, 21 41:24
 42:16, 20 45:14
once 29:6
open 8:1
OPERATIONAL
 1:9, 24
ordinary 5:19
oriented 32:8
Original 3:16
originally 8:7, 9

< P >
p.m 1:15, 15
PAGE 3:3, 10
 35:15, 15 36:10
pain 22:1, 2, 2
paper 41:16, 21
papers 31:11 37:3,
 4, 22, 23 38:9, 10
 39:2, 4, 17 41:17
paperwork 10:14
 15:24 18:13 26:3, 8,
 25 27:18 28:9, 11,
 13, 17 29:1 30:3, 20
 31:3, 20 33:11, 21
 37:7, 15 38:5, 16, 20
 40:12, 18 41:4, 11,
 12 42:5, 8, 13 43:9,
 13, 21 45:3, 11, 12,
 15
paralyzed 9:8 12:5
paramedic 25:3, 11
part 7:17, 19, 20
 25:24
pbuckner@ycrlaw.co
m 2:12
pedestrian 8:19
 11:15
pending 1:19
people 37:21
people's 17:9
percent 28:3
permission 28:21
Perry 2:9 4:13
person 16:14, 15
 39:14, 25 40:1

pertaining 14:14
 34:7 41:21
phone 39:13, 21, 22
physician 26:24
pills 22:1, 2
pin 27:25
PLACE 1:7, 23
 13:2, 4, 5, 7, 11
 15:16, 23 16:6, 17
 18:9 19:4, 12 20:16,
 21 21:5, 8 22:24
 23:2, 16, 25 24:2, 11,
 18 26:12 29:17
 30:21 31:3, 7, 18, 23
 32:6, 14, 18 34:8
 38:2, 3, 11, 21 39:19,
 20 40:17 41:21
 43:4, 12 44:14, 17
Place's 33:7, 17
Plaintiff 1:4, 22 2:3
 4:2
PLEAS 1:1, 20
please 7:5
poor 21:3
poorly 10:9
possibly 23:11
power 13:17
preparation 35:2
prepare 34:15
preparing 34:12
present 2:15 19:11
 23:4 24:20
pressure 14:13 15:2
presume 26:3
 28:16, 18
presumed 36:11
presumably 25:18
pretty 5:17 6:5
 12:8 37:18
previous 31:8
privilege 34:20
probably 9:13
 24:15, 16 40:14
procedure 4:20
process 17:3, 4, 12,
 15, 25 23:2
produced 1:13 4:9
prognosis 10:11
Public 1:18 4:4

purpose 25:9
purposes 10:23
put 15:2 22:12, 13

< Q >
question 5:11, 24
 6:3, 6, 20, 22 14:19,
 25 21:3 22:25 23:9
 25:4, 8 26:5 27:13
 30:24 31:8 33:13
 36:9, 15 37:11 41:7,
 15 43:15, 18
QUESTIONS 3:3
 4:12, 15 5:10, 15, 16
 8:3 14:17 15:10
 20:2 21:3, 22 27:7,
 14, 23 28:7 29:7, 14,
 20 30:1, 25 33:4
 34:5, 22 35:10, 14
 36:7 37:12, 25 41:8,
 18 42:2, 17, 24
 43:16, 25 44:5, 24
 45:9, 19, 21
quick 33:1 35:16
quite 11:10 22:16

< R >
real 32:25
really 16:4, 21, 23
 23:21 29:13 37:2
reason 11:9 30:16
 32:19, 21 33:5 39:5
recall 16:6 17:13
 19:10 22:3 23:4, 20,
 21 25:15 26:16
 27:2, 21 28:2 37:20
recalls 18:4
recess 33:3 42:1
recollection 23:11,
 17
record 4:14 10:21
 11:4 25:7, 9 32:25
 41:25 42:3
record's 38:19
referenced 12:17
referring 13:7
regarding 15:5
 42:5, 9
rely 32:14
remains 9:22

remember 16:9, 11,
 13 17:17, 19, 23
 21:7, 25 22:5 23:8
 10, 23 26:13 31:21
 39:12 41:2, 10 42:8
 44:25 45:1
remembers 11:8
repair 12:18
Repeat 22:25 26:5
 30:24 33:13 37:10
 41:7 43:18
rephrase 6:4 15:1
 18:8
reporter 3:16 34:4
 6 36:6
represent 4:17 19:
 43:8, 11, 19
representations
 33:10, 16

REPRESENTATIVE
 3:12
require 4:21
requires 15:23
rest 22:16
result 9:3 11:13
retained 3:16
Richland 12:23
 15:19, 22 18:15, 18
 24 19:6, 11 21:15
 26:4, 6, 11, 23 27:9
 15, 17 28:10, 20, 25
ride 24:25
riding 9:6
right 7:14 9:3
 10:4, 6, 16, 25 13:21
 15:25 18:9 19:10
 24:5, 12, 13 28:10,
 19 29:24 30:16
 31:15 32:3, 10, 14,
 24 33:9 42:11
 44:20
River 1:16
Rivers 2:9
Road 7:10
room 5:12 18:23
 23:23 24:3, 8, 17
 39:18 45:11
rooms 17:9 24:2

rough 32:4
rules 4:20

< S >

sane 32:22
saw 17:2
saying 13:3 27:8
 29:9 36:18 37:21
says 4:10
see 10:21 11:7
 25:5 30:16 34:13
seen 34:9, 25 44:11
sense 14:13
senses 32:23
SERVICES 1:9, 11,
 24, 25
shape 32:7
sharp 25:5
shipped 18:24
short 33:3 42:1
shorthand 4:4
shows 10:14
side 10:8
sign 18:19, 21 26:8,
 15 28:6 29:4 37:1,
 3, 4, 22 38:7, 15, 20
 39:1, 6, 8, 17 43:9,
 13, 20 45:3, 10, 15
signature 4:6 35:17,
 24 36:10, 11, 12, 13,
 17
signed 19:6 26:20
 29:2 38:10 39:4
 40:19, 22 41:3, 16
significant 21:18
signing 26:13, 17
 37:7, 24 38:5 44:18
 45:12
simply 23:20
sir 4:19 6:23 7:3,
 13 12:13, 13 15:21
 21:19 29:21 33:23
sister 24:20 25:14
 26:16
sister's 22:21
slow 6:5
solely 12:18
somewhat 23:11
son 20:8, 8

sorry 13:3 24:10
 40:4
sort 4:22
sound 6:13 10:16
 32:20
sounds 26:9
SOUTH 1:2, 7, 17,
 18, 21, 22 2:5, 11
 3:11 4:17, 20 7:10
speak 23:19
speaking 23:12
specified 13:1
spinal 12:6, 25 13:1
 20:18 21:18
staff 26:23 27:17
 31:6, 18, 22 32:13,
 18 33:7, 12, 17
standpoint 9:24
started 4:22 24:2
STATE 1:2, 18, 21
 20:19
statement 27:9
 32:13
stay 26:11
Stefan 2:4
stefan@akimlawfirm.
com 2:6
Stevenson 5:9
STIPULATED 4:1
stop 14:23
Street 1:16 2:5, 10
stress 14:7, 12 15:2
struck 11:14
stuff 4:23 5:22
 11:3 42:6
suffered 9:2, 17
 11:25 12:5
suggesting 17:24
 35:19
suggestive 11:5
Suite 2:10
sure 11:10 24:5
 25:8 27:15 28:3
 31:13 32:3 35:23
 38:18 40:5, 8
surgery 12:9, 17
suspect 32:19
sworn 1:14 4:9 6:8

< T >

table 37:14
take 5:21, 25 15:4
 16:3 24:11, 12, 13
taken 4:3 33:3
 36:23 42:1
talk 6:9, 9, 11 17:9
 18:10 28:21 31:14
 35:1, 11
talked 34:23 36:10
 39:10 41:17, 20
 42:4
talking 6:16 15:19
 38:1, 14 40:11, 12,
 24
talks 14:22
Tell 7:4 12:3
 20:20 21:4 28:19
 31:6, 25 36:25
 38:14, 21, 23, 24, 24
telling 28:2, 2
Ten 8:14
term 9:18
testified 18:4 36:20
testify 7:1 17:14
testifying 23:18
 27:16 31:17 33:11
 35:23, 25 36:16
 41:9, 11
testimony 5:13
 22:19 25:10 42:11
Thank 42:18
thankful 10:6
therapy 12:10
THI 1:7, 22
thing 5:18 25:3
 37:8
things 4:21 10:10
 14:22 15:14, 14, 15,
 24 22:6 30:10
 37:15 42:7
think 5:4, 5 9:20
 12:6 16:21 19:5
 29:8 31:1 32:21
 33:22 39:8 42:16,
 17 45:18
THIRTEENTH 1:1,
 20
three 21:17 24:1
 26:2

time 4:14 5:3, 23
 6:6 11:11 13:14
 14:5, 13 15:4, 12
 20:16 21:7, 13
 26:10 31:14, 17
 39:10 40:16 42:18
times 14:18 26:1
today 4:15, 25 6:1
 25 9:22 14:10, 18
 22:8, 19 32:1 35:2
today's 34:12, 15
told 9:8, 9, 11, 12
 12:3 20:23, 24 21:
 25:18 27:17 30:5
Tom 5:8
Tramadol 22:15
transcribed 4:5
transcript 3:17
transported 24:22
traumatic 14:5
 37:18
trial 44:20
true 9:22 10:2
trusted 19:19
try 5:21 6:19 11:3
trying 11:2, 7
 12:23 27:25 29:24
 35:16
two 8:1 12:11 13:
 40:14
two-and-a-half 17:2
type 21:18
typewriting 4:5

< U >

uh-huh 5:19 6:17
 12:13 16:1 18:17
 29:10 31:5
uh-uh 5:20
understand 6:3
 10:7 17:19 18:19
 27:25 31:21
understanding 4:18
 8:15 9:2 13:24
 25:10
understood 6:22
 42:11
underwent 11:25
untoward 11:5

use 9:17
usually 6:5

< V >
vehicle 5:6 8:17, 20
verbal 5:16
vertebrae 12:12, 18
Vislay 1:17 4:4
vs 1:5

< W >
wait 38:6, 6, 6
waived 4:6
walk 9:13 24:10
want 5:23 6:10
 11:5 18:8 20:22, 23
 21:9, 10 23:7 24:2,
 3, 4 28:1, 6, 21
 30:13 31:13, 18
 32:22 34:23 35:22
 37:21 38:7, 18
wanted 31:8 39:1
way 5:12 6:19
 31:22 33:15, 19
 36:1, 13, 14 39:12
week 8:1
weeks 10:4 21:17
 26:2
well 4:18 5:15 9:6,
 12 10:6 12:22 13:9
 16:15 17:5, 19 23:9
 28:8, 24 29:3 31:15
 33:20 38:13
went 9:11
we're 10:7 35:13
 40:11, 12
We've 28:14 39:10
whatsoever 23:13
Wilda 2:15 11:4
 29:9, 12, 15 36:10
wing 24:3, 6
Wise 7:21, 23
wish 10:9
wishes 19:23
witness 4:6 15:9
 20:1 27:6, 13, 21
 28:5, 24 29:19, 24
 30:24 34:18 35:7, 9
 37:10, 20 41:7, 15

43:23 44:4, 23 45:7,
 17
woke 9:6 25:20
wondering 26:10
worked 16:22
world 6:10
wrong 8:16 31:1
wrongfully 30:20

< Y >
Yeah 7:25 9:23
 12:2 13:5 15:12
 16:18 17:1, 22
 21:24 22:11 26:6
 28:13 29:25 31:5
 33:2 35:9, 12, 22
 41:1, 9 44:10
years 8:14 17:21
Young 2:9

WORD LIST

< 1 >

1 (4)
100 (1)
113 (1)
12 (1)
13 (2)
15 (1)
16th (2)
18th (1)
1965 (1)
19th (1)

< 2 >

2 (5)
2:45 (1)
2000 (2)
2016 (17)
2018 (1)
2018-CP-23-01934
(1)
25 (1)
29401 (1)
29403 (1)
29601 (1)

< 3 >

3:36 (1)
30th (14)
32 (1)
325 (1)
34 (1)
36 (1)
3rd (2)

< 4 >

4 (1)
400 (1)
418 (1)
42 (1)

< 8 >

843-614-8888 (1)
843-720-5406 (1)

< A >

ability (2)
able (3)

accident (7)
accommodate (1)
accomplished (1)
accurate (1)
administration (1)
ADMINISTRATIVE
(2)
ADMISSION (28)
admissions (8)
admit (7)
admitted (18)
affect (1)
Afterward (1)
age (1)
ago (1)
agree (4)
AGREED (1)
AGREEMENT (12)
ahead (2)
ain't (2)
alert (1)
allow (1)
alternatively (1)
ambulance (2)
amended (1)
Anastopoulos (2)
Ann (2)
Annette (1)
answer (23)
answered (5)
answering (1)
answers (1)
anybody (8)
appear (1)
appears (1)
appreciate (1)
appropriate (2)
ARBITRATION (8)
arms (1)
arrangements (1)
arrived (2)
asked (13)
asking (5)
assert (1)
assigned (2)
assist (1)
assisting (1)
assume (4)
assuming (1)

attached (1)
attorney (2)
attorney's (1)
authority (17)
authorizations (1)
authorized (1)

< B >

back (8)
background (2)
Baclofen (1)
Bar-B-Q (1)
baseline (1)
basically (1)
basis (1)
bath (1)
BBQ (1)
bed (1)
beginning (1)
behalf (18)
believe (9)
best (3)
better (1)
bike (1)
bit (3)
blacked (1)
blah (3)
blue (3)
body (1)
born (2)
bottom (1)
BOYD (16)
Boyd's (1)
break (2)
briefly (1)
bring (1)
broken (2)
Buckner (48)
building (1)
Burt (8)
business (1)

< C >

C4 (1)
C5 (1)
Calhoun (1)
call (1)
called (1)
Calvin (1)

Cannons (1)
care (4)
CAROLINA (12)
Case (5)
caseworker (9)
cause (2)
certain (9)
chance (1)
changing (1)
Chapin (2)
charge (2)
Charleston (2)
chart (1)
CIRCUIT (2)
civil (1)
clarify (3)
clear (2)
Clement (1)
client (1)
CLINICAL (2)
Coco (14)
cognitive (1)
come (5)
coming (1)
COMMON (3)
communicate (1)
competent (3)
completed (2)
completing (1)
concluded (1)
condition (2)
confirm (1)
confusing (1)
conscious (2)
conservator (1)
constitutional (1)
conversation (21)
copied (1)
copies (1)
correct (19)
counsel (2)
COUNTY (9)
couple (3)
COURT (5)
CROSS-EXAMINAT
ION (1)
currently (3)

< D >

day (16)
 days (1)
 deal (2)
 decisions (2)
 Defendants (5)
 DEFENDANT'S (3)
 deficit (1)
 delegated (1)
 deliberate (1)
 deposes (1)
 DEPOSITION (7)
 described (1)
 DESCRIPTION (1)
 desires (1)
 diagnosis (1)
 different (3)
 DIRECT (1)
 disabilities (1)
 discharge (1)
 discharged (1)
 discharging (1)
 discussed (2)
 doctor (2)
 doctors (2)
 document (3)
 documents (4)
 doing (5)
 door (1)
 doors (1)

 < E >
 earlier (5)
 early (2)
 eat (1)
 effectuated (1)
 employee (3)
 EMS (2)
 engaged (1)
 ensured (1)
 enter (1)
 entitled (1)
 evening (1)
 evidence (1)
 exactly (1)
 EXAMINATION (1)
 examined (2)
 example (1)
 excuse (1)
 execute (5)

executed (5)
 execution (1)
 EXHIBIT (9)
 EXHIBITS (2)
 explained (2)
 expressly (1)
 extent (1)
 eyes (3)

 < F >
 facility (2)
 FACILITY-RESIDE
 NT (1)
 fact (4)
 facts (1)
 fair (10)
 fairly (1)
 false (1)
 family (3)
 far (3)
 feel (3)
 Feidler (41)
 figured (1)
 file (1)
 finally (1)
 financial (2)
 find (1)
 fine (2)
 finish (3)
 Firm (2)
 first (8)
 five (1)
 forgot (1)
 form (6)
 four (4)
 fracture (2)
 fractured (1)
 fractures (1)
 frame (1)
 front (2)
 full (3)
 fully (1)
 function (2)
 functions (1)
 FUNDAMENTAL
 (4)
 further (3)

 < G >

general (1)
 generally (1)
 getting (2)
 give (7)
 given (1)
 giving (3)
 glad (1)
 go (13)
 God (1)
 going (15)
 gonna (2)
 good (4)
 gotcha (2)
 grandmother's (1)
 GREENVILLE (28)
 grown (1)
 guardian (1)
 guess (3)
 guilty (1)
 guy (1)
 guys (2)

 < H >
 hall (2)
 hallway (1)
 handled (2)
 handling (3)
 hands (2)
 happen (3)
 happened (6)
 head (1)
 health (1)
 healthcare (1)
 help (3)
 hit (1)
 hold (2)
 home (12)
 homes (1)
 hospital (6)
 hospitalized (1)
 hours (1)
 hypothetical (1)

 < I >
 identification (2)
 ill (1)
 imagine (3)
 impression (1)
 improved (1)

incident (4)
 including (1)
 INDEX (1)
 individual (1)
 informed (1)
 initial (1)
 initially (1)
 injuries (2)
 injury (5)
 injury-wise (1)
 instruct (1)
 intake (2)
 interest (2)
 involvement (2)
 issue (4)
 issues (1)
 items (1)
 IV (1)

 < J >
 Jackie (1)
 JAMES (5)
 job (2)
 Josh (1)
 JR (5)
 judge (1)
 JUDICIAL (2)
 July (3)
 jump (2)
 jumping (1)
 June (23)
 jury (1)

 < K >
 keep (1)
 kind (9)
 knew (3)
 know (45)
 knowledge (2)
 known (1)

 < L >
 lake (2)
 Law (2)
 lawful (1)
 lawsuit (1)
 lawyer (2)
 laying (1)
 Leading (1)

leave (1)
 led (1)
 left (3)
 legs (1)
 Leola (3)
 Lexington (5)
 life (1)
 light (1)
 Little (8)
 live (2)
 LLC (6)
 LLP (1)
 long (3)
 longer (1)
 look (3)
 looked (2)
 looking (4)
 Lord (1)
 lose (2)
 lost (1)
 lot (1)
 loves (1)
 lying (1)

 < M >
 Madam (1)
 MAGNOLIA (55)
 Magnolias (1)
 man (1)
 Manor (4)
 mark (3)
 marked (2)
 marking (1)
 matters (3)
 Meadowlark (1)
 mean (18)
 meant (1)
 Mediation (2)
 medical (4)
 medication (5)
 medications (3)
 meet (3)
 meeting (1)
 member (6)
 Memorial (19)
 memory (2)
 mental (1)
 mess (1)
 met (3)

middle (2)
 mind (2)
 mindful (1)
 Mindy (2)
 misleading (4)
 misled (1)
 mistaken (1)
 MKD (1)
 mom (8)
 money (1)
 month (4)
 mother (42)
 mother's (3)
 motivation (1)
 Motor (3)
 Mountain (5)
 move (3)

