

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-CP-26-0166
Appellate Case No. 2016-001499

Jeanne Beverly, Individually and on behalf of others similarly situated,.....Appellant,

v.

Grand Strand Regional Medical Center, LLCRespondent.

**RESPONDENT GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S
INITIAL RESPONDENT'S BRIEF**

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE CIRCUIT COURT ERRED IN FINDING BEVERLY IS NOT AN INTENDED THIRD-PARTY BENEFICIARY WITH THE RIGHT TO ENFORCE THE INSTITUTIONAL AGREEMENT BETWEEN GRAND STRAND REGIONAL MEDICAL CENTER, LLC AND BLUE CROSS BLUE SHIELD OF SOUTH CAROLINA.
2. WHETHER THE CIRCUIT COURT ERRED IN FINDING BEVERLY FAILED TO STATE A CLAIM FOR BREACH OF FIDUCIARY DUTY BECAUSE GRAND STRAND DOES NOT OWE BEVERLY A FIDUCIARY DUTY TO FILE HER INSURANCE CLAIMS.
3. WHETHER THE CIRCUIT COURT ERRED IN FINDING GRAND STRAND WAS NOT UNJUSTLY ENRICHED BY COLLECTING NON-DISCOUNTED PAYMENT FOR MEDICAL SERVICES RENDERED.

STATEMENT OF THE CASE

This case is about whether a person who is admittedly not a party to a contract between two other entities may enjoy legal status as a third-party beneficiary of that contract with the power to sue on the contract and to enforce such terms in the contract as she chooses when the parties to the contract included a specific and express term that “[t]his Agreement is not intended to, and shall not be construed to make any person or entity a third-party beneficiary.”

On September 6, 2012, Appellant Jeanne Beverly (“Beverly”) was in an automobile accident and received treatment for her injuries at a hospital operated by Respondent Grand Strand Regional Medical Center, LLC (“Grand Strand”). After medical services were rendered to Beverly, Grand Strand billed Beverly the standard (non-discounted) rates for the medical services Beverly received.

Blue Cross Blue Shield of South Carolina (“BCBS”) and Grand Strand are, and have been, parties to a contract (the “Institutional Agreement”) through which those two entities memorialized the logistics by which Grand Strand would provide medical services and bill for those services at discounted rates through an organized and convenient process for Grand Strand and BCBS.

Beverly asserts she is a BCBS policyholder, but alleges that Grand Strand billed her directly at standard (non-discounted) rates for the medical service she received. As a result of receiving a bill for the medical services she was provided by Grand Strand’s hospital, Beverly filed this action.

In her complaint, Beverly argues (1) she is a third-party beneficiary with the right to enforce the Institutional Agreement and to sue Grand Strand for breach of the Institutional Agreement when it billed her directly at standard (non-discounted) rates for the medical services she received instead of billing BCBS; (2) Grand Strand breached a fiduciary duty to Beverly by

billing her standard (non-discounted) rates for the medical services provided to her; and (3) Grand Strand was unjustly enriched by billing Beverly standard (non-discounted) rates for medical services.

In response to Beverly's complaint, Grand Strand filed a motion to dismiss arguing, (1) the plain language of the Institutional Agreement precludes her status as a third-party beneficiary with the right to enforce and sue upon the Institutional Agreement and, therefore, Beverly does not have standing to bring the action for breach of the Institutional Agreement; (2) Grand Strand does not owe Beverly a fiduciary duty to file her insurance claims; and (3) Grand Strand was not unjustly enriched by billing her standard (non-discounted) rates for the medical services rendered to Beverly.

The circuit court agreed with Grand Strand and dismissed Beverly's complaint. Beverly filed this appeal arguing the circuit court erred in granting Grand Strand's motion to dismiss.

Grand Strand respectfully requests the Court affirm the circuit court's order granting its motion to dismiss because (1) Beverly is not an intended third-party beneficiary under the Institutional Agreement and, therefore, lacks standing to maintain her claim for breach of contract; (2) Beverly's claim for breach of fiduciary duty fails because Grand Strand does not owe Beverly a fiduciary duty to file her insurance claims; and (3) Beverly's claim for unjust enrichment fails because Grand Strand's bill for the non-discounted cost of the services rendered to Beverly does not constitute an inequitable benefit.

FACTS / PROCEDURAL HISTORY

On September 6, 2012, Beverly was injured in an auto accident. Beverly sought treatment for the injuries she suffered in that accident at Grand Strand's hospital. (R. __). At the time of her injury, Beverly was covered under a BCBS health insurance policy. (R. __).

Grand Strand and BCBS are, and have been parties to a contract—the Institutional Agreement—in which Grand Strand agreed to accept certain rates for the services it provides to BCBS policyholders in exchange for BCBS directing its policyholders to Grand Strand’s hospital for medical treatment. (R. __).

Grand Strand billed Beverly directly and at standard (non-discounted) rates for the medical services rendered to Beverly. (R. __). As a result of receiving a bill for the medical services rendered to her, Beverly filed a complaint against Grand Strand asserting claims for (1) breach of contract, (2) breach of fiduciary duty, and (3) unjust enrichment. (R. __).

In response to Beverly’s complaint, Grand Strand filed a motion to dismiss, arguing Beverly’s claims should be dismissed because (1) Beverly lacks standing to enforce the Institutional Agreement because she is not a third-party beneficiary with the right to enforce its terms, (2) Grand Strand does not owe Beverly a fiduciary duty to file insurance claims on her behalf, and (3) Grand Strand was not unjustly enriched by billing Beverly the standard rates for the medical services she received. (R. __).

