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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2013-CP-46-2930
Appellate Case No. 2014-001624

Mae Ruth Davis Thompson, Individually and as the appointed
Personal Representative of the Estate of Eula Mae Davis, Deceased Respondent,
v.

Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings,
Inc.; UHS of South Carolina-East, LLC; United Health Services of
South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill,
LLC d/b/a UniHealth Post Acute Care-Rock Hill Appellants.

RECORD ON APPEAL

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**RECORD ON APPEAL
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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula Mae Davis

Pruitt Corporation
UHS-Pruitt Holdings,
INC
United Health Services
Of South Carolina, INC
United Rehab INC

Unihealth Post-Acute
Care-Rock Hill, LLC

UHS-Pruitt Corporation
UHS Of South Carolina-
East LLC
United Clinical Services
Inc
Rock Hill Healthcare
Properties Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert E Horner

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **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:

ORDER INFORMATION

ORDER

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball

Circuit Court Judge

3063

Judge Code

5/8/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on May 8, 2014, and a copy mailed first class or placed in the appropriate attorney's box on May 8, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Gressette Felder Jr.
Mcgowan Hood And Felder
1517 Hampton Street
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Monteith Powell Todd
PO Box 11449
Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

ORDER

Case No. 2013CP46-2930

2014 MAY - 8 AM 8:33
CLERK OF COURT
JUDICIAL CIRCUIT
SIXTEENTH JUDICIAL CIRCUIT

This matter came before me on March 13, 2014, upon Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings in this case. Representing Plaintiff was John G. Felder, and representing Defendants was Robert E. Horner. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

The following facts are clearly established in the record, and are adopted by me as the facts of this case. The parties have acknowledged that it is for this court to determine the factual issues pertaining to arbitrability for the purpose of ruling on this motion.

On January 11, 2011, Plaintiff and her brother, Andrew Davis ("Davis"), accompanied their mother Eula Mae Davis ("Decedent") to Uni-Health Rock Hill ("Uni-Health"), a nursing care facility, to admit Decedent to the facility for rehabilitation care.¹ As the admission process

¹ For ease of discussion, the term "Uni-Health" is used throughout this order to refer to the interests of all the Defendants, as those interests may appear, or be established, in subsequent proceedings.

proceeded, Davis and Plaintiff met with Uni-Health's staff to complete and execute necessary paperwork, and discuss Decedent's admission and care at the facility. In conjunction with Uni-Health's staff, Davis completed a number of forms associated with the admission process. Included were a detailed Admission Agreement, and a separate five-page Arbitration Agreement. The Arbitration Agreement provides that it applies to "[a]ny and all claims or controversies arising out of or in any way relating to [the] Agreement or the Patient/Resident's Admission Agreement, . . . or the Patient/Resident's stay at, or the care of services provided by [Uni-Health], or any acts or omissions in connection with such care or services." The Arbitration Agreement also seeks to bind potential future wrongful death beneficiaries to arbitration. The Arbitration Agreement precludes a jury trial and limits discovery that would otherwise be permitted under the South Carolina Rules of Civil Procedure.

Davis signed both the Admission Agreement and the Arbitration Agreement for Decedent on lines calling for the signature of "Patient/Resident Representative." His intended capacity was obviously as Decedent's "Representative." Decedent was not present in the meeting with Uni-Health's staff, as she was in the process of being transferred from a local hospital to Uni-Health. Decedent had never executed a power-of-attorney appointing Davis as her attorney-in-fact. Nor had she executed any other document giving Davis express authority to contract on her behalf in making healthcare decisions, or any other matter.

Prior to her admission to Uni-Health, Decedent permitted Davis to assist her with her finances, which amounted to paying her bills, and receiving and cashing her monthly Social Security check. The Decedent signed documents on her own behalf pertaining to renting her home. According to Davis and Plaintiff, Decedent also continued to handle her own affairs, as well as permitting Davis to do so. The Decedent, herself, had no prior contact with Defendants' facility, and never represented that Davis was her agent, either expressly, or impliedly. There is nothing in the record to indicate that Uni-Health relied on Davis' prior acts on behalf of Decedent in accepting him as Decedent's "Representative" for the purpose of executing the Admission Agreement and the Arbitration Agreement.

Plaintiff asserts that there is no valid Arbitration Agreement, because Davis lacked authority, express or implied, to enter the agreement on behalf of Decedent. Defendants assert that there was such authority, either express, or implied, by virtue of an agency relationship held by Davis, as evidenced by his assisting Decedent with her personal and financial affairs.

The parties acknowledge that the validity of the Arbitration Agreement must be

determined in accordance with the general principles of contract and agency law applicable to any other contract.

DISCUSSION

The dispositive issue before the court in this matter is whether Plaintiff is bound by the Arbitration Agreement signed by Davis as "Representative" of Decedent. It is undisputed that Davis held no power of attorney, or similar document, of any kind expressly granting such power or authority.

The Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 *et seq.* (1976, as amended) ("Act") confers such authority in regard to health care decisions, and thereby bound both Uni-Health and Decedent's estate in regard to the terms and conditions of the Admission Agreement. The manifest purpose of the Act is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. It further eliminates the need to deal with questions of apparent agency or authority in order to make such a contract binding.

However, the Act does not confer such authority with respect to an Arbitration Agreement, such as the one in issue in this case. *See Coleman v. Mariner Health Care, Inc.*, Supreme Court, Opinion No. 27362, filed March 12, 2014. As the Arbitration Agreement does not deal with healthcare decisions, the provisions of the Act do not apply to establish the necessary principal-agent relationship. *Id.*

Therefore, if Plaintiff is to be bound by the Arbitration Agreement, it must be the result of an express or implied-in-law principal-agent relationship between the Decedent and Davis. Davis must have been cloaked with actual or apparent authority to contract with Uni-Health concerning arbitration as an alternate method of resolving any dispute between the parties.

An agency relationship may be established with clear evidence of actual or apparent authority conferred by the principal on the alleged agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "... expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). It is clear that there was no such action by Decedent.

Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show "... (1) that the purported principal consciously or impliedly



represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Cowburn*, 366 S.C. at 39, 619 S.E.2d at 448. The burden of establishing agency is upon the party asserting that a principal-agent relationship exists. *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996).

Evidence is lacking to satisfy Uni-Health's burden in this case. First, there is no evidence that Decedent made any express representation to Uni-Health's staff. Indeed, she never spoke with Uni-Health's staff concerning her admission. Second, there is no evidence that Uni-Health relied upon the fact that Davis assisted Decedent with her affairs by paying her bills and depositing her Social Security check. The depositions of Davis and Plaintiff do not indicate that Uni-Health's staff was made aware of that fact.

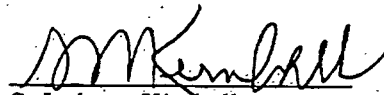
Further, Decedent personally executed the lease documents for her home. Although Davis took Decedent to medical appointments, there is no evidence that he was involved in the appointments as acting on Decedent's behalf. While Decedent was "comfortable" with Davis "sign[ing] her in" to the hospital, she assumed that responsibility herself as well. (Davis deposition at p. 17, lines 1-25.)

In short, I conclude that Decedent did not expressly or impliedly represent to Uni-Health that Davis was her agent for the purpose of signing the Arbitration Agreement. I further conclude that Uni-Health did not rely on any apparent agency relationship in regard to the Arbitration Agreement. Thus, I conclude that Decedent and Plaintiff were not bound to the Arbitration Agreement, and that the Arbitration Agreement cannot be enforced against Plaintiff. It follows that Decedent's heirs are likewise not bound.

Therefore, since the Arbitration Agreement is unenforceable, Defendants' motion to compel arbitration must be denied. As this ruling is dispositive of the issue presented, no ruling on the ancillary issues presented is required.

AND IT IS SO ORDERED.

April 11, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula Mae Davis	Pruitt Corporation UHS-Pruitt Holdings, INC United Health Services Of South Carolina, INC United Rehab INC Unihealth Post Acute Care-Rock Hill, LLC	UHS-Pruitt Corporation UHS Of South Carolina-East LLC United Clinical Services Inc Rock Hill Healthcare Properties Inc
PLAINTIFF(S)		DEFENDANT(S)
Submitted by: The Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/s: Jackson Kimball

3063

7/2/2014

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on July 2, 2014, and a copy mailed first class or placed in the appropriate attorney's box on July 2, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Gressette Felder Jr. McGowan Hood And Felder 1517
Hampton Street Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Monteith Powell Todd PO Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No: 2013-CP-46-2930

ORDER

FILED-RECEIVED
2014 JUL -2 PM 1:19
DAVID H. HARRISON
C.C.C.P. & GS
YORK COUNTY, SC

This matter came before me on June 19, 2014, upon Defendants' Motion to Reconsider my April 11, 2014, Order, denying Defendants' Motion to Dismiss and Compel Arbitration or, in the Alternative, to Compel Arbitration and Stay Proceedings. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

This case concerns the events occurring at the time of Eula Mae Davis's admission to Defendants' skilled nursing facility, and an Arbitration Agreement presented for signature during the admission process. The facts are established in the record, and a statement of facts is included in the prior order. For purposes of the current motion, I adopt the previous statement of facts, and incorporate the same by reference.

Defendants' Motion to Reconsider cites five bases for reconsidering the Court's previous Order: (1) The facts show Eula Mae Davis's son was authorized to sign Ms. Davis into Defendants' facility; (2) The evidence showed an apparent agency relationship; (3) Ms. Davis was a third-party beneficiary of the Arbitration Agreement between her son and Defendants; (4)

Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son; and, (5) If the Court reconsiders its earlier order and concludes Plaintiff is bound by the Arbitration Agreement, then Ms. Davis's beneficiaries are also bound by the Agreement.

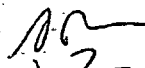
DISCUSSION

Defendants first two arguments relate to agency principles thoroughly addressed in the Court's earlier Order. After considering the parties' submissions and arguments, I reaffirm the earlier findings and conclusions. Agency is a "... fiduciary relationship which results from the manifestation of consent by one person to another to be subject to the control of the other and to act on his behalf." *Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct. App. 1992) (citing Restatement (Second) of Agency § 1 (1958)). An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "... expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

To prove apparent authority, a party must show: (1) the purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and, (3) change in position by third party in reliance on the representation. *Cowburn*, 366 S.C. at 39-40, 619 S.E.2d at 448. As found in the prior Order, Defendants offered no evidence that Ms. Davis expressly or impliedly represented her son to be her agent for purposes of signing the Arbitration Agreement. Defendants also failed to meet their burden of proving Defendants relied on any apparent agency relationship. Thus, I deny Defendants' Motion to Reconsider concerning actual and apparent agency, and reaffirm the earlier findings and conclusions on those issues. See Order at 3-4.

In their third asserted basis for reconsideration, Defendants argue that Ms. Davis was a third-party beneficiary to an Arbitration Agreement formed between Defendants and her son. As discussed above, Ms. Davis's son had no legal authority to enter a contract on his mother's behalf, and while he assisted her in some of her personal business, it does not appear that he entered into binding contracts on her behalf.

Since Ms. Davis did not sign the Arbitration Agreement, and Andrew Davis had neither


ROA-10

actual, nor apparent, authority to enter the agreement on Ms. Davis' behalf, there is no valid and enforceable agreement to arbitrate. There can be no third-party beneficiary without a valid contract. See *Hardaway Concrete Co., Inc. v. Hall Contracting Co.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) (considering a potential third-party beneficiary only after determining the existence of a valid and enforceable contract). This is a principle recognized in other jurisdictions.¹ Fundamentally, there was never intended to be a contract between Defendants and Andrew Davis upon which to premise a 'third party beneficiary' theory. The contract was based upon the son having authority to act directly for Ms. Davis, not that Ms. Davis would somehow benefit from a separate bargain between Defendants and Andrew Davis. Accordingly, Defendants' third basis for reconsideration is denied.

Defendants' fourth argument is that Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son. Defendants' Motion initially refers to 'estoppel' in a general sense (Defendants' Mem. at 5), but later discusses the doctrine of equitable estoppel. Accordingly, I consider only whether Defendants' met their burden to have the court apply the doctrine of equitable estoppel.

Equitable estoppel requires proof that the party to be estopped: (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and, (3) had actual or constructive knowledge of the real facts. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). It also requires that the party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; (3) make a prejudicial change in position in reliance on conduct of party estopped. *Id.* Based on the parties' submissions and arguments, Defendants have not met their burden to satisfy these elements. As discussed above, Defendants have not proved that they relied on the conduct of the party against whom they seek to apply estoppel.

¹ See *Licata v. GGNSC Malden Dexter LLC*, 2 N.E.2d 840, 848 (Mass. 2014) (since "no one with authority to do so signed the arbitration agreement," there was no valid agreement and could be no third-party beneficiary); *GGNSC Omaha Oak Grove, LLC v. Payich*, 708 F.3d 1024 (8th Cir. 2013) (finding son lacked legal authority to sign for mother and there was no valid arbitration agreement to which the resident could be a third-party beneficiary); *GGNSC Batesville, LLC v. Johnson*, 109 So.3d 562, 565 (Miss. 2013) ("For a third-party beneficiary to exist, a valid contract must first exist"); *Dickerson v. Longoria*, 995 A.2d 721, 742 (Md. 2010) ("Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce"); *Adams Cmty. Care Cir., LLC v. Reed*, 37 So.3d 1155, 1160 (Miss. 2010) ("For a third-party beneficiary to exist, there must first exist a valid contract executed by one with 'legal capacity' to enter the contract").

ROA-14
B-3

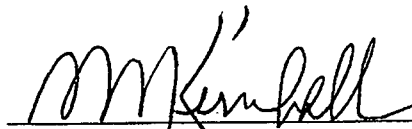
Defendants had no contact at all with Ms. Davis concerning her admission or the arbitration agreement, and they do not contend otherwise. Thus, Defendants have not met their burden, and their Motion to Reconsider on this basis is denied.

Defendants' final argument asks the Court to find that Ms. Davis's statutory beneficiaries are bound to the Arbitration Agreement. This argument is premised upon the Court first finding that a valid agreement exists, and that Ms. Davis is bound by its terms. Since I find and conclude that there is no valid agreement, no ruling on this issue is necessary.

In summary, I reaffirm the findings and conclusions of the prior order. Therefore, based on the prior order and the additional discussion herein, it is ordered that Defendants' Motion to Reconsider be denied.

AND IT IS SO ORDERED.

July 1, 2014



S. Jackson Kimball
Special Circuit Court Judge
York County

#4

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Mae Ruth Davis Thompson, as the appointed
Personal Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff(s)

vs.

Pruitt Corporation d/b/a UHS-Pruitt Corporation,
et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 46- 1515

(Please Print)

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Other:

E-mail: jfelder@mcgowanhood.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- ☒ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: May 7, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-18-01.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days; the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, as the appointed)
Personal Representative of the Estate of Eula)
Mae Davis, deceased,)

Plaintiff,)

vs.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.; UHS)
of South Carolina – East, LLC; United Health)
Services of South Carolina, Inc.; United)
Clinical Services, Inc.; United Rehab, Inc.;)
Rock Hill Healthcare Properties, Inc.;)
UniHealth Post Acute Care – Rock Hill, LLC)
d/b/a UniHealth Post Acute Care – Rock Hill,)

Defendants.)

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

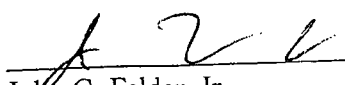
Civil Action No.: 2013-CP-46- 1515

NOTICE OF INTENT
TO FILE SUIT

FILED-RECEIVED
2013 MAY 15 AM 9:26
DAVIDSON
CCCP & LS
YORK COUNTY, SC

Pursuant to S.C. Code Ann. 15-79-125, Plaintiff above named files this Notice of Intent to File Suit. Attached hereto as "Exhibit A" and incorporated herein by reference is a Complaint that lays out to the factual allegations and legal claims. "Exhibit A" is Plaintiff's "short and plain statement of the facts showing that the party is entitled to relief." Attached as "Exhibit B" and "Exhibit C" are affidavits from experts delineating at least one negligent act or omission giving rise to this case. Attached as "Exhibit D" are Answers to the Standard Interrogatories as set forth in S.C.R.C.P. 33 (b).

Respectfully submitted,


John G. Felder, Jr.
McGowan, Hood & Felder
1517 Hampton Street

Columbia, South Carolina 29201
Telephone: (803) 779-0100
Facsimile: (803) 256-0702
jfelder@mcgowanhood.com

May 7, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, as the appointed)
Personal Representative of the Estate of Eula)
Mae Davis, deceased,)

Plaintiffs,)

vs.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.; UHS)
of South Carolina – East, LLC; United Health)
Services of South Carolina, Inc.; United)
Clinical Services, Inc.; United Rehab, Inc.;)
Rock Hill Healthcare Properties, Inc.;)
UniHealth Post Acute Care – Rock Hill, LLC)
d/b/a UniHealth Post Acute Care – Rock Hill,)

Defendants.)

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-46-_____

COMPLAINT
(JURY TRIAL DEMANDED)

TO: THE DEFENDANTS ABOVE NAMED:

The Plaintiff Mae Ruth Davis Thompson, as the appointed Personal Representative of the Estate of Eula Mae Davis, by and through her undersigned counsel, and complaining of the Defendants herein, respectfully alleges as follows:

PARTIES

Plaintiff:

1. The Plaintiff, Mae Ruth Davis Thompson, (hereinafter "Plaintiff") at all times pertinent to this cause of action is a citizen and resident of the County of York, State of South Carolina. At all times relevant herein, Plaintiff was the daughter of Eula Mae Davis (hereinafter "Decedent") and is the duly appointed Personal Representative of the Estate of Eula Mae Davis, who at the time of her death, was a resident of York County, State of South Carolina. The Estate

Exhibit A

is administered through the Probate Court in York County, State of South Carolina. Plaintiff brings this action on behalf of the Estate of Decedent for damages recoverable pursuant to section 15-5-90, Code of Laws of South Carolina (1976, as amended) and for damages recoverable by the statutory beneficiaries of the Decedent pursuant to section 15-51-10, et. seq., Code of Laws of South Carolina (1976, as amended).

Defendants:

2. Upon information and belief, Defendant Pruitt Corporation d/b/a UHS-Pruitt Corporation (hereinafter "UHS-Pruitt") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.
3. Upon information and belief, Defendant UHS-Pruitt Holdings, Inc. (hereinafter "UHS Holdings") is a corporation, authorized and existing under the laws of the State of Georgia, doing business in the County of York, State of South Carolina, but is without a registered agent in the State of South Carolina.
4. Upon information and belief, Defendant UHS of South Carolina – East, LLC (hereinafter "UHS of SC") is a for profit limited liability corporation, authorized and existing under the laws of the State of South Carolina, and is doing business in the County of York, State of South Carolina.
5. Upon information and belief, Defendant United Health Services of South Carolina, Inc. (hereinafter "United") is a for profit corporation, authorized and existing under the laws of the State of South Carolina, and is doing business in the County of York, State of South Carolina.
6. Upon information and belief, Defendant United Clinical Services, Inc. (hereinafter "United Clinical") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

7. Upon information and belief, Defendant United Rehab, Inc. (hereinafter "United Rehab") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

8. Upon information and belief, Defendant Rock Hill Healthcare Properties, Inc. (hereinafter "Rock Hill Properties") is a for profit corporation authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

9. Upon information and belief, Defendant UniHealth Post Acute Care – Rock Hill, LLC d/b/a Unihealth Post Acute Care – Rock Hill (hereinafter "UniHealth Rock Hill") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

10. Upon information and belief, Defendants UHS Pruitt, UHS Holdings, UHS of SC, United, United Clinical, United Rehab, Rock Hill Properties and UniHealth Rock Hill (hereinafter "Pruitt Defendants") were involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Ms. Davis resided. Further, Pruitt Defendants at all times relevant hereto, exerted managerial control and operational control of UniHealth Rock Hill, and that such control was so extensive and pervasive that Defendants actually operated and managed UniHealth Rock Hill, and did business as the facility. Further, the control by the Pruitt Defendants was so extensive and pervasive over UniHealth Rock Hill that the business of UniHealth Rock Hill was the business of the Pruitt Defendants.

11. Upon information and belief, Decedent Eula Mae Davis was a resident at Unihealth Rock Hill and there existed a resident/facility relationship between Ms. Davis and the Pruitt

Defendants, and therefore Ms. Davis was thereby entitled to all the protections afforded such residents in South Carolina.

12. Upon information and belief, the Pruitt Defendants delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Eula Mae Davis during her residency.

13. Upon information and belief, all Pruitt Defendants named herein are or have been involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for UniHealth Rock Hill and have directly controlled the operations at UniHealth Rock Hill.

14. Upon information and belief, all Pruitt Defendants have engaged in substantial business activities in South Carolina, including the management, supervision, training, administration, operation, control and/or ownership of the Defendant nursing home facility at relevant times hereto.

15. Upon information and belief, all Pruitt Defendants named herein have promulgated and established the policies, procedures, protocols, staffing decisions, administrative decisions, clinical decisions, and budgetary decisions at the UniHealth Rock Hill nursing facility, and all Pruitt Defendants named herein after directly controlled any and all business practices at UniHealth Rock Hill at various times.

16. That the deficiencies at the UniHealth Rock Hill nursing home facility in Rock Hill, South Carolina were directed, authorized, approved and ratified by all Pruitt Defendants named herein.

17. That the acts and omissions referred to herein occurred at the Pruitt Defendants' facility in York County, State of South Carolina.

18. That the Court has jurisdiction over the parties and subject matter.

JOINT AND SEVERAL LIABILITY

19. That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, significantly contributed to the cause of the Plaintiff's and Decedent's damages, injuries and losses.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

20. Upon information and belief, Eula Mae Davis was admitted for rehabilitation to UniHealth Rock Hill on January 11, 2011 at 7:50pm.

21. Upon Ms. Davis' admission to UniHealth Rock Hill, the Defendant failed to ensure that preventative measures were in place to avoid any falls.

22. Upon information and belief, Ms. Thompson stated that when Ms. Davis was admitted to UniHealth Rock Hill that the side rail was not functioning properly and that the Defendant told her that maintenance would be called and the bed would be changed.

23. On January 12, 2011 at approximately 1:10am, the Defendants went to check on Ms. Davis and found her face down on the floor beside the bed.

24. Ms. Davis was unresponsive and the Defendants started CPR and called 911.

25. Ms. Davis died at approximately 12:45am.

26. Upon information and belief, Ms. Davis cause of death was due to a neck fracture due to a fall.

27. Upon information and belief, the Defendants did not recognize Ms. Davis was a fall risk and ensure a safe environment to avoid such injuries and prevent falls.

FOR A FIRST CAUSE OF ACTION
(Negligence – Wrongful Death)

28. The Plaintiff re-alleges and reiterates paragraphs one (1) through twenty-seven (27) as though fully set forth herein verbatim and further alleges:

29. Notwithstanding said undertaking and while Ms. Davis was under the care of the Defendants, its employees and agents departed from the prevailing and acceptable professional standards of care and treatment of Ms. Davis and were thereby negligent, careless, grossly negligent, reckless, willful, and wanton and in violation of the duties owed to the Plaintiff's Decedent, and they are liable for one or more of the following acts or omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- b. In failing to provide proper, comprehensive, and timely assessments and evaluation accurately outlining all risk factors for Eula Mae Davis and in failing to properly design an appropriate plan of care;
- c. In failing to have and/or follow proper policies, procedures, and protocol to properly address Eula Mae Davis' risk for falls;
- d. In failing to ensure that preventive measures were in place to avoid falls;
- e. In failing to properly staff, fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to Eula Mae Davis;
- f. In failing to exercise independent skill and judgment in their role as patient advocates;
- g. In negligently administering and operating the Defendants' nursing home;
- h. In failing to comply with the applicable Federal Statutes and Regulations designed to protect persons such as Eula Mae Davis;
- i. In failing to act and provide care as a reasonably healthcare facility would do under the same or similar conditions; and

j. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

30. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by agents and/or employees of Defendants, Plaintiff's Decedent, Eula Mae Davis, suffered injuries and damages as set forth hereinabove.

FOR A SECOND CAUSE OF ACTION
(Negligence – Survivorship Action)

31. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty (30) as though fully set forth herein verbatim and further alleges:

32. The Decedent's estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the defendants, as aforesaid, has incurred expenses in the form of funeral and burial expenses. The Plaintiff is further informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the defendants, as aforesaid, the Plaintiff's Decedent suffered fear, physical pain and suffering, and mental and emotional distress and anguish in the time before her death, for which the Plaintiff's Decedent's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

33. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty-two (32) as though fully set forth herein verbatim and further alleges:

34. The conduct of the Defendants is governed by South Carolina Code §43-35-5 *et seq*, the Bill of Rights for residents of long term care facilities at South Carolina Code §44-81-10 *et seq*, South Carolina Department of Health and Environmental Control regulations at Regulation 61-17, *et seq*, as well as similar protective regulations and statutes in South Carolina, and by 42 U.S.C. § 1396(r), *et seq* and 42 C.F.R. 483, *et seq*.

35. The statutes and regulations set out above were enacted for the benefit and protection of a class of the public, of which Eula Mae Davis was a member at all times relevant to this action. The Defendants violated these statutes and regulations in caring for Eula Mae Davis and other similarly situated residents at their facilities.

36. As a direct and proximate result of the violations of the statutes and regulations by the Defendants, which constitute negligence *per se*, Eula Mae Davis suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

37. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty-four (34) as though fully set forth herein verbatim and further alleges:

38. Prior to, and around the time of Eula Mae Davis' admission to Defendants' facility, agents of the facility made untrue statements to Eula Mae Davis and to her family about the quality of care that Eula Mae Davis would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Eula Mae Davis and her family and upon which they did rely.

39. The Defendants represented to Eula Mae Davis and her family that she would receive appropriate care within the professional standard of care, that the facility had adequate staffing

and adequate funding, that Eula Mae Davis would be carefully monitored, that Eula Mae Davis would be safe and secure.

40. These statements by the Defendants' were untrue and intended to be relied upon by Eula Mae Davis and her family and the family did rely upon them in choosing to admit Eula Mae Davis to the Defendants' facility.

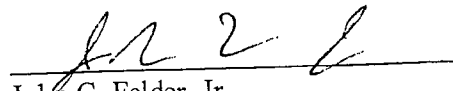
41. These representations were careless, negligent, grossly negligent, reckless, willful, and wanton in that the Defendants knew or should have known that they would not be able to meet these representations for Eula Mae Davis and in failing to meet these representations for her.

42. As a direct and proximate result of the Defendants' misrepresentations, Eula Mae Davis has suffered injuries and died.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law. Plaintiff respectfully requests a Jury Trial.

Respectfully submitted,


John G. Felder, Jr.
McGowan, Hood & Felder
1517 Hampton Street
Columbia, South Carolina 29201
Telephone: (803)779-0100
Facsimile: (803) 256-0702
jfelder@mcgowanhood.com

Dated: May 9, 2013

Columbia, South Carolina

STATE OF SOUTH)))
CAROLINA))))))
COUNTY OF YORK)
)
Mae Ruth Davis)
Thompson, as the)
appointed Personal)
Representative of the)
Estate of Eula Mae)
Davis, deceased,)
)
)
Plaintiffs,

vs.

Pruitt Corporation d/b/a
UHS-Pruitt Corporation;
UHS-Pruitt Holdings,
Inc.; UHS of South
Carolina – East, LLC;
United Health Services
of South Carolina, Inc.;
United Clinical Services;
Inc.; United Rehab, Inc.;
Rock Hill Healthcare
Properties, Inc.;
UniHealth Post-Acute
Care – Rock Hill, LLC d/
b/a UniHealth Post-
Acute Care – Rock Hill,

Defendants.

IN THE COURT OF
COMMON PLEAS
OF THE SIXTEENTH
JUDICIAL CIRCUIT

Civil Action No.: 2013-
CP-46-_____

**AFFIDAVIT
ANN E. MEURS, RN-C,
DON**

**(S.C. Code Ann.
§15-36-100)**

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING
DULY SWORN, SAYS AS FOLLOWS:**

1. I am a Registered Nurse and Certified Gerontological Nurse. I have worked in nursing homes and assisted living communities in various capacities for more than 20 years. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care which should have been provided to Eula Mae Davis in this case.

2. I am familiar with the standard of care of what a reasonably prudent nurse or employee of a long term care facility would do or not do in providing care to different residents of a long term care facility, including the type of care provided to Eula Mae Davis.

3. I have reviewed the medical records of Eula Mae Davis, which consisted in part of records from UniHealth Post-Acute Care – Rock Hill, Medical Associates of Rock Hill, Piedmont Medical Center, York County Coroner, the Medical University of South Carolina and her death certificate. The records I have reviewed are the types of documents which I would consider in rendering an expert opinion in this case.

4. It is my opinion, within a reasonable degree of certainty, that the agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill, deviated in one or more ways from the applicable standard of care which should have been rendered to Eula Mae Davis. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill are as follows:

In failing to recognize Mrs. Davis was a fall risk and ensure a safe environment with measures in place to avoid such injury to Ms. Davis; and

In failing to assist Mrs. Davis in a safe and timely fashion.

It is my opinion, within a reasonable degree of nursing certainty that the deviations from the stand of care by the agent or employees of UniHealth Post-Acute Care –Rock Hill caused or contributed to the injury and subsequent death of Mrs. Davis.

6. SEQ CHAPTER 14 1 The factual basis for my opinion about the breaches of standard of care by agents and/or employees of Defendants are the medical records and other records of Eula Mae Davis.

7. This affidavit is given in compliance with §§ 15-36-100 and 15-79-125 South Carolina Code Annotated which does not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional medical records, depositions or additional information.

Ann E Meurs RN-C, DON

Ann E. Meurs, RN-C, DON

Sworn to and signed before me

this 13 day of March, 2013

Allyson A Griffin (seal) ^{exp 11/03/2015}

Notary Public in and for

County of Guilford
State of North Carolina



PAGE 1

PAGE 2

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) OF THE SIXTEENTH JUDICIAL
) CIRCUIT

Mae Ruth Davis Thompson, as the
appointed Personal Representative of the
Estate of Eula Mae Davis, deceased,

Civil Action No.: 2013-CP-46-_____

Plaintiffs,

) **AFFIDAVIT**
) **DAVID W. SEIGNIOUS, MD, FACP**

vs.

) **(S.C. Code Ann. §15-36-100)**

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.; UHS
of South Carolina – East, LLC; United Health
Services of South Carolina, Inc.; United
Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.;
UniHealth Post-Acute Care – Rock Hill, LLC
d/b/a UniHealth Post-Acute Care – Rock Hill,

Defendants.

**PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BEING DULY
SWORN, SAYS AS FOLLOWS:**

1. I am board certified in internal medicine by the American Board of Internal Medicine and a Fellow of the American College of Physicians. My education, training, and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training, and experience qualify me to render expert opinions in regard to the care rendered to Eula Mae Davis in this case.

2. My medical practice is primarily located in Johns Island, South Carolina. I have been practicing Internal Medicine for more than 20 years.

3. I am familiar with the standard of care of what a reasonably prudent nursing home agent/employee would do or not do in preventing falls. Additionally, I am familiar with the potential complications that stem from not properly preventing falls as in Eula Mae Davis's case.

4. I have reviewed the medical records of Eula Mae Davis which consisted in part of records from UniHealth Post-Acute Care – Rock Hill, Medical Associates of Rock Hill, Piedmont Medical Center, York County Coroner, the Medical University of South Carolina and her death certificate. The records I have reviewed are the type of documents which I would consider in rendering an expert opinion in this case.

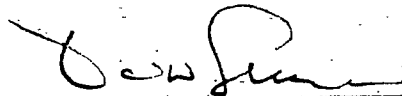
5. It is my opinion, within a reasonable degree of medical certainty, that the agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill committed negligent acts or omissions in their care and treatment of Eula Mae Davis. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill are as follows:

a. In failing to ensure that preventive measures were in place to avoid falls.

6. Further, it is my opinion to a reasonable degree of medical certainty that the actions or inactions of the agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill contributed to the injuries and death suffered by Eula Mae Davis subsequent to the care and treatment provided by the agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill.

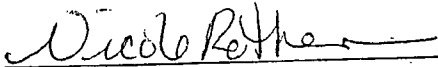
7. The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses at UniHealth Post-Acute Care – Rock Hill at this time are the medical records of Eula Mae Davis. The factual basis of my opinions may be supplemented at a later time.

8. This affidavit is given in compliance with *South Carolina Code of Laws* §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional medical records, documents, depositions and/or information.



David W. Seignious, M.D., F.A.C.P.

Sworn to and signed before me
this 5th day of March, 2013



(seal)

Notary Public in and for

County of Charleston
State of South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) OF THE SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, as the appointed)
Personal Representative of the Estate of Eula)
Mae Davis, deceased,)

Plaintiffs,)

vs.)

Civil Action No.: 2013-CP-46-_____

**ANSWERS TO STANDARD
INTERROGATORIES**

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.; UHS)
of South Carolina – East, LLC; United Health)
Services of South Carolina, Inc.; United)
Clinical Services, Inc.; United Rehab, Inc.;)
Rock Hill Healthcare Properties, Inc.;)
UniHealth Post Acute Care – Rock Hill, LLC)
d/b/a UniHealth Post Acute Care – Rock Hill,)

Defendants.)

TO: THE DEFENDANTS ABOVE NAMED:

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

ANSWER: Mae Ruth Davis Thompson
c/o McGowan, Hood & Felder, LLC
1517 Hampton Street
Columbia, South Carolina 29201

Andrew Phillip Davis
1111 Thompson Davis Road
York, South Carolina 29745

Any and all treating physicians and nurses in the medical records.

Plaintiff is not aware of any written or recorded statements.

Exhibit D

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

ANSWER: Medical records and bills bates numbered: Medical Associates of Rock Hill records 001-00114; Piedmont Medical Center records 001-0055; UniHealth PAC Rock Hill records 001-0071; UniHealth PAC Rock Hill Color records 001-0055; York County Coroner records 001-0018; MUSC Autopsy Report 001-007; Davis Death Certificate 001 and Piedmont Medical Center billing 001-005. Plaintiff reserves the right to supplement this Answer.

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

ANSWER: UniHealth Post Acute Care – Rock Hill
261 South Herlong Avenue
Rock Hill, South Carolina 29732
\$ to be supplemented

Clifford K. Netzler, M.D.
Medical Associates of Rock Hill
2450 India Hood Road, Suite B
Rock Hill, South Carolina 29732
\$ to be supplemented

Piedmont Medical Center
Vasant Patel, M.D.
Mary T. LeBliss, M.D.
222 South Herlong Avenue
Rock Hill, South Carolina 29732
\$2,545.00

In addition to the above named providers, Plaintiff craves reference to the medical records in this matter. Plaintiff also reserves the right to supplement this Answer.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies

involved in the amount or amounts of liability coverage provided in each policy.

ANSWER: To be supplemented.

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

ANSWER: In addition to pain and suffering sustained by the Decedent, and mental anguish and emotional distress experienced by the Decedent's family at the loss of their mother, Plaintiff incurred medical bills from the facilities listed above. Plaintiff also incurred funeral expenses. Plaintiff reserves the right to supplement this Answer once additional responsive information becomes available, and further bills are received through discovery.

6. List the names and addresses of any expert witnesses whom the party proposes to use as witness at the trial of the case.

ANSWER: Ann E. Meurs, RN-C, DON, LNC
353 Wildcat Rocks Road
Seven Devils, North Carolina 28604

David W. Seignious, MD, FACP
4208 Chisolm Road
Johns Island, South Carolina 29455

Plaintiff reserves the right to supplement this Answer should additional experts be identified. Plaintiff also reserves the right to call any treating physician as an expert with their field.

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

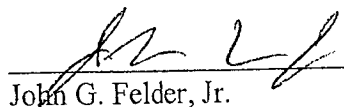
ANSWER: Ms. Thompson is the Personal Representative and daughter of the Decedent in this matter. It is anticipated that she will testify as to the injuries her mother sustained, the medical treatment her mother received as a result thereof, the emotional distress and pain and suffering she and her family endured as a result thereof.

Mr. Davis is the son of the Decedent in this matter. It is anticipated that he will testify as to the injuries his mother sustained, the medical treatment his mother received as a result thereof, the emotional distress and pain and suffering he and his family endured as a result thereof.

The medical providers are expected to testify in accord with their medical records.

Plaintiff reserves the right to supplement this Answer.

Respectfully submitted,



John G. Felder, Jr.
McGowan, Hood & Felder
1517 Hampton Street
Columbia, SC 29201
Telephone: (803) 779-0100
Facsimile: (803) 256-0702
jfelder@mcgowanhood.com

Dated: May 7, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, as the appointed
Personal Representative of the Estate of Eula
Mae Davis, deceased,

Plaintiffs,

vs.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.; UHS
of South Carolina – East, LLC; United Health
Services of South Carolina, Inc.; United
Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.;
UniHealth Post Acute Care – Rock Hill, LLC
d/b/a UniHealth Post Acute Care – Rock Hill,

Defendants.

COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2013-CP-46-2930

COMPLAINT

(JURY TRIAL DEMANDED)

FILED-RECEIVED
2013 SEP 26 AM 9:01
DAVID HAMILTON
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

The Plaintiff Mae Ruth Davis Thompson, as the appointed Personal Representative of the Estate of Eula Mae Davis, by and through her undersigned counsel, and complaining of the Defendants herein, respectfully alleges as follows:

PARTIES

Plaintiff:

1. The Plaintiff, Mae Ruth Davis Thompson, (hereinafter "Plaintiff") at all times pertinent to this cause of action is a citizen and resident of the County of York, State of South Carolina. At all times relevant herein, Plaintiff was the daughter of Eula Mae Davis (hereinafter "Decedent") and is the duly appointed Personal Representative of the Estate of Eula Mae Davis, who at the time of her death, was a resident of York County, State of South Carolina. The Estate

is administered through the Probate Court in York County, State of South Carolina. Plaintiff brings this action on behalf of the Estate of Decedent for damages recoverable pursuant to section 15-5-90, Code of Laws of South Carolina (1976, as amended) and for damages recoverable by the statutory beneficiaries of the Decedent pursuant to section 15-51-10, et. seq., Code of Laws of South Carolina (1976, as amended).

Defendants:

2. Upon information and belief, Defendant Pruitt Corporation d/b/a UHS-Pruitt Corporation (hereinafter "UHS-Pruitt") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.
3. Upon information and belief, Defendant UHS-Pruitt Holdings, Inc. (hereinafter "UHS Holdings") is a corporation, authorized and existing under the laws of the State of Georgia, doing business in the County of York, State of South Carolina, but is without a registered agent in the State of South Carolina.
4. Upon information and belief, Defendant UHS of South Carolina, – East, LLC (hereinafter "UHS of SC") is a for profit limited liability corporation, authorized and existing under the laws of the State of South Carolina, and is doing business in the County of York, State of South Carolina.
5. Upon information and belief, Defendant United Health Services of South Carolina, Inc. (hereinafter "United") is a for profit corporation, authorized and existing under the laws of the State of South Carolina, and is doing business in the County of York, State of South Carolina.
6. Upon information and belief, Defendant United Clinical Services, Inc. (hereinafter "United Clinical") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

7. Upon information and belief, Defendant United Rehab, Inc. (hereinafter "United Rehab") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

8. Upon information and belief, Defendant Rock Hill Healthcare Properties, Inc. (hereinafter "Rock Hill Properties") is a for profit corporation authorized and existing under the ~~laws of the State of Georgia, and is doing business in the County of York, State of South~~ Carolina.

9. Upon information and belief, Defendant UniHealth Post Acute Care – Rock Hill, LLC d/b/a Unihealth Post Acute Care – Rock Hill (hereinafter "UniHealth Rock Hill") is a for profit corporation, authorized and existing under the laws of the State of Georgia, and is doing business in the County of York, State of South Carolina.

10. Upon information and belief, Defendants UHS Pruitt, UHS Holdings, UHS of SC, United, United Clinical, United Rehab, Rock Hill Properties and UniHealth Rock Hill (hereinafter "Pruitt Defendants") were involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Ms. Davis resided. Further, Pruitt Defendants at all times relevant hereto, exerted managerial control and operational control of UniHealth Rock Hill, and that such control was so extensive and pervasive that Defendants actually operated and managed UniHealth Rock Hill, and did business as the facility. Further, the control by the Pruitt Defendants was so extensive and pervasive over UniHealth Rock Hill that the business of UniHealth Rock Hill was the business of the Pruitt Defendants.

11. Upon information and belief, Decedent Eula Mae Davis was a resident at Unihealth Rock Hill and there existed a resident/facility relationship between Ms. Davis and the Pruitt

Defendants, and therefore Ms. Davis was thereby entitled to all the protections afforded such residents in South Carolina.

12. Upon information and belief, the Pruitt Defendants delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Eula Mae Davis during her residency.

~~13. Upon information and belief, all Pruitt Defendants named herein are or have been~~
involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for UniHealth Rock Hill and have directly controlled the operations at UniHealth Rock Hill.

14. Upon information and belief, all Pruitt Defendants have engaged in substantial business activities in South Carolina, including the management, supervision, training, administration, operation, control and/or ownership of the Defendant nursing home facility at relevant times hereto.

15. Upon information and belief, all Pruitt Defendants named herein have promulgated and established the policies, procedures, protocols, staffing decisions, administrative decisions, clinical decisions, and budgetary decisions at the UniHealth Rock Hill nursing facility, and all Pruitt Defendants named herein after directly controlled any and all business practices at UniHealth Rock Hill at various times.

16. That the deficiencies at the UniHealth Rock Hill nursing home facility in Rock Hill, South Carolina were directed, authorized, approved and ratified by all Pruitt Defendants named herein.

17. That the acts and omissions referred to herein occurred at the Pruitt Defendants' facility in York County, State of South Carolina.

18. That the Court has jurisdiction over the parties and subject matter.

JOINT AND SEVERAL LIABILITY

19. That all of the above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, significantly contributed to the cause of the Plaintiff's and Decedent's damages, injuries and losses.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

20. Upon information and belief, Eula Mae Davis was admitted for rehabilitation to UniHealth Rock Hill on January 11, 2011 at 7:50pm.

21. Upon Ms. Davis' admission to UniHealth Rock Hill, the Defendant failed to ensure that preventative measures were in place to avoid any falls.

22. Upon information and belief, Ms. Thompson stated that when Ms. Davis was admitted to UniHealth Rock Hill that the side rail was not functioning properly and that the Defendant told her that maintenance would be called and the bed would be changed.

23. On January 12, 2011 at approximately 1:10am, the Defendants went to check on Ms. Davis and found her face down on the floor beside the bed.

24. Ms. Davis was unresponsive and the Defendants started CPR and called 911.

25. Ms. Davis died at approximately 12:45am.

26. Upon information and belief, Ms. Davis cause of death was due to a neck fracture due to a fall.

27. Upon information and belief, the Defendants did not recognize Ms. Davis was a fall risk and ensure a safe environment to avoid such injuries and prevent falls.

FOR A FIRST CAUSE OF ACTION
(Negligence – Wrongful Death)

28. The Plaintiff re-alleges and reiterates paragraphs one (1) through twenty-seven (27) as though fully set forth herein verbatim and further alleges:

29. Notwithstanding said undertaking and while Ms. Davis was under the care of the

Defendants, its employees and agents departed from the prevailing and acceptable professional standards of care and treatment of Ms. Davis and were thereby negligent, careless, grossly negligent, reckless, willful, and wanton and in violation of the duties owed to the Plaintiff's Decedent, and they are liable for one or more of the following acts or omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- b. In failing to provide proper, comprehensive, and timely assessments and evaluation accurately outlining all risk factors for Eula Mae Davis and in failing to properly design an appropriate plan of care;
- c. In failing to have and/or follow proper policies, procedures, and protocol to properly address Eula Mae Davis' risk for falls;
- d. In failing to ensure that preventive measures were in place to avoid falls;
- e. In failing to properly staff, fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to Eula Mae Davis;
- f. In failing to exercise independent skill and judgment in their role as patient advocates;
- g. In negligently administering and operating the Defendants' nursing home;
- h. In failing to comply with the applicable Federal Statutes and Regulations designed to protect persons such as Eula Mae Davis;
- i. In failing to act and provide care as a reasonably healthcare facility would do under the same or similar conditions; and

j. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

30. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by agents and/or employees of Defendants, Plaintiff's Decedent, Eula Mae Davis, suffered injuries and damages as set forth hereinabove.

FOR A SECOND CAUSE OF ACTION
(Negligence – Survivorship Action)

31. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty (30) as though fully set forth herein verbatim and further alleges:

32. The Decedent's estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the defendants, as aforesaid, has incurred expenses in the form of funeral and burial expenses. The Plaintiff is further informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the defendants, as aforesaid, the Plaintiff's Decedent suffered fear, physical pain and suffering, and mental and emotional distress and anguish in the time before her death, for which the Plaintiff's Decedent's estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

33. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty-two (32) as though fully set forth herein verbatim and further alleges:

34. The conduct of the Defendants is governed by South Carolina Code §43-35-5 *et seq*, the Bill of Rights for residents of long term care facilities at South Carolina Code §44-81-10 *et seq*, South Carolina Department of Health and Environmental Control regulations at Regulation 61-17, *et seq*, as well as similar protective regulations and statutes in South Carolina, and by 42 U.S.C. § 1396(r), *et seq* and 42 C.F.R. 483, *et seq*.

~~35. The statutes and regulations set out above were enacted for the benefit and protection of a~~
class of the public, of which Eula Mae Davis was a member at all times relevant to this action. The Defendants violated these statutes and regulations in caring for Eula Mae Davis and other similarly situated residents at their facilities.

36. As a direct and proximate result of the violations of the statutes and regulations by the Defendants, which constitute negligence *per se*, Eula Mae Davis suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

37. The Plaintiff re-alleges and reiterates paragraphs one (1) through thirty-four (34) as though fully set forth herein verbatim and further alleges:

38. Prior to, and around the time of Eula Mae Davis' admission to Defendants' facility, agents of the facility made untrue statements to Eula Mae Davis and to her family about the quality of care that Eula Mae Davis would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Eula Mae Davis and her family and upon which they did rely.

39. The Defendants represented to Eula Mae Davis and her family that she would receive appropriate care within the professional standard of care, that the facility had adequate staffing

and adequate funding, that Eula Mae Davis would be carefully monitored, that Eula Mae Davis would be safe and secure.

40. These statements by the Defendants' were untrue and intended to be relied upon by Eula Mae Davis and her family and the family did rely upon them in choosing to admit Eula Mae Davis to the Defendants' facility.

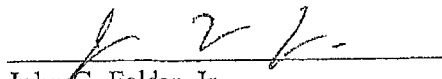
~~41. These representations were careless, negligent, grossly negligent, reckless, willful, and~~
wanton in that the Defendants knew or should have known that they would not be able to meet these representations for Eula Mae Davis and in failing to meet these representations for her.

42. As a direct and proximate result of the Defendants' misrepresentations, Eula Mae Davis has suffered injuries and died.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper. Plaintiff specifically avers that the damages at issue in this case are more than \$100,000, such averment made to allow all manner of discovery under South Carolina Law. Plaintiff respectfully requests a Jury Trial.

Respectfully submitted,



John G. Felder, Jr.
McGowan, Hood & Felder
1517 Hampton Street
Columbia, South Carolina 29201
Telephone: (803) 779-0100
Facsimile: (803) 256-0702
jfelder@mcgowanhood.com

Dated: September 17, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually
and as the appointed Personal
Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.;
UHS of South Carolina-East, LLC;
United Health Services of South Carolina,
Inc.; United Clinical Services, Inc.;
United Rehab, Inc.' Rock Hill Healthcare
Properties, Inc.; Uni-Health Post Acute
Care-Rock Hill, LLC d/b/a UniHealth
Post Acute Care-Rock Hill,

Defendants.

Civil Action No. 2013-CP-46-2930

ANSWER

FILED-RECEIVED
2013 NOV -18 AM 11:50
DAVID B. HUNTER
C.C.P. & G.S.
YORK COUNTY, SC

The defendants, not waiving but specifically reserving their right to be heard on a Motion to Compel Arbitration in this matter, answer the Complaint of the plaintiff as follows:

1. The defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and deny and demand proof of all such allegations.

2. The defendants admit that Pruitt Corporation is a corporation organized and existing under the laws of the State of Georgia, but deny all other allegations in Paragraph 2.

3. The defendants admit that UHS-Pruitt Holdings, Inc. is a corporation organized and existing under the laws of the State of Georgia, but deny all other allegations in Paragraph 3.

4. Denied.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. The defendants admit that Uni-Health Post Acute Care – Rock Hill, LLC, is a limited liability company organized and existing under the laws of the State of Georgia and is doing business in the County of York, State of South Carolina. Except as specifically admitted herein, each and every allegation in Paragraph 9 is denied.

10. Denied.

11. The defendants admit that the decedent, Eula Mae Davis, was a resident of Uni-Health Post Acute Care – Rock Hill, LLC, and that a facility-resident relationship existed between Ms. Davis and Uni-Health Post Acute Care – Rock Hill, LLC, but deny all other allegations in Paragraph 11.

12. The defendants admit that UPAC Rock Hill provided nursing home care to the decedent, Eula Mae Davis, but deny all other allegations in Paragraph 12.

13. Denied.

14. Denied.

15. The defendants admit that UPAC Rock Hill has established policies, procedures, and protocols and has staff and administrative personnel to operate a long-term care facility, but deny all other allegations in Paragraph 15.

16. The defendants deny that any deficiencies existed at Uni-Health Rock Hill which affected the plaintiff and further deny that any such deficiencies, if any existed, were directed, authorized, approved, or ratified by the other defendants.

17. Denied.

18. Denied.

19. Denied.

20. The defendants admit that Ms. Eula Mae Davis was admitted to Uni-Health Post Acute Care Network – Rock Hill, LLC, on January 11, 2011, at approximately 7:50 p.m. Except as specifically admitted herein, all allegations in Paragraph 20 are denied.

21. Denied.

22. Denied.

23. The defendants admit that a nurse and CNA employed by the defendant found Ms. Davis lying on the floor beside her bed on January 12, 2011, at approximately 1:10 a.m.

24. Admitted.

25. The defendants admit, upon information and belief, that the decedent, Eula Mae Davis, had died prior to 1:10 a.m., but do not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 25.

26. The defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 26 and deny and demand proof of all such allegations.

27. The defendants deny the allegations in Paragraph 27.

FOR A FIRST DEFENSE
TO THE FIRST CAUSE OF ACTION

28. The defendants repeat their answers to Paragraphs 1 through 27 and incorporate those answers herein by reference.

29. Denied.

30. Denied.

Except as specifically admitted herein, each and every allegation in the plaintiff's first cause of action and the plaintiff's entire Complaint is denied.

FOR A FIRST DEFENSE
TO THE SECOND CAUSE OF ACTION

31. The defendants repeat their answers to Paragraphs 1 through 30 and incorporate those answers herein by reference.

32. Denied.

Except as specifically admitted herein, each and every allegation in the plaintiff's second cause of action and the plaintiff's entire Complaint is denied.

FOR A FIRST DEFENSE
TO THE THIRD CAUSE OF ACTION

33. The defendants repeat their answers to Paragraphs 1 through 32 and incorporate those answers herein by reference.

34. The defendants admit that the defendant, UPAC-Rock Hill, LLC, is governed by the statutory case and regulatory law of the State of South Carolina, but deny all other allegations in Paragraph 34.

35. Denied.

36. Denied.

Except as specifically admitted herein, each and every allegation in the plaintiff's third cause of action and the plaintiff's entire Complaint is denied.

FOR A FIRST DEFENSE
TO THE FOURTH CAUSE OF ACTION

37. The defendants repeat their answers to Paragraphs 1 through 36 and incorporate those answers herein by reference.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

Except as specifically admitted herein, each and every allegation in the plaintiff's fourth cause of action and the plaintiff's entire Complaint is denied.

FOR A SECOND DEFENSE

43. The defendants would show that the plaintiff's recovery should be barred or reduced as a result of the plaintiff's own negligence and recklessness.

FOR A THIRD DEFENSE

44. The defendants will show that the plaintiff's claims should be limited by the statutory limitations on recovery for non-economic damages found at S.C. Code Ann. §15-32-220.

FOR A FOURTH DEFENSE

45. The defendants will show that the plaintiff's Complaint should be dismissed and the matter should be transferred for arbitration pursuant to the Arbitration Agreement entered into on behalf of the plaintiff's decedent when Ms. Davis was admitted to UPAC-Rock Hill, LLC.

FOR A FIFTH DEFENSE

46. The plaintiff is not entitled to an award for punitive damages as an award of punitive damages violates the Commerce Clause and Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3, of the South Carolina Constitution in that:

- (a) the judiciary's ability to correct a punitive damage award at the appellate level only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- (b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;

- (c) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- (d) even if it could be argued that a standard governing imposition of punitive damages exists, the standard is void for vagueness; and
- (e) the plaintiff's claim for punitive damages violates the Commerce Clause and Due Process Clause, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the defendant.

WHEREFORE, having fully answered, the defendants pray that the plaintiff's Complaint be dismissed, with costs, and for such other and further relief as the Court may deem just and proper.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: Monty Todd
Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina

Nov 1, 2013

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Mae Ruth Davis Thompson, et al.

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS Pruitt, et al.

