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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-17 and 19
Appellate Case No. 2015-001183

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Deceased . . . . . .Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are . . . . . Appellants.

Camille Hodge, Sr., ...Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are . . . . . Appellants.

RECORD ON APPEAL

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RECORD ON APPEAL
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2015 MAR 27 AM 10:03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE, Plaintiff, -vs- UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW; Defendants.	CIVIL ACTION NO: 2014-CP-05-17 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, TO COMPEL ARBITRATION AND STAY PROCEEDINGS**
CAMILLE HODGE, SR., Plaintiff, -vs- UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW; Defendants.	CIVIL ACTION NO: 2014-CP-05-19

This matter is before the Court on the motion of the UPAC Defendants to dismiss this action for want of jurisdiction, or in the alternative, to compel arbitration and to stay proceedings. The issue presented by the motion is whether a nursing home can bind a mentally

and legally competent adult to an arbitration agreement that divests the competent patient of her right to a trial by jury when the agreement is signed only by a family member and the person whom the nursing home wishes to bind has not signed the agreement, has not given her family member a power of attorney or other authority to make contractual commitments on her behalf, and has done nothing to hold the family member out to others as having such authority. In the circumstances of the undisputed facts of this case, the Court answers that question in the negative and denies the motion.

Factual and Procedural Background

On August 31, 2010, Mable Hodge, a resident of Bamberg County and a patient of Defendant Dr. Herbert Moskow, entered Unihealth Post-Acute Care of Bamberg, LLC's ("UPAC's") Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his and UPAC's care. Dr. Moskow's September 1, 2010, initial history and physical of Mable Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." Approximately three weeks after her admission to UPAC, Ms. Hodge was discharged, by ambulance, as a paraplegic. She never walked again and is now deceased.

This lawsuit ensued. Plaintiffs allege that Ms. Hodge developed a Spinal Epidural Abscess that the Defendants failed to diagnose or to treat. Camille Hodge, Jr., acting as Personal Representative of the estate of his mother, Mable Hodge, filed this action against UPAC and related entities United Health Services of South Carolina, Inc., United Health Services, Inc., and UHS-Pruitt Holdings, Inc. (these four Defendants referred to jointly as the "UPAC Defendants"), Dr. Herbert Moskow, and Dr. Dale Padgett, P.A. Camille Hodge, Sr., has filed a separate action against the same Defendants for loss of consortium.

The UPAC Defendants' motion is based on documents signed on August 30, 2010, the day prior to Mable Hodge's admission to UPAC, by her husband, Camille Hodge, Sr. At that time, Ms. Hodge was a patient at Providence Hospital in Columbia. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." UPAC never obtained Mable Hodge's signature on either the Admission Agreement or the Arbitration Agreement and, instead, asks this Court to hold that Mr. Hodge waived his wife's right to a jury trial even though (as discussed below) UPAC's own guidelines mandate that its employees must obtain the patient's signature on the Arbitration Agreement if the patient is competent.

At the motion hearing, UPAC acknowledged that Mable Hodge was competent at the time of her admission, that she did not sign the Arbitration Agreement (or any other document incorporating it by reference), and that she had not executed a health care power of attorney. Thus, there is no dispute as to the following facts:[1]

1) The Arbitration Agreement was signed only by UPAC and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.[2]
3) Mable Hodge was competent at the time she was admitted to UPAC on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge Sr. on August 30, 2010.

[1] UPAC asked the Court to order a deposition of Mr. Hodge, Sr. solely on the arbitration issue. Because the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision.

[2] All parties agreed at the hearing that this motion affects only UPAC and that Plaintiffs' claims against the doctor Defendants, Moskow and Padgett, would proceed to a jury trial regardless of the court's ruling on UPAC's motion.

4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC or at the time the Arbitration Agreement was signed by Mr. Hodge Sr.

5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge Sr. signed the Arbitration Agreement with UPAC in Bamberg.

6) UPAC presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement.

Analysis

South Carolina's Supreme Court and Court of Appeals have recently faced the precise issue that is before the Court today: may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself, and when the relative does not have the patient's power of attorney?

On March 12, 2014, the South Carolina Supreme Court issued its opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). In *Coleman*, the Circuit Court denied the nursing home's motion to compel arbitration because the arbitration agreement was signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the Circuit Court's denial. In that case, the Supreme Court ruled that even though the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care

Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not bind her sister to an Arbitration Agreement with the nursing home.

Three months after the *Coleman* decision, the Supreme Court addressed other nursing home arbitration issues, most of which are not before the Court today. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). In *Dean*, however, the Court *sua sponte* raised the question of whether a competent patient could be bound to a nursing home arbitration agreement when the family member signing the Arbitration Agreement does not possess the patient's health care power of attorney. The Court stated, "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [Arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean*, 408 S.C. at 389 n. 13. This Court shares that concern in this case.

Even more recently, the South Carolina Court of Appeals faced the same question before the Court today – in a lawsuit involving the same issues, the same defendant, and represented by the same lawyer as are before the Court today.[3] In *Scott v. Heritage Healthcare of Estill, LLC*, 2014 WL 3845113, Circuit Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed. The Court of Appeals affirmed Judge Mullen's denial, ruling as follows:

[3] While South Carolina Appellate Court Rule 268(d)(2) provides that unpublished opinions generally have no precedential value, there is an exception in the rule for "proceedings in which they are directly involved." The *Scott* case involves the same defendant, represented by the same lawyer, making the same argument that they are making before this Court today, and thus falls close to the rule's exception. Moreover, the Court does not treat *Scott* as controlling precedent, but instead views it as persuasive reasoning on the precise issue presented here.

> We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent.

2014 WL 3845113, at *1 (emphasis added).

In *Scott*, the Court of Appeals focused on three facts leading to the conclusion that UPAC's Arbitration Agreement was not enforceable against the patient: (1) the patient was competent at the time her family member signed the Arbitration Agreement, and UPAC failed to obtain the signature of the competent patient; (2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and (3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand. This Court finds the reasoning of the Court of Appeals in *Scott* persuasive, and likewise concludes that these three factors prevent UPAC from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case.

First, Mable Hodge was clearly competent at the time of her admission, yet UPAC did not have her sign the Arbitration Agreement. UPAC conceded these facts at the hearing. Moreover, UPAC elected to have Mable Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. For instance, the Court was presented with an "Inventory of Personal Effect" dated September 1, 2010 – the day after Mable Hodge was admitted to UPAC – that bears Mable Hodge's signature. When UPAC wanted Mable

Hodge's signature, UPAC knew how to obtain it. She was competent and could have signed the Arbitration Agreement, but did not do so.

Second, at the time of her admission to UPAC, Mable Hodge had vested no one with a health care power of attorney (or general power of attorney or any such document for that matter) to make decisions, contractual commitments, or waivers on her behalf. Again, at the hearing, UPAC conceded that Mable Hodge had not executed a health care power of attorney. The Court was presented with a form that was completed just days prior to Mable Hodge's admission to UPAC, while she was a patient at Providence Hospital in Columbia. The form clearly indicates that Mable Hodge had not executed a Health Care Power of Attorney. This form was in Mable Hodge's medical record and easily accessible by UPAC if it had chosen to inquire.

Third, UPAC's internal documents demonstrate that UPAC knows that it is required to obtain a patient's signature on its Arbitration Agreements if the patient is competent. Prior to the hearing, the Court was presented with UPAC's internal "Arbitration Checklist." The very first line of that document states that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). The UPAC checklist unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness" (bold and italics in original, underlining added). These guidelines appear to have been drafted to comply with a federal regulatory mandate, which states: "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative

only when the resident is unable to make the decision." Interpretive Guidelines to 42 CFR § 483.10(a)(3) and (4) (emphasis added).

UPAC failed to follow its own guidelines. This Court will not ignore both South Carolina law and the movants' own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement, particularly when the effect of such a result would be to divest the individual of a fundamental right.

In the absence of any evidence that Mable Hodge gave her husband any express authority to act for her, UPAC argues that Mable Hodge "represented" that her husband was authorized to act on her behalf by "allowing" him to procure her admission to the Bamberg facility. UPAC contends that such "acquiescence" established an apparent agency on which it relied in providing its services to Mable Hodge. UPAC submitted, and the Court considered, the affidavit of Deborah Rutland, its administrator, who states that Mr. Hodge Sr. signed the Arbitration Agreement. Tellingly, however, Ms. Rutland does not state that Mable Hodge actually represented, by words or conduct, that her husband had authority to act on her behalf, or that she otherwise held out her husband to UPAC as having authority to execute the arbitration agreement for her.

South Carolina's appellate courts have repeatedly ruled that:

> [t]he 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. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993). *See also Moore v. North American Van Lines*, 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added).

It is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or "held out" the purported agent as having been given authority by the principal.

UPAC has presented no such evidence to the Court. Mable Hodge is now deceased. Thus, only UPAC is in a position to come forward with evidence of words or actions by Mable Hodge holding out her husband to UPAC as her agent with authority to make a contractual waiver for her, and only UPAC can show that it reasonably relied on its belief in Mr. Hodge's authority. This UPAC has not done, other than pointing out the obvious fact that Mable Hodge was admitted to the facility and stayed there. Under the cases discussed above, this is not enough. Nor can UPAC demonstrate "reasonable reliance" when its own "Arbitration Checklist" directs that its employees must obtain the patient's own signature on the Arbitration Agreement when the patient is competent, and when the Arbitration Agreement itself recites that its execution "is not a precondition to admission." (UPAC Arbitration Agreement at 5)

Similarly, UPAC argues that Mable Hodge should be equitably estopped from denying the enforceability of the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit to Mable Hodge, there is no question that she received no "benefit" from the entirely separate Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of

the same contract should be enforced to benefit him." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Mable Hodge received some benefit from UPAC's 12-page Admission Agreement, there can be no question that Mable Hodge received no benefit from the separate 5-page UPAC Arbitration Agreement. Because Mable Hodge is not seeking to enforce any part of the Arbitration Agreement against UPAC, equitable estoppel does not apply.[4]

In the *Scott* case cited above, UPAC made precisely the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the fact that the resident never signed the Arbitration Agreement] is dispositive." *Scott*, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement signed by a competent patient prevents it from arguing that the resident, simply by staying at its facility, is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in *Coleman* addressed these same merger and estoppel arguments in detail and held that the nursing home's arbitration agreement did not merge with the nursing home's separate admission agreement. The Court held that the nursing home had chosen to make the admission agreement and the arbitration agreement two separate documents and because it had drafted the documents, any ambiguity would be resolved against it. The Court then noted that the nursing home's admission agreement contained language that expressly and intentionally made it a separate agreement from the arbitration agreement. That is equally

[4] UPAC also argues that Mable Hodge was a third-party beneficiary of the Arbitration Agreement, and therefore is bound by it. The Court finds this argument unpersuasive, as the third-party beneficiary doctrine operates to allow a third party to enforce a contract to which he or she is not a party. Since the Plaintiffs are not seeking to enforce the Arbitration Agreement, the third-party beneficiary doctrine does not apply.

true of the case at hand. UPAC's Admission Agreement states on its face that it is governed by South Carolina law and "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. . ." (UPAC Admission Agreement at 9, paragraph I (emphasis added)) UPAC's Arbitration Agreement, by contrast, provides that it is governed by federal law and that "[t]he signing of this Agreement is not a precondition to admission." (UPAC Arbitration Agreement at 5) That is, both documents prepared by UPAC acknowledge that the Admissions Agreement is the sole agreement governing the terms and conditions of the patient's admission to the nursing home, and thus Mable Hodge's admission did not operate to merge these two separate agreements or to bind her to an Arbitration Agreement she never signed.

The Supreme Court in *Coleman* also noted that "the [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." 407 S.C. at 355. The UPAC arbitration agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at 5) Finally, the Supreme Court in *Coleman* held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id.* at 355-56. Each of those reasons applies with equal force to the case at hand, and the Supreme Court has clearly held that, in these circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

For each of these independent reasons, the Court finds that UPAC did not enter into a binding Arbitration Agreement with Mable Hodge and the Motion to Dismiss or to Compel Arbitration is DENIED.

~~The Honorable~~ Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10:03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

ORDER DENYING DEFENDANTS' MOTION TO COMPEL DEPOSITION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

The Defendant, Unihealth Post-Acute Care of Bamberg, LLC ("UPAC") moves to compel the deposition of Camille Hodge, Sr. related solely to issues concerning its Arbitration Agreement. For the reasons explained fully in this Court's Order on Defendant's Motion to

Dismiss or to Compel Arbitration, the motion to compel the deposition of Mr. Hodge is DENIED.

The Honorable Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NOS: 2014-CP-05-17 and

ORDER DENYING DEFENDANT UPAC'S MOTION FOR RECONSIDERATION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

FILED
BAMBERG COUNTY
2015 MAY -4 PM 12:01
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

This matter is before the Court on Defendant UPAC's Motion for Reconsideration of the Court's Orders dated March 16, 2015.

After careful review of the submissions of counsel and applicable law, the Motion is hereby denied.

AND IT IS SO ORDERED.

Clifton Newman
Presiding Judge

April 30, 2015
Columbia, South Carolina

COPY

FILED
BAMBERG COUNTY
2013 AUG 21 AM 10:27
JAMES D. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE, and CAMILLE HODGE, SR., Plaintiffs, -vs- UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW; Defendants.	CIVIL ACTION NO: 2013-CP-05-162 **NOTICE OF INTENT TO FILE SUIT**

8/29
2:11
SB

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

PLEASE TAKE NOTICE that Plaintiffs in the above-captioned matter, pursuant to SC Code §15-79-125, intend to file suit against the above-named Defendants. The parties must participate in a mediation conference within one hundred twenty (120) days of service of this Notice of Intent to File Suit.

THE PARTIES

1. The plaintiffs are Camille Hodge, Jr. ("Mr. Hodge, Jr."), acting as personal representative for decedent Mrs. Mabel Hodge and her son, and Camille Hodge, Sr. ("Mr. Hodge, Sr."), the widower of Mrs. Hodge (collectively "Plaintiffs" or "The Hodges"). The Hodges are citizens and residents of the town of Denmark in Bamberg County, South Carolina.

2. Defendant Herbert A. Moskow ("Dr. Moskow") is a citizen and resident of the County of Bamberg, South Carolina and was a medical doctor practicing in Bamberg County at

the relevant times of the facts alleged in this Notice. Upon information and belief, he is no longer licensed to practice medicine.

3. Upon information and belief, Defendant R. Dale Padgett, M.D., P.A., is a South Carolina professional association that employed Dr. Moskow at the time of the events giving rise to this Notice of Intent to Sue.

4. Dr. Moskow held himself, and upon information and belief his employer held Dr. Moskow, out to be a competent medical practitioner, and Mrs. Hodge and Plaintiffs relied upon this and his medical license.

5. Defendant UniHealth Post-Acute Care of Bamberg, LLC ("UPAC Bamberg"), formerly known as Bamberg County Nursing Center, is a South Carolina limited liability company with its principal place of business in Bamberg County, South Carolina.

6. Defendant United Health Services of South Carolina, Inc. is a South Carolina corporation and the manager of UPAC Bamberg and, upon information and belief, owns and controls UPAC Bamberg.

7. Defendant United Health Services, Inc. is a Georgia corporation and, upon information and belief, owns and controls UPAC Bamberg.

8. Defendant UHS-Pruitt Holdings, Inc., also known as UHS-Pruitt Corporation, is a Georgia corporation with its principal place of business in a state other than South Carolina and, upon information and belief, owns and controls UPAC Bamberg.

9. Defendants UPAC Bamberg; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. held their facility, UPAC Bamberg, out to the plaintiffs, Mrs. Hodge, and the public as an extended health care and rehabilitation

facility capable of providing competent medical care as well as therapy and rehabilitation services.

10. Upon information and belief, Defendants had a doctor-patient and medical care provider-patient relationship with Mrs. Hodge with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care and procedures provided for her.

STATEMENT OF FACTS

11. Following a period of hospitalization for cardio and renal problems, Mrs. Hodge was admitted to UPAC Bamberg for extended care and rehabilitation on August 31, 2010. Over the following several weeks, Mrs. Hodge complained of increasingly severe back pain and showed increasingly obvious signs of infection and other distress. Mrs. Hodge remained in the custody and care of Defendants for medical care and treatment until September 24, 2010.

12. UPAC Bamberg called Dr. Moskow to see Mrs. Hodge on September 16, 2010. He failed to evaluate the cause of her pain and only changed Mrs. Hodge's pain medication. For the next several days, Mrs. Hodge continued to complain of back pain.

13. On September 20, 2010, Mrs. Hodge complained to the UPAC Bamberg staff that her back had hurt all night. Mrs. Hodge was unable to stand and had to be lifted because she could not move her legs. UPAC Bamberg failed to evaluate or examine Mrs. Hodge for these complaints and failed to call a doctor to examine her.

14. UPAC Bamberg called Dr. Moskow again on September 21, 2010 to evaluate Mrs. Hodge. At that time, no physical exam was performed, and Dr. Moskow prescribed Mrs. Hodge an antidepressant and again failed to evaluate or test her to determine the cause of her increasing back pain.

15. On September 22, Dr. Moskow saw Mrs. Hodge again at UPAC Bamberg but only wrote new orders for pain medication and for a sleeping pill for Mrs. Hodge. Mrs. Hodge and her family requested a different doctor.

16. On September 23, 2010, Mrs. Hodge complained of not being able to feel her feet placement and of not being able to feel when she was urinating.

17. On September 24, 2010, Mrs. Hodge was unable to feel her legs or arms, unable to stand, and in extreme pain. She was taken to Bamberg County Hospital emergency room, where her condition was assessed immediately as suspicious for diskitis and osteomyelitis with a possible epidural abscess. Because of the pain and onset of paralysis she was experiencing, Mrs. Hodge was transported to Richland Memorial Hospital, where it was discovered that she was fully paralyzed from the waist down.

18. Despite treatment with antibiotics and surgical intervention at that point, Mrs. Hodge never regained sensation below her waist, the use of her legs, or control of her bowel and bladder functions. She was completely paralyzed from the waist down and would remain that way for the rest of her life.

19. As a result of Defendants' failure to evaluate, test, diagnose, and treat Mrs. Hodge's diskitis and osteomyelitis with an epidural abscess prior to September 24, 2010, Mrs. Hodge was paralyzed by a condition that could have been effectively treated with antibiotics, surgery, or a combination thereof. Instead, Mrs. Hodge lost the use of her legs, became bedridden, and developed bed sores and other complications.

20. Defendants' negligence, gross negligence, and reckless disregard for the health, well being, and rights of Mrs. Hodge caused her permanent paralysis and other serious injuries including distress, disfigurement, and pain and suffering. As a direct result of her paralysis, Mrs.

Hodge suffered severe injuries, otherwise unnecessary medical procedures and treatments, and ultimately died on September 22, 2011, approximately one year after she was paralyzed.

21. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate care to Mrs. Hodge and thus deviated from the standard of care and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Notice.

22. Attached to this Notice of Intent to Sue is the affidavit of John G. Spangler, M.D., M.P.H. Dr. Spangler is board certified in family medicine and in general preventive medicine and public health. As Dr. Spangler makes clear in his affidavit, Defendants deviated from the recognized and generally accepted standard of care in one or more of the following particulars:

(a) In failing to investigate the cause of Mrs. Hodge's back pain until after she had lost the use of her legs;

(b) In failing to perform basic examinations on Mrs. Hodge and, instead, simply changing her pain medication and prescribing an antidepressant;

(c) In failing to evaluate or perform tests when Mrs. Hodge complained about back pain, lost her ability to stand, suffered other symptoms; and in waiting, instead, additional days to investigate, evaluate, test, diagnose, and treat Mrs. Hodge; and

(d) In failing to diagnose and treat Mrs. Hodge's diskitis and osteomyelitis with epidural abscess, which caused her paralysis.