The circuit court found the Institutional Agreement contains provisions expressly stating that there are no third-party beneficiaries. (R. __). The circuit court found the third-party beneficiary disclaimer barred Beverly from enforcing the Institutional Agreement and, therefore, Beverly’s claim for breach of contract must be dismissed because Beverly does not have standing to enforce the Institutional Agreement. (R. __). Additionally, the circuit court found Beverly’s claim for breach of fiduciary duty failed because Grand Strand does not owe Beverly a fiduciary duty. (R. __). Finally, the circuit court found that Beverly failed to state a claim for unjust enrichment, because Grand Strand was not unjustly enriched when it billed Beverly the standard rate for the medical services provided to Beverly. (R. __).

Beverly filed this appeal in an effort to convince this Court that the plain language of the Institutional Agreement should be disregarded and she should be allowed to enforce an agreement between a hospital and an insurance company.

STANDARD OF REVIEW

“On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the [circuit] court.” *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (citation omitted). “That standard requires the [appellate] [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Id.* (internal quotations marks omitted) (citation omitted). The appellate court may sustain the dismissal when “the facts alleged in the complaint do not support relief under any theory of law.” *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

ARGUMENT

I. The circuit court correctly held that Beverly is not an intended third-party beneficiary with the right to enforce the Institutional Agreement.

The circuit court properly held that Beverly is not a third-party beneficiary with the right to enforce or sue upon the Institutional Agreement. This Court should affirm the circuit court’s decision on the following grounds: (1) the plain and unambiguous language of the Institutional Agreement precludes the existence of third-party beneficiaries with status to enforce its terms; (2) the authority Beverly relies upon from other jurisdictions is inapplicable and readily distinguishable from the present action; and (3) the Institutional Agreement does not include an exception to the third-party beneficiary disclaimer.

A. The plain and unambiguous language of the Institutional Agreement precludes third-parties from enforcing its terms.

The circuit court correctly held that Beverly does not have standing to bring a claim for breach of the Institutional Agreement because the plain and unambiguous language of the Institutional Agreement precludes the existence of any third-party with intended beneficiary status to enforce or sue upon the terms of the Agreement.

In South Carolina, the law presumes that parties contract exclusively for their own benefit, and that presumption may only be overcome by showing the parties to the contract intended to create the right for a third party to enforce the contract as an intended and direct beneficiary. *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988). The law does not recognize such status or rights for a party who is merely an incidental or consequential beneficiary of the contract. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); see *Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994) (holding a third party not in contractual privity with the contracting parties had no right to enforce a contract unless the contracting parties clearly intended to create a direct third-party beneficiary to the agreement); *Kleckley v. Northwestern Nat'l Cas. Co.*, 338 S.C. 131, 136, 526 S.E.2d 218, 220 (2000) (holding an injured third party could not assert a bad faith claim against a tortfeasor's insurance company because the injured party was not a party to the contract).

To determine whether parties to a contract intended a plaintiff to be a third-party beneficiary, a court must look to and give legal effect to the intentions of the parties as expressed in the plain language of their contract. *Gilbert v. Miller*, 356 S.C. 25, 30, 586 S.E.2d 861, 864 (Ct. App. 2003) (holding the lease agreement at issue did not intend to make the plaintiff a third-party beneficiary allowed to enforce its terms). If a contract's language is clear and capable of

legal construction, a court is to interpret the contract's language according to its lawful meaning and the intent of the parties as expressed in the instrument. *Id.* (citing *Smith-Cooper v. Cooper*, 344 S.C. 289, 543 S.E.2d 271 (Ct. App. 2001)). A court does not have the "authority to alter a contract by construction or make new contracts for the parties, and words cannot be read into a contract which impart an intent wholly unexpressed when the contract was executed." *Gilstrap v. Culpepper*, 283 S.C. 83, 86, 320 S.E.2d 445, 447 (1984) (citation and internal quotation marks omitted).

Courts are bound to interpret the intent of the contracting parties based upon the four corners of the contract. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008). Thus, when the parties to the contract include an express third-party beneficiary disclaimer, the court must find the contracting parties did not intend to convey a direct benefit to third-parties or to create for those third parties a right to enforce or sue upon the contract. *See 1500 Range Way Partners, LLC v. JPMorgan Chase Bank, Nat. Ass'n*, 800 F. Supp. 2d 716, 721 n.3 (D.S.C. 2011) (dismissing a plaintiff's claim for breach of contract because a court may not ignore the plain and unambiguous terms of a contract containing a third-party beneficiary disclaimer and allow a third-party to bring an action to enforce a contract to which the plaintiff is not a party); *see also SynchronPile, Inc. v. Traylor Bros. Inc.*, No. CIV.A. 10-1896, 2011 WL 3419630, at *5-6 (E.D. La. Aug. 3, 2011), *aff'd*, 470 F. App'x 349 (5th Cir. 2012) (holding that the four corners of the contract manifested a clear intent of the parties not to directly benefit third parties and finding third parties were barred from recovering under the plain language of the contract); *Balsam v. Tucows Inc.*, 627 F.3d 1158, 1163 (9th Cir. 2010) (holding that in the "absence of any evidence to the contrary, . . . the 'No Third Party Beneficiaries' clause unambiguously manifest[ed] an intent *not* to create any obligations to third parties through the

[agreement].”); *Old Stone Bank v. Fid. Bank*, 749 F. Supp. 147, 152 (N.D. Tex. 1990) (enforcing a contract’s third-party beneficiary disclaimer on the grounds that courts are bound to interpret the intent of the contracting parties based upon the four corners of the instrument); *RPC Liquidation v. Iowa Dept. of Transp.*, 717 N.W.2d 317, 321-322 (Iowa 2006) (considering a similar third-party beneficiary disclaimer and holding a third party could not recover under the terms of the contract because the disclaimer evidenced the express intent of the contracting parties to exclude third-party beneficiaries); *Richmond Shopping Center, Inc. v. Wiley N. Jackson Co.*, 220 Va. 135, 142 (Va. 1979) (finding a provision specifically stating third parties may not recover under the contract governs and, therefore, third parties were not entitled to recover under the contract); *Atherton v. Tenet Healthcare Corp.*, No. 2005-UP-362, 2005 WL 7084013, at *4 (Ct. App. May 25, 2005) (holding the contract’s third-party disclaimer conveyed an unambiguous expression of the parties’ intent to exclude third-parties from being able to enforce its terms).¹

The circuit court did not err in finding the express language of the Institutional Agreement evidenced the express intent of Grand Strand and BCBS to preclude third-parties from enforcing their contract. In reaching this conclusion, the circuit court relied on the plain and unambiguous language of the Institutional Agreement, which language determines its force and effect. Thus, the circuit court properly construed the terms of the Institutional Agreement according to their plain, ordinary, and popular meaning. See *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011) (“Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the contract’s force and

¹ While an unpublished opinion may not hold precedential value, the reasoning applied by the Court of Appeals in *Atherton* provides clear and directly applicable guidance in the present matter. Rule 268(d)(2), SCACR.

effect.” (citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988)).