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 13-CP-46-2930

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: John G. Felder, Jr., Bar No. _____ Address: McGowan Hood & Felder 1517 Hampton Street Columbia, SC 29201 Phone: 803-779-0100 Fax _____ E-mail: jfelder@mcgowanhood.com Other: _____		Defendant's Attorney: Montelth P. Todd, Bar No. 5591 Address: Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax 803-929-0300 E-mail: mtodd@sowellgray.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to Dismiss, Compel Arbitration, Stay Proceedings Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____			
SECTION III: Motion Fee ☒ PAID -- AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED -- AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually) Civil Action No. 2013-CP-46-2930
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.' Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute Care-Rock Hill,

Defendants.

**DEFENDANTS' MOTION TO DISMISS
AND COMPEL ARBITRATION OR,
ALTERNATIVELY, TO COMPEL
ARBITRATION AND STAY
PROCEEDINGS**

Defendants, Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.’ Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute Care-Rock Hill, hereby move, pursuant to Rule 12(b)(1), (3), and (6) to dismiss plaintiff’s Complaint because an arbitration agreement covering this dispute deprives this Court of jurisdiction, renders this judicial forum an improper venue, and prevents plaintiff from being able to state a claim in a judicial action. Alternatively, defendants move, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16, to

compel arbitration and stay these proceedings. In support of this motion, defendants rely on the affidavits of record and the Memorandum in Support filed contemporaneously with this motion.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: Monty Todd

Monteith P. Todd

Alex E. Davis

1310 Gadsden Street

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Email: mtodd@sowellgray.com

Attorneys for Defendants

Columbia, South Carolina

Jan 31, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually	)	Civil Action No. 2013-CP-46-2930
and as the appointed Personal	)	
Representative of the Estate of Eula Mae	)	
Davis, deceased,	)	
	)	
Plaintiff,	)	

vs.

Pruitt Corporation d/b/a UHS-Pruitt	)
Corporation; UHS-Pruitt Holdings, Inc.;	)
UHS of South Carolina-East, LLC;	)
United Health Services of South Carolina,	)
Inc.; United Clinical Services, Inc.;	)
United Rehab, Inc.' Rock Hill Healthcare	)
Properties, Inc.; Uni-Health Post Acute	)
Care-Rock Hill, LLC d/b/a UniHealth	)
Post Acute Care-Rock Hill,	)
	)
Defendants.	)

MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
AND COMPEL ARBITRATION OR,
ALTERNATIVELY, TO COMPEL
ARBITRATION AND STAY
PROCEEDINGS

The defendants, Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.' Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute Care-Rock Hill, hereby submit the following Memorandum in Support of their Motion to Dismiss plaintiff's Complaint and Compel Arbitration or, in the alternative, to compel arbitration and stay the proceedings in this matter, pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16. For the reasons set forth herein, the defendants request that their motion to compel arbitration be granted.

Background

This action arises out of the care provided to Eula Mae Davis by defendant Uni-Health Post Acute Care Rock Hill, LLC. The plaintiff alleges in her Complaint that Ms. Davis suffered a fall which resulted in her death at UPAC-Rock Hill in Rock Hill, South Carolina. The Complaint alleges that the fall was the result of the negligent acts and omission of UPAC-Rock Hill and caused Ms. Davis' death. The plaintiff filed her Complaint on October 1, 2013, after pre-suit mediation failed to resolve this dispute.

Ms. Davis became a resident of the Facility on January 11, 2011. To become a resident of the Facility, Ms. Davis entered into a number of contracts with UPAC-Rock Hill. The contracts were each signed by Ms. Davis' son, Andrew Davis. (Exhibit 1, Attachment A, Admission Agreement; Attachment B, Arbitration Agreement; Attachment C, Other Signed Agreements). These executed contracts included an Admission Agreement and Arbitration Agreement. (Exhibit 1, Attachment A, Admission Agreement; Attachment B, Arbitration Agreement). Based on these contracts, and pursuant to the agreements set forth therein, the Facility admitted Ms. Davis to the Facility.

The Arbitration Agreement at issue provides that it applies to "[a]ny and all claims or controversies arising out of or in any way relating to [the] Agreement or the Patient/Resident's Admission Agreement, . . . or the Patient/Resident's stay at, or the care of services provided by [UPAC-Rock Hill], or any acts or omissions in connection with such care or services." (Exhibit 1, Attachment B). The Arbitration Agreement was entered into between UPAC-Rock Hill and Eula Mae Davis on January 11, 2011. Because the acts and omission complained of by the plaintiff fall within the scope of the Arbitration Agreement, the Court should dismiss the plaintiff's action, or stay these proceedings, and compel arbitration.

Argument

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 is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16 (2006). 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 (2006). The language of the Act is not permissive, but instead mandates enforcement of 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 (2006) (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). 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 (2006).

The parties to the instant case have such a written provision to arbitrate disputes.

The Arbitration Agreement states, in relevant part:

THE PATIENT/RESIDENT AND [THE FACILITY] UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND

ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

The Arbitration Agreement goes on to define the scope of the disputes it covers:

Any and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including the interpretation of either, or the Patient/Resident's stay at, or the care or services provided by, [the Facility], or any acts or omissions in connection with such care or services, including care or services provided prior to the date that this Agreement was signed, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, and whether sounding in breach of contract, tort, or breach of statutory or regulatory duties (including, without limitation, any claim based on an alleged violation of the state bill of rights for Patients/Residents of long-term care facilities or federal Patient/Resident's rights, any claim based on negligence, any claim for damages resulting from death or injury to any person arising out of care or services rendered by [the Facility] or by any officer, agent, or partner thereof acting within the scope of his or her employment, any claim based on any other departure from accepted standards of health care or safety, or any claim for unpaid nursing home charges), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for arbitration.

(Exhibit 1, Attachment B). The Complaint in the instant case alleges that the defendants were negligent, careless, and reckless in various particulars; including the in negligently hiring, retaining, and supervising staff at defendants' facility; in failing to provide proper, comprehensive, and timely assessments and evaluation accurately outlining all risk factors for Eula Mae Davis and in failing to properly design an appropriate plan of care; in failing to have and/or follow proper policies, procedures, and protocol to properly address Eula Mae Davis' risk for falls; in failing to ensure that preventive measures were in place to avoid falls; in failing to properly staff, fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to Eula Mae Davis; in failing to exercise independent skill and judgment in their role as patient

advocates; in negligently administering and operating the defendants' nursing home; in failing to comply with the applicable federal statutes and regulations designed to protect persons such as Eula Mae Davis, in failing to act and provide care as a reasonable healthcare facility would do under the same or similar conditions; and in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure. (Complaint, ¶ 29). All the claims in the plaintiff's Complaint relate to the care and treatment received by the decedent at the Facility and fall within the scope of the Arbitration Agreement.

The Arbitration Agreement also falls within the reach of the FAA. "[T]here is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." Herron v. Century BMW, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010). In enacting the FAA, Congress established a strong federal policy in support of arbitration agreements, requiring that courts "rigorously enforce agreements to arbitrate." Sherson/Amer. Exp., Inc. v. McMahon, 482 U.S. 220, 226 (quoting Moses H. Cone Mem'l Hop. V. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)). The FAA applies in federal or state court to any arbitration agreement that "in fact" involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001)¹ (citing Allied-Bruce Terminix Co., Inc. v. Dobson, 513 U.S. 265 (1995); Soil Remediation Co. v. Nu-Way Envtl., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996)).

The South Carolina Court of Appeals has succinctly stated:

The words 'involving commerce' have been interpreted by the United States Supreme Court as being the functional equivalent of 'affecting commerce'—words signaling 'an intent to exercise Congress' commerce power to the full.' Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 277, 115 S.Ct.

¹ Munoz expressly overruled Mathews v. Fluor Corp., 312 S.C. 404, 440 S.E.2d 880 (1994), to the extent that the Mathews court considered "whether the parties contemplated interstate commerce as a factor in determining if the FAA applied." Munoz, at n. 3.

834, 130 L.Ed.2d 753 (1995) . . . 'Because the statute provides for the enforcement of arbitration agreements within the full reach of the Commerce Clause, it is perfectly clear that the FAA encompasses a wider range of transactions than those actually in commerce-that is, within the flow of interstate commerce.' Citizens Bank [v. Alafabco, Inc.], 539 U.S. [52,] [] 56, 123 S.Ct. [2037,] [] 2040 [2003].

Thornton v. Trident Medical Center, LLC, 357 S.C. 91, 95, 592 S.E.2d 50, 52 (Ct. App. 2004) (internal citations and quotations in original).

In the Arbitration Agreement, the parties acknowledged and agree that their transaction involved interstate commerce and would be governed by the FAA:

The [Facility]'s business activities substantially affect, relate to, and involve interstate commerce. For example, [the Facility] purchases substantial quantities of goods and services that are produced outside of the state and shipped across state lines to be provided to Patients/Residents of [the Facility]. [The Facility] participates in federally administered reimbursement programs, including Medicare and Medicaid, in which [the Facility] receives reimbursement that is derived from out of state sources for items and services provided to its Patients/Residents. As such, this Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16), as opposed to state arbitration law, notwithstanding any provision of state law or any other understanding or agreement between the parties. The parties specifically exclude the application of South Carolina's Uniform Arbitration Act.

(Exhibit 1, Attachment B). As the agreement reveals, the parties acknowledged that any disputes arising out of the Plaintiff's residency and care at the Facility would involve interstate commerce and be arbitrated pursuant to the FAA.

In addition to the language in the Arbitration Agreement that acknowledges the agreement will be governed by the FAA, the Facility is, in fact, "within the flow of interstate commerce," and the agreement is one "involving [interstate commerce]." Thornton, 357 S.C. at 95, 592 S.E.2d at 52. Ms. Davis's primary insurance payee for the Facility was federal Medicare. (Exhibit 1, Affidavit of Kate Johnson). The Facility also utilizes supplies, materials, and services provided by various entities located outside the State of South Carolina, and would not be able to

operate without these supplies, materials, and services. (Exhibit 1, Affidavit of Kate Johnson). The Facility provides care to numerous individuals, including residents from other states. Id. The Facility also participates in and receives reimbursement under the Medicare and Medicaid federal health insurance programs. Id. These activities demonstrate substantial involvement in interstate commerce and mandate that any disputes within the scope of the Arbitration Agreement be resolved pursuant to the FAA.

II. The Arbitration Agreement is valid and binding and must be enforced

In the instant case, the agreements at issue were executed by Mr. Philip Davis on behalf of his mother, Ms. Davis. 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).

Because Ms. Davis suffered from dementia prior to and at the time of her admission to the Facility, she did not have the capacity to execute a binding contract on her own behalf. Dr. Cliff Netzler, Ms. Davis' internal medicine physician, diagnosed Ms. Davis with an Organic Brain Syndrome as early as January 16, 2007 (see Dr. Netzler's office note of January 16, 2007, attached as Exhibit 2) Dr. Netzler, in this January 16, 2007, office note, predicted "[t]he patient's advancing age and declining activity level portends a progressive decline that is not going to be able to be prevented." Id. In his office note of May 2, 2007, Dr. Netzler attributed the organic brain syndrome to a "multiple small stroke syndrome." (See Dr. Netzler's office note of May 5, 2007, attached as Exhibit 3) Over the next three years, Dr. Netzler continued to diagnose Ms. Davis with an organic brain syndrome and mild dementia. (See Dr. Netzler's office notes of November 2, 2009, June 23, 2010, and November 15, 2010, attached as Exhibit 4)

In December 2010, Ms. Davis suffered a fall at home which caused her to seek treatment at Piedmont Medical Center where she was diagnosed with an intracranial hemorrhage. (See Exhibit 5, Piedmont Medical Center Consultation Report of Dr. Sushii Singhi (PMC record 005 and 006) and Piedmont Medical Center H&P for December 23, 2010 admission (PMC record 009 and 010) and Discharge Summary of January 11, 2011) According to these medical records, Ms. Davis suffered a fall at home on December 6, 2010, which caused an intracranial hemorrhage. She was admitted to Piedmont Medical Center, was stabilized, and then transferred to HealthSouth. HealthSouth transferred her back to Piedmont Medical Center on December 23, 2010, because of her altered mental status, pneumonia, and a UTI. (See Exhibit 6, PMC History of Present Illness, dated December 23, 2011, PMC 039-048)

When she returned to Piedmont Medical Center on December 23, 2010, her admission diagnosis included depression, dementia, and multiple other medical problems. She was described as having "decreased mental status, but does open eyes and follow minimal commands." (See Exhibit 7, PMC H&P of December 23, 2010) Her cardiologist, Dr. Singhi, included in her problem list dementia, ataxia with frequent falls, history of intracranial hemorrhage, and multiple chronic medical problems. Dr. Singh described Ms. Davis as "arouseable to somewhat pain stimuli, but does not spontaneously open her eyes and does not spontaneously engage in a verbal conversation. (See Exhibit 5, Dr. Singhi Consultation Note of December 23, 2010) When discharged from Piedmont Medical Center on January 11, 2011, to UPAC-Rock Hill, Ms. Davis' discharge physician listed 12 different discharge diagnoses, including "(1) change in mental status with baseline dementia . . . , (7) Dementia with agitation at night. It does help if her family is around and encouraged her to eat . . . , (12) sundowning with

confusion and agitation, more so at night.” (See Exhibit 8, PMC January 11, 2011, Discharge Summary)

Since Ms. Davis suffered from dementia when admitted to UPAC Rock Hill, she did not have the capacity to enter into a binding contract. Therefore, Mr. Davis, her son, guardian, and responsible party, executed the Arbitration Agreement and multiple other agreements and contracts on behalf of his mother.

In addition, Mr. Davis had a history of acting as Ms. Davis’ agent in regard to Ms. Davis financial affairs and business dealings. Ruth Mae Davis, who is Ms. Davis’ daughter and the Personal Representative of Ms. Davis’ Estate, testified in deposition that her brother, Philip, “handled all of [Ms. Davis’] financial business” and business dealings. (See Deposition of Ruth Mae Davis Thompson, p. 14, l. 2 to p. 15, l. 10) Her son, Andrew Philip Davis, testified he assisted his mother with her financial affairs and on occasion signed documents for her. (See Deposition of Andrew Philip Davis, p. 15, l. 22 to p. 17, l. 25) Mr. Davis further testified his mother was comfortable with him signing documents for her. (Deposition of Andrew Philip Davis, p. 17, ll. 14-25) Thus, Ms. Davis’ estate is bound by the binding contract and Arbitration Agreement executed by her son and agent.

Moreover, Ms. Davis is bound by the contract executed by Mr. Davis as a third-party beneficiary. Under South Carolina law, “[a] third-party beneficiary is a party that the contracting parties intend to directly benefit.” Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); see also Touchberry v. Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988) (“[t]he presumption that [a] contract is not enforceable by an individual may be overcome by showing that he was intended to be the direct beneficiary of the contract”). Again, Ms. Davis did not sign the contract, but she was the resident being admitted to the Facility

and thus the direct beneficiary of the contract. Ms. Davis's care was the essential purpose of all the agreements in the admissions paperwork, including the Admission Agreement and the Arbitration Agreement, and as a third-party beneficiary, she (and her estate) are bound by the Arbitration Agreement. See THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) (rejecting argument that family member did not have authority to bind resident to arbitration); Cook v. GGNSC Ripley, LLC, 786 F. Supp. 2d 1166, 1171-72 (N.D. Miss. 2011) (holding arbitration agreement in contract for nursing home care was enforceable against third-party beneficiary and her estate under third-party beneficiary principles); Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983 (Ala. 2004) (same); Trinity Mission Health & Rehab. v. Scott, 19 So. 3d 735 (Miss. Ct. App. 2008) (same).

CONCLUSION

As set forth in the foregoing sections, a valid and enforceable arbitration agreement exists in which Ms. Davis and the Facility agreed that any disputes relating to the services or care provided to Ms. Davis by the Facility would be resolved exclusively by binding arbitration. The agreement between Ms. Davis and the Facility falls within the scope of the FAA, which require that agreements to arbitrate be strictly enforced. Therefore, the defendants respectfully request that this Court issue an Order dismissing the plaintiff's Complaint or, in the alternative, staying these proceedings, and compelling arbitration in this matter, pursuant to the FAA, 9 U.S.C. § 4, and the Arbitration Agreement between the Ms. Davis and the defendants.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

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Monteith P. Todd
Alex E. Davis
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina

Jan 31, 2014

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually
and as the appointed Personal
Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.;
UHS of South Carolina-East, LLC;
United Health Services of South Carolina,
Inc.; United Clinical Services, Inc.;
United Rehab, Inc.' Rock Hill Healthcare
Properties, Inc.; Uni-Health Post Acute
Care-Rock Hill, LLC d/b/a UniHealth
Post Acute Care-Rock Hill,

Defendants.

) Civil Action No. 2013-CP-46-2930

AFFIDAVIT OF KATE JOHNSON

Kate Johnson, after being first duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years and make this affidavit based upon my personal knowledge.

2. I am the Administrator for Uni-Health Post Acute Care-Rock Hill ("UPAC-Rock Hill"), a skilled nursing facility located in Rock Hill, South Carolina.

3. The admission files for residents of UPAC-Rock Hill are kept within the facility in the regular course of business.

4. I have reviewed the files of UPAC-Rock Hill and located the admission records for Eula Mae Davis, the plaintiff in this matter.

Exhibit 1

ROA-65

5. Mr. Philip Davis, as the representative of Ms. Cook, signed various documents that are part of the standard admission packet. These documents include an Admission Agreement, whereby UPAC-Rock Hill agreed to provide certain services to Ms. Davis. A true and correct copy of the Admission Agreement is attached hereto as Exhibit A.

6. Mr. Davis, as the representative of Ms. Davis, executed an Arbitration Agreement, whereby the parties agreed that any disputes arising out of or relating to the Admission Agreement or any care or services provided to Ms. Davis would be settled exclusively by binding arbitration. A true and correct copy of the Arbitration Agreement is attached hereto as Exhibit B.

7. A review of Ms. Davis' file indicates that the Arbitration Agreement has never been modified, amended, revoked, or rescinded.

8. Mr. Davis, as the representative of Ms. Davis, signed various other documents as part of the standard admission packet, which agreed to provide additional services to Ms. Davis, set forth Ms. Davis' preferences while at UPAC-Rock Hill, and acknowledged certain policies of the facility, among other things. True and correct copies of these additional signed agreements are attached hereto as Exhibit C.

9. UPAC-Rock Hill's business involves interstate commerce. The care and services provided by UPAC-Rock Hill to Ms. Cook would not have been possible were it not for supplies, materials, and services provided to UPAC-Rock Hill by various entities located outside the State of South Carolina.

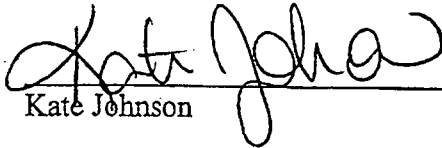
10. UPAC-Rock Hill routinely provides nursing services to residents from other states.

11. UPAC-Rock Hill participates in and receives reimbursement under the federal Medicaid and Medicare programs.

12. UPAC-Rock Hill routinely accepts payments from insurers located in states other than the State of South Carolina.

13. I have reviewed UPAC-Rock Hill's billing records for Ms. Davis, and they show that a portion of her care at UPAC-Rock Hill was paid for by Medicare, the federal government system of health insurance for the elderly.

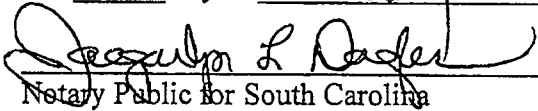
FURTHER AFFIANT SAYETH NOT.

 (L.S.)
Kate Johnson

1-30, 2014

SWORN TO AND SUBSCRIBED BEFORE ME

this 30th day of January, 2014:

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 8-27-2023

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 11th day of January, year 2011, by and between UniHealth PAC Rock Hill (Healthcare Center),
EULA M DAVIS (Patient/Resident)
and certain other undersigned parties.

I. Definitions:

- A. A Legal Representative is any person, such as a legal guardian or person holding power of attorney, with legal authority to act on behalf of an incompetent or incapacitated Patient/Resident. The Patient/Resident's Legal Representative may execute this Agreement on the Patient/Resident's behalf. The Legal Representative is not required to personally guarantee payment of any Healthcare Center charges as a condition of the Patient/Resident's admission, expedited admission, or continued stay in the Healthcare Center. However, if the Legal Representative has access to the Patient/Resident's income or resources available to pay for the Healthcare Center's care, the Legal Representative agrees, by signing this Agreement, to pay the Patient/Resident's financial obligations out of the Patient/Resident's funds. The Legal Representative shall incur no personal financial responsibility except to the extent that such representative had access to resources that would have been available to pay for care provided by the Healthcare Center.
- B. A Responsible Party is a family member or other person interested in the Patient/Resident's welfare who undertakes certain responsibilities in connection with the Patient/Resident's stay at the Healthcare Center. If the Patient/Resident has a Legal Representative, that person should generally serve as the Responsible Party. The Responsible Party is not required to personally guarantee payment of any Healthcare Center charges as a condition of the Patient/Resident's admission, expedited admission, or continued stay in the Healthcare Center. However, if the Responsible Party has access to the Patient/Resident's income or resources available to pay for the Healthcare Center's care, the Responsible Party agrees, by signing this Agreement, to pay the Patient/Resident's financial obligations out of the Patient/Resident's funds.

II. The Healthcare Center agrees:

- A. To provide basic room and board, general nursing care, social services, dietary services, minor medical supplies, bedding, linen, laundry services and activities.
- B. To assist, provide or obtain the services of providers of medical goods and services as required by law. The providers selected by the Patient/Resident shall be required to comply with the Healthcare Center's policies and procedures and

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all federal and state laws and regulations. The Healthcare Center is not obligated to provide medicine, treatment, special diets, or equipment without specific orders or directions from a physician. The Patient/Resident is responsible for all associated costs.

- C. To arrange, at the Patient/Resident's expense, if applicable, for transfer of the Patient/Resident to the hospital of the Patient/Resident's choice, whenever such a transfer is ordered by the attending physician, and to attempt to notify the persons designated on the application for admission of such transfer. Unavailability of designated person shall not be considered a material breach of this Agreement by Healthcare Center.
- D. At the Patient/Resident's request, to hold, safeguard and manage personal funds for the Patient/Resident at no additional charge to the Patient/Resident, subject to the Healthcare Center policy on the MANAGEMENT OF PERSONAL FUNDS as outlined in the Guest Services Guide, and as from time to time amended. After reviewing the policy, the form entitled PATIENT/RESIDENT TRUST FUND AUTHORIZATION AGREEMENT must be completed by the Patient/Resident or the Legal Representative. On this form, the Patient/Resident or the Legal Representative may authorize the Healthcare Center to manage the Patient/Resident's personal funds.

III. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agree:

- A. To select an attending physician who will visit the Patient/Resident regularly according to the Healthcare Center's policies and procedures and state and federal law and regulations and as dictated by the Patient/Resident's needs. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall also designate an alternate physician. If the Patient/Resident's attending physician is not available, the Healthcare Center will call the designated alternate physician.

The Patient/Resident acknowledges that the Healthcare Center has not engaged its Medical Director for the purpose of providing direct care services to Patients/Residents of the Healthcare Center. Should the Patient/Resident choose the Medical Director to serve as the Patient/Resident's attending physician, the Patient/Resident does so as an exercise of the Patient/Resident's right to choose his or her attending physician.

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THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: JAMES JEWELL
2. Alternate attending physician: _____

- B. To select a pharmacy or pharmacist for those pharmaceutical supplies and services not provided by the Healthcare Center as part of the basic rate. The pharmacy or pharmacist must conform to the medication packaging and delivery systems or procedures utilized by the Healthcare Center.

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: UNITED PHARMACY

- C. To provide the Healthcare Center with a copy of any existing written document, such as a Living Will or Durable Power of Attorney for Health Care, indicating the Patient/Resident's choices in connection with the treatment or terminal illness and/or the withholding or withdrawal of life-sustaining medical treatment. *The Healthcare Center does not require that the Patient/Resident execute or produce such a document as a condition of admission.* The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the Healthcare Center's written information in the Guest Services Guide on ADVANCE DIRECTIVES AND DNR ORDERS. After reviewing the information, the form entitled ADVANCE DIRECTIVE CHECKLIST must be completed by the Patient/Resident or the Legal Representative.
- D. To abide by all rules, regulations and policies and procedures, as are, from time to time, established and amended by the Healthcare Center. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the rules and responsibilities governing the conduct of the Patient/Resident and his or her visitors while in the Healthcare Center. These rules and responsibilities are listed in the Guest Services Guide on the page entitled PATIENT/RESIDENT & FAMILY RESPONSIBILITIES. Amendments to the rules and responsibilities shall be effective upon thirty (30) days notice to the Patient/Resident and/or undersigned parties.

IV. The following provisions are applicable to private pay Patients/Residents only including Patients/Residents who are admitted to the Healthcare Center as a different payer source but who subsequently become private pay:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT

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ADMISSION AGREEMENT

COVERED listed in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE.

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing under this Agreement, including the basic monthly rate, when due.
- C. The basic monthly rate is currently \$5858.00. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further, if the Patient/Resident fails to apply promptly,

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the Healthcare Center, in its sole discretion, is authorized, but not obligated, to prepare all necessary forms and documents and submit such forms and documents to the appropriate state agencies for a determination of the Patient/Resident's eligibility for Medicaid benefits. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall certify that the information given to enable the Healthcare Center to assist the Patient/Resident to apply for Medicaid benefits is correct.

Agreement to Follow Through With Medicaid Application:

The Patient/Resident/Legal Representative acknowledges that he/she has been informed by the Admissions Coordinator of the Healthcare Center that upon admission of a Patient/Resident, it will become necessary to go to the Department of Health and Human Services in order to obtain nursing home vendor payment to the nursing home.

It is also understood by the Patient/Resident and/or undersigned parties, not to include the Healthcare Center, that even though the Patient/Resident may already be receiving SSI, the Patient/Resident must once again apply for nursing home vendor payment through the Department of Health and Human Services.

The Patient/Resident and/or undersigned parties, not to include the Healthcare Center, agrees to call the number provided to them by the Admissions Office to set up an appointment with a Social Worker at the Department of Health and Human Services to obtain an Application for Medical Assistance from the Department of Health and Human Services.

The Patient/Resident and/or undersigned parties, not to include the Healthcare Center, shall obtain information from the Social Worker, Business Office or Admissions Director on how to convert the Medicaid to Healthcare Center approved.

Although the Patient/Resident may have a Medicaid number and be drawing SSI, the Patient/Resident and/or undersigned parties, not to include the Healthcare Center, agrees to obtain this Application for Medical Assistance, complete it with appropriate and accurate data, and return it to the Department of Health and Human Services prior to the date of their appointment.

If the Department of Health and Human Services' follow-up is not completed, the Patient/Resident will not be allocated vendor payment and will be considered to be a private pay Patient/Resident under this Agreement. The Healthcare Center reserves the right to collect pre-payments or deposits from individuals whose Medicaid eligibility is pending.

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ADMISSION AGREEMENT

- V. The following provisions are applicable to Medicaid Patients/Residents, including Patients/Residents who are admitted to the Healthcare Center as another payer source, but who subsequently become eligible for Medicaid benefits:
- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT COVERED in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE.
 - B. The Healthcare Center's per diem rate for Medicaid Patients/Residents is determined by the South Carolina Department of Medical Assistance according to a reimbursement formula. The Department of Health and Human Services (DHHS) will determine what portion of that rate must be paid by the Patient/Resident, based on the Patient/Resident's monthly income less any allowable deductions. The Patient/Resident's portion, as determined by DHHS, shall be billed in advance by the Healthcare Center and shall be due on the 10th day of each month.
 - C. Payment for items and services provided by the Healthcare Center but not paid for by Medicaid shall be due within ten days of billing. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of this Agreement and discharge of the Patient/Resident. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding due, including interest.
 - D. If the Patient/Resident wishes to be transferred from a semi-private room to a private room, the additional cost of the private room will be applied to the Patient/Resident's liability.
 - E. The healthcare center will assist the Patient/Resident in billing any applicable insurance claims. However, the Patient/Resident is ultimately responsible for charges if insurance payment is not made within a reasonable amount of time and the Patient/Resident is not Medicaid approved.
 - F. Settlement of all accounts for items and services provided but not paid by Medicaid or any other third-party payer with the Healthcare Center shall be made in full at the time of the Patient/Resident's discharge.

State of South Carolina
ADMISSION AGREEMENT

VI. The following provisions are applicable to Medicare Patients/Residents, including Patients/Residents who are admitted to the Healthcare Center as another payer source, but who subsequently become eligible for Medicare benefits:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT COVERED listed in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE, received upon admission. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agrees to pay, out of the Patient/Resident's funds, as charged for non-covered items or services received by the Patient/Resident.
- B. Medicare Part A includes a benefit period of up to one hundred (100) days per spell of illness in a skilled nursing Healthcare Center (SNF) as long as the Patient/Resident meets the criteria for skilled level according to Medicare guidelines. Part A pays one hundred percent (100%) of the first twenty (20) days of skilled care. The Patient/Resident (beneficiary) is liable for partial payment (co-insurance) for the remaining eighty (80) days of skilled care provided under Medicare. Under certain conditions, Medicaid or insurance will pay the co-insurance days of eligible individuals. The Patient/Resident is responsible for payment to the Healthcare Center of all co-insurance days unless the Resident/Patient is eligible for Medicaid or private insurance coverage applies.
- C. If the Patient/Resident's claim for Medicare payment is denied by the Medicare intermediary, the Patient/Resident has the right to appeal this decision directly to the intermediary. The Patient/Resident will be responsible for payment of all services provided from the date of notification of denial was received. If the Patient/Resident is eligible for coverage from another source (Medicaid, VA) for continued nursing home care, the Healthcare Center will bill the appropriate party. If the Patient/Resident is not eligible for assisted payment, then the Patient/Resident will convert to private pay status and be responsible to pay private pay rates.

If the Patient/Resident's appeal for Medicare payment is denied, the Patient/Resident will be responsible for payment of all services provided during the Medicare benefit period. Failure to make payment within fifteen (15) days from the date of the Final Determination Letter from Medicare may be treated by the Healthcare Center as grounds for termination of this Agreement and discharge of the Patient/Resident.

State of South Carolina
ADMISSION AGREEMENT

VII. General Agreements:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, consent to the administration of such care, treatment, services, and medical or nursing procedures as the Patient/Resident, the Healthcare Center, and the Patient/Resident's attending physician deem appropriate.
- B. When applicable, the Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agrees to pay according to the bed hold regulations as described in the Payer Information Section received upon admission.
- C. The Patient/Resident, and/or the undersigned parties, not to include the Healthcare Center acknowledge and agree that all responsibility of the Healthcare Center to the Patient/Resident shall terminate in the event the Patient/Resident knowingly leaves the Healthcare Center against the medical advice of the Patient/Resident's attending physician and/or without the approval of the Healthcare Center, but with or without the knowledge of the Healthcare Center.
- D. The Patient/Resident, and/or the undersigned parties, not to include the Healthcare Center acknowledge and agree that the Healthcare Center is not responsible for the health, safety or welfare of any Patient/Resident who is away from the Healthcare Center under the care of any person not directly employed by the Healthcare Center.
- E. The Healthcare Center will provide a location at which the Patient/Resident may store documents, jewelry, or other valuables for safekeeping. The Resident/Patient will have reasonable access to such property on weekdays during normal business hours. Special arrangements may be made for access to valuables on weekends or at any other time. The liability of the Healthcare Center for any loss, destruction, or theft of property which is deposited with the Healthcare Center for safekeeping (including liability for negligence for the safekeeping of such property) shall be and is hereby limited to the amount of one hundred dollars (\$100.00) unless a written receipt for a greater amount has been obtained from the Healthcare Center by the Patient/Resident. The Healthcare Center shall have no liability for the loss, destruction, or theft (including theft by partners of the Healthcare Center) of documents, jewelry, money, or other valuables not deposited with the Healthcare Center for safekeeping. The Patient/Resident hereby agrees to indemnify and hold the Healthcare Center harmless from any and all claims regarding such loss, destruction, or theft.
- F. The Healthcare Center may terminate this Agreement and transfer or discharge the Patient/Resident in accordance with applicable state and federal laws and regulations. The Healthcare Center shall give the Patient/Resident, and/or

State of South Carolina
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undersigned parties, not to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

- G. If any terms or conditions of this Agreement are invalid or unenforceable by reason of any rule of law, federal or state statute, or regulation, this Agreement shall be deemed amended to comply with the relevant law, statute, or regulation and shall remain in full force and effect.
- H. If any term, covenant, condition or provision of this Agreement should ever be held to be invalid or unenforceable, the remainder of this Agreement, at the option of Healthcare Center, shall not be thereby affected, and each remaining term, covenant, condition and provision shall be and remain valid and enforceable to the fullest extent permitted by law.
- I. This Agreement shall be construed, governed and enforced under the laws of the State of South Carolina. This Agreement together with all exhibits is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, and supersedes all prior agreements, negotiations, representations, tender documents, and proposals, written and oral with respect to the subject matter hereof. Variance from, or additions to, the terms and conditions of this Agreement in any written notification from Patient/Resident shall be of no effect.
- J. This Agreement shall not be modified or amended in any respect by Patient/Resident except by written agreement executed by Healthcare Center and Patient/Resident in the same manner as this Agreement is executed. These provisions are subject to federal and state law and may be changed periodically to comply with these laws. This Agreement may be modified or amended by Healthcare Center if Healthcare Center sends a notice of the amendment to Patient/Resident thirty (30) days prior to the implementation of the amendment. If Patient/Resident does not reject such amendment in writing within thirty (30) days of receipt of the amendment, such amendment shall be deemed accepted and incorporated into this Agreement. This Agreement shall not be assigned, directly or indirectly, by Patient/Resident without the prior written consent of Healthcare Center. Any attempted assignment by Patient/Resident not in full compliance herewith shall be void and of no force or effect. This Agreement is freely assignable by Healthcare Center.
- K. Neither party's failure to pursue any remedy for any default on the part of the other party or noncompliance by the other party with the terms of this Agreement, nor either party's waiver of any default or noncompliance by the other party with the terms of this Agreement, shall affect or impair such party's rights with respect to any subsequent default or noncompliance of the same or a different kind or nature by the other party. The delay or omission on the part of

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constitute a waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

- L. Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons, other than the parties hereto.
- M. This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original. The parties acknowledge and agree that this Agreement has been mutually discussed and negotiated.
- N. The provisions of this Agreement shall be severable, and if a court of competent jurisdiction holds any provisions of this Agreement in violation of any applicable law, the remaining provisions shall nevertheless remain in full force and effect.

VIII. Miscellaneous Provisions

- A. Healthcare Center is authorized but not obligated to seek the appointment of a guardian should it become necessary.
- B. Patient/Resident/Legal Representative agrees to be responsible for clothes, spending money, costs of transportation; payment for treatment/physician's fees not covered by third party payers; accurate, complete, and updated information to be provided to Healthcare Center.
- C. Patient/Resident/Legal Representative agrees to indemnify and hold harmless the Healthcare Center for any damages caused by Patient/Resident and his or her visitors.
- D. All addendums are incorporated herein by reference.
- E. These items must be provided upon admission:
 - 1. At the time of admission, the Healthcare Center must provide the Patient/Resident with:
 - A written notice of the Healthcare Center's basic daily or monthly rates.

State of South Carolina
ADMISSION AGREEMENT

- A written statement of all Healthcare Center services, including those offered on a needed basis, and related charges, including any extra charges for services not covered under Medicare or Medicaid or by the Healthcare Center's basic daily or monthly rate.
 - A statement disclosing the Healthcare Center's name and business address and the name and business address of the administrator of the Healthcare Center. Upon request an applicant or Patient/Resident shall be furnished with a copy of the annual disclosure statement filed with the Department of Community Health.
 - Notice of the right of access to the written policies and procedures of the Healthcare Center. Access to these policies and procedures shall be permitted during ordinary business hours.
2. Upon a Patient/Resident's request, the Healthcare Center must provide that Patient/Resident with a current list of all services and charges. Current charges must be posted in a conspicuous location.
 3. The Healthcare Center must inform each Patient/Resident in writing, at least 30 days in advance of the effective date, of any changes in rates or the services that these rates cover.
 4. The Healthcare Center must bill for charges at least once a month unless otherwise agreed. Each bill must itemize charges for:
 - The daily or monthly rate.
 - All extra charges.
 5. Each Patient/Resident or Guardian shall be permitted to inspect and receive a copy of the Patient/Resident's non-medical records kept by the Healthcare Center. The Healthcare Center may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

State of South Carolina
ADMISSION AGREEMENT

ACKNOWLEDGMENT:

I have read and understood the Admission Agreement and have received a copy of the Guest Services Guide. I accept all terms and conditions stated in this Agreement and in the Guest Services Guide.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's SignatureANDREW DAVIS

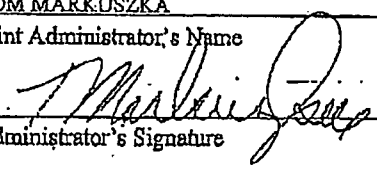
Print Patient/Resident Representative's Name

Andrew P. Davis

Patient/Resident Representative's Signature

TOM MARKUSZKA

Print Administrator's Name


Administrator's SignatureUniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11

Date

(Healthcare Center will maintain a copy for their records)

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 11st day of January, 2011, by and between UniHealth PAC Rock Hill (the "Healthcare Center") and BULA M DAVIS and ANDREW DAVIS ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

A. Scope of Agreement

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including the interpretation of either, or the Patient/Resident's stay at, or the care or services provided by, the Healthcare Center, or any acts or omissions in connection with such care or services, including care or services provided prior to the date that this Agreement was signed, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, and whether sounding in breach of contract, tort, or breach of statutory or regulatory duties (including, without limitation, any claim based on an alleged violation of the state bill of rights for Patients/Residents of long-term care facilities or federal Patient/Resident's rights, any claim based on negligence, any claim for damages resulting from death or injury to any person arising out of care or service rendered by the Healthcare Center or by any officer, agent, or partner thereof acting within the scope of his or her employment, any claim based on any other departure from accepted standards of health care or safety, or any claim for unpaid nursing home charges), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for arbitration.

2. Only disputes that would constitute a legally cognizable cause of action in a court of law may be submitted for arbitration.

3. All claims based in whole or in part on the same incident(s), transaction(s), or related course of care or services provided by the Healthcare Center to the Patient/Resident, shall be arbitrated in one proceeding.

AWD Initials

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4. A claim shall be waived and forever barred if it arose prior to a Demand for arbitration (as defined in this Agreement) and arbitration was not commenced by such Demand within the limitation period prescribed by South Carolina law for the commencement of a civil action concerning the subject matter of that claim.

B. Patient/Resident's Rights. This Agreement shall not limit the Patient/Resident's rights with respect to filing a grievance with the Healthcare Center, the Long-Term Care Ombudsman, or any appropriate state or federal regulatory agency. This Agreement shall not reduce or affect in any way the Healthcare Center's duties and obligations with respect to the provision of care and treatment of Patients/Residents.

C. Parties. This Agreement shall inure to the benefit of and bind the Patient/Resident and the Healthcare Center; their successors, assigns, and intended and incidental beneficiaries. The term "Healthcare Center" shall include its operator, management company, governing body, officers, directors, shareholders, partners, managers, agents, and any parent, affiliate or subsidiary. The term "Patient/Resident" shall include the Patient/Resident, his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person whose claim is derived through or on behalf of the Patient/Resident, including, in addition to those already listed in this Paragraph, any parent, spouse, child, executor, administrator, heir, or survivor entitled to bring a wrongful death claim. If this Agreement is signed by the Patient/Resident's representative, that individual represents that he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so.

D. Administration of Arbitration. Any arbitration conducted pursuant to this Agreement shall be administered by, and according to the applicable rules and procedures then in effect of, an independent impartial entity that is regularly engaged in providing arbitration services (the "Arbitration Service"). A demand for arbitration ("Demand") shall be made in writing and submitted to the Arbitration Service by regular mail, certified mail, or overnight delivery. The Demand must identify the issues in dispute, the amount(s) in dispute, any special qualifications of a desired arbitrator, and the Respondent(s). The parties intend that the Arbitration Service shall be the National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, Minnesota 55405-0191, or its successor. If NAF or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Judicial Arbitration and Mediation Services, Inc. ("JAMS"), 235 Peachtree Street, N.E., 600 North Tower, Atlanta, Georgia 30303-1411, or its successor. If JAMS or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Henning Mediation & Arbitration Service, Inc. ("Henning") 3350 Riverwood Parkway, Riverwood Building Lobby, Suite 75, Atlanta, Georgia 30339, or its successor. If Henning or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the arbitration conducted pursuant to this Agreement will be carried out in conformance with the following Paragraph I.F. of this Agreement. The rules of these Arbitration

APD Initials

State of South Carolina
ARBITRATION AGREEMENT

Services are available from the administrator of the Healthcare Center. The parties intend that the arbitration will be held as close as possible to where the Healthcare Center is located.

B. Ad Hoc Arbitration. In the event that none of the entities named in the foregoing Paragraph I.E. of this Agreement are willing or able to serve as the Arbitration Service (and only in that event), the Demand shall be served on the other party by certified mail or overnight mail, and both parties shall in good faith attempt to agree upon one arbitrator to conduct the arbitration. If the parties are unable to agree upon an arbitrator within 30 days of the receipt of the Demand, each shall within 30 days thereafter appoint an arbitrator and these two individuals shall appoint a third arbitrator within 10 days, in which case the three arbitrators shall serve as the panel of arbitrators. If the arbitration conducted pursuant to this Agreement is conducted before a panel of arbitrators, references to the "arbitrator" contained in this Agreement shall be understood to mean the panel of arbitrators, and the decision of at least two of the three arbitrators shall constitute the decision of the panel. In the event that the arbitration is carried out in accordance with this Paragraph I.F., the arbitrator shall establish the procedural rules for conducting the arbitration.

F. Witnesses, Subpoenas, and Depositions. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness for the circuit court in this state. Upon the request of any party or arbitrator, the arbitrator shall cause to be made a record of the testimony and evidence introduced at the hearing.

G. Costs. The Healthcare Center shall pay the fees of the Arbitration Service up to a maximum of five (5) days of hearing. Any fees of Arbitration Service beyond five (5) days of hearing shall be split between the parties. Each party shall bear its own attorneys' fees.

II. Decision

A. Form of Decision. The arbitrator may, within the time fixed by the rules of the Arbitration Service, grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the Agreement of the parties and consistent with applicable law, provided that the arbitrator shall not make an award of punitive damages unless that award is supported by a reasoned decision that addresses every question of law and fact that a court would be required to address, and further provided that the arbitrator shall not award duplicative damages in respect of a single injury. Notwithstanding any provision contained herein, any award of punitive or

ADD Initials

State of South Carolina
ARBITRATION AGREEMENT

noneconomic damages shall be capped at the statutory amount at which a judgment or jury verdict would be capped had the claim been brought before a court of law. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrator shall deliver a copy to each party personally or by registered mail.

B. Exclusive Process - Result Final. The parties agree that, except to the extent that reconsideration is allowed by the rules and procedures of the Arbitration Service, an arbitration decision shall be the final and unappealable resolution of any controversy within the scope of this Agreement, provided that either party shall be entitled to challenge an arbitration decision upon the limited grounds which are set forth in the rules and procedures of the Arbitration Service. Any decision rendered by the arbitrator may be confirmed in any court of competent jurisdiction.

III. Governing Law, Severability

A. The Healthcare Center's business activities substantially affect, relate to, and involve interstate commerce. For example, the Healthcare Center purchases substantial quantities of goods and services that are produced outside of the state and shipped across state lines to be provided to Patients/Residents of the Healthcare Center. The Healthcare Center participates in federally administered reimbursement programs, including Medicare and Medicaid, in which the Healthcare Center receives reimbursement that is derived from out of state sources for items and services provided to its Patients/Residents. As such, this Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16), as opposed to state arbitration law, notwithstanding any provision of state law or any other understanding or agreement between the parties. The parties specifically exclude the application of South Carolina's Uniform Arbitration Act.

B. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

C. The provisions of this Agreement shall remain in effect after any other agreements between the parties have been terminated.

IV. Patient/Resident's Understanding of Agreement

The Patient/Resident or the Patient/Resident's Representative, has read this Agreement in its entirety, and understands the language in which it is written. If this Agreement has been read, on behalf of the Patient/Resident by the Patient/Resident's Representative, the Patient/Resident's Representative has explained to the Patient/Resident, to the extent of the Patient/Resident's capability to understand such

 Initials

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explanation, the nature of this Agreement and its essential terms. The Patient/Resident understands that:

- A. The Patient/Resident has the right to seek legal counsel concerning this Agreement;
- B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center; and
- C. This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature. If not revoked within thirty (30) days, this Agreement shall remain in effect for all care and services rendered at the Healthcare Center, even if such care and services are rendered following the Patient/Resident's discharge and readmission to the Healthcare Center.

THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE SIGNING. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH ARBITRATION.

BULA M DAVIS

Print: Name of Patient/Resident

UniHealth PAC Rock Hill

Print: Name of Healthcare Center

Signature of Patient/Resident

Signature of Healthcare Center's Authorized Agent

Signature of Patient/Resident Representative

LEORA JACKSON

Print: Name and Title of Healthcare Center's
Authorized Agent

ANDREW DAVIS

Print: Name of Patient/Resident Representative and indicate capacity of representative (e.g., guardian, attorney-in-fact, agent under Durable Power of Attorney for Healthcare, spouse, son, daughter, etc.).

NOTE: In signing this Agreement, Patient/Resident Representative binds both Patient/Resident and Patient/Resident Representative individually.

ADVANCE DIRECTIVES CHECKLIST

Healthcare Center: UniHealth PAC Rock Hill

Patient/Resident Name: EULA M DAVIS

Please read the following (3) statements and initial each: (If the patient/resident is unable to comprehend the information, the person admitting the patient/resident will initial and receive the information.)

1. I have been given written materials on my rights to accept or refuse medical and surgical treatments and my rights to formulate advance directives.	<u>APD</u> Initials
2. I understand that I am not required to have an advance directive in order to receive medical treatment at this healthcare center.	<u>APD</u> Initials
3. I understand that the terms of any advance directive that I have executed will be followed by the staff and physicians of this healthcare center to the extent permitted by law.	<u>APD</u> Initials

Please check one of the following statements:

- ☐ I have executed an advance directive and will provide a copy to the healthcare center. I understand that the staff and physicians of this healthcare center will not be able to follow the terms of my advance directive until I provide a copy of it to the staff.
- ☒ I have not executed an advance directive, and do not wish to discuss advance directives further at this time.
- ☐ I have not executed an advance directive but would like to obtain additional information about advance directives. Information was provided. _____ Initials
- ☐ Patient/resident is unable to comprehend what advance directives are, but this was explained to the family as part of our community education effort.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

[Signature]
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

The following advance directives or DNR orders have been executed and are complete:

[] Living Will; [] DPAHC; [] DNR Order; [] Organ Donation; [] Body Donation

MEDICARE AND MEDICAID INFORMATION FORM

Patient/Resident's Name: DAVIS EULA M
(Last) (First) (Middle Initial)

Date of Birth: [REDACTED] Sex: Male; X Female

Admit Date: 1-11-11 Social Security #: [REDACTED]

Diagnosis: UTI, HTN

Medicare Number: [REDACTED] Medicaid Number: _____

Other Insurance: _____

Subscriber's Name: _____

Policy Number: _____ Relation to Subscriber: _____

ASSIGNMENT OF BENEFITS:

I request that payment of authorized Medicare, Medicaid or any insurance benefits for which I am entitled to be paid on my behalf directly to UniHealth PAC Rock Hill (healthcare center) for any services furnished to me by the healthcare center. I authorize any holder of medical or other information about me to release to the Center for Medicare and Medicaid Services and its agents any information needed to determine these benefits for related services.

PATIENT/RESIDENT/REPRESENTATIVE:

BULM DAY 3 _____
Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS
Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LESLIE JACKSON
Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill
Legal Name of Healthcare Center

Date _____

CHARGES FOR ITEMS & SERVICES

Not Covered in Basic Daily Rate

Patient/Resident Name: EULA M DAVIS

The Guest Services Guide provides more information on the services covered and not covered in the basic daily rate. OTHER ITEMS PROVIDED by the healthcare center that are NOT INCLUDED IN THE BASIC RATE for the patient/resident's current pay source are as follows (charges are subject to change upon thirty (30) days written notice):

Indicate Patient/Resident's Current Pay Source (Medicare/Medicaid/Private Pay):

Medicare/Medicaid

Item or Service	Charge	(if requested, indicate by initials)
Private Room	\$ PER month	
	\$ PER	
	\$ PER	
	\$ PER	
	\$ PER	
	\$ PER	

Please sign the appropriate paragraph below:

I, the above named patient/resident, acknowledge receipt of the above information and if I have requested an item or service by initialing it in the last column, I agree to pay for these items or services in accordance with the payment of items set forth in the Admission Agreement. I make this agreement voluntarily. I understand that this agreement is not a condition of my admission, expedited admission, or continued stay in the healthcare center.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

Effective Date: 01/11/2011

This notice describes how medical information about you may be used and disclosed
and how you can get access to this information.

PLEASE REVIEW IT CAREFULLY.

If you have any questions about this notice, please contact UniHealth PAC Rock Hill
at (803)366-7133 (Healthcare Center Phone Number).

WHO WILL FOLLOW THIS NOTICE.

This notice describes our healthcare center/agency's practices and that of:

- ▶ All departments and units of the healthcare center/agency.
- ▶ Any member of a volunteer group we allow to help you while you are in the healthcare center/agency.
- ▶ All partners, staff and other healthcare center/agency personnel.

OUR PLEDGE REGARDING YOUR HEALTH INFORMATION

We understand that information about you and your health is personal. We are committed to protecting your health information. We create a record of the care and services you receive at the healthcare center/agency, as well as records regarding payment for those services. We need these records to provide you with quality care and to comply with certain legal requirements. This notice applies to all of the records of your care generated by the healthcare center/agency, whether made by healthcare center/agency personnel or your personal doctor. Your personal doctor may have different policies or notices regarding the doctor's use and disclosure of your medical information created in the doctor's office or clinic.

This notice will tell you about the ways in which we may use and disclose medical information about you. We also describe your rights and certain obligations we have regarding the use and disclosure of medical information.

We are required by law to:

- Make sure that medical information that identifies you is kept private.
- Give you this notice of our legal duties and privacy practices with respect to medical information about you.
- Follow the terms of the notice that is currently in effect.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

HOW WE MAY USE AND DISCLOSE HEALTH INFORMATION ABOUT YOU

The following categories describe different ways that we use and disclose health information. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

- ▶ **For Treatment.** We may use health information about you to provide you with medical treatment or services. We may disclose medical information about you to doctors, nurses, technicians, medical students, or other healthcare center/agency personnel who are involved in taking care of you at the healthcare center/agency. For example, a doctor treating you for a broken leg may need to know if you have diabetes because diabetes may slow the healing process. In addition, the doctor may need to tell the dietitian if you have diabetes so that we can arrange for appropriate meals. Different departments of the healthcare center/agency also may share medical information about you in order to coordinate the different things you need, such as prescriptions and lab work.
- ▶ **For Payment.** We may use and disclose health information about you so that the treatment and services you receive at the healthcare center/agency may be billed, and that payment may be collected from you, an insurance company or another third party. For example, we may need to give your health plan information about services that you received at the healthcare center/agency so your health plan will pay us or reimburse you for the services. We may also tell your health plan about a treatment you are going to receive to obtain prior approval or to determine whether your plan will cover the treatment.
- ▶ **For Health Care Operations.** We may use and disclose medical information about you for health care operations. These uses and disclosures are necessary to run the center/ agency and to make sure that all patients/residents receive quality care. For example, we may use medical information to review our treatment and services and to evaluate the performance of our staff in caring for you. We may also combine medical information about many healthcare center/agency patients/residents to decide what additional services the healthcare center/agency should offer, what services are not needed, and whether certain new treatments are effective. We may also disclose information to doctors, nurses, therapists, consultants, technicians, medical students, and other healthcare center/agency personnel for review and learning purposes. We may also combine the medical information we have with medical information from other centers/agencies to compare how we are doing and see where we can make improvements in the care and services we offer. We may remove information that identifies you from this set of medical information so others may use it to study health care and health care delivery without learning who the specific patients/residents are.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- Treatment Alternatives. We may use and disclose medical information to tell you about or recommend possible treatment options or alternatives that may be of interest to you.
- Health-Related Benefits and Services. We may use and disclose medical information to tell you about health-related benefits or services that may be of interest to you.
- Name Placement. We may place your name on the door to your room, on your meal tray, and on pieces of equipment that you might use, including a wheelchair. This aids our staff in identifying your items in order to provide you the best possible care. Further, this practice will assist you in locating your room and equipment.
- Individuals Involved in Your Care or Payment for Your Care. Unless you object, we may release medical information about you to a friend or family member who is involved in your medical care. We may also give information to someone who helps pay for your care. We may also tell your family or friends of your condition. In addition, we may disclose medical information about you to an entity assisting in a disaster relief effort.
- As Required By Law. We will disclose medical information about you when required to do so by federal, state or local law.
- To Avert a Serious Threat to Health or Safety. We may use and disclose medical information about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.
- To Those Involved in Your Care. We may disclose medical information about you to people who may be involved in your care, such as your family members, close personal friends and, if applicable, a private sitter. If, at any time you do not want such people involved in your care, you may instruct us not to make any disclosures to them.
- 1. Private Sitters. If you hire a private sitter, we will disclose medical information about you to aid your sitter in caring for you. There may be private sitters working for other patients/residents of the healthcare center/agency. These sitters may hear incidental information about you.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

SPECIAL SITUATIONS

- ▷ **Organ and Tissue Donation.** If you are an organ donor, we may release medical information to organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.
- ▷ **Military and Veterans.** If you are a member of the armed forces, we may release medical information about you as required by military command authorities. We may also release medical information about foreign military personnel to the appropriate foreign military authority.
- ▷ **Workers' Compensation.** If applicable, we may release medical information about you for workers' compensation or similar programs. These programs provide benefits for work-related injuries or illness.
- ▷ **Public Health Risks.** We may disclose medical information about you for public health activities. These activities generally include the following:
- To prevent or control disease, injury or disability.
 - To report deaths.
 - To report reactions to medications or problems with products.
 - To notify people of recalls of products they may be using.
 - To notify a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition.
 - To notify the appropriate government authority if we believe you have been the victim of abuse, neglect or domestic violence. We will only make this disclosure if you agree or when required or authorized by law.
- ▷ **Health Oversight Activities.** We may disclose medical information to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections, and licensure. These activities are necessary for the government to monitor the health care system, government programs, and compliance with applicable civil rights laws.
- ▷ **Lawsuits and Disputes.** If you are involved in a lawsuit or a dispute, we may disclose medical information about you in response to a court or administrative order. We may also disclose medical information about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if we receive satisfactory assurances that the party seeking the information has made efforts to tell you about the request or to obtain an order protecting the information requested.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▶ **Law Enforcement.** We may release medical information if asked to do so by a law enforcement official:
- In response to a court order, subpoena (after we attempt to notify you), warrant, summons or similar process.
 - To identify or locate a suspect, fugitive, material witness, or missing person.
 - About the victim of a crime if, under certain limited circumstances, we are unable to obtain your agreement.
 - About a death we believe may be the result of criminal conduct.
 - About criminal conduct at our offices.
 - In emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime.
- ▶ **Coroners, Medical Examiners and Funeral Directors.** We may release medical information to a coroner or medical examiner. This may be necessary, for example, to identify a deceased person or determine the cause of death. We may also release medical information about patients/residents of the healthcare center/agency to funeral directors as necessary to carry out their duties.
- ▶ **National Security and Intelligence Activities.** We may release medical information about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.
- ▶ **Protective Services for the President and Others.** We may disclose medical information about you to authorized federal officials so they may provide protection to the President, other authorized persons or foreign heads of state or conduct special investigations.