23. The failure of Defendants to follow the recognized and generally accepted standards of care proximately caused significant and permanent injuries and substantial damages to Mrs. Hodge, including paralysis and a host of accompanying complications and necessary

medical care and procedures, and to Mr. Hodge for the medical bills, other expenses, and loss of consortium of Mrs. Hodge.

24. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mrs. Hodge sustained serious and permanent bodily injuries; Mr. Hodge, Sr. lost her services, care, comfort and companionship as his wife; and they incurred substantial damages and expenses from those injuries and loss of consortium.

25. If Mrs. Hodge had received proper medical care and attention from Defendants, she would not have experienced her injuries and resulting damages, and her husband would not have been deprived of her services, comfort, and companionship or been forced to incur massive expenditures of time and money as a result of her paralysis and related conditions.

26. Therefore, Mr. Hodge Jr., as personal representative of the estate Mable Hodge, and Mr. Hodge Sr. are entitled to judgment for full direct, consequential, and special damages against Defendants in an amount to be determined by a jury, unless the parties can reach a resolution through mediation.

AFFIDAVIT OF JOHN G. SPANGLER, M.D., M.P.H.

The affidavit of expert John G. Spangler, M.D., M.P.H., specifying the negligent acts and omissions claimed and the factual basis for each claim based upon the available evidence at this time is attached pursuant to S.C. Code § 15-36-100 *et seq.*

ANSWERS TO STANDARD INTERROGATORIES

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 not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

Dr. Herbert A. Moskow, the staff and employees of UPAC Bamberg who treated and cared for Mrs. Hodge, the staff and employees of Bamberg County Memorial Hospital who treated and cared for Mrs. Hodge, the staff and employees of Palmetto Health Richland Hospital who treated and cared for Mrs. Hodge, other doctors who treated Mrs. Hodge, Dr. John G. Spangler, Mr. Camille Hodge, Sr., and Mr. Camille Hodge, Jr.

Other than the affidavit of Dr. Spangler, no written or recorded statements have been taken from any of the potential witnesses. Plaintiffs reserve the right to supplement this request at a later date.

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

RESPONSE:

Mable Hodge's medical records and billing records summarized below and listed in Exhibit A to the expert affidavit.

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 connections with said injuries and also set forth a statement of all medical costs involved.

RESPONSE:

The following summary is a list of medical providers and medical costs involved.

MEDICAL PROVIDERS	MEDICAL COSTS
Aiken Regional Medical Center	3,840.00
AMS of West Columbia	1,577.50
Anesthesiology Consultants of Columbia	12,601.03
Bamberg County Memorial Hospital	45,741.93
Bamberg Emergency Group, PC	5,899.00
Bamberg Family Practice	1,286.00
Bamberg Rescue Squad	4,973.00
Capital City Ambulance	1,416.40
Cardiovascular Anesthesia, LLC	1,650.02
Columbia Gastroenterology Associates	2,904.00
Department of Internal Medicine	9,660.00
InterMedical Hospital of SC	167,431.45
Lexington Infectious Disease	1,145.00
Lexington Medical Center	119,996.42
Medical Center Hospitalists	3,121.00
Medi Home Care Services	$10,217.00
Medshore Ambulance Service	250.00
Midlands Pulmonary Care	11,147.00
R. Dale Padgett, M.D., P.A.	441.00
Palliative Care	1,388.00
Palmetto Health Baptist	2,888.50
Palmetto Health Richland	1,804,661.50
Personal Care Ambulance	3,010.10
Pitts Radiology	8,760.00
Professional Pathology Services	802.00
Providence Hospital	122,914.67

Providence Hospital CRNAS	576.00
Regional Ambulance	323.50
The Regional Medical Center	115,658.23
Richland Hospital Internal Medicine	6,713.00
SC Heart Center	5,366.00
Southern Surgical Group	4,221.00
St. Matthews Ambulance Service	25,680.00
UPAC Bamberg	12,478.94
Williston Rescue Squad	1,121.50
TOTAL	**$2,521,860.69**

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

RESPONSE:

Unknown at this time.

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

RESPONSE:

See answer to Number 3 above, which sets forth the list of medical costs identified to date. In addition to medical costs, Plaintiffs have sustained damages, in addition to a full year of her pain and suffering, such as distress, disfigurement, personal services assistants, home health care services, loss of consortium, travel expenses, home renovations necessary from her paraplegia for access by Mrs. Hodge, and other damages that will be supplemented during discovery and as further damages are identified and quantified.

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

RESPONSE:

John G. Spangler, M.D., M.P.H.
Department of Family and Community Medicine
Medical Center Boulevard
Winston-Salem, NC 27157-1084

Plaintiffs reserve the right to supplement this response at a later date.

7. For each person known to the parties 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 witness, or provide a copy of any written or recorded statements taken from such witness.

RESPONSE:

It is anticipated that Dr. Moskow and all hospital and medical staff and employees listed in Mrs. Hodge's medical records will be able to provide information regarding Mrs. Hodge's medical care and treatment.

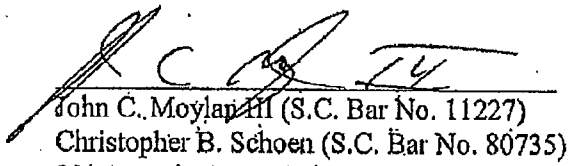
Dr. Spangler will testify about the opinions in his affidavit and respond to any defenses suggested by Defendants.

Mrs. Hodge's husband, Camille Hodge, Sr., and her son, Camille Hodge, Jr., will testify regarding the events leading to Mrs. Hodge becoming paralyzed, the medical care and other services, the expenses and the medical bills and care required by Defendants' actions and fault, and the challenges, including pain and suffering, she and they faced. They will also testify regarding all elements of damages they incurred.

Plaintiffs reserve the right to supplement this response at a later date.

Respectfully submitted,

WYCHE, P.A.



John C. Moylan III (S.C. Bar No. 11227)
Christopher B. Schoen (S.C. Bar No. 80735)
801 Gervais Street, Suite B
P.O. Box 12247 (29211)
Columbia, SC 29201
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jmoylan@wyche.com
cschoen@wyche.com

Date: August 19, 2013

ATTORNEYS FOR PLAINTIFFS

FILED
BAMBERG CENTER
2013 AUG 21 AM 11:28
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR., as personal representative of the estate of MABLE HODGE, and CAMILLE HODGE, SR.,

Plaintiffs,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO:_____

AFFIDAVIT OF JOHN G. SPANGLER, M.D., M.P.H.

Personally appeared before me, John G. Spangler, M.D., M.P.H., who being duly sworn hereby deposes and says:

1. I am an expert in the field of family medicine and preventive medicine, and I am familiar with the generally recognized and accepted practices and procedures that would be followed by average, competent physicians and other health care providers caring for a patient who presents with the symptoms and exams and lab results presented by Mrs. Mable Hodge in August and September 2010.

2. I have reviewed the medical records listed in Exhibit A attached hereto.

3. It is my opinion that Defendants failed to diagnose and treat an infection of the spinal cord (diskitis and osteomyelitis with an epidural abscess), despite increasingly severe symptoms and lab results that should have caused these providers to evaluate, test, diagnose, and treat this condition before it became excruciatingly painful and caused paralysis in Mrs. Hodge.

4. It is my opinion, to a reasonable degree of medical certainty, that UniHealth Post-Acute Care of Bamberg ("UPAC Bamberg"), formerly known as Bamberg County Nursing Center, and Dr. Herbert A. Moskow deviated from the following recognized and generally accepted standards of care in connection with their treatment of Mrs. Hodge in September 2010:

a. In failing to investigate the cause of Mrs. Hodge's back pain until after she had lost the use of her legs;

b. In failing to perform basic examinations of Mrs. Hodge and, instead, simply changing her pain medication and prescribing an antidepressant;

c. In failing to evaluate or perform examinations and tests when Mrs. Hodge complained about back pain, lost her ability to stand, and had other symptoms and in waiting, instead, an additional two days to take any meaningful action to investigate, evaluate, test, diagnose, and treat Mrs. Hodge for these symptoms and conditions; and

d. In failing to diagnose and treat Mrs. Hodge's diskitis and osteomyelitis with epidural abscess, which caused her paralysis.

5. Mrs. Hodge was admitted to UPAC Bamberg, an extended health care facility, on August 31, 2010 for health care and rehabilitation. While at UPAC Bamberg from August 31 to September 24, 2010, Mrs. Hodge complained of increasingly severe back pain and told the staff there that she could not move at times or complete her physical therapy.

6. UPAC Bamberg called Dr. Moskow to see Mrs. Hodge on September 16, 2010. He failed to evaluate the cause of her pain and only changed Mrs. Hodge's pain medication.

7. For the next several days, Mrs. Hodge continued to complain of back pain.

8. On September 20, 2010, Mrs. Hodge complained to the UPAC Bamberg staff that her back had hurt all night. Mrs. Hodge was unable to stand and had to be lifted because she could not move her legs. UPAC Bamberg failed to evaluate or examine Mrs. Hodge for these complaints and failed to call a doctor to examine her.

9. UPAC Bamberg called Dr. Moskow again on September 21, 2010 to evaluate Mrs. Hodge. At that time, no physical exam was performed, and Dr. Moskow again failed to evaluate or test her to determine the cause of her increasing back pain and instead prescribed Mrs. Hodge an antidepressant.

10. On September 22, Dr. Moskow saw Mrs. Hodge again at UPAC Bamberg but only wrote new orders for pain medication and for a sleeping pill for Mrs. Hodge. Mrs. Hodge and her family requested a different doctor.

11. On September 23, 2010, Mrs. Hodge complained of not being able to feel her feet placement and of not being able to feel when she was urinating.

12. On September 24, 2010, Mrs. Hodge was unable to feel her legs, was unable to stand, and had extreme back pain. She was taken to the emergency room at Bamberg County Hospital, where her condition was assessed as suspicious for diskitis and osteomyelitis with a possible epidural abscess. Mrs. Hodge was then transferred to Palmetto Health Richland Hospital where it was confirmed that Mrs. Hodge had diskitis and osteomyelitis with an epidural abscess and that she had become paraplegic.

13. It is my opinion, to a reasonable degree of medical certainty, that Defendants' deviations from the standards of care most probably directly and proximately caused Mrs. Hodge to develop diskitis and osteomyelitis with an epidural abscess, which caused increasing and severe back pain and paralysis.

14. It is very likely that if these conditions had been identified as the cause of Mrs. Hodge's increasingly severe back pain and paralysis, they could have been effectively treated with antibiotics and/or surgical intervention. Therefore, I conclude, to a reasonable degree of medical certainty, that Mrs. Hodge's injuries most probably resulted from Defendants' deviations from and disregard for the standard of medical care and treatment to which Mrs. Hodge was entitled.

15. Attached as Exhibit B is a copy of my curriculum vitae showing my education, training, publications, and experience in the fields of family medicine and general preventive medicine evidencing that I am competent to testify as to the matters stated above.

16. I am board certified in family medicine and in general preventive medicine and public health. I have regularly engaged in the active practice of family medicine and preventive medicine for at least three of the last five years immediately preceding this opinion as required by S.C. Code section 15-36-100. Additionally, I have taught family medicine and preventive medicine for at least half of my professional time as a member of the faculty of Wake Forest University School of Medicine for at least three of the last five years immediately preceding this opinion in further satisfaction of S.C. Code section 15-36-100.

17. If new information becomes available, my opinions are subject to change and additional opinions may be rendered.

John G. Spangler, M.D., M.P.H.

SWORN to be me this 12 day of August, 2013

Notary Public for North Carolina
My Commission Expires 07/17/2016

DANA HIND NOTARY PUBLIC FORSYTH COUNTY, NC

EXHIBIT A

FILED
BAMBERG COUNTY
2013 AUG 21 AM 11:28
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Records from Bamberg County Hospital dated 04/15/10 - 09/24/10

Admission Reports
Consent Forms
History and Physical Reports
Emergency Room Reports
Discharge Summaries
EKG/ECG Reports
Lab Reports
Radiology Reports
Physician Notes
Progress Notes
Medication Records
Transfer Forms

Records from R. Dale Padgett, M.D., P.A. dated 02/26/08 – 10/12/10

Physical Exam Forms
EKG/ECG Reports
Medication Forms
Progress Notes and Reports from Hillcrest Dermatology
Lab Reports from Bamberg County Hospital
Lab Reports from Select Laboratories
Radiology Reports from Bamberg County Hospital
History and Physical Forms from Providence Hospital
Request Forms for Lab and X-ray tests
Office Visit Notes from SC Heart Center
Consultation Reports from Providence Hospital
Nursing Records from Bamberg County Hospital
Progress Notes from Bamberg County Hosptial
Emergency Physician Records from Bamberg County Hospital
Admission Records from Bamberg County Hospital
Medication Forms from Bamberg County Hospital
Discharge Instructions from Bamberg County Hospital
Operative Reports from Providence Hospital
Consultation Reports from Providence Hospital
Pathology reports from Providence Hospital
Radiology Reports from Providence Hospital
Discharge Summary from The Regional Medical Center
Universal Medication Form from The Regional Medical Center
Sleep Study Reports from Dr. Moore
History and Physical from UniHealth Post-Acute Care of Bamberg
Progress Notes from UniHealth Post-Acute Care of Bamberg

Records from Palmetto Health Richland dated 09/24/10 – 04/01/11

Admission Forms
Consent Forms
Nursing Assessments and Notes
History and Physical Forms
Discharge Summaries
Transfusion Reports
Consultation Reports
Progress Notes
Physician Orders
Pathology Reports
Medication Reconciliation Summaries
Anesthesia Records
Operative Reports
Radiology Reports
Lab Reports
Transfer Summaries

Records from Providence Hospital dated 08/05/07 – 12/17/10

Admission Records
Consent Forms
History and Physical Forms
Discharge Summaries
Transfusion Reports
Medication Reconciliation Reports
Radiology Reports
Lab Reports
Operative Reports
Pathology Reports
Progress Records
Physician's Orders
Medication Summaries
EKG/ECG Reports
Consultation Reports
Physician's Orders
Radiology Reports from Bamberg County Hospital
Lab Reports from Bamberg County Hospital
Physical Exam Reports from R. Dale Padgett, M.D., P.A. (August 2010)
Medication Forms from R. Dale Padgett, M.D., P.A.
Discharge Summary from Bamberg County Hospital
History and Physical from Bamberg County Hospital
Complete Medical Record Audits
Nursing Assessments
Respiratory Therapy Forms and Notes
Transfer Summaries from InterMedical Hospital

Physician Orders from InterMedical Hospital
Admission Reports from InterMedical Hospital
History and Physical Forms from InterMedical Hospital
Consultation Reports from InterMedical Hospital
Medication Administration Records from InterMedical Hospital
Progress Notes from InterMedical Hospital
Nursing Notes from InterMedical Hospital
Respiratory Reports from InterMedical Hospital
Lab Reports from Palmetto Health Baptist
EKG/ECG Reports from Palmetto Health Baptist
Radiology Reports from Palmetto Health Baptist
S.C. Heart Office Visit Notes

Records from UPAC Bamberg dated 08/30/10 – 11/01/10

Admission Records
History and Physical
Nursing Admission Assessment Forms
Admission Care Plans Record
Medical Record
Physicians Orders and Notes
Nurses Records
Progress Reports
Therapy Notes
Lab Reports
Discharge Recapitulation of Stay
Discharge Planning

EXHIBIT B

FILED
BAMBERG COUNTY
2013 AUG 21 AM 11:28
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

NAME: John Given Spangler, M.D., M.P.H.

CURRENT ACADEMIC TITLE: Professor,
Family and Community Medicine
Associate Faculty,
Department of Public Health Sciences

ADDRESS: Residence:
231 Stanaford Rd
Winston-Salem, North Carolina 27104
Telephone: (336) 768-1434

Department of Family and Community Medicine
Wake Forest University School of Medicine
Medical Center Boulevard
Winston-Salem, North Carolina 27157-1084
Telephone: (336) 716-2238
FAX: (336) 716-9126

PERSONAL INFORMATION:

Birthplace and date: Chapel Hill, North Carolina; U.S.A.;
January 9, 1960

Citizenship: United States of America

Marital Status: Married

Spouse's Name: Mary Henican Spangler
Children: Stephen Wilson Spangler (1/11/88)
Andrew Henican Spangler (6/20/89)
Anna Given Spangler (6/6/91)
Matthew Wynne Spangler (3/10/94)
Timothy Martin Spangler (3/5/96)
Sarah Marshall Spangler (6/2/99)

EDUCATION:

1982, B.A. French Literature, Cum Laude
Davidson College
Davidson, North Carolina

1986, M.D. University of North Carolina School of Medicine
Chapel Hill, North Carolina

5/1/13

EDUCATION: (Continued)

1988, M.P.H.	International Health The Johns Hopkins School of Hygiene and Public Health Baltimore, Maryland

POSTDOCTORAL TRAINING:

1986 - 1987	Internship Internal Medicine University of North Carolina School of Medicine Chapel Hill, North Carolina
1987 - 1989	Preventive Medicine Residency The Johns Hopkins Medical Institutions Baltimore, Maryland
1989 - 1991	Family Medicine Residency Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1991 - 1993	Faculty Development Fellowship Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina

PROFESSIONAL LICENSURE:

1986	FLEX #600109002
1987 to present	DEA #BS1448249
1987 to present	North Carolina Permanent Medical License #31953

SPECIALTY CERTIFICATION:

1991 1998, 2005, 2012	Board Certified, Family Practice American Board of Family Practice

5/1/13

SPECIALTY CERTIFICATION: (Continued)

1994	Board Certified, General Preventive Medicine and Public Health American Board of Preventive Medicine

EMPLOYMENT:

1991 - 1993	Urgent Care Physician Kernersville Immediate Care Kernersville, North Carolina
1990 - 1993	Urgent Care Physician Old Towne Immediate Care Winston-Salem, North Carolina
1990 - 1997	Volunteer Physician Homeless Clinic Samaritan's Shelter Winston-Salem, North Carolina
1989 - 1993	Resident Physician Department of Family and Community Medicine Bowman Gray School of Medicine Winston-Salem, North Carolina
1993 - 2000	Assistant Professor Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
2000 - Present	Associate Professor Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
2006-Present	Professor Department of Family Medicine Wake Forest University School of Medicine
2000 - Present	Associate Faculty Department of Public Health Sciences Wake Forest University School of Medicine Winston-Salem, North Carolina

OTHER PROFESSIONAL EXPERIENCES: Peer Reviewer

Archives of Family Medicine
The Journal of Family Practice
The Journal of Health Care for the Poor and Underserved
Ethnicity and Disease
Journal of Athletic Training
Clinical Orthopaedics and Related Research
Diabetic Medicine
Public Health Reports
BioMed Central
Preventive Medicine
American Journal of Preventive Medicine
Lancet
Clinical Medicine and Research
Journal of Postgraduate Medicine
Environmental Health
Environmental Health Perspectives
Annals of Epidemiology
Drug and Alcohol Review
Cancer
Annals of Tropical Medicine and Public Health
American Journal of Public Health
Journal of Oncology
Journal of Dental Education
Addictive Behaviors
Drug Safety
Tobacco Control
Nicotine and Tobacco Research
International Journal of Environmental Research and Public Health

TEACHING EXPERIENCE:

1989 - Present	3rd Year Clerk Preceptor Family Practice Center Wake Forest University School of Medicine Winston-Salem, North Carolina
1990 - 1993	1st Year Students' Bedside Tutor Problem-Based Curriculum Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1990 - 1997	Clinician Evaluator Independent Progress Assessment Examinations

Problem-Based Curriculum
Bowman Gray School of Medicine
of Wake Forest University
Winston-Salem, North Carolina

TEACHING EXPERIENCE: (Continued)

1991 - 1998	Small Group Facilitator 4th Year Community Medicine Required Elective Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1991 - 1998	Small Group Leader 1st Year Traditional Curriculum Epidemiology and Community Medicine Course Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1992 - 1997	Circuit Rider Problem Based Curriculum 1st Year Intensive Community Experiences Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1992 - 1997	Pediatric Infectious Diseases Orientation for 1st Year Family Medicine Residents Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1992 - 2000	Lecturer Pediatric Infectious Diseases 1st Year Physician's Assistant Students' Pediatric Course Wake Forest University School of Medicine Winston-Salem, North Carolina
1992 - 2000	Lecturer Introduction to Clinical Medicine 1st Year Physician's Assistant Students

Wake Forest University School of Medicine
Winston-Salem, North Carolina

1992 - 1998 — Small Group Leader
Problem Based Curriculum
1st Year Community Half Day Experiences
Wake Forest University School of Medicine

TEACHING EXPERIENCE: (Continued)

1993 - Present — Preventive Care Tutorial
3rd Year Clerkship in Family Medicine
Wake Forest University School of Medicine
Winston-Salem, North Carolina

1993 - 1999 — Journal Club Leader
Problem Based Curriculum
2nd Year Students
Wake Forest University School of Medicine
Winston-Salem, North Carolina

1993 - 1998 — Lecturer
1st Year Traditional Curriculum
Epidemiology and Community Medicine Course
Bowman Gray School of Medicine
of Wake Forest University
Winston-Salem, North Carolina

1998 - Present — Lecturer
Population Epidemiology
Wake Forest University School of Medicine
Winston-Salem, North Carolina

1993 - 1996 — Small Group Leader
Medicine As A Profession Course
1st Year Traditional Curriculum
Bowman Gray School of Medicine
of Wake Forest University
Winston-Salem, North Carolina

1998 - Present — Small Group Leader
Population Epidemiology
Years I and II
Wake Forest University School of Medicine
Winston-Salem, North Carolina

1994 - Present — Smoking Cessation Tutorial Using

Standardized Patients
3rd Year Clerkship in Family Medicine
Wake Forest University School of Medicine
Winston-Salem, North Carolina

TEACHING EXPERIENCE: (Continued)

1994 - 1995	Faculty Preceptor Doctor-Patient Relationship Course 1st Year Traditional Curriculum Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1994 - 1997	Dissociative Disorders in Primary Care Resident Half Day Seminar (once annually) Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1994 - 1997	Smoking Cessation Using Standardized Patients Resident Half Day Seminar (once annually) Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1999 - 2004	Small Group Facilitator. Evidence Based Medicine 2nd Year Prescription for Excellence Curriculum Wake Forest University School of Medicine Winston-Salem, North Carolina
2000 - Present	Course Director/Co-Director Population Health and Epidemiology Wake Forest University School of Medicine Winston-Salem, North Carolina

PROFESSIONAL APPOINTMENTS:

1991 - 1993	Fellow Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina

1993 - 2000	Assistant Professor Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina

PROFESSIONAL APPOINTMENTS: (Continued)

2000 - Present	Associate Professor Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
2000 - 2006	Associate Faculty Department of Public Health Sciences Wake Forest University School of Medicine Winston-Salem, North Carolina
2006 – Present	Professor Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina

COMMITTEES:

Intramural:

1993 - 1998	Committee on Admissions and Premedical Relations Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
1993 - Present	Formulary Committee Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
1993 - Present	Research Committee Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
1999-Present	Research "CORE" Committee Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina

1993-Present	Center for Health Promotion Committee Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina
1993 - 1998	Fellowship Committee Department of Family and Community Medicine Wake Forest University School of Medicine Winston-Salem, North Carolina

COMMITTEES: (Continued)
Intramural: (Continued)

1996 - 1997	Early Detection, Rehabilitation and Medical Outcomes Program Comprehensive Cancer Center Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
2000 - 2006	Intramural Research Support Committee Wake Forest University School of Medicine Winston-Salem, North Carolina
2000 - Present	Phase I Committee Wake Forest University School of Medicine Winston-Salem, North Carolina
2001 - Present	Cancer Committee Wake Forest University School of Medicine Winston-Salem, North Carolina
2002 – 2006	Committee on Undergraduate Medical Education Wake Forest University School of Medicine Winston-Salem, North Carolina
2003-2006	Dean's Faculty Development Committee Wake Forest University School of Medicine Winston Salem, North Carolina
2007-2008	Tobacco Free Campus Committee Wake Forest University Health Sciences

Extramural:

1995 - 2000	Tobacco Control Subcommittee North Carolina Medical Society
1996 - 2000	Oral Cancer Work Group Centers for Disease Control and Prevention, National Institute of Health and the American Dental Association
1997, 1999, 2001	Invited Participant, October 1997, Professional Education and Practices Subcommittee, National Strategic Planning Conference for the Prevention and Control of Oral Cancer (Centers for Disease Control and Prevention, National Institute of Health and the American Dental Association)

COMMITTEES: (Continued)
Extramural: (Continued)

2000 - 2001	Conference Planning Committee Association of Teachers of Preventive Medicine 60th Annual Meeting Washington, D.C.
2000 - 2001	Clinical Prevention Subcommittee Chair Association of Teachers of Preventive Medicine 60th Annual Meeting Washington, D.C.
2002-2006	Member and Test Item Writer Community-based Care Committee Step 3 USMLE National Board of Medical Examiners Philadelphia, PA
2002	Participant Diversity Workgroup Strategic Planning Project Tobacco Prevention and Control Branch North Carolina Department of Health and Human Services, Raleigh, NC
2003	Invited Peer Reviewer Minnesota Tobacco Settlement Tobacco Control Grants Madison, WI, March 2004

2003 – Present	Member Scientific Advisory Board North Carolina Prevention Partners
2004 – Present	Peer Reviewer Scientific Study Section G National Cancer Institute
2005	Scientific Review Panel The 4th Annual World Assembly on Tobacco Counters Health, New Delhi, India.
2005	Awards Committee The 4th Annual World Assembly on Tobacco Counters Health, New Delhi, India.
2008	Member, Special Emphasis Panel for International Research Scientist Development Awards (K01 Mechanism) Fogarty International Center National Institute of Health.
2009	Member Scientific Review Panel ZRG1 BDA-K 50 Study Section (R03) Fogarty International Center Washington, DC
2009-Present	Member Scientific Review Panel Cancer Control Career Development Award Committee American Cancer Society
2012-present	Member, Governor's Advisory Board on Cancer Control, North Carolina.

GRANTS:

1993 - 1995	Co-Investigator $70,000 Cancer Prevention Training Grant R25-CA57707-02

GRANTS: (Continued)

1994 - 1997	Principle Investigator Intramural Innovations in Medical Education Grant,

"Teaching Medical Students Smoking Cessation Using Standardized Patients" ($21,000) Awarded by Committee on Graduate Medical Education, Bowman Gray School of Medicine

1994 - 1998 — Medical Director
Fracture Intervention Trial
Multicenter, placebo controlled randomized clinical trial assessing utility of alendronate in prevention of osteoporosis-related fractures; sponsored by Merck Research Laboratories (5% Salary Support)

1994 - 1999 — Medical Director
Risedronate in Osteoporosis Safety and Efficacy Trial:Multicenter, placebo-controlled trial assessing safety and efficacy of risedronate in prevention of osteoporosis sponsored by Proctor and Gamble (4% Salary Support)

1995 - 1996 — Medical Director
Precose Resolution of Optimal Titration to Enhance Current Therapies [PROTECT]. A 28-week open label trial evaluating stepped titration of acarbose dosing. Sponsored by Bayer Corporation

GRANTS: (Continued)

1995 - 1997 — Medical Director
Southwest Oncology Group Prostate Cancer Preventive Trial. Seven year double blind, placebo controlled multicenter trial evaluating finesteride in prostate cancer prevention (5% Salary Support)

1996 - 1999 — Co-Investigator
"Bioethical Decision-Making Curriculum for a Family Medicine Residency"
Geriatrics educational grant using a variety of methods to teach ethical issues involved in end of life care, advanced directives, and care of

chronically ill seniors.
Mary Reynolds Babcock Foundation
($9,859 Direct Costs)

1997 - 1998 — Co-Investigator
Osteoporosis Education Intervention
Merck Foundation
($5,000 Direct Costs)

1998 - 2003 — Medical Director
FIT Long-Term Extensions Study (FLEX)
Merck Research Laboratories
(5% Salary Support)

1998 - 2000 — Principal Investigator
Teaching Smoking Cessation to Medical Students Using Standardized Patients
March of Dimes
($4,650 Direct Costs Annually for 3 Years)

1998 - 2003 — Principal Investigator
Teaching Smoking Cessation to Medical Students Using Standardized Patients
Glaxo Wellcome Unrestricted Educational Grant
($3,000 Annually)

1999 - 2002 — Medical Director, Co-Investigator
Program to Increase Screening Mammography
Funded by the National Cancer Institute
(10% Salary Support)

GRANTS: (Continued)

September - December, 2000 — Principal Investigator
Evaluation of the Efficacy of Pleconaril in Upper Respiratory Infections. Sponsored by ViroPharma.
$68,400

January 2001 - June 2001 — Principal Investigator
Prevalence of Early Renal Insufficiency
Sponsored by OrthoBiotech
$12,500

September 2002- January 2003 — Principal Investigator
GLAD Study (Astra-Zenica 242)

	Evaluation of new thioglitazone in control of diabetes $30,000
January 2003- August 2003	Principal Investigator Safety and efficacy of low dose Avandia Glaxo SmithKlein $30,000
July 2003-August 2009	Principal Investigator National Cancer Institute R25CA0965662 Web-Based, Culturally Relevant Tobacco Intervention Curriculum for Medical Schools $1.6 million (% salary support)
August 2007-Present	Principal Investigator National Cancer Institute Nutrition, Exercise and Weight Management Curriculum for Medical Schools $1.6 million (35% Salary Support)
August 2009-present	Co-Principal Investigator. NCI 1R01CA141643-01 Project Title: Smokeless Tobacco Use in College Students Students ($2.93 million direct; $950308 indirect over 5 years).
August 2009-Present	Co-Investigator (Kristie Foley, PI) NCI 1 R21 DA024631-01 Implementation and Dissemination of Tobacco Cessation Strategies in Free Clinics ($403,166 over 2 years).
September 2010-Present	Co-Principal Investigator

HONORS:

Undergraduate:	Phi Beta Kappa Omicron Delta Kappa, National Leadership Society Phi Eta Sigma, Freshman Honor Society Alpha Epsilon Delta, Premedical Honor Society
Medical School:	University of North Carolina Foreign Fellowship Award MAP International Fellowship

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HONORS (continued)

Residency:	Society of Teachers of Family Medicine Resident Teaching Award for Excellence in Clinical Teaching
	Outstanding Resident Award, elected by the faculty of the Department of Family Medicine, Bowman Gray School of Medicine
Public Health School:	Merit-based full scholarship, M.P.H. Program, The Johns Hopkins University School of Hygiene and Public Health
Faculty:	Medical Foundation Teaching Scholar for Excellence in Scholarship and Clinical Teaching. Awarded by the Dean, Bowman Gray School of Medicine of Wake Forest University
	Excellence in Research Award. Awarded jointly by the President and by the Dean, Wake Forest University Health Sciences, November 15, 2004
State:	North Carolina Prevention Partners Program of the Year Award in Health, 2004. Awarded for the Wake Forest University Tobacco Intervention Programs, September 8, 2004
National	Gabriel Smilkstein Innovations in Behavioral Medicine Education Award. Awarded at the 20th Forum for the Behavioral Sciences in Family Medicine for "Teaching Medical Students Smoking Cessation Using Standardized Patients." September 6, 1999, Chicago
	Association of Teachers of Preventive Medicine Outstanding Program of the Year Award for "Teaching Medical Students Smoking Cessation Using Standardized Patients." Savannah, GA, April 4, 2001

PUBLIC HEALTH EXPERIENCES:

January - March, 1986	Acting Intern Village Health Organizer Hôpital Evangelique Bembéreké Republic of Benin West Africa
1991 - 1993	Epidemiology and Biostatistics courses, as part of Faculty Development Fellowship Department of Family and Community Medicine Bowman Gray School of Medicine of Wake Forest University Winston-Salem, North Carolina
July - December, 1988	Outbreak Investigator Division of Epidemiology and Disease Control Maryland Department of Health and Mental Hygiene Baltimore, Maryland
January - February, 1989	Consultant Area Health Survey World Harvest Mission Uganda and Democratic Republic of Congo (Formerly Zaire)
March - April, 1989	Consultant Acellular Pertussis Vaccine Trials Division of Biometry and Epidemiology National Institutes of Allergy and Infectious Diseases Bethesda, Maryland

OTHER INTERNATIONAL EXPERIENCES:

June - August, 1979	Microbiology Technician Laboratorie Vernier Montbéliard, France
July - August, 1981	Student French Linguistics Univerisité de Besançon Besançon, France
June - August, 1982	Surveyor of indigenous churches for local pastors and the Liberian Ministry of Education, Monrovia, Liberia; co-authored book summarizing findings.

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LANGUAGE ABILITY: Read, write, speak French

PROFESSIONAL MEMBERSHIP:
American Medical Association
American Academy of Family Physicians
Christian Medical and Dental Society
North Carolina Medical Society
North Carolina Academy of Family Physicians
Society of Teachers of Family Medicine
Association of Teachers of Preventive Medicine
American Public Health Association

PUBLICATIONS AND PRESENTATIONS:

Peer Reviewed Publications:

Dumler JS, Osterhout GJ, Spangler JG, Dick JD: Vibrio cholera non-serogroup 01 cystitis. J. Clin. Microbiol. 1989. 27: 1898-99.

Spangler JG, Konen JC. Predicting Exercise and Smoking Behaviors in Diabetes and Hypertension: Age, Race, Gender, and Psychological Factors. Arch Fam Med. 1993;2:149-155.

Spangler JG, Konen JC, McGann KP. Prevalence and Predictors of Problem Drinking Among Primary Care Diabetic Patients. J Fam Pract 1993;37:370-375.

McGann KP, Marion GS, Camp DL, Spangler JG. The influence of gender and race on mean body temperature in a population of healthy older adults. Arch Fam Med 1993;2:1265-1267.

Spangler JG, Kirk JK, Knudson MP. Uses and safety of acyclovir in pregnancy. Journal of Family Practice, 1993;38:186-191.

Spangler JG. Clinical Preventive Medicine [Book Review]. Arch Fam Med 1994;3:836-837.

Spangler JG, Konen JC. Oral Health Behaviors in Medical Patients with Diabetes Mellitus. J Dental Hygiene 1994;68:287-293.

Spangler JG, Kirk JK, Knudson MP. Acyclovir Therapy [Letter]. J Fam Pract 38:567, 1994.

Spangler JG, Salisbury PL

Spangler JG, Dignan MB, Michielutte R. Smokeless Tobacco Use Among American Indian Women in Southeastern North Carolina. MMWR 1995;44:113-117.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Peer Reviewed Publications: (Continued)

Spangler, J.G., "Open Your Mouth and Say 'Ah...'": Oral Cancer Screening and Family Physicians. [Editorial]. Arch Fam Med 1995; 4:585-586.

Spangler, J.G. and J.C. Konen, Hypertension, Hyperlipidemia And Abdominal Obesity And The Development Of Microalbuminuria In Patients With Non-insulin Dependent Diabetes Mellitus. Journal of American Board of Family Practice, 1996; 9:1-6.

Spangler, J.G. and J.C. Konen, "Annual Screening Mammography Among Diabetic Women: Demographics, Psychological Stress And Family Functioning," Family Community Health 1996;18(4):1-8.

Spangler JG. Guide to Clinical Preventive Services. [Book review]. Arch Fam Med 1996;5:363.

Kirk JK, Spangler JG. New Agents for Osteoporosis: Alendronate and other biphosphonates. American Fam Physician 1996;54:2053-2060.

Spangler JG, Dignan MD, Michielutte R. Tobacco use among Native American Women in Western North Carolina: Demographic, Social Support, Health Behavioral and Cultural Correlates. American J Public Health; 1997;87:108-111.

Spangler JG, Bell RA, Summerson JH, Konen JC. Correlates of abnormal urinary albumin excretion rates among primary care patients with hypertension. J Amer Board Fam Pract, 1997;10:180-84.

Spangler JG, Bell RA, Dignan MB, Michielutte R. Prevalence and Predictors of Tobacco Use Among Lumbee Indian Women, Robeson County, North Carolina. Journal of Community Health, 1997;22:115-125.

Spangler JG, Bell RA, Summerson JH, Konen JC. Hyperinsulinemia in hypertension: the influence of race, sex, abdominal obesity and hyperlipidemia. Arch Fam Med, 1998;7:53-56.

Spangler JG, Bell RA, Knick S, Michielutte R, Dignan MB, Summerson JH. Church related correlates of tobacco use among Lumbee Indians in North Carolina. Ethnicity Dis, 1998;8:73-80.

Bell RA, Summerson JH, Spangler JG, Konen JC. Body fat, fat distribution, and psychosocial factors among patients with type 2 diabetes mellitus. Behav Med, 1998; 24:138-143.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Peer Reviewed Publications: (Continued)

Bell RA, Summerson JH, Konen JC, Kirk J, Spangler JG: Racial differences in symptoms and complications of type 2 diabetes in a primary care practice [abstract]. Ann Epidemiol 1998; 8(7):469-470.

Spangler JG. Oral Cancer, Fourth Edition [Book Review]. Family Medicine, 1999; 31:42.

Spangler JG, Bell RA, Knick S, Michielutte R, Dignan MB. Epidemiology of tobacco use among Lumbee Indians. J Cancer Ed, 1999; 14:34-40.

Summerson JH, Bell RA, Konen JC, Spangler JG, Shelton B. Association of gender with symptoms and complications in type 2 diabetes mellitus. Women's Health Issues, 1999; 9:176-182.

Bell RA, Summerson JH, Konen JC, Goff Jr., DC, Spangler JG. [Abstract] Differential impact of cardiovascular disease risk factor clustering on vascular and renal disease among African-American and white patients with type 2 diabetes mellitus. Circulation 2000; 101:729.

Kirk JK, Spangler JG, Celestino FS. Prevalence Of Osteoporosis Risk Factors And Therapy In A Primary Care Population. Pharmacotherapy, 2000; 20:405-409.

Bell RA, Spangler JG, Quandt SA. Smokeless tobacco use among adults in the southeast. So Medical Journal, 2000; 93:456-462.

Spangler JG, Summerson JH, Bell RA, Konen JC. Smoking status and psychosocial variables in type 1 diabetes mellitus. Addict Behavior, 2001;26:21-29.

Spangler, J.G., R. Michielutte, R.A. Bell, and M.B. Dignan, "Association Between Smokeless Tobacco Use And Breast Cancer Among Native American Women In North Carolina," Ethnicity Dis, 2001;11:36-43.

Spangler JG, Quandt S, Bell RA. Smokeless tobacco and osteoporosis: a new relationship? Medical Hypotheses, 2001;56:553-557.