Specifically, the circuit court relied on Section 16.16 of the Institutional Agreement to find Grand Strand and BCBS did not intend their contract to be enforceable by third-parties. Section 16.16 states the following:

No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, make any person or entity a third party beneficiary. Notwithstanding the preceding, nothing in this section shall affect Plans['] rights under Article XV, or a Member’s right to receive Covered Services pursuant to the Terms of this Agreement.

(R. ___). The circuit court properly found this language to be a clear, explicit, and unambiguous expression of BCBS and Grand Strand’s intent to preclude third-parties from asserting legal status as third-party beneficiaries and from enforcing the Institutional Agreement. It is undeniably clear from this provision that Grand Strand and BCBS did not intend for third-parties to be able to enforce their contract. To conclude otherwise would require a court to exceed its authority and read words into the Institutional Agreement to impart an intent that is contrary to the express intent of the contracting parties, and wholly unexpressed by them. *See Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (“The court is without authority to consider parties’ secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.” (citing *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976))).

Beverly argues the circuit court erred in applying the direct and express language of Section 16.16 and, instead, argues the circuit court should have relied on purported intimations elsewhere in the Institutional Agreement to ascertain whether Grand Strand and BCBS intended for a third-party to have the right to enforce the Institutional Agreement. In an effort to persuade

this Court that the circuit court erred in interpreting the plain language of the contract, Beverly distorts selected provisions of the Institutional Agreement.

In her brief, Beverly asserts that “[t]he Institutional Agreement acknowledges its core objective is to support a ‘Preferred Provider Organization’ created ‘for the benefit of [Blue Cross policyholders].’” (Appellant’s Brief at 6). In fact, nowhere in the Institutional Agreement does it “acknowledge its core objective is to support a Preferred Provider Organization” for the benefit of BCBS policyholders.

Such benefit as Beverly or other insureds of BCBS may receive by virtue of their BCBS insurance plan participation is ancillary and incidental to the direct benefit intended for BCBS and Grand Strand. *See Bob Hammond Const. Co.*, 312 S.C. at 425, 440 S.E.2d at 892 (holding that the mere fact that the plaintiff might ultimately and indirectly benefit from the defendant’s contract is not sufficient to allow a plaintiff to maintain a breach of contract action).

In an effort to convince the Court that Grand Strand contracted for her benefit, Beverly seeks to misconstrue Section 2.16 of the Institutional Agreement. Section 2.16 describes a “Preferred Provider Organization” to be a network of providers under contract with the Plan whereby Benefit Contracts contain financial incentives for Members to seek Covered Services from such providers.² Under the Institutional Agreement, a “Benefits Contract” is essentially the insurance policy between BCBS and a Member entitling the Member to receive Covered Services. Although Beverly attempts to argue that “[t]he Institutional Agreement defines PPO as a health insurance network containing “financial incentives for Members,” (Appellant’s Brief at 6), the fact is that any “financial incentive for Members” is found in the Members’ policies with

² The Institutional Agreement defines “Member” as “anyone who is covered for health care services under the terms of a Benefits Contract or who is eligible for Covered Services as a result of an agreement between Plan and an Associate Plan.” Institutional Agreement § 2.11.

BCBS. The financial incentives or benefits for insureds such as Beverly flow from their policy with BCBS. The Members' individual policies contain financial incentives for seeking treatment at selected providers, and BCBS incentivizes its Members to seek treatment from such providers, because it pays a reduced rate for services rendered by those providers. The Institutional Agreement, in contrast, is about the terms of the relationship between Grand Strand and BCBS. It is disingenuous to represent that the Institutional Agreement contains financial incentives for BCBS policyholders. Any financial incentives in the Institutional Agreement are for Grand Strand and BCBS.

Beverly also asserts that Section 6.1 of the Institutional Agreement shows that Grand Strand and BCBS intended to authorize BCBS members to independently enforce the Institutional Agreement. (Appellant's Brief at 6; 11-12). This is incorrect. Section 6.1 states, "[Grand Strand] shall seek payment for Covered Services solely from [BCBS]." This section allows Grand Strand to provide medical services to BCBS policyholders, and submit a bill for the medical services rendered directly to BCBS. This provision allows Grand Strand to collect payment from a single entity even though it provides treatment to multiple patients. This provision prevents Grand Strand from having to collect small amounts from multiple patients and, instead, allows Grand Strand to collect a larger amount directly from BCBS for the medical services rendered to BCBS policyholders. Removing the individual patients from the billing process is simply more economical, and for the benefit of the entities (Grand Strand and BCBS) who have agreed to conduct business in such a manner. Even if not being contacted for payment were construed as an incidental benefit for BCBS members, Section 6.1 in no way contradicts the express disclaimer of Section 16.16 against third party beneficiaries – *i.e.*, the clear

renunciation of any right of BCBS policyholders to independently enforce the Institutional Agreement.