< N >
 name (10)
 natural (1)
 nature (3)
 Near (1)
 necessary (1)
 need (3)
 needed (1)
 needs (1)
 never (18)
 Newberry (4)
 nod (1)
 normal (3)
 Notary (2)
 number (1)
 nurse (2)
 nurses (1)
 nursing (13)

< O >
 oath (5)
 object (6)
 objecting (2)
 Objection (17)
 objects (1)
 observing (1)
 obviously (7)
 occur (1)
 occurred (2)
 October (1)
 Oh (3)

Okay (40)
 once (1)
 open (1)
 OPERATIONAL (2)
 ordinary (1)
 oriented (1)
 Original (1)
 originally (2)

< P >
 p.m (2)
 PAGE (5)
 pain (3)
 paper (2)
 papers (11)
 paperwork (38)
 paralyzed (2)
 paramedic (2)
 part (4)
 pbuckner@ycrlaw.co
 m (1)
 pedestrian (2)
 pending (1)
 people (1)
 people's (1)
 percent (1)
 permission (1)
 Perry (2)
 person (5)
 pertaining (3)
 phone (3)
 physician (1)
 pills (2)
 pin (1)
 PLACE (48)
 Place's (2)
 Plaintiff (4)
 PLEAS (2)
 please (1)
 poor (1)
 poorly (1)
 possibly (1)
 power (1)
 preparation (1)
 prepare (1)
 preparing (1)
 present (4)
 pressure (2)
 presume (3)

presumed (1)
 presumably (1)
 pretty (4)
 previous (1)
 privilege (1)
 probably (4)
 procedure (1)
 process (6)
 produced (2)
 prognosis (1)
 Public (2)
 purpose (1)
 purposes (1)
 put (3)

< Q >
 question (25)
 QUESTIONS (41)
 quick (2)
 quite (2)

< R >
 real (1)
 really (6)
 reason (6)
 recall (13)
 recalls (1)
 recess (2)
 recollection (2)
 record (8)
 record's (1)
 referenced (1)
 referring (1)
 regarding (3)
 rely (1)
 remains (1)
 remember (20)
 remembers (1)
 repair (1)
 Repeat (7)
 rephrase (3)
 reporter (4)
 represent (5)
 representations (2)

 REPRESENTATIVE
 (1)
 require (1)
 requires (1)

rest (1)
 result (2)
 retained (1)
 Richland (19)
 ride (1)
 riding (1)
 right (25)
 River (1)
 Rivers (1)
 Road (1)
 room (8)
 rooms (2)
 rough (1)
 rules (1)

< S >

sane (1)
 saw (1)
 saying (5)
 says (1)
 see (5)
 seen (3)
 sense (1)
 senses (1)
 SERVICES (4)
 shape (1)
 sharp (1)
 shipped (1)
 short (2)
 shorthand (1)
 shows (1)
 side (1)
 sign (23)
 signature (8)
 signed (9)
 significant (1)
 signing (7)
 simply (1)
 sir (10)
 sister (3)
 sister's (1)
 slow (1)
 solely (1)
 somewhat (1)
 son (2)
 sorry (3)
 sort (1)
 sound (3)
 sounds (1)

SOUTH (12)
 speak (1)
 speaking (1)
 specified (1)
 spinal (5)
 staff (10)
 standpoint (1)
 started (2)
 STATE (4)
 statement (2)
 stay (1)
 Stefan (1)
 stefan@akimlawfirm.
 com (1)
 Stevenson (1)
 STIPULATED (1)
 stop (1)
 Street (3)
 stress (3)
 struck (1)
 stuff (4)
 suffered (4)
 suggesting (2)
 suggestive (1)
 Suite (1)
 sure (11)
 surgery (2)
 suspect (1)
 sworn (3)

< T >

table (1)
 take (7)
 taken (4)
 talk (9)
 talked (6)
 talking (7)
 talks (1)
 Tell (13)
 telling (2)
 Ten (1)
 term (1)
 testified (2)
 testify (2)
 testifying (9)
 testimony (4)
 Thank (1)
 thankful (1)
 therapy (1)

THI (2)
 thing (3)
 things (11)
 think (14)
 THIRTEENTH (2)
 three (3)
 time (19)
 times (2)
 today (11)
 today's (2)
 told (11)
 Tom (1)
 Tramadol (1)
 transcribed (1)
 transcript (1)
 transported (1)
 traumatic (2)
 trial (1)
 true (2)
 trusted (1)
 try (3)
 trying (6)
 two (4)
 two-and-a-half (1)
 type (1)
 typewriting (1)

< U >

uh-huh (7)
 uh-uh (1)
 understand (6)
 understanding (5)
 understood (2)
 underwent (1)
 untoward (1)
 use (1)
 usually (1)

< V >

vehicle (3)
 verbal (1)
 vertebrae (2)
 Vislay (2)
 vs (1)

< W >

wait (3)
 waived (1)
 walk (2)

want (24)
 wanted (2)
 way (9)
 week (1)
 weeks (3)
 well (17)
 went (1)
 we're (4)
 We've (2)
 whatsoever (1)
 Wilda (6)
 wing (2)
 Wise (2)
 wish (1)
 wishes (1)
 witness (23)
 woke (2)
 wondering (1)
 worked (1)
 world (1)
 wrong (2)
 wrongfully (1)

< Y >

Yeah (21)
 years (2)
 Young (1)

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE CASE NO. 2018-CP-23-01934
3
4 James Boyd, Jr.,
5 Plaintiff,
6 vs.
7 THI of South Carolina at
8 Magnolia Place at Greenville, LLC,
9 Fundamental Administrative Services,
10 LLC, and Fundamental Clinical and
11 Operational Services, LLC,
12 Defendants.

12 DEPOSITION OF LEOLA MICHELLA BURT

14 DATE TAKEN: November 20, 2018
15 TIME BEGAN: 10:04 a.m.
16 TIME ENDED: 10:44 a.m.
17 LOCATION: Anastopoulo Law Firm
18 418 River Street
19 Greenville, South Carolina 29601
20 REPORTED BY: Kaylyn K. Brantner
21 Verbatim Reporter
22
23
24
25

1 APPEARANCES:

2

3 STEFAN B. FIEDLER, ESQUIRE
4 Anastopoulo Law Firm
5 32 Ann Street
6 Charleston, South Carolina 29403
7 Stefan@akimlawfirm.com
8 (843) 614-8888

6

.....On behalf of the Plaintiff

7

8 PERRY M. BUCKNER, IV, ESQUIRE
9 Young, Clement, Rivers, LLP
10 25 Calhoun Street, Suite 400
11 Charleston, South Carolina 29401
12 Pbuckner@ycrlaw.com
13 (843) 720-5406

11

.....On behalf of the Defendants

12

13 ALSO ATTENDING: (None.)

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

Stipulation.....	4
Examination by Mr. Fiedler.....	4
Examination by Mr. Buckner.....	32
Certificate of Reporter.....	40

EXHIBITS (Attached)

Plaintiff's Exhibit 1 (Document).....	20
---------------------------------------	----

1 (It is hereby stipulated and agreed by
2 and among counsel for the respective parties
3 that this deposition is being taken in
4 accordance with the South Carolina Rules of
5 Civil Procedure, and that the deponent does
6 waive reading and signing of this
7 deposition.)

8 - - -

9 LEOLA MICHELLA BURT, after having been
10 first duly sworn, was examined and testified
11 as follows:

12 - - -

13 EXAMINATION

14 BY MR. FIEDLER:

15 Q. Ms. Burt, we previously met off the record, but
16 for the record, can you please state your full
17 name?

18 A. Leola Michella Burt.

19 Q. And from what I gathered, you go by KoKo?

20 A. I do.

21 Q. And that's spelled, from your name tag, K-O-K-O?

22 A. Correct.

23 Q. I was using a C, so I apologize. Now I know. Is
24 it okay if I call you Ms. Burt or KoKo? What do
25 you prefer?

1 A. KoKo.

2 Q. Okay. KoKo, what is your current address?

3 A. [REDACTED].

4 Q. And is that in Greenville?

5 A. Uh-huh. 29611.

6 Q. And how long have you been at that address?

7 A. 13 years.

8 Q. Okay. Perfect. And I know this is rude to ask
9 young ladies, but I need to know. What is your
10 date of birth?

11 A. September 17th, 1983.

12 Q. Missed me by nine days. All right. And a couple
13 years. Much younger than I am.

14 And can I either get the last four digits of your
15 Social or your driver's license number? This
16 will be off the record, but I don't need your
17 full Social.

18 (Discussion held off the record.)

19 EXAMINATION RESUMED

20 BY MR. FIEDLER:

21 Q. Have you ever given your deposition before?

22 A. No.

23 Q. Okay. Perfect. Let me go over a couple of
24 ground rules.

25 A. Okay.

1 Q. As you can see, the court reporter is here taking
2 down everything we say, so it's important that we
3 answer with words rather than head nods and
4 shakes. I think previously you did say uh-huh or
5 uh-uh. Make sure that we are saying yes, no. If
6 you do say uh-uh or if you do give me a head
7 shake, I might say, KoKo, is that a yes or a no.
8 Please know I'm not trying to be rude. I'm just
9 trying to have a clear record because she's going
10 to eventually type everything out.
11 Also, to make her job easier and also to have a
12 clearer record, it's important that we not talk
13 over each other. I can almost bet you a dollar
14 it's going to happen because we're going to get
15 in a conversation. I'm really good at
16 interrupting and not listening to people, and I
17 just ask that you just let me finish my
18 questions, and I'll try my best to let you finish
19 your answers.
20 You understand that you're under oath today,
21 correct?
22 A. Correct.
23 Q. And you understand that while we are in an
24 informal setting, your testimony has the same
25 force and effect as if we were in front of a

1 judge and jury. Do you understand that?

2 A. Yes.

3 Q. If you don't understand one of my questions,
4 simply just say, Stefan, can you please ask me
5 that again or reiterate, and I'll try my best to
6 get the question out clearer. If you need to
7 take a break, let me know. If you need something
8 to drink. The bathrooms are right here to the
9 left. All that good stuff. I'm on your time,
10 not my time, so just let me know if you need to
11 take a break or if you need something to drink,
12 and we'll go get that for you.

13 Are you prepared to answer my questions today?

14 A. Yes.

15 Q. Is there any reason you won't be able to give me
16 full, complete, and truthful answers to my
17 questions today?

18 A. No.

19 Q. Are you currently taking any medications or
20 suffering from any illnesses that would prevent
21 you from understanding my questions or answering
22 them fully?

23 A. No.

24 Q. When did you first learn about this deposition?
25 And when I ask you this next set of questions, I

1 don't want to know anything you talked about with
2 Mr. Buckner or his office. I just want to know a
3 little detail of when you first learned about
4 this deposition.
5 A. Let me think.
6 Q. And exact --
7 A. October.
8 Q. October. Okay. I was going to say exact date is
9 not necessary. So I'm assuming defense counsel's
10 office reached out to you, or did you receive
11 something in the mail?
12 A. Office reached out to me.
13 Q. Okay. Perfect. Other than talking to defense
14 counsel or his office, what did you do to prepare
15 for today's deposition? Did you review any
16 documents?
17 A. Nothing.
18 Q. You didn't review any documents?
19 A. Yes.
20 Q. Okay. What did you review?
21 A. I reviewed the admission packet.
22 Q. Okay. And in the admission packet, was -- is
23 this something about the same thing you
24 reviewed --
25 A. Yes.

1 Q. -- the Admission Agreement?

2 A. Uh-huh.

3 Q. And you say, admission packet. Is there any

4 other documents that were in the Admission

5 Agreement? Would it have been the Arbitration

6 Agreement?

7 A. The entire -- yeah. The entire admission packet.

8 Q. Okay. I'll get to this here in a little bit.

9 Anything else besides the admission packet, so to

10 speak?

11 A. A deposition packet.

12 Q. Okay. And what depositions were those?

13 A. James Boyd.

14 Q. Okay. And who else?

15 A. Wilda.

16 Q. All right. Anything else besides the admission

17 packet and then the depositions of James and

18 Wilda Boyd?

19 A. No.

20 Q. Perfect. Other than defense counsel and/or his

21 office, did you have any communications with

22 anyone about today's deposition?

23 A. My administrator.

24 Q. Okay. And I'm assuming you just told your

25 administrator, hey --

1 A. Yes.

2 Q. -- I need to go to this deposition today?

3 A. Yes.

4 Q. Did you have any other conversations with the
5 administrator other than, I won't be at work this
6 morning?

7 A. No.

8 Q. Okay. The next set of questions, I'm going to go
9 quickly through those. I just need to know a
10 little bit of background on you. Please know I'm
11 not trying to get into your personal business.
12 Just in case we do get to a jury trial, I just
13 want to know exactly who you know because
14 obviously, I don't want to put some of your
15 friends on there and loved ones.

16 Where are you from originally?

17 A. Greenville.

18 Q. Are you married?

19 A. Yes.

20 Q. What is your spouse's name?

21 A. Joseph Burt.

22 Q. Do you have any children over the age of 18?

23 A. No.

24 Q. Perfect. So I'm assuming you've lived your whole
25 life in Greenville?

1 A. Yes.

2 Q. Do you attend church?

3 A. Yes.

4 Q. Where do you attend church at?

5 A. New Poplar Springs.

6 Q. Is New Poplar two words?

7 A. It is.

8 Q. And what's the -- is it Baptist?

9 A. Baptist, uh-huh.

10 Q. Perfect. And real quick, I see your last name is

11 Burt. What about relatives in Greenville County?

12 Any -- what was your maiden name, for instance?

13 A. Kirksey.

14 Q. How do you spell that?

15 A. K-I-R-K-S-E-Y.

16 Q. Other than Burt and Kirksey, any other last names

17 for relatives that stand out? Sometimes

18 attorneys will literally ask you first name and

19 last name. I'm just kind -- a general last name.

20 A. My mother's maiden name was Gordon.

21 Q. Okay. Perfect. Do you have any siblings?

22 A. Yes.

23 Q. Are all of their last names Burt, did some of the

24 sisters get married?

25 A. No.

1 Q. Okay. So what are their last names?
2 A. Wright.
3 Q. What's --
4 A. W-R-I-G-H-T. Uh-huh. The other is Andrews,
5 A-N-D-R-E-W-S.
6 Q. Okay. So Burt, Wright, Andrews, and then your
7 maiden name. Anything else that stands out for
8 relatives in the Greenville County area?
9 A. No.
10 Q. Another rude question I shouldn't ask, but I have
11 to. Have you ever been convicted or pled guilty
12 to a crime other than a minor traffic violation?
13 A. Yes.
14 Q. And what was that crime?
15 A. Disorderly conduct.
16 Q. Okay. And were you found guilty? Did you plead?
17 What was the outcome?
18 A. I paid a fine.
19 Q. Anything else?
20 A. No.
21 Q. And have you ever been part of a civil lawsuit,
22 whether the named party or nonparty?
23 A. No.
24 Q. Perfect. So what is your role at Magnolia Place?
25 Can you please describe that role?

- 1 A. I'm director of admissions.
- 2 Q. Okay. And what do you do as director of
3 admissions?
- 4 A. I'm the initial contact for the hospitals.
- 5 Q. And what do you mean, initial contact?
- 6 A. I receive all of the referrals.
- 7 Q. So a hospital says, hey, we have a potential
8 resident we would like to refer to your facility?
- 9 A. Uh-huh.
- 10 Q. Do you take the intake from there, or how does
11 that work?
- 12 A. Yes. It comes across the computer from several
13 different sites, and I review the referrals, and
14 if we can accommodate, then I offer a bid. If
15 the patient accepts, then they get back with me
16 and let me know they accept, and then we proceed
17 with the admission.
- 18 Q. Okay. And what do you mean you offer a bid? Is
19 it a price bid, or is it this is what we can
20 provide at this rate for this particular person?
- 21 A. No. Generally, it's Medicare, Medicaid.
- 22 Q. Right. What percentage of the residents are on
23 either Medicare or Medicaid?
- 24 MR. BUCKNER: Stefan, I don't want to object or
25 interject, but when I took your folks'

1 deposition, we had an agreement that it would be
2 limited. In fact, it was your proposal to the
3 subjects that Judge Gravely authorized us to go
4 into regarding the agency.

5 MR. FEIDLER: I agree.

6 MR. BUCKNER: And I'm fine with you asking her
7 background stuff, stuff about credibility, but
8 now we're getting into populations, payor source,
9 and I think we're getting a little bit beyond the
10 scope. I'm not particularly sensitive if you
11 want to finish this out. I just want to make
12 sure that we're not taking discovery now that's
13 going to aid the case rather than the arbitration
14 issue, because I agreed to the same with your
15 folks.

16 MR. FEIDLER: Right. I'm going to get to what she does
17 at the facility as her role. Is that okay?

18 MR. BUCKNER: Yes. I don't have a problem with that.
19 I'm just -- I'm talking about if we're talking
20 about all the patients and what the majority is,
21 that's a little outside of the order is all I'm
22 suggesting.

23 MR. FEIDLER: That was an automatic question. That
24 just came out. I -- and I agree with you.

25 EXAMINATION RESUMED

1 BY MR. FEIDLER:

2 Q. So you do an intake. What's the next step?

3 A. I wait to -- and if -- to see if they accept the
4 bid. Once they accept the bid, then I start the
5 process to make the communication with my
6 facility that we are going to accommodate this
7 person. Depending on what stage they are, what
8 things are going on, whether they need
9 assistance, I coordinate all of those pieces with
10 the case managers, get those pieces set up ahead
11 of time, and then we proceed from there.

12 Q. So you receive a request from the hospital, and
13 then you reach out to the case manager at the
14 hospital or at your place?

15 A. Case manager at the hospital. I'm communicating
16 with the case manager the entire time.

17 Q. Perfect. When's the first time you make contact
18 with the person that's going to be admitted into
19 Magnolia Place?

20 A. Once they admit.

21 Q. Okay. Perfect. And so they're brought in,
22 whether by ambulance or however they're brought
23 in to the facility. Can you kind of explain that
24 procedure? Do you immediately say, all right,
25 this person is here, let me go talk to them right

1 away?

2 A. Yes.

3 Q. Perfect. Can you explain that admissions process

4 to me?

5 A. It varies from person to person.

6 Q. Okay. Let's -- for purposes of this, let's

7 assume under James Boyd's circumstances.

8 A. Okay.

9 Q. I'm just going to say assuming he was competent

10 when he was admitted, and I guess we can go from

11 there. So how would you admit somebody such as

12 James Boyd?

13 A. I go in, and I introduce myself, welcome them to

14 the facility.

15 Q. Okay. Anything else?

16 A. We talk about admissions paperwork. I give them

17 time to get settled off the stretcher, and then I

18 come back with my spiel.

19 Q. With your spiel. All right. And does your spiel

20 include filling out the admission paperwork?

21 A. Yes.

22 Q. Okay. And so I'm assuming that's -- what did you

23 do for James Boyd's particular case?