McCurdy, E.A. Spangler, J.G., Wofford, M.M., Chauvenet, A.R., and McLean, T.W. "Complimentary and Alternative Therapy Use in Pediatric Oncology Patients", [Abstract] J Ped Heme Onc 23:A27, 2001.

Spangler J.G., Michielutte R, Bell R.A., Knick S., Dignan M.B., Summerson J.H. Dual tobacco use among Native American adults in southeastern North Carolina. Preventive Medicine, 2001;32:521-528.

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PUBLICATIONS AND PRESENTATIONS: (Continued)

Peer Reviewed Publications: (Continued)

Spangler J.G., Summerson J.H., Konen J.C., Bell R.A. Cigarette smoking and erectile dysfunction among hypertensive males [Letter]. Journal of Family Practice, 2001;50:73.

Spangler, J.G. Enarson, C., Eldridge, C. Tobacco Dependence Curriculum: An Innovative and Integrated Approach. Acad Med 2001;76:115-116.

Spangler, J.G. Pyoderma Gangrenosum in a Patient with Psoriatic Arthritis. J Amer Board Fam Prac, 2001; 14:466-469.

Quandt SA, Bell RA, Spangler JG, Case LD. Osteoporosis in a multi-ethnic population: risk factors and bone mineral density [Abstract]. Gerontologist 2001; 41(special I):170.

Kirk, J.K., Nichols, M., and Spangler, J.G. Use of a Peripheral Dexa Measurement for Osteoporosis Screening. Fam Med 2002; 34:201-205.

Bell, R.A., Quandt, S.A., Spangler J.G., Case D. Dietary and supplemental calcium intake among older African American, European American and Native American women in a rural southeastern community. J Am Dietetic Assoc, 2002; 102:844-847

Bell RA, Summerson JH, Konen JC, Goff Jr., DC, Spangler JG. Differential impact of cardiovascular disease risk factor clustering on vascular and renal disease among African-American and white patients with type 2 diabetes mellitus. Ethnicity Disease, 2002; 12:530-534.

Sharpe, P., Miciellutte R, Freimanis, R., Cunnningham, L, Spangler, J.G, Burnette V. Reported pain following screening mammography. Arch Intern Med 2003; 163: 833-836.

Spangler JG. *Lifeline.* [Guest interview] Lancet June 8, 2002.

Spangler JG, George G, Long-Foley K, Crandall S. Tobacco Intervention Training: Current efforts and gaps in US medial schools. JAMA. 2002; 288:1102 - 1109.

McCurdy, E.A. Spangler, J.G., Wofford, M.M., Chauvenet, A.R., and McLean, T.W. Religiosity is associated with the use of complementary medical therapies by pediatric oncology patients. *J Ped Hem Onc* 2003 25(2): 125-129.

Spangler, J.G., Quandt, S.A., Bell, R.A., Case, L.D. Tobacco use in a tri-ethnic population of older women in southeastern North Carolina. *Ethnic Dis* 2003; 13:226-232.

Spangler JG, Arcury T, Quandt SA, Preisser J. Tobacco use among Mexican farmworkers in North Carolina: implications for agromedicine. J Agromed, 2003; 9:83-91.

5/1/13

Long-Foley K, Crandall S, Roman M, George G, Spangler JG. Evaluation of a smoking cessation counseling paradigm used by standardized patient instructors. J Cancer Ed, 2003; 18:134-141.

Sharp PC, Michielutte R, Spangler JG, Cunningham L, Freimanis R. Primary care providers' concerns and recommendations regarding mammography screening for older women. J Cancer Educ. 2005 Spring; 20(1):34-8.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Peer Reviewed Publications: (Continued)

Quandt SA, Spangler JG, Bell RA, Case LD. Smokeless tobacco use is associated with accelerated bone loss among older women. In press, J Cross Cult Gerontol, 2005.

Spangler JG. [Book Review] Abrams DB et al (Eds.). *The Tobacco Dependence Treatment Handbook*. Lancet April 2003.

Michielutte R, Sharp PC, Foley KL, Cunningham LE, Spangler JG, Paskett ED, Case LD. Intervention to increase screening mammography among women 65 and older. Health Educ Res. 2005 Apr; 20(2):149-62

Elsner R, Spangler JG. Neurotoxicity of Manganese: Public Health Danger in the Shower? Medical Hypotheses 2005; volume 65; e-release May 21, 2005.

Foley KL, George G, Crandall SJ, Walker KH, Marion GS, Spangler JG. Training and evaluating tobacco specific standardized patient instructors. Fam Med. 2006 Jan;38(1):28-37.

Spangler, JG. Bone biology and physiology: Implications for novel osteoblastic osteosarcoma treatments? Med Hypotheses. 2007 Jul 31; [Epub ahead of print]

Spangler JG. NMDA Receptor Blockade: A Novel Avenue for Tobacco Intervention? Med Hypotheses 2008;70(5):1073-4.

Spangler JG, Foley KL, Crandall S, Lane C, Walker K, MacRae M, Vaden K, Marion G. Implementing smokeless tobacco instruction into medical education: Addressing the gap. Teach Learn Med, 2009; Jan-Mar;21(1):33-7..

Crandall S, Foley K, Marion G, Walker K, Kronner D, Vaden K, Spangler J. Training Guide for Standardized Patient Instructors to Teach Medical Students Culturally Competent Tobacco Cessation Counseling. MedEdPORTAL; 2008. Available from: http://services.aamc.org/jsp/mededportal/retrieveSubmissionDetailById.do?subId=762

Spangler JG, Reid JC. Environmental Manganese and Cancer Mortality Rates by County in North Carolina: An Ecological Study. Biol Trace Elem Res. 2009 Jun 4. [Epub ahead of print]

Marion G , Crandall S, Hildebrandt C, Walker K, Gamberini B, Spangler J, Tobacco Ties. MedEdPORTAL; 2009. Available from: http://services.aamc.org/30/mededportal/servlet/s/segment/mededportal/?subid=3138

Spangler AH, Spangler JG. Groundwater manganese and infant mortality rate by county in North Carolina. Ecohealth, 2010; 6:596-600.

Miller DP, Spangler JG, Case D, Goff DC, Singh S, Pignone MP. Effectiveness of a Web-based Colorectal Cancer Screening Patient Decision Aid: A Randomized Controlled Trial in a Mixed Literacy Population. Am J Prev Med. 2011 Jun;40(6):608-15.

Miller PM, Heideman PW, Ravenel MC, Spangler JG, Mauldin MP, Hill EG, Onicescu G. Preliminary development and evaluation of online tobacco and alcohol modules for dental students. Journal of Dental Education June 1, 2011 vol. 75 no. 6 791-796

Sutfin EL, McCoy TP, Reboussin BA, Wagoner KG, Spangler J, Wolfson M. Prevalence and correlates of waterpipe tobacco smoking in college students in North Carolina. Drug Alcohol Depend. 2011 May 1;115(1-2):131-6. Epub 2011 Feb 25.

Singh S, Loke YK, Spangler JG, Furberg CD. Risk of serious adverse cardiovascular events associated with varenicline: a systematic review and meta-analysis. CMAJ, 2011; DOI:10.1503 /cmaj.110218.

Pockey JR, Song EY, Sutfin E, Spangler JG, Jones C, Helme DW, Foley KL. The need for tobacco cessation in a free clinic population. Addictive Behaviors, 2012; 37: 1299–1302.

Spangler JG, Song EY, Pockey JR, Sutfin EL, Helme D, Jones C, Foley KL. Predictors of Clinician Tobacco Intervention Counseling in Six North Carolina Free Clinics. *Tobacco Use Insights* 2012:5 11-16 doi: 10.4137/TUI.S9350

Miller D, Vitolins M, Crandall S, Vernon J, Kronner D, Jamback G, Davis S, Vaden K, Ip E, Marion G, Spangler J. NEW Lifestyle: A downloadable teaching and learning program for Nutrition, Exercise, and Weight management. MedEdPORTAL; 2012. Available from: http://www.mededportal.org/publication/9256.

Weaver KE; Danhauer SC; Tooze JA; Blackstock AW; Spangler J; Thomas L; Sutfin EL. Smoking cessation counseling beliefs and behaviors of outpatient oncology providers. Oncologist. 2012;17(3):455-62. Epub 2012 Feb 14.

Spangler JG. His Patients. My Patients. JAMA 2011;306(21):2305-2306. doi: 10.1001/jama.2011.1747.

Csákányi Z, Czinner A, Spangler J, Rogers T, Katona K. Relationship of passive cigarette smoking to otitis media (OM) in children. International Journal of Paediatric Otolaryngology, 2012 Jul;76(7):989-93. Epub 2012 Apr 15.
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Kristie L. Foley, Jessica R. Pockey, Donald W. Helme, Eun-Young Song, Kate Stewart, Cindy Jones, John G. Spangler and Erin L. Sutfin. Integrating Evidence-Based Tobacco Cessation Interventions in Free Medical Clinics: Opportunities and Barriers. Health Promotion Practice. Published online 3/30/12. DOI: 10.1177/1524839911433465

Vitolins MZ, Crandall SJ, Miller DP, Ip Edward, Marion GS, Spangler JG. Obesity educational interventions in US medical schools: a systematic review and identified gaps. Med Teach Learn, July 2012, DOI:10.1080/10401334.2012.692286.

Spangler JG. Diabetes mortality and environmental heavy metals in North Carolina counties: an ecological study. Journal of Diabetes Mellitus, 2012; 2: 369-372. doi:10.4236/jdm.2012.24057

Spangler JG. Air Manganese Levels and Chronic Liver Disease Mortality in North Carolina Counties. Int. J. Environ. Res. Public Health 2012; 9:3258-3263

Spangler JG. Association of Suicide Rates and Coal-Fired Electricity Plants by County in North Carolina. Journal of Mood Disorders, in press, 2012.

Ip EH, Marshall S, Vitolins M, Crandall SJ, Davis S, Miller D, Kronner D, Vaden K, Spangler J. Measuring Medical Student Attitudes and Beliefs Regarding Patients Who Are Obese. Academic Medicine, in press.

Miller DP, Spangler JG, Vitolins MZ, Davis SW, Ip EH, Marion GS, Crandall SJ. Medical Students are Unaware of Personal Anti-Obesity Prejudice. Academic Medicine, in press.

Antal M, Forster A, Zalai Z, Barabas K, Spangler J, Braunitzer G, Nagy K. A video feedback-based tobacco cessation counselling course for undergraduates-preliminary results. European Journal of Dental Education, 2013; 17: e166–e172.

John Spangler, Jessica Richardson Pockey, Erin L. Sutfin, Eun-Young Song, Beth A. Reboussin, Kimberly Wagoner, Mark Wolfson. Correlates of Smokeless Tobacco Use among First Year College Students in North Carolina and Virginia. Journal of American College Health, under review, January 2013.

Csákányi Z, Czinner A, Spangler J, Katona G. Tobacco intervention teachable moments for pediatric otolaryngologists: atopy and second hand smoke exposure among children. Journal of Laryngology and Otology, under review January, 2013.

Books:

Spangler J.G. [Guest Editor]. *Primary Care Clinics in Office Practice: Women's Medicine.* Philadelphia: W. B. Saunders Company, 1997;Volume 24, Number 1.

Spangler J.G. [Guest Editor]. *Primary Care Clinics in Office Practice: Tobacco Use.*

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Philadelphia: W. B. Saunders Company, 1999;Volume 26, Number 3.

Book Chapters:

Spangler JG. Influenza. In: Rakel, RE (Ed). *Saunders Manual of Medical Practice.* Philadelphia: W. B. Saunders Company, 1996; pp. 877-879.

Spangler JG. Influenza. In: Rakel, RE (Ed). *Saunders Manual of Medical Practice*, 2nd edition. Philadelphia: W. B. Saunders Company, 2000;pp. 1148-1150.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Book Chapters: (Continued)

Spangler JG. Leukoplakia and erythroplasia. In: Rakel, RE (Ed). *Saunders Manual of Medical Practice.* Philadelphia: W. B. Saunders Company, 1996;pp. 968-969.

Spangler JG. Leukoplakia and erythroplasia. In: Rakel, RE (Ed). *Saunders Manual of Medical Practice*, 2nd edition. Philadelphia: W. B. Saunders Company, 2000;pp. 1258-1260.

Bowman MA, Spangler JG. Screening, health promotion and prevention in women. In: Alto, W. (Ed.). *Primary Care: Clinics in Office Practice.* Philadelphia: W. B. Saunders Company, December 1995;pp. 661-677.

Bowman MA, Spangler JG. Prevention of osteoporosis. In: Spangler, JG (Ed). *Primary Care Clinics in Office Practice: Women's Medicine.* Philadelphia: W. B. Saunders Company; 1997;24:27-36.

McGann KP, Spangler JG. Alcohol, tobacco and illicit drug use among women. In: Spangler, JG (Ed.). *Primary Care Clinics in Office Practice: Women's Medicine.* Philadelphia: W. B. Saunders Company; 1997;24:113-122.

Spangler JG, Salisbury PL. Oral lesions. In: Kozol, RA, Fromm, D, Konen, J (Eds). *When to Call the Surgeon in Primary Care Medicine.* Philadelphia: F. A. Davis Company, 1998.

Spangler, J.G. Tobacco Use and Hormone Related Diseases. In: Spangler JG (Ed). *Primary Care Clinics in Office Practice: Tobacco Use.* Philadelphia: W. B. Saunders Company, 1999.

Spangler, J.G., Silbergleit, R. Vascular Emergencies. In Bowman MA, Baxt WG (Eds). *Office Emergencies.* Philadelphia: W. B. Saunders Company, 2002; pp. 63-88.

Jagoda A., Spangler J.G. Seizures. In Bowman MA, Baxt WG (Eds). *Office Emergencies.* Philadelphia: W. B. Saunders Company, 2002; pp. 95-106.

Spangler JG, Kirk JK. Pyelonephritis. In: Danbro M. (Ed). *Griffith's: 5 Minute Consult.* Philadelphia: Lippincott Williams and Wilkins, 2000, pp. 900-901.

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Spangler JG, Kirk JK. Pyelonephritis. In: Danbro M. (Ed), *Griffith's: 5 Minute Consult.* Philadelphia: Lippincott Williams and Wilkins, 2001, pp. 904-905.

Spangler, J.G. Stomatitis. In: Taylor RB. (Ed). *10-Minute Diagnosis: Evidence-Based Assessment in the Time-Limited Encounter.* Baltimore: Lippincott Williams and Wilkins, 2000; pp. 106-108.

Spangler JG. Smokeless tobacco use and cardiovascular disease. In: Varma AK (Ed). *Tobacco Counters Health.* New Delhi: Northern Book Center, 2006; pp 14-17.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Peer Reviewed Publications: (Continued)

Monographs:

Bell RA, Dignan MB, Michielutte R, Sharp P, Blinson K, Spangler JG. Cervical Cancer Education for Native American Women in North Carolina: The North Carolina Cervical Cancer Prevention Project. In: Glover-Sanchez C and Schanche-Hodge F (Eds). *Native Outreach: A Report to American Indian, Alaska Native and Native Hawaiian Communities.* Bethesda: National Cancer Institute. NIH Publications 98-4341, March 1999.

Anonymous (Spangler JG). Oral Cancer. In: North Carolina Cancer Control Plan, 2001-2006, North Carolina Advisory Committee on Cancer Coordinator and Control, Department of Health and Human Services, Raleigh, North Carolina, January 2001.

Educational Materials:

Anonymous (Spangler JG). Patient Information: Quitting Smokeless Tobacco. American Family Physician 52:1431-1432, 1995.

Spangler JG, Cunningham L. Screening Mammography for Elderly Women. In: Attention-Span Newsletter for Cancer Prevention, Issue 1, Winter 1997-1998.

Cruz P, Spangler JG. Osteoporosis Case Studies (Physician Education Monograph and Slide Series). Fort Washington, PA: Merck and Company, 1998.

Anonymous (Spangler J.G.). Smokeless Tobacco in North Carolina. Mental Health Newsletter, East Carolina University, May 1999.

Spangler JG. Doctor-to-Doctor: Smokeless Tobacco: Epidemiology, Health Effects and Cessation Strategies for North Carolina Physicians. North Carolina Medical Society Bulletin Insert, November-December, 1999.

Presentations:

"Group A Beta-hemolytic Streptococcal Pharyngitis Outbreak in a Maryland State Prison: Epidemiologic Considerations." The Annual Workshop for Disease Control, Maryland Department of Health and Mental Hygiene. November, 1988, Baltimore, MD.

"Smoking Cessation: the Teachable Moment." Northwest AHEC Continuing Medical Education Monthly Series, North Wilkesboro, NC, May 5, 1992.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Presentations: (Continued)

"Psychosocial Predictors of Diabetic Problem Drinking." Poster presentation, The Association for Medical Education and Research of Substance Abuse, Bethesda, Maryland, November 12-15, 1992.

"Influenza: Epidemiology and Clinical Considerations." Noon conference presentation, University of Cincinnati, Department of Family Medicine Residency Program, Cincinnati, Ohio, November 24, 1992.

"Problem Drinking in Diabetes: Stress, Family Function and Affect." Mead Johnson Family Medicine Research Forum, Fort Lauderdale, Florida, December 6-8, 1992.

"Psychosocial Predictors of Mammography in Diabetic Women: the Importance of Family Function." Accepted for poster presentation, Third Primary Care Research Conference, Atlanta, January 10-12, 1992.

"Predicting Exercise and Smoking Behaviors in Diabetes and Hypertension: the Role of Psychosocial Parameters." Presented at the 26th Society of Teachers of Family Medicine Annual Spring Conference, San Diego, April 24-28, 1993.

"Psychosocial Predictors of Dental Health Behaviors in Primary Care Diabetic Patients." Poster presentation, the 26th Society of Teachers of Family Medicine Annual Spring Conference, San Diego, April 24-28, 1993.

"Spit to out: Teaching Patients To Quit Smokeless Tobacco." STFM Patient Education Conference, Orlando, Florida, October 1994.

"Behavioral Aspects to Smokeless Tobacco Cessation." The 15th Annual Hinsdale Family Medicine Research Forum, Chicago, September 1994.

"Correlates of Smokeless Tobacco Use Among NC Native American Women." American Public

Health Association, Washington, DC, October 1994.

"The Deadly Quartet and Microalbuminuria Among Patients With Non-Insulin Dependent Diabetes." North American Primary Care Research Group, Toronto, Canada, October 2-5, 1994.

"Opening the Can of Worms: Exploring Complex PTSD in Primary Care." The 15th Annual Hinsdale Family Medicine Research Forum, Chicago, September 1994.

"Racial Differences of Intake of Cardiovascular Risk Factors for Adults with Non-Insulin Dependent Diabetes Mellitus." The 22nd Annual Meeting of North American Primary Care Research Groups, Toronto, Canada, October 2-5, 1994.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Presentations: (Continued)

"Dietary Intake and Locus of Control Among Adults with Non-Insulin Dependent Diabetes Mellitus: Implications for Patient Education." STFM Patient Education Conference, Orlando, Florida, October 1994.

"Smokeless Tobacco Use Among NC Native American Women: Implications for Prevention." The 28th Annual STFM Spring Conference, New Orleans, Louisiana, May 8, 1995.

"Tobacco Use Among Eastern Band Cherokee Women in North Carolina." American Public Health Association, Washington, DC, October 1995.

"Prevalence of Cancer Knowledge and Screening Behaviors Among Lumbee Indian Women." Fourth Annual North Carolina Research Symposium, Research Triangle Park, North Carolina, February 1996.