The language of the Institutional Agreement is plain and unambiguous—Grand Strand and BCBS do not intend for third-parties to enjoy legal status as third-party beneficiaries able to enforce the terms of their contract. This Court should reject Beverly’s assertions to the contrary, because they are based upon a distorted interpretation of the Institutional Agreement’s express language. This Court should find the circuit court did not err in relying on the plain and unambiguous language of the Institutional Agreement to find that Beverly was not an intended third-party beneficiary and, therefore, Beverly lacks standing to bring a claim for breach of contract. Accordingly, this Court should affirm the circuit court’s order dismissing Beverly’s breach of contract claim for lack of standing.

B. Beverly relies on distinguishable authorities for support of her argument that other jurisdictions recognize insurance customers as third-party beneficiaries to PPO Provider Contracts.

Beverly relies on a series of plainly inapplicable and readily distinguishable authorities from other jurisdictions in an effort to support her argument that BCBS and Grand Strand intended the Institutional Agreement to provide a direct benefit to third-parties. The authorities relied upon by Beverly may be distinguished in two primary ways. First, Beverly cites several cases that do not involve provider agreements containing express third-party beneficiary disclaimers. Second, Beverly cites to several cases in which the contract at issue contained a third-party beneficiary disclaimer; however, in those cases each contract contained express language that exempted the plaintiff from the third-party beneficiary disclaimer.

In contrast, the Institutional Agreement contains an express disclaimer of third-party beneficiaries, and does not include any language that would exempt Beverly from its third-party beneficiary disclaimer.

1. **Authorities from other jurisdictions that do not address third-party beneficiary disclaimers in the agreements are inapplicable and unpersuasive.**

Beverly cites to the Tennessee Supreme Court's holding in *Benton v. Vanderbilt University*, 137 S.W.3d 614, 616 (Tenn. 2004) for the proposition that "[s]everal other jurisdictions have considered [whether an insured is a third-party beneficiary to a provider agreement] and held that patients like Ms. Beverly are third-party beneficiaries entitled to enforce insurer-provider contracts like the Institutional Agreement." (Appellant's Brief at 9). In *Benton*, the Tennessee Supreme Court found the plaintiff was a third-party beneficiary to the provider agreement between Vanderbilt Hospital and Blue Cross Blue Shield of Tennessee and compelled the plaintiff to arbitration pursuant to the arbitration clause in the provider agreement. *Benton*, 137 S.W.3d at 616. Beverly incorrectly asserts that the court in *Benton* addressed "the issue for **this same Institutional Agreement.**" (Appellant's Brief at 9) (emphasis in original). Based upon a review and comparison of the sections quoted by the court in *Benton* versus the Institutional Agreement, it is obvious that the contract in *Benton* is not the same as the Institutional Agreement in this case and Beverly's assertion is patently false.

In *Benton*, the court described Section 6.1 of the provider agreement in that case and when compared to Section 6.1 of the Institutional Agreement in this case they are clearly about different provisions. The same is true with respect to Section 8.2 in the agreement applicable to the *Benton* case, which is an arbitration clause, as compared with section 8.2 of the Institutional Agreement which has nothing to do with arbitration and relates to a quality assurance committee. After comparing the sections of the provider agreement quoted in *Benton* with the Institutional Agreement, it is obvious that the agreements are not the same as Beverly contends.

Most importantly, when the Tennessee court in *Benton* found the patient was a third-party beneficiary of the provider agreement, it specifically noted that the patient was only entitled to

enforce the terms of the provider agreement if “the parties to the contract have not otherwise agreed.” *Id.* at 618. Unlike the circuit court in this case, the court in *Benton* made no reference to a clause in the agreement in that case precluding the existence of third-party beneficiaries. A third-party beneficiary disclaimer in the applicable agreement—such as the one existing here—would clearly have altered the *Benton* court’s analysis and conclusion. Such a clause would have provided undeniable evidence that the parties to the contract had “otherwise agreed” that third-parties were not entitled to enforce the terms of their contract. Therefore, reliance on the holding in *Benton* is unwarranted and inappropriate because the provider agreements at issue are obviously different. Unlike the provider agreement in *Benton*, the Institutional Agreement in this case contains an express disclaimer of third-party beneficiaries.

Next, Beverly seeks to rely on the Arizona court of appeals’ opinion in *Nahom v. Blue Cross & Blue Shield of Arizona, Inc.*, 885 P.2d 1113, 1118 (Ariz. Ct. App. 1994) for the proposition that “a provision requiring the hospital to accept a discount reimbursement rate was ‘clearly a benefit to the [Blue Cross] subscriber [and] that benefit is both intentional and direct.’” (Appellant’s Brief at 9) (quoting *Nahom*, 885 P.2d at 1117). In *Nahom*, the Arizona court of appeals found the plaintiff was a third-party beneficiary of the Blue Cross Blue Shield of Arizona and Scottsdale Memorial Hospital provider agreement. *Nahom*, 885 P.2d at 1117. However, in reaching this conclusion, the Arizona court of appeals made no mention of a provision in the applicable agreement excluding third-party beneficiaries. Such a provision would have altered the court’s analysis because a disclaimer of third-party beneficiaries provides unequivocal evidence that the contracting parties do not intend their contract to be for the direct benefit of a third-party and the *Nahom* court recognized that the controlling principle under Arizona law was the clear intention in the contract that the parties to the contract intend to

recognize the third-party beneficiary. *Id.* The lack of a third-party beneficiary disclaimer is paramount in distinguishing the holding in *Nahom* from the instant case. Therefore, the holding in *Nahom* is inapplicable because the provider agreement at issue did not include a provision stating the express intent of the contracting parties to exclude third-party beneficiaries. *See Bob Hammond Const. Co.*, 312 S.C. at 425, 440 S.E.2d at 892 (stating that without evidence that the parties to a contract intended to create a direct, rather than incidental or consequential, benefit to a third party, the third party is not entitled to enforce the contract).