24 A. I went in to introduce myself, welcome him to the

25 facility, go over with him that his mom had

- 1 started his admission process. She signed the
2 initial admission paperwork.
- 3 Q. Okay. And when did she sign that initial
4 paperwork? Do you recall the date?
- 5 A. Day of admission.
- 6 Q. Okay. I have date of admission on June 3rd,
7 2016. Is that correct?
- 8 A. Correct.
- 9 Q. And so she started the admission paperwork before
10 he was even admitted into the facility?
- 11 A. Yes.
- 12 Q. Okay. And why did -- how did she start it before
13 he was even admitted? Did you reach out to her?
- 14 A. Well, reached out to the case manager when we
15 were coordinating the admission to see who would
16 assist him.
- 17 Q. So the case manager said here's, I guess, Wilda
18 Boyd's contact information? How did that work?
- 19 A. The case manager said she would get back to me,
20 and she put Wilda Boyd in touch with me.
- 21 Q. Okay. And then what happened next?
- 22 A. The case manager called back and informed me that
23 it would be his mom.
- 24 Q. Okay. It would be his mom what?
- 25 A. Assisting with his admission paperwork.

- 1 Q. Okay. And then what happened next?
- 2 A. I spoke with the mom. She informed me that she
3 couldn't come to do the paperwork, that I would
4 have to fax it to her.
- 5 Q. Okay. Did you fax it to her?
- 6 A. I did. I faxed it to her, and she called me back
7 and told me that she had it. I told her just
8 review it, read over it, sign it, and send it
9 back.
- 10 Q. Perfect. Had you talked to Mr. Boyd prior to
11 faxing this paperwork?
- 12 A. No. He was not there yet.
- 13 Q. What was the case manager's name?
- 14 A. Peggy.
- 15 Q. What is Peggy's last name?
- 16 A. Fields.
- 17 Q. Field, like --
- 18 A. Uh-huh.
- 19 Q. -- Stream and Field?
- 20 A. Uh-huh.
- 21 Q. That's the only example I could think of. It's a
22 popular magazine, for me, at least. So you faxed
23 that paperwork to her, correct?
- 24 A. Yes.
- 25 Q. Do you recall if it was at a business, at a house

- 1 fax number, or --
- 2 A. She had to pay for it because when it came time
3 to fax it back, she called me and said she
4 couldn't afford to send it all back.
- 5 Q. So maybe it was, like, a -- I don't know -- one
6 of those services you use. Okay. So anyway, you
7 faxed the paperwork, and then she said she's
8 going to fax it back, but she has to pay for it;
9 is that correct?
- 10 A. Correct. She said she could not afford to fax it
11 all back.
- 12 Q. Okay. Did she end up faxing it all back?
- 13 A. No. I informed her that it was okay, that she
14 was going to receive a copy of the Admission
15 Agreement anyway, so she didn't have to send
16 those pages back.
- 17 Q. What did you send her via fax exactly?
- 18 A. The Admission Agreement. I sent her Consent to
19 Treats, two Consent to Treats, and the
20 Arbitration Agreement.
- 21 Q. And what did she sign and return via fax?
- 22 A. The Admission Agreement, Consent to Treat, and
23 the Arbitration Agreement.
- 24 Q. And when you received these, the Admission
25 Agreement, Consent to Treat, and the Arbitration

1 Agreement via return fax, had you talked to James
2 Boyd at that point?

3 A. No.

4 Q. Okay. And I believe -- let me just go ahead and
5 show y'all this.

6 MR. FIEDLER: I'm just going to hand you everything I
7 might turn in, that way I'm not going through.

8 MR. BUCKNER: He'll give you a copy. Oh, okay. Do you
9 have a copy for her, too?

10 MR. FIEDLER: I do.

11 MR. BUCKNER: Okay.

12 MR. FIEDLER: I just wanted to get you out of the way
13 so I don't -- I'm not very good at being
14 organized. We can go off the record for a
15 second.

16 (Plaintiff's Exhibit Number 1 was marked for
17 identification.)

18 EXAMINATION RESUMED

19 BY MR. FIEDLER:

20 Q. KoKo, I'm going to hand you what I have stapled
21 together and I believe is the Admission
22 Agreement, Consent to Treat, and the Arbitration
23 Agreement. Please review this and make sure this
24 is everything that I'm presenting on record that
25 I'm giving to you, and also, please verify --

1 what I'm trying to do is assume this is
2 everything that she faxed back to you, but
3 basically just look over that and make sure
4 that's everything.

5 A. Too many pages.

6 Q. Too many pages?

7 A. Uh-huh.

8 Q. Okay. And why?

9 A. She could not afford to fax it all back to me.
10 She did not fax all of this back to me.

11 Q. Okay. But sitting here today, do you know what
12 she faxed and what she did not fax?

13 A. This.

14 Q. So this bundle she did not fax?

15 A. No. No. This bundle she did not. These she
16 did.

17 MR. BUCKNER: Why don't we identify what this bundle is
18 for the record? That's going to be pretty
19 confusing.

20 MR. FIEDLER: Yes. Absolutely.

21 EXAMINATION RESUMED

22 BY MR. FIEDLER:

23 Q. This bundle is identified as page 23 of 23, the
24 Acknowledgement; is that correct, KoKo?

25 A. Correct.

- 1 Q. It is also page 2 of 5. Do you know what that
2 page 2 of 5 is?
- 3 A. Yes. It goes along with -- yes. Authorizations.
- 4 Q. So the first -- 1 of 5, Authorization, Consents,
5 and Acknowledgments was sent via fax?
- 6 A. Yes.
- 7 Q. But not the second page?
- 8 A. It was all sent. She could not afford to fax it
9 all back.
- 10 Q. It was all sent. How?
- 11 A. I faxed it to her, but she could not afford to
12 fax me all the pages back.
- 13 Q. Right. So what she could not or what she did not
14 fax back was the Acknowledgment, correct?
- 15 A. Correct.
- 16 Q. Page 2 of 5?
- 17 A. May I have the packet, please?
- 18 Q. Yes. Absolutely.
- 19 A. Thank you.
- 20 Q. I'm not trying to trick you. I just want to have
21 a good record.
- 22 A. The Admission Agreement, Consent to Treat -- the
23 Acknowledgment form shouldn't be in there.
- 24 Q. It shouldn't be in the middle like that?
- 25 A. It shouldn't be with this at all. It never got

1 sent to her.

2 MR. FIEDLER: I'm going to take the Acknowledgment out
3 of this Exhibit 1.

4 MR. BUCKNER: Has this already been marked?

5 MR. FIEDLER: Yes. Do you have any preference how else
6 we should do this.

7 MR. BUCKNER: I was just thinking this is going to be
8 tough to understand when we go back.

9 (Discussion held off the record.)

10 EXAMINATION RESUMED

11 BY MR. FIEDLER:

12 Q. All right. Let's just go through it.

13 A. Okay.

14 Q. So we have the Admission Agreement; is that
15 correct?

16 A. Yes.

17 Q. And that was sent back via fax, correct?

18 A. She kept this. She faxed this back.

19 Q. And you said, she faxed this back. What is this?

20 A. She faxed back the signature page for the
21 Admission Agreement. She faxed back the Consent
22 to Treat.

23 Q. The entire consent to re-treat package?

24 A. The faxed back Consent to Treat form number one,
25 and Consent to Treat form number two, and the

- 1 Arbitration Agreement is what she faxed back.
- 2 Q. Okay. Perfect. So we'll still keep that as
- 3 Plaintiff's Exhibit 1.
- 4 A. Do you want to take this out?
- 5 Q. No. We're going to keep it in there. And so did
- 6 you explain the Admission Agreement to her via
- 7 phone?
- 8 A. No.
- 9 Q. Okay. Just faxed it to her?
- 10 A. Yes.
- 11 Q. What did you tell her? Did you give her any
- 12 instruction?
- 13 A. Yes. I told her to read over it, sign it, and
- 14 call me with questions.
- 15 Q. Perfect. Had you talked to James Boyd, again,
- 16 prior to receiving the return faxes?
- 17 A. No.
- 18 Q. Okay. Did she have any questions for you?
- 19 A. No.
- 20 Q. Okay. And then the Consent to Release, again,
- 21 she faxed that back. Looking at the Consent to
- 22 Release, who put these little Xs there where the
- 23 initials are?
- 24 A. I don't know.
- 25 Q. Okay. So you don't know who put the Xs where the

1 signature of patient is on the first page?

2 A. No.

3 Q. Okay. And so that's something that we just don't
4 know who would've put those Xs there?

5 A. No.

6 Q. Okay. Would you not have done that to mark where
7 she needs to initial and sign before faxing?

8 A. No.

9 Q. Okay. Looking at the admission paperwork --
10 Admission Agreement -- excuse me -- page 12 of
11 12, who would've marked an X there on page 12 of
12 12 where it says signature of resident?

13 A. I don't know.

14 Q. Okay. And so we don't know who marked those Xs,
15 but we do -- we're assuming Wilda did sign on
16 page 12 of 12 or the Admission Agreement,
17 correct?

18 A. Yes.

19 MR. BUCKNER: Object to the form.

20 EXAMINATION RESUMED

21 BY MR. FIEDLER:

22 Q. And same thing with the -- this -- oh, this is
23 the Consent to Treat, assuming that WAB is Wilda
24 Boyd's initials, correct?

25 A. Yes.

1 Q. Okay. Now, the Acknowledgement, can we look at
2 the acknowledgment in there? Did she tell you
3 why to fax it to her? Did she say she couldn't
4 come up to there to fill out the paperwork, or
5 what --

6 A. She did. She said that she was going to be out
7 of town and she couldn't come right away.

8 Q. Okay. So when was this Acknowledgment completed?

9 A. Once she -- once she came.

10 Q. Okay. And so she signed, obviously, I think this
11 is July 7th, 2016; is that correct?

12 A. Yes.

13 Q. And you were present for this?

14 A. Yes.

15 Q. And that's your signature and your printed name
16 on the bottom?

17 A. Yes.

18 Q. By the time that Ms. Wilda Boyd signed the
19 Acknowledgement, had you spoken to Mr. Boyd?

20 A. Yes.

21 Q. What did you talk to Mr. Body about?

22 A. I talked to him -- I welcomed him to the
23 facility. I spoke with him about what I had sent
24 his mom and told him that she had started the
25 admissions process and that I sent her the

1 Admission Agreement, and the Consent to Treats,
2 and the Arbitration Agreement, and I told him we
3 still have a lot more to complete.

4 Q. Okay. And when did you have that conversation
5 with him?

6 A. The day of admission.

7 Q. And what day was that?

8 A. June 30th.

9 Q. You previously testified, though, that you had
10 not talked to Mr. Boyd when you received the
11 return fax?

12 A. Yes.

13 Q. Okay. So did you talk to him before the fax or
14 after the fax?

15 A. After.

16 Q. Okay. And that includes after receiving the
17 signed arbitration agreement back, too, correct?

18 A. Yes.

19 Q. Okay. And this -- I know I put it in the middle
20 of the Consent -- where was it? What is this
21 page that I'm looking at?

22 A. It's Consents -- Authorizations, Consents, and
23 Acknowledgments.

24 Q. Okay. So this is 1 of 5 pages?

25 A. Yes.

- 1 Q. And where page two should be is actually the
2 Acknowledgement, which is page 23 of 23?
- 3 A. This shouldn't be there.
- 4 Q. Right. Well, that's what I'm saying. So then
5 page 2, 3, 4, 5 follows -- let me make sure it
6 follows from there as well.
- 7 A. 3, 4, 5. Yes.
- 8 Q. And so that was signed on the -- what date was
9 that signed on?
- 10 A. The 7th.
- 11 Q. Okay. And so did you explain the Consent to
12 Release to Ms. Boyd?
- 13 A. No. I had her to read it.
- 14 Q. Okay. And what about the Arbitration Agreement?
- 15 A. No.
- 16 Q. Did you explain the Admission Agreement to Mr.
17 Boyd?
- 18 A. No.
- 19 Q. What about the Consent to Release? Did you
20 explain that to Mr. Boyd?
- 21 A. No.
- 22 Q. What about the Arbitration Agreement? Did you
23 explain that to Mr. Boyd?
- 24 A. No.
- 25 Q. Did you believe Mr. Boyd was competent to make

1 his own decisions upon admission?

2 A. Yes.

3 Q. Okay. What do you think -- what do you think
4 about Mr. Boyd? Was he ever rude to you? Was he
5 a nice gentleman? Do you have any opinion on
6 him?

7 A. No. He was a nice gentleman.

8 Q. Okay. Do you -- during your job as the director
9 of admissions, do you, at times, explain this
10 paperwork to residents at the facility?

11 A. Yes.

12 Q. Okay. Can you briefly tell me exactly what you
13 say when you describe the Arbitration Agreement
14 to those folks?

15 A. I read it to them.

16 Q. Okay. So verbatim, you read it to them?

17 A. Yes.

18 Q. And if they have any questions, you obviously try
19 your best to answer those?

20 A. Yes.

21 Q. Has there ever been a scenario where you couldn't
22 answer one of their questions?

23 A. No.

24 Q. Okay. And so other than read it verbatim, do you
25 present any other explanation of what this

1 agreement is to residents coming in?

2 A. No.

3 Q. Okay. Looking at the Arbitration Agreement -- I

4 don't mean to reach over you, Ms. Koko. Let's

5 flip over it. Do you see that X right there? Do

6 we know who put that X there?

7 A. No.

8 Q. And then we see Wilda Ann Boyd's name; is that

9 correct?

10 A. Yes.

11 Q. And who dated it on her signature line? Was that

12 your signature, or was that her date?

13 A. Her date.

14 Q. Okay. If a person is incompetent to sign the

15 admission paperwork, what do you do as the

16 director of admission? If a person is just not,

17 I guess, able to sign their own Arbitration

18 Agreement, what do you do at that point? Do you

19 try to reach out to a family member?

20 A. Yes.

21 Q. Okay. And is that about the extent of it? You

22 just try to find a legal representative, or can

23 you explain that process?

24 A. No. I go through the case manager to see who is

25 going to assist with that prior to the admission

1 to the facility.

2 Q. Okay. So that would have been -- well, it's
3 probably not always going to be Ms. Peggy,
4 because it depends on what facility they're
5 coming from?

6 A. Correct.

7 Q. Is Ms. Peggy -- where is she the case manager?
8 Is she the case manager at --

9 A. Palmetto Baptist.

10 Q. Is there any other case managers up there? I'm
11 assuming there is.

12 A. I'm sure.

13 Q. Okay. Do you ever deal with anybody besides Ms.
14 Peggy?

15 A. She's the only one that I've dealt with.

16 Q. Perfect. And so knowing Mr. Boyd was competent,
17 why did he not sign the admission paperwork?

18 A. I reached out to the case manager prior to him
19 coming because of his condition and asked her who
20 would assist him with his admission paperwork,
21 and she told me she'd get back with me, and she
22 did, and then the mom made contact with me.

23 Q. Perfect.

24 A. After admission, Mr. Boyd -- not with Ms. Fields
25 anymore, with me, I went in to see him for myself

1 about the paperwork.

2 MR. FIEDLER: Okay. I'm sorry. We can go off the
3 record for a second.

4 (Recess taken.)

5 MR. FIEDLER: I don't have any more questions for you.
6 Please answer any questions Mr. Buckner may have
7 for you.

8 EXAMINATION

9 BY MR. BUCKNER:

10 Q. Ms. Burt, in responding to a couple of
11 plaintiff's counsel's questions about
12 conversations with Ms. Fields at Palmetto
13 Baptist, you had indicated that you spoke with
14 Ms. Fields on a couple of occasions; is that
15 correct?

16 A. Yes.

17 Q. Okay. And that one of those conversations or
18 phone calls was a phone call that you initiated
19 to her inquiring about who should handle James
20 Boyd's admissions paperwork, correct?

21 A. Yes.

22 Q. And you testified that Ms. Fields got back to you
23 and indicated that Wilda Boyd would be the person
24 who would be handling it; is that correct?

25 A. Yes.

- 1 Q. All right. Do you know why you were informed
2 that Wilda Boyd would be the person who would be
3 doing it?
- 4 A. She had to check with James.
- 5 Q. Okay. And when you say she, you mean Ms. Fields
6 had to check with James?
- 7 A. Yes.
- 8 Q. Okay. And is it your understanding that Mr. Boyd
9 directed Ms. Fields to his mother for admissions
10 paperwork to Magnolia Place?
- 11 A. Yes.
- 12 Q. Okay. And did Ms. Fields tell you that?
- 13 A. Yes.
- 14 Q. All right. Ms. Fields told you that James Boyd
15 indicated that Wilda Boyd, his mother, would be
16 the appropriate person to handle the admissions
17 paperwork?
- 18 A. Yes.
- 19 Q. When Mr. Boyd -- and that conversation occurred
20 while he was at Palmetto Baptist prior to June
21 30th, 2016?
- 22 A. Correct.
- 23 Q. And Mr. Boyd then comes to Magnolia Place, I
24 believe, on by June 30th, 2016?
- 25 A. Yes.

1 Q. And at that point, you meet him in person for the
2 first time?

3 A. Yes.

4 Q. Okay. And during that conversation, I understood
5 your testimony that you informed him that his
6 mother had already signed three separate
7 agreements on his behalf, including the
8 Arbitration Agreement, correct?

9 A. Yes.

10 Q. All right. At that time, on June 30th, 2016 when
11 you were with him in person, did he raise any
12 objection to her doing that?

13 A. No. He told me that she would finish the rest of
14 it.

15 Q. Okay. And during that conversation on June 30th,
16 2016 in person at Magnolia Place, did you
17 actually have an opportunity to call Ms. Boyd in
18 James' presence?

19 A. He did. I had to dial the number and hold the
20 telephone for him.

21 Q. Okay. And what did you discuss with Ms. Boyd?

22 A. She was going somewhere. James said that she
23 would complete all of his paperwork, so I needed
24 to schedule a time that she was going to complete
25 all of it.

1 Q. Okay. And during the time period that you're
2 speaking with Ms. Boyd in James' presence on June
3 30th, 2016, did Mr. Boyd ever interject or say,
4 stop doing this, or anything of that nature?

5 A. No.

6 Q. Okay. As far as you know, Mr. Boyd had full and
7 complete knowledge that his mother was handling
8 his admissions paperwork, including the
9 Arbitration Agreement?

10 A. Yes.

11 Q. And I understood your testimony earlier that you
12 even specifically informed him that an
13 Arbitration Agreement had been signed by Wilda
14 Boyd; is that correct?

15 A. Yes.

16 Q. Do you know what date, approximately, that Wilda
17 Boyd came to Magnolia place in person to complete
18 the rest of the paperwork?

19 A. It was July 7th.

20 Q. Okay. On July 7, 2016, was anyone else present
21 with Wilda Boyd?

22 A. It was Wilda, another woman, which was his
23 sister, and then there was a man.

24 Q. Okay. Do you remember his sister's name?

25 A. No.

- 1 Q. And the man was a relative insofar as you knew?
- 2 A. Yes.
- 3 Q. All right. The mother, Wilda Boyd, completed the
- 4 remaining admissions paperwork that day that
- 5 you're referencing?
- 6 A. Yes.
- 7 Q. Okay. And tell me after the admissions
- 8 paperwork, the remaining admissions paperwork,
- 9 was completed, is a file created for James Boyd?
- 10 A. Yes.
- 11 Q. Okay. And what does that file include? And you
- 12 can be comprehensive in telling me.
- 13 A. It includes the admissions handbook, the
- 14 resident's rights, channel guide, facility abuse
- 15 policies, and all of the signed admissions
- 16 paperwork.
- 17 Q. All right. And the signed admissions paperwork
- 18 includes the Arbitration Agreement?
- 19 A. Yes.
- 20 Q. Does it include the Admission Agreement?
- 21 A. Yes.
- 22 Q. And where -- what do you do with that -- the
- 23 admissions file folder I'll call it for lack of a
- 24 better term?
- 25 A. I give it to the resident.