"Preventive Implications of Tobacco Use Among Eastern Band Cherokee Women." 1996 Annual Spring Conference, Society of Teachers of Family Medicine, San Francisco, May 1996.

"The Challenge of Osteoporosis." Presented to Medical Associates of Surry County, Mt. Airy, North Carolina, July 30, 1996.

"New Approaches to Treating Osteoporosis." Presented to the Department of Family and Community Medicine, Bowman Gray School of Medicine, Winston-Salem, North Carolina, September 17, 1996.

"Lumbee Indian Smokeless Tobacco Use and Cessation Survey: A Pilot Study for Community Education." 1996 Patient Education Conference, Society of Teachers of Family Medicine, Nashville, Tennessee, October 1996.

"Osteoporosis: A Medical Challenge." Visiting Professor Lectureship, Department of Family Medicine, Duke University Medical Center, Durham, North Carolina, March 19, 1997.

"Smoking Cessation in Primary Care." Invited presentation, Carolinas Medical Center, Spring Symposium 1997, Charlotte, North Carolina, May 15, 1997.

"Smoking Cessation: Practice with Standardized Patients." Carolinas Medical Center, Spring Symposium 1997, Charlotte, North Carolina, May 15, 1997.

"Smoking Cessation in Primary Care." Continuing Education for Department of Family Practice, Roanoke, Virginia, December 7, 1997.

"Recent Advances in Osteoporosis." Noon Conference, Department of Family and Community Medicine, Wake Forest University School of Medicine, Winston-Salem, North Carolina, March 17, 1998.

"Smoking Cessation in Pharmacy Practice." AHEC Pharmacy Continuing Education, Babcock Auditorium, Wake Forest University School of Medicine, Winston-Salem, North Carolina, March 26, 1998.

"Recent Advances in Osteoporosis." AHEC Continuing Education Meeting, Conover, North Carolina, March 31, 1998.

"Smoking Cessation in Pharmacy Practice." Northwest AHEC Pharmacy Continuing Education, North Wilkesboro, North Carolina, March 29, 1998.

"Body Composition and Psychosocial Parameters in NIDDM." Society of Teachers of Family Medicine Annual meeting, Chicago, Illinois, April 23, 1998.

"Correlates of Tobacco Use Among Lumbee Indians in North Carolina." Society of Teachers of Family Medicine Annual Meeting, Chicago, Illinois, April 24, 1998.

"Osteoporosis Chart Review Management in a University Family Practice Program." Conference on Patient Education. Orlando, Florida, November 1998.

"Tobacco Control Guide for the Health Provider." Western North Carolina Public Health Association, Nursing Section, Greensboro, North Carolina, May 20, 1999.

"Teaching Smoking Cessation Using Standardized Patients." Award winning presentation at the 20th Annual Forum and Behavioral Sciences in Family Medicine, Chicago, Illinois, September 26, 1999.

"Smokeless Tobacco Use and Breast Cancer Risk Among Native American Women in North Carolina." Society of Teachers of Family Medicine, Orlando, Florida, May 5, 2000.

"Smoking Cessation Among Women." Visiting Professor invited presentation, Department of

OB-GYN, Carolinas Medical Center, Charlotte, North Carolina, May 11, 2000.

"Utilization of a Chart Review for Osteoporosis Patient Education and Evaluation of a Peripheral Dexa Measurement." 22nd Annual Conference on Patient Education, Society of Teachers of Family Medicine, Albuquerque, New Mexico, November 16, 2000.

"Smoking Cessation Training Using Standardized Patients." Association of Teachers of Family Medicine 59th Annual Conference, Savannah, Georgia, April 4, 2001.

"Complimentary and Alternative Medicine Use Among Pediatric Oncology Patients." American Society of Pediatric Hematology/Oncology 14th Annual Meeting, Baltimore, Maryland, April 29, 2001.

PUBLICATIONS AND PRESENTATIONS: (Continued)

Presentations: (Continued)

"Caring for the Underserved: Mammography for Older Women." Society of Teachers of Family Medicine, 34th Annual Spring Conference, May 2001.

"Erectile Dysfunction Among Men with Hypertension Who Smoke," American Society of Hypertension, San Francisco, California, May 19, 2001.

"Tobacco use among North Carolina Native Americans: Implications for health." Presented at the 24th Annual Minority Health Conference, University of North Carolina School of Public Health, March 1, 2002, Chapel Hill, North Carolina.

"Reported and expected pain following mammography screening: Implications for cancer education." European Association for Cancer Education, 15th Annual Scientific Meeting, Nijmegen, the Netherlands, May, 2002.

"Tobacco cessation for physician assistants." Invited presentation at the Annual North Carolina Academy of Physician Assistants Summer Meeting, Myrtle Beach, SC, August 23, 2002.

"Tobacco cessation for physician assistants." Invited presentation at the Annual North Carolina Academy of Physician Assistants Winter Meeting, Durham, NC, February 28, 2003

"Development of a Standardized Evaluation Scale for Tobacco Interventions with Standardized Patients." Preventive Oncology, February 8, 2003, Nice, France.

"Directed Education About Cultural Sensitivity and Tobacco Intervention Program: The DEACS TIP Curriculum Development at Wake Forest University." Invited Presentation at NCI-sponsored R25 Tobacco Curriculum Development Meeting, Boston University, Host Institution, Waltham, MA, October 11-12, 2003.

"New Directions in Global Tobacco Control." Invited Keynote presentation, the 3rd Annual World Assembly on Tobacco Control and Health," sponsored by the World Health

Organization, New Delhi, India, March7-11, 2004 (invited; could not attend due to death in family)

"Tobacco Addiction for Physician Assisants." Invited speaker, NC Academy of Physician Assistants, Research Triangle Park, February 12, 2005.

"Tobacco Treatment Education: Strategic Planning for Successful Curricula." Invited Panelist, Southeast Regional AAMC Meeting, Winston-Salem, NC, April 8, 2005

"Development of a Standardized Patient Training Program for Tobacco Cessation Education." Society of Teachers of Family Medicine, New Orleans, LA, May 2, 2005.

"Tobacco Cessation for the Clinician." Presentation to medical staff, Galax Hospital, Galax Virginia, August 10, 2005.

"Smokeless Tobacco and Health." Presentation to North Carolina Partners in Cancer Control, convened by the Tobacco Control Branch of the North Carolina Department of Environment and Health Resources, October 28, 2005.

"The Biology and Pharmacology of Nicotine Addiction." Cancer Center of Gaston Mem Hosp, Gastonia, NC, November 22, 2005.

"Smokeless Tobacco and Health?" Invited Keynote presentation, the 4th Annual World Assembly on Tobacco Control and Health," sponsored by the World Health Organization, New Delhi, India, December 9, 2005

"Tobacco Control Globally." Invited panelist, the 4th Annual World Assembly on Tobacco Control and Health," sponsored by the World Health Organization, New Delhi, India, December 9, 2005

"Developing a Persona to Tailor Web-based Curricula for Medical Students." AACE Annual Meeting , October 12-14, 2006 in San Diego, California.

"Smokeless tobacco use in medical education: Addressing the gap." Society of Teachers of Family Medicine, Baltimore, MD, May 1, 2008.

"QUIT: A National Tobacco Intervention Curriculum." International Society for Hypertension among Blacks, New Orleans, Louisiana, July 18, 2008.

"Using Standardized Patient Instructors to Train Medical Students for Weight Management and Physical Activity Counseling." Society of Teachers of Family Medicine, Denver, May 1, 2009.

"Portraying Standardized Patients: Impact on Actual Lifestyle Behaviors." Food & Nutrition Conference & Expo (FNCE), Boston November 9, 2010.

"Smokeless Tobacco Use among College Students." National Cancer Institute Grantees Meeting, Baltimore, Maryland, February 19, 2010.
5/1/13

"Medical Students Are Unaware of Personal Bias Toward Obese Patients." Society of General Internal Medicine, Minneapolis MN, April 29, 2010.

"Environmental Manganese and Infant Mortality in North Carolina Counties." National Environmental Health Association Annual Meeting, Albuquerque, New Mexico, June 6, 2010.

"Waterpipe use among college students." Sutfin, Erin; McCoy, Thomas; Reboussin, Beth; Wagoner, Kimberly; Spangler, John; Wolfson, Mark. APHA 137th Annual Conference, Philadelphia, PA; November 9, 2009.

"Does Medical History and Chief Complaint Influence Provider Behavior for Implementing the 5 A's to Decrease Tobacco Use among Free Clinic Patients?" Association for Prevention Teaching and Research Annual Meeting, Washinton, DC, March 18, 2011.

"Impact of a Randomized Trial to Increase Adoption of the US Public Health Service Guidelines for Free Clinics". K.L. Foley, E.Y. Song, J.G. Spangler, D.W. Helme, J.R. Pockey, K. Stewart, C. Jones, E.L. Sutfin. APHA National Meeting, October 31, 2011.

"Smokeless Tobacco Use among College Students: Data Update." National Cancer Institute Grantees Meeting, Bethesda, Maryland, April 12, 2011.

"College Students' Use of Snus, Snuff, and Chewing Tobacco." 19th Annual Society of Prevention Research, May 31-June 3, 2011.

"Tobacco Initiation by Youth: Which Product is First?" APHA, Washington DC, October 31, 2011.

"College Student Tobacco Use and the Campus-Community Environment." APHA, Washington DC, October 31, 2011.

"Update on Men's Health." 11th Annual Geriatrics Symposium, Clemmons, NC February 19, 2012.

"Perceptions of smokeless tobacco use among college students." National Cancer Institute Grantees Meeting, Houston, March 12, 2012.

"Prevalence and Correlates of Smokeless Tobacco Use among College Students." Society of Teachers of Family Medicine, Seattle, WA, April 30, 2012.

"Obesity Education: The NEW Lifestyle Curriculum." Society of Teachers of Family Medicine, Seattle, WA, May 1, 2012.

"Smokeless tobacco use among college students: Marketing and perceptions." National SPIT Tobacco Summit, Austin Texas, May 10, 2012.

5/1/13

Bell R, Spangler J, Golden S, Kimes C, Faircloth R, Locklear T, Oxendine A. Development and Implementation of the Native Proverbs 31 Health Project. Poster Presentation, 2012 Summit on the Science of Eliminating Health Disparities. December 18, 2012, National Harbor, MD.

Pending:

College students' interest in trying dissolvable tobacco products, 2013 SRNT Annual Meeting, March 13-16, Boston, MA.

The association of campus demographics with tobacco product choice and perceived harm among college students. 2013 SRNT Annual Meeting, March 13-16, Boston, MA.

College health providers' tobacco cessation counseling practices. 2013 SRNT Annual Meeting, March 13-16, Boston, MA.

Predictors of a motivational interviewing intervention with college student tobacco users. 2013 SRNT Annual Meeting, March 13-16, Boston, MA.

Household secondhand smoke policies and ear, nose and throat symptoms in children. 2013 SRNT Annual Meeting, March 13-16, Boston, MA.

Community Presentations:

"Osteoporosis and Alendronate." Presentation to participants of the Fracture Intervention Trial, Greensboro, North Carolina, April 3, 1995.

"Preventing Osteoporosis with Risedronate." Presentation to participants of the Risedronate in Osteoporosis Safety and Efficacy Trial (ROSET), Winston-Salem, North Carolina, April 17, 1995.

"Osteoporosis: Prevention and Treatment." Community Presentation, King, North Carolina, April 17, 1996.

"New Agent for Treating Osteoporosis." Presentation to pharmacists, Winston-Salem Health Care, Winston-Salem, North Carolina, June 7, 1996.

"Prevention and Treatment of Osteoporosis." Community Presentations, Sara Lee Hosiery, Winston-Salem, North Carolina, February 18, 19 and 20, 1997.

"Prevention and Treatment of Osteoporosis." Community Presentation, Hanes Mills, Winston-Salem, North Carolina, May 7, 1997.

"Prevention and Treatment of Osteoporosis." Community Presentation, Sara Lee Direct, Rural Hall, North Carolina, May 16, 1997.

"Who me? Osteoporosis?" Community Presentation to patients of Department of Family and Community Medicine, Wake Forest University School of Medicine, Winston-Salem, North Carolina, March 21 and 23, 1998.

PUBLICATIONS AND PRESENTATIONS: (Continued)

"Erectile Dysfunction in Primary Care: VDTED/BDTVD." Presented to community physicians, South by Southwest Restaurant, Winston-Salem, NC, May, 2002.
Pine Room Restaurant, Charlotte NC, September 4, 2002

Radio/Television Appearances:

"Herbal Medicine." Fox 45 News, April 20, 1997.

"Teaching Smoking Cessation Using Standardized Patients." WFDD Public Radio, September 3, 1999

Radio and Television Appearances: (Continued)

"Erectile dysfunction among men with hypertension who smoke."
Interviews with:
Vivian Schenker, May 20, 2001; Live appearance on Radio National Breakfast Program, Radio National Network, Australia
ABC National Radio News, May 20, 2001
BBC News, May 20, 2001
New York Daily News, May 22, 2001

"Tobacco Intervention Training: Current Efforts and Gaps in U.S. Medical Schools."
Interviews with:
El Mundo (Spanish national news journal, Madrid, Spain), August 30, 2002
Reuters Health Wire Service, September 4, 2002
North Carolina News Network, September 4, 2002
Winston-Salem Journal, September 9, 2002
Respiratory Therapy Products Journal, September 6, 2002
Winston-Salem Chronicle, September 12, 2002
Voices and Viewpoints, WFDD Public Radio, September 13, 2002; Re-aired May, 2005
Fox News Channel 8, September 23, 2002

Tobacco Intervention Clinic
Fox News Channel 8, December 29, 2003
WFMY TV, January 2, 2004
WXII TV, February 12, 2004
The Chronicle Weekly Newspaper (Winston-Salem) January 9, 2004

WFMY TV, *2 Your Health*

5/1/13

"Osteoporosis," March 27, 2003
"Smoking Cessation: Kicking the Habit," April 23, 2003
"Screening Tests than Can Save Your Life," May 18, 2005

Neurotoxicity of Manganese: Public Health Danger in the Shower?
5500 Web pages (national and international) on Google as of July 6, 2005
BBC live radio interviews, July 3 and July 4, 2005
3AW Breakfast Radio, Melbourne Australia, live interview July 3, 2005
Breakfast Talk Radio, Sydney Australia, live interview, July 4, 2005
Sydney Australia live radio interview, July 5, 2005
Hamilton, Ontario Talk Radio, live interview, July 5, 2005
Toronto, Ontario live radio interview, July 6, 2005

Mentoring:

Mentored:	Position:	Context:
Holly Westhall	Medical student	Research
Doug Little	Family Medicine Resident	Research Career Development
Terry Styer	Family Medicine Resident	Research Proposals Career Development
Lisa Naczki	Family Medicine Resident	Career Development
Rob Daniels	Family Medicine Resident	Career Development
Stacy Griffin	Masters Student, PA Program	Master's Thesis
Andy Erwin	Masters Student, PA Program	Master's Thesis
Cathy Mills	Masters Student, PA Program	Master's Thesis
Randy Clinch	Junior Faculty	Master's Thesis; Career Development; Research Proposals; Research
Scott Strayer	Junior Faculty	Research Proposals Career Development
David Miller	Junior Faculty	Research Proposals; Research; Primary Mentor, Career Development Award
Kristie Long-Foley	Junior Faculty	Research; Research Proposals; Career Development Award

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG)

FILED
BAMBERG COUNTY

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,) CIVIL ACTION COVERSHEET
2014 FEB -7 AM 10:53
Plaintiff(s))
JAMES E. MIERS
CLERK OF COURT
BAMBERG, SC

2014 -CP- 05 - 17

vs.)

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center, et al.)
Defendant(s))

Submitted By: John C. Moylan, III
Address: 801 Gervais Street, Suite B
P.O. Box 12247 (29211)
Columbia, SC 29201

SC Bar #: 11227
Telephone #: 803-254-6542
Fax #: 803-254-6544
Other:
E-mail: jmoylan@wyche.com

NOTE: The coversheet 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 coversheet 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 # 2013-CP-05-162
- ☒ 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)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

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)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

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 Comm. (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:** Feb. 6, 2014

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. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, 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 BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014 CP 05 17

SUMMONS
(Jury Trial Demanded)

FILED
BAMBERG COUNTY
2014 FEB -7 AM 10:53
JAMES D. HIERS
CLERK OF COURT
BAMBERG, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at Post Office Box 12247, Columbia, SC 29211, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

WYCHE, P.A.

John C. Moylan III (S.C. Bar No. 11227)
Christopher B. Schoen (S.C. Bar No. 80735)
801 Gervais Street, Suite B
P.O. Box 12247 (29211)
Columbia, SC 29201
803-254-6542
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jmoylan@wyche.com
cschoen@wyche.com

February 6, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014 CP 05 17

COMPLAINT
(Jury Trial Demanded)

FILED
BAMBERG COUNTY
2014 FEB -7 AM 10:53
JAMES P. HIERS
CLERK OF COURT
BAMBERG, SC

Camille Hodge, Jr., as personal representative of the Estate of Mable Hodge and the Plaintiff, complaining of the Defendants herein, would respectfully show unto the Court and jury as follows:

1. Plaintiff is Camille Hodge, Jr. ("Mr. Hodge, Jr."), acting as personal representative for the estate of decedent Mrs. Mable Hodge ("Mrs. Hodge") and her son. Mrs. Hodge and Mr. Hodge, Jr., as the personal representative, were or are citizens and residents of the town of Denmark in Bamberg County, South Carolina.

2. Defendant Herbert A. Moskow ("Dr. Moskow") is a citizen and resident of the County of Bamberg, South Carolina and was a medical doctor practicing in Bamberg County at the relevant times of the facts alleged in this Complaint. Dr. Moskow has subsequently agreed to give up his license to practice medicine.

3. Upon information and belief, Defendant R. Dale Padgett, M.D., P.A., is a South Carolina professional association that employed Dr. Moskow at the time of the events giving rise to this Complaint.

4. Upon information and belief, R. Dale Padgett, M.D., P.A. had the right or power to direct and control Dr. Moskow in the performance of his duties and work as a part of that practice.

5. Dr. Moskow held himself, and upon information and belief Dale Padgett, P.A., his employer, held Dr. Moskow out to be a competent medical practitioner, and Mrs. Hodge relied upon this and his medical license. Dr. Moskow and Dale Padgett, P.A. had a doctor-patient relationship with Mrs. Hodge in September 2010.

6. Defendant UniHealth Post-Acute Care of Bamberg, LLC ("UPAC Bamberg"), formerly known as Bamberg County Nursing Center, is a South Carolina limited liability company with its principal place of business in Bamberg County, South Carolina.

7. Defendant United Health Services of South Carolina, Inc. is a South Carolina corporation and the manager of UPAC Bamberg and, upon information and belief, owns and/or right or power to direct and control UPAC Bamberg.

8. Defendant United Health Services, Inc. is a Georgia corporation and, upon information and belief, owns and/or has the right or power to direct and control UPAC Bamberg.

9. Defendant UHS-Pruitt Holdings, Inc., also known as UHS-Pruitt Corporation, is a Georgia corporation with its principal place of business in a state other than South Carolina and, upon information and belief, owns and/or has the right or power to direct and control UPAC Bamberg.

10. Defendants UPAC Bamberg; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. held their facility UPAC Bamberg out to Mrs. Hodge and the public as an extended health care and rehabilitation facility capable of providing competent medical care as well as therapy and rehabilitation services.

11. Upon information and belief, Defendants had a doctor-patient and/or medical care provider-patient relationship with Mrs. Hodge with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care services and procedures which she was provided and/or which she required.