YOUR RIGHTS REGARDING MEDICAL INFORMATION ABOUT YOU

You have the following rights regarding medical information we maintain about you:

- ▶ **Right to Inspect and Copy.** You or your legal representative has the right to inspect and copy medical information that may be used to make decisions about your care. Usually, this includes medical and billing records, but does not include psychotherapy notes. We must provide you with access to your records within 24 hours of your request, not including weekends or holidays. We must provide you with a copy of your records within two (2) working days following your request.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

To inspect and copy medical information that may be used to make decisions about you, submit your request orally or in writing to TOM MARKUSZKA. If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

We may deny your request to inspect and copy in certain very limited circumstances. If you are denied access to medical information, you may request that the denial be reviewed if the denial is made for certain reasons. Another licensed health care professional chosen by the healthcare center/agency will review your request and the denial. The person conducting the review will not be the person who denied your request. We will comply with the outcome of the review.

- **Right to Amend.** If you feel that medical information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the healthcare center/agency.

To request an amendment, your request must be made in writing and submitted to TOM MARKUSZKA. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment.
- Is not part of the medical information kept by or for the healthcare center/agency.
- Is not part of the information which you would be permitted to inspect and copy.
- Is accurate and complete.

- **Right to an Accounting of Disclosures.** You have the right to request an "accounting of disclosures." This is a list of certain disclosures we made of medical information about you.

To request this list or accounting of disclosures, you must submit your request in writing to TOM MARKUSZKA. Your request must state a time period which may not be longer than six years and may not include dates before April 14, 2003. Your request should indicate in what form you want the list (for example, on paper, electronically). The first list you request within a 12-month period will be free. For additional lists, we may charge you for the costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▷ **Right to Request Restrictions.** You have the right to request a restriction or limitation on the medical information we use or disclose about you for treatment, payment or health care operations purposes. You may also request a limit on the medical information we disclose about you to someone who is involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not use or disclose information to your daughter, or that we not use your information in any quality assurance activities.

We are not required to agree to your request. If we do agree, we will comply with your request unless the information is needed to provide you emergency treatment.

To request restrictions, you must make your request in writing to TOM MARKUSZKA. In your request, you must tell us (1) what information you want to limit; (2) whether you want to limit our use, disclosure or both; and (3) to whom you want the limits to apply, for example, disclosures to your spouse.

- ▷ **Right to Request Confidential Communications.** You have the right to request that we communicate with you about medical matters in a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to TOM MARKUSZKA. We will not ask you the reason for your request. We will accommodate reasonable requests. Your request must specify how or where you wish to be contacted.

- ▷ **Right to a Paper Copy of This Notice.** You have the right to a paper copy of this notice. You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.

CHANGES TO THIS NOTICE

- ▷ We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for medical information we already have about you as well as any information we receive in the future. We will post a copy of the current notice in the healthcare center/agency. The notice will contain on the first page, in the top right-hand corner, the effective date.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the healthcare center/agency or with the Secretary of the Department of Health and Human Services. To file a complaint with the agency, contact UniHealth PAC Rock Hill
at (803)366-7133

All complaints must be submitted in writing. A complaint may be filed with the Secretary of the Department of Health and Human Services at:

Secretary
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Telephone: 202-619-0257
Toll Free: 1-877-696-6775

You will not be penalized in any way for filing a complaint.

OTHER USES OF MEDICAL INFORMATION

Other uses and disclosures of medical information not covered by this notice or the laws that apply to us will be made only with your written permission. If you provide us permission to use or disclose medical information about you, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose medical information about you for the reasons covered by your written authorization. You understand that we are unable to take back any disclosures we have already made with your permission, and that we are required to retain our records of the care that we provided to you.

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE
OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION**

Patient/Resident Name: EULA M DAVISPatient/Resident Social Security Number: [REDACTED]

I understand that UniHealth PAC Rock Hill (healthcare center/agency name) is part of a corporation which may share my health information for treatment, billing and healthcare operations. I have been given a copy of the organization's Notice of Privacy Practices that describes how my health information is used and shared. I understand that the corporation has the right to change this notice at any time. I may obtain a current copy by contacting this healthcare center/agency at (803)366-7133 (healthcare center/agency telephone number) or by contacting the Corporate Privacy Officer by calling 1-800-222-0321.

For Healthcare Center/Agency Use Only:

If unable to obtain written acknowledgment, please document reason and good faith efforts below:

My signature below constitutes my acknowledgment that I have been provided with a copy of the Notice of Privacy Practices.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center/Agency Representative's Name

Healthcare Center/Agency Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center/Agency

Date

**ACKNOWLEDGMENT OF RECEIPT
OF PARTNERSHIP IN CARING PACKET**

Patient/Resident: EULA M DAVIS

I acknowledge receipt of the Partnership in Caring Packet provided to me either prior to or upon admission. I understand that if I have any questions regarding its content, especially as it relates to me or the above named patient/resident, I may bring those questions to staff members or the attending physician. I understand that the information contained in the packet is for general educational purposes and should not be taken as medical advice or replace the advice or recommendations of a medical professional. I understand that nothing contained in this packet is intended to guarantee satisfaction or particular results.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11

Date

CONTINUUM OF CARE INTEGRATION PATIENT/RESIDENT PROVIDER CHOICE LETTER

Dear Patient/Resident or Representative:

One of the most important choices you can make is selecting a quality healthcare provider for you or your loved one. We believe the burden for this responsibility can be lifted by having a family of providers that communicate and work together to promote efficient delivery of quality care - and such a family is available right here in your community!

This healthcare center/agency is a separate entity, yet affiliated with UHS-Pruitt Corporation, and therefore is part of a growing network of healthcare providers and resources. Our organization has worked to build community-centered, integrated healthcare delivery systems that promote choice, quality and efficiency. Among our related party providers are:

- ❖ Skilled nursing centers
- ❖ Assisted living centers
- ❖ Long-term pharmacies
- ❖ Home care and home health agencies
- ❖ Nutritional program specialists
- ❖ Clinical consultants
- ❖ Retail pharmacies
- ❖ In-home and inpatient hospice agencies
- ❖ Medical supply services
- ❖ Adult day care centers
- ❖ Rehabilitation therapists
- ❖ Commercial insurance care managers
- ❖ Community care program providers
- ❖ Home infusion therapy services

Our related party providers collaborate to evaluate patient/resident need and develop clinical pathways to optimize care delivery in the least restrictive environment. The result is that patients/residents can access multiple types of providers, easily change providers as healthcare needs change, and benefit from the continuity of care that occurs when affiliated providers work together.

This healthcare center/agency appreciates the trust you have already committed by choosing us to deliver healthcare services to you or your loved one. Your physician or healthcare professional has now ordered/recommended that you receive additional or continued services that *this* center/agency staff cannot provide, but which *can* be provided by another provider affiliated with UHS-Pruitt Corporation. It would be our pleasure to make such a referral and assist you in the transition.

While you generally have the right to choose a healthcare provider, in some instances, your choice may be limited to those providers who contract with other providers. For example, skilled nursing centers affiliated with UHS-Pruitt Corporation contract exclusively with related-party hospice providers and long term care pharmacies; thus your right to choose those providers is exercised when the skilled nursing center is selected for admission. These exclusive contracts promote the same continuity and quality of care already discussed and are supported by regulatory authorities.

If you need more information before making this decision, please let us know, and we will be happy to assist you if possible. Because we are unfamiliar with the policies and procedures of

**CONTINUUM OF CARE INTEGRATION
PATIENT/RESIDENT PROVIDER CHOICE LETTER**

non-related providers, including whether they service your area or are qualified to meet your care needs, we cannot make any recommendations concerning them. We also recommend that you verify coverage for any alternative provider with your insurance company. We are happy to verify your insurance coverage for the providers in the UHS-Pruitt Corporation family.

Please make your selection regarding related party providers below. On behalf of our related party providers, we thank you for your continued trust and look forward to serving your healthcare needs in the future.

Sincerely,

Administrator

Patient/Resident or Representative -- Please check one of the following:

I understand that I have a choice in selecting a healthcare provider. I have been counseled about and understand the distinction between related party and non-related party providers, and have had the opportunity to seek answers to my questions. Accordingly, I have made the following informed decision:

☒ I choose to use a related party provider in the UHS-Pruitt Corporation family of providers.

☐ I choose NOT to use a related party provider in the UHS-Pruitt Corporation family of providers.

Patient/Resident Signature: _____

Date: _____

Representative Signature: Andrew P. Downing

Date: 1-11-11

Representative's Relationship to Patient/Resident: _____

EXTENDED SIGNATURE AUTHORIZATION

(Statement to permit payment of Medicare benefits to supplier, physician or patient/resident)

Patient/Resident Name: EULA M DAVISHealthcare Center Name: UniHealth PAC Rock Hill

I request that payment of authorized Medicare/Medicaid benefits be made either to me or on my behalf to:

- ☒ United Nutritional/United Medical Services
- ☒ I have received CMS Medicare DMEPOS Supplier Standards
- ☒ United Rehabilitation
- ☒ United Pharmacy Services
- ☒ United Hospice
- ☒ Physician
- ☐ Other (specify) _____

for any services furnished to me by the supplier indicated above. I authorize any holder of medical information about me to release to the Center for Medicare and Medicaid Services and its agents any information needed to determine these benefits payable for related services.

I request that payment of Medicaid, other insurance, or HMO benefits be made on my behalf to the supplier listed above for any services furnished to me by that supplier. I authorize any holder of hospital or medication information about me to release to Medicaid, other insurance HMO or their agents any information needed to determine these benefits or the benefits payable for related services.

This authorization is in effect until I choose to revoke it. I understand that if I am a patient/resident of a healthcare center, this authorization will be in effect for a period of my stay.

PATIENT/RESIDENT/REPRESENTATIVE:EULA M DAVIS

Print Patient/Resident's Name

Resident/Patient's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

**ACKNOWLEDGMENT OF RECEIPT OF
PATIENT/RESIDENT FEDERAL & STATE RIGHTS**

Patient/Resident Name: EULA M DAVIS

This healthcare center admits patients/residents and provides services without regard to race, color, religion, sex, national origin, handicap condition or age.

I acknowledge receipt of the Patient/Resident Federal & State Rights. I have been informed of these rights either prior to or upon admission.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

LEORA JACKSON

Print Healthcare Center Representative's Name

Patient/Resident's Signature

Leora Jackson
Healthcare Center Representative's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Andrew P. Davis
Patient/Resident Representative's Signature

1-11-11
Date

OMBUDSMAN ACKNOWLEDGMENT:

I acknowledge receipt of information on the Long Term Care Ombudsman Program for this state.

Andrew P. Davis
Patient/Resident/Representative's Signature

1-11-11
Date

*(Give original to patient/resident and photocopy this page
for patient/resident's file at healthcare center)*

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: UniHealth PAC Rock HillPatient/Resident: EULA M DAVIS

It has been explained to me by the staff of the above named healthcare center/agency, and I fully understand that:

(a) I may select the physician of my choice, provided that such physician has been given, or obtains, staff privileges at the healthcare center/agency. I understand and acknowledge that the exercise of the right to choose an attending physician does not mean that the physician must or will serve in that capacity. The healthcare center/agency will have the right, after informing me, to seek alternative physician participation to assure the provision of appropriate and adequate care and treatment. There are times when the attending physician is not available to the patient/resident. On these occasions, the attending physician will ask another physician to attend to the patient/resident during his/her absence. I fully understand this arrangement and I do consent to being treated by the stand-by physician during the absence of my regular physician.

(b) I may select the pharmacy or pharmacist of my choice for those pharmaceutical supplies and services not provided by the healthcare center as part of the basic daily rate, provided that the pharmacy or pharmacist packages medications in accordance with the healthcare center/agency's packaging system and meets the requirements of a long term care pharmacy provider under the Medicare Modernization Act.

(c) I understand that I may enroll in a Medicare prescription drug benefit plan or choose to change my existing drug benefit plan on admission to the healthcare center/agency. I understand that enrollment in a drug plan may require payment to the plan sponsor for the benefit.

The following indicate my choices:

1. Attending Physician JAMES JEWELL
Address & Phone Number: 1147 EBENEZER ROAD ROCK HILL, SC 29732 (803)329-6648
2. Pharmacy UNITED PHARMACY

I ☐ do wish to enroll in a Medicare Prescription Drug Benefit plan
I ☒ do not wish to enroll in a Medicare Prescription Drug Benefit plan.
I ☐ wish to change my enrollment in the Medicare Prescription Drug Benefit to

3. Consent to photograph. The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check the statement below that reflects your wishes:

I ☒ do consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.
I ☐ do not consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: UniHealth PAC Rock Hill

Patient/Resident: EULA M DAVIS

4. Consent regarding correspondence. The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check all the statements below that reflect your wishes:

- ☐ I request that the Administrator or designee assist in the opening and/or reading of my personal mail.
- ☐ I request that the Administrator or designee assist in opening financially related mail addressed to me such as checks, medical bills or statements, Medicare and Medicaid correspondence.
- ☒ I do not give consent for any staff of the healthcare center to open my mail. All such mail shall be given directly to me or my responsible party, unopened.

5. Laundry. (See Guest Services Guide) Each personal item of clothing must be marked with a laundry marker. Out of season clothing should be removed from patient/resident's room by family.

Check your preference on the laundering of personal laundry:

- ☒ done by the healthcare center
- ☐ done by family*

*If laundry is done by family, a closed and labeled container that is fire retardant must be provided.

6. Other Specified Charges.

☒ Beauty/Barber Shop _____

☐ TV/Cable _____

☐ Telephone _____

☐ Other: _____

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

K. Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

[Signature]
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

ACKNOWLEDGMENT OF TRANSFER/LIFT PROGRAM

This program has been implemented in an effort to provide a safe and healthy environment for individuals in our care and for those that provide their care.

The **TOTAL MECHANICAL LIFT** will be used for individuals who cannot bear weight on their legs and can only offer minimal assistance with their transfers/lifts.

The **SIT OR STAND MECHANICAL LIFT** will be used for individuals who can bear weight on their legs and can offer assistance with their transfers/lifts.

A lift will not be used for individuals who can assist greater than 50% with their transfers/lifts in order to continue to promote their highest level of functioning.

I have received a full explanation of the Transfer/Lift Program, and if requested, I can receive additional information.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

[Signature]
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

ANNUAL INFLUENZA (FLU) VACCINE CONSENT / REFUSAL

It is the policy of UniHealth PAC Rock Hill (healthcare center) that an annual Influenza (Flu) Vaccine be given to each patient/resident who resides in this healthcare center unless contraindicated by the physician or refused by the patient/resident or family, and depending on the availability of the vaccine.

Permission to receive the vaccine will be obtained on admission and will remain in place unless revoked by the physician, patient/resident or family. A one-time standing order for the vaccine will be obtained from the physician upon admission to the healthcare center. The order will remain valid and appear each October on the Physician Order sheet unless discontinued by the physician.

CONSENT

☐ I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the flu vaccine each year, depending on the availability of the vaccine.

REFUSAL

☒ I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do not wish to receive the flu vaccine yearly.

10/2010

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

*Side effects, benefits and risks of the Influenza Vaccine are attached and may be copied and distributed to patients/residents and family members.

PATIENT/RESIDENT OR AUTHORIZED PERSON ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM

UniHealth PAC Rock Hill (healthcare center name), in accordance with new federal and state laws, has a very stringent program regarding the use of physical and chemical restraints on patients/residents. Our philosophy of providing patients/residents with the highest possible quality of care and life is reflective of our belief that it is essential for our patients/residents to maintain their dignity and independence by being permitted to take "the normal risks of everyday life". Restraints used in an attempt to remove these normal risks of living violate the rights of patients/residents, greatly reduces their quality of life, and presents significant physical and psychological risks. For these reasons, it is the philosophy of this healthcare center to promote a restraint free environment, as designated in the Restraint Reduction Program.

In accordance with federal and state laws, restraint use in our healthcare center will only be considered to treat a medical symptom/condition that endangers the physical safety of the patient/resident or other patients/residents and under the following conditions: 1) as a last resort measure after a trial period where restraint free measures have been undertaken and proven unsuccessful; 2) with a physician order; 3) with the consent of the patient/resident; 4) when the benefits of the restraint outweigh the identified risks. If restraint use is deemed necessary, the goal will be to use the least restrictive type of restraint for the shortest period of time possible, with a structured plan for time out of the restraint and for restraint elimination.

Every patient/resident at this healthcare center will be individually assessed upon admission regarding the need for appropriate safety measures and will be periodically reassessed as their needs change throughout their stay at our healthcare center. The Restraint Reduction Committee will collaborate to promote a restraint free environment.

By virtue of my signature, I state that I have received, read, and had an opportunity to discuss any questions I have had concerning this restraint policy. Additionally, I state that I clearly understand and agree with this program.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

Rev: 5/07

3.05



1C.05

AGREEMENT OF FINANCIAL RESPONSIBILITY

Patient/Resident: Name: EULA M DAVIS
Healthcare Center: UniHealth PAC Rock Hill Admission Date: _____
Medicare Prescription Drug Benefit Plan: _____
Commercial Insurance Plan: _____
Medicaid #: _____ Medicare A/B #: _____
(Attach photocopy, front and back, of Medicare card, PDP plan card, insurance card)

Legal Representative: Name: _____
Address: _____
City, State, Zip: _____
Phone: (Home) _____ (Work) _____ (Cell) _____
☐ General POA ☐ DPOAHC ☐ Guardian of Person ☐ Guardian of Property/Conservator

Responsible Party: Name: ANDREW DAVIS
Address: 111 Thompson Avenue Rd
City, State, Zip: York, SC 29745
Phone: (Home) 803-626-5946 (Work) _____ (Cell) _____
Relationship to Patient: Son

United Pharmacy Services agrees to provide medications ordered by the patient's physician in accordance with the following terms:

1. All eligible charges for medications will be billed to the Medicare Prescription Drug Plan (PDP), the commercial insurance plan listed above or to Medicaid if applicable. It is the responsibility of the patient/resident, legal representative or responsible party to notify the healthcare center and pharmacy business office of any change in prescription drug coverage.
2. The patient/resident, legal representative or responsible party shall pay any outstanding pharmacy charges after payment by the PDP, commercial insurance plan or Medicaid. Payment is expected for purchases not payable by the third party insurance source. "Outstanding pharmacy charges" shall not include covered items, allowance for contractual adjustments or similar amounts otherwise not collectible in accordance with state or federal regulations or contract terms.
3. Billing will be made on a monthly basis. Payment is expected in full upon receipt of the pharmacy statement. In order for the account to remain active, the account must remain current. Unpaid past due bills will incur a monthly late charge of 1.5%. Should collection efforts become necessary, collection fees, including any attorney's fees, will be included in the principal amount due. Delinquent accounts are subject to termination.
4. Healthcare center staff may authorize purchases on this account on behalf of the named patient/resident.

I certify that I have read the agreement as outlined above and hereby accept the terms and conditions.

Signature of Patient/Resident

Date

Witness

Signature of Legal Representative

Date

Witness

Signature of Responsible Party

Date

Witness

White - Pharmacy Copy

Yellow - Center Copy

Pink - Patient/Resident Copy

MEDICARE COVERAGE DETERMINATION

Patient/Resident Name: EULA M DAVISHealthcare Center Name: UniHealth PAC Rock HillDate of Admission: 1-11-11

Qualifies for Medicare Part A benefits for skilled services related to:

Estimated coverage: 3 day hospital stay
14 full days; 80 co-pay; 94 total days.Does not qualify for Medicare Part A benefits because:

_____Do you agree with this determination?
_____If no, do you want a Demand Billing? If you would like to request a Demand Billing,
please see the form entitled "Request for Medicare Intermediary Review".

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

BED HOLDS

It is our policy to allow any patient/resident who is transferred or discharged from the healthcare center to be re-admitted, in accordance with applicable regulations, including determining that there are no medical care issues that the medical staff believes the healthcare center will be unable to treat.

Two notices related to the healthcare center's bed hold policy will be issued. The first notice of bed hold policies is given during this admission, which is well in advance of any transfer. The second notice, which specifies the duration of the bed hold policy, will be issued at the time of any transfer. In cases of emergency transfer, notice "at the time of transfer" means that the family and/or undersigned parties, not to include the healthcare center, is provided with written notification within 24 hours of the transfer. The requirement is met if the patient/resident's copy of the notice is sent with other papers accompanying the patient/resident to the hospital.

The following is a breakout by payment source of how the bed hold policy works. Any patient/resident may have primary or secondary payer sources, so please inquire with the business office if you have a question about payer source at the time of transfer or which payer source is applicable to a particular transfer.

I. MEDICAID

Any patient/resident who has made application or is approved by the Department of Health and Human Services, shall be considered a Medicaid patient/resident.

A. HOSPITAL STAY:

Medicaid will pay for ten (10) days, minus any patient/resident portion amount. After the 10th day, the patient/resident, family or hospital must decide if the bed will be held by paying privately at the posted daily rate. This must be arranged, however, prior to the patient/resident leaving the hospital, and the patient/resident will be responsible for payment of the posted basic daily rate currently in effect.

B. THERAPEUTIC LEAVE:

The Medicaid program will provide payment during the patient/resident's leave of absence for a total of eighteen (18) days in any fiscal year (July through June). Each leave of absence is not to exceed more than ninety (9) consecutive days. The attending physician must document in the plan of care that such visits are therapeutic in nature. If therapeutic leave exceeds nine (9) consecutive days Medicaid benefit will cease and will need to be reapplied for through the Department of Health and Human Services.

Hospital stays or therapeutic leaves beyond the time for which Medicaid will make payment: Arrangements may be made for holding a bed for a patient/resident for days exceeding the established limit. This must be arranged, however, prior to leaving, and the patient/resident will be responsible for payment of the bed hold charges in the amount which Medicaid would have paid.

BED HOLDS

If the bed is held, then the patient/resident can return at any time of discharge from the hospital. Alternatively, if the patient/resident's hospitalization or therapeutic leave exceeds the number of days indicated above and the bed is not held, then the patient/resident has the right to return to the center in the next available bed if:

- The patient/resident requires the services provided by the healthcare center.
- The patient/resident is eligible for Medicaid healthcare center services.

II. MEDICARE

Medicare does not pay for holding a bed. Check with the Business Office if you need help determining whether a secondary payer source is effective.

III. PRIVATE PAY

A vacant bed will be held for the patient/resident while the patient/resident is in the hospital or on a therapeutic leave, if the patient/resident, responsible party, or legal representative notifies the healthcare center in writing of the desire to reserve a bed and pays the posted basic daily rate in effect at the time of the patient/resident's absence from the healthcare center. If the patient/resident chooses not to reserve the bed through payment, he/she will be re-admitted to the healthcare center in accordance with applicable regulations, provided that the patient/resident requires the services provided by the healthcare center.

IV. VETERANS ADMINISTRATION

No bed holds are paid under V.A. contracts. Check with the Business Office if you need help determining whether a secondary payer source is effective.

PATIENT/RESIDENT/REPRESENTATIVE:EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's SignatureANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's SignatureLEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's SignatureUniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

PATIENT/RESIDENT INFORMATION AND FINANCIAL PROFILE

Patient/Resident Name: EULA M DAVIS
 (First) (Middle) (Last)
 Healthcare Center Name: UniHealth PAC Rock Hill Date of Admission: 1-11-11
 (Mo/Day/Year)
 Home Address: 13 Turner Ave.
York SC 29745
 (City) (State) (Zip)
 Home Phone (area code): 803-684-4192 Marital Status: S; M; ☒ W; D
 Soc. Sec. No: [REDACTED] Yrs. at Current Address: Rent/Own:
 Name of Landlord/Mortgager:

Monthly Rental/Mortgage Payment: \$
 If renting, have you ever owned a home? Y; N
 If yes, approximate date of sale: Do you plan to keep your rental unit? Y; N
 Patient/Resident type: Private; Medicaid; Medicare; VA contact
 Other:

Are you currently covered under SSI Medicaid? Y; N
 Do you plan to apply for Medicaid? Y; N
 Have you ever used Medicaid before? Y; N Uncertain

Estimated length of stay: Less than 30 days
 Between 30-180 days
 Long term

Name of last healthcare center in which you resided: Agape Senior

Address:

Dates of Stay: 12/9-12/14

Do you want the healthcare center to become representative payee? Y; ☒ N

SOURCES OF INCOME:			
Social Security: \$	Veteran's Benefits \$	Railroad Retirement: \$	SSI: \$
Private Pension: \$	Government Pension: \$	Other: \$	Other: \$
Description of "Other" income: 			

PATIENT/RESIDENT INFORMATION AND FINANCIAL PROFILE

Patient/Resident Name: EULA M DAVIS
 (First) (Middle) (Last)

Assets:			
Cash on Hand: \$	Cash in Bank: \$	Cash in Savings: \$	Value of Stocks: \$
Value of Bonds: \$	Paid-up Life Ins.: \$	Paid up Burial Ins.: \$	Other: \$
Description of "Other" Assets:			

Have you transferred, given away, or sold assets in the last 36 months? Y; N

Description of Asset	Estimated Value	To Whom
	\$	
	\$	
	\$	
	\$	
	\$	

I hereby certify that the information I have given is true and correct, and I agree to pay my account according to the terms and conditions referred to.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

EULA MAE DAVIS

2507

01/16/07

Date of birth: [REDACTED]

Rock Hill

Level 99215

S: The patient is a 91-year-old woman who comes in accompanied by her son and daughter. The son usually accompanies her and is more involved with her on a regular basis. The daughter comes in today whom I saw in the office as a patient many years ago. She is a bit frustrated with how her mother is doing as she will not eat and she believes there must be some medical solution to this. Reviewed carefully with her what we have done over the past years, what the medicines she is on are for, and the options available for helping someone to eat. So far she has not been benefitted by Remeron, which helps both depression and stimulates appetite and Elder tonic. She has not been tried on Menace yet but I think this is a reasonable thing to do but it is expensive and increases the risk of clotting but she is on Coumadin so that should not be a significant problem. Unfortunately, I am pessimistic as to whether this will be helpful. The patients advancing age and declining activity level portends a progressive decline that is not going to be able to be prevented. She continues to have decreased hearing and watches our discussion with a sort of bemused detachment aware that we are talking about her fully in her hearing but demonstrating no particular interest in what is being said.

PAST MEDICAL HISTORY: As described on previous note.

REVIEW OF SYSTEMS: Otherwise negative.

FAMILY HISTORY: Negative for early disease.

SOCIAL HISTORY: She does not smoke or drink alcohol.

ALLERGIES: NKDA

CURRENT MEDICATIONS: List per chart.

O: Physical exam per chart.

Continued

Exhibit 2

ROA-115

Medical Associates of RH records 0057

EULA MAE DAVIS

2507

01/16/07

Date of birth: [REDACTED]

Rock Hill

Page 2

- A:**
1. Fatigue. The patient is progressively losing weight, is weaker, needs assistance to stand from a sitting position and walks with her walker. Interestingly, her mood has improved significantly over the past months. She used to be much more uneasy, anxious and easily agitated but is much calmer and seems much more content than she used to be.
 2. Weight loss without obvious primary cause.
 3. Organic brain syndrome.
 4. Decreased hearing.
 5. Chronic renal failure.
 6. Anemia.
 7. Peripheral neuropathy.
 8. Ataxia.
 9. Atherosclerotic heart disease.
 10. Thyroid cancer, post left lobe resection with no evidence of recurrence.
 11. Atrial fibrillation, on Coumadin.
 12. Diabetes mellitus.
 13. Sick sinus syndrome with permanent pacemaker.
 14. COPD.
 15. Past cholecystectomy.
 16. Past kidney stones.
 17. Lumbosacral disc disease.
 18. Scoliosis.
- P:**
1. Stop Glucophage as this could be inhibiting appetite.
 2. Start Menace 20 mg each morning x 2 weeks, then increase to 20 mg b.i.d.
 3. CMP, BNP, iron, TIBC, amylase, CBC, ProTime, sed rate and B12 level.
 4. Next step may be trial of Aricept, although she does not have significant signs of dementia.
 5. Recheck in 6 weeks.

Clifford K. Netzer, M.D./teg/172568

DT: 01/22/07

EULA MAE DAVIS

2507

05/02/07

Date of birth: [REDACTED]

Rock Hill

Level 99215

S: The patient is a 91-year-old woman who comes in for evaluation following being involved in a rather serious automobile accident several days ago. She was riding in the passenger side of the car, wearing her seat belt, when that side of the car was broad sided. Her sister was driving. Neither was hurt severely at the time. I do not believe it required for her to go to the emergency room but I am not completely certain about this fact. The airbags were not deployed, which is probably very fortunate because I am afraid she would have been injured more by those with the side impact and her fragile musculoskeletal condition. She does have an obvious bruise on her right arm where she was hit by the door. Apparently she was very fortunate that the primary impact was on the right front wheel as opposed to being a couple of feet further back where it would have hit directly where she was sitting. This would have been a very significant problem and she would have had a very difficult time recovering from any significant fracture problems.

PAST MEDICAL HISTORY:

1. Decreased hearing.
2. Mild cognitive defect, which is very minimally progressive at a slower rate than is typical for an Alzheimer's-type disease, suggesting possible small stroke origin.
3. Osteoarthritis.
4. Kyphotic emphysematous changes.
5. Diabetes mellitus.
6. Hypertension.
7. High cholesterol.
8. Gradual weight loss with poor appetite.
9. Chronic venous stasis edema.
10. Atherosclerotic heart disease, followed at Charlotte Cardiology.
11. Atrial fibrillation.
12. Sick sinus syndrome with permanent pacemaker.
13. Peripheral neuropathy.
14. Progressive ataxia.
15. Kidney stones.
16. Diverticulosis.
17. Lumbosacral disc disease.
18. Post cholecystectomy.
19. Kyphoscoliotic.
20. Chronic iron-deficiency anemia.
21. Thyroid cancer, which was follicular in the past.

REVIEW OF SYSTEMS: Otherwise negative.

Continued

Exhibit 3

EULA MAE DAVIS

2507

05/02/07

Date of birth: [REDACTED]

Rock Hill

Page 2

FAMILY HISTORY: Positive for diabetes, hypertension and heart disease.

SOCIAL HISTORY: She does not smoke or drink alcohol.

ALLERGIES: NKDA

CURRENT MEDICATIONS: List per chart.

O: Physical exam per chart.

- A:**
1. Motor vehicle accident with significant diffuse traumatic myositis with mild low back, upper back, trapezius, arm and leg jarring and muscle inflammation.
 2. Traumatic right arm hematoma.
 3. Venous stasis edema, left worse than right.
 4. Osteoarthritis.
 5. COPD with kyphoscoliosis.
 6. Atherosclerotic heart disease.
 7. Atrial fibrillation.
 8. Sick sinus syndrome with permanent pacemaker.
 9. Organic brain syndrome, clinically suggestive of multiple small stroke syndrome.
 10. Diabetes mellitus.
 11. Hypertension.
 12. Type 2b hyperlipidemia.

- P:**
1. CMP, iron, TIBC, CBC and CPK.
 2. Increase Lasix from 40 mg. 1½ tablets daily to 2 tablets each morning.
 3. Laboratory studies will confirm whether low potassium is contributing to the ineffectiveness but I suspect that pain from the automobile accident is causing a stress reaction in the body and excessive fluid retention but also mild dehydration, decrease in oral intake and inactivity is resulting in a combination of decreased renal blood flow and increased peripheral edema, which are certainly contradictory but the patient has a very fragile cardiovascular situation.
 4. Recheck in 4 weeks.

Clifford K. Netzler, M.D./teg/194040 DT: 05/09/07

MEDICAL ASSOCIATES OF ROCK HILL
Clifford Netzler

2450 India Hook Road, Suite B
Rock Hill, SC 29732

Telephone (803) 328-0181
Fax (803) 328-0553

Patient Name: DAVIS, EULA
DOB: [REDACTED]
IDX MRN: 224761
CHART: 2507

Date of Service: 11/2/2009

OFFICE VISIT

215

The patient is a 93-year-old woman who comes in accompanied by her daughter complaining of shortness of breath, chest tightness or a variant of chest pain. The patient appears in no distress. She does have mild dementia and even though when asked how she is feeling, she says "fine," even though it is always difficult to know exactly what she is answering because of her marked decrease in hearing, and then moments later will look at her daughter and state "I feel short of breath," even though she does not appear in any distress. She has been unsteady and dizzy but walks up and down the hall in the office without significant difficulty, although with minimal assistance. The patient has a history of atrial fibrillation on Coumadin, venous stasis edema, congestive heart failure, recent onset diabetes mellitus, bladder dysfunction, iron-deficiency anemia, peripheral neuropathy, ataxia, deconditioning myopathy, dementia and recent head trauma with post concussion syndrome over the last several weeks.

REVIEW OF SYSTEMS:

Otherwise negative.

SOCIAL HISTORY:

She does not smoke.

ALLERGIES:

No known allergies.

FAMILY HISTORY:

Negative for early disease.

PAST MEDICAL HISTORY:

Otherwise negative.

PHYSICAL EXAM:

Per chart.

ASSESSMENT:

1. Atypical chest pain clinically of musculoskeletal origin related to her shortness of breath, which is of unclear etiology. She has no evidence of congestive heart failure. No worsening edema. No significant wheezing and I suspect it is due to hyperventilation from anxiety triggered by irregular heart rhythm or dizziness of inner ear origin.
2. Near syncope due to vasovagal stimulation.
3. Right ear wax impaction.
4. Vasomotor rhinitis with congestion.
5. Decreased hearing.
6. Atrial fibrillation on Coumadin.
7. Venous stasis edema which is mild.
8. Congestive heart failure clinically, well compensated.
9. Diabetes mellitus of new onset.

MEDICAL ASSOCIATES OF ROCK HILL
Clifford Netzler

2450 India Hook Road, Suite B
Rock Hill, SC 29732

Telephone (803) 328-0181
Fax (803) 328-0553

Patient Name: DAVIS, EULA

DOB: [REDACTED]

IDX MRN: 224761

CHART: 2507

Date of Service: 11/2/2009

ASSESSMENT (continued):

10. Dementia.
11. Postconcussion syndrome which appears to be improving.
12. Iron-deficiency anemia.

PLAN:

1. CMP, BNP, CBC, D-dimer, hemoglobin A1c.
2. Cerumen lavage.
3. EKG shows no acute changes.
4. O2 sat is 98%.
5. Reassurance to the patient, but especially to the daughter.
6. Recheck in 4 weeks.

Clifford Netzler

CN/sm

DD: 11/8/2009 4:41:10 PM

DT: 11/10/2009 7:45:12 AM

[REDACTED]

MEDICAL ASSOCIATES OF ROCK HILL
Clifford Netzler, MD

2450 India Hook Road, Suite B
Rock Hill, SC 29732

Telephone (803) 328-0181
Fax (803) 328-0553

Patient Name: DAVIS, EULA
DOB: [REDACTED]
IDX MRN: 224761
CHART: 2507

Date of Service: 6/23/2010
Level of Service:

OFFICE VISIT

215

The patient is a 94-year-old woman who comes in accompanied by her son. She comes in complaining of dramatic development of left foot edema, which is tender on palpation and when she walks, making walking even more difficult than it has been. The pain is primarily medial just on the medial surface on the side of the foot proximal to the 1st MTP joint. She has had a prothrombin time done recently through cardiology, which was "good". Her weight is down 4 pounds despite the increase in edema, suggesting that she has lost even more weight than the 4 pounds would suggest. She has a history of chronic venostasis edema, left worse than right, but the left is significantly worse than what it has been with the tender, red area as noted. She has chronic degenerative medical problems related to chronic renal failure, recurring gout, asthma, diabetes mellitus, progressive weight loss, sick sinus syndrome, permanent pacemaker, atrial fibrillation, on Coumadin, congestive heart failure, bladder dysfunction, iron deficiency anemia, and mild dementia, which is affected by associated decreased hearing.

PAST MEDICAL HISTORY:

Otherwise, negative.

FAMILY HISTORY:

Positive for diabetes, heart disease, and stroke.

SOCIAL HISTORY:

She does not smoke or drink alcohol.

ALLERGIES:

She has no known allergies.

Her son is going to have to go to Arizona to be with his daughter in the next few days, and one of the reasons she was brought in was to make sure everything is doing okay prior to his trip out there for a couple of weeks.

PHYSICAL EXAMINATION:

Per chart.

ASSESSMENT:

1. Venostasis edema, left worse than right.
2. Left foot superficial thrombophlebitis due to trauma and bruising.
3. Gout.
4. Chronic renal failure.
5. Asthma.
6. Diabetes mellitus.
7. Dementia.
8. Peripheral neuropathy.
9. Ataxia with autonomic neuropathy.
10. Atherosclerotic heart disease.
11. Congestive heart failure.
12. Atrial fibrillation, on Coumadin.

MEDICAL ASSOCIATES OF ROCK HILL
Clifford Netzler, MD

2450 India Hook Road, Suite B
Rock Hill, SC 29732

Telephone (803) 328-0181
Fax (803) 328-0553

Patient Name: DAVIS, EULA

DOB: [REDACTED]

IDX MRN: 224761

CHART: 2507

Date of Service: 6/23/2010

Level of Service:

ASSESSMENT (Continued):

13. Sick sinus syndrome with permanent pacemaker.
14. Decreased hearing.
15. Thyroid cancer, post resection.

PLAN:

1. CMP, BNP, CBC, hemoglobin A1c, iron TIBC, TSH.
2. Kenalog 40 mg IM.
3. Elevate foot when sitting but maintain physical activity with shoes that do not press on the bruised area.
4. Recheck in 2 months but will call with results of labs and make any adjustments that they would suggest need to be made. Otherwise, I think she is in stable medical condition.

Clifford Netzler, MD

CN/ljc

DD: 6/26/2010 3:47:45 PM

DT: 6/28/2010 10:07:12 AM

[REDACTED]

MEDICAL ASSOCIATES OF ROCK HILL
Clifford Netzler, MD

2450 India Hook Road, Suite B
Rock Hill, SC 29732

Telephone (803) 328-0181
Fax (803) 328-0553

Patient Name: DAVIS, EULA

DOB: [REDACTED]

IDX MRN: 224761

CHART: 2507

Date of Service: 11/15/2010

Level of Service:

OFFICE VISIT

SUBJECTIVE:

The patient is a 94-year-old woman who comes in accompanied by her son. She has a progressive multiple small stroke dementia syndrome, which is a typical in that she has not had significant deterioration in her alertness or memory, but has continued a gradual slow decline related to deconditioning as well as progressive decline in hearing and flattened affect. She is falling more often. Her deconditioning myopathy and mild osteoarthritis all are contributing to this occurring despite the best efforts of the patient and her son. He is taking excellent care of her and wants to keep her home as long as possible and this is certainly an excellent plan.

REVIEW OF SYSTEMS:

Otherwise negative.

SOCIAL HISTORY:

She does not smoke.

ALLERGIES:

No known allergies.

PHYSICAL EXAM:

Per the chart.

ASSESSMENT:

1. Fatigue.
2. Weight loss.
3. Venostasis edema.
4. Familial tremor.
5. Peripheral neuropathy.
6. Organic brain syndrome with a mild stable dementia syndrome consistent with multiple small strokes.
7. Congestive heart failure, clinically well compensated.
8. Diabetes mellitus.

PLAN:

1. CMP, lipid panel, vitamin B-12, CBC, hemoglobin A1c, iron TIBC, and TSH.
2. Maintain physical activity as much as possible, but with being as careful as is also possible to help prevent falls. I reviewed with the son that she could fall even if she were in an assisted living center as people are not going to be with her every moment of the day and the data shows that people fall less and break their hips when they are up walking than when they are confined to a wheelchair. Lab recheck in 4 months.

Clifford Netzler, MD
CN/gnp

DD: 11/20/2010 8:20:27 AM DT: 11/21/2010 11:31:29 AM 24-5736088

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
ACCT #: E71976013

BIRTHDATE: [REDACTED]
ADM/SVC DATE: 12/23/10
DISCHARGE DATE:

CONSULTATION

PRIMARY CARDIOLOGIST: Sushil Singhi, M.D.

REASON FOR CONSULTATION: A-Fib, RVR.

PROBLEM LIST:

1. Chronic atrial fibrillation.
2. Hypertension.
3. Dementia.
4. History of ataxia with frequent falls.
5. History of intracranial hemorrhage.
6. Pneumonia.
7. Urinary tract infection.
8. Advanced age.

HISTORY OF PRESENT ILLNESS: A 95-year-old African-American female was admitted with hypertension, abdominal pain. We have been asked to see for A-Fib with RVR. The patient has a history of chronic A-Fib and is not a Coumadin candidate secondary to history of intracranial hemorrhage and frequent falling. She was recently seen here and admitted with intracranial hemorrhage. She was discharged on aspirin alone into rehab. She was also discharged on rate controlling medicines of diltiazem 240 mg daily, atenolol 50 mg daily. The patient currently at the present time is sedated, so history is obtained mostly from the chart. There are no family members available.

CURRENT MEDICATIONS: At this hospitalization currently is on Imodium 2 mg p.r.n., Zosyn, Levaquin, Haldol p.r.n., sliding scale insulin, Protonix 40 mg daily, Lantus 10 units at bedtime, Remeron 7.5 mg at bedtime, Feosol 325 mg b.i.d., Tiazac 240 mg daily, atenolol 25 mg daily, Zylprim 100 mg daily.

ALLERGIES: DIPHENHYDRAMINE.

PAST SURGICAL HISTORY: Thyroidectomy, cholecystectomy. She has a permanent pacemaker.

SOCIAL HISTORY: Negative.

FAMILY HISTORY: Unremarkable.

REVIEW OF SYSTEMS: The patient does not respond to review of systems.

PHYSICAL EXAMINATION:

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Vasant Patel MD

CONSULTATION

Page 1 of 2

Exhibit 5

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

VITAL SIGNS: BP 108/85, pulse is 100.

GENERAL: Elderly African-American female. She is in no acute distress.

NEUROLOGIC: She is arouseable to somewhat painful stimuli, but does not spontaneously open the eyes and does not spontaneously engage in verbal conversation.

CARDIOVASCULAR: She has irregular rate and rhythm.

LUNGS: Clear.

ABDOMEN: Soft, nondistended.

EXTREMITIES: No edema or cyanosis.

LABORATORY DATA: Hemoglobin is 10.2, potassium 3.7, creatinine is 1. EKG: A-Fib, RVR.
Chest x-ray is negative.

ASSESSMENT AND PLAN: Atrial fibrillation, rapid ventricular response. Patient presents with atrial fibrillation with rapid ventricular response, but has borderline blood pressure. The patient is on rate controlling medicines of Tiazac, atenolol. At this point, the best option would be to digitalize patient. We will start digoxin. Also, we will check 2D echocardiogram since she is not on anticoagulation and has history of chronic atrial fibrillation and there is not one on the chart. We will continue to follow along with you.

Thank you for allowing us to participate in the care of this patient.

Dictated by: RICHARD BOULWARE, PA

TR:RB/F

DD:12/30/2010 11:59 EST

DT:12/30/2010 12:39 EST

Dictation ID: 2554049/Confirmation #: 1132979

Copies to:

Patel,Vasant MD

Singhi,Sushil MD, FACC, FACP

<<Signature on File>>

Vasant Patel MD

Electronically Signed by: Vasant Patel MD 12/30/10 1709

PATIENT NAME: DAVIS,EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Vasant Patel MD

CONSULTATION

Page 2 of 2

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
ACCT #: E71976013

BIRTHDATE: [REDACTED]
ADM/SVC DATE: 12/23/10
DISCHARGE DATE:

HISTORY AND PHYSICAL

CHIEF COMPLAINT: Transferred here for high blood sugar and abdominal pain.

HISTORY OF PRESENT ILLNESS: Patient is a 96-year-old African-American female who recently had a fall on 12/06 and had a hemorrhage. Apparently, patient was on Coumadin for chronic atrial fib. She subsequently stabilized and was discharged to Healthsouth for ongoing rehab. Patient also has history of type 2 diabetes, hypertension, depression and dementia along with mild renal insufficiency, creatinine on last discharge was 1.4. Currently, patient is sedated and not able to give history, most history is from ER records along with family members. She has been having some abdominal pain, decreased appetite. Blood sugar has been running high and the nursing physician sent patient over here for evaluation. Here, she was found to have UTI along with chest x-ray showing increased opacity in the left lung suggestive of pleural effusion. Her x-ray of abdomen also show increased colonic fecal material. Patient apparently had a fall and was here in the ER yesterday for multiple x-ray that was negative for any fracture.

PAST MEDICAL HISTORY: As above, recent fall with intracerebral hemorrhage secondary to fall and Coumadin, known atrial fib and diabetes, gout, dementia, hypertension.

MEDICATIONS: She is on Zytroprim 300 mg p.o. daily, atenolol 25 mg p.o. daily, Os-Cal D 500 mg t.i.d., Cardizem CD 240 mg p.o. daily, ferrous sulfate 325 mg p.o. b.i.d., Remeron 7.5 mg p.o. at bedtime, vitamin D at 1000 units daily, zinc oxide apply to external area buttock, Prandin 1 mg t.i.d. before meals, Skelaxin 400 mg t.i.d. Docusate 100 mg p.o. daily.

SOCIAL HISTORY: Patient was recently transferred to Healthsouth for ongoing rehab.

FAMILY HISTORY: Noncontributory.

PHYSICAL EXAMINATION:

GENERAL: Currently, patient has decreased mental status, but she does open eyes and follow minimal commands.

VITAL SIGNS: Blood pressure 126/59, pulse 83, respiratory rate 16, temperature 97.1.

HEENT: Patient's face is significant for periorbital ecchymosis from previous fall. Mouth is dry.

CHEST: Clear to auscultation.

CARDIOVASCULAR: Regular rate and rhythm, I/VI systolic murmur.

ABDOMEN: Mildly distended with decreased bowel sounds.

EXTREMITIES: No edema. On her left leg on the medial thighs, she does have ecchymosis about a palm sized.

LABORATORY DATA: So far, X-ray of the abdomen show diffuse colonic material left, increased

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: 2AMS 258-A
PHYSICIAN: Mary T LeBliss MD

HISTORY & PHYSICAL

Page 1 of 2

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

opacity brain, nothing acute, no change from 12/17. WBC of 15, hemoglobin 9.9, platelets 121. Chemistry: Sodium 135, potassium 5.1, creatinine 1.3, BUN 51, AST 52, ALT 44. First set of enzymes for CPK and troponin is negative. Acetone is negative. Urine is 120 wbc's with positive nitrite.

ASSESSMENT AND PLAN:

1. Change in mental status.
2. Urinary tract infection, possibly urosepsis, IV antibiotics, hydration.
3. Hyperosmolar nonketotic state. Plan to control blood sugar with insulin, blood sugar is up because of the infection.
4. Continue with hypertension medication and atrial fibrillation with knee SCDs for deep venous thrombosis prophylaxis since patient has recent bleed.
5. We will discuss code status with family at some point. Further intervention would be depending on her clinical course.

Dictated by: MARY LEBLISS, MD

TR:ML/IF
DD:12/23/2010 17:23 EST
DT:12/23/2010 18:20 EST
Dictation ID: 2510950/Confirmation #: 1113997

Copies to:
LeBliss, Mary T MD

<<Signature on File>>

Mary T LeBliss MD
Electronically Signed by: Mary T LeBliss MD 12/23/10 1911

PATIENT NAME: DAVIS, EULA K
MEDICAL REC#: M000002822
LOCATION: 2AHS 258-A
PHYSICIAN: Mary T LeBliss MD

HISTORY & PHYSICAL

Page 2 of 2

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
ACCT #: E71978013

BIRTHDATE: [REDACTED]
ADM/SVC DATE: 12/23/10
DISCHARGE DATE: 01/11/11

DISCHARGE SUMMARY

DISCHARGE DIAGNOSES:

1. Change in mental status with baseline dementia.
2. Pneumonia. Patient has finished the antibiotics course and does not need any further antibiotics
3. Urinary tract infection treated.
4. Atrial fibrillation, currently rate controlled. Patient was seen by cardiology who adjusted her medications
5. Atrial fibrillation, not a Coumadin candidate since patient suffered intracranial hemorrhage when she was on Coumadin recently.
6. Diabetes but diet-controlled. Sometimes it flares up because of steroid, currently patient will be off steroids Accu-Cheks q. week and monitored.
7. Dementia with agitation at night. It does help if her family is around and encouraged her to eat.
8. Gout, recent flare-up. Pain is controlled, will be restarted on allopurinol.
9. Hyperosmolar nonketotic state because of infection currently is controlled.
10. Past medical history of status post fall on 12/06 with intracerebral hemorrhage. Patient was on Coumadin for chronic atrial fib, which was taken off.
11. Renal insufficiency, creatinine is about 1.4, last creatinine is 0.9.
12. Sundowning with confusion and agitation, more so at night

DISCHARGE MEDICATIONS: At this time, patient is to continue with her allopurinol 100 mg p.o. daily. For atrial fibrillation, she is going to be on Tiazac ER 120 mg p.o. daily, Lopressor 50 mg p.o. b.i.d. For her gout, she is to be on Indocin 25 mg p.o. t.i.d. p.r.n., colchicine 0.6 mg p.o. daily, Remeron 7.5 mg p.o. at bedtime.

DISCHARGE INSTRUCTIONS: Patient eats ADA pureed diet, 1800 calories, Accu-Cheks q. week

CONSULTANTS: Patient was seen by cardiology. Patient was seen by OT, speech, physical therapy.

HOSPITAL COURSE: Ms Davis is a 95-year-old African-American female who presented on 12/23 with hyperosmolar nonketotic state, change in mental status and UTI. Patient has a complicated history of atrial fib. She was on Coumadin until 12/06 where she had a fall and had an intracerebral hemorrhage. She subsequently stabilized and was discharged to Healthsouth. She came back with UTI. She was also found to have hyperosmolar nonketotic state. Chest x-ray showed pneumonia. She also had constipation and early ileus. She was started on IV antibiotics. She subsequently went into atrial fib with rapid ventricular response requiring transfer to PCU, cardiology was consulted. Her rate was controlled. Her infection was treated. The main issue with her is the sundowning in the hospital and at

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Kary T LeBliss MD

DISCHARGE SUMMARY

Page 1 of 2

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

time because of her dementia, she would refuse to eat and take her medications. She behaves quite differently when her family is around, but at night she would get agitated requiring sedation. At this point, her current medication is recommended to continue as listed above.

She did have gout, which was treated with Solu-Medrol and colchicine. Currently, it is stable and I will place her back on allopurinol. We have tried to avoid Seroquel because of oversedation, but that can be used, Seroquel 12.5-25 mg p.o. at bedtime for agitation.

Patient is accepted at UniHealth and will be discharged today.

Dated by: MARY LEBLISS, MD

TRML/HF

DD:01/11/2011 14:31 EST

DT:01/11/2011 15:14 EST

Citation ID: 2641729/Confirmation #: 1171813

Copies to:

LeBliss, Mary T MD

<<Signature on File>>

Mary T LeBliss MD

Electronically Signed by: Mary T LeBliss MD 01/14/11 0926

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Mary T LeBliss MD

DISCHARGE SUMMARY

Page 2 of 2

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	[REDACTED]
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Acct #:	71976013
Private Phys:	Clifford Netzer MD	ED Phys:	Jeffrey Warden, MD

HISTORY OF PRESENT ILLNESS**Note**

Medication Reconciliation Statement: I have reviewed the list of medications provided and included them in the plan of care. <WAJ 12/23/2010 14:28>

Medical Screening examination has been initiated.