1 Q. Okay. And in this case, that would be James
2 Boyd?

3 A. Yes.

4 Q. So James Boyd was provided with a written copy of
5 all of the agreements that his mother entered
6 into on his behalf?

7 A. Yes.

8 Q. Okay. And you personally provided him with that
9 file folder?

10 A. Yes.

11 Q. Okay. And when you personally provided that file
12 folder to him, did he, on that day or any day
13 thereafter, voice any objection to his mother's
14 signing these contracts on this behalf?

15 A. No.

16 Q. Okay. And as far as you know, Mr. Boyd had full
17 and complete knowledge of all of these agreements
18 and his mother's activity in entering them,
19 correct?

20 A. Yes.

21 Q. How many times did you see, approximately, James
22 Boyd after that? And when I say, after that, I
23 mean whatever date that you provided the
24 admissions file folder to him.

25 A. I provided it to him on July 7th, the day of

1 completion.

2 Q. And that would not have been the last day that
3 you saw him?

4 A. No.

5 Q. All right. And you were certainly available by
6 phone?

7 A. Yes.

8 Q. How was it that Mr. Boyd, on June 30th, 2016,
9 made you aware that he wanted his mother to
10 handle the admissions paperwork?

11 A. When I went in to tell him about the paperwork
12 and still having to complete more, he told me
13 that his mother handles all of that.

14 Q. Okay. Do you have any doubt -- and I want you to
15 remember in answering this question that you're
16 under oath --

17 A. Okay.

18 Q. -- and obligated to give full and complete truths
19 to my questions. Do you understand that?

20 A. Yes.

21 Q. Do you have any doubt that James Boyd authorized
22 his mother to enter into all of the admissions
23 paperwork, including the Arbitration Agreement,
24 in this case?

25 A. No.

1 MR. BUCKNER: I don't think I have any other questions.

2 (Deposition concluded at 10:44 a.m.)

3 - - -

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, Kaylyn K. Brantner,
Notary Public in and for the State of South
Carolina, do hereby certify that the deposition
of LEOLA MICHELLA BURT was taken on the 20th day
of November, 2018, that the within deponent was
sworn to tell the truth, and that the foregoing
is an accurate transcription of the testimony
taken under oath; that all exhibits entered
herein are attached hereto (if requested by
counsel) and made a part of this deposition.

I further certify that I am neither counsel
nor solicitor to any of the parties in said suit,
nor interested in the event of the cause.

In witness whereof, I have hereunto set my
hand and seal this 5th day of December, 2018.

Kaylyn K. Brantner

Notary Public for South Carolina

My Commission Expires: 4/12/20

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT
3 CASE NO.: 2018-CP-23-01934
4
5 JAMES BOYD, JR.,)
6 PLAINTIFF,)
7 v.)
8 THI OF SOUTH CAROLINA, LLC,) DEPOSITION TRANSCRIPT
9 D/B/A/ MAGNOLIA PLACE) PEGGY FIELDS
10 GREENVILLE; HUNT VALLEY)
11 HOLDINGS, LLC, THI OF)
12 BALTIMORE, INC; FUNDAMENTAL) MAY 7, 2018
13 CLINICAL AND OPERATIONAL)
14 SERVICES, LLC; FUNDAMENTAL)
15 ADMINISTRATIVE SERVICES, LLC;)
16 FUNDAMENTAL CLINICAL)
17 CONSULTING, LLC; LEONARD)
18 GRUNSTEIN BOTH INDIVIDUALLY)
19 AND AS OWNER/OPERATOR OF)
20 MAGNOLIA PLACE; AND RUSTY)
21 FLATHMANN BOTH INDIVIDUALLY)
22 AND AS EMPLOYEE/MANAGER OF)
23 MAGNOLIA PLACE,)
24 _____ DEFENDANTS.)
25

1 _____
2 DEPOSITION ON THE ORAL EXAMINATION OF PEGGY
3 FIELDS, REPORTED BY KRISTA GIBSON, COURT REPORTER AND
4 NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA;
5 SAID DEPOSITION TAKEN PURSUANT TO NOTICE AND IN
6 ACCORDANCE WITH THE SOUTH CAROLINA RULES OF CIVIL
7 PROCEDURE AT THE ANASTOPOULO LAW FIRM, 1201 MAIN STREET,
8 SUITE 1100, COLUMBIA, SOUTH CAROLINA ON TUESDAY, THE 7TH
9 DAY OF MAY, 2019; SCHEDULED FOR 10:00 A.M. AND COMMENCING
10 AT 10:14 A.M.
11 _____
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

2

3 REPRESENTING THE PLAINTIFF:

4

5 STEFAN FEIDLER, ESQUIRE

6 ANASTOPOULO LAW FIRM

7 1201 MAIN STREET, SUITE 1100

8 COLUMBIA, SOUTH CAROLINA 29201

9

10 REPRESENTING THE DEFENDANT:

11

12 PERRY M. BUCKNER, IV, ESQUIRE

13 YOUNG CLEMENT RIVERS, LLP

14 25 CALHOUN STREET, SUITE 400

15 CHARLESTON, SOUTH CAROLINA 29401

16

17 REPRESENTING THE WITNESS:

18

19 ELIZABETH BRADLEY, ESQUIRE

20 PRISMA HEALTH

21 1600 MANOR STREET

22 COLUMBIA, SOUTH CAROLINA 29201

23

24 ALSO PRESENT: NONE

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S
(DEPOSITION OF PEGGY FIELDS)

PAGE

EXHIBIT INDEX	4
LEGEND	4
DIRECT EXAMINATION BY MR. FEILDER	5
CROSS EXAMINATION BY MR. BUCKNER	28
CERTIFICATE OF REPORTER	30

E X H I B I T I N D E X

EXHIBITS:	IDENTIFIED AT PAGE:
PLAINTIFF'S EXHIBIT NO. 1	10

L E G E N D

DASHES [--] INDICATES INTERRUPTION; INCOMPLETE
PHRASES; UNFINISHED SENTENCES.
[sic] WRITTEN AS SAID.
[ph] WRITTEN PHONETICALLY.

DEPOSITION OF PEGGY FIELDS

1 This deposition is taken in accordance with
2 the South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent
4 and respective counsel that the reading and signing of
5 the deposition by the deponent is expressly waived.

6 WHEREUPON:

7 PEGGY FIELDS, having been duly sworn and
8 cautioned to speak the truth, the whole truth and
9 nothing but the truth, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. FEIDLER:

12 Q. Will you please state your full name for the
13 record.

14 A. Peggy Sons, S-O-N-S, Fields.

15 Q. Ms. Fields, we briefly met off the record but for
16 the record my name is Stefan Feidler and I
17 represent the plaintiff, James Boyd, who has filed
18 a lawsuit against Magnolia Place Greenville.

19 Have you ever given your deposition before?

20 A. No.

21 Q. Let me go over a couple grounds rules that are, of
22 course, required of me to tell witnesses
23 regardless if you've been through a deposition or
24 not. As you can see, the court reporter is taking
25 down everything that we're saying today so it's

DEPOSITION OF PEGGY FIELDS

6

1 important that we answer with words rather than
2 head nods and shakes. It's bound to happen. I'm
3 doing it as I speak right now.

4 But, Ms. Fields, if you do give me a nod
5 instead of a verbal answer I may ask you, you
6 know, Ms. Fields, was that a yes or a no? Please
7 know that I'm not trying to be rude. I'm just
8 trying to make her job easier and I'm trying to
9 have a clear record. Okay?

10 A. (Nonverbal response)

11 Q. Also, to ensure that we have an accurate record
12 and to ensure that she has an easier job, it's
13 important that we not talk over each other. I am
14 very slow with my questioning at times. I may
15 pause and then continue my question, I just ask
16 that you do your best not to speak over me and on
17 the same token I'll do my best not to speak over
18 you when you are answering. Do you understand
19 that?

20 A. Yes.

21 Q. Do you understand that you're under oath today?

22 A. Yes.

23 Q. And do you understand that while we aren't in a
24 formal setting, your testimony has the same force
25 and effect as if we were in front of a judge and

DEPOSITION OF PEGGY FIELDS

- 1 jury?
- 2 A. (Nonverbal response)
- 3 Q. Do you understand that?
- 4 A. Yes.
- 5 Q. And if you don't understand one of my questions,
- 6 please just ask me to reiterate. If you need to
- 7 take a break, let me know. This is not a
- 8 marathon. I don't intend on having you in here
- 9 more than 15 or 20 minutes tops, but I want to be
- 10 respectful of your time so if you need to answer
- 11 the phone, use the restroom, stretch your legs,
- 12 you just say, Stephen, can we please take a time
- 13 out please. Okay?
- 14 A. (Nonverbal response)
- 15 Q. Are you prepared to answer my questions today?
- 16 A. Yes.
- 17 Q. And is there any reason you won't be able to give
- 18 me full, complete, and truthful answers to my
- 19 questions today?
- 20 A. No.
- 21 Q. Are you taking any medications or suffering from
- 22 any illnesses that would prevent you from
- 23 understanding my questions or answering them
- 24 fully?
- 25 A. No.

DEPOSITION OF PEGGY FIELDS

8

- 1 Q. Okay. And when did you first learn about this
2 deposition?
- 3 A. Since --
- 4 Q. And I don't need an --
- 5 A. -- maybe April.
- 6 Q. April. Okay. And how did you learn about this
7 deposition?
- 8 A. I received an email from Ms. Bradley.
- 9 Q. Okay. And what did you do to prepare for today's
10 deposition?
- 11 A. I reviewed the hospital record.
- 12 Q. You say you reviewed the hospital record. Is that
13 the hospital record of Mr. James Boyd?
- 14 A. Yes.
- 15 Q. And when you say that you reviewed the record, was
16 there any particular section or did you, kind of,
17 review the entire record?
- 18 A. My section that I'm involved with.
- 19 Q. Okay. What's your section?
- 20 A. I am the discharge planner.
- 21 Q. Okay. So what section would you have reviewed?
- 22 A. Basically my notes as the discharge planner. And
23 then we have a referral tool called Allscripts --
- 24 Q. Okay.
- 25 A. So I reviewed where -- what facilities referrals

DEPOSITION OF PEGGY FIELDS

1 were sent to.

2 Q. Okay. Did you speak to anybody about today's

3 deposition from Young Clement Rivers?

4 A. No.

5 Q. Okay. And so other than those documents you said,

6 a discharge plan and also your notes, did you

7 review anything else?

8 A. Just the discharge summary --

9 Q. Discharge summary.

10 A. -- of the physician.

11 Q. How many pages did that consist of?

12 A. Three.

13 Q. Three or four?

14 A. (Nonverbal response)

15 Q. Okay. And what was the purpose of reviewing those

16 documents?

17 A. Just to refresh my memory as far as what the

18 patient's diagnosis was.

19 Q. Okay. Any diagnosis stick out to you?

20 A. No.

21 Q. Okay. Do you remember Mr. Boyd?

22 A. A little.

23 Q. Okay. If you had to describe him today, how would

24 you describe him?

25 A. He was a black male, rather large.

DEPOSITION OF PEGGY FIELDS

10

1 Q. Large, black male. Okay. What do you mean by
2 large?

3 A. Like just muscular, big. Not obese or anything.

4 Q. Okay.

5 A. Just a big male.

6 Q. Okay. And other than counsel sitting next to you,
7 did you communicate with any other lawyers about
8 today's deposition?

9 A. No.

10 Q. Okay. What about the affidavit -- or the
11 declaration that you signed, is that something
12 that you drafted?

13 A. Yes.

14 Q. Okay. So you drafted -- I'm going to go ahead and
15 get this into the record as plaintiff's exhibit
16 one. I enter this into the record as Plaintiff's
17 Exhibit No. 1.

18 [PLAINTIFF'S EXHIBIT NO. 1; MARKED FOR IDENTIFICATION]

19 BY MR. FEIDLER: (Resuming)

20 Q. So Ms. Fields, did you draft this document?

21 A. Yes.

22 Q. Okay. So you drafted the caption as well?

23 A. No, not this.

24 Q. Okay.

25 A. I drafted the body, starting with No. 1.

DEPOSITION OF PEGGY FIELDS

11

1 Q. So you drafted, "I, Peggy Fields, respectfully" --

2 A. Yes.

3 Q. Okay. And what about No. 2? You drafted all of
4 that language or was that already sent to you?

5 MS. BRADLEY: Can we go off the record
6 for a second?

7 MR. FEIDLER: Yeah, absolutely. Let's
8 go off the record.

9 [OFF THE RECORD DISCUSSION]

10 MR. FEIDLER: All right. We're back on
11 the record.

12 BY MR. FEIDLER:

13 Q. Let's start with No. 3.

14 It says, "The information contained in this sworn
15 declaration is based on the review of certain
16 documents."

17 A. Yes.

18 Q. Again, what were those documents?

19 A. My notes in the medical record, which are under
20 Case Management, and Allscripts.

21 Q. Okay. What is Allscripts?

22 A. Allscripts is our referral tool that we use to
23 send out referrals to various facilities
24 throughout the state.

25 Q. Is that the only referral tool that Palmetto

DEPOSITION OF PEGGY FIELDS

12

1 Health would have used back in -- what was this,
2 2016?

3 A. Yes.

4 Q. Okay. This may seem like a silly question and
5 there may be more silly questions, but it's also
6 an obvious question that I need to ask.

7 How did you get access to these documents?

8 A. Which documents?

9 Q. The documents you reviewed for --

10 A. Oh, the medical record.

11 Q. Okay. What I'm asking is if there's a system --
12 is there a computer system? Is it --

13 A. Computer.

14 Q. -- hard files?

15 A. It's on the computer.

16 Q. Okay. Perfect. And why were you referring to
17 certain documents?

18 A. To refresh my memory regarding this case.

19 Q. Okay. And No. 4 of this declaration -- excuse me
20 -- says, "The patient was admitted to Palmetto
21 Health Richland in June of 2016."

22 Is that information you figured out from
23 reviewing --

24 A. From the medical records.

25 Q. Okay. And you're a case manager at Palmetto

DEPOSITION OF PEGGY FIELDS

13

1 Health Richland; is that correct?

2 A. That is correct.

3 Q. And currently you're a case manager at Palmetto
4 Health Richland?

5 A. Currently we're called Acute Care Coordination,
6 but -- case management.

7 Q. Back in 2016, though, you were a case manager at
8 Palmetto Health?

9 A. Yes.

10 Q. Perfect. Paragraph No. 5 says, "I spoke on
11 multiple occasions with Leola Burt, the Admissions
12 Coordinator at Magnolia Place of Greenville."

13 Multiple occasions, does that pertain to this
14 case only or does that pertain to -- as general
15 working practice?

16 A. Depending on the needs of the patient, the
17 location of the patient, is who -- are the
18 facilities we talk to. So in this case, Magnolia
19 Place was discussed with Mr. Boyd.

20 Q. Okay. And do you recall how many times you talked
21 to Mr. Boyd about his placement into Magnolia
22 Place?

23 A. I do not.

24 Q. Okay. Do you know how many times you talked to
25 Leola Burt about Mr. Boyd's placement into

DEPOSITION OF PEGGY FIELDS

14

1 Magnolia Place?

2 A. Not a specific number.

3 Q. Okay. It says -- again, Paragraph 5, reading the
4 last sentence.

5 "I provided her with certain information to
6 determine if Magnolia Place of Greenville could
7 accept the referral."

8 What does that mean? What certain
9 information?

10 A. That means, one, we have to refer -- we have to
11 notify the facilities of the funding source.

12 Q. Okay.

13 A. Two, the clinical information as far as therapy
14 notes and medical information as to whether they -
15 -- that facility, per say, can manage that
16 person's medical care at the time of transfer.

17 Q. Okay. Knowing Mr. Boyd's diagnosis at that time,
18 did you, as the case manager, find Magnolia Place
19 an appropriate referral for his conditions?

20 A. Yes.

21 Q. All right. Paragraph 6 says, "I do recall speaking
22 with Ms. Burt when she inquired as to who would be
23 responsible for handling admission paperwork for
24 the patient's admission to Magnolia Place of
25 Greenville. This is a common inquiry in my line

DEPOSITION OF PEGGY FIELDS

15

1 of work."

2 What were Ms. Burke's exact words to you as
3 it pertains to Mr. Boyd?

4 A. Now I do not remember that.

5 Q. Okay. Do you have any recollection of that
6 conversation?

7 A. No.

8 Q. Okay. So how do you know that she inquired into
9 who would be responsible for handling the
10 admission paperwork for patients?

11 A. Because that is a standard question of any acute
12 care or skilled nursing facility as to who the
13 responsible party will be in terms of paperwork.

14 Q. Okay. So sitting here today, do you recall
15 anything about the conversation with Ms. Burt as
16 it pertains to Mr. Boyd's placement into Magnolia
17 Place?

18 A. No.

19 Q. Okay. Now it says, Paragraph 7, "In response to
20 that inquiry by Ms. Burt, I personally asked
21 patient ho should be handling the admission
22 paperwork for Magnolia Place of Greenville.

23 It says, I personally asked patient. Who was
24 the patient?

25 A. Mr. Boyd.

DEPOSITION OF PEGGY FIELDS

16

1 Q. Okay. Do you know the exact words of that
2 conversation?

3 A. No.

4 Q. Okay. It says, "The patient specifically informed
5 me that the mother would handle all such
6 paperwork."

7 Do you specifically recall that conversation?

8 A. I remember his mother.

9 Q. You remember his mother but you don't remember a
10 conversation with him saying that she could do the
11 admission paperwork for him?

12 A. I remember talking to him but I do not remember
13 the specific wording of the conversation.

14 Q. Okay. So you don't recall a conversation with Ms.
15 Burt about Mr. Boyd's admission into --

16 A. I did --

17 Q. Go ahead.

18 A. I remember a conversation because that is typical
19 with any facility. Exact words, no.

20 Q. Okay. Did Mr. Boyd ever make a representation to
21 you that his mother could handle the admission
22 paperwork for Magnolia Place?

23 A. Yes.

24 Q. Okay. And what did he say?

25 A. Yes. Mother.

DEPOSITION OF PEGGY FIELDS

17

1 Q. He just said, yes, mother?

2 A. His mother.

3 Q. Okay. What did you ask him?

4 A. I asked him -- it is a requirement that a patient
5 be signed in prior to the arrival to a facility.

6 So in that case I asked him who would be that
7 person that would be signing paperwork on his
8 behalf.

9 Q. Okay. Did you ask if you would be that person
10 signing paperwork on his behalf?

11 A. They do not -- they have to have family members do
12 it prior to admission, so -- the majority of the
13 time patients are not able to complete that
14 paperwork.