12. Upon information and belief, UPAC had the right or power to direct and control Dr. Moskow in the performance of his duties and work at UPAC.

13. This matter arises from medical malpractice by the Defendants, for which they are liable as herein stated, occurring in Bamberg County, South Carolina, and that harmed Mrs. Hodge.

14. The Court has jurisdiction of the parties and subject matter of this action. Venue is properly laid in Bamberg County.

15. The Notice of Intent to File Suit and accompanying expert affidavits were filed on August 21, 2013, and the parties have conducted the pre-filing mediation in accordance with the requirements of S.C. Code Ann. §§ 15-79-110, *et seq.*

16. Following a period of hospitalization for heart and kidney problems, Mrs. Hodge was admitted to UPAC Bamberg for extended care and rehabilitation on August 31, 2010. Mrs. Hodge was admitted to UPAC Bamberg under the care of Dr. Moskow. Over the following several weeks, Mrs. Hodge complained of increasingly severe back pain and showed increasingly obvious signs of infection and other distress. Mrs. Hodge remained in the custody

and care of Defendants for medical care and treatment until September 24, 2010, after she was paralyzed.

17. UPAC Bamberg failed to call Dr. Moskow to see Mrs. Hodge until September 16, 2010. Dr. Moskow failed to physically examine Mrs. Hodge or to evaluate the cause of her pain. Instead, Dr. Moskow only changed Mrs. Hodge's pain medication. For the next several days, Mrs. Hodge continued to complain of back pain and could not perform her physical therapy.

18. On September 20, 2010, Mrs. Hodge complained to the UPAC Bamberg staff that her back had hurt all night. Mrs. Hodge was unable to stand and had to be lifted because she could not move her legs. UPAC Bamberg failed to evaluate or examine Mrs. Hodge for these complaints and failed to call any doctor to examine her.

19. After more complaints the next morning, UPAC Bamberg called Dr. Moskow again on September 21, 2010 to evaluate Mrs. Hodge. Again, at that time, no physical exam was performed, and Dr. Moskow again failed to evaluate or test her to determine the cause of her increasing back pain. Instead, Dr. Moskow prescribed Mrs. Hodge an antidepressant.

20. Mrs. Hodge continued to complain about increasing back pain, and her condition continued to get worse. On September 22, 2010, Dr. Moskow saw Mrs. Hodge again at UPAC Bamberg, but he only wrote new orders for pain medication and for a sleeping pill for Mrs. Hodge. Mrs. Hodge and her family then requested a different doctor.

21. On September 23, 2010, Mrs. Hodge complained of not being able to feel her feet placement and of not being able to feel when she was urinating. Her condition had worsened, and Dr. McAlhaney was called at the family's request. Dr. McAlhaney immediately ordered tests on Mrs. Hodge to evaluate her complaints of back pain and loss of feeling in her legs.

22. The next morning, on September 24, 2010, Mrs. Hodge was unable to feel her legs or arms, unable to stand, and in extreme pain. Dr. McAlhaney sent her to Bamberg County Hospital emergency room, where her condition was assessed immediately as suspicious for diskitis and osteomyelitis with a possible epidural abscess. Because of the pain and paralysis she was experiencing, Mrs. Hodge was transported to Richland Memorial Hospital, where it was confirmed that she was fully paralyzed from the waist down.

23. Despite treatment with antibiotics and surgical intervention at that point, Mrs. Hodge never regained sensation below her waist, the use of her legs, or control of her bowel and bladder functions. She was completely paralyzed from the waist down and would remain that way for the rest of her life.

24. As a result of Defendants' failure to evaluate, test, diagnose, and treat Mrs. Hodge's diskitis and osteomyelitis with an epidural abscess prior to September 24, 2010, Mrs. Hodge was paralyzed by a condition that could have been effectively treated with antibiotics, surgery, or a combination thereof. Instead, Mrs. Hodge lost the use of her legs, became bedridden, and developed bed sores and other complications.

25. Defendants' negligence, gross negligence, and reckless disregard for the health, well being, and rights of Mrs. Hodge caused her permanent paralysis and other serious injuries including distress, disfigurement, and pain and suffering. As a direct result of her paralysis, Mrs. Hodge suffered severe injuries, otherwise unnecessary medical procedures and treatments, and ultimately died on September 22, 2011, approximately one year after she was paralyzed.

26. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate

care to Mrs. Hodge and thus deviated from the standard of care and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Complaint.

27. Defendants deviated from the recognized and generally accepted standard of care in one or more of the following particulars:

(a) In failing to investigate the cause of Mrs. Hodge's back pain until after she had lost the use of her legs;

(b) In failing to perform basic examinations on Mrs. Hodge and, instead, simply changing her pain medication and prescribing an antidepressant;

(c) In failing to evaluate or perform tests when Mrs. Hodge complained about back pain, lost her ability to stand, suffered other symptoms; and in waiting, instead, additional days to investigate, evaluate, test, diagnose, and treat Mrs. Hodge; and

(d) In failing to diagnose and treat Mrs. Hodge's diskitis and osteomyelitis with epidural abscess, which caused her paralysis.

28. The failure of Defendants to follow the recognized and generally accepted standards of care proximately caused significant and permanent injuries and substantial damages to Mrs. Hodge, including paralysis and a host of accompanying complications and necessary medical care and procedures.

29. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mrs. Hodge sustained serious and permanent bodily injuries.

30. If Mrs. Hodge had received proper medical care and attention from Defendants, she would not have experienced her injuries and resulting damages.

31. Because Defendants acts and omissions were willful, wanton, and grossly negligent, Mrs. Hodge is entitled to punitive damages.

32. Therefore, Mr. Hodge Jr., as personal representative of the estate Mable Hodge, is entitled to judgment for full direct, consequential, and special damages, including punitive damages, against Defendants in an amount to be determined by a jury.

Respectfully submitted,

WYCHE, P.A.

John C. Moylan III (S.C. Bar No. 11227)
Christopher B. Schoen (S.C. Bar No. 80735)
801 Gervais Street, Suite B
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cschoen@wyche.com

Date: February 6, 2014

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

CAMILLE HODGE, SR.)
Plaintiff(s))

vs.)

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center, et al.)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014 -CP- 05 -19

FILED
BAMBERG COUNTY
2014 FEB 11 AM 9:50
JAMES B. HEIS
CLERK OF COURT
BAMBERG, SC

Submitted By: John C. Moylan, III
Address: 801 Gervais Street, Suite B
P.O. Box 12247 (29211)
Columbia, SC 29201

SC Bar #: 11227
Telephone #: 803-254-6542
Fax #: 803-254-6544
Other:
E-mail: jmoylan@wyche.com

NOTE: The coversheet 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 coversheet 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 # 2013 -CP- 05 - 162

- ☐ 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)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

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)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

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 Comm. (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:** 2/10/2014

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. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, 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 BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

FILED
BAMBERG COUNTY
2014 FEB 11 AM 9:50
JAMES M. HIERS
CLERK OF COURT
BAMBERG, SC

SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at their offices at Post Office Box 12247, Columbia, SC 29211, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

WYCHE, P.A.

John C. Moylan III (S.C. Bar No. 11227)
Christopher B. Schoen (S.C. Bar No. 80735)
801 Gervais Street, Suite B
P.O. Box 12247 (29211)
Columbia, SC 29201
803-254-6542
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jmoylan@wyche.com
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February 10, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

COMPLAINT
(Jury Trial Demanded)

FILED
BAMBERG COUNTY
2014 FEB 11 AM 9:50
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Camille Hodge, Sr., complaining of the Defendants herein, would respectfully show unto the Court and jury as follows:

1. Plaintiff is Camille Hodge, Sr. ("Mr. Hodge, Sr."), the widower of decedent Mrs. Mable Hodge ("Mrs. Hodge"). Mr. Hodge, Sr., and Mrs. Hodge are or were citizens and residents of the town of Denmark in Bamberg County, South Carolina.

2. Defendant Herbert A. Moskow ("Dr. Moskow") is a citizen and resident of the County of Bamberg, South Carolina and was a medical doctor practicing in Bamberg County at the relevant times of the facts alleged in this Complaint. Dr. Moskow has subsequently agreed to give up his license to practice medicine.

3. Upon information and belief, Defendant R. Dale Padgett, M.D., P.A., is a South Carolina professional association that employed Dr. Moskow at the time of the events giving rise to this Complaint.

4. Upon information and belief, R. Dale Padgett, M.D., P.A. had the right or power to direct and control Dr. Moskow in the performance of his duties and work as a part of that practice.

5. Dr. Moskow held himself, and upon information and belief Dale Padgett, P.A., his employer, held Dr. Moskow out to be a competent medical practitioner, and Mrs. Hodge relied upon this and his medical license. Dr. Moskow and Dale Padgett, P.A. had a doctor-patient relationship with Mrs. Hodge in September 2010.

6. Defendant UniHealth Post-Acute Care of Bamberg, LLC ("UPAC Bamberg"), formerly known as Bamberg County Nursing Center, is a South Carolina limited liability company with its principal place of business in Bamberg County, South Carolina.

7. Defendant United Health Services of South Carolina, Inc. is a South Carolina corporation and the manager of UPAC Bamberg and, upon information and belief, owns and/or controls UPAC Bamberg.

8. Defendant United Health Services, Inc. is a Georgia corporation and, upon information and belief, owns and controls UPAC Bamberg.

9. Defendant UHS-Pruitt Holdings, Inc., also known as UHS-Pruitt Corporation, is a Georgia corporation with its principal place of business in a state other than South Carolina and, upon information and belief, owns and controls UPAC Bamberg.

10. Defendants UPAC Bamberg; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. held their facility UPAC Bamberg out to Mrs. Hodge and the public as an extended health care and rehabilitation facility capable of providing competent medical care as well as therapy and rehabilitation services.

11. Upon information and belief, Defendants had a doctor-patient and/or medical care provider-patient relationship with Mrs. Hodge with a duty to provide her proper care by medical care professionals properly trained, qualified, and competent in the health care services and procedures. which she was provided and/or which she required

12. Upon information and belief, UPAC had the right or power to direct and control Dr. Moskow in the performance of his duties and work at UPAC.

13. This matter arises from medical malpractice by the Defendants, for which they are liable as herein stated, occurring in Bamberg County, South Carolina, and that harmed Mrs. Hodge. As a direct consequence of the harm caused to Mrs. Hodge by Defendants' malpractice, Mr. Hodge, Sr., lost her services, care, comfort and companionship as his wife; and he incurred substantial damages and expenses from those injuries and loss of consortium.

14. The Court has jurisdiction of the parties and subject matter of this action. Venue is properly laid in Bamberg County.

15. The Notice of Intent to File Suit and accompanying expert affidavits were filed on August 21, 2013, and the parties have conducted the pre-filing mediation in accordance with the requirements of S.C. Code Ann. §§ 15-79-110, *et seq.*

16. Following a period of hospitalization for heart and kidney problems, Mrs. Hodge was admitted to UPAC Bamberg for extended care and rehabilitation on August 31, 2010. Mrs. Hodge was admitted to UPAC Bamberg under the care of Dr. Moskow. Over the following several weeks, Mrs. Hodge complained of increasingly severe back pain and showed increasingly obvious signs of infection and other distress. Mrs. Hodge remained in the custody and care of Defendants for medical care and treatment until September 24, 2010, after she was paralyzed.

17. UPAC Bamberg failed to call Dr. Moskow to see Mrs. Hodge until September 16, 2010. Dr. Moskow failed to physically examine Mrs. Hodge or to evaluate the cause of her pain. Instead, Dr. Moskow only changed Mrs. Hodge's pain medication. For the next several days, Mrs. Hodge continued to complain of back pain and could not perform her physical therapy.

18. On September 20, 2010, Mrs. Hodge complained to the UPAC Bamberg staff that her back had hurt all night. Mrs. Hodge was unable to stand and had to be lifted because she could not move her legs. UPAC Bamberg failed to evaluate or examine Mrs. Hodge for these complaints and failed to call any doctor to examine her.

19. After more complaints the next morning, UPAC Bamberg called Dr. Moskow again on September 21, 2010 to evaluate Mrs. Hodge. Again, at that time, no physical exam was performed, and Dr. Moskow again failed to evaluate or test her to determine the cause of her increasing back pain. Instead, Dr. Moskow prescribed Mrs. Hodge an antidepressant.

20. Mrs. Hodge continued to complain about increasing back pain, and her condition continuned to get worse. On September 22, 2010, Dr. Moskow saw Mrs. Hodge again at UPAC Bamberg, but he only wrote new orders for pain medication and for a sleeping pill for Mrs. Hodge. Mrs. Hodge and her family then requested a different doctor.

21. On September 23, 2010, Mrs. Hodge complained of not being able to feel her feet placement and of not being able to feel when she was urinating. Her condition had worsened, and Dr. McAlhaney was called at the family's request. Dr. McAlhaney immediately ordered tests on Mrs. Hodge to evaluate her complaints of back pain and loss of feeling in her legs.

22. The next morning, on September 24, 2010, Mrs. Hodge was unable to feel her legs or arms, unable to stand, and in extreme pain. Dr. McAlhaney sent her to Bamberg County Hospital emergency room, where her condition was assessed immediately as suspicious for

diskitis and osteomyelitis with a possible epidural abscess. Because of the pain and paralysis she was experiencing, Mrs. Hodge was transported to Richland Memorial Hospital, where it was confirmed that she was fully paralyzed from the waist down.

23. Despite treatment with antibiotics and surgical intervention at that point, Mrs. Hodge never regained sensation below her waist, the use of her legs, or control of her bowel and bladder functions. She was completely paralyzed from the waist down and would remain that way for the rest of her life.

24. As a result of Defendants' failure to evaluate, test, diagnose, and treat Mrs. Hodge's diskitis and osteomyelitis with an epidural abscess prior to September 24, 2010, Mrs. Hodge was paralyzed by a condition that could have been effectively treated with antibiotics, surgery, or a combination thereof. Instead, Mrs. Hodge lost the use of her legs, became bedridden, and developed bed sores and other complications.

25. Defendants' negligence, gross negligence, and reckless disregard for the health, well being, and rights of Mrs. Hodge caused her permanent paralysis and other serious injuries including distress, disfigurement, and pain and suffering. As a direct result of her paralysis, Mrs. Hodge suffered severe injuries, otherwise unnecessary medical procedures and treatments, and ultimately died on September 22, 2011, approximately one year after she was paralyzed.

26. Defendants directly and vicariously through their agents, servants, contractors, privileged providers, subsidiaries, and employees failed to provide the requisite and adequate care to Mrs. Hodge and thus deviated from the standard of care and were negligent, reckless, willful, wanton, and grossly negligent as described in further detail in this Complaint.

27. Defendants deviated from the recognized and generally accepted standard of care in one or more of the following particulars:

(a) In failing to investigate the cause of Mrs. Hodge's back pain until after she had lost the use of her legs;

(b) In failing to perform basic examinations on Mrs. Hodge and, instead, simply changing her pain medication and prescribing an antidepressant;

(c) In failing to evaluate or perform tests when Mrs. Hodge complained about back pain, lost her ability to stand, suffered other symptoms; and in waiting, instead, additional days to investigate, evaluate, test, diagnose, and treat Mrs. Hodge; and

(d) In failing to diagnose and treat Mrs. Hodge's diskitis and osteomyelitis with epidural abscess, which caused her paralysis.

28. The failure of Defendants to follow the recognized and generally accepted standards of care proximately caused significant and permanent injuries to Mrs. Hodge, including paralysis and a host of accompanying complications and necessary medical care and procedures, and these injuries proximately caused Mr. Hodge, Sr., to incur expenses in connection with Mrs. Hodge's medical treatment and care, and to suffer loss of consortium with Mrs. Hodge.

29. As a direct and proximate result of Defendants' failure to follow the recognized and generally accepted standards of care, Mrs. Hodge sustained serious and permanent bodily injuries, and Mr. Hodge, Sr., was deprived of her services, comfort, and companionship and was forced to incur expenditures of time and money as a result of her paralysis and related conditions.

30. If Mrs. Hodge had received proper medical care and attention from Defendants, she would not have experienced her injuries, and her husband would not have been deprived of

her services, comfort, and companionship or been forced to incur expenditures of time and money as a result of her paralysis and related conditions.

31. Therefore, Mr. Hodge, Sr., is entitled to judgment for full direct and consequential damages against Defendants in an amount to be determined by a jury.

Respectfully submitted,

WYCHE, P.A.

John C. Moylan III (S.C. Bar No. 11227)
Christopher B. Schoen (S.C. Bar No. 80735)
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Columbia, SC 29201
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jmoylan@wyche.com
cschoen@wyche.com

Date: February 10, 2014

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2014-CP-05-17 **ANSWER OF DEFENDANT, UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC**

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10: 21
JAMES P. ROBERS
CLERK OF COURT
BAMBERG, SC

The defendant, UniHealth Post-Acute Care of Bamberg, LLC, without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow was a medical doctor practicing in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11. This defendant admits that Ms. Hodge was a resident of UPAC-Bamberg from August 31 to September 24, 2010, and that UPAC-Bamberg had a duty to provide reasonable

long-term care and rehabilitation services to Ms. Hodge during this time period, but denies all other allegations in Paragraph 11.

12. Denied.

13. Denied.

14. Denied.

15. This defendant admits that the plaintiff has previously filed a Notice of Intent to File Suit and the parties have conducted a pre-suit mediation.

16. This defendant admits that Ms. Hodge became a resident of UPAC-Bamberg on August 31, 2010, after several lengthy hospitalizations at Providence Hospital for multiple medical problems. This defendant further admits that on admission to UPAC Bamberg Ms. Hodge designated Dr. Padgett and Dr. Moskow as her physicians. This defendant further admits that Ms. Hodge remained in UPAC-Bamberg until she was transferred out on September 24, 2010. This defendant denies all other allegations in Paragraph 16.

17. Denied.

18. This defendant admits that on September 20, 2010, Ms. Hodge complained that her back hurt, but this defendant denies all other allegations in Paragraph 18.

19. This defendant admits that UPAC-Bamberg called Dr. Moskow to request that he come see Ms. Hodge the following morning, and admits that Dr. Moskow came to UPAC-Bamberg the following morning of September 21, 2010, to evaluate and examine Ms. Hodge. This defendant further admits that after examining Ms. Hodge, Dr. Moskow prescribed an anti-depressant. This defendant denies all other allegations in Paragraph 19.

20. This defendant admits that on September 22, 2010, Dr. Moskow saw Ms. Hodge again at UPAC-Bamberg and issued additional orders for Ms. Hodge including pain medication

and a sleeping pill. This defendant further admits that Ms. Hodge's family requested later that Dr. McElhaney's office take over the medical care of Ms. Hodge. Except as specifically admitted herein, each and every allegation in Paragraph 20 is denied.

21. This defendant admits a family nurse practitioner with Dr. McElhaney's office came to UPAC-Bamberg on September 23, 2010, to evaluate Ms. Hodge and issued orders regarding Ms. Hodge. Except as specifically admitted herein, each and every allegation in Paragraph 21 is denied.

22. This defendant admits that on September 24, 2010, Ms. Hodge complained of back pain which led staff to call Dr. McElhaney's office came to the facility to evaluate Ms. Hodge. Dr. McElhaney's nurse practitioner responded and had Ms. Hodge transferred to the Bamberg County Hospital Emergency Room. This defendant does not have sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 22 and, except as specifically admitted herein, denies all other allegations in Paragraph 22.