Notes: <WAJ 12/23/10 14:28 >

Medical and surgical history obtained. <WAJ 12/23/10 14:28 >

Social history obtained. <WAJ 12/23/10 14:29 >

Past family history obtained. <WAJ 12/23/10 14:29 >

Vital signs reviewed: Thursday, December 23, 2010 14:28. <WAJ 12/23/10 14:29 >

HPI: 95 yo female with history of HTN, DM, and admission on 12/15/10 for intracerebral hemorrhage, presents to ED from Health South for elevated FSBS, altered mental status, and abdominal distension/pain. Per report symptoms started today. FSBS of 443. Patient, who moans occasionally with palpation of abdomen as well as tactile stimuli to extremities, can provide no additional history. She is oriented to person only. It is unclear what change was noted by nursing staff at rehabilitation center with regards to altered mental status. Looking back at medical records from 12/15/10, patient appears to be at baseline.

ROS: As documented in HPI. All other symptoms are negative.

PE:

GENERAL: well appearing; well nourished; in no apparent distress; non-toxic.

HEAD: normocephalic; atraumatic

EYES: PERRL; EOM intact

ENT: normal nose; no rhinorrhea; mucous membranes moist; pharynx clear

NECK: supple; trachea midline; non-tender

CARDIAC: RRR; S1, S2;

LUNGS: breath sounds clear and equal bilaterally; no appreciable wheezes, rales or rhonchi

ABDOMEN: soft; intermittent moaning/complaining of pain with palpation of abdomen, exam extremely variable; normal bowel sounds, minimal distension

MUSCULOSKELETAL: no appreciable muscle atrophy; no noted clubbing or cyanosis

SKIN: warm and dry; no appreciable rashes

NEURO: patient moves all 4 extremities without difficulty, follows commands intermittently

ENDOCRINE: no appreciable goiter; no exophthalmos

PSYCHIATRY: oriented to person only

LYMPHATIC: no appreciable tonsillar, cervical or auricular lymphadenopathy

95 yo female with abdominal pain, hyperglycemia, reported change in mental status. CT head, acute abdominal series,

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Medical Chart with Audits

Exhibit 6

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	[REDACTED]
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Acct #:	71976013
Private Phys:	Clifford Netzler MD	ED Phys:	Jeffrey Warden, MD

UA, labs ordered. IVF to be given. Disposition pending. <WAJ 12/23/10 14:58 >

ORDERS**Medicine**

IV bolus 0.9% NS 1000 ml wide open < Jeffrey Warden, MD 12/23/2010 14:45>
 Insulin R (Novulin) 8units IV < Jeffrey Warden, MD 12/23/2010 15:59>
 Levaquin (Levofloxacin) 750mg IV < Jeffrey Warden, MD 12/23/2010 16:02>
 Zosyn (piperacillin sodium / tazobactam sodium) 4.5 GM IV < Jeffrey Warden, MD 12/23/2010 16:02>
 Vancomycin (Vancocin) 1gram IV < Jeffrey Warden, MD 12/23/2010 16:02>

Lab

Category: Urine ; Test: ROUTINE URINALYSIS ; Source/queries Cath urine [Reference: 1347787.001] < Jeffrey Warden, MD 12/23/2010 14:29>

Category: Chemistry ; Test: COMPREHENSIVE METABOLIC PANEL [Reference: 1347790.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Chemistry ; Test: LIPASE [Reference: 1347791.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Chemistry ; Test: TROPONIN-I [Reference: 1347792.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Chemistry ; Test: CKMB [Reference: 1347793.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Hematology ; Test: COMPLETE BLOOD COUNT W/DIFF [Reference: 1347794.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Coagulation ; Test: PROTHROMBIN TIME W/ INR [Reference: 1347796.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Coagulation ; Test: PART. THROMBOPLASTIN TIME [Reference: 1347797.001] < Jeffrey Warden, MD 12/23/2010 14:30>

Category: Chemistry ; Test: ACETONE [Reference: 1347817.001] < Jeffrey Warden, MD 12/23/2010 14:34>

Category: Chemistry ; Test: OSMOLALITY, BLOOD [Reference: 1347818.001] < Jeffrey Warden, MD 12/23/2010 14:34>

DIFF [Reference: 1347883.001] < User N. Interface 12/23/2010 14:57>

Category: Microbiology ; Test: BLOOD CULTURE ; Source/queries Venous blood; Qty: 2 [Reference: 1348138.001] < Jeffrey Warden, MD 12/23/2010 16:02>

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Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	██████████
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Acct #:	71976013
Private Phys:	Clifford Netzer MD	ED Phys:	Jeffrey Warden, MD

Radiology

Category: CT ; Exam: HEAD WO CONTRAST ; Clinical diagnosis: Bleeding [Reference: 1347785.001] < Jeffrey Warden, MD 12/23/2010 14:29>

Category: Diagnostic ; Exam: ABD ACUTE w 1V CXR ; Clinical diagnosis: Abdominal pain [Reference: 1347798.001] < Jeffrey Warden, MD 12/23/2010 14:30>

EKG

Category: Cardiology ; Test: ELECTROCARDIOGRAM ; Reason for order: Other < Jeffrey Warden, MD 12/23/2010 16:19>

RESULTS**Lab**

Category: Urine ; Test: ROUTINE URINALYSIS ; Source/queries Cath.urine Jeffrey Warden MD

Result 12/23/2010 16:13 < User N. Interface 12/23/2010 4:13 PM>

Category: Urine ; Test: ROUTINE URINALYSIS ; Source/queries Cath.urine Jeffrey Warden MD					
Result 12/23/2010 16:13 < User N. Interface 12/23/2010 4:13 PM>					
Test	Result	Units	Ref Range	Flags	
ROUTINE URINALYSIS	N				I
URINE TYPE	N	CATH			F
URINE COLOR	N	Yellow	YELLOW		F
URINE APPEARANCE	U	HAZY	CLEAR		F
SPECIFIC GRAVITY, URINE	N	1.017	1.003-1.030		F
URINE LEUKOCYTE	N	3+	NEGATIVE		F
URINE NITRITE	N	POS	NEGATIVE		F
URINE PH	N	5.0	4.5-8.0		F
URINE PROTEIN	U	1+	mg/dL	NEGATIVE	F
URINE GLUCOSE	N	NEG	mg/dL	NEGATIVE	F
URINE KETONES	N	NEG	mg/dL	NEGATIVE	F
URINE UROBILINOGEN	N	NORM	mg/dL	NORMAL	F
URINE BILIRUBIN	N	NEG	mg/dL	NEGATIVE	F
URINE OCCULT BLOOD	H	2+	mg/dL	NEGATIVE	F
URINE WBC	H	110	/HPF	0-5	F
WBC CLUMPS	H	MOD	/HPF	NONE SEEN	F
URINE RBC	H	87	/HPF	0-2	F

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Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	██████████
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Acct #:	71976013
Private Phys:	Clifford Netzler MD	ED Phys:	Jeffrey Warden, MD

URINE SQUAMOUS EPITHELIAL CELL. N <1 /HPF 0-5 F
 URINE BACTERIA N OCC /HPF NONE F
 Reviewed By: Jeffrey Warden, MD 12/23/2010 16:14

Category: Chemistry ; Test: COMPREHENSIVE METABOLIC PANEL Jeffrey Warden MD

Result 12/23/2010 16:02 < User N. Interface 12/23/2010 4:02 PM>

COMPREHENSIVE METABOLIC PANEL					
Test	Unit	Value	Ref Range	Flag	Stat
COMPREHENSIVE METABOLIC PANEL N					
SODIUM	N	135	mmol/L 133-145	F	
POTASSIUM	H	5.1	mmol/L 3.5-5.0	F	
CHLORIDE	H	106	mmol/L 95-105	F	
CARBON DIOXIDE	DL	20	mmol/L 22-32	F	
BUN	DM	51	MG/DL 8-26	F	
GLUCOSE	DM	354	MG/DL 70-105	F	
CREATININE	H	1.3	MG/DL 0.6-1.1	F	
TOTAL PROTEIN	DL	6.0	G/DL 6.5-8.1	F	
ALBUMIN	DL	2.5	G/DL 3.5-4.8	F	
CALCIUM	DL	8.2	MG/DL 8.9-10.3	F	
TOTAL BILIRUBIN	N	0.5	MG/DL 0.3-1.2	F	
ALKALINE PHOSPHATASE	N	74	U/L 39-117	F	
SGOT(ALT)	H	52	U/L 15-41	F	
SGPT(ALT)	N	44	U/L 14-54	F	
ANION GAP	N	9	mmol/L 8.0-16.0	F	
OSMOLALITY, CALCULATED	N	298	mOSM/L 285-325	F	
BUN/CREATININE RATIO	H	39.2	12.0-20.0	F	
AG/RATIO	L	0.71	1.10-2.30	F	

Reviewed By: Jeffrey Warden, MD 12/23/2010 16:02

Result 12/23/2010 15:58 < User N. Interface 12/23/2010 3:58 PM>

COMPREHENSIVE METABOLIC PANEL					
Test	Unit	Value	Ref Range	Flag	Stat
COMPREHENSIVE METABOLIC PANEL N					
SODIUM	N	135	mmol/L 133-145	F	
POTASSIUM	H	5.1	mmol/L 3.5-5.0	F	

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Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	██████████
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Accl #:	71976013
Private Phys:	Clifford Netziar MD	ED Phys:	Jeffrey Warden, MD

<u>CHLORIDE</u>	<u>U</u>	<u>106</u>	<u>mmol/L</u>	<u>95-105</u>	<u>F</u>
<u>CARBON DIOXIDE</u>	<u>DL</u>	<u>20</u>	<u>mmol/L</u>	<u>22-32</u>	<u>F</u>
<u>BUN</u>	<u>DH</u>	<u>51</u>	<u>MG/DL</u>	<u>8-26</u>	<u>F</u>
<u>GLUCOSE</u>	<u>DH</u>	<u>154</u>	<u>MG/DL</u>	<u>70-105</u>	<u>F</u>
<u>CREATININE</u>	<u>H</u>	<u>1.3</u>	<u>MG/DL</u>	<u>0.6-1.1</u>	<u>F</u>
<u>TOTAL PROTEIN</u>	<u>DL</u>	<u>6.0</u>	<u>G/DL</u>	<u>6.5-8.1</u>	<u>F</u>
<u>ALBUMIN</u>	<u>DL</u>	<u>2.5</u>	<u>G/DL</u>	<u>3.5-4.8</u>	<u>F</u>
<u>CALCIUM</u>	<u>DL</u>	<u>8.2</u>	<u>MG/DL</u>	<u>8.9-10.3</u>	<u>F</u>
<u>TOTAL BILIRUBIN</u>	<u>N</u>	<u>0.5</u>	<u>MG/DL</u>	<u>0.1-1.2</u>	<u>F</u>
<u>ALKALINE PHOSPHATASE</u>	<u>N</u>	<u>74</u>	<u>U/L</u>	<u>39-117</u>	<u>F</u>
<u>SGOT(ASAT)</u>	<u>U</u>	<u>52</u>	<u>U/L</u>	<u>15-41</u>	<u>F</u>
<u>SGPT(ALT)</u>	<u>N</u>	<u>44</u>	<u>U/L</u>	<u>14-34</u>	<u>F</u>
<u>ANION GAP</u>	<u>N</u>	<u>9</u>	<u>mmol/L</u>	<u>8-16</u>	<u>F</u>
<u>OSMOLALITY, CALCULATED</u>	<u>N</u>	<u>298</u>	<u>mOsm/L</u>	<u>285-305</u>	<u>F</u>
<u>BUN/CREATININE RATIO</u>	<u>H</u>	<u>39.2</u>		<u>12.0-20.0</u>	<u>F</u>
<u>A/G RATIO</u>	<u>L</u>	<u>0.71</u>		<u>1.10-2.30</u>	<u>F</u>

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:59

Category: Chemistry ; Test: LIPASE Jeffrey Warden MD

Result 12/23/2010 15:19 < User N. Interface 12/23/2010 3:15 PM >

<u>Category: Chemistry ; Test: LIPASE</u>			
<u>Pat:</u>	<u>DAVIS, EULA M</u>	<u>DOB:</u>	<u>██████████</u>
<u>Ref:</u>	<u>██████████</u>	<u>Ref:</u>	<u>██████████</u>

LIPASE N 47 U/L 22-51 F

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:55

Result 12/23/2010 15:19 < User N. Interface 12/23/2010 3:19 PM >

<u>Category: Chemistry ; Test: LIPASE</u>			
<u>Pat:</u>	<u>DAVIS, EULA M</u>	<u>DOB:</u>	<u>██████████</u>
<u>Ref:</u>	<u>██████████</u>	<u>Ref:</u>	<u>██████████</u>

LIPASE N 47 U/L 22-51 F

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Category: Chemistry ; Test: TROPONIN-I Jeffrey Warden MD

Result 12/23/2010 15:47 < User N. Interface 12/23/2010 3:47 PM >

<u>Category: Chemistry ; Test: TROPONIN-I</u>			
<u>Pat:</u>	<u>DAVIS, EULA M</u>	<u>DOB:</u>	<u>██████████</u>
<u>Ref:</u>	<u>██████████</u>	<u>Ref:</u>	<u>██████████</u>

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Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient: DAVIS, EULA M
MR #: 000002822
DOS: 12/23/2010 14:18
Private Phys: Clifford Netzer MD

DOB: [REDACTED]
Age/Gender: 85y F
Acct #: 71976013
ED Phys: Jeffrey Warden, MD

TROPONIN-I N <0.20 NG/ML 0-1.00 F
Reviewed By: Jeffrey Warden, MD 12/23/2010 15:55

Category: Chemistry ; Test: CKMB Jeffrey Warden MD

Result 12/23/2010 16:31 < User N, Interface 12/23/2010 4:31 PM>

Category: Chemistry ; Test: CKMB
Test Name: CKMB NG/ML 0.2-5.1 F
CKMB H 10.80 NG/ML 0.2-5.1 F

Result 12/23/2010 16:31 < User N, Interface 12/23/2010 4:31 PM>

Category: Chemistry ; Test: CKMB
Test Name: CKMB NG/ML 0.2-5.1 F
CKMB H 10.80 NG/ML 0.2-5.1 F

Reviewed By: Jeffrey Warden, MD 12/23/2010 16:56

Category: Hematology ; Test: COMPLETE BLOOD COUNT W/DIFF Jeffrey Warden MD

Result 12/23/2010 16:00 < User N, Interface 12/23/2010 4:00 PM>

Test Name	Ref Range	Units	Status
COMPLETE BLOOD CT W/DIFF	N		I
CORRECTED WBC	N	14.4 K/MM3	F
WHITE BLOOD COUNT	11	15.1 K/MM3	F
RED BLOOD COUNT	L	3.58 M/MM3	F
HEMOGLOBIN	L	9.9 G/DL	F
HEMATOCRIT	L	30.3 %	F
MEAN CELL VOLUME	N	84.7 FL	F
MEAN CELL HEMOGLOBIN	N	27.6 PG	F
MEAN CELL HGB CONC	L	32.6 G/DL	F
RED CELL DIST WIDTH	11	16.7 %	F
PLATELET COUNT AUTO	DL	121 K/MM3	F
MEAN PLATELET VOLUME	N	8.9 FL	F

Reviewed By: Jeffrey Warden, MD 12/23/2010 16:02

Result 12/23/2010 14:54 < User N, Interface 12/23/2010 2:54 PM>

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Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient: DAVIS, EULA M
MR #: 000002822
DOS: 12/23/2010 14:18
Private Phys: Clifford Netzer MD

DOB: [REDACTED]
Age/Gender: 95y F
Acct #: 71976013
ED Phys: Jeffrey Warden, MD

COMPLETE BLOOD COUNT (CBC) - 12/23/2010 14:54					
WHITE BLOOD COUNT	H	15.1	K/MM3	4.8-10.8	F
RED BLOOD COUNT	L	3.58	M/MM3	4.2-5.4	F
HEMOGLOBIN	L	9.9	G/DL	12.0-16.0	F
HEMATOCRIT	L	30.3	%	37.0-47.0	F
MEAN CELL VOLUME	N	84.7	fL	81.0-93.0	F
MEAN CELL HEMOGLOBIN	N	27.6	PG	27.0-31.0	F
MEAN CELL HGB CONC.	L	32.6	G/DL	33.0-37.0	F
RED CELL DIST. WIDTH	H	16.7	%	11.5-14.5	F
PLATELET COUNT AUTO	DL	121	K/MM3	150-400	F
MEAN PLATELET VOLUME	N	8.9	fL	7.4-10.4	F

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Result 12/23/2010 14:54 < User N. Interface 12/23/2010 2:54 PM >

COMPLETE BLOOD COUNT (CBC) - 12/23/2010 15:41					
WHITE BLOOD COUNT	H	15.1	K/MM3	4.8-10.8	F
RED BLOOD COUNT	L	3.58	M/MM3	4.2-5.4	F
HEMOGLOBIN	L	9.9	G/DL	12.0-16.0	F
HEMATOCRIT	L	30.3	%	37.0-47.0	F
MEAN CELL VOLUME	N	84.7	fL	81.0-93.0	F
MEAN CELL HEMOGLOBIN	N	27.6	PG	27.0-31.0	F
MEAN CELL HGB CONC.	L	32.6	G/DL	33.0-37.0	F
RED CELL DIST. WIDTH	H	16.7	%	11.5-14.5	F
PLATELET COUNT AUTO	DL	121	K/MM3	150-400	F
MEAN PLATELET VOLUME	N	8.9	fL	7.4-10.4	F

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Category: Coagulation ; Test: PROTHROMBIN TIME W/ INR Jeffrey Warden MD

Result 12/23/2010 15:41 < User N. Interface 12/23/2010 3:41 PM >

Category: Coagulation ; Test: PROTHROMBIN TIME W/ INR	

Printed By User N. Interface on 12/23/2010 5:28 PM

Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient: DAVIS, EULA M
MR #: 000002822
DOS: 12/23/2010 14:18
Private Phys: Clifford Netzer MD

DOB: [REDACTED]
Age/Gender: 95y F
Acct #: 71976013
ED Phys: Jeffrey Warden, MD

Test	Flag	Value	Units	Ref. Range	Status	Comments
PROTHROMBIN TIME W/INR	N				I	
PT PATIENT	N	12.0	SECS	9.9-13.3	F	
INTERNATIONAL NORM RATIO I		0.9		2.0-3.0	E	

The INR value is recommended for patients who are on long term (greater than six weeks) stable coumadin therapy.

*The recommended INR Reference Range on a "stable" anticoagulated patient is: 2.0-3.0

*The recommended INR Reference Range on patients with mechanical heart valves and those who have thromboembolic events is: 2.5-3.5

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Category: Coagulation ; Test: PART. THROMBOPLASTIN TIME Jeffrey Warden MD

Result 12/23/2010 15:41 < User N. Interface 12/23/2010 3:41 PM >

Category: Coagulation ; Test: PART. THROMBOPLASTIN TIME

PART. THROMBOPLASTIN TIME N
PT PATIENT DL 21.7 SECS 24.3-36.2 E

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Category: Chemistry ; Test: ACETONE Jeffrey Warden MD

Result 12/23/2010 15:15 < User N. Interface 12/23/2010 3:15 PM >

Category: Chemistry ; Test: ACETONE
NEGATIVE

Reviewed By: Jeffrey Warden, MD 12/23/2010 15:45

Category: Chemistry ; Test: OSMOLALITY,BLOOD Jeffrey Warden MD

Result 12/23/2010 17:41 < User N. Interface 12/23/2010 5:41 PM >

Category: Chemistry ; Test: OSMOLALITY,BLOOD

OSMOLALITY,BLOOD H 334 mOSM/L 285-325 I

DIFF

Result 12/23/2010 16:00 < User N. Interface 12/23/2010 4:00 PM >

Printed By User N. Interface on 12/25/2010 5:28 PM

Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient: DAVIS, EULA M
 MR #: 000002822
 DOS: 12/23/2010 14:18
 Private Phys: Clifford Netzer MD

DOB: [REDACTED]
 Age/Gender: 95y F
 Acct #: 71976013
 ED Phys: Jeffrey Warden, MD

DIFFERENTIAL COMMENTS					
Test	Ref	Value	Units	Ref Range	Status
DIFFERENTIAL MANUAL	N				I
SEGMENTED NEUTROPHILS II	N	81	%	42-75	F
BAND	N	3	%	0-3	F
LYMPHOCYTES	N	12	%	20-51	F
MONOCYTES	N	4	%	2-9	F
PLATELET ESTIMATE	N	DEC		ADQ	F
NUCLEATED RBC	H	2	/100WBC	0-0	F

Reviewed By: Jeffrey Warden, MD 12/23/2010 16:02

Category: Microbiology ; Test: BLOOD CULTURE ; Source/queries Venous blood; Qty: 2 Jeffrey Warden MD

Result 12/24/2010 08:19 < User N Interface 12/24/2010 8:19 AM>

Category: Microbiology ; Test: BLOOD CULTURE ; Source/queries Venous blood; Qty:

2Order Comments:

SITE:PERIPHERAL

No growth

Result 12/24/2010 08:19 < User N Interface 12/24/2010 8:19 AM>

Category: Microbiology ; Test: BLOOD CULTURE ; Source/queries Venous blood; Qty:

2Order Comments:

SITE:PERIPHERAL

No growth

Radiology

Category: CT ; Exam: HEAD WO CONTRAST ; Clinical diagnosis: Bleeding Jeffrey Warden MD

Result 12/23/2010 15:24 < User N Interface 12/23/2010 3:24 PM>

Category: CT ; Exam: HEAD WO CONTRAST ; Clinical diagnosis: Bleeding

Piedmont Medical Center
 222 South Herlong Avenue
 Rock Hill, SC 29732

Report Status: Signed

Patient Name: DAVIS, EULA M
 Date of Birth: [REDACTED]

95F

Acct: E71976013
 MR: M000002822

Printed By User N Interface on 12/23/2010 5:28 PM

Medical Chart with Audits

Piedmont Medical Center - Rock Hill, SC 29732

Patient:	DAVIS, EULA M	DOB:	██████████
MR #:	000002822	Age/Gender:	95y F
DOS:	12/23/2010 14:18	Acct #:	71976013
Private Phys:	Clifford Netzler MD	ED Phys:	Jeffrey Warden, MD

Ordering Dr: Warden, Jeffrey D MD

Location: ER

Status: REG ER

Exam Date: 12/23/10
CT / HEAD WO CONTRAST / 1223-0067
Bleeding

report generated by Voice Recognition transcription software

HISTORY: 95-year-old with history of altered mental status

Examination: CT head without contrast. 12/23/2010.

COMPARISON: 12/17/2010

Technique: Multiple transaxial CT images of the brain were performed without the use of contrast material.

FINDINGS: The calvarium is intact and unremarkable in appearance. Visualized portions of the orbits and sinuses and mastoid air cells are unremarkable. The bilateral cerebral hemispheres are atrophic in appearance. Extensive low attenuation changes of the periventricular white matter identified consistent chronic microvascular ischemic change which is unchanged from 12/17/2010. No intracranial hemorrhage, mass, mass effect or midline shift or hydrocephalus identified. The basilar cisterns are intact and unremarkable.

IMPRESSION:

1. No acute intracranial abnormality identified. No change from 12/17/2010

Reported by: Robert Reuter, MD
Signed by: Reuter, Robert MD

Printed By User N. Interface on 12/25/2010 5:28 PM

Medical Chart with Audits

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
ACCT #: E71976013

BIRTHDATE: [REDACTED]
ADM/SVC DATE: 12/23/10
DISCHARGE DATE:

HISTORY AND PHYSICAL

CHIEF COMPLAINT: Transferred here for high blood sugar and abdominal pain.

HISTORY OF PRESENT ILLNESS: Patient is a 96-year-old African-American female who recently had a fall on 12/06 and had a hemorrhage. Apparently, patient was on Coumadin for chronic atrial fib. She subsequently stabilized and was discharged to Healthsouth for ongoing rehab. Patient also has history of type 2 diabetes, hypertension, depression and dementia along with mild renal insufficiency, creatinine on last discharge was 1.4. Currently, patient is sedated and not able to give history, most history is from ER records along with family members. She has been having some abdominal pain, decreased appetite. Blood sugar has been running high and the nursing physician sent patient over here for evaluation. Here, she was found to have UTI along with chest x-ray showing increased opacity in the left lung suggestive of pleural effusion. Her x-ray of abdomen also show increased colonic fecal material. Patient apparently had a fall and was here in the ER yesterday for multiple x-ray that was negative for any fracture.

PAST MEDICAL HISTORY: As above, recent fall with intracerebral hemorrhage secondary to fall and Coumadin, known atrial fib and diabetes, gout, dementia, hypertension.

MEDICATIONS: She is on Zylprim 300 mg p.o. daily, atenolol 25 mg p.o. daily, Os-Cal D 500 mg t.i.d., Cardizem CD 240 mg p.o. daily, ferrous sulfate 325 mg p.o. b.i.d., Remeron 7.5 mg p.o. at bedtime, vitamin D at 1000 units daily, zinc oxide apply to external area buttock, Prandin 1 mg t.i.d. before meals, Skelaxin 400 mg t.i.d. Docusate 100 mg p.o. daily.

SOCIAL HISTORY: Patient was recently transferred to Healthsouth for ongoing rehab.

FAMILY HISTORY: Noncontributory.

PHYSICAL EXAMINATION:

GENERAL: Currently, patient has decreased mental status, but she does open eyes and follow minimal commands.

VITAL SIGNS: Blood pressure 126/59, pulse 83, respiratory rate 16, temperature 97.1.

HEENT: Patient's face is significant for periorbital ecchymosis from previous fall. Mouth is dry.

CHEST: Clear to auscultation.

CARDIOVASCULAR: Regular rate and rhythm, I/V systolic murmur.

ABDOMEN: Mildly distended with decreased bowel sounds.

EXTREMITIES: No edema. On her left leg on the medial thighs, she does have ecchymosis about a palm sized.

LABORATORY DATA: So far, X-ray of the abdomen show diffuse colonic material left, increased

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: 2AMS 258-A
PHYSICIAN: Mary T LeBliss MD

HISTORY & PHYSICAL

Page 1 of 2

Exhibit 7

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

opacity brain, nothing acute, no change from 12/17. WBC of 15, hemoglobin 9.9, platelets 121. Chemistry: Sodium 135, potassium 5.1, creatinine 1.3, BUN 51, AST 52, ALT 44. First set of enzymes for CPK and troponin is negative. Acetone is negative. Urine is 120 wbc's with positive nitrite.

ASSESSMENT AND PLAN:

1. Change in mental status.
2. Urinary tract infection, possibly urosepsis, IV antibiotics, hydration.
3. Hyperosmolar nonketotic state. Plan to control blood sugar with insulin, blood sugar is up because of the infection.
4. Continue with hypertension medication and atrial fibrillation with knee SCDs for deep venous thrombosis prophylaxis since patient has recent bleed.
5. We will discuss code status with family at some point. Further intervention would be depending on her clinical course.

Dictated by: MARY LEBLISS, MD

TR:ML/IF
DD:12/23/2010 17:23 EST
DT:12/23/2010 18:20 EST
Dictation ID: 2510950/Confirmation #: 1113997

Copies to:
LeBliss, Mary T MD

<<Signature on File>>

Mary T LeBliss MD
Electronically Signed by: Mary T LeBliss MD 12/23/10 1911

PATIENT NAME: DAVIS, EULA K
MEDICAL REC#: M000002822
LOCATION: 2AHS 258-A
PHYSICIAN: Mary T LeBliss MD

HISTORY & PHYSICAL

Page 2 of 2

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
ACCT #: E71976013

BIRTHDATE: [REDACTED]
ADM/SVC DATE: 12/23/10
DISCHARGE DATE: 01/11/11

DISCHARGE SUMMARY

DISCHARGE DIAGNOSES:

1. Change in mental status with baseline dementia.
2. Pneumonia. Patient has finished the antibiotics course and does not need any further antibiotics.
3. Urinary tract infection treated.
4. Atrial fibrillation, currently rate controlled. Patient was seen by cardiology who adjusted her medications.
5. Atrial fibrillation, not a Coumadin candidate since patient suffered intracranial hemorrhage when she was on Coumadin recently.
6. Diabetes but diet-controlled. Sometimes it flares up because of steroid, currently patient will be off steroids, Accu-Cheks q. week and monitored.
7. Dementia with agitation at night. It does help if her family is around and encouraged her to eat.
8. Gout, recent flare-up. Pain is controlled, will be restarted on allopurinol.
9. Hyperosmolar nonketotic state because of infection currently is controlled.
10. Past medical history of status post fall on 12/06 with intracerebral hemorrhage. Patient was on Coumadin for chronic atrial fib, which was taken off.
11. Renal insufficiency, creatinine is about 1.4, last creatinine is 0.9.
12. Sundowning with confusion and agitation, more so at night.

DISCHARGE MEDICATIONS: At this time, patient is to continue with her allopurinol 100 mg p.o. daily. For atrial fibrillation, she is going to be on Tiazac ER 120 mg p.o. daily, Lopressor 50 mg p.o. b.i.d. For her gout, she is to be on Indocin 25 mg p.o. t.i.d. p.r.n., colchicine 0.6 mg p.o. daily, Remeron 7.5 mg p.o. at bedtime.

DISCHARGE INSTRUCTIONS: Patient eats ADA pureed diet, 1800 calories, Accu-Cheks q. week.

CONSULTANTS: Patient was seen by cardiology. Patient was seen by OT, speech, physical therapy.

HOSPITAL COURSE: Ms Davis is a 95-year-old African-American female who presented on 12/23 with hyperosmolar nonketotic state, change in mental status and UTI. Patient has a complicated history of atrial fib. She was on Coumadin until 12/06 where she had a fall and had an intracerebral hemorrhage. She subsequently stabilized and was discharged to Healthsouth. She came back with UTI. She was also found to have hyperosmolar nonketotic state. Chest x-ray showed pneumonia. She also had constipation and early ileus. She was started on IV antibiotics. She subsequently went into atrial fib with rapid ventricular response requiring transfer to PCU, cardiology was consulted. Her rate was controlled. Her infection was treated. The main issue with her is the sundowning in the hospital and at

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Mary T LeBliss MD

DISCHARGE SUMMARY

Page 1 of 2

Exhibit 8

PIEDMONT MEDICAL CENTER
222 South Herlong Avenue
Rock Hill, South Carolina 29732
(803)329-1234

time because of her dementia, she would refuse to eat and take her medications. She behaves quite differently when her family is around, but at night she would get agitated requiring sedation. At this point, her current medication is recommended to continue as listed above. She did have gout, which was treated with Solu-Medrol and colchicine. Currently, it is stable and I will place her back on allopurinol. We have tried to avoid Seroquel because of oversedation, but that can be used, Seroquel 12.5-25 mg p.o. at bedtime for agitation.

Patient is accepted at Uni-Health and will be discharged today.

Dictated by: MARY LEBLISS, MD

TRML/HF
DD:01/11/2011 14:31 EST
DT:01/11/2011 15:14 EST
Dictation ID: 2641729/Confirmation #: 1171813

Copies to:
LeBliss, Mary T MD

<<Signature on File>>

Mary T LeBliss MD
Electronically Signed by: Mary T LeBliss MD 01/14/11 0928

PATIENT NAME: DAVIS, EULA M
MEDICAL REC#: M000002822
LOCATION: PCUA 349-A
PHYSICIAN: Mary T LeBliss MD

DISCHARGE SUMMARY

Page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

2013 - CP - 46 - 2930

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS
AND COMPEL ARBITRATION OR
ALTERNATIVELY, TO COMPEL
ARBITRATION AND STAY
PROCEEDINGS**

2013 JAN 11 PM 1:59
CLERK OF COURT
JAN 11 2013

Plaintiff Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, through her attorney, respectfully submits this Memorandum of Law in Opposition to Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings.

FACTS

On January 11, 2011, Plaintiff Mae Ruth Davis Thompson and her brother Andrew Davis accompanied their mother Eula Mae Davis to Uni-Health Rock Hill to admit Eula Davis to the nursing home for rehabilitation care. (Compl. ¶ 20). As the evening progressed, Mr. Davis met with representatives from the home and spent approximately one hour completing a variety of forms associated with the admission process. A. Davis Dep. 72:4-13. Mr. Davis was handed a

stack of documents including a 12-page Admission Agreement and a separate five-page Arbitration Agreement. Mr. Davis did not have a full opportunity to fully read the documents. A. Davis Dep. 69:8-12. Mr. Davis signed the Admission Agreement and the Arbitration Agreement on lines designated for "Patient/Resident Representative." Eula Davis never gave Mr. Davis power-of-attorney to complete these documents. A. Davis Dep. 17:12-13.

The Arbitration Agreement purported to cover "[a]ny and all claims arising out of Ms. Davis' stay at the nursing home. The Agreement also purported to bind Ms. Davis' potential future wrongful death beneficiaries to arbitration even though such beneficiaries did not sign the Agreement and were unascertainable until Ms. Davis' death. Under the Agreement's terms, any legal claim by Ms. Davis could not be tried before a jury and the discovery procedures permitted by the South Carolina Rules of Civil Procedure were curtailed. Specifically, a party would only be permitted to take a deposition at the arbitrator's discretion and under the terms the arbitrator establishes.

Shortly after completing the admission paperwork, Eula Davis was taken to a room at Uni-Health Rock Hill. Plaintiff noticed that the side rail for Ms. Davis' bed was not working properly. (Compl. ¶ 22). A few hours later, Ms. Davis was discovered face down on the floor beside her bed with a neck fracture. (Compl. ¶ 23, 26). Ms. Davis was unresponsive and died hours later. (Compl. ¶ 24-25). Plaintiff filed a Notice of Intent to File Suit on May 7, 2013 and filed a Summons and Complaint on September 17, 2013. Plaintiff's Complaint alleged causes of action for negligence, negligence per se, and negligent misrepresentation¹. Defendants filed the current motion on January 31, 2014.

¹ All of Plaintiff's claims sound in tort. Plaintiff does not allege breaches of contract based on either the Admission Agreement or Arbitration Agreement.

ARGUMENT

I. Federal Arbitration Act (“FAA”) mandatory language only applies where parties have a valid and enforceable arbitration agreement.

Plaintiff does not dispute Defendants’ citation to the mandatory language in the FAA. However, it is important to note that this mandatory language only applies in instances where a valid arbitration agreement has been established. This is evident from the FAA provision quoted in Defendants’ memorandum. (Defs’ Mem. at 3). “The court shall make an order directing the parties to proceed to arbitration” but only “upon being satisfied that the making of the agreement...is not in issue.” 9 U.S.C. § 4. While it is true that the U.S. Supreme Court has held that the FAA “leaves no place for the exercise of discretion,” the Court also cited the FAA’s savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability. Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985); 9 U.S.C. § 2; see also Defs’ Mem. P. 6-7(quoting Byrd).

The South Carolina Supreme Court has noted that “the FAA does not require parties to arbitrate when they have not agreed to do so.” Zabinski v. Bright Acres Assocs., 346 S.C. 580, 591, 553 S.E.2d 110, 116 (2001) (citing Volt Info. Scis. Inc. v. Board of Trs., 489 U.S. 468, 478 (1989)). Defendants’ memorandum recognizes this fact by acknowledging the threshold issue of whether a written agreement to arbitrate exists. Defs’ Mem at 3. Plaintiff does not dispute that the FAA contains mandatory language, but the mandatory language does not require arbitration here since there is no valid arbitration agreement between the parties.

II. There is no valid arbitration agreement between Eula Davis and Defendants.

Plaintiff’s Complaint alleges four causes of action including negligence (wrongful death and survivor actions), negligence per se, and negligent misrepresentation claims. With the exception of the wrongful death claim discussed below, all of the Complaint’s claims related to

duties established and breached during Eula Davis' life and damages sustained during Eula Davis' life. These claims belong to Eula Davis. Mae Ruth Davis Thompson (Eula Davis' personal representative) presents these claims on Eula Davis' behalf. See S.C. Code Ann. § 15-5-90 (stating that claims "survive both to and against the personal or real representative...of a deceased person"). Accordingly, Defendants must show a valid and enforceable arbitration agreement between Eula Davis and Defendants to prevail on their motion. Defendants' motion, memorandum, and attached documents do not meet this burden.

Basic contract law holds that a contract binds only those parties who show an "objective manifestation of...assent at the time the contract was made." Laser Supply & Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). Defendants agree generally applicable contract law applies to the Arbitration Agreement. Defs.' Mem. at 7. Eula Davis clearly did not sign the Arbitration Agreement or personally give any other objective manifestations of assent to the agreement. Defendants contend Eula Davis is bound to the agreement through the signature of Andrew Davis, whom Defendants assert was acting as Eula Davis' agent. Defs.' Mem. at 9. For agency situations, the legal burden is on the party asserting that an agency exists. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996). In this case, Defendants must show that all necessary elements of an agency relationship are "clearly established" by the facts. Id. A party dealing with an agent has a duty to use due care to ascertain the scope of the agent's authority to act. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Ct. App. 1996).

Agency is a "fiduciary relationship which results from the manifestation of consent by one person to another to be subject to the control of the other and to act on his behalf." Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 145, 425 S.E.2d

764, 773 (Ct. App. 1992) (citing Restatement (Second) of Agency § 1 (1958)). An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is “expressly conferred upon the agent by the principal.” Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on “representations made by the principal to the third party and reliance by the third party on those representations.” Young v. S.C. Dep’t of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by third party in reliance on the representation. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448.

South Carolina law clearly states that an agency relationship cannot be established solely by the words and actions of the purported agent. Id. Defendants do not argue Andrew Davis had actual authority to bind Eula Davis to the Arbitration Agreement. Defendants cannot point to any statutory power Andrew Davis had to act for Eula Davis. Andrew Davis was never designated as Eula Davis’ attorney-in-fact for any reason. A. Davis Dep. 17:12-13. Instead, Defendants contend Eula Davis is bound to the Arbitration Agreement by Andrew Davis’ signature because he had signed documents for Eula Davis in the past as part of business transactions with persons who are not parties to the Arbitration Agreement or this lawsuit. Defendants’ argument attempts to establish an apparent agency between Eula Davis and Andrew Davis but does not meet the required elements.

For apparent authority to exist, “[e]ither the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely

to create such belief.” R & G Constr., Inc. v. Lowcountry Reg’l Transp. Auth., 343 S.C. 424; 433, 540 S.E.2d 113, 118 (Ct. App. 2000). Defendants have not identified any conduct by Eula Davis demonstrating that she intended to cause Defendants to believe Andrew Davis was authorized to act for her.² In fact, as Defendants discuss at length in their memorandum, Eula Davis suffered from dementia and decreased mental status. Defs.’ Mem. at 7-8. These conditions rendered her incapable of forming the requisite intent. The deposition testimony to which Defendants refer in their memorandum does not make the showing required to prove apparent agency.

Defendants cite testimony in which both Ruth Davis and Andrew Davis indicate Andrew Davis assisted his mother with financial affairs and would occasionally sign documents for her. These citations do not show any words or acts by Eula Davis directed toward Defendants in which she indicated Andrew Davis had authority to enter contracts on her behalf. While Andrew Davis agreed that his mother was comfortable with his assistance in her financial affairs (A. Davis Dep. 17:19-21), there is no indication that Eula Davis expressed this comfort to Defendants at any time during the process of admitting Ms. Davis to Defendants’ facility. Without proof of representations made by Eula Davis, Defendants cannot prove the required elements for apparent agency stated in Cowburn.

² Accordingly, Defendants’ attempt to create an agency relationship between Eula Davis and Andrew Davis in the Arbitration Agreement is insufficient. In Section I(C), the Agreement states that a signatory lacking power of attorney “represents that he or she is authorized” to sign for the resident. First, this provision was drafted exclusively by Defendants and presented to Andrew Davis as a form contract of adhesion. It is difficult to fathom that Defendants knew or were in a position to state Mr. Davis’ representations. Second, for agency purposes, the alleged agent’s representations are irrelevant. Only Eula Davis could say or do something to create an apparent agency relationship with her son.

III. Plaintiff is not bound to the Arbitration Agreement as a third-party beneficiary.

In addition to their agency argument, Defendants contend Eula Davis' estate is bound to the Arbitration Agreement as a third-party beneficiary. Generally, a contract only binds the parties who objectively manifest assent to its terms and enter the contract as parties. Wogan v. Kunze, 366 S.C. 583, 604, 623 S.E.2d 107, 118 (Ct. App. 2005). As an exception to this rule, a person that contract parties "intended to directly benefit" as indicated by the contract's language, may be a third party beneficiary who acquires benefits and responsibilities in the contract's terms. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).D Defendants argue Eula Davis is bound by "the contract" because her care was the essential purpose of the admission paperwork. Defs.' Mem. at 9-10.

Portions of Defendants' third-party beneficiary argument suggest only one contract was presented at Ms. Davis' admission. However, the Admission Agreement and Arbitration Agreement were two separate contracts. In arguing Ms. Davis was a third-party beneficiary of the Arbitration Agreement, Defendants are required to show how the Arbitration Agreement and not the Admission Agreement benefitted Eula Davis. Defendants make no effort to explain how the essential purpose of the Arbitration Agreement was to provide Ms. Davis nursing home care. It is not clear how the Arbitration Agreement, a document purporting to strip Ms. Davis of her constitutionally protected jury trial right, is either to her benefit or was created for the essential purpose of providing Ms. Davis nursing home services.

Defendants' third-party beneficiary argument has a much more fundamental error. Since Eula Davis did not sign the Arbitration Agreement and Andrew Davis had neither actual nor apparent authority to enter the Agreement on Ms. Davis' behalf, there is no valid and enforceable Agreement. There can be no third-party beneficiary without a valid contract. See Hardaway Concrete Co., Inc. v. Hall Contracting Co., 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App.

2007) (considering a potential third-party beneficiary only after determining the existence of a valid and enforceable contract). Courts from around the country have refused to find nursing home residents and their estates third-party beneficiaries for this very reason. Licata v. GGNSC Malden Dexter LLC, 2 N.E.2d 840, 848 (Mass. 2014) (since “no one with authority to do so signed the arbitration agreement,” there was no valid agreement and could be no third-party beneficiary); GGNSC Omaha Oak Grove, LLC v. Payich, 708 F.3d 1024 (8th Cir. 2013) (finding son lacked legal authority to sign for mother and there was no valid arbitration agreement to which the resident could be a third-party beneficiary); GGNSC Batesville, LLC v. Johnson, 109 So.3d 562, 565 (Miss. 2013) (“For a third-party beneficiary to exist, a valid contract must first exist”); Dickerson v. Longoria, 995 A.2d 721, 742 (Md. 2010) (“Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce”); Adams Cmtv. Care Ctr., LLC v. Reed, 37 So.3d 1155, 1160 (Miss. 2010) (“For a third-party beneficiary to exist, there must first exist a valid contract executed by one with ‘legal capacity’ to enter the contract”).

Andrew Davis was not Eula Davis’ actual agent and Ms. Davis made no representations to Defendants on which an apparent agency relationship could arise. The Arbitration Agreement is not valid and enforceable and there is no arbitration contract to which Ms. Davis could be a third-party beneficiary.

IV. Eula Davis’ heirs did not sign the Arbitration Agreement and are not bound by its terms.

Plaintiff’s first cause of action is a wrongful death claim alleging Defendants’ negligent care of Eula Davis contributed to the injuries causing Ms. Davis’ death. Under South Carolina law, a wrongful death claim is independent of any claim a decedent may have for her injuries. See Crosby v. Glasscock Trucking Co., Inc., 340 S.C. 626, 628, 532 S.E.2d 856, 856 (2000)

(finding South Carolina's wrongful death statute "created a new cause of action" distinct from decedent's claim for pre-death injury): While a wrongful death claim must be pursued by a decedent's personal representative, the claim is for the benefit of a class of beneficiaries including the decedent's spouse, children, parents, or "heirs." S.C. Code Ann. § 15-51-20; Lester v. McFaddon, 415 F.2d 1101, 1103 (4th Cir. 1969). Any recovery from a wrongful death claim is not processed through the decedent's estate but must go "directly to the statutory beneficiaries." Lester, 415 F.2d at 1103. Wrongful death proceeds are disbursed among the beneficiaries according to South Carolina intestacy law. S.C. Code Ann. § 15-51-40.

Plaintiff did not sign an agreement with Defendants and did not do anything else to objectively manifest assent to the Arbitration Agreement's terms. The group that Plaintiff represents, Eula Davis' heirs at law, did not exist until Ms. Davis' death. See Jones v. Leagan, 384 S.C. 1, 16, 681 S.E.2d 6, 14 (Ct. App. 2009) (noting person's heirs are not determined until person's death). The Arbitration Agreement purports to require arbitration for the wrongful death beneficiaries' claims by defining the "Parties" to the Agreement to include any person "entitled to bring a wrongful death claim." However, this provision is unenforceable because it violates fundamental South Carolina law by purporting to bind persons who have no expressed assent to the Agreement's terms.

It does not appear that South Carolina courts have specifically addressed whether an arbitration agreement can bind the people who later become a nursing home resident's wrongful death beneficiaries. The issue was recently addressed in Missouri. In Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (en banc), a prospective nursing home resident's daughter signed an arbitration agreement on the resident's behalf. In language tracking the Agreement in this case, the agreement in Lawrence purported to bind the resident "and all persons whose claim

is derived through or on behalf of” the resident. The court held that the agreement was not binding on the resident’s wrongful death beneficiaries because they were proceeding on the independent tort of wrongful death that was not derivative of any claim the resident would have retained had she survived. Id. at 528-29; see also Bybee v. Abdulla, 189 P.3d 40, 43 (Utah 2003) (“a decedent does not have the power to contract away the wrongful death action of his heirs”)³.

While there is a split among jurisdictions as to whether a wrongful death claim is affected by a decedent’s assent to arbitrate, the difference of opinion is usually based on whether a state views wrongful death claims as independent or derivative causes of action. Ping v. Beverly Enters., Inc., 376 S.W.3d 581, 598 (Ky. 2012). In states where wrongful death is a derivative claim, a decedent’s assent to arbitrate may affect the statutory beneficiaries’ wrongful death claim. Id. However, in states where wrongful death is an independent claim, a decedent cannot waive her statutory beneficiaries’ independent right to a jury trial on their independent wrongful death claim. Id. South Carolina clearly recognizes wrongful death as an independent cause of action. Crosby, 340 S.C. at 628, 532 S.E.2d at 856. Therefore, Plaintiffs’ wrongful death claim, brought for the benefit of Eula Davis’ statutory beneficiaries, may not be compelled to arbitration. A recent circuit court order from Florence County confirms this reasoning. See Coleman v. Mariner Health Care, Inc. et al., Case No. 2010-CP-21-835 (S.C. Com. Pl. March 18, 2011) at 8-9 (attached as **EXHIBIT 1**).

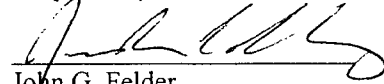
³ Courts from other jurisdictions have reached the same conclusion. Woodall v. Avalon Core Ctr.-Fed. Way, LLC, 231 P.3d 1252, 1258 (Wash. App. Div. 1 2010) (refusing to compel arbitration of wrongful claim because wrongful death claim never belonged to decedent); Peters v. Columbus Steel Castings Co., 873 N.E.2d 1258, 1262 (Ohio 2007) (concluding decedent “could not restrict his beneficiaries to arbitration of their wrongful death claims, because he held no right to those claims”).

Accordingly, even if the Court were to find the Arbitration Agreement binding as to Eula Davis' claims, the Agreement cannot apply to her wrongful death beneficiaries who did not sign the Agreement.

CONCLUSION

Based on the arguments above, Plaintiff respectfully requests that the court deny Defendants' motion in full. Eula Davis did not sign the Arbitration Agreement and Andrew Davis lacked any legal authority to sign on her behalf. In the absence of a valid contract, there can be no third-party beneficiary.

Respectfully submitted,



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Attorney for Plaintiff

March 11, 2014
Columbia, South Carolina

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal Representative of the Estate of M. C. C. P. & G. S. Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlsan a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-835

ORDER DENYING DEFENDANTS
MARINER HEALTH CARE
MANAGEMENT COMPANY,
MARINER HEALTH CENTRAL, INC.,
GRAN CARE SOUTH
CAROLINA, INC., INDIVIDUALLY
AND d/b/a FAITH HEALTH CARE
CENTER, MARINER HEALTH CARE,
INC. f/k/a MARINER POST ACUTE
NETWORK, LLC, MARINER
HEALTH GROUP, INC., MHC
HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN
MOTION TO STAY ACTION AND
COMPEL ARBITRATION
(WRONGFUL DEATH ACTION)

CERTIFIED: A TRUE COPY

Connie Lee Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry and Murray Forman, to stay the action and compel arbitration and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Stay Action and Compel Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at that time no one had a conservatorship and no one had been

appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the June 1, 2006, Arbitration Agreement which these Defendants seek to enforce.

DISCUSSION

1. **The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.**

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendants' own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Ann Coleman did not have that authority. Furthermore, Defendants admit that they are not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendants Answers to Interrogatories—Mariner Interrogatory 24 and Grancare Interrogatory 32).

Defendants rely upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary Brinson. S.C. Code Ann. §44-66-30

notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: ... (6) an adult sibling...of the patient..."

S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendants admit that Ms. Brinson was incompetent by virtue of their responses to Plaintiff's Request to Admit in addition to the fact that the medical director at the Faith Healthcare Center facility certified that Ms. Brinson was unable to consent to or make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendants also rely on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to

healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines 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." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contract waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement." Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendants further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendants argue that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, rely on *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966), and *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is

misplaced. *Heil-Quaker* and *WDI Meredith & Co.* hold that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "Apparent authority is the authority that the principal intended the agent to have or such power that a principal holds his agent as possessing or permits him to exercise." *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendants further rely on *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004) for the proposition that "to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief". As the court also noted in *WDI Meredith*, "an agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief.

The Defendants also rely on *Carraway v. Beverley Enterprises Alabama, Inc.* 978 So. 2d 27 (Aa. 2007). In this Alabama case, the Plaintiff was a brother of a resident of a nursing home

facility who executed a number of documents on his sister's behalf on her admission to the facility, including an arbitration agreement. The brother of the plaintiff did not have a Power of Attorney. Shortly after his sister's admission, a Power of Attorney was executed naming the brother as her attorney-in-fact. The fact that the sister provided a Power of Attorney shortly after her admission indicates that she was indeed competent, unlike the present case with Mary Brinson. Therefore, the sister could have allowed or exhibited the intent for her brother to be held out as her representative unlike Mary Brinson. Furthermore, in *Carraway* the sister in essence ratified the representation by the brother by shortly thereafter naming him as her power of attorney by her own decision. This court finds the reasoning of *Munn* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendants' admission documents, they were aware that Ann Coleman did not have a Power of Attorney. The face sheet from the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. The Defendants are sophisticated individuals and corporations which are accustomed to dealing with arbitration provisions and understand the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendants cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when they had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendants have a form which would allow for the documentation of some form of authority indicates that they knew that there are certain requirements which much be met before an

individual can be imbued with the authority to act as an agent, and further demonstrates that they knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to their facility.

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and to sign away her right to a jury trial by entering into the arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. The Arbitration Agreement is not enforceable against the statutory beneficiaries.

The agreement to arbitrate explicitly specifies that it is "an agreement to arbitrate any dispute that might arise between Mary Brinson ("Resident") and/or _____ ("Legal Representative") and Faith Healthcare ("Facility")...". The agreement clearly allowed for the application of the agreement to extend to a resident's representative and, in this instance, was not so applied. Even if so applied, in the current actions, Ann Coleman has filed both a wrongful death and a survival action. While this court finds independently that Ann Coleman lacked the authority to enter into the contract on behalf of Mary Brinson and is therefore, null and void, this court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the right to statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and

because the statutory beneficiaries have not conveyed any power to the signatory to the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.

The Defendants acted in a manner inconsistent with their own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, the policy states its purpose as intended to "provide an informative environment that should reduce the fears and anxieties of the resident and family during the admissions process" and requires that "the Administrator, through the Admissions Staff, is responsible for ensuring that the facility and the resident follow the established admission policy, as it may apply." Additionally, the policy requires that "the Admission staff will explain and offer an Arbitration Agreement to the resident or responsible party (emphasis added)". On the basis of the Affidavit of Ann Coleman and the admission of the Defendants that the Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it can not be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing

to a claim. Claims that have been made on behalf of Ann Coleman and the other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid portions of the claims along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Care, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that “(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient's family members were third parties to the patient's arbitration agreement.” In its ruling denying the nursing facility's motion to compel arbitration, California's Appellate Court noted that “the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not

joined to the court action with the other defendants...Different triers of fact in different proceedings could come to different conclusions..." *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims "not just as successors in interest, but also individually and as surviving heirs" (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for "wrongful death and emotional distress were brought by plaintiffs in their individual capacities" and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that "different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of liability—unless all the parties are joined to one action" (*Id.* at 1322). Based on such a finding, the Court determined that it was proper to deny the nursing facility's motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson's estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have discussed and recognized that it is proper to deny Arbitration Agreements with impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 SC 125, 678 S.E.2d 435 (S.C. 2009)).

