

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Edgar W. Dickson, Circuit Court Judge

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JUL 01 2016  
SC Court of Appeals

Case No. 2010-CP-40-1095

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Protection and Advocacy for People with Disabilities, Inc., ..... Appellant,

v.

Beverly A. H. Buscemi, Ph.D., in her official capacity as State Director, South Carolina Department of Disabilities and Special Needs and The South Carolina Department of Disabilities and Special Needs, and Kelly Hanson Floyd, Nancy Banov, W. Robert Harrell, Rick Huntress, Deborah McPherson and Dr. Otis Speight in their Official Capacities as Members of the Department of Disabilities and Special Needs Commission, ..... Respondents.

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**RESPONDENTS' RETURN TO  
PETITION FOR REHEARING**

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Respondents Buscemi, *et al.*, submit the following by way of return to Appellant's Petition for Rehearing.

This case involves only an issue of statutory construction. This Court’s opinion held that “Upon examination of the relevant statutes, we find it is the clear intent of the General Assembly not to permit P&A to review individual medical records in the course of unannounced inspections of the living conditions of the residential facilities and, therefore, affirm the trial court.” Slip op. at 2. Specifically, and after a detailed review of all pertinent parts of the statutes, this Court held that “the General Assembly has not deemed it appropriate to make the medical records of the residents in question available for review to P&A during its Team Advocacy inspections.” *Id.* at 9. In dismissing Plaintiff P&A’s claims, this Court noted that the State’s public policy regarding the issues in this case had been set forth in the statutes, and that “[a]ccordingly, P&A’s policy arguments are more properly addressed to the General Assembly.” *Id.*

As will be demonstrated below, most if not all of P&A’s arguments merely seek to reargue the policy issues which this Court correctly held to be matters for the General Assembly.

1. P&A first argues that the opinion reaches an “absurd result,” which “substantially limits the effectiveness” of team advocacy inspections. Petition at 2-4. This is a policy issue rather than a question of statutory construction, and P&A’s argument on this point does not even seek to address this Court’s conclusions regarding the construction of the statutes at issue. To the extent that this Court’s

correct reading of the statutes may impact P&A's conception of what would constitute an appropriate, then P&A's remedy is to seek to have the statute amended.<sup>1</sup>

2. P&A next argues that the result of the Court's opinion is that it "authorize[es] the entities P&A inspects to dictate what the plan of care is to P&A." Petition at 4. However, P&A admits that "[t]he opinion does not take a position on what constitutes the "plan of care." *Id.* The opinion simply holds that P&A cannot inspect MARs. P&A's concerns about the nature of the plan of care are addressed to a conclusion which the Court did not make.

3. P&A's third contention is that "[t]o effectuate the intent of the General Assembly, P&A must be allowed to inspect MARs." Petition at 5-6. This contention, however, merely assumes that which is to be proven, and does not even address the specific language of the statutes under review. As a result, the contention is without merit.

4. Fourthly, P&A contends that "[t]he Opinion misapprehends how P&A's separate authorities work together." Petition at 6-9. In this contention, P&A

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<sup>1</sup> In a footnote, Petition at 3 n.1, P&A argues for the first time that the Court's conclusion might also affect quality assurance inspections which are performed on behalf of DDSN under contract with a third party organization. Aside from the fact that this issue was not previously raised, it also lacks merit, because any such third party in question, by performing quality assurance reviews for DDSN, merely stands in the shoes of DDSN itself. *See* R. 198. This case does involve the issue of whether records may be reviewed by P&A, not by DDSN or those acting in that agency's stead.

merely reasserts, in almost verbatim language, the same arguments found at pp. 2-5 of its Reply Brief. This Court has already concluded that those arguments lack merit, for the reasons set forth in the opinion.

5. Next, P&A contends that “[t]he opinion overlooked the plain language of the statute.” Petition at 9-11. As with the previous contention, this one merely tracks the language of a previous brief (Br. of Appellant at 10-11), reasserting arguments already rejected by the opinion, with only a conclusory assertion, Petition at 11, that the opinion overlooked a point that had already been asserted by P&A.

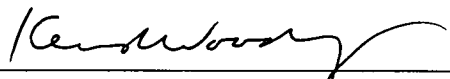
6. P&A’s Issues III and IV, Petition at 11-13 and 13-15, are also mere repetitions of prior arguments from the Brief of Appellant, in this instance, pp. 28-31 and 31-32 of that brief. Again, these are arguments that have been presented to, and rejected by, this Court, and P&A makes no effort to assert how or why the opinion misapprehended or overlooked them. As a result, neither point sets forth a valid ground for granting rehearing.

## CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Rehearing should be denied.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

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July 1, 2016

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CERTIFICATE OF SERVICE

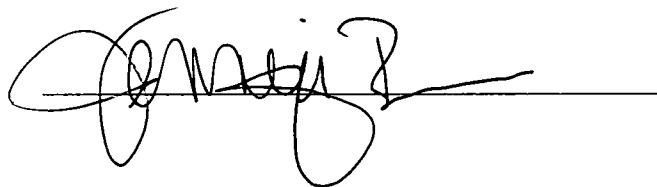
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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of **Respondents' Return to Petition for Rehearing** was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 1st day of July 2016:

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A handwritten signature in black ink, appearing to read "Reid T. Sherard", is written over a horizontal line.

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RE: Protection and Advocacy for People with Disabilities, Inc. v.  
Beverly A. H. Buscemi, Ph.D., *et al.*  
Appellate Tracking Number: 2015-000109  
Civil Action Number: 2010-CP-40-1095  
Our File Number: 79.8338

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of **Respondents' Return to Petition for Rehearing** with regard to the above referenced appeal. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving copies on all counsel of record. Thank you for your assistance in this matter.

With highest regards, I am

Sincerely yours,

DAVIDSON & LINDEMANN, P.A.



Kenneth P. Woodington

KPW/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
July 1, 2016  
Page Two

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