Beverly also argues the South Dakota Supreme Court reached a similar conclusion in *Jennings v. Rapid City Regional Hospital, Inc.*, 802 N.W.2d 918, 922-23 (S.D. 2011). In *Jennings*, the South Dakota Supreme Court found that the employees were third-party beneficiaries of their employer's self-insurance contract with a managed care organization and the managed care organization's contract with a hospital. 802 N.W.2d at 923-24. The South Dakota Supreme Court found that even though the agreements provided benefits to the contracting parties, the primary beneficiaries of the contracts were the employees. *Id.* at 923. In reaching this conclusion, the South Dakota court made no mention of a third-party beneficiary disclaimer in the contract and even noted that the defendant made no argument to overcome the conclusion that the contract was primarily for the benefit of the third-party employees.

In the instant case, Beverly failed to provide any argument that overcomes the plain language of the contract that there are no intended third-party beneficiaries. A court's role is to interpret the language of a contract—not to redraft a contract. *See Gilstrap*, 283 S.C. at 86, 320 S.E.2d at 447. The Institutional Agreement contains an express disclaimer of third-party beneficiaries, and the circuit court was correct in relying on the contract's plain language to find that Beverly lacked standing to bring her claim. This Court should find that Beverly cannot

overcome the plain language of the Institutional Agreement. Accordingly, this Court should affirm the circuit court's dismissal of Beverly's breach of contract claim.

2. The Institutional Agreement does not contain any language that exempts Beverly from the third-party beneficiary disclaimer, as in cases cited from other jurisdictions.

Beverly relies on authorities from other jurisdictions for support of the argument that the Institutional Agreement's third-party beneficiary disclaimer is inapplicable because the contract as a whole is inconsistent with the purported disclaimer. In fact, the third-party beneficiary disclaimer in the Institutional Agreement does more than merely disclaim the existence of any third-party beneficiary, it expresses an overriding intent by the contracting parties that the Agreement "*shall not be construed to make any person or entity a third-party beneficiary.*" (R. ___) (emphasis added). This language removes all doubt and expresses an absolute prohibition of the general interpretation Beverly seeks to have applied. The authorities upon which Beverly seeks to rely are readily distinguishable from the instant case, because in each of those cases the courts relied upon separate specific provisions in the contract that exempted the plaintiff from the third-party beneficiary disclaimer by providing express, direct and intentional benefits to the plaintiff. See *MEA-NEA Local I v. Mount Clemens Community School*, No. 248794, 2004 WL 2387650, at *1 (Mich. Ct. App. Oct. 26, 2004) (finding the third-party beneficiary disclaimer in the contract between the school district and the management company did not apply to the plaintiffs because the plaintiffs' contract with the school district—which contained provisions for the direct benefit of the plaintiffs—was incorporated into the school district's contract with the management company); *La Joya Independent School District v. Villarreal*, No. 13-13-00325-CV, 2014 WL 3050484, at *6 (Tex. App. July 3, 2014), review denied (June 5, 2015) (finding the subject contract contained a provision disclaiming third-party beneficiaries; however, the third-party beneficiary disclaimer was inapplicable because the subject contract "exempt[ed]

Villarreal from exclusion by specifically naming Villarreal as the owed recipient of commissions for broker services”); *Cates v. Integrus Health, Inc.*, No. CIV-12-0763-F, 2013 WL 3923512, at *6 (W.D. Okla. July 29, 2013) (holding the provider agreement did not unambiguously prohibit third-party beneficiaries from enforcing its terms because the clause the plaintiffs were attempting to enforce stated expressly that it “shall be construed to be for the benefit of the Member”); *Dorr v. Sacred Heart Hospital*, 597 N.W.2d 462, 475-76 (Wis. Ct. App. 1999) (finding the third-party beneficiary disclaimer did not apply to the plaintiff because the provision the plaintiff was attempting to enforce expressly stated that it “shall be construed to be for the benefit of [the policyholders]”); *Aetna Life Insurance Company v. Huntingdon Valley Surgery Center*, No. CIV.A. 13-03101, 2015 WL 1954287, at *2 (E.D. Pa. Apr. 30, 2015) (noting the third-party beneficiary disclaimer expressly stated the insurance company was a third-party beneficiary and holding that the insurance company may not “have it both ways” by both arguing that it could enforce a contract as a third-party beneficiary but could not be sued under a related contract because it was not a party).

Unlike the cases relied upon by Beverly, there is no evidence BCBS and Grand Strand intended Beverly to be a direct—rather than incidental or consequential—beneficiary of the Institutional Agreement. There is no language in the Institutional Agreement that directly identifies Beverly as an intended beneficiary of the instrument. To the contrary, the Institutional Agreement contains an express disclaimer of third-party beneficiaries. Therefore, the authorities Beverly relies upon in support of her argument are easily distinguishable and are inapplicable to the instant case.

C. Beverly is not exempt from the third-party beneficiary disclaimer in the Institutional Agreement.

The circuit court properly found there is no “covered services” exception to the third-party beneficiary disclaimer in the Institutional Agreement. Section 16.16 of the Institutional Agreement states:

No Third Party Beneficiaries. This Agreement is not intended to, and shall not be construed to, make any person or entity a third party beneficiary. Notwithstanding the preceding, nothing in this section shall affect Plans rights under Article XV, or a Member’s right to receive Covered Services pursuant to the Terms of this Agreement.

(R. __). While Beverly seeks to argue that the second sentence of this section is an exception to the disclaimer in the first sentence, it is not. The intent of Grand Strand and BCBS is undeniably clear from the first sentence of this provision: they did not intend for anyone to have third-party beneficiary rights under the Institutional Agreement.

The second sentence of Section 16.16—which Beverly argues creates a “Covered Services Exception”—merely serves to clarify the parties’ intent regarding the exclusion of third-party beneficiaries. The second sentence of Section 16.16 establishes that a BCBS policyholder is entitled to receive “Covered Services” from Grand Strand, and the third-party beneficiary disclaimer does not allow Grand Strand to refuse to provide a BCBS policyholder a Covered Service. Filing an insurance claim is not a Covered Service.