It is the finding of this Court that the Arbitration Agreement was presented to Ms. Coleman as part of a larger admissions packet and the meaning of the Arbitration Agreement was not explained; that Ms. Coleman was not informed that her signature on the Arbitration Agreement was optional and not a prerequisite for her sister to receive care; that the current conditions are that most, but not all of the defendants are seeking to compel arbitration; and compelling arbitration of Plaintiff's claims while not compelling arbitration to some claims against other Defendants, or by statutory beneficiaries who are not seeking either arbitration or were not parties to the contract makes the Arbitration Agreement as a whole impossible, unconscionable and therefore, unenforceable.

4. **The Defendants' delay has effectively nullified the agreement and waived any right the Defendants may have had to force Arbitration.**

The Plaintiff's Notice of Intent was filed in July of 2009, providing the Defendants with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the Summons and Complaint in March of 2010. Defendants began filing their Answers in May of 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendants' allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement only by virtue of one of the Defendants' affirmative defenses. Even in light of said notice, Defendants did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery and filed a Motion to Compel.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. See Annot., *Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/u/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendants intended to rely upon the Agreement, they should have acted promptly upon the first notice of a civil action. Secondly, and being generous to Defendants, they waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration Agreement and an additional three months more before moving to enforce said Agreement.

"[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing." *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, "A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract..." *U.S. f/u/b/a Williams Electric* at 134-135 citing 74 A.L.R.3d at 226-230 §7(i). "An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances." *Quality Concrete Products, Inc., v. Thomason*, 253 S.C. 579, 172

S.E.2d 297 (1970). "Abandonment of a contract by one party is the giving up of the right of benefit due from the other party." *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct. App. 1987). "As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause." *U.S. f/w/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C. App. 2003), *Deloitte & Touche, LLP v. Unisys Corp.*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendants now seek to enforce does not contain a no-damage-for-delay clause, which make the performance under the Agreement an even more time-sensitive issue. The Defendants delayed almost a year before notifying Plaintiff of such an agreement and waited more than a year before moving for the enforcement of the Agreement. During the entire length of their delay, they conducted themselves in a manner consistent with parties that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendants, through their actions and delay, abandoned any rights they may have been afforded to force this matter to arbitration. To allow the Defendants to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but it is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendants here.

5. **Excepting GranCare South Carolina, Inc., Mariner Health Care Management Company, and Mariner Health Central, Inc., the Defendants bringing this motion have argued in a manner inconsistent with the parties who have standing to enforce an Arbitration Agreement.**

GranCare South Carolina, Inc., was the operator of Faith Healthcare Center at the time of Mary Brinson's June 2006 admission, and all of the other defendants bringing this motion have alleged elsewhere that they do not operate nursing homes, do not have any ties to Faith Healthcare Center, have never transacted business in South Carolina, do not own property in South Carolina, and have never had any influence over the operations of Faith Healthcare Center. In fact, simultaneous to the hearing of this Motion to Compel Arbitration, these same Defendants argued a Motion to Dismiss for Lack of Personal Jurisdiction. Yet despite these protestations, these Defendants have sought to enforce an Arbitration Agreement between a facility they contend they have no interest in or control over, in a state they do not transact business in, in an industry in which they do not participate, and that this Court holds no jurisdiction over them. It cannot be rationally argued that all of these Defendants are parties to this contract, while at the same time argue that they have never contracted in South Carolina, never conducted business in South Carolina or are not tied in with the operation of the nursing facility. If the Defendants' arguments were accepted as true, then they would not have standing to enforce the Arbitration Agreement and the impossibility of prosecuting the claims in two separate forums becomes even more significant as discussed hereinabove.

6. **The Defendants' argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.**

Defendants' have sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the

Defendants' extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to commit her sister to a legally binding contract that agreed to the removal of Ms. Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

7. The Defendants' argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendants' argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur "Estoppel" §4.*

The Defendants' estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendants' policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that

caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the finding that the Arbitration Agreement is not valid. The Defendants could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendants are assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendants' argument for equitable estoppel.

Furthermore, the Defendants have argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendants' were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendants' contention that the Arbitration Agreement and the Admissions Agreement are part of the same agreement between the parties and, as such, Plaintiff cannot disclaim the Arbitration Agreement. Defendants further argued that the Arbitration Agreement was part of the entire agreement between the parties and that the Plaintiff should not be able to argue that the Arbitration Agreement is invalid while asserting claims arising out of the relationship between the parties and that the Plaintiff should be equitably estopped from doing so. Plaintiff opposed these contentions. The errors in this argument have already been discussed. The Defendants again assume that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendants' argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal agreement. The determination of agency is made based upon the principal and not the agent, and the Defendants' own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendants cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the documents she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

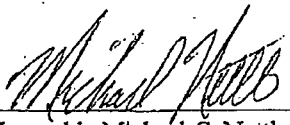
The Arbitration Agreement was further abandoned by the Defendants through their delay. The Defendants proceeded to engage in the litigation process with Plaintiff, allowing this case to

more forward for more than a year after the filing of the Notice of Intent before they sought any enforcement of the Arbitration Agreement. South Carolina precedent is clear that, had the Defendants intended to seek enforcement of the Agreement, they should have done so at the outset of this matter, not more than a year after its genesis. And while it has been the finding of this Court in a separate Order that the Plaintiff has made a sufficient showing for jurisdiction over Defendants in this case, the myriad of issues discussed previously preclude any finding in favor of their Motion to Compel Arbitration, as they have argued inconsistent and irreconcilable positions.

Finally, it is the belief of this Court that the Defendants' arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and are rejected by the Court.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister; the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendants abandoned the Agreement through their delay in seeking its enforcement. As such, Defendants' Motion to Stay Action and Compel Arbitration is denied in its entirety.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 3-18-11

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CONNOR REEL-SHEARIN
& ASSOCIATES
P.C.
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS

) SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually
and as the appointed Personal
Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.;
UHS of South Carolina-East, LLC;
United Health Services of South Carolina,
Inc.; United Clinical Services, Inc.;
United Rehab, Inc.' Rock Hill Healthcare
Properties, Inc.; Uni-Health Post Acute
Care-Rock Hill, LLC d/b/a UniHealth
Post Acute Care-Rock Hill,

Defendants.

) Civil Action No. 2013-CP-46-2930

) **DEFENDANTS' SUPPLEMENTAL**
) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO COMPEL**
) **ARBITRATION**

The defendant submits this supplemental memorandum in support of its Motion to Compel Arbitration/Motion to Dismiss.

Though Plaintiff has submitted the case of Coleman v. Mariner, et al, the Defendant would submit that the Coleman case is not on point, as the Supreme Court itself noted several times in footnote 4 to its opinion that the basis of its opinion was only "[a] surrogate's authority strictly by reference to [South Carolina Code]§ 44-60-70(B)" and that they were only "interpreting a health care surrogacy act" and nothing else. However, the Defendant in this case has not raised section 44-60-70(B) as a basis for enforcing the contract, but instead relies upon the common law.

As to the Federal Arbitration Act, the Plaintiff's only argument is that there must be a contract before the FAA can be applicable, and in the instant case there is no agreement between Ms. Davis and the Defendants. This conclusion is erroneous for the following reasons.

There is a valid and binding contract in this case, contrary to the Plaintiff's assertions. The agreements, both admission and arbitration, were executed by Mr. Davis on behalf of his mother Ms. Davis. The only real question is whether Ms. Davis and her Estate are bound by the agreement. Under general principles of contract law, they are.

Mr. Davis procured his mother's admission to the Facility, allowing he and his mother to accept the benefits of the contracts entered into in connection with that admission. Mr. Davis readily admits that he helped handle his mother's affairs on a regular basis. Additionally, Mr. Davis was aware that the paperwork was for his mother's admission to the nursing home. It is disingenuous for Mr. Davis and his sister to now argue they the Estate should not be bound by the paperwork when he was the one who represented, by executing the contracts in the first place, that he was authorized to act on her behalf in connection with her admission. See R&G Constr., Inc., v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) ("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.").

An apparent agency is established when the purported principal has represented another to be her agent by either affirmative conduct or conscious and voluntary inaction and there is reliance upon the agency representation with a corresponding change in position as a result. Watkins v. Mobil Oil Corp., 291 S.C. 62, 67, 352 S.E.2d 284, 287 (Ct. App. 1986). "The apparent authority of an agent results from conduct or other manifestations of the principal's consent, whereby third persons are justified in believing the agent is acting within his authority." R. & G Constr., 343 S.C. at 433-34, 540 S.E.2d at 118. "Such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." Id. at 434, 540 S.E.2d at 118. "Agency may be implied or inferred and may be proved circumstantially by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal." Id.

In the present case, Mr. Davis admitted that he had signed contracts on behalf of his mother in the past. He paid her bills on her behalf. He helped her cash and spend her social security check on the debts she incurred, including her rent. He had done this for several years without his mother ever manifesting to him that he did not have the authority to make such decisions or sign things on her behalf. (Deposition of Andrew Davis, p. 66). Moreover, he admitted that he went and visited the facility and felt like it was an appropriate place for his mother to go for rehabilitation. When asked specifically if he signed the paper work on behalf of his mother, he stated "I probably did" and that he remembered doing so. (Id.) Also, when asked, he stated that his mother was "all right with [him] signing documents for her." (Id. at 67).

Additionally, Ms. Thompson, Ms. Davis' daughter, also testified that her brother was responsible for all of her mother's financial affairs and business dealings and that her brother was the one who would sign documents for her and make sure her mother's business affairs were in order. (Thompson depo., p. 14, 15). Ms. Thompson was likewise present on the day they admitted her mother and witnessed her brother signing the documents on her mother's behalf without voicing any objection or indicating to any employee of the Defendant that her brother was not authorized to sign the documents. In fact, based on her previous testimony, she expected her brother to sign the documents when her mother was admitted and would have expected him to sign the contracts even if her mother had been at home signing that paperwork. (Thompson, p. 53-54).

Mr. Davis was also aware generally of what arbitration was and realized at the time of his mother's admission he was signing an arbitration agreement and admitted that he asked questions and had the ability to ask questions about the documents. Finally, he testified that his mother was communicative at the time of her admission into the facility, and yet at no time she just voice an objection to being placed at the facility or his signing the documents on her behalf. For this reason, the Court should find that Mr. Davis was the apparent agent of his mother for purposes of the documents in question. See Pee Dee Nursing Home v. Florence Gen. Hosp., 309 S.C. 80, 419 S.E.2d 834 (Ct. App. 1992) (the doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption; 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).

Additionally, Plaintiff misunderstands the Defendant's argument that Ms. Davis was a third-party beneficiary under the contracts signed by her son, Andrew Davis. Even if this Court were to decide that Mr. Davis was not the apparent agent of his mother, it is clear that Mr. Davis signed the contracts with the Defendant Pruitt and that those contracts all benefited his mother. Thus, Ms. Davis is, in fact, a third-party beneficiary as a matter of law and bound by the agreement.

Under South Carolina law, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." Helmis Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); see also Touchberry v. Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988) ("[t]he presumption that [a] contract is not enforceable by an individual may be overcome by showing that he was intended to be the direct beneficiary of the contract"). Again, Ms. Davis did not sign the contract, but she clearly is the resident to be admitted to the Facility and thus the direct beneficiary of the contracts. Ms. Davis' care was the essential purpose of all the agreements in the admissions paperwork, including the Admission Agreement and the Arbitration Agreement, and as a third-party beneficiary, she (and her estate) are bound by the Arbitration Agreement. See THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) (rejecting argument that family member did not have authority to bind resident to arbitration); Cook v. GGNCS Ripley, LLC, 786 F. Supp. 2d 1166, 1171-72 (N.D. Miss. 2011) (holding arbitration agreement in contract for nursing home care was enforceable against third-party beneficiary and her estate under third-

party beneficiary principles); Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983 (Ala. 2004) (same); Trinity Mission Health & Rehab. v. Scott, 19 So. 3d 735 (Miss. Ct. App. 2008) (same).

Finally, the Plaintiff should be estopped from repudiating the Arbitration Agreement. In October 2012, the South Carolina Court of Appeals held that a nonsignatory could be bound by an arbitration provision within a contract executed by other parties. Pearson v. Hilton Head Hosp., 400 S.C. 281, 288-89, 733 S.E.2d 597, 600-01 (Ct. App. 2012) (“Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.”) (citing Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000)). These common law principles of contract and agency law include agency and estoppel, at issue here, among others. Pearson, 400 S.C. at 289-90, 733 S.E.2d at 601.

“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, 206 F.3d at 417-18 (citation and internal quotation marks omitted). “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 Tencara Shipyard, 170 F.3d at 353 (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:

[A] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage. . . . [W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (citing Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp., 659 F.2d 836, 839 (7th Cir. 1981); Int'l Paper, 206 F.3d at 418.

In the present case, Ms. Davis accepted the benefits of all the contracts signed by her son. She was admitted to the facility and began receiving medical care and also became capable of enforcing the arbitration agreement against Pruitt in the event she had a complaint or issue with them. As is cited above, numerous courts hold that where a plaintiff receives the benefits of the contract, which Ms. Davis did, the plaintiff is estopped from denying an arbitration agreement merely because she did not sign the contract under which she received all of the benefits. Mr. Davis executed numerous agreements benefitting Ms. Davis as part of her admission to the Facility. Ms. Davis' Estate is not free to pick and choose those agreements it wants to enforce and those it does not and should be estopped from doing just that.

Finally, Plaintiff asserts that she cannot be bound by the Arbitration Agreement because she is not a signatory to the agreement and her wrongful death claim is independent of any claim a decedent may have for her injuries. This claim is mistaken. The test for whether or not an administrator may maintain an action for wrongful death is whether the deceased could have maintained an action for the injury had he survived. Hall v. Murphy, 236 S.C. 257, 259, 113 S.E.2d 790, 791 (1960) (citation

omitted); S.C. Code Ann. § 15-51-10. Although a wrongful death cause of action is an independent action, it is dependent on a wrong committed against another person. Id. Thus, recovery is precluded where the decedent could not have maintained an action had his death not occurred.

This issue has been addressed by South Carolina Courts in contexts other than that presented in the instant case, and Courts have repeatedly held that defenses available to a defendant in wrongful death action are the same as those that could have been asserted in an action by the decedent. For instance, a defendant in a wrongful death action may assert the wrongful action of the decedent himself as a bar recovery, even where there is no wrongful conduct on the part of the plaintiff. Blanding v. Hammell, 267 S.C. 352, 228 S.E.2d 271 (1976) (affirming a directed verdict in a wrongful death action where the plaintiff was barred from recovery by the contributory negligence of the plaintiff). A plaintiff in a wrongful death action is also barred where the statute of limitations has run on the original action prior to the decedent's death, even where the action is brought within the wrongful death statute of limitations. Stokes v. Pee Dee Fam. Physicians, LLP, 389 S.C. 343, 699 S.E.2d 143 (2010). A plaintiff in a wrongful death action is also barred from bringing an action where the defendant has executed a contractual release for the claims during his lifetime, even though the beneficiaries were not signatories to the contract. E.g., Rish v. Seaboard Air Line Ry., 106 S.C. 143, 90 S.E. 704 (1916).

Courts in other jurisdictions which have examined this issue have found the invocation of arbitration agreements analogous to the situations discussed above. In Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (2013), the Florida Supreme Court

examined exactly this issue.¹ The court in Laizure recognized that the wrongful death action was “a new and distinct right of action from the right of action the decedent had prior to death.” Id. at 760. However, the court recognized that despite the distinct nature of the cause of action, a plaintiff was still barred for recovery where the decedent had recovered during his lifetime, had released the defendant prior to his death, and other situations in which the decedent would have had no cause of action prior to his death. Id. at 760-61.

On this basis, the court held that in the context of an arbitration agreement, as in the previously discussed situations, “[t]he estate and heirs stand in the shoes of the decedent for purposes of whether the defendant is liable and are bound by the decedent’s actions and contracts with respect to defenses and releases.” Id. at 762. The court reasoned that “if a decedent signs a release of liability in resolution of a personal injury action, the estate and heirs would be precluded from bringing a wrongful death cause of action based on the same conduct. We see no reason that a different result is compelled for the decedent’s choice of forum, and it would be anomalous to give greater rights to the estate and heirs than to the decedent.” Id. Other jurisdictions have reached similar conclusions. See, e.g., In re Labatt Food Serv., L.P., 279 S.W.3d 640 (Tex. 2009); Trinity Mission Health & Rehab. of Clinton v. Estate of Scott ex rel. Johnson, 19 So.3d

¹ Florida’s wrongful death statute is almost identical to South Carolina’s and reads, in pertinent part:

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

Laizure, 109 So.3d at 758 (citing § 768.19, Fla. Stat. (2008)) (emphasis in the original).

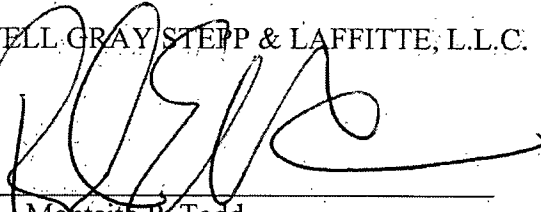
735 (Miss. Ct.App. 2008); Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661 (Ala. 2004); Herbert v. Superior Court, 169 Cal. App. 3d 718 (1985); Ballard v. Sw. Detroit Hosp., 327 N.W.2d 370 (1982)).

At least one court in South Carolina has reached the same conclusion. In THI of South Carolina at Columbia, LLC v. Wiggins, the United States District Court for the District of South Carolina was asked to determine if an arbitration agreement was enforceable in a wrongful death action against the defendant. 2011 WL 4089435 (D.S.C. Sept. 13, 2011). The court held that the arbitration agreement, which was signed by the decedent's daughter, was binding on the personal representative of the decedent in an action brought following his death:

[The decedent] 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. See, e.g., Cook v. GGNSC Ripley, LLC, — F.Supp.2d —, No. 3:10CV018, 2011 WL 1439458 (N.D. Miss. Apr.14, 2011) (holding arbitration agreement in contract for nursing home care was enforceable against third-party beneficiary and her estate under analogous third-party beneficiary law); Owens v. Coosa Valley Health Care, Inc., 890 So.2d 983 (Ala.2004) (same); Trinity Mission Health & Rehab. of Clinton v. Estate of Scott, 19 So.3d 735 (Miss.Ct.App.2008) (same).

Wiggins at *6. The Court's reasoning in Wiggins is consistent with South Carolina law and the reasoning of courts in other jurisdictions that a personal representative in a wrongful death action stands in the shoes of the decedent as he/she was just prior to death, and the defenses which would have been available against the decedent remain available against the estate. Thus, the plaintiff is bound by the arbitration agreement in this action.

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Attorneys for Defendants

Columbia, South Carolina

March 13, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually	)	Civil Action No. 2013-CP-46-2930
and as the appointed Personal	)	
Representative of the Estate of Eula Mae	)	
Davis, deceased,	)	
	)	
Plaintiff,	)	

vs.

DEFENDANTS' SECOND
SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
COMPEL ARBITRATION

Pruitt Corporation d/b/a UHS-Pruitt	)
Corporation; UHS-Pruitt Holdings, Inc.;	)
UHS of South Carolina-East, LLC;	)
United Health Services of South Carolina,	)
Inc.; United Clinical Services, Inc.;	)
United Rehab, Inc.' Rock Hill Healthcare	)
Properties, Inc.; Uni-Health Post Acute	)
Care-Rock Hill, LLC d/b/a UniHealth	)
Post Acute Care-Rock Hill,	)
	)
Defendants.	)

The Defendants submit this Second Supplemental Memorandum in support of their Motion to Compel Arbitration/Motion to Dismiss and provide additional support for their argument that plaintiff is bound by the arbitration agreement.

The Plaintiff asserts and these defendants agree that the issues of agency and other threshold issues of arbitrability must be decided by the Court as opposed to being referred to an arbitrator for the deciding of that issue. The Fourth Circuit has adopted the general rule that the judiciary should resolve issues regarding arbitrability unless the parties agree to arbitrate the issue of arbitrability and arbitrate issues like agency in clear and concise terms. Peabody Holding Co., LLC v. United Mine Workers of America, 665

F.3d. 96 (2012). Under the present agreement, the Defendants concede that the Arbitration Agreement does not concisely provide for an arbitrator to decide the issue of arbitrability or agency.

Since the parties did not agree for an arbitrator to decide the issue of arbitrability, this Court should determine the threshold issue of arbitrability. Thus, the Court must decide the agency issue under the FAA. Sandvik AB v. Advent International Corp., 220 F.3d 99, 105-09 (3d Cir.2000); N&D Fashions, Inc. v. DHJ Industries, Inc., 548 F.2d 722, 729 (8th Cir.1976); Three Valleys Municipal Water District v. E.F. Hutton & Co., 925 F.2d 1136, 1139-42 (9th Cir.1991). Based upon the evidence presented in this case, the Court should find that Andrew Davis, and his sister are bound by the agreement and arbitration should be compelled to arbitration.

Non-signatories can be bound to an arbitration agreement under a number of theories, including incorporation by reference; assumption; agency; veil-piercing/alter ego; estoppel; and as third-party beneficiaries. Bridas S.A.P.I.C. v. Gov't of Turkmenistan, 345 F.3d 347, 356 (5th Cir. 2003) (citing Thomson-C.S.F., S.A. v. American Arbitration Ass'n, 64 F.3d 773, 776 (2d Cir. 1995); E.I. DuPont de Nemours & Co. v. Rhone Poulenc, 269 F.3d, 187 195-97 (3d Cir. 2001)). Here, the Plaintiff is bound to the arbitration agreement under the principals of agency, estoppel, and third-party beneficiary.

South Carolina's appellate courts have held that *agency is generally a question of fact*. Froneberger v. Smith, 406 S.C. 37, 49-50, 748 S.E.2d 625, 631 (Ct. App. 2013) (citing Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 226, 317 S.E.2d 748, 752 (Ct. App. 1984)). The initial burden of proving agency is on the proponent of the

agency. Vereen v. Liberty Life Ins. Co., 306 S.C. 423, 427, 412 S.E.2d 425, 428 (Ct. App. 1991). However, where the proponent of agency is able to establish a *prima facie* case for agency, the burden shifts to the party denying the existence of the agency. Cooper v. Graham, 231 S.C. 404, 414, 98 S.E.2d 843, 848 (1957); Norris v. Bryant, 217 S.C. 389, 403, 60 S.E.2d 844, 849 (1950).

Here, Mr. Davis, who signed the arbitration agreement, admitted that he had signed contracts on behalf of his mother in the past, that he paid her bills on her behalf, that he helped her cash and spend her social security check on the debts she incurred, including her rent, and that he had done this for several years without his mother ever manifesting to him that he did not have the authority to make such decisions or sign things on her behalf. (Deposition of Andrew Davis, p. 66). Moreover, he admitted that he went and visited the facility and felt like it was an appropriate place for his mother to go for rehabilitation. When asked specifically if he signed the paper work on behalf of his mother, he stated "I probably did" and that he remembered doing so. (*Id.*) Also, when asked, he stated that his mother was "all right with [him] signing documents for her." (*Id.* at 67). Finally, Mr. Davis represented in the contract itself that he was authorized to sign it. (***"If this Agreement is signed by the Patient/Representative's representative, that individual represents he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so."***)(Arbitration Agreement, p. 2 of 5, ¶ C) (emphasis added). Additionally, the very last sentence of the agreement notes that in signing the Agreement, the Patient/Resident Representative binds both the Patient/Resident and the Patient/Resident Representative.

This conduct and evidence are *prima facie* evidence of an agency relationship between Mr. Davis and his mother. In fact, it is similar to the circumstances in Cooper and Bryant, where the Supreme Court held that a *prima facie* case had been made for agency and the burden shifted to the party opposing agency to disprove it. In Cooper, the Supreme Court held that a *prima facie* case that an individual was an agent of a company, Beard Oil Company, where the company had entrusted Beard with the possession of its gas station for the purpose of selling items delivered to him by Beard Oil Company, and the burden to disprove agency shifted to Beard Oil Company. Cooper, 231 S.C. 404, 98 S.E.2d 843. Similarly, in Bryant, the Supreme Court held that where the driver of a truck in an accident was utilizing a truck owned by a company alleging no master/servant relationship, there was a *prima facie* case for agency and the burden shifted to the company to disprove agency.

In the instant case, the facts give rise to a similar presumption. As previously discussed, Mr. Davis testified that he was authorized to execute contracts on his mother's behalf, handle her money, pay her bills, and make other decisions on her behalf. Defendants assert that this conduct is sufficient to establish an agency relationship. However, at the very least, this conduct establishes the presumption of an agency relationship, and the burden is on the Plaintiff to disprove agency. Under the facts of this case, the Plaintiff is unable to meet this burden.¹

¹ Defendants would assert that all inferences should be decided in favor of arbitration. 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."); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 464, 556 S.E.2d 397, 399 (Ct. App.2001) "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration."

Plaintiff should also be estopped from denying his ability to bind his mother the Estate to the applicability of the arbitration 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, 206 F.3d at 417-18 (citation and internal quotation marks omitted). The doctrine of estoppel applies if a person, by her actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury. Hubbard v. Beverly, 197 S.C. 476, 480, 15 S.E.2d 740, 741 (1941). Here, the Plaintiff, Ms. Thompson, who is Ms. Davis' daughter, testified that her brother was responsible for all of her mother's financial affairs and business dealings and that her brother was the one who would sign documents for her and make sure her mother's business affairs were in order. (Thompson depo., p. 14, 15). Ms. Thompson was likewise *present on the day they admitted her mother and witnessed her brother signing the documents on her mother's behalf without voicing any objection or indicating to any employee of the Defendant that her brother was not authorized to sign the documents*. In fact, based on her previous testimony, she expected her brother to sign the documents when her mother was admitted and would have expected him to sign the contracts even if her mother had been at home signing that paperwork. (Thompson, p. 53-54). Finally, the son represented via the contract itself he had the authority to sign the paperwork and knew of no reason why his mother would not.

If the Plaintiff knew, as she now alleges, that her brother did not have the authority to sign the arbitration agreement and admissions paperwork on behalf of her

Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App.1999).

mother, she had ample opportunity to voice her objections when the agreement was signed, as she was present at the time. She should not now be allowed to contend that the agreement was invalid because her brother lacked the authority to sign the agreement on behalf of her mother.

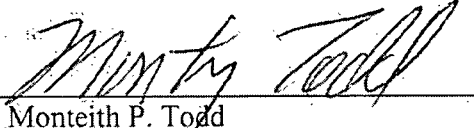
Finally, the arbitration agreement itself is not only an agreement between the decedent and the Defendants, but also an agreement between Mr. Davis *individually*, and the Defendants, as the agreement specifically names Mr. Davis. In addition to naming Mr. Davis, the agreement's language expressly states that the Agreement "shall inure to the benefit of and bind the Patient Resident and the Healthcare Center, their successors, assigns, and intended and incident beneficiaries." (Section C, Exhibit 1, Attachment B to Defendant's Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings). The agreement goes on to state that the term "Patient/Resident" includes "his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person whose claim is derived through or on behalf of the Patient/Resident, including, in addition to those already listed in this Paragraph, any parent spouse, child, executor, administrator, heir, or survivor entitled to bring a wrongful death claim." (*Id.*). Thus, the express language of the contract, entered into in the presence of the Plaintiff, evidences the intent of the contract to bind not only Ms. Davis and her son, Mr. Davis, but also any other children or representatives, including the Plaintiff. Because the signatories to the contract intended for it to apply to non-party beneficiaries such as the Plaintiff, the Plaintiff is bound by the agreement under the plain rules of contract interpretation. *E.g., Allen v. Pacheco*, 71 P.3d 375, 380 (Colo. 2003) ("[T]he arbitration agreement binds not only claims brought by signatory members, but

also claims brought by a member's heir or personal representative. . . . The contract clearly does not require that these heirs, personal representatives, or persons claiming special duties actually sign and become parties to the contract before they can fall within the scope of the arbitration agreement. Because the contract reflects the intent of the parties to bind claimants other than signatory members, the fact that [Plaintiff] is a non-party does not by itself exempt her from the arbitration agreement. So long as she is within the category of heirs, personal representatives, or persons claiming special duties, she is bound by the arbitration agreement.”)

As noted, Defendants concede that the decision to enforce the arbitration agreement is one that is for the Court based on the language in the agreement and Fourth Circuit precedent construing the FAA. It is clear that the plain language of the agreement encompasses the claims in this case, that Mr. Davis was Ms. Davis' agent for the purposes of executing the agreements, and that the Plaintiff should be estopped from denying both his agency authority and the enforceability of the arbitration agreement. Therefore, based on the foregoing and on the law and facts previously submitted in the Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings and Defendants' Supplemental Memorandum in Support of Motion to Compel Arbitration, the Court should dismiss or, in the alternative stay, the Plaintiff's claims and compel arbitration.

Respectfully Submitted

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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Attorneys for Defendants

April 4, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

**PLAINTIFF'S MEMORANDUM
OF LAW IN OPPOSITION TO
DEFENDANTS' SECOND
SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
COMPEL ARBITRATION**

Plaintiff Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, through her attorney, respectfully submits this Memorandum of Law in Opposition to Defendants' Second Supplemental Memorandum in Support of Motion to Compel Arbitration.

ARGUMENT

In their latest memorandum, Defendants discuss three alleged bases for enforcement of an arbitration agreement and compelling arbitration of Plaintiff's negligence claims. Defs.' Supp. Mem. at 2. First, Defendants argue Andrew Davis acted as Eula Mae Davis' (his mother) agent when signing nursing home admission paperwork. *Id.* at 2-4. Second, Defendants argue Plaintiff is estopped from denying Andrew Davis' alleged authority to enter an arbitration agreement on

his mother's behalf. Id. at 5-6. Finally, Defendants contend the "plain rules of contract interpretation" require the court to find a valid arbitration agreement and require the court to enforce the alleged agreement against multiple parties who neither signed nor otherwise assented to the agreement's terms. Id. at 6. Nothing in Defendants' supplemental memorandum cures the fundamental deficiencies in their previous filings and oral argument. Defendants have not made the showing required by basic principles of agency and contract law and their motion should be denied.

A. Agency

Defendants' Second Supplemental Memorandum makes one substantive addition to their previous arguments. Defendants now argue that Plaintiff bears the burden of disproving Andrew Davis was his mother's agent because Defendants have met an initial burden of proving a *prima facie* case of agency. Id. at 2-3. However, as Defendants acknowledge, South Carolina law places the burden of proof on a party asserting agency. Pee Dee Nursing Home, Inc. v. Florence Gen. Hosp., 309 S.C. 80, 85, 419 S.E.2d 834, 837 (Ct. App. 1992). The burden is not to make a mere *prima facie* showing but rather to show that agency is "clearly established by the facts." Id. South Carolina law imposes this weighty burden because a person dealing with an alleged agent has a legal duty of due care to determine the scope of the perceived agent's authority. Id. (citing McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987)).

Defendants support their burden-shifting argument by citing two cases from the 1950s. Defs.' Supp. Mem. at 3 (citing Cooper v. Graham, 231 S.C. 404, 414, 98 S.E.2d 843, 848 (1957); Norris v. Bryant, 217 S.C. 389, 403, 60 S.E.2d 844, 849 (1950)). However, Cooper and Bryant applied different law to facts that are different than the current case. In Cooper, the South Carolina Supreme Court reviewed a trial court's ruling that there was no evidence a gas station

owner and gas station operator had a master-servant relationship. 231 S.C. at 408, 98 S.E.2d at 845. The operator argued that he was only the owner's independent contractor. Id. Thus, if the question before a court is whether the relationship between parties is a master-servant or independent contractor relationship, then a prima facie showing of a master-servant relationship shifts the burden to the party maintaining that he was only an independent contractor. Id. at 414-15, 98 S.E.2d at 848 (quoting Norris, 217 S.C. at 403, 60 S.E.2d at 849).

This rule was imposed for policy reasons specific to a master-servant versus independent contractor situation. Where a motorist is injured by another driver, sues the driver's employer and the employer defends by alleging driver was an independent contractor, employer bears the burden of demonstrating the independent contractor relationship so long as motorist makes a *prima facie* showing of an employment relationship. Bryant, 217 S.C. at 403, 60 S.E.2d at 849. The motorist is a stranger to any contract between employer and driver and it would be "unfair" to place a burden on the motorist to disprove the employer's independent contractor assertion. Id. Clearly, this case presents a different situation. There is no master-servant relationship at issue here and it is perfectly fair to require Defendants to bear the burden of proving the alleged agency relationship on which their motion relies. Defendants had a duty to use due care in dealing with any perceived agent and should bear the burden of demonstrating the required elements of an agency relationship.

Defendants' agency argument takes an additional misguided step forward by contending Defendants are entitled a "presumption" Andrew Davis was his mother's agent. Defs.' Supp. Mem. at 4. Neither Cooper nor Bryant supports a presumption of agency in this case. Additionally, cases decided since Cooper and Bryant demonstrate that a presumption of agency is inappropriate. For example, the Supreme Court has held that "[w]here the existence of an

agency depends upon the acts of the parties the law makes no presumption of agencies.” McComb v. Tiburon Aircraft, Inc., 276 S.C. 683, 687, 281 S.E.2d 482, 484 (1981); see also Paramount Fund, Inc. v. Cusaac, 282 S.C. 497, 500, 319 S.E.2d 354, 356 (Ct. App. 1984) (“agency is not presumed”).

Defendants bear the burden of proving an agency relationship between Andrew Davis and his mother. Cooper and Bryant do not alter Defendants’ burden and South Carolina law bars an agency presumption. Even if Defendants’ latest agency theory were valid, it still would not compel the finding Defendants seek. In other words, Defendants have not made a *prima facie* showing of an agency relationship between Andrew Davis and his mother. An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. Cowburn v. Leventis, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is “expressly conferred upon the agent by the principal.” Richardson v. PV, Inc., 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on “representations made by the principal to the third party and reliance by the third party on those representations.” Young v. S.C. Dep’t of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by third party in reliance on the representation. Cowburn, 366 S.C. at 39-40, 619 S.E.2d at 448.

Andrew Davis was not his mother’s guardian or her attorney-in-fact, and Defendants point to no other document in which Eula Davis gave her son actual authority to enter an arbitration agreement. Defendants also fail to satisfy the requirements to prove an apparent agency. Young is clear in holding that apparent agency requires conduct by Eula Davis directed

toward Defendants in which Ms. Davis indicated that her son had authority to enter the arbitration agreement on her behalf. In its third memorandum on this issue, Defendants again fail to point to any such conduct by Ms. Davis. In fact, for the third consecutive time, Defendants rely only on Andrew Davis' statements¹ to Defendants and language in the arbitration agreement Defendants drafted. Defs.' Supp. Mem. at 3. Without representations by Eula Davis to Defendants, Defendants' agency argument is fatally flawed.

B. Equitable estoppel

Defendants also argue Plaintiff Mae Ruth Davis Thompson is equitably estopped from denying Andrew Davis was Eula Davis' agent when he signed an arbitration agreement. Id. at 5-6. Defendants' memorandum cites only a portion of the required elements to demonstrate equitable estoppel. Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; (3) make a prejudicial change in position in reliance on conduct of party estopped. Id. As the party asserting estoppel, Defendants bear the burden of demonstrating all six of these elements. Kelly v. Logan, Jolley & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009).

Defendants' memorandum does not cite or attempt to establish all six of these elements and, therefore, fails to meet its burden to prevail on their equitable estoppel argument. Also, the evidence shows Defendants cannot meet its burden to show they lacked knowledge or the means

¹ Notably, Andrew Davis specifically testified that his mother never authorized him to contract away her constitutional right to a trial by jury. A. Davis Dep. 93:21-94:4.

of knowledge of the truth of the facts in question. This element requires Defendants to show they did not know Andrew Davis lacked authority to sign the arbitration agreement on his mother's behalf and lacked the ability to make this determination. Equitable doctrines such as equitable estoppel favor diligent parties actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

In this case, Defendants certainly had the capacity to determine whether Mr. Davis had authority to sign an arbitration agreement on his mother's behalf. Defendants are sophisticated business entities frequently interacting with residents and their families during the nursing home admission process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney. Defendants certainly had the ability to ask Andrew Davis and his mother whether Mr. Davis was his mother's guardian or attorney-in-fact and had the ability to request supporting documentation. Defendants cannot meet their burden on this element and do not attempt to present evidence to prove all six equitable estoppel elements.

C. "Plain rules of contract interpretation"

Defendants contend the arbitration agreement binds Eula Davis, Plaintiff Mae Ruth Davis Thompson, and other unnamed children and representatives of Eula Davis in addition to Andrew Davis. Defs.' Mem. at 6. Defendants' argument is based almost entirely on the language of the form contract of adhesion Defendants drafted. Id. In other words, Defendants argue a whole collection of non-signatories are bound to a contract because the contract says so. Defendants view this reasoning as an application of the "plain rules of contract interpretation." Id. However,

Defendants' argument violates South Carolina's contract interpretation rules and should be rejected.

Basic contract law holds that an agreement binds only those parties who show an "objective manifestation of . . . assent at the time the contract was made." Laser Supply & Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 334, 676 S.E.2d 139, 143-44 (Ct. App. 2009). A contract party cannot manufacture assent or create an acceptable substitute for assent simply by drafting contract provisions purporting to bind strangers to the contract. To conclude otherwise would threaten the rudimentary understanding that, in addition to consideration, a viable contract requires an offer and an acceptance. See Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc., 357 S.C. 363, 368, 593 S.E.2d 170, 173 (Ct. App. 2004) ("The necessary elements of a contract are offer, acceptance, and valuable consideration"). The individuals who would become Eula Davis' wrongful death beneficiaries were unascertainable at the time of her admission to Defendants' facility. The arbitration agreement was not "offered" to them and they certainly did nothing to "accept" the arbitration agreement's terms. Eula Davis' statutory beneficiaries, owners of the wrongful death claim in this suit, are not bound by the arbitration agreement.

Finally, Defendants argue that other courts have held that the signature of a nursing home resident or a resident's agent may bind heirs who might later file a wrongful death claim. Defendants cite one Colorado case but no South Carolina law to support this position. Defs.' Supp. Mem. at 6 (citing Allen v. Pacheo, 71 P.3d 375, 380 (Colo. 2003)). Plaintiff acknowledges a split among courts across the country on this issue. Plaintiff's earlier memorandum cited several cases that have taken the opposition position espoused in Allen. Plaintiff incorporates

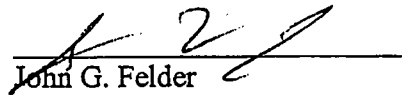
these cases and related argument by reference as further opposition to Defendants' argument.

Pla. Mem. in Opp. at 8-10.

CONCLUSION

Based on the arguments above, Plaintiff respectfully requests that the court deny Defendants' motion in full.

Respectfully submitted,


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Attorney for Plaintiff

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April 1, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Mae Ruth Davis Thompson, et al.

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS Pruitt, et al.

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 13-CP-46-2930

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

FILED-RECEIVED
2014 MAY 14 PM 2:06
DAVID HAMILTON
C.C.P.C. G.S.
YORK COUNTY, SC

Plaintiff's Attorney: John G. Felder, Jr., Bar No. _____ Address: McGowan Hood & Felder 1517 Hampton Street Columbia, SC 29201 Phone: 803-779-0100 Fax _____ E-mail: jfelder@mcgowanhood.com Other: _____	Defendant's Attorney: Monteith P. Todd, Bar No. 559 Address: Sowell Gray Stepp & Laffitte, Post Office Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax 803-929-8300 E-mail: mtodd@sowellgray.com Other: _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider Pursuant to Rule 59, SCRPC Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent-Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS

) SIXTEENTH JUDICIAL CIRCUIT

Mae Ruth Davis Thompson, Individually
and as the appointed Personal
Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff,

vs.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.;
UHS of South Carolina-East, LLC;
United Health Services of South Carolina,
Inc.; United Clinical Services, Inc.;
United Rehab, Inc.' Rock Hill Healthcare
Properties, Inc.; Uni-Health Post Acute
Care-Rock Hill, LLC d/b/a UniHealth
Post Acute Care-Rock Hill,

Defendants.

) Civil Action No. 2013-CP-46-2930

) **NOTICE OF MOTION AND MOTION**
) **TO RECONSIDER PURSUANT TO**
) **RULE 59, SCRPC**

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2014 MAY 14 PM 2:06

Pursuant to Rule 59, SCRPC, the defendants Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.' Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute Care-Rock Hill (collectively "Pruitt") move for reconsideration of the Court's Order denying their Motion to Dismiss/Motion to Compel Arbitration. This Motion is made within 10 days of receipt of written notice of the entry of the Court's Order and thus is timely under Rule 59.

In the interest of judicial economy, the Defendants will not repeat the facts, as the Court is well aware of them. Additionally, in the interest of judicial economy, the Defendants would

respectfully incorporate verbatim, as if repeated herein, the prior Memoranda submitted in support of its position in favor of arbitration.

The grounds for this Motion are as follows:

First, the Court erred in determining that the facts failed to show that Eula Mae Davis' (hereinafter the "decedent") son, Andrew Davis, was not authorized to sign his mother into Uni-Health Rock Hill when his testimony and that of Mae Ruth Davis Thompson's, his sister, both established that he had taken control of decedent's affairs, with her consent, as they both admitted to in their depositions. Although Pruitt may not have been aware of the particular details as to what actions Davis had undertaken on her behalf prior to signing decedent into the facility, Davis had still taken over many of her mother's affairs without objection by her and thus had become a general agent for her. See R&G Constr., Inc., v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) ("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."). Moreover, Pruitt did rely upon Davis' and his sister's representations that he was authorized to sign decedent into the home by accepting decedent as a patient at the facility and providing her care. While they may not have known the extent of his past representation of his mother, there was no objection by anyone to his signing the paperwork, and he represented he was authorized to do so.¹

¹ Defendants would assert that all inferences should be decided in favor of arbitration. 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."); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 464, 556 S.E.2d 397, 399 (Ct. App. 2001) "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration."

Second, the Court erred in not finding an apparent agency relationship was established based upon the evidence presented. "An apparent agency is established when the purported principal has represented another to be her agent by either affirmative conduct or conscious and voluntary inaction and there is reliance upon the agency representation with a corresponding change in position as a result." Watkins v. Mobil Oil Corp., 291 S.C. 62, 67, 352 S.E.2d 284, 287 (Ct. App. 1986). "The apparent authority of an agent results from conduct or other manifestations of the principal's consent, whereby third persons are justified in believing the agent is acting within his authority." R & G Constr., 343 S.C. at 433-34, 540 S.E.2d at 118. "Such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf." Id. at 434, 540 S.E.2d at 118.

In the present case, the decedent allowed, passively or otherwise, Davis to not only sign her into her Pruitt, but also to handle multiple other financial affairs for her, as admitted by Thompson, the sister, as well. Thompson testified that her brother was responsible for all of her mother's financial affairs and business dealings and that her brother was the one who would sign documents for her and make sure her mother's business affairs were in order. (Thompson depo., p. 14, 15). Ms. Thompson was likewise present on the day they admitted her mother and witnessed her brother signing the documents on her mother's behalf without voicing any objection or indicating to any employee of the Defendant that her brother was not authorized to sign the documents. In fact, based on her previous testimony, she expected her brother to sign the documents when her mother was admitted and would have expected him to sign the contracts even if her mother had been at home signing that paperwork. (Thompson, p. 53-54). Thus, at a minimum, Davis had the apparent authority to handle not only decedent's other affairs, but also her admission into the home.

Third, the Court erred in failing to rule on, and in favor of, Pruitt's argument regarding the fact that the decedent was a third-party beneficiary to the Arbitration Agreement, and thus bound by it. Though the Court held that there was no actual or apparent agency relationship between the parties, the Court failed to address Pruitt's argument that decedent was a third-party beneficiary to the agreements and were therefore bound by them.

Under South Carolina law, "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit." Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); see also Touchberry v. Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988) ("[t]he presumption that [a] contract is not enforceable by an individual may be overcome by showing that he was intended to be the direct beneficiary of the contract").

Again, although decedent did not sign the contract, she was the resident being admitted to the Facility and thus the direct beneficiary of the contract. Decedent's care was the essential purpose of all the agreements in the admissions paperwork, including the Admission Agreement and the Arbitration Agreement, and as a third-party beneficiary, she (and her estate) are bound by the Arbitration Agreement. See THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) (rejecting argument that family member did not have authority to bind resident to arbitration); Cook v. GGNCS Ripley, LLC, 786 F. Supp. 2d 1166, 1171-72 (N.D. Miss. 2011) (holding arbitration agreement in contract for nursing home care was enforceable against third-party beneficiary and her estate under third-party beneficiary principles); Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983 (Ala. 2004) (same); Trinity Mission Health & Rehab. v. Scott, 19 So. 3d 735 (Miss. Ct. App. 2008) (same).

Davis was both a direct party to the contract because he was named as a party to the contract and because he signed it in his own capacity, as well as in a representative capacity.

Thus, he is bound by the contract and bound his mother to the contract because it was at a minimum a contract between Pruitt and Davis for the benefit of the decedent. Even if the Court rejects that decedent was bound as a third-party beneficiary, Davis and the other statutory beneficiaries must pursue their claims in arbitration because Davis signed the arbitration agreement on his own behalf, as well as in a representative capacity.

Fourth, the Court erred in failing to rule on, and in favor of Pruitt's argument that the Plaintiff was estopped from denying the agency relationship between Davis and decedent so that the Estate and the Plaintiff is bound by the Arbitration Agreement. In October 2012, the South Carolina Court of Appeals held that a nonsignatory could be bound by an arbitration provision within a contract executed by other parties. Pearson v. Hilton Head Hosp., 400 S.C. 281, 288-89, 733 S.E.2d 597, 600-01 (Ct. App. 2012) ("Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.") (citing Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000)). These common law principles of contract and agency law include agency and estoppel, at issue here, among others. Pearson, 400 S.C. at 289-90, 733 S.E.2d at 601.

"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, 206 F.3d at 417-18 (citation and internal quotation marks omitted). "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 Tencara Shipyard, 170 F.3d at

353 (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)).

In the present case, decedent accepted the benefits of all the contracts signed by her son. She was admitted to the facility and began receiving medical care. She also became capable of enforcing the arbitration agreement against Pruitt in the event she had a complaint or issue with them. As cited above, numerous courts hold that where a plaintiff receives the benefits of the contract, which the decedent did, the plaintiff is estopped from denying an arbitration agreement merely because she did not sign the contract under which she received all of the benefits. Davis executed numerous agreements benefitting decedent as part of her admission to the Facility. The Estate is not free to pick and choose those agreements it wants to enforce and those it does not and should be estopped from doing just that. Factually, the son agrees that he believed he had the authority to sign the paperwork because when asked specifically if he signed the paper work on behalf of his mother, he stated "I probably did" and that he remembered doing so. (*Id.*) Also, when asked, he stated that his mother was "all right with [him] signing documents for her." (*Id.* at 67).

Finally, Mr. Davis represented in the contract itself that he was authorized to sign it. (*"If this Agreement is signed by the Patient/Representative's representative, that individual represents he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so."*)(Arbitration Agreement, p. 2 of 5, ¶ C) (emphasis added). Additionally, the very last sentence of the agreement notes that in signing the Agreement, the Patient/Resident Representative binds both the Patient/Resident and the Patient/Resident Representative. Davis, his sister, and the Estate should be estopped from denying authority to sign the agreement, or be bound by it, when they

believed he had the authority, represented he had the authority, and allowed the decedent to benefit from all of the documents executed at admission.

Finally, in the event the Court finds that the Estate is bound by the Arbitration Agreement, the Court should find that the beneficiaries are likewise bound, despite Plaintiff's contentions to the contrary that her wrongful death claim is independent of any claim a decedent may have for her injuries.

The test for whether or not an administrator may maintain an action for wrongful death is whether the deceased could have maintained an action for the injury had he survived. Hall v. Murphy, 236 S.C. 257, 259, 113 S.E.2d 790, 791 (1960) (citation omitted); S.C. Code Ann. § 15-51-10. Although a wrongful death cause of action is an independent action, it is dependent upon a wrong committed against another person. Id. Thus, recovery is precluded where the decedent could not have maintained an action had his death not occurred.

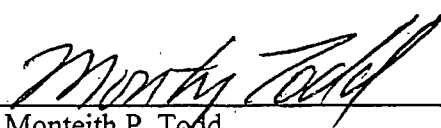
This issue has been addressed by South Carolina Courts in contexts other than that presented in the instant case, and Courts have repeatedly held that defenses available to a defendant in wrongful death action are the same as those that could have been asserted in an action by the decedent. Courts in other jurisdictions which have examined this issue have found the invocation of arbitration agreements analogous to the situations discussed above. In Laizure v. Avante at Leesburg, Inc., 109 So.3d 752 (2013), the Florida Supreme Court examined exactly this issue. The court in Laizure recognized that the wrongful death action was "a new and distinct right of action from the right of action the decedent had prior to death." Id. at 760. However, the court recognized that despite the distinct nature of the cause of action, a plaintiff was still barred for recovery where the decedent had recovered during his lifetime, had released

the defendant prior to his death, and other situations in which the decedent would have had no cause of action prior to his death. Id. at 760-61.

On this basis, the court held that in the context of an arbitration agreement, as in the previously discussed situations, “[t]he estate and heirs stand in the shoes of the decedent for purposes of whether the defendant is liable and are bound by the decedent’s actions and contracts with respect to defenses and releases.” Id. at 762. The court reasoned that “if a decedent signs a release of liability in resolution of a personal injury action, the estate and heirs would be precluded from bringing a wrongful death cause of action based on the same conduct. We see no reason that a different result is compelled for the decedent’s choice of forum, and it would be anomalous to give greater rights to the estate and heirs than to the decedent.” Id.

For the reasons set forth herein, the Court erred in concluding that the Arbitration Agreement was not binding on the decedent or her heirs. The Defendants respectfully ask the Court to reconsider its prior Order, withdraw it, and find that Plaintiff’s lawsuit should be dismissed or stayed pending arbitration.

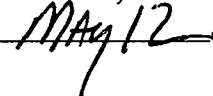
SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

Monteith P. Todd
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(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina

 May 12, 2014

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Mae Ruth Davis Thompson, Individually
and as the appointed Personal
Representative of the Estate of Eula Mae
Davis, deceased,

Plaintiff,

v.

Pruitt Corporation d/b/a UHS-Pruitt
Corporation; UHS-Pruitt Holdings, Inc.;
UHS of South Carolina-East, LLC;
United Health Services of South Carolina,
Inc.; United Clinical Services, Inc.;
United Rehab, Inc.; Rock Hill Healthcare
Properties, Inc.; Uni-Health Post Acute
Care-Rock Hill, LLC d/b/a UniHealth
Post Acute Care-Rock Hill,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-46-2930

**PLAINTIFF'S MEMORANDUM
OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION
TO RECONSIDER**

Plaintiff Mae Ruth Davis Thompson, Individually and as the appointed Personal Representative of the Estate of Eula Mae Davis, through her attorney, respectfully submits her memorandum of law in opposition to Defendants' Motion to Reconsider.

PROCEDURAL HISTORY

Plaintiff filed this negligence action against Defendants alleging Plaintiff's mother, Eula Mae Davis, fell while a resident at Defendants' facility and suffered ultimately fatal injuries due to Defendants' negligent nursing home care. On January 31, 2014, Defendants filed a Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings. Both parties filed multiple memoranda related to Defendants' motion. On April 11, 2014, the

Honorable S. Jackson Kimball issued an order denying Defendants' motion. Defendants' filed a Motion to Reconsider on May 12, 2014.

Defendants' motion rehashes issues raised in Defendants' Motion to Compel Arbitration. In the Motion to Reconsider, Defendants raise the following five grounds for relief: (1) evidence showed Andrew Davis was authorized to sign the arbitration agreement Defendants seek to enforce; (2) evidence established an apparent agency relationship between Andrew Davis and Eula Mae Davis; (3) the Court failed to rule on Defendants' argument that Eula Mae Davis was bound to an arbitration agreement as a third-party beneficiary; (4) the Court failed to rule on Defendants' equitable estoppel argument; and (5) Andrew Davis was authorized to sign the arbitration agreement on Eula Mae Davis' behalf based on language in the arbitration agreement. Plaintiff has addressed the deficiencies in all five of these arguments in her memoranda responding to Defendants' Motion to Compel Arbitration. Plaintiff fully incorporates those arguments to her response to Defendants' current motion.

ARGUMENT

Nothing in Defendants' Motion to Reconsider corrects the deficiencies in their Motion to Compel Arbitration and Defendants' latest motion should be denied. The first two grounds Defendants cite address an alleged agency relationship between Eula Mae Davis and her son.¹ However, Defendants cannot meet their burden of showing the necessary elements to prove an agency relationship. Defendants cannot produce any document in which Eula Mae Davis designated her son as her agent for purposes of entering an arbitration agreement. In fact, as the

¹ Defendants state these as two independent grounds for relief with the first ground based on an undefined "authorization" Andrew Davis had to sign an arbitration agreement on his mother's behalf. Defs.' Mtn. at 2-3. The only authority Defendants cite in support of this ground is based on agency principles. Defs.' Mtn. at 2 (citing R&G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000)). Therefore, Plaintiff addresses these two grounds together.

Court's order acknowledges, it is undisputed that Andrew Davis was not his mother's attorney-in-fact or other similar legally recognized agent. Order at 3. Defendants are also unable to meet the elements required to show an apparent agency relationship between the two. Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations." Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show (1) purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and (3) change in position by third party in reliance on the representation. Cowburn v. Leventis, 366 S.C. 20, 39-40, 619 S.E.2d 437, 448 (Ct. App. 2005).