15 Q. Okay. Why was he not able to complete that
16 paperwork?

17 A. One, he wasn't physically there with the facility.

18 Q. Okay.

19 A. Two, he had deficits in the upper extremities in
20 terms of signing.

21 Q. Okay.

22 A. It's just not standard.

23 Q. What about his mental capacity? Was he mentally
24 competent to sign paperwork?

25 A. Yes.

DEPOSITION OF PEGGY FIELDS

18

1 Q. Okay.

2 A. As I remember.

3 Q. So, physically, he was not at the Magnolia Place
4 signing paperwork, correct?

5 A. Uh-uh.

6 Q. Mentally, he was competent to sign paperwork.

7 A. To the best of my knowledge.

8 Q. Okay.

9 A. I don't declare competency.

10 Q. And you said his upper extremities. Do you recall
11 what was going on?

12 A. I recall that he had deficits related to his
13 activities the day we moved him --

14 Q. Okay.

15 A. -- and he was total care.

16 Q. Okay. And do you recall if he could sign a piece
17 of paper with either hand?

18 A. No.

19 Q. Okay. Was anybody present when you had this
20 conversation with Mr. Boyd about his mother
21 signing the admission paperwork?

22 A. I don't remember.

23 Q. Do you recall if you asked Mr. Boyd if his mother
24 or anyone else could sign the arbitration
25 agreement on his behalf?

DEPOSITION OF PEGGY FIELDS

19

1 A. I do not.

2 Q. Okay. Now Magnolia Place, before a patient is
3 admitted into their facility, that paperwork, as
4 far as you know, is required to be filled out
5 prior to admission?

6 A. As far as I know.

7 Q. Okay. In your line of work as a case manager for
8 Palmetto Health, have you ever -- or do you recall
9 a patient signing their own paperwork before
10 admission into Magnolia Manor?

11 A. Very rarely. Oh, and Magnolia Manor specifically,
12 no.

13 Q. Okay. Other than that one conversation with Mr.
14 Boyd where he stated Mom, paperwork, any other
15 conversations with him or the family as it
16 pertains to signing admission paperwork to
17 Magnolia Manor?

18 A. No.

19 Q. Okay. And what did you tell Mr. Burt after that
20 conversation with Mr. Boyd? Leola Burt.

21 A. As far as the mother would be the contact person
22 for him.

23 Q. Okay. Did you tell her that the mother would be
24 signing the admission paperwork on his behalf?

25 A. That is out of my scope. I tell them the contact

1 person and then the facility takes over.

2 Q. So how do you tell them the contact person? Is it
3 via email, phone call?

4 A. Sometimes it is via Allscripts. Sometimes it's
5 via phone.

6 Q. Okay. Do you recall which one it was in this
7 particular --

8 A. No.

9 Q. -- case?

10 A. No.

11 Q. Would you have documentation showing you that is
12 was via Allscripts?

13 A. There is documentation in Allscripts of the
14 referral process.

15 Q. Okay.

16 A. It probably happened by phone but I cannot 100
17 percent say that.

18 Q. When you all make phone calls such as this, do you
19 all record those phone calls?

20 A. No.

21 Q. Do you all make notes about those phone calls?

22 A. Yes.

23 Q. And where are those notes saved?

24 A. In the case -- in the medical record in the case
25 management section.

DEPOSITION OF PEGGY FIELDS

21

1 Q. And so your only conversation with Ms. Burt -- and
2 I don't want to put words in your mouth obviously
3 -- was A) Ms. Burt inquired as to who would be
4 responsible for the admission paperwork. Correct?

5 A. Yes.

6 Q. And then B) you either said his mother would be
7 handling it or --

8 A. Yes.

9 Q. Okay. Now did you say James Boyd's mother will be
10 handling admission paperwork or did you just say
11 this is who you need to contact?

12 A. I --

13 MR. BUCKNER: Object to the form.

14 Q. You can answer. He's going to object sometimes.
15 He's just preserving it for the record.

16 A. Okay.

17 Q. Well, I don't think he, technically, can tell you
18 not to answer but if he does do that we'll figure
19 it out between us, but you can answer.

20 A. Rephrase the question for me.

21 Q. Did you tell Ms. Burt that she would need to
22 contact James Boyd's mother?

23 A. Yes.

24 Q. Okay. Did you tell Ms. Burt that James Boyd's
25 mother would be responsible for the admission

1 paperwork?

2 A. We identified the mother as the responsible party.

3 Q. Okay. I gotcha. Did Ms. Burt ever ask you if Mr.

4 Boyd was competent?

5 A. Not to my knowledge.

6 Q. Okay. Did Ms. Burt ever ask you if Mr. Boyd was

7 unable to sign paperwork?

8 A. Not to my knowledge.

9 Q. Have you talked to Ms. Burt about this case or
10 about Mr. Boyd since around this June 2016 period?

11 A. No.

12 Q. Okay. Do you all still have a professional
13 working relationship to this day?

14 THE WITNESS: Think being on this --

15 MS. BRADLEY: I cannot answer any
16 questions.

17 BY MR. FEIDLER: (Resuming)

18 Q. It's all right.

19 A. My professional relationship with any facility is
20 based on funding to patient need. So I have not
21 recently had the need to refer anyone to Magnolia
22 Place because of the location of the facility.

23 He -- he fell under what we call Complex Care
24 Medicaid. We are limited by the facilities that
25 the state has approved to participate in that

1 program.

2 Q. Okay. Perfect. We used to have a case manager
3 that worked at our office and she was very, very
4 helpful to our clients and went over and beyond
5 her duties as a paralegal. So I really appreciate
6 what you do for a living and the help you
7 provided.

8 A. Oh, okay.

9 Q. Do you know who signed the paperwork for Mr. Boyd
10 when he was admitted into Palmetto Health
11 Richland?

12 A. I do not.

13 Q. Okay. Other than Mr. Boyd being, I guess, a big
14 man, was he respectful to you?

15 A. Yes.

16 Q. Okay. Did you have any issues with him or his
17 family?

18 A. No.

19 Q. Did you ever speak to anyone outside of Mr. Boyd?
20 His mother or sister, anybody like that?

21 A. No.

22 Q. Did you ever --

23 A. Well, we made referrals to other facilities that
24 we provided -- we gave Mr. Boyd -- or I gave Mr.
25 Boyd a choice of facilities so the information was

DEPOSITION OF PEGGY FIELDS

24

1 provided to those facilities so does that classify
2 as speaking to someone?

3 Q. Yeah, that's perfect. This is my only chance to
4 ask you every question under the sun, so --

5 A. No, no. That's fine.

6 Q. I just want to cover my bases.

7 A. We just usually have a procedure that we follow,
8 so --

9 Q. Okay. Did Ms. Burt ever forward you the admission
10 paperwork?

11 A. Not that I recall.

12 Q. Okay. And during this process, did you ever hear
13 anybody mention any arbitration agreement?

14 A. No.

15 MR. FEIDLER: We can go off the record
16 for a second. I'm going to just review
17 my notes.

18 [OFF THE RECORD DISCUSSION]

19 BY MR. FEIDLER: (Resuming)

20 Q. Let's go back on the record.

21 Paragraph 8 says, I relayed that information to
22 Ms. Burt and to the best of my knowledge the
23 patient was ultimately discharged to Magnolia
24 Place of Greenville.

25 Again, what information did you relay to Ms. Burt?

- 1 A. The above-stated information.
- 2 Q. Okay.
- 3 A. As far as paperwork, facility availability.
- 4 Q. So you just told --
- 5 A. I confirmed date of admission with Ms. Burt and
- 6 relayed that back to the family.
- 7 Q. Okay. And you don't recall if it was via phone or
- 8 via --
- 9 A. I'm sure it was phone.
- 10 Q. Okay. And you would have told Ms. Burt that she
- 11 needed to contact Mr. Boyd's mother?
- 12 A. Yes. She would be his responsible party.
- 13 Q. Okay. And did you tell Ms. Burt that Mr. Boyd
- 14 specifically told you that his mother would handle
- 15 the paperwork?
- 16 A. Yes.
- 17 Q. Do you recall if Ms. Burt asked any other
- 18 questions outside of that conversation?
- 19 A. In terms of responsible party or paperwork?
- 20 Q. Anything. Anything in that conversation.
- 21 A. Well, final dispositions. Any type of sub-acute
- 22 skilled nursing home, we have to provide the level
- 23 of care and in his position -- or condition, we
- 24 provided the complex care approval form --
- 25 Q. Okay.

- 1 A. -- and just the discharge summary, med rec.
- 2 Q. Has Ms. Burt ever forwarded you admission
- 3 paperwork for patients to sign prior to admission?
- 4 A. Not to my knowledge.
- 5 Q. Has any other facility ever forwarded you
- 6 admission paperwork?
- 7 A. They have and -- but I do not like it because that
- 8 is their paperwork and they need to be responsible
- 9 for it.
- 10 Q. Okay. Did you ever have a conversation with Ms.
- 11 Boyd, who is Mr. Boyd's mother, about her signing
- 12 the admission paperwork?
- 13 A. That was the -- yes, that she had been identified.
- 14 Q. But did you speak to her specifically about the
- 15 admission --
- 16 A. No.
- 17 Q. -- paperwork?
- 18 A. No. Other than that the facility would contact
- 19 her.
- 20 Q. Okay. Did you tell Mr. Boyd that his mother would
- 21 be filling out the admission paperwork for
- 22 Magnolia Place?
- 23 A. He identified her as the contact for Magnolia
- 24 Place.
- 25 Q. Okay. Do you -- did you tell him that his mother

1 would be signing the admission paperwork on his
2 behalf?

3 A. He identified her so that's where we left it.

4 Q. I understand that. So did you, after that, tell
5 Mr. Boyd --

6 A. No.

7 Q. Okay. And did you ask Mr. Boyd if he wanted to
8 fill out the admission paperwork to Magnolia
9 Manor?

10 A. No.

11 Q. And so your question, when asking him, was it who
12 will be filling out this admission paperwork?

13 A. He identified his mother as the contact for
14 Magnolia.

15 Q. Okay. So he identified her as the contact or as
16 the person filling out the admission paperwork?

17 MR. BUCKNER: Object to the form.

18 MS. BRADLEY: Object to the form.

19 A. The --

20 Q. You can answer.

21 A. The contact.

22 Q. Okay. But did he know --

23 A. Yes.

24 Q. Let me finish my question.

25 A. Okay.

DEPOSITION OF PEGGY FIELDS

28

1 Q. Did he know that his mother would be filling out
2 the admission paperwork to Magnolia?

3 A. To the best of my knowledge.
4

5 MR. FEIDLER: No further questions.

6 Please answer any questions Mr. Buckner
7 may have for you.

8 CROSS-EXAMINATION

9 BY MR. BUCKNER:

10 Q. Ma'am, I think I've only got two questions and
11 then we'll be done. My name is Perry Buckner and
12 I represent Magnolia Greenville. I appreciate you
13 being here today.

14 I just want to make sure that I understand
15 your testimony so far. Regarding the conversation
16 that you had with Mr. Boyd when he was still at
17 the hospital -- and I understand that you do not
18 determine competency, but presuming he was
19 competent, was there anything that would have
20 prevented Mr. James Boyd from suggesting that he
21 wanted to handle all of the paperwork himself if
22 he wanted to?

23 MR. FEIDLER: Objection. You can
24 answer.

25 A. No, not to my knowledge.

DEPOSITION OF PEGGY FIELDS

29

1 MR. BUCKNER: I don't have any further
2 questions.

3 MR. FEIDLER: That's it. Thank you.

4 (FURTHER DEPONENT SAYETH NOT.)

5 (THERE BEING NOTHING FURTHER, THE DEPOSITION OF
6 PEGGY FIELDS CONCLUDED AT 11:06 A.M.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

DEPOSITION OF PEGGY FIELDS

30

1 CERTIFICATE OF REPORTER

2 I, KRISTA GIBSON, COURT REPORTER AND NOTARY
3 PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY
4 CERTIFY THAT I REPORTED THE DEPOSITION OF PEGGY FIELDS ON
5 TUESDAY, MAY 7, 2019; THAT THE WITNESS WAS FIRST DULY
6 SWORN BY ME AND THAT THE FOREGOING 29 PAGES CONSTITUTE A
7 TRUE AND CORRECT TRANSCRIPTION OF MY VERBATIM REPORT OF
8 SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY
10 NOR COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID
14 TRANSCRIPT WAS SEALED AND DELIVERED TO STEFAN FEILDER,
15 1201 MAIN STREET, SUITE 1100, COLUMBIA, SOUTH CAROLINA,
16 WHO WILL RETAIN THE SEALED ORIGINAL TRANSCRIPT AND SHALL
17 BE RESPONSIBLE FOR FILING SAME WITH THE COURT PRIOR TO
18 TRIAL OR ANY HEARING WHICH MIGHT RESULT IN A FINAL ORDER
19 ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL
21 THIS 18TH DAY OF MAY, 2019.

22

23

24 KRISTA GIBSON, COURT REPORTER

25 MY COMMISSION EXPIRES JUNE 20, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONN PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JAMES BOYD, JR. ,	)	CASE NO. 2018-CP-23-01934
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
THI OF SOUTH CAROLINA, LLC,	)	
D/B/A MAGNOLIA PLACE-	)	
GREENVILLE; HUNT VALLEY	)	
HOLDINGS, LLC; THI OF	)	
BALTIMORE, INC.; FUNDAMENTAL	)	
CLINICAL AND OPERATIONAL	)	
SERVICES LLC; FUNDAMENTAL	)	
ADMINISTRATIVE SERVICES, LLC;	)	DECLARATION OF PEGGY FIELDS
FUNDAMENTAL CLINICAL	)	
CONSULTING, LLC; LEONARD	)	
GRUNSTEIN BOTH INDIVIDUALLY	)	
AND AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; MURRAY	)	
FORMAN BOTH INDIVIDUALLY AND	)	
AS OWNER/OPERATOR OF	)	
MAGNOLIA PLACE; AND RUSTY	)	
FLATHMANN BOTH INDIVIDUALLY	)	
AND AS EMPLOYEE/MANAGER OF	)	
MAGNOLIA PLACE ,	)	
	)	
DEFENDANTS.	)	

1. I, Peggy Fields, respectfully submit this sworn declaration in connection with the above-captioned matter.
2. I am over the age of 18 years old, am otherwise competent, and I am resident of the state of South Carolina. I am currently employed as a case manager at Palmetto Health Richland in Columbia, South Carolina.
3. The information contained in this sworn declaration is based the review of certain documents.

4. The patient was admitted to Palmetto Health Richland in June of 2016. During the hospitalization, it was determined that the patient would be discharged to Magnolia Place of Greenville, a skilled nursing facility in Greenville, South Carolina.
5. As a case manager at Palmetto Health Richland during that time, I spoke on multiple occasions with Leola Burt, the Admissions Coordinator at Magnolia Place of Greenville. I provided her with certain information to determine if Magnolia Place of Greenville could accept the referral.
6. I do recall speaking with Ms. Burt when she inquired as to who would be responsible for handling the admissions paperwork for the patient's admission to Magnolia Place of Greenville. This is a common inquiry in my line of work.
7. In response to that inquiry by Ms. Burt, I personally asked patient who should be handling the admissions paperwork for Magnolia Place of Greenville. The patient specifically informed me that the mother would handle all such paperwork.
8. I relayed that information to Ms. Burt, and, to the best of my knowledge, the patient was ultimately discharged to Magnolia Place of Greenville.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2019

Columbia, South Carolina


Peggy Fields

*State of South Carolina
County of Richland
Before me, the undersigned notary public, this day, 2/19/19,
personally, appeared before me. Subscribed to and sworn
before me this 19th day of February, 2019.
Melania L. Liu - Notary Public
My commission expires: April 12, 2023*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

DEPOSITION OF WILDA BOYD, produced, sworn
and examined on the 19th day of October, 2018, between
the hours of 3:39 p.m. and 4:10 p.m., at the
Anastopoulo Law Firm, 418 River Street, Greenville,
South Carolina, 29601, before Mindy Vislay, a Notary
Public within and for the State of South Carolina, in
a certain cause now pending in the Court of Common
Pleas, Thirteenth Judicial Circuit, in the County of
Greenville, State of South Carolina, wherein JAMES
BOYD, JR., is Plaintiff and THI OF SOUTH CAROLINA AT
MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL
CLINICAL AND OPERATIONAL SERVICES, LLC; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC, are Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

For the Plaintiff:

Anastopoulo Law Firm
By: Stefan B. Feidler
32 Ann Street
Charleston, South Carolina 29403
843-614-8888
stefan@akimlawfirm.com

For the Defendants:

Young, Clement, Rivers, LLP
By: Perry M. Buckner, IV
25 Calhoun Street
Suite 400
Charleston, South Carolina 29401
843-720-5406
pbuckner@ycrlaw.com

Also present: James Boyd, Jr., Plaintiff

INDEX

QUESTIONS BY:

PAGE NO.

MR. BUCKNER

4

PREVIOUSLY MARKED EXHIBITS

DEFENDANT'S

DESCRIPTION

REFERENCED

EXHIBIT 1ADMISSION AGREEMENT - SOUTH
CAROLINA

19

EXHIBIT 2FACILITY-RESIDENT/REPRESENTATIVE
ARBITRATION AGREEMENT

22

(Original exhibits were retained by the court reporter and will be copied and attached to copies of the transcript.)

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiff and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Mindy Vislay, a Notary Public, and
5 afterwards transcribed into typewriting; and the
6 signature of the witness is expressly waived.

7 * * * * *

8 WILDA BOYD,
9 of lawful age, produced, sworn and examined on behalf
10 of the Defendants, deposes and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. BUCKNER:

13 Q. Ms. Boyd, my understanding is that your
14 full name is Wilda Ann Boyd?

15 A. It's Stevens now.

16 Q. Stevens now? Okay. You've recently been
17 married?

18 A. Uh-huh.

19 Q. Congratulations.

20 A. Thank you.

21 Q. Who is the lucky gentleman?

22 A. Barnett Stevens.

23 Q. And where do y'all live?

24 A. [REDACTED].

25 Q. In Lexington County?

1 A. In Lexington.

2 Q. But I'm close, right? It's only a couple
3 miles. I think Little Mountain, and I think Newberry.

4 A. Yeah, we're almost on the county line.

5 Q. Well, unfortunately, I know you sat through
6 a portion of my spiel today, but the rules require me
7 to go over the same things with you.

8 If you want to take a break at any time just let
9 me know and we'll go off the record. It doesn't
10 matter what it is, a phone call, a drink of water, a
11 bathroom break, just say the words and we'll do it.

12 A. Okay.

13 Q. Let me finish the question before you
14 answer so we don't talk over each other. Is that
15 agreeable?

16 A. Uh-huh.

17 Q. And that helps make her job a lot easier.
18 Verbal answers. No head nods. No uh-huhs and uh-uhs.
19 Is that agreeable?

20 A. Yes.

21 Q. If I ask a question, and you don't
22 understand it, direct your question about my question
23 to me not anybody else, whether it be your son or his
24 attorney. Is that agreeable?

25 A. Yes.

1 Q. The rules don't allow you now that you've
2 been sworn under oath to talk to anybody about these
3 issues.

4 Have you ever given a deposition before?

5 A. No.

6 Q. And when I say the phrase "give a
7 deposition," that means exactly what we're doing right
8 now. We're parties in a room, and you're giving
9 testimony under oath. That hasn't happened?