23. This defendant does not have sufficient knowledge or information as to the truth of the allegations in Paragraph 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

34. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

35. 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, this defendant prays that the plaintiff's Complaint be dismissed, and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: _____

Monteith P. Todd
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Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina
March 18, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, UniHealth Post-Acute Care of Bamberg, LLC

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
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Robin Owens

3/18, 2014

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10:21
JAMES B. MYERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge,	)	Civil Action No. 2014-CP-05-17
Plaintiff,	)	
vs.	)	**ANSWER OF DEFENDANT, UNITED HEALTH SERVICES, INC.**
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
Defendants.	)	

The defendant, United Health Services, Inc., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow was a medical doctor practicing in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

34. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

35. 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, this defendant prays that the plaintiff's Complaint be dismissed, and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: Monty Todd

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Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 18, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, United Health Services, Inc.

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
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James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

3/18, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2014-CP-05-17 **ANSWER OF DEFENDANT, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.**

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10: 21
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

The defendant, United Health Services of South Carolina, Inc., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow was a medical doctor practicing in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

34. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

35. 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, this defendant prays that the plaintiff's Complaint be dismissed, and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: _____

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Email: mtodd@sowellgray.com

Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 18, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, United Health Services of South Carolina, Inc.

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
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Aiken, SC 29802

Robin Owens

3/18, 2014

FILED
CLERK OF COURT
2014 MAR 19 AM 10:22
JAMES L. MYERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge,	)	Civil Action No. 2014-CP-05-17
Plaintiff,	)	
vs.	)	**ANSWER OF DEFENDANT, UHS PRUITT HOLDINGS, INC. A/K/A UHS-PRUITT CORP.**
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
Defendants.	)	

The defendant, UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow was a medical doctor practicing in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits that Dr. Moskow worked with Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

34. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

35. 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, this defendant prays that the plaintiff's Complaint be dismissed, and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: _____

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Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 18, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
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Aiken, SC 29802

Robin Owens

3/18, 2014

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:51
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BAMBERG) SECOND JUDICIAL CIRCUIT

Camille Hodge, Sr., Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	Civil Action No. 14-CP-05-19 **ANSWER OF DEFENDANT, UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC F/K/A BAMBERG COUNTY NURSING CENTER**

The defendant, UniHealth Post-Acute Care of Bamberg, LLC, without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration and its Motion to Dismiss because the same claims are already pending before the Court in another case, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow practiced medicine in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principal place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11. This defendant admits that Ms. Hodge was a resident of UPAC-Bamberg from August 31 to September 24, 2010, and that UPAC-Bamberg had a duty to provide reasonable

long-term care and rehabilitation services to Ms. Hodge during this time period, but denies all other allegations in Paragraph 11.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. This defendant admits that Ms. Hodge became a resident of UPAC-Bamberg on August 31, 2010, after several lengthy hospitalizations at Providence Hospital for multiple medical problems. This defendant further admits that on admission to UPAC Bamberg Ms. Hodge designated Dr. Padgett and Dr. Moskow as her physicians. This defendant further admits that Ms. Hodge remained in UPAC-Bamberg until she was transferred out on September 24, 2010. This defendant denies all other allegations in Paragraph 16.

17. Denied.

18. This defendant admits that on September 20, 2010, Ms. Hodge complained that her back hurt, but this defendant denies all other allegations in Paragraph 18.

19. This defendant admits that a nurse at UPAC-Bamberg called Dr. Moskow on September 20 to request that he come see Ms. Hodge the following morning, and admits that Dr. Moskow came to UPAC-Bamberg the following morning of September 21, 2010, to evaluate and examine Ms. Hodge. This defendant further admits that after examining Ms. Hodge, Dr. Moskow prescribed an anti-depressant. This defendant denies all other allegations in Paragraph 19.

20. This defendant admits that on September 22, 2010, Dr. Moskow saw Ms. Hodge again at UPAC-Bamberg and issued additional orders for Ms. Hodge including pain medication

and a sleeping pill. This defendant further admits that Ms. Hodge's family requested later that day that Dr. McElhaney's office take over the medical care of Ms. Hodge. Except as specifically admitted herein, each and every allegation in Paragraph 20 is denied.

21. This defendant admits a family nurse practitioner with Dr. McElhaney's office came to UPAC-Bamberg on September 23, 2010, to evaluate Ms. Hodge and issued orders regarding Ms. Hodge. Except as specifically admitted herein, each and every allegation in Paragraph 21 is denied.

22. This defendant admits that on September 24, 2010, Ms. Hodge complained of back pain which led staff to call Dr. McElhaney's office to come to the facility to evaluate Ms. Hodge. Dr. McElhaney's nurse practitioner responded and had Ms. Hodge transferred to the Bamberg County Hospital Emergency Room. This defendant does not have sufficient knowledge and information to form a belief as to the truth of the remaining allegations in Paragraph 22 and, except as specifically admitted herein, denies all other allegations in Paragraph 22.

23. This defendant does not have sufficient knowledge or information as to the truth of the allegations in Paragraph 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

32. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff and the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

34. This defendant will show the plaintiff's claims are barred by the applicable Statute of Limitations.

FOR A FIFTH DEFENSE TO PLAINTIFF'S CLAIMS

34. 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, this defendant prays that the plaintiff's Complaint be dismissed and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: Monty Todd

Monteith P. Todd
1310 Gadsden Street
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Tel: (803) 929-1400
Fax: (803) 929-0300
Email: mtodd@sowellgray.com

Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 27, 2014

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:54
JAMES A. MYERS
CLERK OF COURT
BAMBERG, S.C.

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, Unihealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

Robin Owens

3/27, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr.,	)	Civil Action No. 14-CP-05-19
	)	
Plaintiff,	)	
	)	
vs.	)	**ANSWER OF DEFENDANT, UNITED HEALTH SERVICES INC.**
	)	
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
	)	
Defendants.	)	

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:55
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

The defendant, United Health Services, Inc., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration and its Motion to Dismiss because the same claims are already pending before the Court in another case, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow practiced medicine in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

32. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

34. 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, this defendant prays that the plaintiff's Complaint be dismissed and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: Monty Todd

Monteith P. Todd
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Fax: (803) 929-0300
Email: mtodd@sowellgray.com

Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 27, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:55
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Pleadings:

Answer of Defendant, United Health Services, Inc.

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
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Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
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Aiken, SC 29802

Robin Owens

3/27, 2014

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:54
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr.,)	Civil Action No. 14-CP-05-19
Plaintiff,)	
vs.)	**ANSWER OF DEFENDANT, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.**
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,)	
Defendants.)	

The defendant, United Health Services of South Carolina, Inc., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration and its Motion to Dismiss because the same claims are already pending before the Court in another case, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow practiced medicine in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

32. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

34. 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, this defendant prays that the plaintiff's Complaint be dismissed and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems 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
Tel: (803) 929-1400
Fax: (803) 929-0300
Email: mtodd@sowellgray.com

Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 27, 2014

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:54
JAMES D. MYERS
CLERK OF COURT
BAMBERG, S.C.

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, United Health Services of South Carolina, Inc.

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

3/27, 2014

FILED
2014 MAR 28 AM 9:55
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr.,	)	Civil Action No. 14-CP-05-19
	)	
Plaintiff,	)	
	)	
vs.	)	**ANSWER OF DEFENDANT, UHS-PRUITT HOLDINGS, INC. A/K/A UHS-PRUITT CORP.**
	)	
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
	)	
Defendants.	)	

The defendant, UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., without waiving its right to be heard on its Motion to Dismiss or in the Alternative to Compel Arbitration and its Motion to Dismiss because the same claims are already pending before the Court in another case, answers the Complaint of the plaintiff as follows:

1. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 1 and denies and demands proof of all such allegations.

2. This defendant admits that Dr. Herbert Moskow practiced medicine in Bamberg County in August and September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 2 and demands proof of all such allegations.

3-4. This defendant admits that Dr. Dale Padgett PA is a medical practice in Bamberg, South Carolina. This defendant further admits upon information and belief that Dr. Moskow worked with or for Dr. Dale Padgett PA during the times alleged in the plaintiff's Complaint. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraphs 3 and 4 and demands proof of all such allegations.

5. This defendant admits that Dr. Moskow held himself out to be a competent medical practitioner during the time he treated Ms. Hodge in September of 2010 and further admits that Dr. Moskow had a doctor patient relationship with Ms. Hodge during September 2010, but this defendant does not have sufficient knowledge or information to form a belief as to the truth of the other allegations in Paragraph 5 and demands proof of all such allegations.

6. Admitted.

7. This defendant admits United Health Services of South Carolina is a South Carolina Corporation, but denies all other allegations in Paragraph 7.

8. This defendant admits that United Health Services is a Georgia corporation, but denies all other allegations in Paragraph 8.

9. This defendant admits that UHS-Pruitt Holdings, Inc. is a Georgia corporation with its principle place of business in Georgia, but denies all other allegations in Paragraph 9.

10. This defendant admits that UPAC-Bamberg is a long-term care and rehabilitation facility which provides long-term care and rehabilitation services. Except as specifically admitted herein, each and every allegation in Paragraph 10 is denied.

11-23. This defendant does not have sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraphs 11 through 23 and denies and demands proof of all such allegations.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

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

FOR A SECOND DEFENSE TO PLAINTIFF'S CLAIMS
(Comparative Negligence)

32. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the negligence and recklessness of the plaintiff's decedent at the time and place in question in failing to heed Dr. Padgett's advice to see an orthopedic surgeon to evaluate complaints of back pain.

FOR A THIRD DEFENSE TO PLAINTIFF'S CLAIMS
(Assumption of Risk)

33. This defendant will show that the plaintiff's claims are barred or should be reduced as a result of the plaintiff's assumption of the risk because the plaintiff failed to heed Dr. Padgett's advice to her to have an evaluation by an orthopedic surgeon.

FOR A FOURTH DEFENSE TO PLAINTIFF'S CLAIMS

34. 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, this defendant prays that the plaintiff's Complaint be dismissed and that the plaintiff be compelled to engage in mandatory arbitration, or that the plaintiff's Complaint be dismissed, and with such other and further relief as the Court deems just and proper.

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

By: _____

Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
Tel: (803) 929-1400
Fax: (803) 929-0300
Email: mtodd@sowellgray.com

Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.;

Columbia, South Carolina

March 27, 2014

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Answer of Defendant, UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:55
JAMES P. RIVERS
CLERK OF COURT
BAMBERG, SC

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

3/27, 2014

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG Camille Hodge Jr., as PR of Est. of Mable Hodge, Plaintiff, vs. UniHealth Post Acute Care of Bamberg, et al. Defendant.	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT CASE NO.: 14-CP-05-17 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

FILED
BAMBERG COUNTY
2014 MAR 19 A 10: 23
JAMES D. HERD
CLERK OF COURT
BAMBERG, SC

Plaintiff's Attorney: John C. Moylan, III, Bar No. _____ Address: Wyche PA Post Office Box 12247 Columbia, SC 29211 Phone: 803-254-6542Fax 803-254-6544 E-mail: _____Other: _____	Defendant's Attorney: Monteith P. Todd, Bar No. 5591 Address: Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax803-929-0300 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 and Compeal 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: $ 2500
☐ 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: $ _____

SCCA 233 (11/2003)

COUNSEL FOR DEFENDANTS, R. DALE PADGETT, MD, PA AND DR. HERBERT A. MOSKOW

James D. Nance, Esquire
Nance, McCants & Massey
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FILED
CAMDEN, SC
2014 MAR 19 AM 10:23
JAMES E. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge,	)	Civil Action No. 2014-CP-05-17
Plaintiff,	)	**DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION OR, ALTERNATIVELY, TO COMPEL ARBITRATION AND STAY PROCEEDINGS**
vs.	)	
UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
Defendants.	)	

Defendants, UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., 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, LLC

BY: Monteith P. Todd

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Columbia, South Carolina

March 18, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)
)
Camille Hodge, Sr.,,)
Plaintiff,)
vs.)
)
UniHealth Post Acute Care of Bamberg, et al.)
Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 14-CP-05-19

FILED
2014 MAR 28 AM 9:51
JAMES E. ROGERS
CLERK OF COURT
BAMBERG, SC

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
John C. Moylan, III, Bar No. _____ Address: Wyche PA Post Office Box 12247 Columbia, SC 29211 Phone: 803-254-6542Fax 803-254-6544 E-mail: _____Other: _____	Monteith P. Todd, Bar No. 5591 Address: Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax803-929-0300 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 Compel Arbitration
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: $ _____

COUNSEL FOR DEFENDANTS, R. DALE PADGETT, MD PA AND DR. HERBERT A. MOSKOW:

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FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:51
JAMES B. AVERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr.,	)	Civil Action No. 14-CP-05-19
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**NOTICE OF MOTION AND MOTION TO DISMISS AND COMPEL ARBITRATION**
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
	)	
Defendants.	)	
	)	

The defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., hereby move to dismiss the plaintiff's Complaint and to compel arbitration or in the alternative to compel arbitration and stay the proceedings pending the resolution of the arbitration, pursuant to Federal Arbitration Act 9 U.S.C. §1 – 16. This motion will be based on the affidavit and materials submitted in the Motion to Compel Arbitration filed in the case of *Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge v. UniHealth Post-Acute Care of Bamberg, et al.*, Civil Action No. 14-CP-05-17.

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

By: _____

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Columbia, South Carolina

March 27, 2014

FILED
BAMBERG COUNTY
2014 MAR 28 AM 9:51
JAMES B. OWENS
CLERK OF COURT
BAMBERG, SC

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Notice of Motion and Motion to Compel Arbitration

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3/27, 2014

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10:23
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)))	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2014-CP-05-17 **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION, OR, ALTERNATIVELY TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

The defendants, UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., hereby submit the following Memorandum in Support of their Motion to Dismiss plaintiffs' Complaint and Compel Arbitration or, in the alternative, to stay 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 respectfully request that their motion to compel arbitration be granted.

Background

This action arises out of the care provided to Mable Hodge by defendant Uni-Health Post Acute Care Bamberg, LLC ("UPAC-Bamberg"). The plaintiffs allege in their Complaint that staff at UPAC-Bamberg, known as Unihealth Post Acute Care – Bamberg ("the Facility"), located

in Bamberg, South Carolina, failed to properly monitor Ms. Hodge and refer her to a hospital or physician when she complained of back pain and developed lower extremity weakness. The Complaint alleges that these negligent acts and omission of UPAC-Bamberg caused Ms. Hodge to develop lower extremity paralysis and her eventual death. The plaintiff filed his Notice of Intent on August 21, 2013, and his Summons and Complaint on February 7, 2014.

Ms. Hodge became a resident of the Facility on August 31, 2010. To become a resident of the Facility, Ms. Hodge entered into a number of contracts with UPAC-Bamberg. The contracts were each signed by Ms. Hodge's representative, Camille Hodge, as representative of Ms. Hodge. (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, Ms. Hodge was admitted to the Facility. During her stay at the Facility, Ms. Hodge accepted the benefits of the contracts entered into on her behalf by her representative, Mr. Hodge, including her admission to the facility and the receipt of skilled nursing care.

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-Bamberg], or any acts or omissions in connection with such care or services." (Exhibit 1, Attachment B). The Arbitration Agreement was entered into between UPAC-Bamberg and Mr. and Ms. Hodge on August 30, 2010. 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 Defendant was negligent, careless, and reckless in various particulars, including the failure to adequately assess the decedent's complaint of back pain, failure to obtain treatment for plaintiff's complaints of back pain, failure to notify medical personnel in a timely manner, and failure to exercise the degree of care a reasonably prudent person would under similar circumstances. (Complaint, ¶ 27). 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. 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:

---

[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.

> 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." Thorton, 357 S.C. at 95, 592 S.E.2d at 52. Ms. Hodge's primary insurance payee for the Facility was federal Medicare Health Insurance. (Exhibit 1, Affidavit of Deborah Rutland, Attachment C). Additional payments for services at the Facility were provided by Empire Blue Cross Blue Shield, based out of New York, New York, under the City of New York Health Benefits Program. (Exhibit 1, Affidavit of Deborah Rutland, Attachment C). 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 Deborah Rutland). 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. Hodge on behalf of Ms. Hodge. 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). By allowing Mr. Hodge to procure her admission to the Facility and accepting the benefits of the contracts entered into in connection with that admission, Ms. Hodge represented that Mr. Hodge was her authorized representative 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.").

There is no evidence that Ms. Hodge ever attempted to repudiate Mr. Hodge's actions. In fact, Ms. Hodge accepted the benefit of numerous contracts that Mr. Hodge executed for her benefit during her stay at the Facility. These include: Admission Agreement (Bates Stamp 1-12), Arbitration Agreement (Bates Stamp 13-17), Medicare and Medicaid Information Form (Bates Stamp 18), Charges for Items and Services (Bates Stamp 19), Patient/Resident Trust Fund Authorization Form (Bates Stamp 20), Advance Directives Checklist (Bates Stamp 21), Notice of Privacy Practices for Protected Health Information (Bates Stamp 22-29), Acknowledgment of Receipt of Notice of Privacy Practices for Protected Health Information (Bates Stamp 30),

Continuum of Care Integration Patient/Resident Provider Choice Letter (Bates Stamp 31-32), Acknowledgment of Receipt of Patient/Resident Federal and State Rights (Bates Stamp 33), Freedom of Choice Statement (Bates Stamp 34-35), Acknowledgment of Transfer/Lift Program (Bates Stamp 36), Patient/Resident or Authorized Person Acknowledgment of Restraint Reduction Program (Bates Stamp 37), Patient/Resident Trust Fund Authorization Agreement (Bates Stamp 38), Acknowledgment of Receipt of Partnership in Caring Packet (Bates Stamp 39), CMS Medicare DMEPOS Supplier Standards (Bates Stamp 40-41), Extended Signature Authorization (Bates Stamp 42), Medicare Coverage Determination (Bates Stamp 43), Bed Holds (Bates Stamp 44-45), Medicare Secondary Payer Questionnaire (46-52), Annual Influenza (Flu) Vaccine Consent/Refusal (Bates Stamp 53), and Pneumococcal Vaccine Consent/Refusal (Bates Stamp 54). In the face of Mr. Hodge's representation that he was allowed to execute the admission paperwork, including *all* the above-referenced documents providing for Ms. Hodge's stay and care at the Facility, personal preferences, authorization for payment, the Arbitration Agreement, etc., and Ms. Hodge's acquiescence, UPAC-Bamberg reasonably relied upon these representations in allowing Mr. Hodge to execute the paperwork and admit Ms. Hodge into the facility. It would be disingenuous for the Plaintiff to now claim Ms. Hodge should not be bound by a contract she entered into via her appointment of Mr. Hodge as her agent.

Additionally, Ms. Hodge accepted the benefits of these contracts with UPAC-Bamberg and, as such, she ratified them through her conduct, i.e. remaining at the Facility and receiving care and other services pursuant to her preferences, as laid out in the admissions paperwork. Her estate should, therefore, be estopped from denying the validity of these contracts. If Mr. Hodge was not authorized to act on Ms. Hodge's behalf in admitting her to the Facility, certainly Ms. Hodge would have not stayed at the Facility. One cannot ratify that part of the

contract under which she has accepted the benefits and avoid that part which she later deems to be disadvantageous. See Southern Bell Telephone & Telegraph Co. v. WRNO, Inc., 216 S.C. 533, 535-36, 59 S.E.2d 146, 147 (1950).