Defendants' agency argument continues to focus on Andrew Davis's actions and the "expectations" of Mae Ruth Davis Thompson, decedent's daughter. Defs.' Mtn. at 3. Yet, Defendants are still unable to show that Eula Mae Davis represented to Defendants that her son was her agent. Defendants' Motion argues that Eula Mae Davis "allowed, passively or otherwise" her son to sign the nursing home admission agreement and the arbitration agreement. Defs.' Mtn. at 3. Defendant does not explain how Eula Mae Davis made any representations to Defendants regarding her son. Furthermore, to the extent that Defendants argue Eula Mae Davis represented her son to be her agent because she did not object to any alleged representations made by her son, Defendants now choose to ignore Ms. Davis's substantially decreased mental status brought on by her medical conditions. Ms. Davis was in no physical and mental condition to make any representations regarding her son at the time she was admitted to Defendants' facility. Defendants acknowledged Ms. Davis's serious medical conditions in their Motion to Compel Arbitration. Defs.' Mtn. to Compel Arbitration at 7-8 (citing medical records where Ms. Davis is described as suffering from "organic brain syndrome and mild dementia" and

“decreased mental status”). The Court was correct in its conclusion that Defendants failed to meet their burden of proving an agency relationship between Eula Mae Davis and her son. Defendants’ Motion to Reconsider remains devoid of proof on an essential element of an agency relationship. Defendants’ Motion should be denied.

Defendants’ third ground for relief argues that the Court failed to rule on Defendants’ third-party beneficiary argument and that Defendants are correct in their assertion that Eula Mae Davis was a third-party beneficiary of the arbitration agreement. However, Defendants’ third-party beneficiary argument must fail because there was no valid contract to which Eula Mae Davis could be a third-party beneficiary. As discussed above, Defendants cannot establish an agency relationship between Andrew Davis and his mother. As a result, Defendants cannot establish a valid and enforceable contract to arbitrate the parties’ dispute. See Order at 4 (concluding that the lack of an agency relationship means “the Arbitration Agreement is unenforceable”). There can be no third-party beneficiary in the absence of a valid contract. See Hardaway Concrete Co., Inc. v. Hall Contracting Co., 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) (considering a potential third-party beneficiary only after determining the existence of a valid and enforceable contract).²

² Plaintiff’s memorandum opposing Defendants’ earlier motion cited several cases where this principle has been applied to similar nursing home admissions. Pla.’s Mem. in Opp. to Defs.’ Mtn. to Compel Arbitration at 7-8 (citing Licata v. GGNSC Malden Dexter LLC, 2 N.E.2d 840, 848 (Mass. 2014) (since “no one with authority to do so signed the arbitration agreement,” there was no valid agreement and could be no third-party beneficiary); GGNSC Omaha Oak Grove, LLC v. Payich, 708 F.3d 1024 (8th Cir. 2013) (finding son lacked legal authority to sign for mother and there was no valid arbitration agreement to which the resident could be a third-party beneficiary); GGNSC Batesville, LLC v. Johnson, 109 So.3d 562, 565 (Miss. 2013) (“For a third-party beneficiary to exist, a valid contract must first exist”); Dickerson v. Longoria, 995 A.2d 721, 742 (Md. 2010) (“Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce”); Adams Cmty. Care Ctr., LLC v. Reed, 37 So.3d 1155, 1160 (Miss. 2010) (“For a third-party beneficiary to

Defendants fourth ground for relief argues that the Court failed to rule on Defendants' equitable estoppel argument and that Defendants are correct in their assertion that Plaintiff is equitably estopped from denying Andrew Davis's alleged authority to enter an arbitration agreement on his mother's behalf. Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conducted be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; (3) make a prejudicial change in position in reliance on conduct of party estopped. Id. As discussed in Plaintiff's earlier memorandum, Defendants are unable to meet several of these elements.³ Pla.'s Mem. in Opp. to Defs.' Second Supp. Mem. at 5-6. Defendants' motion neither cites nor seeks to apply these elements. Since Defendants have not provided evidence on all equitable estoppel elements, their motion must be denied.

Finally, Defendants argue Andrew Davis was authorized to sign the arbitration agreement on his mother's behalf because a provision of the agreement says so. This argument appears to be nothing more than a combination of the agency and estoppel arguments discussed above. Without citation to authority, Defendants argue that a single provision of the agreement means that Andrew Davis "his sister, and the Estate should be estopped from denying authority to sign the agreement . . ." Defs.' Mtn. at 6. Regardless of the agreement's language, there can be no agency relationship without representations by Eula Mae Davis to Defendants regarding Andrew

exist, there must first exist a valid contract executed by one with 'legal capacity' to enter the contract").

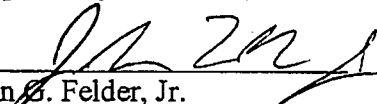
³ The Court's Order properly concluded Defendants provided no evidence to show Defendants' relied on any alleged representation made regarding any alleged authority Andrew Davis had to sign documents on his mother's behalf. Order at 4.

Davis's alleged authority. Additionally, Defendants again make no effort to prove the elements of equitable estoppel or any other estoppel theory. Defendants' motion should be denied.

CONCLUSION

Based on the arguments stated above and those expressly incorporated by reference, Plaintiff respectfully requests an Order denying Defendants' Motion to Reconsider⁴.

Respectfully submitted,


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jfelder@mcgowanhood.com

Attorney for Plaintiff

May 22, 2014
Columbia, South Carolina

⁴ Unless the Court prefers counsel again address these matters on which the Court has already entertained arguments at the March 13, 2014, hearing, Plaintiff's counsel respectfully requests the Court enter an Order denying Defendant's Motion to Reconsider without additional oral argument at a second hearing.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 25 2014

APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

S. Jackson Kimball, Circuit Court Judge

Case No. 2013-CP-46-2930

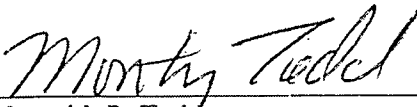
Mae Ruth Davis Thompson, Individually and as the appointed
Personal Representative of the Estate of Eula Mae Davis, Deceased Respondent,
v.

Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings,
Inc.; UHS of South Carolina-East, LLC; United Health Services of
South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill,
LLC d/b/a UniHealth Post Acute Care-Rock Hill Appellants.

NOTICE OF APPEAL

Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings, Inc.; UHS of South Carolina-East, LLC; United Health Services of South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.; Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill, LLC d/b/a UniHealth Post Acute Care-Rock Hill appeal the Order Denying Defendants' Motion to Compel Arbitration of the Honorable S. Jackson Kimball dated April 11, 2014, and the Order Denying Defendants' Motion for Reconsideration of the Honorable S. Kimball-Jackson dated July 1, 2014. Appellants received written notice of entry of this Order on July 7, 2014.

July 25, 2014



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(803) 779-0100
Attorneys for Respondent

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula Mae Davis

Pruitt Corporation
UHS-Pruitt Holdings,
INC
United Health Services
Of South Carolina, INC
United Rehab INC
Unihhealth Post-Acute
Care-Rock Hill, LLC

UHS-Pruitt Corporation
UHS Of South Carolina-
East LLC
United Clinical Services
Inc
Rock Hill Healthcare
Properties Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert E Horner

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ 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: _____
- ☐ 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:

ORDER INFORMATION

ORDER

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge

may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/ S. Jackson Kimball

Circuit Court Judge

3063

Judge Code

5/8/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on May 8, 2014, and a copy mailed first class or placed in the appropriate attorney's box on May 8, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

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Columbia, SC 29201

Monteith Powell Todd
PO Box 11449
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

ORDER

Case No. 2013CP46-2930

2014 MAY -8 AM 8:33
CLERK OF COURT
SOUTH CAROLINA

This matter came before me on March 13, 2014, upon Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings in this case. Representing Plaintiff was John G. Felder, and representing Defendants was Robert E. Horner. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

The following facts are clearly established in the record, and are adopted by me as the facts of this case. The parties have acknowledged that it is for this court to determine the factual issues pertaining to arbitrability for the purpose of ruling on this motion.

On January 11, 2011, Plaintiff and her brother, Andrew Davis ("Davis"), accompanied their mother Eula Mae Davis ("Decedent") to Uni-Health Rock Hill ("Uni-Health"), a nursing care facility, to admit Decedent to the facility for rehabilitation care.¹ As the admission process

¹ For ease of discussion, the term "Uni-Health" is used throughout this order to refer to the interests of all the Defendants, as those interests may appear, or be established, in subsequent proceedings.

proceeded, Davis and Plaintiff met with Uni-Health's staff to complete and execute necessary paperwork, and discuss Decedent's admission and care at the facility. In conjunction with Uni-Health's staff, Davis completed a number of forms associated with the admission process. Included were a detailed Admission Agreement, and a separate five-page Arbitration Agreement. The Arbitration Agreement provides that it applies to "[a]ny and all claims or controversies arising out of or in any way relating to [the] Agreement or the Patient/Resident's Admission Agreement, . . . or the Patient/Resident's stay at, or the care of services provided by [Uni-Health], or any acts or omissions in connection with such care or services." The Arbitration Agreement also seeks to bind potential future wrongful death beneficiaries to arbitration. The Arbitration Agreement precludes a jury trial and limits discovery that would otherwise be permitted under the South Carolina Rules of Civil Procedure.

Davis signed both the Admission Agreement and the Arbitration Agreement for Decedent on lines calling for the signature of "Patient/Resident Representative." His intended capacity was obviously as Decedent's "Representative." Decedent was not present in the meeting with Uni-Health's staff, as she was in the process of being transferred from a local hospital to Uni-Health. Decedent had never executed a power-of-attorney appointing Davis as her attorney-in-fact. Nor had she executed any other document giving Davis express authority to contract on her behalf in making healthcare decisions, or any other matter.

Prior to her admission to Uni-Health, Decedent permitted Davis to assist her with her finances, which amounted to paying her bills, and receiving and cashing her monthly Social Security check. The Decedent signed documents on her own behalf pertaining to renting her home. According to Davis and Plaintiff, Decedent also continued to handle her own affairs, as well as permitting Davis to do so. The Decedent, herself, had no prior contact with Defendants' facility, and never represented that Davis was her agent, either expressly, or impliedly. There is nothing in the record to indicate that Uni-Health relied on Davis' prior acts on behalf of Decedent in accepting him as Decedent's "Representative" for the purpose of executing the Admission Agreement and the Arbitration Agreement.

Plaintiff asserts that there is no valid Arbitration Agreement, because Davis lacked authority, express or implied, to enter the agreement on behalf of Decedent. Defendants assert that there was such authority, either express, or implied, by virtue of an agency relationship held by Davis, as evidenced by his assisting Decedent with her personal and financial affairs.

The parties acknowledge that the validity of the Arbitration Agreement must be

determined in accordance with the general principles of contract and agency law applicable to any other contract.

DISCUSSION

The dispositive issue before the court in this matter is whether Plaintiff is bound by the Arbitration Agreement signed by Davis as "Representative" of Decedent. It is undisputed that Davis held no power of attorney, or similar document, of any kind expressly granting such power or authority.

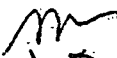
The Adult Health Care Consent Act (S.C. Code Ann. § 44-66-10 *et seq.* (1976, as amended) ("Act") confers such authority in regard to health care decisions, and thereby bound both Uni-Health and Decedent's estate in regard to the terms and conditions of the Admission Agreement. The manifest purpose of the Act is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. It further eliminates the need to deal with questions of apparent agency or authority in order to make such a contract binding.

However, the Act does not confer such authority with respect to an Arbitration Agreement, such as the one in issue in this case. See *Coleman v. Mariner Health Care, Inc.*, Supreme Court, Opinion No. 27362, filed March 12, 2014. As the Arbitration Agreement does not deal with healthcare decisions, the provisions of the Act do not apply to establish the necessary principal-agent relationship. *Id.*

Therefore, if Plaintiff is to be bound by the Arbitration Agreement, it must be the result of an express or implied-in-law principal-agent relationship between the Decedent and Davis. Davis must have been cloaked with actual or apparent authority to contract with Uni-Health concerning arbitration as an alternate method of resolving any dispute between the parties.

An agency relationship may be established with clear evidence of actual or apparent authority conferred by the principal on the alleged agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "... expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). It is clear that there was no such action by Decedent.

Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). To prove apparent authority, a party must show "... (1) that the purported principal consciously or impliedly


53

represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Cowburn*, 366 S.C. at 39, 619 S.E.2d at 448. The burden of establishing agency is upon the party asserting that a principal-agent relationship exists. *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240, 244, 473 S.E.2d 865, 867 (Cl. App. 1996).

Evidence is lacking to satisfy Uni-Health's burden in this case. First, there is no evidence that Decedent made any express representation to Uni-Health's staff. Indeed, she never spoke with Uni-Health's staff concerning her admission. Second, there is no evidence that Uni-Health relied upon the fact that Davis assisted Decedent with her affairs by paying her bills and depositing her Social Security check. The depositions of Davis and Plaintiff do not indicate that Uni-Health's staff was made aware of that fact.

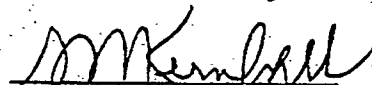
Further, Decedent personally executed the lease documents for her home. Although Davis took Decedent to medical appointments, there is no evidence that he was involved in the appointments as acting on Decedent's behalf. While Decedent was "comfortable" with Davis "sign[ing] her in" to the hospital, she assumed that responsibility herself as well. (Davis deposition at p. 17, lines 1-25.)

In short, I conclude that Decedent did not expressly or impliedly represent to Uni-Health that Davis was her agent for the purpose of signing the Arbitration Agreement. I further conclude that Uni-Health did not rely on any apparent agency relationship in regard to the Arbitration Agreement. Thus, I conclude that Decedent and Plaintiff were not bound to the Arbitration Agreement, and that the Arbitration Agreement cannot be enforced against Plaintiff. It follows that Decedent's heirs are likewise not bound.

Therefore, since the Arbitration Agreement is unenforceable, Defendants' motion to compel arbitration must be denied. As this ruling is dispositive of the issue presented, no ruling on the ancillary issues presented is required.

AND IT IS SO ORDERED.

April 11, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP4602930

Mae Ruth Davis Thompson Eula-Mae Davis

Pruitt Corporation
UHS-Pruitt Holdings,
INC
United Health Services
Of South Carolina, INC
United Rehab INC

UHS-Pruitt Corporation
UHS Of South Carolina-
East LLC
United Clinical Services
Inc
Rock Hill Healthcare
Properties Inc

Unihealth Post Acute
Care-Rock Hill, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ 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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/S. Jackson Kimball
Circuit Court Judge

3063

7/2/2014

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on July 2, 2014, and a copy mailed first class or placed in the appropriate attorney's box on July 2, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

John Gressette Felder Jr. McGowan Hood And Felder 1517
Hampton Street Columbia, SC 29201

Monteith Powell Todd PO Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Mae Ruth Davis Thompson, Individually)
and as the appointed Personal)
Representative of the Estate of Eula Mae)
Davis, deceased,)

Plaintiff,)

v.)

Pruitt Corporation d/b/a UHS-Pruitt)
Corporation; UHS-Pruitt Holdings, Inc.;)
UHS of South Carolina-East, LLC;)
United Health Services of South Carolina,)
Inc.; United Clinical Services, Inc.;)
United Rehab, Inc.; Rock Hill Healthcare)
Properties, Inc.; Uni-Health Post Acute)
Care-Rock Hill, LLC d/b/a UniHealth)
Post Acute Care-Rock Hill,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case No. 2013-CP-46-2930

ORDER

FILED-RECEIVED
2014 JUL -2 PM 1:19
DAVID H. HARRIS
C.C.P. & GS.
YORK COUNTY, SC

This matter came before me on June 19, 2014, upon Defendants' Motion to Reconsider my April 11, 2014, Order, denying Defendants' Motion to Dismiss and Compel Arbitration or, in the Alternative, to Compel Arbitration and Stay Proceedings. Based on the submissions and arguments of the parties, I make the following findings and conclusions.

STATEMENT OF CASE

This case concerns the events occurring at the time of Eula Mae Davis's admission to Defendants' skilled nursing facility, and an Arbitration Agreement presented for signature during the admission process. The facts are established in the record, and a statement of facts is included in the prior order. For purposes of the current motion, I adopt the previous statement of facts, and incorporate the same by reference.

Defendants' Motion to Reconsider cites five bases for reconsidering the Court's previous Order: (1) The facts show Eula Mae Davis's son was authorized to sign Ms. Davis into Defendants' facility; (2) The evidence showed an apparent agency relationship; (3) Ms. Davis was a third-party beneficiary of the Arbitration Agreement between her son and Defendants; (4)

Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son; and, (5) If the Court reconsiders its earlier order and concludes Plaintiff is bound by the Arbitration Agreement, then Ms. Davis's beneficiaries are also bound by the Agreement.

DISCUSSION

Defendants first two arguments relate to agency principles thoroughly addressed in the Court's earlier Order. After considering the parties' submissions and arguments, I reaffirm the earlier findings and conclusions. Agency is a "... fiduciary relationship which results from the manifestation of consent by one person to another to be subject to the control of the other and to act on his behalf." *Peoples Fed. Savs. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct. App. 1992) (citing Restatement (Second) of Agency § 1 (1958)). An agency relationship may be established with clear evidence of actual or apparent authority conferred by the purported principal on the purported agent. *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005). Actual authority is "... expressly conferred upon the agent by the principal." *Richardson v. PV, Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Apparent authority is based on "... representations made by the principal to the third party and reliance by the third party on those representations." *Young v. S.C. Dep't of Disabilities & Special Needs*, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007).

To prove apparent authority, a party must show: (1) the purported principal consciously or impliedly represented another to be his agent; (2) reliance on the representation by a third party; and, (3) change in position by third party in reliance on the representation. *Cowburn*, 366 S.C. at 39-40, 619 S.E.2d at 448. As found in the prior Order, Defendants offered no evidence that Ms. Davis expressly or impliedly represented her son to be her agent for purposes of signing the Arbitration Agreement. Defendants also failed to meet their burden of proving Defendants relied on any apparent agency relationship. Thus, I deny Defendants' Motion to Reconsider concerning actual and apparent agency, and reaffirm the earlier findings and conclusions on those issues. See Order at 3-4.

In their third asserted basis for reconsideration, Defendants argue that Ms. Davis was a third-party beneficiary to an Arbitration Agreement formed between Defendants and her son. As discussed above, Ms. Davis's son had no legal authority to enter a contract on his mother's behalf, and while he assisted her in some of her personal business, it does not appear that he entered into binding contracts on her behalf.

Since Ms. Davis did not sign the Arbitration Agreement, and Andrew Davis had neither

actual, nor apparent, authority to enter the agreement on Ms. Davis' behalf, there is no valid and enforceable agreement to arbitrate. There can be no third-party beneficiary without a valid contract. See *Hardaway Concrete Co., Inc. v. Hall Contracting Co.*, 374 S.C. 216, 225, 647 S.E.2d 488, 492 (Ct. App. 2007) (considering a potential third-party beneficiary only after determining the existence of a valid and enforceable contract). This is a principle recognized in other jurisdictions.¹ Fundamentally, there was never intended to be a contract between Defendants and Andrew Davis upon which to premise a 'third party beneficiary' theory. The contract was based upon the son having authority to act directly for Ms. Davis, not that Ms. Davis would somehow benefit from a separate bargain between Defendants and Andrew Davis. Accordingly, Defendants' third basis for reconsideration is denied.

Defendants' fourth argument is that Plaintiff is estopped from denying an agency relationship between Ms. Davis and her son. Defendants' Motion initially refers to 'estoppel' in a general sense (Defendants' Mem. at 5), but later discusses the doctrine of equitable estoppel. Accordingly, I consider only whether Defendants' met their burden to have the court apply the doctrine of equitable estoppel.

Equitable estoppel requires proof that the party to be estopped: (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and, (3) had actual or constructive knowledge of the real facts. *Strickland v. Strickland*, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). It also requires that the party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; (3) make a prejudicial change in position in reliance on conduct of party estopped. *Id.* Based on the parties' submissions and arguments, Defendants have not met their burden to satisfy these elements. As discussed above, Defendants have not proved that they relied on the conduct of the party against whom they seek to apply estoppel.

¹ See *Licata v. GGNCS Malden Dexter LLC*, 2 N.E.2d 840, 848 (Mass. 2014) (since "no one with authority to do so signed the arbitration agreement," there was no valid agreement and could be no third-party beneficiary); *GGNSC Omaha Oak Grove, LLC v. Payich*, 708 F.3d 1024 (8th Cir. 2013) (finding son lacked legal authority to sign for mother and there was no valid arbitration agreement to which the resident could be a third-party beneficiary); *GGNSC Batesville, LLC v. Johnson*, 109 So.3d 562, 565 (Miss. 2013) ("For a third-party beneficiary to exist, a valid contract must first exist"); *Dickerson v. Longoria*, 995 A.2d 721, 742 (Md. 2010) ("Before one can enforce a contract, however, whether as a party to the contract or as a third-party beneficiary, there must be a contract to enforce"); *Adams Cmty. Care Ctr., LLC v. Reed*, 37 So.3d 1155, 1160 (Miss. 2010) ("For a third-party beneficiary to exist, there must first exist a valid contract executed by one with 'legal capacity' to enter the contract").

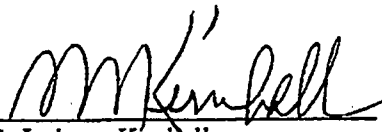
Defendants had no contact at all with Ms. Davis concerning her admission or the arbitration agreement, and they do not contend otherwise. Thus, Defendants have not met their burden, and their Motion to Reconsider on this basis is denied.

Defendants' final argument asks the Court to find that Ms. Davis's statutory beneficiaries are bound to the Arbitration Agreement. This argument is premised upon the Court first finding that a valid agreement exists, and that Ms. Davis is bound by its terms. Since I find and conclude that there is no valid agreement, no ruling on this issue is necessary.

In summary, I reaffirm the findings and conclusions of the prior order. Therefore, based on the prior order and the additional discussion herein, it is ordered that Defendants' Motion to Reconsider be denied.

AND IT IS SO ORDERED.

July 1, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County

#4

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 25 2014

APPEAL FROM YORK COUNTY
Court of Common Pleas

SC Court of Appeals

S. Jackson Kimball, Circuit Court Judge

Case No. 2013-CP-46-2930

Mae Ruth Davis Thompson, Individually and as the appointed
Personal Representative of the Estate of Eula Mae Davis, Deceased Respondent,
v.

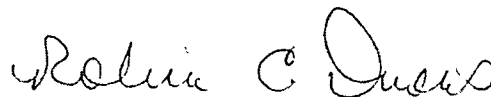
Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings,
Inc.; UHS of South Carolina-East, LLC; United Health Services of
South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill,
LLC d/b/a UniHealth Post Acute Care-Rock Hill Appellants.

PROOF OF SERVICE

I, the undersigned Legal Assistant, of the law offices of Sowell Gray Stepp &
Laffitte, LLC, attorneys for Appellants, do hereby certify that I have served all counsel in this
action with a copy of the Notice of Appeal by mailing a copy of same to counsel via United
States Mail, postage prepaid, at the following address(es):

Counsel Served:

John G. Felder, Jr., Esquire
McGowan, Hood & Felder
1517 Hampton Street
Columbia, SC 29201



Robin C. Owens, Legal Assistant

July 25, 2014.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2013-CP-46-02930
	)	
Mae Ruth Davis Thompson, et	)	
al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Pruitt Corporation, et al.	)	
	)	
Defendants.	)	
_____	)	

March 13th, 2014
York, South Carolina

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, JUDGE.

APPEARANCES:

JOHN G. FELDER, JR., ESQ.
Attorney for the Plaintiff

ROBERT E. HORNER, ESQ.
Attorney for the Defendants

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

EXHIBITS

No.

Description

Page

(No exhibits were marked.)

P R O C E E D I N G S

THE COURT: This is defendants' motion to compel arbitration or to dismiss or vacate?

MR. HORNER: Yes, sir, Your Honor. My name is Bob Horner. I'm here on behalf of the defendants. I'm here for Monty Todd, who found out on Tuesday he had a detached retina and had to have surgery this morning, so I've had this case for about 24 hours.

THE COURT: I've done that.

MR. HORNER: It's always fun.

This is a case to compel arbitration. This is a nursing home case where Mrs. Davis, who is the deceased, was a resident of a Pruitt nursing home corporation. It appears she was admitted in the morning or -- on January 11th, I believe it was. Later on the same day, she was found out of her bed. She had suffered a fractured neck and unfortunately passed away.

She came from Piedmont Medical Center, and upon her being transferred to the Pruitt facility, her son and her daughter -- her son, Andrew Davis, and her daughter, Mae Ruth Davis Thompson -- visited the facility and signed paperwork on Ms. Davis' behalf. And the paperwork included an admission agreement and an arbitration agreement and some other paperwork that's typically executed when a resident is admitted. Typically includes

1 things like do you want us to open your mail, do you want
2 your hair done, things like that.

3 Mr. Davis signed the admission agreement, the
4 arbitration agreement and all of the documents. He signed
5 them in the presence of his sister. They had a chance to
6 go over it. He testified it took somewhere between 45
7 minutes and an hour about 15 minute to execute all the
8 documents, and he admitted he had a chance to ask any
9 questions if he had any.

10 THE COURT: Mr. Horner, did he have a -- either a
11 healthcare power of attorney or any other kind of --

12 MR. HORNER: No, Your Honor, he did not.

13 THE COURT: Just a son?

14 MR. HORNER: Just a son.

15 THE COURT: Would he fall, then, under that act?

16 MR. HORNER: We -- there's the case that Mr. Felder
17 produced.

18 MR. FELDER: Johnny.

19 MR. HORNER: Different Johnny. We didn't raise the
20 act. The act is very specific. He would have fallen
21 under the act as far as the admission agreement, I
22 believe, even under the new case, but not as to the
23 arbitration agreement based upon the Supreme Court's
24 interpretation of their being separate documents and the
25 arbitration agreement being outside the authority of him

1 under that act.

2 THE COURT: That's what it says.

3 MR. HORNER: Yes, that is the way I read it. But
4 what the dissent -- not the dissent -- what the majority
5 makes clear in footnote 4 of that opinion is they are only
6 addressing the authority of a relative to be bound under
7 that act. They mentioned several times that they are not
8 discussing any other theories under which someone may be
9 bound. And our motion from the start has always been
10 based upon the alternate theories of why the estate and
11 the representative should be bound. And those theories
12 are one, it's an apparent agency. Mr. Davis testified
13 that since around 2009, he handled his mother's affairs.
14 He would pay her bills; he would sign documents on her
15 behalf, and he would do all that for her.

16 The sister or the daughter, if you will, confirmed
17 that, that her brother was the one who handled his
18 mother's affairs and had done so for several years. And
19 so we believe that he had been cloaked with this apparent
20 agency for several years to handle his mother's affairs.
21 He comes to the facility. He's sitting there signing the
22 paperwork on her behalf in front of his sister who voices
23 no objection, who has no complaint about him signing these
24 documents on his mother's behalf. She testified in her
25 deposition if that document had been taken home to their

1 mother to read, he would have signed them anyway.

2 Now, I know there is some question as to the mother's
3 competency. It appears that she -- the family doesn't
4 really admit it in their deposition. They seem to say for
5 the most part she seemed okay to them, but there are
6 medical records that back up that she was having some
7 trouble with her memory, some early-onset dementia.

8 THE COURT: Right.

9 MR. HORNER: But we still believe that under the
10 doctrine of apparent agency, we as a third-party and based
11 upon the fact that son and the daughter are both there and
12 they both know that he has represented the mother through
13 various financial transactions for several years, has
14 every right to rely upon his representation to us that he
15 is authorized to admit her and sign these documents on her
16 behalf.

17 THE COURT: Does -- does -- does that theory beg --
18 in light of the -- what is it? Mariners --

19 MR. HORNER: Coleman case? Yes, sir, versus Mariner
20 Health Care.

21 THE COURT: Yeah. Does that presuppose you have to
22 determine what the purpose -- this is the difficulty I
23 have -- determine what the purpose of the -- was it
24 section -- the Adult Healthcare Consent Act is. In other
25 words, must I -- if I were to find, I suppose, for example

1 that the Adult Healthcare Consent Act was for the purpose
2 of protecting a person against -- an ill or infirm adult
3 from waiving rights, then it would affect how I would
4 think about that argument. On the other hand, if the
5 Adult Healthcare Act is simply to protect people who
6 provide services and whatnot to infirm adults in terms of
7 getting paid, in terms of procedures they follow, medical
8 treatment they render and things like that, that would be
9 a different interpretation, seems to me.

10 MR. HORNER: Yes, sir.

11 THE COURT: Does that make sense?

12 MR. HORNER: I think I understand where you're coming
13 from, but the way I view it in looking at the dissent --
14 why do I keep saying that? -- footnote number 4, what the
15 Court says is: "We define the surrogate's authority
16 strictly by reference to the act itself, which
17 specifically provides the surrogate is not responsible --
18 financially responsible for the costs associated with the
19 healthcare decisions she makes on behalf" --

20 THE COURT: Hold on. I'm looking at footnote 4.
21 Where is that in footnote 4?

22 MR. HORNER: It is the second sentence. Contrary to
23 the dissent view --

24 THE COURT: All right.

25 MR. HORNER: And it goes on to say: "We are

1 interpreting a healthcare surrogacy act, not consumer
2 rights legislation. And the sole question before the
3 Court is the scope of the surrogate's authority." He goes
4 on to say: "Authority to enter other types of contracts
5 may be vested in attorney-in-fact, a probate court
6 guardian, or another who possesses legal authority." Now,
7 you can have legal authority to me --

8 THE COURT: I'm sorry. Where is that, now? I'm
9 sorry.

10 MR. HORNER: I'm sorry, Your Honor.

11 THE COURT: You read the footnote better than I did.

12 MR. HORNER: To me, the footnote is how I distinguish
13 this case.

14 THE COURT: Hang on. This is why I ask the question
15 about whether there's any kind of healthcare power or
16 other power of attorney.

17 MR. HORNER: Yes, sir.

18 THE COURT: Okay.

19 MR. HORNER: And the footnote makes clear that in
20 addition to things like the attorney-in-fact or probate
21 court guardian, it says another who possesses legal
22 authority. And there are many ways within the law one can
23 possess legal authority over others, and one of those
24 principles is the doctrine of agency, which is what --
25 really the basis of our argument is is that the son is

1 acting as an apparent agent on behalf of his mother to
2 admit her, to sign all of the paperwork on her behalf in
3 front of the daughter, and he had done so for several
4 years.

5 THE COURT: Isn't that what we've always assumed in
6 these typical contracts before this -- of course, this
7 statute is old now. Passed in '90 something, '92?

8 MR. FELDER: I thought it was 2002. Could be wrong.

9 MR. HORNER: 2002.

10 THE COURT: 2002. Isn't agency what we've really
11 always assumed is as a theory for binding the plaintiff to
12 arbitration, I mean, sort of an implied agency? Like this
13 agreement itself says -- doesn't say agent,
14 attorney-in-fact. Let me find it. I had it. It's a
15 dual --

16 MR. HORNER: I think it says "representative."

17 THE COURT: Yeah, something like that.

18 MR. HORNER: Responsible party?

19 THE COURT: Patient/resident representative's
20 signature.

21 MR. HORNER: Yes, sir.

22 THE COURT: Which makes me think that we've always
23 assumed this -- that -- the application of arbitration
24 based on a theory of that. And my concern was this act
25 may really affect that.

1 MR. HORNER: Yes, sir, and I think that's the purpose
2 for the footnote is for the Court to say: You may get
3 here by other ways, but you can't get here based solely
4 upon the fact that the statute gives you standing to admit
5 a relative by virtue of -- because it goes through eight
6 or ten classifications of people who can admit you, if
7 it's not this one, then this one and this one and this
8 one. But theoretically under a theory of just general
9 common-law agency, I could get my next-door neighbor who
10 is not on the list to still bind me to the admission
11 agreement and the arbitration agreement just through
12 common-law agency.

13 THE COURT: Let me tell you what I -- deal with this.
14 What I thought when I read it is this act was sort of,
15 like I said, put into place to protect both the provider
16 and the representative agent in the absence of healthcare
17 power of attorney, regular power of attorney, or some
18 other kind of -- guardianship, you know, some other type
19 of official appointment. And that if it were -- if
20 something was happening only under this statute, the
21 arbitration agreement wouldn't apply. But if there was
22 another capacity like a POA, then that would bind the
23 plaintiff because the POA gives part of the authority to
24 bind the plaintiff to anything. Do you understand what I
25 mean?

1 MR. HORNER: Right, yes.

2 THE COURT: If this guy had signed so-and-so,
3 attorney-in-fact, it seemed like he would have bound her
4 to anything.

5 MR. HORNER: Yes.

6 THE COURT: But the act is a substitute for that.

7 MR. HORNER: And that's what I disagree with on the
8 basis that one, the footnote says there are other ways
9 that you can be legally bound and that we're not
10 discussing those; and two, when you look at the act
11 itself, it basically goes down through relatives,
12 attorney-in-fact, a POA, but then stops and says a person
13 given authority to make healthcare decisions by a
14 different statutory provision.

15 THE COURT: Let me see. There it is. I got it.

16 MR. HORNER: That would be subsection number 8.
17 Which -- essentially if you hold the statute replaces the
18 common-law ability to contract or to bind via agency, you
19 have created a whole class of people who, through the
20 doctrine of agency, can bind somebody like a neighbor or
21 your best friend or your partner. Let's say in this case
22 you have a life partner. The statute doesn't address
23 those people. But they still have every right to legally
24 bind someone through the doctrine of agency. That's why I
25 don't think it's a complete substitute for the common-law

1 theory of agency and third-party beneficiary and estoppel
2 that we sort of raised in our brief, which is why we
3 didn't go under the statute.

4 THE COURT: You don't want go under the statute.

5 MR. HORNER: Not now. And I understand --

6 THE COURT: So you're saying other folks that may
7 otherwise be an agent, may be dubbed an agent are maybe a
8 class of people outside this statute.

9 MR. HORNER: Yes, sir.

10 THE COURT: But this gentleman is not.

11 MR. HORNER: Well, he's, in fact, a relative. But I
12 don't think it's mutually exclusive, that because you're a
13 relative you can't be an agent through the common law.

14 THE COURT: Well, I don't disagree with that as a
15 general sense, no.

16 Let me hear from Mr. Felder.

17 MR. FELDER: Thank you, Your Honor. Your Honor, my
18 good friend over here and colleague keeps talking about
19 agency, my neighbor can bind me through agency, but
20 specifically there's no actual agency here. They
21 stipulate that in their brief. There's -- he had no legal
22 authority, as you asked. She was not -- they spend most
23 of their first brief saying she didn't have the mental
24 capacity to enter into a contract. She never gave him any
25 actual agency. There's no document, no evidence, no

1 testimony of that. There's no evidence that she knew
2 about this agreement or authorized him to sign an
3 arbitration agreement contracting away her
4 seventh amendment right to a jury trial, but they don't
5 even argue that.

6 So when he's talking about your neighbor binding you
7 through agency, he's talking about what their brief is
8 talking about, implied or apparent agency. And under the
9 law, that has to come from the principal to the person
10 asserting the agency. Ms. Davis -- it can't be from the
11 son. Ms. Davis has to -- the principal has to do
12 something to indicate that that's an agent.

13 THE COURT: Cloaked with apparent authority.

14 MR. FELDER: She couldn't do that here. She
15 didn't -- they put all through their brief she didn't have
16 the capacity do that. Also, Your Honor, he did not sign
17 this indicating -- he just signed his name. It says,
18 "Please indicate the capacity of the representative." He
19 doesn't even fill that part out. There -- the only -- any
20 of the stuff in the past -- I didn't go through the
21 depositions because he also testified that she had never
22 discussed with him any arbitration or anything like that.
23 But none of that even matters, stuff they did with the
24 banks a few years earlier.

25 THE COURT: Here's the problem I have with your side,

1 the other side. This is the other side of it. If I
2 adopted your position, there would never -- the statute
3 would trump all such signatures. In other words --

4 MR. FELDER: No, sir.

5 THE COURT: Every signature would fall under the
6 statute.

7 MR. FELDER: Well, no, sir, because if there was
8 implied agency; in other words, if she had come in and
9 given some indication that he was her agent --

10 THE COURT: Yeah, I'll exclude that. I agree with
11 that, yes.

12 MR. FELDER: Now, Your Honor, there's another
13 critical difference that hasn't been talked about, and by
14 the way, the THI case --

15 THE COURT: What about my concern?

16 MR. FELDER: That's -- I thought I -- one example of
17 that is if you have apparent agency. Another example of
18 that would be if you had a third-party beneficiary, which
19 I would like to say why that doesn't apply here. There
20 are lots of examples of where the signature would be valid
21 outside of that statute. Because that statute is talking
22 about healthcare decisions.

23 THE COURT: Now, let me -- be sure we're on the same
24 page. When I say "valid," I mean valid to bind -- to bind
25 the plaintiff's claim to arbitration.

1 MR. FELDER: Yes, sir. That's what I'm trying to
2 address.

3 THE COURT: Okay. All right.

4 MR. FELDER: If I could -- I might be doing a poor
5 job, but one example of where that could happen, Your
6 Honor, is if -- in the THI case and the Mississippi case
7 they cite. And in Coleman, the court talks about the
8 arbitration agreement, if it were in the admission
9 contract, you would have some of those arguments.

10 THE COURT: Right. Chief Justice talks about that.

11 MR. FELDER: But they are in separate documents, and
12 the THI case, which they cite in their brief, that was my
13 case. I was in the underlying case. And what happened
14 there, Your Honor, is they were in default. And while
15 that was being argued about, they filed a declaratory
16 judgment. Judge Curry issued that order. We immediately
17 appealed it the Fourth Circuit. They knew they were going
18 to lose. They knew that order had all kinds of problems,
19 and they settled it right after we filed the appeal. The
20 important thing --

21 THE COURT: People settle things for lots of reasons.

22 MR. FELDER: Well, I can just tell you -- that was my
23 case, and I will tell you that in that -- there were two
24 things in that case we don't have here. That person later
25 became the PR, okay, because you might have seen the

1 argument that that can be retroactive, which we don't have
2 that here.

3 THE COURT: I did not.

4 MR. FELDER: Mr. Davis never became the PR. So he's
5 not the PR, he never became the PR, he never had power of
6 attorney. But also, Your Honor, the arbitration provision
7 was not in the admission contract, okay. And just like in
8 the Coleman case that we saw yesterday, it's revocable,
9 it's not a condition precedent to admission. It's a
10 separate document. They're not merged.

11 THE COURT: I understand..

12 MR. FELDER: Okay, so there's no -- that's one
13 example you asked me about. There is no benefit from the
14 admission contract here to make that signature valid to a
15 third-party beneficiary because they're separate
16 documents. There was no benefit derived to this lady from
17 the separate contract that was entered, and that's
18 directly under Coleman. That trumps their estoppel
19 argument --

20 THE COURT: That's what I'm saying. Does this
21 statute and Coleman trump every signature like this?

22 MR. FELDER: No, sir. If you had a valid agency, a
23 valid agent, that would be --

24 THE COURT: Valid agent or apparent authority.

25 MR. FELDER: Yes, sir. Because otherwise --

1 THE COURT: Granted by the principal.

2 MR. FELDER: -- what gives them -- why shouldn't that
3 be the case? I mean, you need to have some legal
4 authority to contract away somebody's constitutional
5 rights to a jury trial. I mean, it's unbelievable me
6 that --

7 THE COURT: Until Coleman, that's the way it was.

8 MR. FELDER: Well, there was lot of splits because
9 I've gotten -- to be completely honest, and he probably
10 has too -- circuit court judges --

11 THE COURT: Mr. Felder, I had one decided by the
12 Court of Appeals. It was an unpublished opinion where
13 they upheld my finding that arbitration was to be
14 compelled.

15 MR. FELDER: I don't know the facts of your case, but
16 I've seen orders --

17 THE COURT: Like this one.

18 MR. FELDER: Sir?

19 THE COURT: I do think it was in -- I do believe it
20 was in the same agreement in that case.

21 MR. FELDER: Yes, sir. So --

22 THE COURT: I've done this before and I'm confused.

23 MR. FELDER: I know, and I hope I'm not -- I'm trying
24 to answer your question, and I don't know the case. I'm
25 not going to -- certainly not trying to tell you about the

1 case you saw, but as you surely know, there's lots of
2 circuit court orders on both sides of this issue.

3 THE COURT: Which are not binding on anybody.

4 MR. FELDER: Yes, sir, exactly. So I didn't bring --
5 I've got a whole binder in here. I didn't bring those in
6 here, so I don't know about your case, and I apologize.

7 THE COURT: No, you don't -- that's fine.

8 MR. FELDER: But that would be my answer, Your Honor.
9 There are still -- and I do note the language of the
10 footnote that we kept reading. He said: "This does not
11 apply to other situations when someone may be vested,
12 attorney-in-fact, probate court guardian, or another legal
13 authority."

14 THE COURT: Right.

15 MR. FELDER: And I don't think -- and when you look
16 at the -- I don't think there's any legal authority. I
17 don't know -- the gentleman -- he was not an --

18 THE COURT: Let me stop you. Hold on. Slow down.
19 What is your view of the purpose of the Adult Healthcare
20 Consent Act?

21 MR. FELDER: That someone can make decisions in any
22 of those categories that are listed in the statute.

23 THE COURT: Someone in any of those categories can
24 make healthcare decisions?

25 MR. FELDER: Healthcare decisions. But they can't go

1 to a separate document that's not part of the contract
2 that's relied on for the healthcare services as the
3 Supreme Court notes and separately enter into a contract
4 that is a form-choosing contract. It's whether you have
5 your constitutional rights to a jury or not.

6 THE COURT: Well, I hate it if Justice Pleicones is
7 going to have to read this, but I agree with the Chief
8 Justice that that's the very reason to allow the
9 arbitration agreement to be binding, because it doesn't
10 have anything to do with this act, and therefore because
11 the act didn't give authority to sign the admission, it's
12 got nothing to do with the act. It would have to do with
13 agency.

14 MR. FELDER: But, Your Honor, where is the authority
15 for him? He's not her agent. This gentleman --

16 THE COURT: That's a factual question.

17 MR. FELDER: Yes, sir, but don't they have the burden
18 to establish it?

19 THE COURT: Oh, sure. Sure.

20 MR. FELDER: And I don't see anything in the record
21 where there's any testimony -- the testimony of the son
22 was she didn't even know about anything about arbitration.
23 She couldn't have even understood it at that time. And,
24 Your Honor, the cases they cite, they cite several cases,
25 International Paper, and they say these cases are where

1 non-signatories were held to the arbitration because they
2 embraced the term of the contract. That's the language
3 they used. This lady was in this facility with dementia
4 for a few hours. How could she embrace the terms of --

5 THE COURT: I don't disagree with that.

6 MR. FELDER: So it's such a -- such a -- it's such a
7 huge -- I mean, it's a constitutional right that is being
8 waived for someone by someone who doesn't have the
9 authority to waive it.

10 THE COURT: Heretofore it's been waived and --

11 MR. FELDER: Under these facts?

12 THE COURT: Legitimately waived. Yes. This is a new
13 case. The -- in my view, the Mariner case is a new case,
14 but it's binding.

15 MR. FELDER: Your Honor, it's our position they
16 are -- they have the burden of establishing agency in this
17 scenario. They have not met the elements, and we've
18 listed them out in our brief. They don't even address the
19 elements of estoppel, the five elements of estoppel. They
20 don't even talk about those anywhere in their brief, and
21 they have the burden to do that.

22 THE COURT: No, no.

23 MR. HORNER: And I did -- riding up here, I did talk
24 to Monty this morning. He's also a good friend, and Monty
25 said he had this retina surgery. And I said, "Monty" --

1 last night I emailed him. I said, "Are you going forward
2 tomorrow?" This morning he called me, said, "We're going
3 to talk with the client. I don't even know if we're going
4 to go forward with the hearing. I'll let you know." I
5 got a --

6 THE COURT: I think we got the answer to that.

7 MR. FELDER: I got this 11-page memo and I stopped in
8 our Rock Hill office and printed it, tried to read it. I
9 didn't see anything in there, I don't see anything
10 anywhere establishing that this gentleman meets the
11 elements for apparent agency, for -- there's certainly no
12 third-party beneficiary here because the contract, under
13 the Supreme Court's case, is not merged with the admission
14 contract. There's no healthcare benefits related to that.
15 And then lastly, Your Honor, they don't even address -- I
16 don't know how seriously they're trying to establish
17 estoppel, but they didn't even address the factors for an
18 estoppel argument. So we would just -- that's our
19 position.

20 THE COURT: I understand. I think I fully
21 understand.

22 Mr. Horner, briefly.

23 MR. HORNER: I'll be brief. As I said earlier, both
24 the son and the daughter testified that for a period of
25 years, the son was empowered and entitled to handle the

1 mother's affairs.

2 THE COURT: These are depositions you're talking
3 about?

4 MR. HORNER: Yes, yes. And I have the deposition
5 testimony. It's cited in the briefs, but they both admit
6 that the son had the ability to sign. The daughter
7 admitted as the son was signing it that he had the ability
8 to sign this. And he had taken care of his mother's
9 affairs for about two years, two and a half years prior to
10 this. So there is some evidence of an apparent agency.
11 In fact, they both --

12 THE COURT: Actual agency.

13 MR. HORNER: Well, actual agency to be honest,
14 because there is two years worth of him handling her
15 affairs without the mother acquiescing. You know, they
16 said the mother was able to communicate at the time she
17 went to the facility to them. That's in the deposition
18 testimony, and yet she didn't repudiate. She didn't say,
19 "I don't want to be here," so there is some evidence here
20 to support that.

21 As to the third-party beneficiary argument, you know,
22 Mr. Felder, Johnny says that, you know, there might have
23 been some third-party beneficiary as to the healthcare
24 aspect but not arbitration. That's just simply not true.
25 Ms. Davis had the same benefits that she could have

1 derived from the arbitration. Now that she's dead, her
2 family doesn't like the arbitration agreement, but to say
3 that both parties don't benefit from an arbitration
4 agreement. If she had had a --

5 THE COURT: I don't think third-party beneficiary is
6 an issue here.

7 MR. HORNER: Okay. And just to protect the record,
8 the son is, in fact, a party to the arbitration agreement.
9 His name is typed in as a party to the agreement, and he
10 signed the agreement on behalf of his mother. And that
11 would be the basis of the third-party beneficiary, as he
12 entered into an arbitration agreement for the benefit of
13 his mother with the healthcare facility, and that is why
14 she is a direct third-party beneficiary because he's, in
15 fact, a party to the arbitration agreement. His name is
16 on -- in the very first paragraph, and the agreement is
17 between Eula Davis and Andrew Davis.

18 THE COURT: I'm sorry. Say that again, please?
19 You're talking about the arbitration agreement?

20 MR. HORNER: Yes, very first paragraph. His name is
21 typed in. Eula Davis and Andrew Davis. So she is a party
22 to the arbitration agreement, and the arbitration
23 agreement is executed for her direct benefit as the
24 resident or patient in the facility. And that would be
25 our third-party beneficiary argument based upon him being

1 a party to that contract, knowing that it was to benefit
2 his mother and her estate and her heirs.

3 And finally as to the estoppel, our argument is
4 basically that they sat there, admitted they had the
5 ability to sign the agreement. We relied upon them in
6 their representing they had the authority to enter into
7 the agreement. We relied upon that -- she, although she
8 was only there for that one day or less, she was admitted.
9 She wasn't turned away. She wasn't forced to go home.
10 She wasn't forced to go back to the hospital. She wasn't
11 forced to go sit in the car for 12 hours while
12 everything -- while a POA was obtained or anything like
13 that. We admitted her to a facility with the intention of
14 her staying there long-term based upon the family -- both
15 family members representation to the facility that they
16 had -- they were the authorized representative of their
17 mother, and that is the basis of the estoppel argument.

18 THE COURT: It's clear to me that the Mariner
19 decision depends upon the court's reasoning that there is
20 no basis under the act for the authority to bind
21 Ms. Coleman, wasn't it?

22 MR. HORNER: In the case?

23 THE COURT: Ms. Mary Brinson, the decedent, to the
24 arbitration agreement. That's the premise, as I
25 understand it. It does not, I agree -- it does not

1 preclude proof of authority, and that's what you're saying
2 under some other theory of law. And what you're telling
3 me is that the depositions establish that the son had
4 either actual or apparent authority. All right.

5 MR. FELDER: Your Honor, can I ask a question? I'm
6 not asking for more argument. Can I ask a question?

7 THE COURT: Well, let me get this out of my head
8 first. I'm trying to articulate what I'm thinking, and
9 y'all can help me with it. So it seems to me that I would
10 have to make a factual determination and determine that by
11 some measure of the evidence the son was the -- some sort
12 of an agent of the decedent. Can I do that in this
13 hearing?

14 MR. HORNER: Because --

15 THE COURT: Typically like a summary judgment --
16 summary judgment just to put in the context of a summary
17 judgment, you know -- you know the standard. Scintilla of
18 evidence, otherwise I can't make factual determinations.
19 Just has to be no genuine issue of fact. Or if you
20 applied to it the 12(b) standard, it would be anything
21 that tended to indicate. So I guess I'm asking you both:
22 Do I have to make a factual determination in order to rule
23 either way? Let Mr. Horner go, since it's harder for him.

24 MR. HORNER: Your Honor, I don't think that the --
25 first I think you would have to make a factual finding as

1 to whether or not the relationship between the decedent
2 and her son who signed the document under the agency
3 argument that I've made established some evidence of -- I
4 don't think it's a scintilla that he wasn't. I don't
5 think it rises to a summary judgment standard. I think
6 that is, in fact, a finding of fact that the Court does
7 have to make in determining whether or not the arbitration
8 agreement or any of these documents become enforceable,
9 because I don't know how otherwise --

10 THE COURT: Because you have to put them outside of
11 this case. You have to put them in the exceptions to this
12 case.

13 MR. HORNER: Yes, sir. Yes, sir. And so to get to
14 the exceptions of establishing legal authority, there's
15 always going to be a question as to whether or not there
16 was, in fact, an agency relationship between the parties,
17 and I believe that's appropriate for the judge in deciding
18 whether an arbitration is binding or not whether or not
19 there is evidence of an agency relationship that would
20 bind the estate to her son's signature or signing of these
21 documents. But I would not think it rose to the level of
22 scintilla or -- it's just a finding of fact that the judge
23 would have to make in determining the enforceability of
24 the arbitration agreement.

25 Now, if I'm not mistaken, federal courts actually

1 hold that if there's some sort of finding of fact, the
2 case should be sent to arbitration and the arbitrator
3 should make that finding --

4 THE COURT: I was going to ask that next. Among the
5 things that an arbitration, as I understand, forced
6 arbitration does is requires the arbitrator to make the
7 decision whether the matter is arbitrable.

8 MR. HORNER: Yes, and that's under the federal act.
9 That is what happens is if you have an agreement that
10 appears to proper on its face, you send it to the
11 arbitrator who decides that question of fact based upon
12 the evidence presented to him. And if he finds that there
13 was no agency relationship, he sends it back to the
14 circuit court. But if he finds there was an agency
15 relationship, then he keeps that case for himself and
16 proceeds through arbitration.

17 THE COURT: I seem to recall something like that.

18 MR. HORNER: Yes, sir.

19 THE COURT: Let me hear from Mr. Felder.

20 MR. FELDER: I think in writing your -- that you
21 should be the first person to decide whether or not they
22 have established their burden under the three claims, not
23 the wrongful -- you know, we have an independent argument
24 on the wrongful death claims whether he's an agent or not.
25 He couldn't bind the wrongful death beneficiaries to -- he

1 couldn't waive their right to a jury trial, so that's a
2 separate argument. But on the front line for the three
3 claims that were hers, they have the burden of
4 establishing an agency relationship, and what I would ask
5 Your Honor is they spent their whole first brief talking
6 about how she has no capacity, and then in their
7 supplemental brief, they said, "Well, we found this one
8 reference where she could" --

9 THE COURT: Well, do they really have the burden?
10 Because --

11 MR. FELDER: Yes.

12 THE COURT: -- outside this case, some evidence is he
13 signed as her representative and she was admitted.

14 MR. FELDER: He didn't even indicate that. He just
15 put his name on there. If you look at the signature --

16 THE COURT: It's what's typed under the line.

17 MR. FELDER: It says he's supposed to indicate in
18 what capacity, and they type his name --

19 THE COURT: Let's not get off track on that.

20 MR. FELDER: He doesn't indicate --

21 THE COURT: I know what he did. Let's don't get off
22 track on that.

23 MR. FELDER: Okay.

24 THE COURT: Let's deal with what I got to deal with.

25 MR. FELDER: I thought that's what you were asking.

1 THE COURT: No, that isn't what I'm asking.

2 MR. FELDER: I apologize.

3 THE COURT: He signed on the line that says
4 "representative" underneath it. I guess I better -- I
5 want to do two things. One, if I'm going make a factual
6 decision -- determination, I need to have submitted to me
7 what's got the facts in it, which I assume would be
8 depositions.

9 MR. FELDER: Could we submit proposed orders at
10 least, because I got this --

11 THE COURT: No, no. When I make up my mind, I'll get
12 someone to send me a proposed order. Second thing is deal
13 with the question of whether it would be -- whether the
14 proper track is to send it to the arbitrator to determine
15 as a fact whether there are other -- bases other than as
16 defined in the Mariner case to enforce the arbitration
17 agreement.