10 A. No.

11 Q. Have you ever filed a lawsuit before?

12 A. No.

13 Q. Have you ever been sued?

14 A. No.

15 Q. And have you ever been charged with any
16 crime before or convicted of a crime?

17 A. No.

18 Q. And I'm not talking about traffic tickets
19 or anything like that. Have you ever declared
20 bankruptcy before?

21 A. No.

22 Q. All right. Well, now that you're under
23 oath, you're obviously under an obligation to recall
24 all information that you currently have about your
25 son's admission to Magnolia Manor [sic]. Do you

1 understand that?

2 A. Yes.

3 Q. And, you know, it's okay for you to let me
4 know that you're not a hundred percent sure about
5 something, but if you have some recollection or
6 memory, you can qualify it and tell me what you're
7 recalling. Is that understood?

8 A. Yes.

9 Q. And now that you are in fact under oath
10 under penalty of perjury, I just want to make sure
11 that the answers you give today will be the same that
12 you would give in front of a judge at a later time in
13 this case. Is that fair?

14 A. Yes.

15 Q. And if you answer my question that I ask,
16 I'm going to assume that you've understood it. Is
17 that fair?

18 A. Yes.

19 Q. All right. When your son was admitted to
20 Richland Memorial after this accident in June of 2016
21 did you complete his admission paperwork to that
22 hospital?

23 A. To be honest, I can't recall.

24 Q. Okay. Well, do you think that more likely
25 than not you did?

1 A. More likely not.

2 Q. More likely than not you did or did not?

3 A. Did not.

4 Q. Okay. So your son was admitted to Richland
5 Memorial for a month, and according to his testimony
6 was incapacitated for 24 hours or more.

7 A. Uh-huh.

8 Q. And it's your testimony that he signed that
9 paperwork?

10 A. No.

11 MR. FEIDLER: Objection.

12 QUESTIONS BY MR. BUCKNER:

13 Q. Okay. What is your testimony?

14 A. Whenever he was first admitted to the
15 hospital the night of the accident, me and -- at the
16 time it was my boyfriend, well, it was my fiance --
17 went to the hospital. They had him in a pod for --
18 the accident happened around three in the morning.
19 They had him in a pod until probably seven o'clock
20 that night, and I know I didn't do any paperwork that
21 day, and the next morning they called me and told me
22 they had to do surgery on him, and I went to the
23 hospital. They did surgery. That's the reason why I
24 say I can't remember signing no papers.

25 Q. Okay. Do you believe that ultimately

1 papers were signed by someone on behalf of your son?

2 A. Then my daughter came, Jackie, and I told
3 her that she knows more about this kind of stuff than
4 I did, because she'd had caseworkers before, and the
5 caseworker came, and they did do some -- they talked,
6 and I can't remember signing the papers. It was a
7 terrible time in my life at that time.

8 Q. Okay. And if those records are subpoenaed
9 from Richland Memorial, if you had to speculate, which
10 you're free to do as long as you tell me you're
11 speculating, who do you think's signature is on the
12 paperwork at Richland Memorial regarding the care and
13 treatment that your son received there?

14 A. I don't know. It may be Jackie's.

15 Q. Is it more likely Jackie's than yourself?

16 A. Probably.

17 Q. Okay. And what is Jackie -- Jackie you
18 said used to be a caseworker?

19 A. No.

20 Q. Is she a nurse?

21 A. No.

22 Q. You said that you thought she was more
23 familiar with this kind of stuff. Why did you say
24 that?

25 A. Because she's been -- she dealt with a lot

1 of caseworkers before, and she knows more about that
2 kind of stuff than I did, so she handled most of the
3 stuff.

4 Q. And why does she know more about
5 caseworkers?

6 A. Because she's been disabled and she had
7 caseworkers before. I've never had to dealt with a
8 caseworker. And she was always there. Most of the
9 time when I went to the hospital she went. She was
10 there, too.

11 Q. Now, would you agree that your son Mr. Boyd
12 was in no shape to be executing paperwork at the
13 beginning of June 2016 right after the accident,
14 right?

15 A. What do you mean?

16 Q. Well, in other words, he had obviously had
17 a traumatic accident, correct?

18 A. Uh-huh.

19 Q. And it impaired him physically, correct?

20 A. Yeah. He was in a lot of pain.

21 Q. And do you think that it would have been
22 appropriate for him to be presented with paperwork and
23 make decisions and things like that after he had just
24 had that traumatic accident?

25 A. No.

1 Q. And you would agree that it would have been
2 better to have that delegated to someone else,
3 correct?

4 A. Yes.

5 Q. And I presume that you and your son have a
6 good relationship?

7 A. Yeah.

8 Q. And that y'all love one another?

9 A. Yeah.

10 Q. And that in no way as his mother you would
11 do anything against his wishes or interest; is that
12 correct?

13 MR. FEIDLER: Objection. You can answer.

14 THE WITNESS: Yes.

15 QUESTIONS BY MR. BUCKNER:

16 Q. He's going to object from time to time, but
17 you've got to answer my question just like he's not
18 objecting unless he tells you otherwise. All right?

19 And I want to make sure, not just regarding
20 Richland Memorial, but also any paperwork that was
21 completed at Magnolia Place, was there ever a time
22 that your son Mr. Boyd came to you and said I don't
23 want you to execute admissions paperwork on my behalf?

24 A. No.

25 Q. And he recalled in his deposition a time

1 where you actually told him that you were going to be
2 signing some admissions paperwork at Magnolia Place.
3 Do you recall that conversation?

4 A. No.

5 MR. FEIDLER: Objection.

6 QUESTIONS BY MR. BUCKNER:

7 Q. But you don't dispute that it occurred?

8 A. No.

9 Q. Do you remember Miss Coco Burt or Leola
10 Burt?

11 A. Do I remember her?

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. And do you remember her because you dealt
15 with her for the admissions process at Magnolia Place
16 at Greenville?

17 A. Yes.

18 Q. And what memory or recollection, if any, do
19 you have of the admissions process at Magnolia Place?

20 A. Whenever James was first admitted to the
21 hospital, I didn't go there for a couple of days
22 because I was going out of town the same day he was
23 being transferred to Magnolia Place, and whenever I
24 came back I came up there, and they told me that I
25 needed to go see -- go to administration.

1 Q. Okay.

2 A. So I went to the administration and met
3 her, and she told me her name was whatever, but she
4 said everybody called her Coco.

5 Q. And they do. I just used her formal name
6 Leola because it's on the paperwork. Everybody does
7 call her Coco. Coco is in Jamaica right now, in case
8 you're interested, otherwise she would be being
9 deposed today here as well. Can you picture Coco
10 right now?

11 A. Uh-huh.

12 Q. If she walked in you would know who she is?

13 A. I think I would. She was pregnant at the
14 time.

15 Q. Okay. Well, that will be easy to confirm.
16 And was she nice and pleasant?

17 A. Yes.

18 Q. And easy to deal with?

19 A. Yeah.

20 Q. And seemed honest?

21 A. Yeah.

22 Q. No reason for her to mislead or
23 misrepresent anything that happened with you or your
24 son about the admissions process, correct?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: Correct.

2 QUESTIONS BY MR. BUCKNER:

3 Q. That you know of?

4 A. That I know of.

5 Q. And when she went through this admissions
6 paperwork with you did she take the opportunity to
7 explain things about it to you?

8 A. Not really. She had a stack of papers like
9 that, and she would --

10 Q. Like that is not going to read well. So it
11 looks like you've got what I would consider about a
12 half an inch?

13 A. She had a thick pile of papers --

14 Q. Okay. There you go.

15 A. -- and, you know, I don't know, and she
16 would give me each sheet, and she would say this is
17 for this and this is for this, you know, and just sign
18 where the X is.

19 Q. Well, when you said this is for this and
20 this is for this, she was explaining the purpose of
21 those documents, right?

22 A. Yes.

23 MR. FEIDLER: Objection.

24 QUESTIONS BY MR. BUCKNER:

25 Q. And she was there to answer questions that

1 you had also, correct?

2 A. Yes.

3 MR. FEIDLER: Objection.

4 QUESTIONS BY MR. BUCKNER:

5 Q. She never told you not to ask questions or
6 anything like that?

7 A. No.

8 Q. All right. And I assume that you read
9 these agreements before you signed them?

10 A. No.

11 Q. You did not?

12 A. No, I did not.

13 Q. Did anyone tell you not to read them?

14 A. No.

15 Q. And you weren't prevented from reading them
16 by Miss Coco?

17 A. No.

18 Q. Okay. And do you remember -- you said that
19 she would explain this is for this and this is for
20 that. Do you remember what she said to you when you
21 executed the arbitration agreement?

22 A. No. Because all I was signing papers to
23 make sure my son had somewhere to be and get
24 treatments. And it's just like going to buy a car.
25 You go buy a car. The dealer be telling you stuff.

1 You don't read all that stuff on that paper. You're
2 trying to get you a car.

3 Q. I understand that, but you would agree with
4 me that you obviously had an opportunity to read it,
5 correct?

6 A. Yes.

7 Q. And if you wanted to you could have,
8 correct?

9 A. Yes.

10 Q. And no one forced you to sign these
11 documents, correct?

12 A. Right.

13 Q. And if you wanted to leave and take your
14 son somewhere else, you could have done that, correct?

15 A. Yes.

16 Q. No one was keeping you there against your
17 will in any way, correct?

18 A. Correct.

19 Q. All right. And if you did not read any of
20 these documents, that's your own fault, correct?

21 A. Correct.

22 Q. Nobody else's fault, right?

23 A. Correct.

24 Q. And, so, there was nothing that Coco Burt
25 did that prevented you from reading these or

1 understanding these documents, correct?

2 A. Correct.

3 Q. And if you had a question about any of
4 these documents she was there to answer it. Fair?

5 A. Fair.

6 Q. All right. And you don't have an
7 independent recollection of what she told you about
8 the arbitration agreement, correct?

9 A. Right.

10 Q. And, again, same thing as earlier, you have
11 to give verbal answers. It's hard to remember, and we
12 all forget.

13 Did Miss Coco Burt ever discuss, to the best of
14 your recollection, anything that she and your son had
15 talked about?

16 A. No.

17 Q. Do you remember talking with Mrs. Burt on
18 the phone before you came up there?

19 A. I can't remember.

20 Q. Okay. Did you use a cellphone back then?

21 A. Yes.

22 Q. What was that cellphone number?

23 A. 803-422-1184.

24 Q. And is that the same number you use today?

25 A. Yes.

1 Q. Well, I'm not trying to get it because I
2 want to bother you. You're not going to be getting a
3 call from me, but we can look at phone records from
4 the facility for that number to determine that.

5 A. Okay.

6 Q. You're not saying that she didn't talk with
7 you, you're just saying that you don't remember?

8 A. Right.

9 Q. All right. And, ma'am, you're not aware --
10 you weren't aware back then or now of your son telling
11 any staff member of Magnolia Place of Greenville that
12 he did not want you to execute admissions paperwork,
13 including the arbitration agreement, right?

14 A. Right.

15 Q. All right. And you don't have any
16 recollection -- or scratch that. I told you I'm going
17 to mess up some questions. That was one of them.

18 Were you present for a conversation between your
19 son and any admissions person at Magnolia Place of
20 Greenville?

21 A. Was I present with -- was my son and myself
22 present with any member at the same time?

23 Q. Correct.

24 A. No.

25 Q. Okay. So, when Miss Burt testifies about

1 conversations that she may or may not have had with
2 your son --

3 A. Uh-huh.

4 Q. -- you're not going to know anything about
5 those?

6 A. Correct.

7 Q. All right. Now, in the admissions
8 agreement that's been marked as **Exhibit 1** your son
9 wasn't able to, but can you verify that that is your
10 signature on the last page?

11 A. Yes.

12 Q. And you did sign it on June 30th, 2016?

13 A. June 30th?

14 Q. Yes. Or you don't know, you just know it
15 was back then when he was admitted?

16 A. I didn't sign on June 30th.

17 Q. Okay.

18 A. I do know that.

19 Q. When did you sign?

20 A. After I came back from Biloxi after the 4th
21 was the first time I went to Magnolia Place.

22 Q. All right. What were you down in Biloxi
23 for?

24 A. A trip. Pleasure. Vacation.

25 Q. So do you think that the date was already

1 supplied on there when you signed it? That is your
2 signature, correct?

3 A. Uh-huh.

4 Q. And did you not scratch out the date and
5 put the new one, or was the date not on there, or do
6 you think it's just an instance of someone putting the
7 wrong date?

8 A. All I can say is they must have put in the
9 wrong date, because I was not --

10 Q. All right. And what I want to know is
11 whether they put in the wrong date before or after you
12 signed it, and you don't recall?

13 A. I don't recall.

14 Q. It could have been that that date was there
15 when you signed it and you didn't change it?

16 A. Could be. I wouldn't -- can I say
17 something?

18 Q. Of course.

19 A. I wouldn't have put June the 30th if I
20 wasn't --

21 Q. Yeah. Afterward?

22 A. Yes.

23 Q. I understand. I'm not accusing you of
24 doing that.

25 A. So the date must have been already there

1 and I just signed the papers.

2 Q. But you certainly could have changed it to
3 reflect the current date if you wanted to?

4 A. Yeah. Evidently I didn't pay the date no
5 attention, because I know that I didn't sign no papers
6 on June 30th.

7 Q. But you were present with Mrs. Burt when
8 you signed it?

9 A. Yes.

10 Q. Okay. And were you in the admissions
11 office at Magnolia Place when you signed it?

12 A. Yes.

13 Q. Was your daughter present, too?

14 A. No.

15 Q. Had your daughter been present at the
16 facility at any time prior to that date that you know
17 of?

18 A. No, not that I know of.

19 Q. And she visited your son a lot, correct?

20 A. Yes.

21 Q. So there could be times when she was there
22 and you didn't know about it, or would you know about
23 it?

24 A. There could have been, but I don't -- I
25 don't know.

1 Q. I know these questions sound funny to some
2 extent because it's hard to remember. And this is the
3 only time I get to talk to you. I wasn't around back
4 then. I'm a stranger to this whole thing, just as
5 your son's lawyer is. So I'm just trying to figure
6 out, you know, what I can derive from this paperwork.
7 Do you understand?

8 A. The reason why I say that, I don't think
9 she was there, because I went up three to four times a
10 week, and I don't think Jackie went up there whenever
11 I didn't go, but, just like I said, it's been a long
12 time. She may have and I don't know.

13 Q. Now, **Exhibit 2** is the main reason we're
14 here to talk today, and **Exhibit 2** is an arbitration
15 agreement that was signed by you on your son's behalf,
16 correct?

17 A. Uh-huh.

18 Q. And would you agree with me there's
19 certainly no indication on the face of this document
20 that you didn't have authority to sign it, correct?

21 A. That I didn't have authority to sign it?

22 Q. Yeah. Is there anything on this document
23 that would make someone at Magnolia Place believe that
24 you didn't have authority to sign it?

25 MR. FEIDLER: Objection. You can answer.

1 THE WITNESS: No.

2 QUESTIONS BY MR. BUCKNER:

3 Q. And would you agree with me that you
4 certainly gave Miss Coco Burt no indication that you
5 couldn't sign this document?

6 A. No.

7 Q. And that was probably a double negative.
8 So you didn't say anything to Miss Burt that would
9 make her believe that you lacked authority to sign
10 this?

11 A. No.

12 Q. All right. And as far as -- and I realize
13 that you can't put yourself entirely in her shoes, but
14 as far as Miss Burt would have known based on this
15 agreement you were authorized to enter it on your
16 son's behalf?

17 A. I guess. Yeah.

18 Q. Okay. And if we look at the first
19 paragraph on **Exhibit 1**, can you read that out loud for
20 me?

21 A. "Inducement: Resident and/or
22 representative verifies that all information submitted
23 to facility, including without limitation, financial
24 information, medical history and medical diagnosis, is
25 true and correct and acknowledges that providing false

1 information constitutes a breach of this agreement."

2 Q. And you represented to Magnolia Place that
3 you had authority to sign all admissions paperwork for
4 your son, correct?

5 MR. FEIDLER: Objection.

6 THE WITNESS: Did I -- say that again.

7 QUESTIONS BY MR. BUCKNER:

8 Q. You represented to Magnolia Place of
9 Greenville that you had authority to enter into all
10 admissions paperwork on behalf of your son, correct?

11 A. Yeah.

12 MR. FEIDLER: Same objection.

13 QUESTIONS BY MR. BUCKNER:

14 Q. I mean, I know that -- I have my own
15 children. I'm assuming that you were trying to in
16 every way, shape or form look out for your son's best
17 interest, correct?

18 A. Correct.

19 Q. And that you wouldn't sign something that
20 you thought was not in his best interest, correct?

21 A. Correct.

22 Q. And if there was anything in this
23 admissions paperwork that gave you any pause, what
24 would you have done?

25 A. I wouldn't have signed. But, once again, I

1 don't think -- she did not -- she probably told me
2 what this --

3 Q. We're flipping through the 12 pages of
4 **Exhibit 1**.

5 A. Yeah. And all she said was, you know, you
6 sign here. So, you know, I didn't read over this
7 stuff. I didn't read -- I would have been there all
8 day if I had read over all that stuff that she gave --

9 Q. But you could have done that? You had the
10 opportunity to do that?

11 A. Yes.

12 Q. So when your son was in the hospital and
13 the nursing home, I guess if we take -- what is the
14 time together of his hospitalization plus his
15 residency at Magnolia Place? In other words, how long
16 was he admitted as a patient at those two places
17 collectively?

18 A. You mean the time he was at Richland
19 Memorial?

20 Q. Let's start the clock from June 3rd, 2016,
21 until he was discharged from Magnolia Place of
22 Greenville.

23 A. Seven months.

24 Q. Okay. And during those seven months I
25 would imagine that, you know, he was focused on his

1 recovery. Were you tending to personal matters for
2 him like his finances and things of that nature?

3 MR. FEIDLER: Objection. You can answer.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. BUCKNER:

6 Q. Okay. Tell me about that. Would you go to
7 the bank and sign things on his behalf?

8 A. I did go to the bank and signed his check
9 one time.

10 Q. Okay. And did your son give you authority
11 to do that?

12 A. No.

13 Q. Okay. Now, when I asked that question, are
14 you assuming that I mean that he called you and told
15 you you could do it?

16 A. Say that again.

17 Q. Well, let me backtrack. Why did you go to
18 the bank and sign a check for your son?

19 A. Because I needed money to pay his bills and
20 gas money for going up and down the road.

21 Q. You were trying to help him, correct?

22 A. Yeah.

23 Q. You're not a crook, correct?

24 A. No.

25 Q. You weren't trying to do anything other

1 than what was best for your son, correct?

2 A. Correct.

3 Q. And he trusted you to do those things,
4 correct?

5 A. I hope so.

6 Q. And certainly when other people were
7 dealing with him, as far as you know he gave them the
8 impression that you had the ability to do that, right?

9 MR. FEIDLER: Objection.

10 THE WITNESS: Ask the question again.

11 QUESTIONS BY MR. BUCKNER:

12 Q. Sure. As far as you know, did your son
13 give others, including the staff at Magnolia Place,
14 the impression that you had the ability to act on his
15 behalf?

