RECEIVED
Sep 23 2026
SC Court of Appeals

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 VOL. I

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

INDEX

Volume I (ROA 1-200)

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

Volume II (ROA 201-413)

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

Volume III (ROA 414-613)

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

Volume IV (ROA 614-729)

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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 Anastopoulo Law Firm, LLC. Present on behalf of Defendant THI

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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"[i] "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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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-

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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."

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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."

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.,

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 Caroline 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

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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).

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jul 09 8:29 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 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**
vs.	)	
THI OF SOUTH CAROLINA AT MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL CLINICAL 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. 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

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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:

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> **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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.*

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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).

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Aug 20 11:28 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 PLACE AT GREENVILLE LLC'S MOTION TO DISMISS AND COMPEL ARBITRATION**
THI OF SOUTH CAROLINA AT MAGNOLIA PLACE AT GREENVILLE, LLC; FUNDAMENTAL CLINICAL 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

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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…

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> **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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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:

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> 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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2019 Jul 03 12:23 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 FILED - 2019 Oct 17 12:11 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2019 Oct 17 12:11 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2019 Oct 17 12:11 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 FILED - 2021 Dec 29 8:30 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

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.

ELECTRONICALLY FILED - 2021 Dec 29 8:30 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2021 Dec 29 8:30 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2021 Dec 29 8:30 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2025 Oct 16 2:41 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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:

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.

ELECTRONICALLY FILED - 2025 Oct 16 2:41 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2025 Oct 16 2:41 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 FILED - 2018 Mar 27 10:26 AM - 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-_____

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - 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-_____
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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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,

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 facilitates 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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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:

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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*.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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).

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

j. In such other and further was 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:

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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_.

ELECTRONICALLY FILED - 2018 Mar 27 10:26 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - 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 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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - 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 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,

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

28. 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)

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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 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.

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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).

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 was 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:

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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;

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Sep 19 10:34 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 May 02 5:44 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 ,	)	**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**
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 (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

ELECTRONICALLY FILED - 2018 May 02 5:44 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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, SCRCP.

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)

ELECTRONICALLY FILED - 2018 May 02 5:44 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 May 02 5:44 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 May 02 5:44 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 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 Wilda Ann Boyd 6/30/16
Resident/Representative Signature Date

Printed Name of Resident/Representative

Authorized Agent of Facility 6/30/16
Date

Leola Burt
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

EXHIBIT B
ALL-STATE® INTERNATIONAL

ELECTRONICALLY FILED - 2018 May 02 6:09 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 May 02 6:09 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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]

ELECTRONICALLY FILED - 2018 May 02 6:09 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 May 02 6:05 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

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.

ELECTRONICALLY FILED - 2018 May 02 6:05 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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]

ELECTRONICALLY FILED - 2018 May 02 6:05 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 ,	)	**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) MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND COMPEL ARBITRATION**
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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

("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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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. at433, 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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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. <u>Equitable Estoppel</u>

"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."); S*ee 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.").

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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,

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> 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 form 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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 facia, coextensive with the business entrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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. <u>The Arbitration Agreement and Admission Agreement Must be Construed Together, and Plaintiff Should Be Estopped from Denying the Parties' Mutual Right to Arbitration</u>

i. <u>Merger</u>

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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. Gernqross*, 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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

. . . .

> [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).

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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, one 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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

[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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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. <u>The Arbitration Agreement is enforceable because Mr. Boyd was a Third Party Beneficiary</u>

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,

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.").

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ADMISSION AGREEMENT – SOUTH CAROLINA

RESIDENT NAME: James Boyd

RESIDENT NUMBER: _____

DATE OF ADMISSION: 6/30/2016

THIS ADMISSION AGREEMENT ("Agreement") as above dated is by and among _____ ("Facility"), James Boyd ("Resident") and/or _____ ("Resident's Durable Power of Attorney for Health Care"/"Resident's Legal Guardian"/"Resident's Responsible Party" hereinafter collectively "Representative").

Magnolia Place of Greenville
35 South Pointe Drive
Greenville, SC 29607-5656
864-288-1415 Fax 864-288-7271

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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,

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.

ELECTRONICALLY FILED - 2018 Jun 12 4:17 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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.)