18 MR. HORNER: We can brief that issue, Your Honor?

19 THE COURT: Yes, sir.

20 MR. HORNER: Okay.

21 THE COURT: I'm also -- I'm correct, am I not in --
22 my recollection is that -- correct me if I'm wrong; I'm
23 asking for a correction -- that this business of having
24 the arbitrator determine if arbitration is assigned,
25 having the arbitrator determine the arbitrability of the

1 claim precludes an immediate appeal from an order -- from
2 an order ordering arbitration. Am I wrong about that?

3 MR. FELDER: Your Honor, I don't think it's
4 immediately appealable. I think we learned that in the
5 Wiggins case. But, Your Honor, the only thing I would ask
6 if we're going to -- if the cost and the time involved in
7 arbitrator, I would like the opportunity to talk with
8 Monty if -- that's even something if you care, if the
9 parties even want. Because my suggestion would be for you
10 to --

11 THE COURT: Well, if you don't --

12 MR. FELDER: -- rule on that and live with it either
13 way, but it's going to be -- to go hire an arbitrator to
14 tell us whether or not -- I don't know --

15 THE COURT: I just think that's the way the procedure
16 is.

17 MR. FELDER: Where does that come from?

18 THE COURT: Well, I just -- if you're asking me for a
19 citation, you can't ask me for that. I ask you for that.

20 MR. FELDER: I just never seen -- in any case I've
21 had, the judge -- it's done one way or the other. I can't
22 imagine that's -- I'd just like to talk to Monty since
23 Monty's -- can we do that?

24 THE COURT: That's fine. I'm taking it under
25 advisement. Send me what I asked for and I will rule, and

1 someone will send me and order and we'll deal with it.

2 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
))
COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the hearing of
the captioned case, relative to appeal, in the Court of
Common Pleas for York County, South Carolina, on the 13th
day of March, 2014.

October 6th, 2014

Aminah R. Hardy, RPR, CVR-CM

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
County of York	)	2013-CP-46-02930
	)	
Mae Ruth Davis Thompson, et	)	
al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Pruitt Corporation, et al.	)	
	)	
Defendants.	)	
	)	

June 19th, 2014
York, South Carolina

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, JUDGE.

APPEARANCES:

JOHN G. FELDER, JR., ESQ.
Attorney for the Plaintiff

ROBERT E. HORNER, ESQ.
Attorney for the Defendants

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

No.	<u>EXHIBITS</u> Description	Page
(No exhibits were marked.)		

P R O C E E D I N G S

1
2 MR. HORNER: Your Honor, as you probably recall, we
3 briefed this case a lot prior to your Court's ruling on
4 the issue of agency, and the questions there were actual
5 agency versus apparent agency. And Your Honor reached its
6 conclusion and addressed the basis of that conclusion in
7 your motion. And while we had wished you had ruled
8 differently, the basis for that opinion does appear on the
9 record, and I think we briefed that issue to death.

10 However, what didn't appear in the order that Your
11 Honor issued was the issue of third-party beneficiaries
12 and equitable estoppel. And as Your Honor knows, in
13 today's day and age if there's not a ruling in the order,
14 then they're technically not preserved for appeal in the
15 event, you know, my client wishes to do that. There's
16 been no decision made on that. However, the rules require
17 us to -- Your Honor, I guess for us to raise the issue and
18 for Your Honor to rule on it. And as I recall from our
19 initial ruling, you certainly indicated from the bench
20 that you were not inclined to find there was a third-party
21 beneficiary or that there was equitable estoppel in this
22 case, but no grounds for that appeared in Your Honor's
23 order.

24 THE COURT: Well, they have chastised me about that
25 before. Not in this case.

1 MR. HORNER: Yes, sir, and that's the primary basis
2 for our motion to reconsider. Like I said, we briefed the
3 issue to death several times and several different issues
4 that came up, and certainly Your Honor addresses the
5 agency issue. Our brief basically outlines our
6 third-party beneficiary arguments as well as our equitable
7 estoppel arguments.

8 And the third-party beneficiary area -- I'll be very
9 brief. It's based upon the fact that the decedent was
10 signed in by her son. Although she didn't live very long,
11 she was admitted into the facility and given care at the
12 facility and began to reap the benefits of that. It was
13 clear the son signed the arbitration agreement both in his
14 own name and as a representative, and we think that was
15 for the benefit of the decedent, and therefore the
16 decedent and the estate is bound by that agreement just
17 due to the fact that she was the intended and the direct
18 beneficiary of all of the contracts signed by the decedent
19 son's.

20 THE COURT: The difficulty I have with that is that
21 even if we assume that she was somehow the third-party
22 beneficiary of the treatment -- not treatment, the
23 residency agreement we'll call it. In the Frazier case,
24 we all know what happened there -- I'm sorry, Coleman is
25 what I'm trying to say.

1 MR. HORNER: Yeah.

2 THE COURT: In the Coleman case, that's exactly the
3 distinction -- they didn't make a third-party -- I don't
4 recall any discussion of a third-party beneficiary, but
5 the two agreements each stood on their own.

6 MR. HORNER: Yes, sir.

7 THE COURT: And if -- the benefit -- I guess arguably
8 the benefit you could say -- if she -- if there was a
9 third-party beneficiary argument, it seems to me that that
10 would be encompassed by the admission agreement or
11 residency agreement.

12 MR. HORNER: Well, in the Coleman case, they
13 distinguished that they were two separate contracts, and
14 certainly she benefited from the residency agreement right
15 off the bat by being admitted. But she was also an
16 intended beneficiary of the arbitration agreement in the
17 sense that she also -- had she had a complaint -- now, in
18 this case, she passed away extremely quickly, and
19 therefore no occasion arose for her to present anything in
20 an arbitration forum had she had the desire. But
21 certainly there are, you know, the benefits to her would
22 have been limited discovery. We would have paid for fees
23 related under the arbitration. It would have benefited
24 her had she needed it.

25 Now, the fact that she didn't need it doesn't mean

1 the contract wasn't enforceable. Now, obviously the
2 benefit that she took immediately was under the actual
3 admission agreement as opposed to the arbitration
4 agreement, but I don't think that would invalidate the
5 arbitration agreement because the consideration would be
6 they both got the benefits of arbitration had either party
7 needed it.

8 THE COURT: I understand.

9 MR. HORNER: That would be the basis of that
10 argument. And then as to the equitable estoppel argument,
11 this, again, just goes back to the fact we have the son
12 and the daughter sitting in the room with the
13 representative. They've both represented through their
14 actions, at least, that they are authorized to sign her
15 in, that they're authorized to sign the admission
16 agreement -- I mean the arbitration agreement. The
17 arbitration agreement itself has a line that says, "I
18 agree I am authorized to sign this agreement." And so
19 we're sitting there with the son and the daughter. No one
20 is voicing any objection. They sign the agreement. They
21 reap the benefits of all the contracts they signed, and
22 now they're involved in litigation, they seek to change
23 their position and say no, we weren't authorized to sign
24 those.

25 And that goes to the Franklin v. Franklin --

1 Strickland v. Strickland case. And Mr. Felder talked
2 about how we didn't really go through the elements, but I
3 think we've gone through the elements. We just didn't
4 number them one, two, three, four. When you look at the
5 Strickland case, it's conduct which amounts to a false
6 representation or conduct that conveys the impression
7 facts are otherwise than they are, and the intention that
8 conduct be acted upon and knowledge of the real facts.

9 So in this case we have his representing to us,
10 either through omission or commission, that he's
11 authorized to sign her in and authorized to sign the
12 agreement. If he knew what he now wishes to take the
13 position contrary to that, he knew the real facts, he
14 could have presented them and said, "Hey, I'm not
15 authorized to do this, by the way," and then the intention
16 that the conduct be acted upon would be her admission to
17 the facility.

18 Now, on our side we have to have lack of knowledge.
19 Well, we didn't have knowledge otherwise. He's
20 represented to us through his appearance there, through
21 his signing document after document after document and
22 representing within the contract itself he has the
23 authority to sign on behalf of his mother. Reliance upon
24 the conduct of the party, we have that in that we admitted
25 her to the facility and she began to receive the benefits,

1 and three, prejudicial change of position in reliance.
2 Had we known otherwise, we would have -- or could have
3 forced him to go get a power of attorney or a healthcare
4 power of attorney or get appointed through the probate
5 court, something of that nature. But instead we relied
6 upon those in admitting her to the facility, at which
7 point they now wish to repudiate that position by saying,
8 "I know I told you I was authorized, but I'm not, and now
9 we're in litigation, I want to change my opinion."

10 So that's the basis of our two arguments, and as I
11 said, we briefed this issue repeatedly, and I'm not going
12 to waste any more of the Court's time. Happy to answer
13 any questions.

14 THE COURT: Wouldn't that -- let's assume she didn't
15 die; that she was just injured. Obviously the two -- the
16 son who signed is -- I believe I remember this right -- is
17 a beneficiary of her estate, so he stands to gain by --
18 according to your argument by --

19 MR. HORNER: Repudiating it.

20 THE COURT: Yeah, repudiating the agreement. All
21 right. Suppose she had lived and simply was injured, fell
22 out of bed, was injured, you know, had some treatment,
23 that kind of thing. Would you be able to apply the
24 equitable estoppel argument?

25 MR. HORNER: Well, I think --

1 THE COURT: Because it would apply to her.

2 MR. HORNER: Absolutely, because it would apply to
3 her, and she would have -- and I guess in that situation
4 had she lived, there had was certainly a 30-day period
5 where she could have revoked the arbitration agreement.
6 So the further you get out from the signing of it, you
7 know, she being 30 days out or 31 days out would have even
8 been more estopped, I guess you could say, because she had
9 the opportunity to repudiate it and didn't, just like her
10 son or daughter had the opportunity to repudiate it on her
11 behalf, except as to the son. He actually could have
12 repudiated it on his own behalf because he was a party to
13 it.

14 But I think too you would also end up with a sort of
15 ratification-type situation had she lived where --

16 THE COURT: I can make it harder and make her
17 incompetent. And then --

18 MR. HORNER: Then you have, you know, then you end up
19 with the issue that I don't know a case that's addressed
20 it whether or not someone can ratify a contract and then
21 be a third-party beneficiary of the ratification. But,
22 you know, this case is certainly complicated by the fact
23 she did only live 12 hours and did have some competency
24 issues.

25 But that being said, in -- we think actually in this

1 case, you've got two beneficiaries who are both sitting in
2 the room, one of whom is signing. They both testified
3 they -- certainly the son had handled her affairs in other
4 matters and therefore this was not out of the norm and
5 this was routine. And now they're the ones who actually
6 stand to benefit financially by repudiating the agreement.
7 This isn't the case where she's actually alive and is
8 like, My son didn't have the authority. They stand to
9 benefit financially and they're the ones who actually made
10 the misrepresentation either through omission or
11 commission, or the representation that they now wish to
12 take back.

13 So that's sort of the basis of the estoppel argument
14 and the basis of the third-party beneficiary.

15 THE COURT: All right, sir. We'll hear from the
16 plaintiff.

17 MR. FELDER: Thank you, Your Honor. I read your
18 order to read -- the third-party beneficiary argument I
19 don't think is disputed by either side. If there's no
20 valid contract, you don't reach the third-party
21 beneficiary issue. Case after case submitted on that. So
22 I read the end of your order when you said once you ruled
23 that there was no valid contract, these other issues
24 didn't need to be reached. That's dispositive. So --

25 THE COURT: I would be satisfied with that if the

1 Court of Appeals hadn't told me once I couldn't do that; I
2 ought not to do that.

3 MR. FELDER: But we do -- just to make the point up
4 front, you don't reach the third-party beneficiary if
5 there's no valid contract, and you've already ruled there
6 was no valid contract. But the estoppel, I think what you
7 were talking about --

8 THE COURT: Okay. I see what you mean by that.

9 MR. FELDER: You see what I'm saying?

10 THE COURT: Yeah.

11 MR. FELDER: And we submitted that in our brief, so
12 that's why I read your order that way. You -- it's -- if
13 there's no valid contract, that's dispositive of the
14 third-party beneficiary issue without getting into the
15 things that defense counsel was talking to there.

16 But also, Your Honor, on the estoppel I think what
17 you were referencing when you were talking about the
18 Mariner case and the two agreements, that goes to the
19 estoppel issue.

20 THE COURT: They didn't talk about that.

21 MR. FELDER: Yes, sir, they did.

22 THE COURT: I don't remember that.

23 MR. FELDER: Yes, sir. I'll hand it up. What they
24 said was because there were two separate documents, those
25 documents were not merged and they said there could be no

1 estoppel. And I -- can I approach, Your Honor?

2 THE COURT: Yeah, sure.

3 MR. FELDER: There's the heading there.

4 THE COURT: I still don't think they discussed
5 equitable estoppel. Didn't think so then; don't think so
6 now.

7 MR. FELDER: Well, that was just one -- they say in
8 here with the two --

9 THE COURT: Say because they didn't merge, there
10 can't be equitable estoppel?

11 MR. FELDER: Well, they couldn't -- they could not --
12 they could not -- as I read this, that the Court said
13 because the two separate documents as we have in our case,
14 they are not merged.

15 THE COURT: Right.

16 MR. FELDER: And they denied the argument for
17 equitable estoppel.

18 THE COURT: They don't tell me why, really.

19 MR. FELDER: Well, can I add to that, Your Honor?

20 THE COURT: Yes, sir.

21 MR. FELDER: We briefed this. He keeps talking about
22 that Mr. Davis being estopped. Well, the equitable
23 estoppel arguments -- we laid these out. As you know, we
24 now have three round of briefing and we -- in every brief.
25 It's the -- it requires the party to be estopped. And

1 it's a list of elements that you have to show as to the
2 party being estopped. Well, Mr. Davis is not a party to
3 the case, never has been appointed PR. He was -- signed
4 it as a family member, okay. So the estoppel argument,
5 the elements -- what they're required to show for the
6 party to be estopped that the party acted in a way
7 amounting to false representation. There's no evidence
8 that number one, the party did anything. The party
9 wasn't -- he's not a party. He's not a party to the case.
10 He's never been appointed PR.

11 But secondly, there isn't a false representation. He
12 didn't sign it and say, "I have power of attorney," or
13 anything of that nature. He signed it as a family member.
14 He -- there's no evidence of any -- and this is all
15 through -- there's no evidence at all of false
16 representation. No evidence that the party being estopped
17 intended that the conduct be acted on by another party.
18 And if you go on further, Your Honor, they have the burden
19 of showing they lacked knowledge or the means of acquiring
20 knowledge. Well, as we know, our office all the time --

21 THE COURT: Does the -- I didn't pull out the
22 agreement again. Does it say "family members" or
23 "representative"? Says "representative."

24 MR. FELDER: "Representative," yes, sir.

25 THE COURT: Does that matter?

1 MR. FELDER: No, sir. I don't see -- number 1,
2 again, he's not a party. Number 2, he is -- is he acting
3 in a way that's amounting to a false representative? I
4 mean, how is that -- what does that mean? "I'm her son."
5 Even so, they still have -- I don't think that's false
6 representation by the party being estopped right there,
7 so -- but if you keep going through the elements, they
8 haven't even attempted anywhere to meet all of these
9 elements. They lack the knowledge or the means of
10 knowledge -- my office, we requested medical records. The
11 Court says we have to have -- need to show us a copy of
12 the, you know, appointment of personal representative.
13 And you can ask a question. And this case law puts a
14 pretty high burden on them, and they haven't met that in
15 any of their briefs. They haven't submitted any
16 affidavits, nothing to meet these element of estoppel.

17 So Your Honor, the -- when we first were in front of
18 you after two round of briefing, you indicated you weren't
19 inclined to rule for the defendants on these issues. They
20 come back in because your order stopped saying it was
21 dispositive and you didn't reach these other issues and
22 they filed another brief. I don't see any new arguments.
23 You've read all the depositions. They haven't submitted
24 any new affidavits. The record hasn't changed at all. So
25 it's our position that they don't meet the elements, and

1 it's their burden to meet and we've laid those out three
2 times. We don't think they can meet estoppel, and we
3 don't think you reach third-party beneficiary because the
4 case law says if you don't establish a valid contract,
5 it's -- there is no --

6 THE COURT: In other words, agency ruling took care
7 of the contract, thus there's no third-party beneficiary.

8 MR. FELDER: Yes, sir. That's our position, Your
9 Honor.

10 THE COURT: Anything briefly in response?

11 MR. HORNER: Yes, Your Honor. And again, when you go
12 back to the arbitration agreement, the -- Mr. Andrew
13 Davis, who is the son is, in fact, a party to the
14 arbitration agreement. They've asserted no basis to
15 invalidate a contract between Andrew Davis and the
16 facility. He signed it; he's a party to it --

17 THE COURT: He signed it as representative.

18 MR. HORNER: Well, his name is on the contract as a
19 party to it. And so our argument would be the contract
20 between Andrew Davis, that he would arbitrate all
21 agreements brought on behalf of his mother. And the
22 facility, that contract isn't undone by her incapacity.

23 THE COURT: Yeah, well, but she's not a party to it.

24 MR. HORNER: Well, they're both parties to it.
25 That's what makes her a third-party beneficiary. She

1 doesn't have to be a party to it to be a third-party
2 beneficiary. There has to be a valid underlying contract
3 that she is the direct beneficiary of, and we would say
4 the contract between Andrew Davis and the facility is a
5 binding contract for which she was to receive the benefit,
6 therefore she's a third-party beneficiary.

7 THE COURT: That would be the first time you said
8 that.

9 MR. HORNER: I feel like I said that the first time
10 because we had a long discussion about him being a party
11 to the contract and his name being typed on the contract.
12 So it's actually -- in our opinion is a contract between
13 him and the facility as well since his name is typed in
14 and he signed it. So that would be our third-party
15 argument as why it's not undone by the agency agreement,
16 or agency argument, the ruling that Your Honor came up
17 with. I understand his argument on that, but my argument
18 is a little different in that Andrew Davis was a party.

19 And then as to the estoppel argument, I agree with
20 you that the Coleman opinion -- they just said their
21 argument was premised upon the doctrine of merger, and
22 since there was no merger, essentially they didn't even
23 have to address the estoppel issue.

24 THE COURT: That was not clear to me at all.

25 MR. HORNER: Yeah, because it doesn't discuss

1 equitable estoppel other than to basically discuss merger
2 and say if your argument is premised on merger, we found
3 no merger; therefore, this argument must fail. My
4 argument is not premised upon a merger, and therefore
5 that's how I would distinguish that from the Coleman case.
6 But that's all I have, Your Honor.

7 THE COURT: Okay. I'm going to -- I will do -- first
8 of all, I find that a third-party beneficiary argument and
9 an equitable estoppel argument don't change the results.
10 I agree with the plaintiff that the elements of equitable
11 estoppel aren't met and that the defendants in this case
12 have -- it's their burden to come up with it.

13 I think the -- concerning the third-party
14 beneficiary, I think it's correct in my view there
15 wasn't -- based on my ruling there wasn't a contract. So
16 there can be no third-party beneficiary. So will you
17 e-mail an order --

18 MR. FELDER: Yes, sir, Your Honor.

19 THE COURT: -- containing that?

20 MR. FELDER: Yes, sir. Your Honor, I'm sorry. Do
21 you want a -- is it like a just an addendum order on those
22 two issues?

23 THE COURT: Yeah, well -- right, right. Right. I
24 mean, but for the Coleman case, the result of this case
25 may have been different and I don't think we know where

1 the Coleman case goes yet, and I don't think they've fully
2 discussed the equitable estoppel idea, which is -- seemed
3 to me something to discuss. So we'll just leave it to
4 them.

5 MR. HORNER: All right.

6 MR. FELDER: Thank you, Your Honor.

7 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 19th day of June, 2014.

September 28th, 2014



Aminah R. Hardy, RPR, CVR-CM

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

MAE RUTH DAVIS THOMPSON,
INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF EULA
MAE DAVIS, DECEASED,

PLAINTIFF,

VS

PRUITT CORPORATION, D/B/A
UHS-PRUITT CORPORATION;
UHS-PRUITT HOLDINGS, INC.;
UHS OF SOUTH CAROLINA-EAST,
LLC; UNITED HEALTH SERVICES
OF SOUTH CAROLINA, INC.;
UNITED CLINICAL SERVICES,
INC.; ROCK HILL HEALTHCARE
PROPERTIES, INC.;
UNI-HEALTH POST ACUTE
CARE-ROCK HILL, LLC D/B/A
UNIHEALTH POST ACUTE
CARE-ROCK HILL,

DEFENDANTS.

CASE NO. 13-CP-46-2930

DEPOSITION OF ANDREW PHILLIP DAVIS

ROCK HILL, SOUTH CAROLINA

DECEMBER 10, 2013

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- 1 Q As I understand it, at some point, you started
2 paying her bills and - - - as according to your
3 sister. Did you pay her bills?
- 4 A Yes.
- 5 Q And did she have her own checkbook, or did you pay
6 bills out of your checkbook?
- 7 A Out of hers. We - - - We paid cash. We paid cash
8 from her retirement account.
- 9 Q Did she - - -
- 10 A Or get a money order or something like that.
- 11 Q All right. So she didn't have a checkbook?
- 12 A No.
- 13 Q Or a checking account?
- 14 A No, a direct - - - (No further response)
- 15 Q What was her source of income?
- 16 A A retirement pension from Social Security.
- 17 Q So Social Security?
- 18 A Yes.
- 19 Q Any other sources of income, other than Social
20 Security, for your mother?
- 21 A No.
- 22 Q And you'd get a check every month?
- 23 A It would come. I would take her with me to the
24 bank and cash it. We would go around to pay the
25 bills, the power bill, telephone bill, gas bill.

Deposition of Andrew Phillip Davis

- 1 Q Did she rent her home, or did she own her home?
- 2 A She rented.
- 3 Q Was there a written lease agreement, a written
- 4 rental agreement?
- 5 A Yes.
- 6 Q Who signed that?
- 7 A She did.
- 8 Q Who paid that bill? Did you pay those bills - - -
- 9 A She did.
- 10 Q Out of her account?
- 11 A Yes.
- 12 Q Did you ever have a power-of-attorney from her?
- 13 A No.
- 14 Q When she was admitted to Piedmont Medical Center,
- 15 who would sign her in to Piedmont Medical Center?
- 16 A I would, unless I would just allow her to. I can't
- 17 remember exactly whether she signed sometimes, or I
- 18 would sign.
- 19 Q But sometimes, she - - - She was comfortable with
- 20 you signing for her?
- 21 A Yes.
- 22 Q And you did that on a number of occasions? You
- 23 would sign her in, if she - - -
- 24 A If I was with her or if I wasn't with her, either
- 25 one of us would sign.

Deposition of Andrew Phillip Davis

- 1 Q Your mother's birthday was [REDACTED]?
- 2 A Yes.
- 3 Q Do you know what her education was?
- 4 A I think she went to the eleventh grade. In fact,
- 5 I'm sure she went to the eleventh grade.
- 6 Q She could read and write and - - -
- 7 A Yes.
- 8 Q And your father, when did your father pass away?
- 9 A Gracious. Let's see. I think it was 1985.
- 10 Q Your mother never remarried?
- 11 A No.
- 12 Q Now, in 2008, 2009, who lived with your mother?
- 13 A Her sister.
- 14 Q And what was her sister's name?
- 15 A Ruth Thompson.
- 16 Q Is Ms. Ruth Thompson still alive?
- 17 A Yes.
- 18 Q And how is her health?
- 19 A She's a resident of Agape Healthcare.
- 20 Q Does she have any dementia?
- 21 A Yes.
- 22 Q And how long has she suffered from dementia?
- 23 A That, I don't know.
- 24 Q Did she live with your mother in 2010 before she
- 25 went - - - I understand your mother had a fall in

Deposition of Andrew Phillip Davis

1 point?

2 A Yes.

3 Q When was that?

4 A I can't remember the exact year, but during family
5 gatherings, we kind of noticed that.

6 Q And you told me she was on an appetite pill?

7 A Yes, and a liquid drink. Once we realized that she
8 was not, we took her to her doctor to find out if
9 there was anything wrong.

10 Q Was that Dr. Netzler?

11 A Yes.

12 Q All right. Now, did you ever have any discussions
13 with Dr. Netzler about her having a mild dementia?
14 Did you have conversations with Dr. Netzler about
15 that?

16 A I probably did.

17 Q Tell me what you remember about those discussions.

18 A I just asked him, did he notice any signs or - - -
19 during the doctor visits, or was he aware? I think
20 his indirect response may have been, possibly,
21 possibly.

22 Q What led you to ask Dr. Netzler about that? Were
23 you starting to see some changes that made you - -
24 -

25 A No. Just general questions that I would ask about

Deposition of Andrew Phillip Davis

- 1 A I - - -
- 2 Q To you about - - -
- 3 A I can't remember exactly because of the time, you
4 know, that has elapsed.
- 5 Q All right. When your mother went to - - - What
6 time was your mother discharged from Piedmont?
- 7 A It was during the evening. I remember that.
- 8 Q Now, did you go to Uni-Health before your mother
9 got there?
- 10 A I was with the paramedics in the room. I walked
11 down with them while they put her in the - - - in
12 the rescue vehicle, covered her with clothing. It
13 was cold outside. I remember that. Misting and
14 sleet or rain. I told her I would see her in a few
15 minutes. She smiled at me.
- 16 Q And did you head across the street - - -
- 17 A Yes.
- 18 Q To Uni-Health?
- 19 A Yes.
- 20 Q And how long were you at Uni-Health before your
21 mother got there?
- 22 A I can't remember. We - - - My sister and I went
23 directly in with the representative to do the
24 paperwork.
- 25 Q And did you go into a room and - - -

Deposition of Andrew Phillip Davis

1 A In the office with the representative, to do the
2 admission process.

3 Q Okay. Did you sign the papers on behalf of your
4 mother?

5 A I probably did.

6 Q Do you remember that? Do you remember - - -

7 A Yes. I was - - - I was the one. My sister and I
8 was, but she was marking my mother's clothes, her
9 name in her clothes. So we were both in there, but
10 she was labeling her clothes.

11 Q Okay. That's something you had done for your
12 mother before? You worked with her to help her pay
13 her bills and signed documents for her?

14 A Be - - - Be specific.

15 Q Did you sign documents for your mother before?

16 A Let's see. Yes, if - - - If it was convenient for
17 me, or if I wanted her to do it just to display to
18 people that she could write or stuff like that, I
19 would let her do it.

20 Q All right. And - - -

21 A It really didn't matter. It was just the
22 convenience of it. That - - - That was really the
23 reason. My - - - Like I said, my mom attended
24 eleventh grade. She could read. She could write
25 her name and stuff like that. It was just, who was

Deposition of Andrew Phillip Davis

1 convenient to do it.

2 Q And your mother was all right with you signing
3 documents for her?

4 A Yes.

5 Q Okay. Now - - -

6 A I would think so.

7 Q When you got there, do you remember what - - - Tell
8 me what discussions you remember about signing the
9 paperwork. I'm going to - - - Let's see. I'm
10 going to hand you - - - This will be Exhibit 8.

11 Whereupon - Document was marked as Deposition
12 Exhibit Number 8.

13 A All right.

14 Q And I'll just get you to - - - If you'll turn to
15 the last page - - -

16 A It seems like my copy is thicker than this, the
17 copy that I have, you know.

18 Q Okay. You have the original?

19 A The last page? Yes.

20 Q Okay. Have you provided the original to your
21 attorney, or are you still holding it? Do you
22 still have it at home?

23 A He hadn't asked for it or anything like that.

24 Q No. I hadn't asked for any - - - I'm just saying,
25 I'm just trying to find out where the original is.

Deposition of Andrew Phillip Davis

1 A I have it in - - - in my bag in my car.

2 Q Okay. And what I was going to ask you, on the last
3 page, is that your signature?

4 A Yes.

5 Q And before you signed it, did you have an
6 opportunity to read it and ask questions about it?

7 A Yes. We went through it, as an admission document.

8 Q Okay. That will be 8, and this will be 9.

9 Whereupon - Document was marked as Deposition
10 Exhibit Number 9.

11 Q I'll hand you Exhibit 9, which is labeled - - -
12 It's labeled, Arbitration Agreement. Do you recall
13 signing this document?

14 A I - - - I - - - I do.

15 Q Okay.

16 A I think I remember the word arbitration within the
17 process.

18 Q Did you have any questions? Did you ask questions
19 about it?

20 A No.

21 Q Did you have an opportunity to read it before you
22 signed it?

23 A Word-for-word? No.

24 Q And is this your - - - And I'm looking at the
25 bottom of the page. Is that your initial?

Deposition of Andrew Phillip Davis

1 about the - - -

2 A Yes.

3 Q What do you remember?

4 A I remember going through the process of filling out
5 the admission agreement. Arbitration is a word
6 that would stick to your mind, you know.

7 Q Why is that?

8 A I guess just because of the word itself,
9 arbitration. At the time, it didn't have any
10 relevance to me, except it - - - It's something
11 within there that you would remember that word.

12 Q All right. And you had the opportunity, and I
13 think you did ask questions about it?

14 A It - - - No. I - - - Detailed questions, I don't
15 remember that.

16 Q What does arbitration mean to you? When you saw
17 that word, what did it mean to you?

18 A I would assume coming together of certain parties
19 to make a decision on something. It's a word
20 that's prevalently used in baseball or football or
21 all sports or any - - - anything. I mean, I guess
22 that's the prevalency of the word, but at the time,
23 I didn't relate it as significantly being important
24 as a right - - - you know, significantly being
25 important. But it's a word that would stay with

Deposition of Andrew Phillip Davis

1 haven't looked at these documents.

2 Q Do you remember, was she black or white?

3 A Oh, she was - - - she was white.

4 Q How long did it take you to do all of the admission
5 - - - the documents you were signing on admission?

6 A Oh, gosh. This is going to be an approximation or
7 an estimation. I would say possibly a time frame
8 within an hour, or it could have been longer or
9 less.

10 Q Okay. Somewhere around an hour, give or take - - -

11 A Yeah.

12 Q Ten or fifteen minutes?

13 A An approximation.

14 Q All right. So forty-five minutes to an hour and
15 fifteen minutes you think would be a good estimate?

16 A Approximation, as to what I said.

17 Q All right. And then when you were done with doing
18 the paperwork, had your mother arrived?

19 A Yes. I'm assuming that she was there.

20 Q So when you got through with the paperwork, what
21 did you do?

22 A We went to visit our mother.

23 Q And was she in her room already?

24 A I think they had assigned her a room. I think they
25 were sort of like evaluating her, the hospital - -

Deposition of Andrew Phillip Davis

1 - or the nursing home administrator, the nurses. I
2 don't remember if we went directly in to see her.
3 I know that they were doing a - - - their own
4 assessment of her physically, just looking her
5 over.

6 Q So was it - - - And what I'm trying to find out is,
7 was there any delay in your mother coming from
8 Piedmont to Uni-Health?

9 A I wouldn't know that. I went down on the elevator
10 with the paramedics. I was there when they put her
11 in the vehicle. I remember, because she was - - -
12 The weather was cold outside. Making sure that she
13 had a - - - They may have given her an extra
14 blanket. She was cozy. From that time on, we went
15 directly to Uni-Health. We went in the office to
16 complete the admission process. After that, we
17 went to visit with our mother. I think they may
18 have been doing the physical assessment of her, a
19 nurse or a representative there. I know my sister
20 and I was waiting on that to go in.

21 Q Okay. So when you got through with the paperwork,
22 you went out, and your mother was already in her
23 room at that time?

24 A That, I'm going to assume that they were doing an
25 assessment. They had provided a room with - - -

Deposition of Andrew Phillip Davis

1 A Well, there was another patient in her - - -
2 adjacent to her.

3 Q In the room? In the same room?

4 A Yes.

5 Q And would your mother have been in the bed closest
6 to the door, or closest to the window?

7 A Close - - - Closest to the window.

8 Q Okay. Now, was your mother having any - - - How
9 was your mother doing? Was she having any kind of
10 problems that you could see while you were still in
11 the nursing home?

12 A No.

13 Q Did she show any kind of tearfulness or - - -

14 A No.

15 Q Was she concerned about being in the nursing home?

16 A No.

17 Q Did she make any - - - have any statements about
18 wanting to be home?

19 A No.

20 Q Did she have any concerns about you and your sister
21 leaving her - - -

22 Mr. Felder - Object to the form.

23 Q That night?

24 A We - - - (No further response)

25 Q Going home that night.

Deposition of Andrew Phillip Davis

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

MAE RUTH DAVIS THOMPSON,
INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF EULA
MAE DAVIS, DECEASED,

PLAINTIFF,

VS

PRUITT CORPORATION, D/B/A)
UHS-PRUITT CORPORATION;)
UHS-PRUITT HOLDINGS, INC.;)
UHS OF SOUTH CAROLINA-EAST,)
LLC; UNITED HEALTH SERVICES)
OF SOUTH CAROLINA, INC.;)
UNITED CLINICAL SERVICES,)
INC.; ROCK HILL HEALTHCARE)
PROPERTIES, INC.;)
UNI-HEALTH POST ACUTE)
CARE-ROCK HILL, LLC D/B/A)
UNIHEALTH POST ACUTE)
CARE-ROCK HILL,)

CASE NO. 13-CP-46-2930

DEFENDANTS.

DEPOSITION OF MAE RUTH DAVIS THOMPSON

ROCK HILL, SOUTH CAROLINA

DECEMBER 10, 2013

COPY

REPORTER: KELLY REITER

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ROA-297

- 1 A I didn't.
- 2 Q Now, she was living in the house in York. Was that
3 her house? Did she rent, or - - -
- 4 A She rented.
- 5 Q Who paid the bills?
- 6 A She paid her own bills.
- 7 Q Did she have a checkbook? Would - - -
- 8 A No.
- 9 Q She have her own checkbook?
- 10 A No.
- 11 Q How would she pay bills?
- 12 A Oh. My brother, Phillip, handled all of her
13 financial business.
- 14 Q So Phillip was the person who handled her - - -
- 15 A Yes.
- 16 Q Business dealings?
- 17 A Yes.
- 18 Q Did she ever give a power-of-attorney to Phillip?
- 19 A No.
- 20 Q But if she had to pay bills, Phillip was the one
21 responsible for paying them?
- 22 A That is correct.
- 23 Q When she signed her lease agreement for her house,
24 renting her house, would Phillip be the one who
25 would do - - -

Deposition of Mae Ruth Davis Thompson

- 1 A He was.
- 2 Q Sign those documents for her?
- 3 A She signed her documents.
- 4 Q Okay. But Phillip would take care of - - -
- 5 A Yes.
- 6 Q Paying the bills and making sure her business
- 7 affairs - - -
- 8 A Right.
- 9 Q Were in order?
- 10 A Yes.
- 11 Q Who would take your mother to the doctor?
- 12 A Phillip.
- 13 Q How often would you visit your mother?
- 14 A I worked in York, and I would visit her every day
- 15 and on Saturday and Sunday.
- 16 Q So like every day?
- 17 A Every day.
- 18 Q What kind of things could your mother do for
- 19 herself, say, in 2008 and 2009? What kind of
- 20 things would she do?
- 21 A My mother could do everything for herself. She
- 22 could dress herself, take a bath. She was not
- 23 incapacitated to any degree.
- 24 Q Was she having some health problems? Did she have
- 25 health problems in the last few years of her life?

Deposition of Mae Ruth Davis Thompson

- 1 A No.
- 2 Q All right. Well, let me ask you about, how was
3 your mother doing on January 11th while she was in
4 the hospital?
- 5 A She was fine.
- 6 Q She wasn't having any problems at all?
- 7 A Not that I recall.
- 8 Q Now, what time was the discharge planned for, when
9 they planned to discharge her? Were you aware when
10 you went on the 11th that they were going to
11 discharge her?
- 12 A (No response)
- 13 Q Or was that something you - - -
- 14 A Yes. We - - - They - - - We had been talking about
15 a discharge date.
- 16 Q And do you know why they waited until between seven
17 and eight to discharge her?
- 18 A I don't know.
- 19 Q Now, as I understand it, you and your brother went
20 to the nursing home while your mother was still at
21 Piedmont?
- 22 A We did.
- 23 Q When you got to the nursing home, tell me what you
24 did.
- 25 A We were greeted by someone from the office, and

Deposition of Mae Ruth Davis Thompson

- 1 they expected my mom. We did the paperwork while
2 we were waiting for her to arrive.
- 3 Q We being you and your brother?
- 4 A Phillip and I.
- 5 Q Now, who signed the paperwork?
- 6 A Probably Phillip.
- 7 Q And if there was a contract your mother was
8 entering into, even if she were at home, would
9 Phillip sign the contract for her?
- 10 A Yes.
- 11 Q All right. Do you remember any discussion about
12 what he was signing?
- 13 A Not directly.
- 14 Q Do you remember he signed an admission agreement?
- 15 A I'm - - - I'm sure he did.
- 16 Q All right. Do you remember he - - -
- 17 A The procedural things.
- 18 Q Okay. Do you remember he signed an arbitration
19 agreement?
- 20 A I do not remember that particular reference.
- 21 Q Do you remember what he signed and what was
22 discussed?
- 23 A This all occurred very quickly. I don't remember,
24 because he was the person who was signing.
- 25 Q When you say it occurred very quickly, what - - -

Deposition of Mae Ruth Davis Thompson

- 1 A Well, it was paper after paper that we were - - -
2 the person was reviewing with us and saying what it
3 was. I - - - I don't remember exactly the words
4 that were used, except the paperwork was filled
5 out.
- 6 Q Okay. And Phillip was the one primarily
7 responsible for - - -
- 8 A Right. Signing.
- 9 Q Reviewing the documents and signing them?
- 10 A Yes.
- 11 Q Now, did you have any questions to the person who
12 was doing - - - Did you ask any questions to the
13 person who was doing the admission paperwork with
14 you and Phillip?
- 15 A No, I didn't.
- 16 Q Do you remember who that person was?
- 17 A I do not.
- 18 Q Once you had signed the paperwork, what did you do
19 after that?
- 20 A We put her name in her clothing.
- 21 Q And did you go to the room where she was going to
22 be placed?
- 23 A No, we did it in the office.
- 24 Q So you had her suitcase?
- 25 A We did.

Deposition of Mae Ruth Davis Thompson

1 Q Anything else you did while you were in the office?

2 A No. That was it.

3 Q At some point, did you go to the room where she was
4 going to be staying before your mother got there?

5 A No.

6 Q Do you know about what time you got to Uni-Health
7 Rock Hill?

8 A Probably between five, five thirty.

9 Q And what time did your mother get there?

10 A Around seven thirty, between seven thirty and
11 eight.

12 Q Do you know why it took so long? Were you
13 expecting your mother to come - - -

14 A Earlier?

15 Q Yes.

16 A Probably.

17 Q Do you know why she didn't get there earlier?

18 A I don't know if it were a problem with transport.
19 I have no idea.

20 Q Okay. Now, what did you do during those two hours?
21 Was the whole two hours spent filling out
22 paperwork?

23 A Well, paperwork and labeling her clothes, and I'm
24 sure Phillip and I had just small talk during that
25 time.

Deposition of Mae Ruth Davis Thompson

- 1 Q Were you waiting in the office, or did you go back
2 - - -
- 3 A We were in the office area.
- 4 Q The whole time?
- 5 A The whole time.
- 6 Q All right. Did you talk to any nurses during that
7 time or other staff, other than - - -
- 8 A No.
- 9 Q You just talked to the person who was - - -
- 10 A Right.
- 11 Q Going through the papers with you?
- 12 A Right.
- 13 Q So when your mother got there around seven thirty,
14 she came by EMS from Piedmont?
- 15 A She did.
- 16 Q And did she go to her room?
- 17 A Yes.
- 18 Q And how was she doing when she got there?
- 19 A She was doing fine. They said that they needed to
20 evaluate her. So we continued to wait until they
21 told us we could come down.
- 22 Q And do you know how long it - - - Do you know about
23 what time it was before they - - - Let me see if I
24 can make this question better. How long did it
25 take them to evaluate her?

Deposition of Mae Ruth Davis Thompson

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 11th day of January, year 2011, by and between UniHealth PAC Rock Hill (Healthcare Center),
EULA M DAVIS (Patient/Resident)
and certain other undersigned parties.

I. Definitions:

- A. A Legal Representative is any person, such as a legal guardian or person holding power of attorney, with legal authority to act on behalf of an incompetent or incapacitated Patient/Resident. The Patient/Resident's Legal Representative may execute this Agreement on the Patient/Resident's behalf. The Legal Representative is not required to personally guarantee payment of any Healthcare Center charges as a condition of the Patient/Resident's admission, expedited admission, or continued stay in the Healthcare Center. However, if the Legal Representative has access to the Patient/Resident's income or resources available to pay for the Healthcare Center's care, the Legal Representative agrees, by signing this Agreement, to pay the Patient/Resident's financial obligations out of the Patient/Resident's funds. The Legal Representative shall incur no personal financial responsibility except to the extent that such representative had access to resources that would have been available to pay for care provided by the Healthcare Center.
- B. A Responsible Party is a family member or other person interested in the Patient/Resident's welfare who undertakes certain responsibilities in connection with the Patient/Resident's stay at the Healthcare Center. If the Patient/Resident has a Legal Representative, that person should generally serve as the Responsible Party. The Responsible Party is not required to personally guarantee payment of any Healthcare Center charges as a condition of the Patient/Resident's admission, expedited admission, or continued stay in the Healthcare Center. However, if the Responsible Party has access to the Patient/Resident's income or resources available to pay for the Healthcare Center's care, the Responsible Party agrees, by signing this Agreement, to pay the Patient/Resident's financial obligations out of the Patient/Resident's funds.

II. The Healthcare Center agrees:

- A. To provide basic room and board, general nursing care, social services, dietary services, minor medical supplies, bedding, linen, laundry services and activities.
- B. To assist, provide or obtain the services of providers of medical goods and services as required by law. The providers selected by the Patient/Resident shall be required to comply with the Healthcare Center's policies and procedures and

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all federal and state laws and regulations. The Healthcare Center is not obligated to provide medicine, treatment, special diets, or equipment without specific orders or directions from a physician. The Patient/Resident is responsible for all associated costs.

- C. To arrange, at the Patient/Resident's expense, if applicable, for transfer of the Patient/Resident to the hospital of the Patient/Resident's choice, whenever such a transfer is ordered by the attending physician, and to attempt to notify the persons designated on the application for admission of such transfer. Unavailability of designated person shall not be considered a material breach of this Agreement by Healthcare Center.
- D. At the Patient/Resident's request, to hold, safeguard and manage personal funds for the Patient/Resident at no additional charge to the Patient/Resident, subject to the Healthcare Center policy on the MANAGEMENT OF PERSONAL FUNDS as outlined in the Guest Services Guide, and as from time to time amended. After reviewing the policy, the form entitled PATIENT/RESIDENT TRUST FUND AUTHORIZATION AGREEMENT must be completed by the Patient/Resident or the Legal Representative. On this form, the Patient/Resident or the Legal Representative may authorize the Healthcare Center to manage the Patient/Resident's personal funds.

III. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agree:

- A. To select an attending physician who will visit the Patient/Resident regularly according to the Healthcare Center's policies and procedures and state and federal law and regulations and as dictated by the Patient/Resident's needs. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall also designate an alternate physician. If the Patient/Resident's attending physician is not available, the Healthcare Center will call the designated alternate physician.

The Patient/Resident acknowledges that the Healthcare Center has not engaged its Medical Director for the purpose of providing direct care services to Patients/Residents of the Healthcare Center. Should the Patient/Resident choose the Medical Director to serve as the Patient/Resident's attending physician, the Patient/Resident does so as an exercise of the Patient/Resident's right to choose his or her attending physician.

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THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: JAMES JEWELL
 2. Alternate attending physician: _____
- B. To select a pharmacy or pharmacist for those pharmaceutical supplies and services not provided by the Healthcare Center as part of the basic rate. The pharmacy or pharmacist must conform to the medication packaging and delivery systems or procedures utilized by the Healthcare Center.

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: UNITED PHARMACY

- C. To provide the Healthcare Center with a copy of any existing written document, such as a Living Will or Durable Power of Attorney for Health Care, indicating the Patient/Resident's choices in connection with the treatment or terminal illness and/or the withholding or withdrawal of life-sustaining medical treatment. *The Healthcare Center does not require that the Patient/Resident execute or produce such a document as a condition of admission.* The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the Healthcare Center's written information in the Guest Services Guide on ADVANCE DIRECTIVES AND DNR ORDERS. After reviewing the information, the form entitled ADVANCE DIRECTIVE CHECKLIST must be completed by the Patient/Resident or the Legal Representative.
- D. To abide by all rules, regulations and policies and procedures, as are, from time to time, established and amended by the Healthcare Center. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the rules and responsibilities governing the conduct of the Patient/Resident and his or her visitors while in the Healthcare Center. These rules and responsibilities are listed in the Guest Services Guide on the page entitled PATIENT/RESIDENT & FAMILY RESPONSIBILITIES. Amendments to the rules and responsibilities shall be effective upon thirty (30) days notice to the Patient/Resident and/or undersigned parties.

IV. The following provisions are applicable to private pay Patients/Residents only including Patients/Residents who are admitted to the Healthcare Center as a different payer source but who subsequently become private pay:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT

State of South Carolina
ADMISSION AGREEMENT

COVERED listed in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE.

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing under this Agreement, including the basic monthly rate, when due.
- C. The basic monthly rate is currently \$5859.00. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further, if the Patient/Resident fails to apply promptly,

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the Healthcare Center, in its sole discretion, is authorized, but not obligated, to prepare all necessary forms and documents and submit such forms and documents to the appropriate state agencies for a determination of the Patient/Resident's eligibility for Medicaid benefits. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall certify that the information given to enable the Healthcare Center to assist the Patient/Resident to apply for Medicaid benefits is correct.

Agreement to Follow Through With Medicaid Application:

The Patient/Resident/Legal Representative acknowledges that he/she has been informed by the Admissions Coordinator of the Healthcare Center that upon admission of a Patient/Resident, it will become necessary to go to the Department of Health and Human Services in order to obtain nursing home vendor payment to the nursing home.

It is also understood by the Patient/Resident and/or undersigned parties, not to include the Healthcare Center, that even though the Patient/Resident may already be receiving SSI, the Patient/Resident must once again apply for nursing home vendor payment through the Department of Health and Human Services.

The Patient/Resident and/or undersigned parties, not to include the Healthcare Center, agrees to call the number provided to them by the Admissions Office to set up an appointment with a Social Worker at the Department of Health and Human Services to obtain an Application for Medical Assistance from the Department of Health and Human Services.

The Patient/Resident and/or undersigned parties, not to include the Healthcare Center, shall obtain information from the Social Worker, Business Office or Admissions Director on how to convert the Medicaid to Healthcare Center approved.

Although the Patient/Resident may have a Medicaid number and be drawing SSI, the Patient/Resident and/or undersigned parties, not to include the Healthcare Center, agrees to obtain this Application for Medical Assistance, complete it with appropriate and accurate data, and return it to the Department of Health and Human Services prior to the date of their appointment.

If the Department of Health and Human Services' follow-up is not completed, the Patient/Resident will not be allocated vendor payment and will be considered to be a private pay Patient/Resident under this Agreement. The Healthcare Center reserves the right to collect pre-payments or deposits from individuals whose Medicaid eligibility is pending.

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V. The following provisions are applicable to Medicaid Patients/Residents, including Patients/Residents who are admitted to the Healthcare Center as another payer source, but who subsequently become eligible for Medicaid benefits:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT COVERED in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE.
- B. The Healthcare Center's per diem rate for Medicaid Patients/Residents is determined by the South Carolina Department of Medical Assistance according to a reimbursement formula. The Department of Health and Human Services (DHHS) will determine what portion of that rate must be paid by the Patient/Resident, based on the Patient/Resident's monthly income less any allowable deductions. The Patient/Resident's portion, as determined by DHHS, shall be billed in advance by the Healthcare Center and shall be due on the 10th day of each month.
- C. Payment for items and services provided by the Healthcare Center but not paid for by Medicaid shall be due within ten days of billing. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of this Agreement and discharge of the Patient/Resident. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding due, including interest.
- D. If the Patient/Resident wishes to be transferred from a semi-private room to a private room, the additional cost of the private room will be applied to the Patient/Resident's liability.
- E. The healthcare center will assist the Patient/Resident in billing any applicable insurance claims. However, the Patient/Resident is ultimately responsible for charges if insurance payment is not made within a reasonable amount of time and the Patient/Resident is not Medicaid approved.
- F. Settlement of all accounts for items and services provided but not paid by Medicaid or any other third-party payer with the Healthcare Center shall be made in full at the time of the Patient/Resident's discharge.

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VI. The following provisions are applicable to Medicare Patients/Residents, including Patients/Residents who are admitted to the Healthcare Center as another payer source, but who subsequently become eligible for Medicare benefits:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the ITEMS AND SERVICES COVERED/NOT COVERED listed in the Guest Services Guide and a separate schedule entitled CHARGES FOR ITEMS AND SERVICES NOT COVERED IN THE BASIC DAILY RATE, received upon admission. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agrees to pay, out of the Patient/Resident's funds, as charged for non-covered items or services received by the Patient/Resident.
- B. Medicare Part A includes a benefit period of up to one hundred (100) days per spell of illness in a skilled nursing Healthcare Center (SNF) as long as the Patient/Resident meets the criteria for skilled level according to Medicare guidelines. Part A pays one hundred percent (100%) of the first twenty (20) days of skilled care. The Patient/Resident (beneficiary) is liable for partial payment (co-insurance) for the remaining eighty (80) days of skilled care provided under Medicare. Under certain conditions, Medicaid or insurance will pay the co-insurance days of eligible individuals. The Patient/Resident is responsible for payment to the Healthcare Center of all co-insurance days unless the Resident/Patient is eligible for Medicaid or private insurance coverage applies.
- C. If the Patient/Resident's claim for Medicare payment is denied by the Medicare intermediary, the Patient/Resident has the right to appeal this decision directly to the intermediary. The Patient/Resident will be responsible for payment of all services provided from the date of notification of denial was received. If the Patient/Resident is eligible for coverage from another source (Medicaid, VA) for continued nursing home care, the Healthcare Center will bill the appropriate party. If the Patient/Resident is not eligible for assisted payment, then the Patient/Resident will convert to private pay status and be responsible to pay private pay rates.

If the Patient/Resident's appeal for Medicare payment is denied, the Patient/Resident will be responsible for payment of all services provided during the Medicare benefit period. Failure to make payment within fifteen (15) days from the date of the Final Determination Letter from Medicare may be treated by the Healthcare Center as grounds for termination of this Agreement and discharge of the Patient/Resident.

State of South Carolina
ADMISSION AGREEMENT

VII. General Agreements:

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, consent to the administration of such care, treatment, services, and medical or nursing procedures as the Patient/Resident, the Healthcare Center, and the Patient/Resident's attending physician deem appropriate.
- B. When applicable, the Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, agrees to pay according to the bed hold regulations as described in the Payer Information Section received upon admission.
- C. The Patient/Resident, and/or the undersigned parties, not to include the Healthcare Center acknowledge and agree that all responsibility of the Healthcare Center to the Patient/Resident shall terminate in the event the Patient/Resident knowingly leaves the Healthcare Center against the medical advice of the Patient/Resident's attending physician and/or without the approval of the Healthcare Center, but with or without the knowledge of the Healthcare Center.
- D. The Patient/Resident, and/or the undersigned parties, not to include the Healthcare Center acknowledge and agree that the Healthcare Center is not responsible for the health, safety or welfare of any Patient/Resident who is away from the Healthcare Center under the care of any person not directly employed by the Healthcare Center.
- E. The Healthcare Center will provide a location at which the Patient/Resident may store documents, jewelry, or other valuables for safekeeping. The Resident/Patient will have reasonable access to such property on weekdays during normal business hours. Special arrangements may be made for access to valuables on weekends or at any other time. The liability of the Healthcare Center for any loss, destruction, or theft of property which is deposited with the Healthcare Center for safekeeping (including liability for negligence for the safekeeping of such property) shall be and is hereby limited to the amount of one hundred dollars (\$100.00) unless a written receipt for a greater amount has been obtained from the Healthcare Center by the Patient/Resident. The Healthcare Center shall have no liability for the loss, destruction, or theft (including theft by partners of the Healthcare Center) of documents, jewelry, money, or other valuables not deposited with the Healthcare Center for safekeeping. The Patient/Resident hereby agrees to indemnify and hold the Healthcare Center harmless from any and all claims regarding such loss, destruction, or theft.
- F. The Healthcare Center may terminate this Agreement and transfer or discharge the Patient/Resident in accordance with applicable state and federal laws and regulations. The Healthcare Center shall give the Patient/Resident, and/or

State of South Carolina
ADMISSION AGREEMENT

undersigned parties, not to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

- G. If any terms or conditions of this Agreement are invalid or unenforceable by reason of any rule of law, federal or state statute, or regulation, this Agreement shall be deemed amended to comply with the relevant law, statute, or regulation and shall remain in full force and effect.
- H. If any term, covenant, condition or provision of this Agreement should ever be held to be invalid or unenforceable, the remainder of this Agreement, at the option of Healthcare Center, shall not be thereby affected, and each remaining term, covenant, condition and provision shall be and remain valid and enforceable to the fullest extent permitted by law.
- I. This Agreement shall be construed, governed and enforced under the laws of the State of South Carolina. This Agreement together with all exhibits is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, and supersedes all prior agreements, negotiations, representations, tender documents, and proposals, written and oral with respect to the subject matter hereof. Variance from, or additions to, the terms and conditions of this Agreement in any written notification from Patient/Resident shall be of no effect.
- J. This Agreement shall not be modified or amended in any respect by Patient/Resident except by written agreement executed by Healthcare Center and Patient/Resident in the same manner as this Agreement is executed. These provisions are subject to federal and state law and may be changed periodically to comply with these laws. This Agreement may be modified or amended by Healthcare Center if Healthcare Center sends a notice of the amendment to Patient/Resident thirty (30) days prior to the implementation of the amendment. If Patient/Resident does not reject such amendment in writing within thirty (30) days of receipt of the amendment, such amendment shall be deemed accepted and incorporated into this Agreement. This Agreement shall not be assigned, directly or indirectly, by Patient/Resident without the prior written consent of Healthcare Center. Any attempted assignment by Patient/Resident not in full compliance herewith shall be void and of no force or effect. This Agreement is freely assignable by Healthcare Center.
- K. Neither party's failure to pursue any remedy for any default on the part of the other party or noncompliance by the other party with the terms of this Agreement, nor either party's waiver of any default or noncompliance by the other party with the terms of this Agreement, shall affect or impair such party's rights with respect to any subsequent default or noncompliance of the same or a different kind or nature by the other party. The delay or omission on the part of

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constitute a waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

- L. Nothing in this Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons, other than the parties hereto.
- M. This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original. The parties acknowledge and agree that this Agreement has been mutually discussed and negotiated.
- N. The provisions of this Agreement shall be severable, and if a court of competent jurisdiction holds any provisions of this Agreement in violation of any applicable law, the remaining provisions shall nevertheless remain in full force and effect.