Generally, a contract is “interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense.” *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 414, 661 S.E.2d 62, 67 (2008) (citation omitted). A court may rely on dictionary definitions to ascertain the plain, ordinary and popular meaning of terms that are not defined by a contract. *See Doe v. S.C. Dep’t of Soc. Servs.*, 407 S.C. 623, 634-35, 757 S.E.2d 712, 718 (2014).

The Institutional Agreement does not define the terms “notwithstanding” or “pursuant to,” as contained in Section 16.16; therefore, the Court may rely on dictionary definitions to ascertain the plain meaning of the undefined terms and, thereby, to understand the context of the entire section.

Black’s Law Dictionary defines “Notwithstanding” as “despite” or “in spite of.” *Black’s Law Dictionary, Notwithstanding*, (10th Ed. 2014); *see also* Merriam-Webster.com. Merriam-Webster, *Notwithstanding*, n.d. Web. 28 Nov. 2016. (“without being prevented by (something)”; “in spite of what has just been said”; “although”; “nevertheless”).

Black’s Law Dictionary defines the term “pursuant to” to mean “as authorized by.” *Black’s Law Dictionary, Pursuant To*, (10th ed. 2014). Courts have also interpreted “pursuant to” to mean “as authorized by” in determining plain meaning of the phrase. *See Fruitt v. Astrue*, 604 F.3d 1217, 1220 (10th Cir. 2010) (“An on-point definition is that ‘pursuant to’ means ‘[a]s authorized by’”) (citation omitted); *Gulf Islands Leasing, Inc. v. Bombardier Capital Inc.*, No. 02 CIV. 2839 (WHP), 2006 WL 314523, at *4 (S.D.N.Y. Feb. 10, 2006) (“Black’s Law Dictionary defines the term ‘pursuant to’ to mean ‘in compliance with; in accordance with; under; as authorized by;’ or ‘in carrying out.’” (citation omitted)).

Section 2.6 of the Institutional Agreement defines “Covered Services” as

those inpatient and outpatient hospital services, supplies, equipment and/or items to be delivered by or through [Grand Strand] to Members ***that are reimbursable*** under the applicable Member Benefits contract

(emphasis added).

Thus, applying these straightforward definitions, Section 16.16 may be read as follows:

This Agreement is not intended to, and shall not be construed to, make any person or entity a third party beneficiary. [In spite of] the preceding sentence, nothing in this section shall affect

[BCBS']s rights under Article XV, or a [BCBS policyholder's] right to receive [reimbursable inpatient and outpatient hospital services] [as authorized by] the Terms of this Agreement.

Properly read and interpreted, the second sentence of Section 16.16 does not imply a BCBS policyholder is excepted from the third-party beneficiary disclaimer in the first sentence, or that she has the right to enforce the terms of the Institutional Agreement. The second sentence of Section 16.16 merely affirms a BCBS policyholder's right to receive services that are covered by their BCBS policies and authorized by the Institutional Agreement.

Additionally, as noted by the circuit court, "Covered Services" are those services that *are reimbursable* under a BCBS policy. Nothing in the Institutional Agreement indicates that BCBS reimburses for costs incurred in filing an insurance claim. Therefore, filing for insurance benefits is not a "reimbursable service," and Grand Strand does not have any obligation to file for insurance benefits on Beverly's behalf.

Accordingly, this Court should affirm the circuit court's holding and find the Institutional Agreement does not contain a "Covered Services Exception" that would allow Beverly to circumvent the Institutional Agreement's third-party beneficiary disclaimer.

II. The circuit court properly ruled that Beverly failed to state a claim for breach of fiduciary duty.

The circuit court properly dismissed Beverly's claim for breach of fiduciary duty because (1) South Carolina law does not recognize a fiduciary duty for a health care provider to file an insurance claim, (2) Beverly failed to allege she has a relevant "special relationship" with Grand Strand, (3) Beverly's alleged unilateral actions cannot create a fiduciary relationship with Grand Strand, and (4) the alleged fiduciary relationship ("medical care and treatment") was incongruent with the alleged breach of a fiduciary duty (failing to submit insurance claims).

“To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages proximately resulting from the wrongful conduct of the defendant.” *Turpin v. Lowther*, 404 S.C. 581, 589, 745 S.E.2d 397, 401 (Ct. App. 2013) (citing *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012)). “The existence of a fiduciary duty is a question of law for the court.” *Id.*; *Spence v. Wingate*, 395 S.C. 148, 160, 716 S.E.2d 920, 926-27 (2011).

“A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *Wogan v. Kunze*, 366 S.C. 583, 605, 623 S.E.2d 107, 119 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008) (citing *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003)).

To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004) (citing *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986)).

A. The circuit court properly held South Carolina law does not recognize a fiduciary duty to file an insurance claim.

The circuit court properly held that, as a matter of law, Grand Strand does not owe Beverly a fiduciary duty to file her insurance claims.

South Carolina courts have recognized fiduciary relationships between agents and principals, attorneys and clients, beneficiaries of an estate and the administrator of the estate, partners in a partnership, officers of a corporation and shareholders of the corporation, and a doctor's duty to maintain a patient's confidentiality. *See Peoples Fed. Sav. & Loan Ass'n v.*

Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 145-46, 425 S.E.2d 764, 773 (Ct. App. 1992) (agent and principal); *Spence v. Wingate*, 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011) (attorney and client); *Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 555, 673 S.E.2d 836, 840 (Ct. App. 2009) (beneficiaries of an estate and the administrator of the estate); *Landvest Assoc. v. Owens*, 276 S.C. 22, 274 S.E.2d 433 (1981) (partners in a partnership); *Talbot v. James*, 259 S.C. 73, 190 S.E.2d 759 (1972) (officers and directors of a corporation and shareholders); *Darby v. Furman Co.*, 334 S.C. 343, 346-47, 513 S.E.2d 848, 849 (1999) (real estate agents and clients); *McCormick v. England*, 328 S.C. 627, 643-44, 494 S.E.2d 431, 439 (Ct. App. 1997) (doctor's fiduciary duty to maintain a patient's confidentiality). However, there is no authority for the proposition that a fiduciary relationship exists between a hospital and a patient involving the hospital's duty to submit an insurance claim. *Wogan v. Kunze*, 366 S.C. 583, 605, 623 S.E.2d 107, 119 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008) ("[T]his state has not found that medical negligence or malpractice will support a cause of action for breach of fiduciary duty. Nor have our courts found the failure of a doctor to offer assistance in filing a Medicare claim or other claim is a breach of fiduciary duty."); *see also Burton v. William Beaumont Hosp.*, 373 F. Supp. 2d 707, 724 (E.D. Mich. 2005) (finding Michigan law does not authorize the imposition of a fiduciary duty related to a hospital's billing practices); *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255, 269 (3d Cir. 2008) ("It is clear however, that in general New Jersey does not find fiduciary duty in the debtor-creditor context, and, given that the cases cited by both sides relate only to the provision of care and not the payment therefor, it is unlikely that the New Jersey courts would expand a hospital's fiduciary duty to its billing practices. In the absence of a fiduciary duty, no cause of action exists for its alleged breach, and [the plaintiff's claim for breach of fiduciary duty] will therefore be dismissed.").

Beverly does not challenge the quality of the medical care she received. Rather, she complains only of Grand Strand's billing practices. Beverly attempts to stretch the logic of the fiduciary relationship that exists between a doctor and a patient to encompass a hospital's billing practices for medical services rendered. In essence, Beverly is asking the Court to impose a fiduciary duty on a creditor-debtor relationship. South Carolina law does not authorize the imposition of such a duty. *See Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) ("South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." (citing *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986))). Therefore, the circuit court properly found that South Carolina does not recognize a fiduciary duty related to a hospital's billing practices. Accordingly, this Court should affirm the circuit court's dismissal of Beverly's claim for breach of fiduciary duty.

B. The circuit court properly found Beverly does not have an applicable "special relationship" with Grand Strand and, therefore, Grand Strand does not owe Beverly a fiduciary duty to file her insurance claim.

The circuit court correctly held that Beverly's claim for breach of fiduciary duty fails because Beverly is not a third-party beneficiary to the Institutional Agreement.

In the Complaint, Beverly alleges a "special relationship" was created by her status as a third-party beneficiary of the Institutional Agreement. (R. ____). However, as explained above Beverly is not a third-party beneficiary of the Institutional Agreement and she does not have the right to enforce the Agreement. Beverly's only alleged basis for a fiduciary duty is her status as a third-party beneficiary to the Institutional Agreement. Since Beverly is not a third-party beneficiary with the right to enforce the Institutional Agreement, she has not properly alleged that a "special relationship" existed. Without the existence of a special relationship, her claim for breach of fiduciary duty fails. Therefore, the circuit court properly dismissed her claim for

breach of fiduciary duty. Accordingly, this Court should affirm the circuit court's dismissal of Beverly's claim for breach of fiduciary duty on the grounds that Beverly failed to properly allege the existence of a "special relationship" between herself and Grand Strand.

C. The circuit court properly found Beverly's unilateral actions may not create a fiduciary relationship with Grand Strand.

The circuit court properly held that Beverly's claim for breach of fiduciary duty fails because the alleged duty was created by Beverly's unilateral actions.

"[A] fiduciary relationship cannot be created by the unilateral action of one party." *Moore*, 360 S.C. at 251, 599 S.E.2d at 472 (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 670, 582 S.E.2d 432, 444 (Ct. App. 2003)). The other party to the purported relationship must have actually accepted or induced the confidence allegedly placed in him. *Id.* (citation omitted); see *Cowburn v. Leventis*, 366 S.C. 20, 37, 619 S.E.2d 437, 447 (Ct. App. 2005); *Ellis v. Davidson*, 358 S.C. 509, 519-20, 595 S.E.2d 817, 822 (Ct. App. 2004); *Steele v. Victory Sav. Bank*, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988).

Beverly alleges a fiduciary relationship was created by her reliance on the Institutional Agreement—to which she is not a party, and which she is not entitled to enforce—and from her decision to seek medical treatment from the Grand Strand's hospital. Therefore, Beverly's claim fails as a matter of law, because these are both unilateral actions by Beverly and a fiduciary relationship cannot be created by unilateral action. See *Moore*, 360 S.C. at 251, 599 S.E.2d at 472. Accordingly, this Court should affirmed the circuit court's dismissal of Beverly's claim for breach of fiduciary duty on the grounds that a fiduciary duty may not be created by a party's unilateral action.

D. The circuit court properly dismissed Beverly's claim for breach of fiduciary duty because the alleged fiduciary relationship is incongruent with the alleged breach.

Beverly cannot assert a legitimate claim for breach of a fiduciary duty by merely alleging she placed a level of trust in Grand Strand by choosing to seek medical care and treatment at Grand Strand's hospital and then claiming a fiduciary duty was breached when Grand Strand refused to submit her insurance claims. The duty and the breach must relate to the same thing. *See Turpin*, 404 S.C. at 589, 745 S.E.2d at 401 (noting that to establish a claim for breach of a fiduciary duty a plaintiff must prove: (1) the existence of a fiduciary duty; (2) a breach of *that* duty; and (3) damages resulting from the breach (emphasis added)). A duty relating to providing medical care and treatment is not the same as a duty to file insurance claims.

Moreover, it is clear that the "duty" Beverly asserts and the "breach" she alleges do not relate. Beverly alleges a fiduciary duty was created because she "reasonably placed a level of trust in [Grand Strand] by choosing to seek medical care and treatment from [Grand Strand] based on [Grand Strand]'s status as a preferred provider." (R. ____). However, the breach Beverly alleges is based on Grand Strand's alleged failure to submit her insurance claims. (R. ____). Beverly's claim for breach of fiduciary duty fails due to the inconsistency between the alleged fiduciary duty and the alleged breach. Accordingly, the Court should affirm the circuit court's dismissal of Beverly's claim for breach of fiduciary duty on the grounds the duty Beverly alleges Grand Strand owes her is not the duty that she alleges Grand Strand breached.