Signature of Facility Official

Printed Name of Facility Official & Title

Date 6/30/2016

Original: Business File • Photocopy: Resident/Representative

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 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 Wilda Ann Boyd 6/30/16
Resident/Representative Signature Date

Printed Name of Resident/Representative

6/30/16
Authorized Agent of Facility Date

Leola Burt
Printed Name & Title

Original: Business File • Photocopy: Resident/Representative

Attention Ms. Boyd
803-932-0003
From Kokho 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

xWaB
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

James Calvin Boyd
Print Patient's Name

Witness

xWilda Ann Boyd
Signature of Patient
(Patient's Guardian or Legally Authorized Representative)

6/30/16

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

AUTHORIZATIONS, CONSENTS & ACKNOWLEDGMENTS

Please read, review and acknowledge each the following:

Treatment/Health Care Professionals:

Authorization for Treatment

KWAB (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

KWAB (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 in 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

KWAB (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

KWAB (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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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; Polices/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.

7/7/16		
Resident Signature	Date	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		Leda Best Admissions
Facility Representative Signature	Date	Printed Name and Title

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 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.

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.

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

Personal Property/Valuables/Money:

☐ AB (initial) I acknowledge that I have received, read or had read to me, and understand Facility's policy 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 (initial) I acknowledge and understand that Facility is not responsible for damage to or theft/loss of 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 (initial) 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 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 event of my death, I authorize Facility to transfer all personal funds and property held by Facility to the following person(s): Ann 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 (initial) I acknowledge that I have received, read or have had read to me, and understand *Facility's Policy 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 (initial) I acknowledge that I have received, read or have had read to me, and understand *Facility's Policy 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.**

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

Special Services:

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

Telephone	☐Yes	☑ No	☐ N/A	Charge $ ∅
Television	☐Yes	☐ No	☐ N/A	Charge $ ∅
Newspaper	☐Yes	☐ No	☐ N/A	Charge $
Laundry	☐Yes	☐ No	☐ N/A	Charge $ ∅
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 (initials) I acknowledge and understand that neither Facility nor its parent, affiliates, officers, directors, 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 (initial) ☐ No _____ (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.

Posted Information ☐ Yes AB (initial) ☐ No _____ (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 the minimum amount necessary and shall serve as a means of communication, enabling staff to provide service while, 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.

Authorization to Release and Obtain Information ☐ Yes AB (initial) ☐ No _____ (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 (initial) ☐ No _____ (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 — Date — Printed Name of Resident

Ann Boyd 7/7/2016

Legal Representative Signature, if any — Date — Printed Name of Representative

Witness Signature — Date — Printed Name of Witness

Facility Representative Signature — Date — Printed Name and Title

Leola Burt 7/7/2016 Leola Burt

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

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

Magnolia Place of Greenville

Family Admission Meeting

Patient: James Boyd Room: 103 B
Date: 7/12/2016 Time: 11:30
Place: Confrence 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 Date: 7/7/2016
Resident/Representative Signature

Facility Representative Signature Date: 7/7/2016

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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_____

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

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

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

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

gned By:

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

Original: Medical Chart • Photocopy: Resident/Representative

ELECTRONICALLY FILED - 2018 Jun 11 4:04 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

Patient Name: James Boyd

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

Physicians / Practitioners performing procedure(s):

Dr. Vilwox

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.

Ann Boyd → Patient Signature OR X _____ Power of Attorney Signature

Verbal Consent: (yes / no)

Witness one name [illegible] signature [signature]

Witness two name _____ 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 rocedures.

Signature of Physician / Practitioner / Authorized Nurse [signature] Date 7/18/17

ELECTRONICALLY FILED - 2018 Jun 12 4:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

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/

ELECTRONICALLY FILED - 2018 Jun 12 4:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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**

ELECTRONICALLY FILED - 2018 Jun 12 4:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> **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)

ELECTRONICALLY FILED - 2018 Jun 12 4:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 12 4:27 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 12 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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 ,	)	**DEFENDANT FUNDAMENTAL CLINICAL AND OPERATIONAL SERVICES, LLC'S MEMORANDUM IN SUPPORT OF MOTION TO STAY**
DEFENDANTS.	)	

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/

ELECTRONICALLY FILED - 2018 Jun 12 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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**

ELECTRONICALLY FILED - 2018 Jun 12 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

> **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)

ELECTRONICALLY FILED - 2018 Jun 12 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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

ELECTRONICALLY FILED - 2018 Jun 12 4:33 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2301934

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