VIII. Miscellaneous Provisions

- A. Healthcare Center is authorized but not obligated to seek the appointment of a guardian should it become necessary.
- B. Patient/Resident/Legal Representative agrees to be responsible for clothes, spending money, costs of transportation; payment for treatment/physician's fees not covered by third party payers; accurate, complete, and updated information to be provided to Healthcare Center.
- C. Patient/Resident/Legal Representative agrees to indemnify and hold harmless the Healthcare Center for any damages caused by Patient/Resident and his or her visitors.
- D. All addendums are incorporated herein by reference.
- E. These items must be provided upon admission:
 - 1. At the time of admission, the Healthcare Center must provide the Patient/Resident with:
 - A written notice of the Healthcare Center's basic daily or monthly rates.

State of South Carolina
ADMISSION AGREEMENT

- A written statement of all Healthcare Center services, including those offered on a needed basis, and related charges, including any extra charges for services not covered under Medicare or Medicaid or by the Healthcare Center's basic daily or monthly rate.
 - A statement disclosing the Healthcare Center's name and business address and the name and business address of the administrator of the Healthcare Center. Upon request an applicant or Patient/Resident shall be furnished with a copy of the annual disclosure statement filed with the Department of Community Health.
 - Notice of the right of access to the written policies and procedures of the Healthcare Center. Access to these policies and procedures shall be permitted during ordinary business hours.
2. Upon a Patient/Resident's request, the Healthcare Center must provide that Patient/Resident with a current list of all services and charges. Current charges must be posted in a conspicuous location.
 3. The Healthcare Center must inform each Patient/Resident in writing, at least 30 days in advance of the effective date, of any changes in rates or the services that these rates cover.
 4. The Healthcare Center must bill for charges at least once a month unless otherwise agreed. Each bill must itemize charges for:
 - The daily or monthly rate.
 - All extra charges.
 5. Each Patient/Resident or Guardian shall be permitted to inspect and receive a copy of the Patient/Resident's non-medical records kept by the Healthcare Center. The Healthcare Center may charge a reasonable fee for duplication, which fee shall not exceed actual cost.

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ADMISSION AGREEMENT

ACKNOWLEDGMENT:

I have read and understood the Admission Agreement and have received a copy of the Guest Services Guide. I accept all terms and conditions stated in this Agreement and in the Guest Services Guide.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

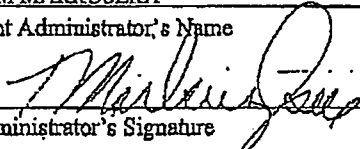
Print Patient/Resident's Name

Patient/Resident's SignatureANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's SignatureTOM MARKUSZKA

Print Administrator's Name


Administrator's SignatureUniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

(Healthcare Center will maintain a copy for their records)

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 11st day of January, 2011, by and between UniHealth PAC Rock Hill (the "Healthcare Center") and BULAM DAVIS and ANDREW DAVIS ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

THE PATIENT/RESIDENT AND THE HEALTHCARE CENTER UNDERSTAND AND ACKNOWLEDGE THAT THIS AGREEMENT IS A VOLUNTARY AGREEMENT TO SUBMIT FOR RESOLUTION BY ARBITRATION ANY DISPUTES THAT MAY ARISE IN THE FUTURE BETWEEN THE PARTIES. THE PARTIES FURTHER UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD, ANY DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH BINDING ARBITRATION.

A. Scope of Agreement.

1. Any and all claims or controversies arising out of or in any way relating to this Agreement or the Patient/Resident's Admission Agreement, including the interpretation of either, or the Patient/Resident's stay at, or the care or services provided by, the Healthcare Center, or any acts or omissions in connection with such care or services, including care or services provided prior to the date that this Agreement was signed, whether arising out of State or Federal law, whether existing or arising in the future, whether for statutory, compensatory or punitive damages, and whether sounding in breach of contract, tort, or breach of statutory or regulatory duties (including, without limitation, any claim based on an alleged violation of the state bill of rights for Patients/Residents of long-term care facilities or federal Patient/Resident's rights, any claim based on negligence, any claim for damages resulting from death or injury to any person arising out of care or service rendered by the Healthcare Center or by any officer, agent, or partner thereof acting within the scope of his or her employment, any claim based on any other departure from accepted standards of health care or safety, or any claim for unpaid nursing home charges), irrespective of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted for arbitration.

2. Only disputes that would constitute a legally cognizable cause of action in a court of law may be submitted for arbitration.

3. All claims based in whole or in part on the same incident(s), transaction(s), or related course of care or services provided by the Healthcare Center to the Patient/Resident, shall be arbitrated in one proceeding.

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4. A claim shall be waived and forever barred if it arose prior to a Demand for arbitration (as defined in this Agreement) and arbitration was not commenced by such Demand within the limitation period prescribed by South Carolina law for the commencement of a civil action concerning the subject matter of that claim.

B. Patient/Resident's Rights. This Agreement shall not limit the Patient/Resident's rights with respect to filing a grievance with the Healthcare Center, the Long-Term Care Ombudsman, or any appropriate state or federal regulatory agency. This Agreement shall not reduce or affect in any way the Healthcare Center's duties and obligations with respect to the provision of care and treatment of Patients/Residents.

C. Parties. This Agreement shall inure to the benefit of and bind the Patient/Resident and the Healthcare Center, their successors, assigns, and intended and incidental beneficiaries. The term "Healthcare Center" shall include its operator, management company, governing body, officers, directors, shareholders, partners, managers, agents, and any parent, affiliate or subsidiary. The term "Patient/Resident" shall include the Patient/Resident, his or her guardian, attorney-in-fact, agent, sponsor, representative, or any person whose claim is derived through or on behalf of the Patient/Resident, including, in addition to those already listed in this Paragraph, any parent, spouse, child, executor, administrator, heir, or survivor entitled to bring a wrongful death claim. If this Agreement is signed by the Patient/Resident's representative, that individual represents that he or she is authorized and has no reason to believe that the Patient/Resident would not have signed this Agreement if he or she were competent and able to do so.

D. Administration of Arbitration. Any arbitration conducted pursuant to this Agreement shall be administered by, and according to the applicable rules and procedures then in effect of, an independent impartial entity that is regularly engaged in providing arbitration services (the "Arbitration Service"). A demand for arbitration ("Demand") shall be made in writing and submitted to the Arbitration Service by regular mail, certified mail, or overnight delivery. The Demand must identify the issues in dispute, the amount(s) in dispute, any special qualifications of a desired arbitrator, and the Respondent(s). The parties intend that the Arbitration Service shall be the National Arbitration Forum ("NAF"), P.O. Box 50191, Minneapolis, Minnesota 55405-0191, or its successor. If NAF or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Judicial Arbitration and Mediation Services, Inc. ("JAMS"), 235 Peachtree Street, N.E., 600 North Tower, Atlanta, Georgia 30303-1411, or its successor. If JAMS or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the Arbitration Service shall be Henning Mediation & Arbitration Service, Inc. ("Henning"), 3350 Riverwood Parkway, Riverwood Building, Lobby, Suite 75, Atlanta, Georgia 30339, or its successor. If Henning or its successor is unwilling or unable to serve as the Arbitration Service, the parties intend that the arbitration conducted pursuant to this Agreement will be carried out in conformance with the following Paragraph I.F. of this Agreement. The rules of these Arbitration

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Services are available from the administrator of the Healthcare Center. The parties intend that the arbitration will be held as close as possible to where the Healthcare Center is located.

B. Ad Hoc Arbitration. In the event that none of the entities named in the foregoing Paragraph I.E. of this Agreement are willing or able to serve as the Arbitration Service (and only in that event), the Demand shall be served on the other party by certified mail or overnight mail, and both parties shall in good faith attempt to agree upon one arbitrator to conduct the arbitration. If the parties are unable to agree upon an arbitrator within 30 days of the receipt of the Demand, each shall within 30 days thereafter appoint an arbitrator and these two individuals shall appoint a third arbitrator within 10 days, in which case the three arbitrators shall serve as the panel of arbitrators. If the arbitration conducted pursuant to this Agreement is conducted before a panel of arbitrators, references to the "arbitrator" contained in this Agreement shall be understood to mean the panel of arbitrators, and the decision of at least two of the three arbitrators shall constitute the decision of the panel. In the event that the arbitration is carried out in accordance with this Paragraph I.F., the arbitrator shall establish the procedural rules for conducting the arbitration.

F. Witnesses, Subpoenas, and Depositions. The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrator, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party and for use as evidence, the arbitrator may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrator, of a witness who cannot be subpoenaed or is unable to attend the hearing. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness for the circuit court in this state. Upon the request of any party or arbitrator, the arbitrator shall cause to be made a record of the testimony and evidence introduced at the hearing.

G. Costs. The Healthcare Center shall pay the fees of the Arbitration Service up to a maximum of five (5) days of hearing. Any fees of Arbitration Service beyond five (5) days of hearing shall be split between the parties. Each party shall bear its own attorneys' fees.

II. Decision

A. Form of Decision. The arbitrator may, within the time fixed by the rules of the Arbitration Service, grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the Agreement of the parties and consistent with applicable law, provided that the arbitrator shall not make an award of punitive damages unless that award is supported by a reasoned decision that addresses every question of law and fact that a court would be required to address, and further provided that the arbitrator shall not award duplicative damages in respect of a single injury. Notwithstanding any provision contained herein, any award of punitive or

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ARBITRATION AGREEMENT

noneconomic damages shall be capped at the statutory amount at which a judgment or jury verdict would be capped had the claim been brought before a court of law. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrator shall deliver a copy to each party personally or by registered mail.

B. Exclusive Process - Result Final. The parties agree that, except to the extent that reconsideration is allowed by the rules and procedures of the Arbitration Service, an arbitration decision shall be the final and unappealable resolution of any controversy within the scope of this Agreement, provided that either party shall be entitled to challenge an arbitration decision upon the limited grounds which are set forth in the rules and procedures of the Arbitration Service. Any decision rendered by the arbitrator may be confirmed in any court of competent jurisdiction.

III. Governing Law, Severability

A. The Healthcare Center's business activities substantially affect, relate to, and involve interstate commerce. For example, the Healthcare Center purchases substantial quantities of goods and services that are produced outside of the state and shipped across state lines to be provided to Patients/Residents of the Healthcare Center. The Healthcare Center participates in federally administered reimbursement programs, including Medicare and Medicaid, in which the Healthcare Center receives reimbursement that is derived from out of state sources for items and services provided to its Patients/Residents. As such, this Agreement shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16), as opposed to state arbitration law, notwithstanding any provision of state law or any other understanding or agreement between the parties. The parties specifically exclude the application of South Carolina's Uniform Arbitration Act.

B. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, the remaining provisions, and partially invalid or unenforceable provisions, to the extent valid and enforceable, shall nevertheless be binding and valid and enforceable.

C. The provisions of this Agreement shall remain in effect after any other agreements between the parties have been terminated.

IV. Patient/Resident's Understanding of Agreement

The Patient/Resident or the Patient/Resident's Representative, has read this Agreement in its entirety, and understands the language in which it is written. If this Agreement has been read, on behalf of the Patient/Resident by the Patient/Resident's Representative, the Patient/Resident's Representative has explained to the Patient/Resident, to the extent of the Patient/Resident's capability to understand such

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State of South Carolina
ARBITRATION AGREEMENT

explanation, the nature of this Agreement and its essential terms. The Patient/Resident understands that:

- A. The Patient/Resident has the right to seek legal counsel concerning this Agreement;
- B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center; and
- C. This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature. If not revoked within thirty (30) days, this Agreement shall remain in effect for all care and services rendered at the Healthcare Center, even if such care and services are rendered following the Patient/Resident's discharge and readmission to the Healthcare Center.

THIS AGREEMENT GOVERNS IMPORTANT LEGAL RIGHTS. PLEASE READ THE AGREEMENT IN ITS ENTIRETY BEFORE SIGNING. THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT, AS TO ALL DISPUTES THAT ARE GOVERNED BY THIS AGREEMENT, EACH OF THE PARTIES IS WAIVING THE RIGHT TO TRIAL BY JURY, AND INSTEAD DISPUTES BETWEEN THE PARTIES SHALL BE RESOLVED THROUGH ARBITRATION.

BULA M DAVIS

Print: Name of Patient/Resident

UniHealth PAC Rock Hill

Print: Name of Healthcare Center

Signature of Patient/Resident

Signature of Healthcare Center's Authorized Agent

Signature of Patient/Resident Representative

LEORA JACKSON

Print: Name and Title of Healthcare Center's
Authorized Agent

ANDREW DAVIS

Print: Name of Patient/Resident Representative and indicate capacity of representative (e.g., guardian, attorney-in-fact, agent under Durable Power of Attorney for Healthcare, spouse, son, daughter, etc.).

NOTE: In signing this Agreement, Patient/Resident Representative binds both Patient/Resident and Patient/Resident Representative individually.

RPD Initials

ADVANCE DIRECTIVES CHECKLIST

Healthcare Center: UniHealth PAC Rock HillPatient/Resident Name: EULA M DAVIS

Please read the following (3) statements and initial each: (If the patient/resident is unable to comprehend the information, the person admitting the patient/resident will initial and receive the information.)

1. I have been given written materials on my rights to accept or refuse medical and surgical treatments and my rights to formulate advance directives. APD Initials
2. I understand that I am not required to have an advance directive in order to receive medical treatment at this healthcare center. APD Initials
3. I understand that the terms of any advance directive that I have executed will be followed by the staff and physicians of this healthcare center to the extent permitted by law. APD Initials

Please check one of the following statements:

- ☐ I have executed an advance directive and will provide a copy to the healthcare center. I understand that the staff and physicians of this healthcare center will not be able to follow the terms of my advance directive until I provide a copy of it to the staff.
- ☒ I have not executed an advance directive, and do not wish to discuss advance directives further at this time.
- ☐ I have not executed an advance directive but would like to obtain additional information about advance directives. Information was provided. _____ Initials
- ☐ Patient/resident is unable to comprehend what advance directives are, but this was explained to the family as part of our community education effort.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

The following advance directives or DNR orders have been executed and are complete:
☐ Living Will; ☐ DPAHC; ☐ DNR Order; ☐ Organ Donation; ☐ Body Donation

MEDICARE AND MEDICAID INFORMATION FORM

Patient/Resident's Name: DAVIS EULA M
(Last) (First) (Middle Initial)

Date of Birth: [REDACTED] Sex: Male; X Female

Admit Date: 1-11-11 Social Security #: [REDACTED]

Diagnosis: UTI, HTN

Medicare Number: 249126837A Medicaid Number: _____

Other Insurance: _____

Subscriber's Name: _____

Policy Number: _____ Relation to Subscriber: _____

ASSIGNMENT OF BENEFITS:

I request that payment of authorized Medicare, Medicaid or any insurance benefits for which I am entitled to be paid on my behalf directly to UniHealth PAC Rock Hill (healthcare center) for any services furnished to me by the healthcare center. I authorize any holder of medical or other information about me to release to the Center for Medicare and Medicaid Services and its agents any information needed to determine these benefits for related services.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS
 Print Patient/Resident's Name

 Patient/Resident's Signature

ANDREW DAVIS
 Print Patient/Resident Representative's Name

Andrew P. Davis
 Patient/Resident Representative's Signature

LESTA JACKSON
 Print Healthcare Center Representative's Name

[Signature]
 Healthcare Center Representative's Signature

UniHealth PAC Rock Hill
 Legal Name of Healthcare Center

1-11-11
 Date

CHARGES FOR ITEMS & SERVICES

Not Covered in Basic Daily Rate

Patient/Resident Name: EULA M DAVIS

The Guest Services Guide provides more information on the services covered and not covered in the basic daily rate. OTHER ITEMS PROVIDED by the healthcare center that are NOT INCLUDED IN THE BASIC RATE for the patient/resident's current pay source are as follows (charges are subject to change upon thirty (30) days written notice):

Indicate Patient/Resident's Current Pay Source (Medicare/Medicaid/Private Pay): Medicare/Medicaid

Item or Service	Charge	(if requested, indicate by initials)
Private Room	\$ PER month	
	\$ PER	
	\$ PER	
	\$ PER	
	\$ PER	
	\$ PER	

Please sign the appropriate paragraph below:

I, the above named patient/resident, acknowledge receipt of the above information and if I have requested an item or service by initialing it in the last column, I agree to pay for these items or services in accordance with the payment of items set forth in the Admission Agreement. I make this agreement voluntarily. I understand that this agreement is not a condition of my admission, expedited admission, or continued stay in the healthcare center.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEOPA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

Effective Date: 01/11/2011

This notice describes how medical information about you may be used and disclosed
and how you can get access to this information.

PLEASE REVIEW IT CAREFULLY.

If you have any questions about this notice, please contact UniHealth PAC Rock Hill
at (803)366-7133 (Healthcare Center Phone Number).

WHO WILL FOLLOW THIS NOTICE.

This notice describes our healthcare center/agency's practices and that of:

- ▷ All departments and units of the healthcare center/agency.
- ▷ Any member of a volunteer group we allow to help you while you are in the healthcare center/agency.
- ▷ All partners, staff and other healthcare center/agency personnel.

OUR PLEDGE REGARDING YOUR HEALTH INFORMATION

We understand that information about you and your health is personal. We are committed to protecting your health information. We create a record of the care and services you receive at the healthcare center/agency, as well as records regarding payment for those services. We need these records to provide you with quality care and to comply with certain legal requirements. This notice applies to all of the records of your care generated by the healthcare center/agency, whether made by healthcare center/agency personnel or your personal doctor. Your personal doctor may have different policies or notices regarding the doctor's use and disclosure of your medical information created in the doctor's office or clinic.

This notice will tell you about the ways in which we may use and disclose medical information about you. We also describe your rights and certain obligations we have regarding the use and disclosure of medical information.

We are required by law to:

- Make sure that medical information that identifies you is kept private.
- Give you this notice of our legal duties and privacy practices with respect to medical information about you.
- Follow the terms of the notice that is currently in effect.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

HOW WE MAY USE AND DISCLOSE HEALTH INFORMATION ABOUT YOU

The following categories describe different ways that we use and disclose health information. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

- ▶ **For Treatment.** We may use health information about you to provide you with medical treatment or services. We may disclose medical information about you to doctors, nurses, technicians, medical students, or other healthcare center/agency personnel who are involved in taking care of you at the healthcare center/agency. For example, a doctor treating you for a broken leg may need to know if you have diabetes because diabetes may slow the healing process. In addition, the doctor may need to tell the dietitian if you have diabetes so that we can arrange for appropriate meals. Different departments of the healthcare center/agency also may share medical information about you in order to coordinate the different things you need, such as prescriptions and lab work.
- ▶ **For Payment.** We may use and disclose health information about you so that the treatment and services you receive at the healthcare center/agency may be billed, and that payment may be collected from you, an insurance company or another third party. For example, we may need to give your health plan information about services that you received at the healthcare center/agency so your health plan will pay us or reimburse you for the services. We may also tell your health plan about a treatment you are going to receive to obtain prior approval or to determine whether your plan will cover the treatment.
- ▶ **For Health Care Operations.** We may use and disclose medical information about you for health care operations. These uses and disclosures are necessary to run the center/ agency and to make sure that all patients/residents receive quality care. For example, we may use medical information to review our treatment and services and to evaluate the performance of our staff in caring for you. We may also combine medical information about many healthcare center/agency patients/residents to decide what additional services the healthcare center/agency should offer, what services are not needed, and whether certain new treatments are effective. We may also disclose information to doctors, nurses, therapists, consultants, technicians, medical students, and other healthcare center/agency personnel for review and learning purposes. We may also combine the medical information we have with medical information from other centers/agencies to compare how we are doing and see where we can make improvements in the care and services we offer. We may remove information that identifies you from this set of medical information so others may use it to study health care and health care delivery without learning who the specific patients/residents are.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▷ Treatment Alternatives. We may use and disclose medical information to tell you about or recommend possible treatment options or alternatives that may be of interest to you.
- ▷ Health-Related Benefits and Services. We may use and disclose medical information to tell you about health-related benefits or services that may be of interest to you.
- ▷ Name Placement. We may place your name on the door to your room, on your meal tray, and on pieces of equipment that you might use, including a wheelchair. This aids our staff in identifying your items in order to provide you the best possible care. Further, this practice will assist you in locating your room and equipment.
- ▷ Individuals Involved in Your Care or Payment for Your Care. Unless you object, we may release medical information about you to a friend or family member who is involved in your medical care. We may also give information to someone who helps pay for your care. We may also tell your family or friends of your condition. In addition, we may disclose medical information about you to an entity assisting in a disaster relief effort.
- ▷ As Required By Law. We will disclose medical information about you when required to do so by federal, state or local law.
- ▷ To Avert a Serious Threat to Health or Safety. We may use and disclose medical information about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.
- ▷ To Those Involved in Your Care. We may disclose medical information about you to people who may be involved in your care, such as your family members, close personal friends and, if applicable, a private sitter. If, at any time you do not want such people involved in your care, you may instruct us not to make any disclosures to them.
- ▷ Private Sitters. If you hire a private sitter, we will disclose medical information about you to aid your sitter in caring for you. There may be private sitters working for other patients/residents of the healthcare center/agency. These sitters may hear incidental information about you.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

SPECIAL SITUATIONS

- ▷ **Organ and Tissue Donation.** If you are an organ donor, we may release medical information to organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.
- ▷ **Military and Veterans.** If you are a member of the armed forces, we may release medical information about you as required by military command authorities. We may also release medical information about foreign military personnel to the appropriate foreign military authority.
- ▷ **Workers' Compensation.** If applicable, we may release medical information about you for workers' compensation or similar programs. These programs provide benefits for work-related injuries or illness.
- ▷ **Public Health Risks.** We may disclose medical information about you for public health activities. These activities generally include the following:
 - To prevent or control disease, injury or disability.
 - To report deaths.
 - To report reactions to medications or problems with products.
 - To notify people of recalls of products they may be using.
 - To notify a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition.
 - To notify the appropriate government authority if we believe you have been the victim of abuse, neglect or domestic violence. We will only make this disclosure if you agree or when required or authorized by law.
- ▷ **Health Oversight Activities.** We may disclose medical information to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections, and licensure. These activities are necessary for the government to monitor the health care system, government programs, and compliance with applicable civil rights laws.
- ▷ **Lawsuits and Disputes.** If you are involved in a lawsuit or a dispute, we may disclose medical information about you in response to a court or administrative order. We may also disclose medical information about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if we receive satisfactory assurances that the party seeking the information has made efforts to tell you about the request or to obtain an order protecting the information requested.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

► **Law Enforcement.** We may release medical information if asked to do so by a law enforcement official:

- In response to a court order, subpoena (after we attempt to notify you), warrant, summons or similar process.
- To identify or locate a suspect, fugitive, material witness, or missing person.
- About the victim of a crime if, under certain limited circumstances, we are unable to obtain your agreement.
- About a death we believe may be the result of criminal conduct.
- About criminal conduct at our offices.
- In emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime.

► **Coroners, Medical Examiners and Funeral Directors.** We may release medical information to a coroner or medical examiner. This may be necessary, for example, to identify a deceased person or determine the cause of death. We may also release medical information about patients/residents of the healthcare center/agency to funeral directors as necessary to carry out their duties.

► **National Security and Intelligence Activities.** We may release medical information about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.

► **Protective Services for the President and Others.** We may disclose medical information about you to authorized federal officials so they may provide protection to the President, other authorized persons or foreign heads of state or conduct special investigations.

YOUR RIGHTS REGARDING MEDICAL INFORMATION ABOUT YOU

You have the following rights regarding medical information we maintain about you:

► **Right to Inspect and Copy.** You or your legal representative has the right to inspect and copy medical information that may be used to make decisions about your care. Usually, this includes medical and billing records, but does not include psychotherapy notes. We must provide you with access to your records within 24 hours of your request, not including weekends or holidays. We must provide you with a copy of your records within two (2) working days following your request.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

To inspect and copy medical information that may be used to make decisions about you, submit your request orally or in writing to TOM MARKUSZKA. If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

We may deny your request to inspect and copy in certain very limited circumstances. If you are denied access to medical information, you may request that the denial be reviewed if the denial is made for certain reasons. Another licensed health care professional chosen by the healthcare center/agency will review your request and the denial. The person conducting the review will not be the person who denied your request. We will comply with the outcome of the review.

- **Right to Amend.** If you feel that medical information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the healthcare center/agency.

To request an amendment, your request must be made in writing and submitted to TOM MARKUSZKA. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment.
- Is not part of the medical information kept by or for the healthcare center/agency.
- Is not part of the information which you would be permitted to inspect and copy.
- Is accurate and complete.

- **Right to an Accounting of Disclosures.** You have the right to request an "accounting of disclosures." This is a list of certain disclosures we made of medical information about you.

To request this list or accounting of disclosures, you must submit your request in writing to TOM MARKUSZKA. Your request must state a time period which may not be longer than six years and may not include dates before April 14, 2003. Your request should indicate in what form you want the list (for example, on paper, electronically). The first list you request within a 12-month period will be free. For additional lists, we may charge you for the costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▷ **Right to Request Restrictions.** You have the right to request a restriction or limitation on the medical information we use or disclose about you for treatment, payment or health care operations purposes. You may also request a limit on the medical information we disclose about you to someone who is involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not use or disclose information to your daughter, or that we not use your information in any quality assurance activities.

We are not required to agree to your request. If we do agree, we will comply with your request unless the information is needed to provide you emergency treatment.

To request restrictions, you must make your request in writing to TOM MARKUSZKA. In your request, you must tell us (1) what information you want to limit; (2) whether you want to limit our use, disclosure or both; and (3) to whom you want the limits to apply, for example, disclosures to your spouse.

- ▷ **Right to Request Confidential Communications.** You have the right to request that we communicate with you about medical matters in a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to TOM MARKUSZKA. We will not ask you the reason for your request. We will accommodate reasonable requests. Your request must specify how or where you wish to be contacted.

- ▷ **Right to a Paper Copy of This Notice.** You have the right to a paper copy of this notice. You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.

CHANGES TO THIS NOTICE

- ▷ We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for medical information we already have about you as well as any information we receive in the future. We will post a copy of the current notice in the healthcare center/agency. The notice will contain, on the first page, in the top right-hand corner, the effective date.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the healthcare center/agency or with the Secretary of the Department of Health and Human Services. To file a complaint with the agency, contact UniHealth PAC Rock Hill at (803)366-7133.

All complaints must be submitted in writing. A complaint may be filed with the Secretary of the Department of Health and Human Services at:

Secretary
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Telephone: 202-619-0257
Toll Free: 1-877-696-6775

You will not be penalized in any way for filing a complaint.

OTHER USES OF MEDICAL INFORMATION

Other uses and disclosures of medical information not covered by this notice or the laws that apply to us will be made only with your written permission. If you provide us permission to use or disclose medical information about you, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose medical information about you for the reasons covered by your written authorization. You understand that we are unable to take back any disclosures we have already made with your permission, and that we are required to retain our records of the care that we provided to you.

**ACKNOWLEDGMENT OF RECEIPT OF NOTICE
OF PRIVACY PRACTICES FOR PROTECTED HEALTH INFORMATION**

Patient/Resident Name: EULA M DAVISPatient/Resident Social Security Number: [REDACTED]

I understand that UniHealth PAC Rock Hill (healthcare center/agency name) is part of a corporation which may share my health information for treatment, billing and healthcare operations. I have been given a copy of the organization's Notice of Privacy Practices that describes how my health information is used and shared. I understand that the corporation has the right to change this notice at any time. I may obtain a current copy by contacting this healthcare center/agency at (803)366-7133 (healthcare center/agency telephone number) or by contacting the Corporate Privacy Officer by calling 1-800-222-0321.

For Healthcare Center/Agency Use Only:

If unable to obtain written acknowledgment, please document reason and good faith efforts below:

My signature below constitutes my acknowledgment that I have been provided with a copy of the Notice of Privacy Practices.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

[Signature]
Patient/Resident's SignatureANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's SignatureLEORA JACKSON

Print Healthcare Center/Agency Representative's Name

[Signature]
Healthcare Center/Agency Representative's SignatureUniHealth PAC Rock Hill

Legal Name of Healthcare Center/Agency

1-11-11
Date

**ACKNOWLEDGMENT OF RECEIPT
OF PARTNERSHIP IN CARING PACKET**

Patient/Resident: EULA M DAVIS

I acknowledge receipt of the Partnership in Caring Packet provided to me either prior to or upon admission. I understand that if I have any questions regarding its content, especially as it relates to me or the above named patient/resident, I may bring those questions to staff members or the attending physician. I understand that the information contained in the packet is for general educational purposes and should not be taken as medical advice or replace the advice or recommendations of a medical professional. I understand that nothing contained in this packet is intended to guarantee satisfaction or particular results.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

K. Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

CONTINUUM OF CARE INTEGRATION PATIENT/RESIDENT PROVIDER CHOICE LETTER

Dear Patient/Resident or Representative:

One of the most important choices you can make is selecting a quality healthcare provider for you or your loved one. We believe the burden for this responsibility can be lifted by having a family of providers that communicate and work together to promote efficient delivery of quality care - and such a family is available right here in your community!

This healthcare center/agency is a separate entity, yet affiliated with UHS-Pruitt Corporation, and therefore is part of a growing network of healthcare providers and resources. Our organization has worked to build community-centered, integrated healthcare delivery systems that promote choice, quality and efficiency. Among our related party providers are:

- ❖ Skilled nursing centers
- ❖ Assisted living centers
- ❖ Long-term pharmacies
- ❖ Home care and home health agencies
- ❖ Nutritional program specialists
- ❖ Clinical consultants
- ❖ Retail pharmacies
- ❖ In-home and inpatient hospice agencies
- ❖ Medical supply services
- ❖ Adult day care centers
- ❖ Rehabilitation therapists
- ❖ Commercial insurance care managers
- ❖ Community care program providers
- ❖ Home infusion therapy services

Our related party providers collaborate to evaluate patient/resident need and develop clinical pathways to optimize care delivery in the least restrictive environment. The result is that patients/residents can access multiple types of providers, easily change providers as healthcare needs change, and benefit from the continuity of care that occurs when affiliated providers work together.

This healthcare center/agency appreciates the trust you have already committed by choosing us to deliver healthcare services to you or your loved one. Your physician or healthcare professional has now ordered/recommended that you receive additional or continued services that *this* center/agency staff cannot provide, but which *can* be provided by another provider affiliated with UHS-Pruitt Corporation. It would be our pleasure to make such a referral and assist you in the transition.

While you generally have the right to choose a healthcare provider, in some instances, your choice may be limited to those providers who contract with other providers. For example, skilled nursing centers affiliated with UHS-Pruitt Corporation contract exclusively with related-party hospice providers and long term care pharmacies; thus your right to choose those providers is exercised when the skilled nursing center is selected for admission. These exclusive contracts promote the same continuity and quality of care already discussed and are supported by regulatory authorities.

If you need more information before making this decision, please let us know, and we will be happy to assist you if possible. Because we are unfamiliar with the policies and procedures of

**CONTINUUM OF CARE INTEGRATION
PATIENT/RESIDENT PROVIDER CHOICE LETTER**

non-related providers, including whether they service your area or are qualified to meet your care needs, we cannot make any recommendations concerning them. We also recommend that you verify coverage for any alternative provider with your insurance company. We are happy to verify your insurance coverage for the providers in the UHS-Pruitt Corporation family.

Please make your selection regarding related party providers below. On behalf of our related party providers, we thank you for your continued trust and look forward to serving your healthcare needs in the future.

Sincerely,

Administrator

Patient/Resident or Representative -- Please check one of the following:

I understand that I have a choice in selecting a healthcare provider. I have been counseled about and understand the distinction between related party and non-related party providers, and have had the opportunity to seek answers to my questions. Accordingly, I have made the following informed decision:

☒ I choose to use a related party provider in the UHS-Pruitt Corporation family of providers.

☐ I choose NOT to use a related party provider in the UHS-Pruitt Corporation family of providers.

Patient/Resident Signature: _____

Date: _____

Representative Signature: _____

Date: 1-11-11

Representative's Relationship to Patient/Resident: _____

EXTENDED SIGNATURE AUTHORIZATION*(Statement to permit payment of Medicare benefits to supplier, physician or patient/resident)*Patient/Resident Name: EULA M DAVISHealthcare Center Name: UniHealth PAC Rock Hill

I request that payment of authorized Medicare/Medicaid benefits be made either to me or on my behalf to:

- ☒ United Nutritional/United Medical Services
- ☒ I have received CMS Medicare DMEPOS Supplier Standards
- ☒ United Rehabilitation
- ☒ United Pharmacy Services
- ☒ United Hospice
- ☒ Physician
- ☐ Other (specify) _____

for any services furnished to me by the supplier indicated above. I authorize any holder of medical information about me to release to the Center for Medicare and Medicaid Services and its agents any information needed to determine these benefits payable for related services.

I request that payment of Medicaid, other insurance, or HMO benefits be made on my behalf to the supplier listed above for any services furnished to me by that supplier. I authorize any holder of hospital or medication information about me to release to Medicaid, other insurance HMO or their agents any information needed to determine these benefits or the benefits payable for related services.

This authorization is in effect until I choose to revoke it. I understand that if I am a patient/resident of a healthcare center, this authorization will be in effect for a period of my stay.

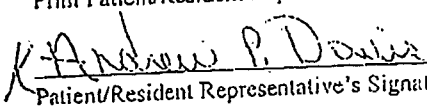
PATIENT/RESIDENT/REPRESENTATIVEEULA M DAVIS

Print Patient/Resident's Name

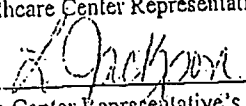
Resident/Patient's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name


 Patient/Resident Representative's Signature
LEORA JACKSON

Print Healthcare Center Representative's Name


 Healthcare Center Representative's Signature
UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
 Date

**ACKNOWLEDGMENT OF RECEIPT OF
PATIENT/RESIDENT FEDERAL & STATE RIGHTS**

Patient/Resident Name: EULA M DAVIS

This healthcare center admits patients/residents and provides services without regard to race, color, religion, sex, national origin, handicap condition or age.

I acknowledge receipt of the Patient/Resident Federal & State Rights. I have been informed of these rights either prior to or upon admission.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

LEORA JACKSON

Print Healthcare Center Representative's Name

[Signature]

Patient/Resident's Signature

[Signature]

Healthcare Center Representative's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

[Signature]

Patient/Resident Representative's Signature

1-11-11

Date

OMBUDSMAN ACKNOWLEDGMENT:

I acknowledge receipt of information on the Long Term Care Ombudsman Program for this state.

[Signature]

Patient/Resident/Representative's Signature

1-11-11

Date

*(Give original to patient/resident and photocopy this page
for patient/resident's file at healthcare center)*

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: UniHealth PAC Rock HillPatient/Resident: EULA M DAVIS

It has been explained to me by the staff of the above named healthcare center/agency, and I fully understand that:

(a) I may select the physician of my choice, provided that such physician has been given, or obtains, staff privileges at the healthcare center/agency. I understand and acknowledge that the exercise of the right to choose an attending physician does not mean that the physician must or will serve in that capacity. The healthcare center/agency will have the right, after informing me, to seek alternative physician participation to assure the provision of appropriate and adequate care and treatment. There are times when the attending physician is not available to the patient/resident. On these occasions, the attending physician will ask another physician to attend to the patient/resident during his/her absence. I fully understand this arrangement and I do consent to being treated by the stand-by physician during the absence of my regular physician.

(b) I may select the pharmacy or pharmacist of my choice for those pharmaceutical supplies and services not provided by the healthcare center as part of the basic daily rate, provided that the pharmacy or pharmacist packages medications in accordance with the healthcare center/agency's packaging system and meets the requirements of a long term care pharmacy provider under the Medicare Modernization Act.

(c) I understand that I may enroll in a Medicare prescription drug benefit plan or choose to change my existing drug benefit plan on admission to the healthcare center/agency. I understand that enrollment in a drug plan may require payment to the plan sponsor for the benefit.

The following indicate my choices:

1. Attending Physician: JAMES JEWELL

Address & Phone Number: 1147 EBENEZER ROAD ROCK HILL, SC 29732 (803)329-6648

2. Pharmacy: UNITED PHARMACY

I ☐ do wish to enroll in a Medicare Prescription Drug Benefit plan

I ☒ do not wish to enroll in a Medicare Prescription Drug Benefit plan.

I ☐ wish to change my enrollment in the Medicare Prescription Drug Benefit to

3. Consent to photograph. The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check the statement below that reflects your wishes:

I ☒ do consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.

I ☐ do not consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: UniHealth PAC Rock Hill

Patient/Resident: EULA M DAVIS

4. Consent regarding correspondence. The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check all the statements below that reflect your wishes:

- ☐ I request that the Administrator or designee assist in the opening and/or reading of my personal mail.
- ☐ I request that the Administrator or designee assist in opening financially related mail addressed to me such as checks, medical bills or statements, Medicare and Medicaid correspondence.
- ☒ I do not give consent for any staff of the healthcare center to open my mail. All such mail shall be given directly to me or my responsible party, unopened.

5. Laundry. (See Guest Services Guide) Each personal item of clothing must be marked with a laundry marker. Out of season clothing should be removed from patient/resident's room by family.

Check your preference on the laundering of personal laundry:

- ☒ done by the healthcare center
- ☐ done by family*

*If laundry is done by family, a closed and labeled container that is fire retardant must be provided.

6. Other Specified Charges.

☒ Beauty/Barber Shop _____

☐ TV/Cable _____

☐ Telephone _____

☐ Other: _____

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

ACKNOWLEDGMENT OF TRANSFER/LIFT PROGRAM

This program has been implemented in an effort to provide a safe and healthy environment for individuals in our care and for those that provide their care.

The **TOTAL MECHANICAL LIFT** will be used for individuals who cannot bear weight on their legs and can only offer minimal assistance with their transfers/lifts.

The **SIT OR STAND MECHANICAL LIFT** will be used for individuals who can bear weight on their legs and can offer assistance with their transfers/lifts.

A lift will not be used for individuals who can assist greater than 50% with their transfers/lifts in order to continue to promote their highest level of functioning.

I have received a full explanation of the Transfer/Lift Program, and if requested, I can receive additional information.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

[Signature]
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

**ANNUAL INFLUENZA (FLU) VACCINE
CONSENT / REFUSAL**

It is the policy of UniHealth PAC Rock Hill (healthcare center) that an annual Influenza (Flu) Vaccine be given to each patient/resident who resides in this healthcare center unless contraindicated by the physician or refused by the patient/resident or family, and depending on the availability of the vaccine.

Permission to receive the vaccine will be obtained on admission and will remain in place unless revoked by the physician, patient/resident or family. A one-time standing order for the vaccine will be obtained from the physician upon admission to the healthcare center. The order will remain valid and appear each October on the Physician Order sheet unless discontinued by the physician.

CONSENT

 I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the flu vaccine each year, depending on the availability of the vaccine.

REFUSAL

 ✓ I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do not wish to receive the flu vaccine yearly.

10/2010

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

*Side effects, benefits and risks of the Influenza Vaccine are attached and may be copied and distributed to patients/residents and family members.

**PATIENT/RESIDENT OR AUTHORIZED PERSON
ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM**

UniHealth PAC Rock Hill (healthcare center name), in accordance with new federal and state laws, has a very stringent program regarding the use of physical and chemical restraints on patients/residents. Our philosophy of providing patients/residents with the highest possible quality of care and life is reflective of our belief that it is essential for our patients/residents to maintain their dignity and independence by being permitted to take "the normal risks of everyday life". Restraints used in an attempt to remove these normal risks of living violate the rights of patients/residents, greatly reduces their quality of life, and presents significant physical and psychological risks. For these reasons, it is the philosophy of this healthcare center to promote a restraint free environment, as designated in the Restraint Reduction Program.

In accordance with federal and state laws, restraint use in our healthcare center will only be considered to treat a medical symptom/condition that endangers the physical safety of the patient/resident or other patients/residents and under the following conditions: 1) as a last resort measure after a trial period where restraint free measures have been undertaken and proven unsuccessful; 2) with a physician order; 3) with the consent of the patient/resident; 4) when the benefits of the restraint outweigh the identified risks. If restraint use is deemed necessary, the goal will be to use the least restrictive type of restraint for the shortest period of time possible, with a structured plan for time out of the restraint and for restraint elimination.

Every patient/resident at this healthcare center will be individually assessed upon admission regarding the need for appropriate safety measures and will be periodically reassessed as their needs change throughout their stay at our healthcare center. The Restraint Reduction Committee will collaborate to promote a restraint free environment.

By virtue of my signature, I state that I have received, read, and had an opportunity to discuss any questions I have had concerning this restraint policy. Additionally, I state that I clearly understand and agree with this program.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

/ Andrew P. Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

Rev: 5/07

3.05



AGREEMENT OF FINANCIAL RESPONSIBILITY

Patient/Resident: Name: EULA M DAVIS
Healthcare Center: UniHealth PAC Rock Hill Admission Date: _____
Medicare Prescription Drug Benefit Plan: _____
Commercial Insurance Plan: _____
Medicaid #: _____ Medicare A/B #: _____
(Attach photocopy, front and back, of Medicare card, PDP plan card, insurance card)

Legal Representative: Name: _____
Address: _____
City, State, Zip: _____
Phone: (Home) _____ (Work) _____ (Cell) _____
☐ General POA ☐ DPOAHC ☐ Guardian of Person ☐ Guardian of Property/Conservator

Responsible Party: Name: ANDREW DAVIS
Address: 111 Thompson Avenue Rd
City, State, Zip: York SC 29745
Phone: (Home) 803-628-5946 (Work) _____ (Cell) _____
Relationship to Patient: Son

United Pharmacy Services agrees to provide medications ordered by the patient's physician in accordance with the following terms:

1. All eligible charges for medications will be billed to the Medicare Prescription Drug Plan (PDP), the commercial insurance plan listed above or to Medicaid if applicable. It is the responsibility of the patient/resident, legal representative or responsible party to notify the healthcare center and pharmacy business office of any change in prescription drug coverage.
2. The patient/resident, legal representative or responsible party shall pay any outstanding pharmacy charges after payment by the PDP, commercial insurance plan or Medicaid. Payment is expected for purchases not payable by the third party insurance source. "Outstanding pharmacy charges" shall not include covered items, allowance for contractual adjustments or similar amounts otherwise not collectible in accordance with state or federal regulations or contract terms.
3. Billing will be made on a monthly basis. Payment is expected in full upon receipt of the pharmacy statement. In order for the account to remain active, the account must remain current. Unpaid past due bills will incur a monthly late charge of 1.5%. Should collection efforts become necessary, collection fees, including any attorney's fees, will be included in the principal amount due. Delinquent accounts are subject to termination.
4. Healthcare center staff may authorize purchases on this account on behalf of the named patient/resident.

I certify that I have read the agreement as outlined above and hereby accept the terms and conditions.

Signature of Patient/Resident

Date

Witness

Signature of Legal Representative

Date

Witness

Signature of Responsible Party

Date

Witness

White - Pharmacy Copy

Yellow - Center Copy

Pink - Patient/Resident Copy

MEDICARE COVERAGE DETERMINATION

Patient/Resident Name: EULA M DAVISHealthcare Center Name: UniHealth PAC Rock HillDate of Admission: 1-11-11

Qualifies for Medicare Part A benefits for skilled services related to:

Estimated coverage: 94 full days; 80 co-pay; 94 total days.

Does not qualify for Medicare Part A benefits because:



Do you agree with this determination?



If no, do you want a Demand Billing? If you would like to request a Demand Billing, please see the form entitled "Request for Medicare Intermediary Review".

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

BED HOLDS

It is our policy to allow any patient/resident who is transferred or discharged from the healthcare center to be re-admitted, in accordance with applicable regulations, including determining that there are no medical care issues that the medical staff believes the healthcare center will be unable to treat.

Two notices related to the healthcare center's bed hold policy will be issued. The first notice of bed hold policies is given during this admission, which is well in advance of any transfer. The second notice, which specifies the duration of the bed hold policy, will be issued at the time of any transfer. In cases of emergency transfer, notice "at the time of transfer" means that the family and/or undersigned parties, not to include the healthcare center, is provided with written notification within 24 hours of the transfer. The requirement is met if the patient/resident's copy of the notice is sent with other papers accompanying the patient/resident to the hospital.

The following is a breakout by payment source of how the bed hold policy works. Any patient/resident may have primary or secondary payer sources, so please inquire with the business office if you have a question about payer source at the time of transfer or which payer source is applicable to a particular transfer.

I. MEDICAID

Any patient/resident who has made application or is approved by the Department of Health and Human Services, shall be considered a Medicaid patient/resident.

A. HOSPITAL STAY:

Medicaid will pay for ten (10) days, minus any patient/resident portion amount. After the 10th day, the patient/resident, family or hospital must decide if the bed will be held by paying privately at the posted daily rate. This must be arranged, however, prior to the patient/resident leaving the hospital, and the patient/resident will be responsible for payment of the posted basic daily rate currently in effect.

B. THERAPEUTIC LEAVE:

The Medicaid program will provide payment during the patient/resident's leave of absence for a total of eighteen (18) days in any fiscal year (July through June). Each leave of absence is not to exceed more than ninety (9) consecutive days. The attending physician must document in the plan of care that such visits are therapeutic in nature. If therapeutic leave exceeds nine (9) consecutive days Medicaid benefit will cease and will need to be reapplied for through the Department of Health and Human Services.

Hospital stays or therapeutic leaves beyond the time for which Medicaid will make payment: Arrangements may be made for holding a bed for a patient/resident for days exceeding the established limit. This must be arranged, however, prior to leaving, and the patient/resident will be responsible for payment of the bed hold charges in the amount which Medicaid would have paid.

BED HOLDS

If the bed is held, then the patient/resident can return at any time of discharge from the hospital. Alternatively, if the patient/resident's hospitalization or therapeutic leave exceeds the number of days indicated above and the bed is not held, then the patient/resident has the right to return to the center in the next available bed if:

- The patient/resident requires the services provided by the healthcare center.
- The patient/resident is eligible for Medicaid healthcare center services.

II. MEDICARE

Medicare does not pay for holding a bed. Check with the Business Office if you need help determining whether a secondary payer source is effective.

III. PRIVATE PAY

A vacant bed will be held for the patient/resident while the patient/resident is in the hospital or on a therapeutic leave, if the patient/resident, responsible party, or legal representative notifies the healthcare center in writing of the desire to reserve a bed and pays the posted basic daily rate in effect at the time of the patient/resident's absence from the healthcare center. If the patient/resident chooses not to reserve the bed through payment, he/she will be re-admitted to the healthcare center in accordance with applicable regulations, provided that the patient/resident requires the services provided by the healthcare center.

IV. VETERANS ADMINISTRATION

No bed holds are paid under V.A. contracts. Check with the Business Office if you need help determining whether a secondary payer source is effective.

PATIENT/RESIDENT/REPRESENTATIVE:EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

Date

PATIENT/RESIDENT TRUST FUND AUTHORIZATION AGREEMENT

Patient/Resident Name: EULA M DAVIS

I acknowledge that I have been advised of my right to manage my personal financial affairs and that I am not required to deposit personal funds with the Healthcare Center.

- () I do authorize the Healthcare Center to hold, safeguard, manage and account for monies I may deposit with the Healthcare Center in a Patient/Resident fund account. *I have reviewed the Healthcare Center's policies on the MANAGEMENT OF PERSONAL FUNDS in the Guest Services Guide.*

I authorize the Healthcare Center to pay for the following items from my personal trust funds account:

☐ Pharmacy	☐ Insurance premiums
☐ Barber/beauty shop charges	☐ Room and board charges/bed holds
☐ Personal petty cash withdrawals	
☐ Other (please list): _____	

I authorize the Healthcare Center to disperse my personal needs allowance in the amount of \$ _____ per month to _____ relationship _____, whom I have designated as my representative.

I understand that I will receive quarterly statements listing all transactions on my account including a copy of the ledger page(s).

Also, I authorize the Healthcare Center to maintain this agreement until discharge, and upon such event to deliver any funds in the account, after satisfaction of any liability, to _____ in accordance with applicable law.

I have been informed that I may change this authorization by informing the Healthcare Center in writing in advance of the date that I wish changes to be effective.

- (☒) I do not authorize the healthcare center to hold, safeguard, manage and account for monies I may deposit with the healthcare center in a patient/resident fund account.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

Andrew P Davis
Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

Leora Jackson
Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
Date

PATIENT/RESIDENT INFORMATION AND FINANCIAL PROFILE

Patient/Resident Name: EULA M. DAVIS
(First) (Middle) (Last)

Healthcare Center Name: UniHealth PAC Rock Hill Date of Admission: 1-11-11
(Mo/Day/Year)

Home Address: 13 Turner Ave.
(Street No.) (Apt #)
York SC 29745
(City) (State) (Zip)

Home Phone (area code): 803-684-4192 Marital Status: S; M; W; D

Soc. Sec. No: [REDACTED] Yrs. at Current Address: Rent/Own:

Name of Landlord/Mortgager:

Monthly Rental/Mortgage Payment: \$
 If renting, have you ever owned a home? Y; N
 If yes, approximate date of sale: Do you plan to keep your rental unit? Y; N

Patient/Resident type: Private; Medicaid; Medicare; VA contact
 Other:

Are you currently covered under SSI Medicaid? Y; N
 Do you plan to apply for Medicaid? Y; N
 Have you ever used Medicaid before? Y; N Uncertain

Estimated length of stay: Less than 30 days
Between 30-180 days
Long term

Name of last healthcare center in which you resided: Agape Senior

Address:

Dates of Stay: 12/9-12/14

Do you want the healthcare center to become representative payee? Y; N

SOURCES OF INCOME:			
Social Security: \$	Veteran's Benefits \$	Railroad Retirement: \$	SSI: \$
Private Pension: \$	Government Pension: \$	Other: \$	Other: \$
Description of "Other" income: 			

PATIENT/RESIDENT INFORMATION AND FINANCIAL PROFILE

Patient/Resident Name: EULA M DAVIS
 (First) (Middle) (Last)

Assets:			
Cash on Hand: \$	Cash in Bank: \$	Cash in Savings: \$	Value of Stocks: \$
Value of Bonds: \$	Paid-up Life Ins.: \$	Paid up Burial Ins.: \$	Other: \$
Description of "Other" Assets:			

Have you transferred, given away, or sold assets in the last 36 months?

☐ Y; ☒ N

Description of Asset

Estimated Value

To Whom

	\$	
	\$	
	\$	
	\$	
	\$	
	\$	

I hereby certify that the information I have given is true and correct, and I agree to pay my account according to the terms and conditions referred to.

PATIENT/RESIDENT/REPRESENTATIVE:

EULA M DAVIS

Print Patient/Resident's Name

Patient/Resident's Signature

ANDREW DAVIS

Print Patient/Resident Representative's Name

/ Andrew P. Davis
 Patient/Resident Representative's Signature

LEORA JACKSON

Print Healthcare Center Representative's Name

L Jackson
 Healthcare Center Representative's Signature

UniHealth PAC Rock Hill

Legal Name of Healthcare Center

1-11-11
 Date

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 04 2015

SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Case No. 2013-CP-46-2930
Appellate Case No. 2014-001624

Mae Ruth Davis Thompson, Individually and as the appointed
Personal Representative of the Estate of Eula Mae Davis, Deceased Respondent,
v.

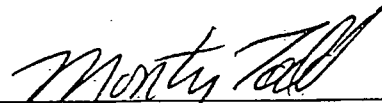
Pruitt Corporation d/b/a UHS-Pruitt Corporation; UHS-Pruitt Holdings,
Inc.; UHS of South Carolina-East, LLC; United Health Services of
South Carolina, Inc.; United Clinical Services, Inc.; United Rehab, Inc.;
Rock Hill Healthcare Properties, Inc.; Uni-Health Post Acute Care-Rock Hill,
LLC d/b/a UniHealth Post Acute Care-Rock Hill Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed and agreed to be included by the parties and not any other material.

SOWELL GRAY STEPP & LAFFITTE

BY:



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Attorneys for Appellants

February 12, 2015