III. The circuit court properly ruled that Beverly failed to state a claim for unjust enrichment because Beverly is not a third-party beneficiary of the Institutional Agreement and the unjust enrichment claim is completely derivative of the Institutional Agreement claim.

Beverly's unjust enrichment claim requires her to be able to enforce the terms of the Institutional Agreement and receive medical services at the discounted rates negotiated in the

Institutional Agreement. The circuit court properly found Beverly's unjust enrichment claim fails because the Institutional Agreement's plain language bars third-parties like her from enforcing its terms and the discounted rates set forth therein.

To state a cause of action for unjust enrichment, Beverly must allege Grand Strand unjustly retained benefits or money which in justice and equity belong to her. *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). To recover restitution in the context of unjust enrichment, Beverly must show: (1) she conferred a non-gratuitous benefit on Grand Strand; (2) Grand Strand realized some value from the benefit; and (3) it would be inequitable for Grand Strand to retain the benefit without paying the plaintiff for its value. *56 Leinbach Inv'rs, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 479, 769 S.E.2d 242, 249 (Ct. App. 2014); *Inglese v. Beal*, 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013).

Grand Strand provided Beverly with medical treatment and, in exchange for that treatment, billed Beverly at non-discounted rates. Beverly does not allege Grand Strand charged her more than its non-discounted rates for the medical services or for services which she did not receive and accept. Likewise, Beverly does not allege the non-discounted rates are unjust, inequitable, or excessive. It is not inequitable for Grand Strand to charge Beverly non-discounted rates, because the discounted rates she seeks to obtain are only available through the Institutional Agreement as part of the bargain between Grand Strand and BCBS. Beverly is neither a party, nor a third-party beneficiary, of the Institutional Agreement, and she does not have the right to enforce its terms. Her unjust enrichment claim is inextricably woven to her ability to enforce the Institutional Agreement's terms, because the alleged unjust benefit is derived exclusively from Beverly's alleged right to receive medical services at the discounted

rates Grand Strand and BCBS contracted for between themselves in the Institutional Agreement. Since Beverly is not capable of enforcing the Institutional Agreement and receiving the discounted rates, she did not confer a non-gratuitous benefit on Grand Strand when it billed her at the non-discounted rate. Therefore, Beverly failed to allege Grand Strand received an unjust benefit when it billed her at the non-discounted rate.

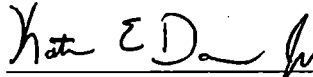
This Court's decision in *Pitts v. Jackson National Life Insurance Company*, illustrates the fallacy of Beverly's alleged unjust enrichment claim. 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). In *Pitts*, the plaintiff brought an unjust enrichment claim against an insurance company based upon the allegation that the insurance company failed to issue a refund to customers who qualified for a preferred policy that charged lower premiums. *Id.* at 337-38, 574 S.E.2d at 511. The court in *Pitts* found no benefit was conferred upon the insurance company that would be unjust for it to retain. *Id.* at 339, 574 S.E.2d at 512. In the instant case, Grand Strand provided Beverly medical services and, according to the Complaint, Beverly was charged the non-discounted rates in exchange for those services. Similar to the plaintiff in *Pitts*, Beverly claims Grand Strand was unjustly enriched by failing to charge a discounted rate for its services. Like the court in *Pitts*, this Court should find that Beverly's claim fails because she does not have a contractual right to receive the discounted rates from Grand Strand and the failure to charge a discounted rate that a plaintiff is not legally entitled to is an insufficient basis to sustain a claim for unjust enrichment.

Accordingly, this Court should affirm the circuit court's finding that Beverly failed to state a claim for unjust enrichment because Beverly did not confer a non-gratuitous benefit upon Grand Strand.

CONCLUSION

For the reasons set forth above, Grand Strand respectfully requests the Court affirm the circuit court's order granting Grand Strand's Motion to Dismiss.

Respectfully submitted,



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December 21, 2016
Columbia, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-CP-26-0166
Appellate Case No. 2016-001499

RECEIVED

DEC 21 2016

SC Court of Appeals

Jeanne Beverly, Individually and on behalf of others similarly situated,Appellant,

v.

Grand Strand Regional Medical Center, LLCRespondent.

PROOF OF SERVICE

The undersigned hereby certifies that on December 21, 2016, he served the foregoing
**RESPONDENT'S INITIAL BRIEF, DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL, AND MOTION TO SEAL** on all counsel of record by
placing a copy in the United States Mail, first class postage prepaid, addressed as follows:

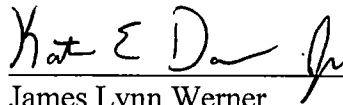
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December 21, 2016

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: *Jeanne Beverly Individually and on behalf of other similarly situated v. Grand Strand Regional Medical Center, LLC; Civil Action No. 2016-CP-26-0116*

Dear Mrs. Kitchings:

Enclosed please find the original and two copies of Respondent's Initial Brief, Respondent's Designation of Matter to be Included in the Record on Appeal, an original and six (6) copies of Respondent's Motion to Seal, Proof of Service and our firm check in the amount of \$25.00 in the above-referenced lawsuit. Please file the original documents and return file-stamped copies to my courier.

By copy of this letter, I am today serving the Initial Brief, Designation of Matter to be Included in the Record on Appeal, Respondent's Motion to Seal and Proof of Service on counsel for the Appellant.

Thank you for your attention to this request.

Sincerely,

Katon E. Dawson, Jr.

KED:DTD
Enclosure

cc: John G. Felder, Jr.
Chad A. McGowan
Jordan C. Calloway
Roy Harmon
Sidney L. Major, Jr.
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SC Court of Appeals

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