16 A. I don't know what he gave other people.

17 Q. Okay. And did you ever witness -- I think
18 you've already answered this, but let me confirm for
19 the record. You never witnessed a conversation
20 between your son and Coco Burt, correct?

21 A. No.

22 Q. Did you ever witness any statement or
23 conversation or any sort of thing whatsoever where
24 your son told or informed someone else that you were
25 not authorized to act on his behalf?

1 A. Say that again.

2 Q. Sure. It was a terrible question. Was
3 there ever a time that you heard your son tell someone
4 else my mother has no authority to act on my behalf?

5 A. No.

6 Q. Was there ever a time that you saw your son
7 do something that would give another person an
8 indication that you weren't authorized to act on his
9 behalf?

10 A. That were or were not?

11 Q. Were not.

12 A. Ask the question again.

13 Q. Was there ever something that you saw your
14 son do that would give another person the impression
15 that you were not authorized to act on his behalf?

16 A. No.

17 Q. Okay. When you executed certain paperwork
18 at Magnolia Place, at Richland Memorial, at the bank,
19 and all these other places where you were signing,
20 potentially, documents on his behalf, I know we
21 haven't confirmed Richland Memorial, but you're
22 telling me that that was a result of happenstance and
23 no specific conversation whatsoever with your son?

24 A. No.

25 Q. All right. What are you telling me?

1 A. What am I telling you about --

2 Q. Yes, ma'am.

3 A. -- signing papers that --

4 Q. I need to know, because this is my last
5 chance to talk to you, and you're under oath, if you
6 and your son ever talked about your authority to
7 execute documents, admissions paperwork, on his
8 behalf.

9 A. No.

10 Q. And you never talked with him about
11 executing bank-related financial documents on his
12 behalf?

13 A. I told him that he had a check that I
14 needed to get cashed, and he told me that I would take
15 it to the bank to see could I get it cashed.

16 Q. Was that around the time when he was
17 admitted to Magnolia Place or --

18 A. Uh-uh.

19 Q. When was that? Before?

20 MR. FEIDLER: Is that a no? I'm sorry.

21 THE WITNESS: I can't remember. I really
22 can't. I can't remember.

23 QUESTIONS BY MR. BUCKNER:

24 Q. All right.

25 A. It seemed like it was before. And then

1 again, it seems like it was after.

2 Q. Fair enough. When you would come to the
3 nursing home to see your son would you speak with the
4 nursing staff about his condition?

5 A. Yes.

6 Q. Okay. Did you speak with the medical
7 director about his condition?

8 A. Who is the medical director?

9 Q. Did you ever speak with a doctor at all
10 when you were there?

11 A. Yes.

12 Q. How about a nurse practitioner?

13 A. I can't remember speaking to a nurse
14 practitioner. What do a nurse practitioner do?

15 Q. Helps the doctor. She's authorized to
16 prescribe medication but would be someone between a
17 nurse and a doctor is the best way to describe it in
18 terms of authority.

19 A. Maybe. Maybe. I can't -- maybe. I talked
20 to a lot of people at Magnolia Place.

21 Q. Would they call you, too, when you weren't
22 in the building?

23 A. On my phone?

24 Q. Uh-huh.

25 A. Yeah, they have.

1 Q. All right. And what would they call you
2 about, that Mr. Boyd had a fall or --

3 A. I can't remember, but I do remember talking
4 to -- I do remember them calling me several times on
5 my phone. Just like you said, you can pull phone
6 records and see.

7 Q. And they were calling you to tell you what
8 was going on or asking you for your input or what? Or
9 both?

10 A. I don't know. I can't remember.

11 Q. Okay. Fair enough.

12 MR. BUCKNER: I think that's all the
13 questions I have.

14 MR. FEIDLER: I have no questions.

15 (Wherein, the deposition was concluded.)
16
17
18
19
20
21
22
23
24
25

WORD INDEX

< 1 >

1 3:10 19:8 23:19
25:4**12** 25:3**19** 3:10**19th** 1:14

< 2 >

2 3:12 22:13, 14**2016** 7:20 10:13

19:12 25:20

2018 1:14**2018-CP-23-01934**

1:6

22 3:12**24** 8:6**25** 2:10**29401** 2:11**29403** 2:5**29601** 1:17

< 3 >

3:39 1:15**30th** 19:12, 13, 16

20:19 21:6

32 2:5**325** 4:24**3rd** 25:20

< 4 >

4 3:4**4:10** 1:15**400** 2:10**418** 1:16**4th** 19:20

< 8 >

803-422-1184 17:23**843-614-8888** 2:6**843-720-5406** 2:11

< A >

ability 27:8, 14**able** 19:9**accident** 7:20 8:15,

18 10:13, 17, 24

accusing 20:23**acknowledges** 23:25**act** 27:14, 25 28:4,
8, 15**administration**

12:25 13:2

ADMINISTRATIVE

1:10, 25

ADMISSION 3:10

6:25 7:21

admissions 11:23

12:2, 15, 19 13:24

14:5 18:12, 19 19:7

21:10 24:3, 10, 23

29:7

admitted 7:19 8:4,

14 12:20 19:15

25:16 29:17

Afterward 20:21**age** 4:9**agree** 10:11 11:1

16:3 22:18 23:3

agreeable 5:15, 19,

24

AGREED 4:1**AGREEMENT** 3:10,

13 15:21 17:8

18:13 19:8 22:15

23:15 24:1

agreements 15:9**allow** 6:1**Anastopoulos** 1:16

2:4

Ann 2:5 4:14**answer** 5:14 7:15

11:13, 17 13:25

14:25 17:4 22:25

26:3

answered 27:18**answers** 5:18 7:11

17:11

anybody 5:23 6:2**appropriate** 10:22**ARBITRATION**

3:13 15:21 17:8

18:13 22:14

asked 26:13**asking** 31:8**assume** 7:16 15:8**assuming** 24:15

26:14

attached 3:18**attention** 21:5**attorney** 5:24**authority** 22:20, 21,

24 23:9 24:3, 9

26:10 28:4 29:6

30:18

authorized 23:15

27:25 28:8, 15

30:15

aware 18:9, 10

< B >

back 12:24 17:20

18:10 19:15, 20

22:3

backtrack 26:17**bank** 26:7, 8, 18

28:18 29:15

bank-related 29:11**bankruptcy** 6:20**Barnett** 4:22**based** 23:14**bathroom** 5:11**beginning** 10:13**behalf** 4:9 9:1

11:23 22:15 23:16

24:10 26:7 27:15,

25 28:4, 9, 15, 20

29:8, 12

believe 8:25 22:23

23:9

best 17:13 24:16,

20 27:1 30:17

better 11:2**bills** 26:19**Biloxi** 19:20, 22**bother** 18:2**BOYD** 1:2, 13, 22

2:15 4:8, 13, 14

10:11 11:22 31:2

boyfriend 8:16**breach** 24:1**break** 5:8, 11**Buckner** 2:9 3:4

4:12 8:12 11:15

12:6 14:2, 24 15:4

23:2 24:7, 13 26:5

27:11 29:23 31:12

building 30:22**Burt** 12:9, 10 16:24

17:13, 17 18:25

21:7 23:4, 8, 14

27:20

buy 15:24, 25

< C >

Calhoun 2:10**call** 5:10 13:7 18:8

30:21 31:1

called 8:21 13:4

26:14

calling 31:4, 7**car** 15:24, 25 16:2**care** 9:12**CAROLINA** 1:2, 7,

17, 18, 21, 22 2:5, 1

3:12

Case 1:5 7:13 13:8**caseworker** 9:5, 18

10:8

caseworkers 9:4

10:1, 5, 7

cashed 29:14, 15**cause** 1:19**cellphone** 17:20, 22**certain** 1:19 28:17**certainly** 21:2

22:19 23:4 27:6

chance 29:5**change** 20:15**changed** 21:2**charged** 6:15**Charleston** 2:5, 11**check** 26:8, 18

29:13

children 24:15**CIRCUIT** 1:1, 20**Clement** 2:9**CLINICAL** 1:8, 24**clock** 25:20**close** 5:2**Coco** 12:9 13:4, 7,

7, 9 15:16 16:24

17:13 23:4 27:20

collectively 25:17**come** 30:2**COMMON** 1:1, 19**complete** 7:21

completed 11:21
concluded 31:15
condition 30:4, 7
confirm 13:15
 27:18
confirmed 28:21
Congratulations
 4:19
consider 14:11
constitutes 24:1
conversation 12:3
 18:18 27:19, 23
 28:23
conversations 19:1
convicted 6:16
copied 3:18
copies 3:18
correct 10:17, 19
 11:3, 12 13:24 14:1
 15:1 16:5, 8, 11, 14,
 17, 18, 20, 21, 23
 17:1, 2, 8 18:23
 19:6 20:2 21:19
 22:16, 20 23:25
 24:4, 10, 17, 18, 20,
 21 26:21, 23 27:1, 2,
 4, 20
counsel 4:2, 2
COUNTY 1:2, 20
 4:25 5:4
couple 5:2 12:21
course 20:18
COURT 1:1, 19
 3:18
crime 6:16, 16
crook 26:23
current 21:3
currently 6:24

< D >

date 19:25 20:4, 5,
 7, 9, 11, 14, 25 21:3,
 4, 16
daughter 9:2 21:13,
 15
day 1:14 8:21
 12:22 25:8
days 12:21
deal 13:18

dealer 15:25
dealing 27:7
dealt 9:25 10:7
 12:14
decisions 10:23
declared 6:19
Defendants 1:12, 25
 2:8 4:3, 10
DEFENDANT'S
 3:10
delegated 11:2
deposed 13:9
deposes 4:10
DEPOSITION 1:13
 4:3 6:4 11:25
 31:15
deposition, 6:7
derive 22:6
describe 30:17
DESCRIPTION
 3:10
determine 18:4
diagnosis 23:24
DIRECT 4:11 5:22
director 30:7, 8
disabled 10:6
discharged 25:21
discuss 17:13
dispute 12:7
doctor 30:9, 15, 17
document 22:19, 22
 23:5
documents 14:21
 16:11, 20 17:1, 4
 28:20 29:7, 11
doing 6:7 20:24
double 23:7
drink 5:10

< E >

earlier 17:10
easier 5:17
easy 13:15, 18
else's 16:22
enter 23:15 24:9
entirely 23:13
everybody 13:4, 6
Evidently 21:4
exactly 6:7

EXAMINATION

4:11
examined 1:14 4:9
execute 11:23
 18:12 29:7
executed 15:21
 28:17
executing 10:12
 29:11
EXHIBIT 3:10, 12
 19:8 22:13, 14
 23:19 25:4
EXHIBITS 3:8, 18
explain 14:7 15:19
explaining 14:20
expressly 4:6
extent 22:2

< F >

face 22:19
facility 18:4 21:16
 23:23
FACILITY-RESIDE
NT 3:12
fact 7:9
fair 7:13, 17 17:4, 5
 30:2 31:11
fall 31:2
false 23:25
familiar 9:23
far 23:12, 14 27:7,
 12
fault 16:20, 22
Feidler 2:4 8:11
 11:13 12:5 13:25
 14:23 15:3 22:25
 24:5, 12 26:3 27:9
 29:20 31:14
fiance 8:16
figure 22:5
filed 6:11
finances 26:2
financial 23:23
 29:11
finish 5:13
Firm 1:16 2:4
first 8:14 12:20
 19:21 23:18
flipping 25:3

focused 25:25
forced 16:10
forget 17:12
form 24:16
formal 13:5
four 22:9
free 9:10
front 7:12
full 4:14
FUNDAMENTAL
 1:8, 10, 23, 24
funny 22:1

< G >

gas 26:20
gentleman 4:21
getting 18:2
give 6:6 7:11, 12
 14:16 17:11 26:10
 27:13 28:7, 14
given 6:4
giving 6:8
go 5:7, 9 12:21, 25
 25 14:14 15:25
 22:11 26:6, 8, 17
going 7:16 11:16
 12:1, 22 14:10
 15:24 18:2, 16 19:4
 26:20 31:8
good 11:6
GREENVILLE 1:2
 8, 16, 21, 23 12:16
 18:11, 20 24:9
 25:22
guess 23:17 25:13

< H >

half 14:12
handled 10:2
happened 6:9 8:18
 13:23
happenstance 28:22
hard 17:11 22:2
head 5:18
heard 28:3
help 26:21
helps 5:17 30:15
history 23:24
home 25:13 30:3

honest 7:23 13:20
hope 27:5
hospital 7:22 8:15, 17, 23 10:9 12:21 25:12
hospitalization 25:14
hours 1:15 8:6
hundred 7:4

< I >

imagine 25:25
impaired 10:19
impression 27:8, 14 28:14
incapacitated 8:6
inch 14:12
including 18:13 23:23 27:13
independent 17:7
INDEX 3:1
indication 22:19 23:4 28:8
Inducement 23:21
information 6:24 23:22, 24 24:1
informed 27:24
input 31:8
instance 20:6
interest 11:11 24:17, 20
interested 13:8
issues 6:3
IV 2:9

< J >

Jackie 9:2, 17, 17 22:10
Jackie's 9:14, 15
Jamaica 13:7
JAMES 1:2, 21 2:15 12:20
job 5:17
JR 1:2, 22 2:15
judge 7:12
JUDICIAL 1:1, 20
June 7:20 10:13 19:12, 13, 16 20:19 21:6 25:20

< K >

keeping 16:16
kind 9:3, 23 10:2
know 5:5, 9 7:3, 4 8:20 9:14 10:4 13:12 14:3, 4, 15, 15, 17 19:4, 14, 14, 18 20:10 21:5, 16, 18, 22, 22, 25 22:1, 6, 12 24:14 25:5, 6, 25 27:7, 12, 16 28:20 29:4 31:10
known 23:14
knows 9:3 10:1

< L >

lacked 23:9
Law 1:16 2:4
lawful 4:9
lawsuit 6:11
lawyer 22:5
leave 16:13
Leola 12:9 13:6
Lexington 4:25 5:1
life 9:7
limitation 23:23
line 5:4
Little 4:24 5:3
live 4:23
LLC 1:8, 9, 11, 23, 24, 25
LLP 2:9
long 9:10 22:11 25:15
look 18:3 23:18 24:16
looks 14:11
lot 5:17 9:25 10:20 21:19 30:20
loud 23:19
love 11:8
lucky 4:21

< M >

ma'am 12:12 18:9 29:2
MAGNOLIA 1:7, 23 6:25 11:21 12:2, 15, 19, 23 18:11, 19 19:21 21:11 22:23

24:2, 8 25:15, 21 27:13 28:18 29:17 30:20
main 22:13
Manor 6:25
MARKED 3:8 19:8
married 4:17
matter 5:10
matters 26:1
Meadowlark 4:24
mean 10:15 24:14 25:18 26:14
means 6:7
medical 23:24, 24 30:6, 8
medication 30:16
member 18:11, 22
Memorial 7:20 8:5 9:9, 12 11:20 25:19 28:18, 21
memory 7:6 12:18
mess 18:17
met 13:2
miles 5:3
Mindy 1:17 4:4
mislead 13:22
misrepresent 13:23
money 26:19, 20
month 8:5
months 25:23, 24
morning 8:18, 21
mother 11:10 28:4
Mountain 4:24 5:3

< N >

name 4:14 13:3, 5
nature 26:2
need 29:4
needed 12:25 26:19 29:14
negative 23:7
never 10:7 15:5 27:19 29:10
new 20:5
Newberry 5:3
nice 13:16
night 8:15, 20
nods 5:18
Notary 1:17 4:4

number 17:22, 24 18:4
nurse 9:20 30:12, 13, 14, 17
nursing 25:13 30:3 4

< O >

oath 6:2, 9, 23 7:9 29:5
object 11:16
objecting 11:18
Objection 8:11 11:13 12:5 13:25 14:23 15:3 22:25 24:5, 12 26:3 27:9
obligation 6:23
obviously 6:23 10:16 16:4
occurred 12:7
o'clock 8:19
October 1:14
office 21:11
Okay 4:16 5:12 7:3, 24 8:4, 13, 25 9:8, 17 13:1, 15 14:14 15:18 17:20 18:5, 25 19:17 21:10 23:18 25:24 26:6, 10, 13 27:17 28:17 30:6 31:11
once 24:25
OPERATIONAL 1:9, 24
opportunity 14:6 16:4 25:10
Original 3:18

< P >

p.m 1:15, 15
PAGE 3:3 19:10
pages 25:3
pain 10:20
paper 16:1
papers 8:24 9:1, 6 14:8, 13 15:22 21:1, 5 29:3
paperwork 7:21 8:9, 20 9:12 10:12, 22 11:20, 23 12:2

13:6 14:6 18:12
 22:6 24:3, 10, 23
 28:17 29:7
paragraph 23:19
parties 6:8
patient 25:16
pause 24:23
pay 21:4 26:19
pbuckner@ycrlaw.co
m 2:12
penalty 7:10
pending 1:19
people 27:6, 16
 30:20
percent 7:4
perjury 7:10
Perry 2:9
person 18:19 28:7,
 14
personal 26:1
phone 5:10 17:18
 18:3 30:23 31:5, 5
phrase 6:6
physically 10:19
picture 13:9
pile 14:13
PLACE 1:7, 23
 11:21 12:2, 15, 19,
 23 18:11, 19 19:21
 21:11 22:23 24:2, 8
 25:15, 21 27:13
 28:18 29:17 30:20
places 25:16 28:19
Plaintiff 1:4, 22 2:3,
 15 4:2
PLEAS 1:1, 20
pleasant 13:16
Pleasure 19:24
plus 25:14
pod 8:17, 19
portion 5:6
potentially 28:20
practitioner 30:12,
 14, 14
pregnant 13:13
prescribe 30:16
present 2:15 18:18,
 21, 22 21:7, 13, 15
presented 10:22
presume 11:5

prevented 15:15
 16:25
PREVIOUSLY 3:8
prior 21:16
probably 8:19 9:16
 23:7 25:1
process 12:15, 19
 13:24
produced 1:13 4:9
providing 23:25
Public 1:18 4:4
pull 31:5
purpose 14:20
put 20:5, 8, 11, 19
 23:13
putting 20:6

< Q >
qualify 7:6
question 5:13, 21, 22,
 22 7:15 11:17 17:3
 26:13 27:10 28:2,
 12
QUESTIONS 3:3
 4:12 8:12 11:15
 12:6 14:2, 24, 25
 15:4, 5 18:17 22:1
 23:2 24:7, 13 26:5
 27:11 29:23 31:13,
 14

< R >
read 14:10 15:8, 13
 16:1, 4, 19 23:19
 25:6, 7, 8
reading 15:15 16:25
realize 23:12
really 14:8 29:21
reason 8:23 13:22
 22:8, 13
recall 6:23 7:23
 12:3 20:12, 13
recalled 11:25
recalling 7:7
received 9:13
recollection 7:5
 12:18 17:7, 14
 18:16
record 5:9 27:19

records 9:8 18:3
 31:6
recovery 26:1
REFERENCED
 3:10
reflect 21:3
regarding 9:12
 11:19
relationship 11:6
remember 8:24 9:6
 12:9, 11, 14 15:18,
 20 17:11, 17, 19
 18:7 22:2 29:21, 22
 30:13 31:3, 3, 4, 10
reporter 3:18

REPRESENTATIVE
 3:12 23:22
represented 24:2, 8
require 5:6
residency 25:15
Resident 23:21
result 28:22
retained 3:18
Richland 7:20 8:4
 9:9, 12 11:20 25:18
 28:18, 21
right 5:2 6:7, 22
 7:19 10:13, 14
 11:18 13:7, 10
 14:21 15:8 16:12,
 19, 22 17:6, 9 18:8,
 9, 13, 14, 15 19:7, 22
 20:10 23:12 27:8
 28:25 29:24 31:1
River 1:16
Rivers 2:9
Road 4:24 26:20
room 6:8
rules 5:6 6:1

< S >
sat 5:5
saw 28:6, 13
saying 18:6, 7
says 4:10
scratch 18:16 20:4
see 12:25 29:15
 30:3 31:6

SERVICES 1:9, 11
 24, 25
seven 8:19 25:23, 24
shape 10:12 24:16
she'd 9:4
sheet 14:16
shoes 23:13
shorthand 4:4
sic 6:25
sign 14:17 16:10
 19:12, 16, 19 21:5
 22:20, 21, 24 23:5,
 24:3, 19 25:6 26:7
 18
signature 4:6 9:11
 19:10 20:2
signed 8:8 9:1
 15:9 20:1, 12, 15
 21:1, 8, 11 22:15
 24:25 26:8
signing 8:24 9:6
 12:2 15:22 28:19
 29:3
son 5:23 7:19 8:4
 9:1, 13 10:11 11:5
 22 13:24 15:23
 16:14 17:14 18:10
 19, 21 19:2, 8 21:1
 24:4, 10 25:12
 26:10, 18 27:1, 12,
 20, 24 28:3, 6, 14, 24
 29:6 30:3
son's 6:25 22:5, 15
 23:16 24:16
sorry 29:20
sort 27:23
sound 22:1
SOUTH 1:2, 7, 17,
 18, 21, 22 2:5, 11
 3:10
speak 30:3, 6, 9
speaking 30:13
specific 28:23
speculate 9:9
speculating 9:11
spiel 5:6
stack 14:8
staff 18:11 27:13
 30:4

Deposition of Wilda Boyd

start 25:20
STATE 1:2, 18, 21
statement 27:22
Stefan 2:4
stefan@akimlawfirm.com 2:6
Stevens 4:15, 16, 22
STIPULATED 4:1
stranger 22:4
Street 1:16 2:5, 10
stuff 9:3, 23 10:2, 3 15:25 16:1 25:7, 8
submitted 23:22
subpoenaed 9:8
sued 6:13
Suite 2:10
supplied 20:1
sure 7:4, 10 11:19 15:23 27:12 28:2
surgery 8:22, 23
sworn 1:13 4:9 6:2

< T >
take 5:8 14:6 16:13 25:13 29:14
taken 4:3
talk 5:14 6:2 18:6 22:3, 14 29:5
talked 9:5 17:15 29:6, 10 30:19
talking 6:18 17:17 31:3
tell 7:6 9:10 15:13 26:6 28:3 31:7
telling 15:25 18:10 28:22, 25 29:1
tells 11:18
tending 26:1
terms 30:18
terrible 9:7 28:2
testifies 18:25
testimony 6:9 8:5, 8, 13
Thank 4:20
THI 1:7, 22
thick 14:13
thing 17:10 22:4 27:23
things 5:7 10:23 14:7 26:2, 7 27:3

think 5:3, 3 7:24 10:21 13:13 19:25 20:6 22:8, 10 25:1 27:17 31:12
think's 9:11
THIRTEENTH 1:1, 20
thought 9:22 24:20
three 8:18 22:9
tickets 6:18
time 5:8 7:12 8:16 9:7, 7 10:9 11:16, 16, 21, 25 13:14 18:22 19:21 21:16 22:3, 12 25:14, 18 26:9 28:3, 6 29:16
times 21:21 22:9 31:4
today 5:6 7:11 13:9 17:24 22:14
told 8:21 9:2 12:1, 24 13:3 15:5 17:7 18:16 25:1 26:14 27:24 29:13, 14
town 12:22
traffic 6:18
transcribed 4:5
transcript 3:19
transferred 12:23
traumatic 10:17, 24
treatment 9:13
treatments 15:24
trip 19:24
true 23:25
trusted 27:3
trying 16:2 18:1 22:5 24:15 26:21, 25
two 25:16
typewriting 4:5

< U >
Uh-huh 4:18 5:16 8:7 10:18 13:11 19:3 20:3 22:17 30:24
uh-huhs 5:18
Uh-uh 29:18
uh-uhs 5:18
ultimately 8:25

understand 5:22 7:1 16:3 20:23 22:7
understanding 4:13 17:1
understood 7:7, 16
unfortunately 5:5
use 17:20, 24

< V >
Vacation 19:24
Verbal 5:18 17:11
verifies 23:22
verify 19:9
visited 21:19
Vislay 1:17 4:4
vs 1:5

< W >
waived 4:6
walked 13:12
want 5:8 7:10 11:19, 23 18:2, 12 20:10
wanted 16:7, 13 21:3
water 5:10
way 11:10 16:17 24:16 30:17
week 22:10
Well 5:5 6:22 7:24 8:16 10:16 13:9, 15 14:10, 19 18:1 26:17
went 8:17, 22 10:9, 9 13:2 14:5 19:21 22:9, 10
we're 5:4 6:7, 8 22:13 25:3
whatsoever 27:23 28:23
WILDA 1:13 4:8, 14
wishes 11:11
witness 4:6 11:14 14:1 23:1 24:6 26:4 27:10, 17, 22 29:21
witnessed 27:19

words 5:11 10:16 25:15
wrong 20:7, 9, 11

< Y >
y'all 4:23 11:8
Yeah 5:4 10:20 11:7, 9 13:19, 21 20:21 21:4 22:22 23:17 24:11 25:5 26:22 30:25
Young 2:9

WORD LIST

< 1 >

1 (4)
12 (1)
19 (1)
19th (1)

< 2 >

2 (3)
2016 (4)
2018 (1)
2018-CP-23-01934
(1)
22 (1)
24 (1)
25 (1)
29401 (1)
29403 (1)
29601 (1)

< 3 >

3:39 (1)
30th (5)
32 (1)
325 (1)
3rd (1)

< 4 >

4 (1)
4:10 (1)
400 (1)
418 (1)
4th (1)

< 8 >

803-422-1184 (1)
843-614-8888 (1)
843-720-5406 (1)

< A >

ability (2)
able (1)
accident (6)
accusing (1)
acknowledges (1)
act (5)
administration (2)
ADMINISTRATIVE

(2)
ADMISSION (3)
admissions (14)
admitted (7)
Afterward (1)
age (1)
agree (5)
agreeable (3)
AGREED (1)
AGREEMENT (9)
agreements (1)
allow (1)
Anastopoulos (2)
Ann (2)
answer (9)
answered (1)
answers (3)
anybody (2)
appropriate (1)
ARBITRATION (5)
asked (1)
asking (1)
assume (2)
assuming (2)
attached (1)
attention (1)
attorney (1)
authority (10)
authorized (5)
aware (2)

< B >

back (6)
backtrack (1)
bank (5)
bank-related (1)
bankruptcy (1)
Barnett (1)
based (1)
bathroom (1)
beginning (1)
behalf (15)
believe (3)
best (5)
better (1)
bills (1)
Biloxi (2)
bother (1)
BOYD (10)

boyfriend (1)
breach (1)
break (2)
Buckner (16)
building (1)
Burt (11)
buy (2)

< C >

Calhoun (1)
call (5)
called (3)
calling (2)
car (3)
care (1)
CAROLINA (9)
Case (3)
caseworker (3)
caseworkers (4)
cashed (2)
cause (1)
cellphone (2)
certain (2)
certainly (4)
chance (1)
change (1)
changed (1)
charged (1)
Charleston (2)
check (3)
children (1)
CIRCUIT (2)
Clement (1)
CLINICAL (2)
clock (1)
close (1)
Coco (10)
collectively (1)
come (1)
COMMON (2)
complete (1)
completed (1)
concluded (1)
condition (2)
confirm (2)
confirmed (1)
Congratulations (1)
consider (1)
constitutes (1)

conversation (5)
conversations (1)
convicted (1)
copied (1)
copies (1)
correct (38)
counsel (2)
COUNTY (4)
couple (2)
course (1)
COURT (3)
crime (2)
crook (1)
current (1)
currently (1)

< D >

date (11)
daughter (3)
day (4)
days (1)
deal (1)
dealer (1)
dealing (1)
dealt (3)
decisions (1)
declared (1)
Defendants (5)
DEFENDANT'S (1)
delegated (1)
deposed (1)
deposes (1)
DEPOSITION (5)
deposition, (1)
derive (1)
describe (1)
DESCRIPTION (1)
determine (1)
diagnosis (1)
DIRECT (2)
director (2)
disabled (1)
discharged (1)
discuss (1)
dispute (1)
doctor (3)
document (3)
documents (8)
doing (2)

double (1)	forget (1)	including (3)	look (3)
drink (1)	form (1)	independent (1)	looks (1)
< E >	formal (1)	INDEX (1)	lot (5)
earlier (1)	four (1)	indication (3)	loud (1)
easier (1)	free (1)	Inducement (1)	love (1)
easy (2)	front (1)	information (4)	lucky (1)
else's (1)	full (1)	informed (1)	< M >
enter (2)	FUNDAMENTAL	input (1)	ma'am (3)
entirely (1)	(4)	instance (1)	MAGNOLIA (21)
everybody (2)	funny (1)	interest (3)	main (1)
Evidently (1)	< G >	interested (1)	Manor (1)
exactly (1)	gas (1)	issues (1)	MARKED (2)
EXAMINATION (1)	gentleman (1)	IV (1)	married (1)
examined (2)	getting (1)	< J >	matter (1)
execute (3)	give (9)	Jackie (4)	matters (1)
executed (2)	given (1)	Jackie's (2)	Meadowlark (1)
executing (2)	giving (1)	Jamaica (1)	mean (4)
EXHIBIT (7)	go (11)	JAMES (4)	means (1)
EXHIBITS (2)	going (11)	job (1)	medical (4)
explain (2)	good (1)	JR (3)	medication (1)
explaining (1)	GREENVILLE (10)	judge (1)	member (2)
expressly (1)	guess (2)	JUDICIAL (2)	Memorial (8)
extent (1)	< H >	June (8)	memory (2)
< F >	half (1)	< K >	mess (1)
face (1)	handled (1)	keeping (1)	met (1)
facility (3)	happened (3)	kind (3)	miles (1)
FACILITY-RESIDE	happenstance (1)	know (37)	Mindy (2)
NT (1)	hard (2)	known (1)	mislead (1)
fact (1)	head (1)	knows (2)	misrepresent (1)
fair (6)	heard (1)	< L >	money (2)
fall (1)	help (1)	lacked (1)	month (1)
false (1)	helps (2)	Law (2)	months (2)
familiar (1)	history (1)	lawful (1)	morning (2)
far (4)	home (2)	lawsuit (1)	mother (2)
fault (2)	honest (2)	lawyer (1)	Mountain (2)
Feidler (14)	hope (1)	leave (1)	< N >
fiance (1)	hospital (7)	Leola (2)	name (3)
figure (1)	hospitalization (1)	Lexington (2)	nature (1)
filed (1)	hours (2)	life (1)	need (1)
finances (1)	hundred (1)	limitation (1)	needed (3)
financial (2)	< I >	line (1)	negative (1)
finish (1)	imagine (1)	Little (2)	never (4)
Firm (2)	impaired (1)	live (1)	new (1)
first (4)	impression (3)	LLC (6)	Newberry (1)
flipping (1)	incapacitated (1)	LLP (1)	nice (1)
focused (1)	inch (1)	long (3)	night (2)
forced (1)			nods (1)

Notary (2)
 number (3)
 nurse (5)
 nursing (3)

 < O >
 oath (5)
 object (1)
 objecting (1)
 Objection (11)
 obligation (1)
 obviously (3)
 occurred (1)
 o'clock (1)
 October (1)
 office (1)
 Okay (27)
 once (1)
 OPERATIONAL (2)
 opportunity (3)
 Original (1)

 < P >
 p.m (2)
 PAGE (2)
 pages (1)
 pain (1)
 paper (1)
 papers (9)
 paperwork (18)
 paragraph (1)
 parties (1)
 patient (1)
 pause (1)
 pay (2)
 pbuckner@ycrlaw.co
 m (1)
 penalty (1)
 pending (1)
 people (3)
 percent (1)
 perjury (1)
 Perry (1)
 person (3)
 personal (1)
 phone (6)
 phrase (1)
 physically (1)
 picture (1)

pile (1)
 PLACE (20)
 places (2)
 Plaintiff (5)
 PLEAS (2)
 pleasant (1)
 Pleasure (1)
 plus (1)
 pod (2)
 portion (1)
 potentially (1)
 practitioner (3)
 pregnant (1)
 prescribe (1)
 present (7)
 presented (1)
 presume (1)
 prevented (2)
 PREVIOUSLY (1)
 prior (1)
 probably (4)
 process (3)
 produced (2)
 providing (1)
 Public (2)
 pull (1)
 purpose (1)
 put (5)
 putting (1)

 < Q >
 qualify (1)
 question (11)
 QUESTIONS (20)

 < R >
 read (10)
 reading (2)
 realize (1)
 really (2)
 reason (4)
 recall (5)
 recalled (1)
 recalling (1)
 received (1)
 recollection (5)
 record (2)
 records (3)
 recovery (1)

REFERENCED (1)
 reflect (1)
 regarding (2)
 relationship (1)
 remember (19)
 reporter (1)

 REPRESENTATIVE
 (2)
 represented (2)
 require (1)
 residency (1)
 Resident (1)
 result (1)
 retained (1)
 Richland (8)
 right (29)
 River (1)
 Rivers (1)
 Road (2)
 room (1)
 rules (2)

 < S >
 sat (1)
 saw (2)
 saying (2)
 says (1)
 scratch (2)
 see (4)
 SERVICES (4)
 seven (3)
 shape (2)
 she'd (1)
 sheet (1)
 shoes (1)
 shorthand (1)
 sic (1)
 sign (16)
 signature (4)
 signed (12)
 signing (6)
 son (33)
 son's (5)
 sorry (1)
 sort (1)
 sound (1)
 SOUTH (9)
 speak (3)

speaking (1)
 specific (1)
 speculate (1)
 speculating (1)
 spiel (1)
 stack (1)
 staff (3)
 start (1)
 STATE (3)
 statement (1)
 Stefan (1)
 stefan@akimlawfirm.
 com (1)
 Stevens (3)
 STIPULATED (1)
 stranger (1)
 Street (3)
 stuff (8)
 submitted (1)
 subpoenaed (1)
 sued (1)
 Suite (1)
 supplied (1)
 sure (6)
 surgery (2)
 sworn (3)

 < T >
 take (5)
 taken (1)
 talk (6)
 talked (5)
 talking (3)
 tell (6)
 telling (5)
 tells (1)
 tending (1)
 terms (1)
 terrible (2)
 testifies (1)
 testimony (4)
 Thank (1)
 THI (2)
 thick (1)
 thing (3)
 things (6)
 think (12)
 think's (1)
 THIRTEENTH (2)

thought (2)
three (2)
tickets (1)
time (22)
times (3)
today (5)
told (13)
town (1)
traffic (1)
transcribed (1)
transcript (1)
transferred (1)
traumatic (2)
treatment (1)
treatments (1)
trip (1)
true (1)
trusted (1)
trying (6)
two (1)
typewriting (1)

< U >

Uh-huh (9)
uh-huhs (1)
Uh-uh (1)
uh-uhs (1)
ultimately (1)
understand (5)
understanding (2)
understood (2)
unfortunately (1)
use (2)

< V >

Vacation (1)
Verbal (2)
verifies (1)
verify (1)
visited (1)
Vislay (2)
vs (1)

< W >

waived (1)
walked (1)
want (7)
wanted (3)
water (1)

way (4)
week (1)
Well (11)
went (9)
we're (5)
whatsoever (2)
WILDA (3)
wishes (1)
witness (10)
witnessed (1)
words (3)
wrong (3)

< Y >

y'all (2)
Yeah (14)
Young (1)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934

James Boyd,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Administrative Services, LLC; and
Fundamental Clinical and Operational Services, LLC,

Respondents.

NOTICE OF APPEAL

James Boyd, hereby appeals the following orders of the Honorable Perry H. Gravley, Circuit Court Judge:

- His Honor's Order Granting Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's Motion to Compel Arbitration and Granting Fundamental Administrative Services, LLC and Fundamental Clinical and Operational Services, LLC's Motions to Stay, filed August 20, 2019; and
- His Honor's Order denying Plaintiff's Motion to Reconsider and Affirming its previous Order granting Defendant's Motion to Dismiss and Compel Arbitration, filed October 17, 2019.

Copies of the appealed Orders are attached hereto and incorporated herein by reference. Appellant received written notice of the Order Confirming the Arbitration Award on or about October 16th, 2025, a copy of which is also attached.

Respectfully submitted,

CANTWELL LAW FIRM, LLC

By: s/ Joshua P. Cantwell

Joshua P. Cantwell

S.C. Bar No. 76368

P.O. Box 600

Charleston, South Carolina 29402

(843) 801-4104

josh@cantwelllawfirm.org

Attorney(s) for Appellant

Charleston, South Carolina

Dated: November 13, 2025

Other Counsel of Record:

D. Jay Davis, Jr. (SC Bar No.: 12084)

James D. Gandy, III (SC Bar No.: 11925)

Clement Rivers, LLP

PO Box 993

Charleston, SC 29402

(843) 720-5406

Attorney(s) for Respondent(s)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2018-CP-23-01934

James Boyd,

Appellant,

v.

THI of South Carolina at Magnolia Place at Greenville, LLC;
Fundamental Administrative Services, LLC; and
Fundamental Clinical and Operational Services, LLC,

Respondents.

PROOF OF SERVICE

CANTWELL LAW FIRM, LLC
Joshua P. Cantwell
S.C. Bar No. 76368
P.O. Box 600
Charleston, SC 29402
(843) 801-4104
josh@cantwelllawfirm.org

Attorney(s) for Appellant

I, Joshua P. Cantwell, of Cantwell Law Firm, LLC, attorney for Appellant, herby certify that the foregoing NOTICE OF APPEAL has been served on all parties to this matter through the following counsel, and it has been E-filed with the lower court.

D. Jay Davis, Jr.
S.C. Bar No.: 12084
James D. Gandy, III
S.C. Bar No.: 11925
Clement Rivers, LLP
PO Box 993
Charleston, SC 29402

Attorney(s) for Respondent(s)

Respectfully submitted,

CANTWELL LAW FIRM, LLC

By: s/ Joshua P. Cantwell

Joshua P. Cantwell
S.C. Bar No. 76368
P.O. Box 600
Charleston, South Carolina 29402
(843) 801-4104
josh@cantwelllawfirm.org

Attorney(s) for Appellant

Charleston, South Carolina

Dated: November 13, 2025