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); ZIV Television Programs, Inc. v. Associated Grocers, Inc. of South Carolina, 236 S.C. 448, 453, 114 S.E.2d 826, 828 (1960). In the present case, Ms. Hodge and Mr. Hodge represented to UPAC-Bamberg that Mr. Hodge was authorized to execute Ms. Hodge's admission paperwork at the Facility. UPAC-Bamberg relied upon Ms. Hodge's representations that Mr. Hodge was authorized to sign the paperwork to admit her into the Facility. Ms. Hodge was admitted into the Facility based upon this representation and Mr. Hodge's signing of the admission paperwork. Based upon this representation, UPAC-Bamberg allowed Mr. Hodge to sign *all* of the documents executed at the time of admission. 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).

Moreover, Ms. Hodge is bound by the contract executed by Mr. Hodge 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. Hodge did not sign the contract, but she clearly is the resident to be admitted to the Facility and thus the direct beneficiary of the contract. Ms. Hodge'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).

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). "A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a direct benefit from a contract containing an arbitration clause.'" Id. (quoting Am. Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999)).

"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.com:

> [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; Am. Bankers Ins. Grp. v. Long, 453 F.3d 623, 628 (4th Cir. 2006); R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n, 384 F.3d 157, 162 (4th Cir. 2004); Tencara Shipyard, 170 F.3d at 353 (holding nonsignatory was estopped from denying applicability of arbitration clause when

nonsignatory received "direct benefits" from contract including lowered insurance rates and the ability to sail under the French flag)).

In the present case, Ms. Hodge embraced all the aspects of the admissions agreements despite her non-signatory status. As is cited above, numerous courts hold that where a plaintiff receives the benefits of the contract, which Ms. Hodge certainly 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. Hodge executed numerous agreements benefitting Ms. Hodge as part of her admission to the Facility, and Ms. Hodge accepted all the benefits of all these agreements during her stay. Ms. Hodge's 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.

CONCLUSION

As set forth in the foregoing sections, a valid and enforceable arbitration agreement exists in which Ms. Hodge and the Facility agreed that any disputes relating to the services or care provided to Ms. Hodge by the Facility would be resolved exclusively by binding arbitration. The agreement between Ms. Hodge and the Facility falls within the scope of the FAA, which require that agreements to arbitrate be strictly enforced. Therefore, the Defendant, Uni-Health Post Acute Care-Bamberg, LLC, respectfully requests 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. Hodge and the Defendant.

Signature on Next Page

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Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS -Pruitt Corp.

Columbia, South Carolina

March 18, 2014

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, and Camille Hodge, Sr., Plaintiffs, vs. UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2013-CP-05-162 **AFFIDAVIT OF DEBORAH RUTLAND**

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10:23
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Deborah Rutland, 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 Administrator for Uni-Health Post Acute Care-Bamberg ("UPAC-Bamberg"), a skilled nursing facility located in Bamberg, South Carolina.

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

4. I have reviewed the files of UPAC-Bamberg and located the admission records for Mable Hodge, the plaintiff in this matter.

5. Camille Hodge, as the representative of Ms. Hodge, signed various documents that are part of the standard admission packet. These documents include an Admission

Agreement, whereby UPAC-Bamberg agreed to provide certain services to Ms. Hodge. A true and correct copy of the Admission Agreement is attached hereto as Exhibit A.

6. Mr. Hodge, as the representative of Ms. Hodge, 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. Hodge would be settled exclusively by binding agreement. A true and correct copy of the Arbitration Agreement is attached hereto as Exhibit B.

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

8. Mr. Hodge, as the representative of Ms. Hodge, signed various other documents as part of the standard admission packet, which agreed to provide additional services to Ms. Hodge, set forth Ms. Hodge's preferences while at UPAC-Bamberg, 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-Bamberg's business involves interstate commerce. The care and services provided by UPAC-Bamberg to Ms. Hodge would not have been possible were it not for supplies, materials, and services provided to UPAC-Bamberg by various entities located outside the State of South Carolina.

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

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

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

13. I have reviewed UPAC-Bamberg's billing records for Ms. Hodge and they show that a portion of her care at UPAC-Bamberg was paid for by Medicare, a federal government system of health insurance for the elderly. The billing records also show that additional payments for Ms. Hodge's care at UPAC-Bamberg were paid by Blue Cross Blue Shield of New York, a health insurance provider located in the state of New York.

FURTHER AFFIANT SAYETH NOT.

Deborah Rutland (L.S.)
Deborah Rutland

3/4/2014, ~~2013~~

SWORN TO AND SUBSCRIBED BEFORE ME
This 4th day of March, 2014 ~~2013~~.

Mary A Kinard (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/10/2022

Rev. 5/07

1A.03

FILED
BAMBERG COUNTY
2014 MAR 19 AM 10:23
JAMES D. MIERS
CLERK OF COURT

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 30th day of August, year 2010, by and between UniHealth PAC Bamberg (Healthcare Center), MABLE HODGE (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

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.

State of South Carolina
ADMISSION AGREEMENT

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: HERBERT A MOSKOW I Padget
2. Alternate attending physician: HERBERT A MOSKOW I Padget

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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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 $5462.00EST . 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.

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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

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

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.

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- 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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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:

MABLE HODGE	LUTHER REEVES
Print Patient/Resident's Name	Print Administrator's Name
	Luther Reeves
Patient/Resident's Signature	Administrator's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
Camille Hodge	8/30/10
Patient/Resident Representative's Signature	Date

(Healthcare Center will maintain a copy for their records)

Rev: 5/07

FILED
BAMBERG COUNTY
2016 MAR 19 AM 10: 23
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 30th day of August, 2010, by and between UniHealth PAC Bamberg (the "Healthcare Center") and MABLE HODGE and CAMILLE HODGE ("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.

E E O

_____ Initials

State of South Carolina
ARBITRATION AGREEMENT

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

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.

E. 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

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

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.

MABLE HODGE	UniHealth PAC Bamberg
Print: Name of Patient/Resident	Print: Name of Healthcare Center
Signature of Patient/Resident	Signature of Healthcare Center's Authorized Agent
Camille E Hodge	LISA LANE
Signature of Patient/Resident Representative	Print: Name and Title of Healthcare Center's Authorized Agent

CAMILLE HODGE

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.

Rev: 5/07

FILED
BAMBERG COUNTY
1C.01
2014 MAR 19 AM 10:23
JAMES D. HIERS
CLERK OF COURT
BAMBERG, SC

MEDICARE AND MEDICAID INFORMATION FORM

Patient/Resident's Name: HODGE (Last) MABLE (First) (Middle Initial)

Date of Birth: 08/09/1931 Sex: ___ Male; X Female

Admit Date: 8/30/10 Social Security #: 239-46-0026

Diagnosis: Hypokalemia, DM, CKD, HTN, CAD, SSS

Medicare Number: 239460190A Medicaid Number: N/a

Other Insurance: Blue Cross of New York

Subscriber's Name: Mable Hodge

Policy Number: YLS890003145 Relation to Subscriber: Same Policy Double Cover (SMF)

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 Bamberg (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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

CHARGES FOR ITEMS & SERVICES
Not Covered in Basic Daily Rate

Patient/Resident Name: MABLE HODGE

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

Item or Service	*Charge*	*(If requested, indicate by initials)*
Private Room 193.00 a day	$_____ PER month	_____
183.00 a day	$_____ PER	_____
10.00 a day from Difference	$_____ 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:

MABLE HODGE
Print Patient/Resident's Name

_____
Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/20/10
Date

PATIENT/RESIDENT TRUST FUND AUTHORIZATION AGREEMENT

Patient/Resident Name: MABLE HODGE

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
- ✓ Barber/beauty shop charges
- ✓ Personal petty cash withdrawals
- ___ Other (please list): _____
- ✓ Insurance premiums
- ___ Room and board charges/bed holds

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:

MABLE HODGE
Print Patient/Resident's Name

_____
Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

ADVANCE DIRECTIVES CHECKLIST

Healthcare Center: UniHealth PAC Bamberg

Patient/Resident Name: MABLE HODGE

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. MH Initials
2. I understand that I am not required to have an advance directive in order to receive medical treatment at this healthcare center. MH 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. MH 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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E. Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

The following advance directives or DNR orders have been executed and are complete:
[ ] Living Will; [ ] DPAHC; [ ] DNR Order; [ ] Organ Donation; [ ] Body Donation

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

Effective Date: 08/30/2010

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 Bamberg at (803)245-6227 (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 LUTHER REEVES. 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 LUTHER REEVES. 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 LUTHER REEVES. 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 LUTHER REEVES . 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 LUTHER REEVES . 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 Bamberg at (803)245-6227.

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: MABLE HODGE

Patient/Resident Social Security Number: 239-46-0026

I understand that UniHealth PAC Bamberg (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)245-6227 (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:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center/Agency Representative's Name
	Lisa Lane
Patient/Resident's Signature	Healthcare Center/Agency Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center/Agency
Camille E. Hodge	8-30-10
Patient/Resident Representative's Signature	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: 8-30-10

Representative Signature: Janette E. Hodge Date: 8/30/10

Representative's Relationship to Patient/Resident: _____

ACKNOWLEDGMENT OF RECEIPT OF PATIENT/RESIDENT FEDERAL & STATE RIGHTS

Patient/Resident Name: MABLE HODGE

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:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center Representative's Name
	Lisa Lane
Patient/Resident's Signature	Healthcare Center Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
Camille E Hodge	8/30/10
Patient/Resident Representative's Signature	Date

OMBUDSMAN ACKNOWLEDGMENT:

Susan Garren

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

Camille E Hodge — 8/30/10

Patient/Resident/Representative's Signature — Date

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

Rev: 5/07

1B.02

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: UniHealth PAC Bamberg

Patient/Resident: MABLE HODGE

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** HERBERT A MOSKOW

   Address & Phone Number: 526 NORTH ST. BAMBERG, SC 29003 (803)245-2433

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 Bamberg

Patient/Resident: MABLE HODGE

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- Cable free of Charge
___ Telephone
___ Other:

PATIENT/RESIDENT/REPRESENTATIVE:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/16
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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

Rev: 5/07

3.05

PATIENT/RESIDENT OR AUTHORIZED PERSON ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM

UniHealth PAC Bamberg (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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

PATIENT/RESIDENT TRUST FUND AUTHORIZATION AGREEMENT

Patient/Resident Name: MABLE HODGE

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
- ✓ Barber/beauty shop charges
- ✓ Personal petty cash withdrawals
- ___ Other (please list): _____
- ✓ Insurance premiums
- ___ Room and board charges/bed holds

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:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center Representative's Name
	Lisa Lane
Patient/Resident's Signature	Healthcare Center Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
Camille E Hodge	8/30/10
Patient/Resident Representative's Signature	Date

ACKNOWLEDGMENT OF RECEIPT OF PARTNERSHIP IN CARING PACKET

Patient/Resident: MABLE HODGE

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:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center Representative's Name
	Lisa Lane
Patient/Resident's Signature	Healthcare Center Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
X Camille E Hodge	8-30-10
Patient/Resident Representative's Signature	Date

CMS MEDICARE DMEPOS SUPPLIER STANDARDS

NOTE: This list is an abbreviated version of the application certification standards that every Medicare DMEPOS supplier must meet in order to retain their billing privileges. These standards, in their entirety, are listed in 42 C.F.R. § 424.57(c) and are effective on December 11, 2000. A supplier must disclose these standards to all customers/patients who are Medicare beneficiaries. See 42 C.F.R. § 424.57(c).

1. A supplier must be in compliance with all applicable Federal and State licensure and regulatory requirements.
2. A supplier must provide complete and accurate information on the DMEPOS supplier application. Any changes to this information must be reported to the National Supplier Clearinghouse within 30 days.
3. An authorized individual (one whose signature is binding) must sign the application for billing privileges.
4. A supplier must fill orders from its own inventory, or must contract with other companies for the purchase of items necessary to fill the order. A supplier may not contract with any entity that is currently excluded from the Medicare program, any State health care programs, or from any other Federal procurement or non-procurement programs.
5. A supplier must advise beneficiaries that they may rent or purchase inexpensive or routinely purchased durable medical equipment, and of the purchase option for capped rental equipment.
6. A supplier must notify beneficiaries of warranty coverage and honor all warranties under applicable State law, and repair or replace free of charge Medicare covered items that are under warranty.
7. A supplier must maintain a physical facility on an appropriate site.
8. A supplier must permit the Centers for Medicare and Medicaid Services ("CMS"), or its agents to conduct on-site inspections to ascertain the supplier's compliance with these standards. The supplier location must be accessible to beneficiaries during reasonable business hours, and must maintain a visible sign and posted hours of operation.
9. A supplier must maintain a primary business telephone listed under the name of the business in a local directory or a toll free number available through directory assistance. The exclusive use of a beeper, answering machine or cell phone is prohibited.
10. A supplier must have comprehensive liability insurance in the amount of at least $300,000 that covers both the supplier's place of business and all customers and partners of the supplier. If the supplier manufactures its own items, this insurance must also cover product liability and completed operations.
11. A supplier must agree not to initiate telephone contact with beneficiaries, with a few exceptions allowed. This standard prohibits suppliers from calling beneficiaries in order to solicit new business.
12. A supplier is responsible for delivery and must instruct beneficiaries on use of Medicare covered items, and maintain proof of delivery.
13. A supplier must answer questions and respond to complaints of beneficiaries, refer beneficiaries with Medicare questions to the appropriate carrier, and maintain documentation of such contacts.
14. A supplier must maintain and replace at no charge or repair directly, or through its service contract with another company, Medicare-covered items it has rented to beneficiaries.

CMS MEDICARE DMEPOS SUPPLIER STANDARDS

15. A supplier must accept returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and rented or sold) from beneficiaries.
16. A supplier must disclose these supplier standards to each beneficiary to whom it supplies a Medicare-covered item.
17. A supplier must disclose to the government any person having ownership, financial, or control interest in the supplier.
18. A supplier must not convey or reassign a supplier number; i.e., the supplier may not sell or allow another entity to use its Medicare billing number.
19. A supplier must have a complaint resolution protocol established to address beneficiary complaints that relate to these standards. A record of these complaints must be maintained at the physical facility.
20. Complaint records must include: the name, address, telephone number and health insurance claim number of the beneficiary, a summary of the complaint, and any actions taken to resolve it.
21. A supplier must agree to furnish CMS any information required by the Medicare statute and implementing regulations.

New: 5/07

1C.03

EXTENDED SIGNATURE AUTHORIZATION

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

Patient/Resident Name: MABLE HODGE

Healthcare Center Name: UniHealth PAC Bamberg

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:

MABLE HODGE
Print Patient/Resident's Name

Resident/Patient's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8-30-16
Date

MEDICARE COVERAGE DETERMINATION

Patient/Resident Name: MABLE HODGE

Healthcare Center Name: UniHealth PAC Bamberg

Date of Admission: 8/30/10

✓ Qualifies for Medicare Part A benefits for skilled services related to:
Rehab Services
Estimated coverage: 20 full days; 80 co-pay; 100 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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Camille E Hodge
Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Lisa Lane
Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LISA LANE
Print Healthcare Center Representative's Name

Healthcare Center Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

ANNUAL INFLUENZA (FLU) VACCINE
CONSENT / REFUSAL

It is the policy of UniHealth PAC Bamberg (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.

PATIENT/RESIDENT/REPRESENTATIVE:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center Representative's Name
Patient/Resident's Signature	Healthcare Center Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
	8/30/10
Patient/Resident Representative's Signature	Date

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

PNEUMOCOCCAL VACCINE
CONSENT / REFUSAL

It is the policy of UniHealth PAC Bamberg (healthcare center) that a one time Pneumococcal 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.

Permission to receive the vaccine will be obtained on admission. A one-time order for the vaccine will be obtained from the physician upon admission to the healthcare center.

CONSENT

____ I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the Pneumococcal 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 Pneumococcal Vaccine.

PATIENT/RESIDENT/REPRESENTATIVE:

MABLE HODGE	LISA LANE
Print Patient/Resident's Name	Print Healthcare Center Representative's Name
Patient/Resident's Signature	Healthcare Center Representative's Signature
CAMILLE HODGE	UniHealth PAC Bamberg
Print Patient/Resident Representative's Name	Legal Name of Healthcare Center
Patient/Resident Representative's Signature	8/30/10
	Date

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

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings

Memorandum in Support of Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

3/18, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG	)	CASE NO.: 14-CP-05-17 and 19
Camille Hodge Jr., as PR of Est. of Mable Hodge; Camille Hodge, Sr., Plaintiff,	)	**MOTION AND ORDER INFORMATION**
vs.	)	**FORM AND COVERSHEET**
UniHealth Post Acute Care of Bamberg, et al. Defendant.	)	

Plaintiff's Attorney: John C. Moylan, III, Bar No. _____ Address: Wyche PA Post Office Box 12247 Columbia, SC 29211 Phone: 803-254-6542Fax 803-254-6544 E-mail: _____Other: _____	Defendant's Attorney: Monteith P. Todd, Bar No. 5591 Address: Sowell Gray Stepp & Laffitte, LLC Post Office Box 11449 Columbia, SC 29211 Phone: 803-929-1400 Fax803-929-0300 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)**

2014 APR 21 AM 10:02
JAMES C. MERS
CLERK OF COURT
BAMBERG, SC
FILED

SECTION I: Hearing Information

Nature of Motion: Motion to Permit Deposition of Camille Hodge, Sr.
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: $ _____

COUNSEL FOR DEFENDANTS, R. DALE PADGETT, MD, PA AND DR. HERBERT A. MOSKOW

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BAMBERG) SECOND JUDICIAL CIRCUIT

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge,) Civil Action No. 2014-CP-05-17

Plaintiff,

vs.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

Defendants.

MOTION TO PERMIT DEPOSITION OF CAMILLE HODGE, SR. ON ISSUES RELATED TO THE ARBITRATION AGREEMENT

FILED
2014 APR 21 AM 10:02
JAMES E. [illegible]
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BAMBERG) SECOND JUDICIAL CIRCUIT

Camille Hodge, Sr.,) Civil Action No. 14-CP-05-19

Plaintiff,

vs.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

Defendants.

The defendant, UPAC-Bamberg, has moved this Court to compel arbitration of the plaintiffs' claims against UPAC-Bamberg. A hearing on these motions are scheduled before the Court in Bamberg on April 22, 2014. This attorney has contacted the plaintiffs' attorney to request dates to depose Mr. Hodge Sr. on issues affecting the arbitration. The plaintiffs' attorney objects to Mr. Hodge Sr.'s deposition. (See attached correspondence and emails regarding this request). Therefore, the defendant, UPAC-Bamberg, moves this Court for an order allowing it to depose Mr. Hodge regarding issues relating to the Motion to Compel Arbitration, and for a continuance of the Motion to Compel Arbitration until this deposition has been taken.

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, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp

Columbia, South Carolina
April 15, 2014

SOWELL SG GRAY

FILE

MONTEITH P. TODD
Direct Dial 803.231.7837
Direct Fax 803.231.7887
Email mtodd@sowellgray.com

April 8, 2014

John C. Moylan, III, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

RE: Camille Hodge, Jr. as PR of the Estate of Mable Hodge v. UniHealth Post-Acute Care of Bamberg f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow
Civil Action No. 14-CP-05-17

Camille Hodge Sr. v. UniHealth Post-Acute Care of Bamberg f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow
Civil Action No. 14-CP-05-19
Our File No. 5593/1530

Dear John:

As discussed in our phone call last week, I would like to schedule the deposition of Camille Hodge, Sr. for the limited purpose of questioning him about the execution of the Arbitration Agreement and his authority to do so on behalf of Ms. Hodge. Please provide me with dates that are acceptable to you and Mr. Hodge for this deposition. If you prefer that we go ahead and depose Mr. Hodge on all issues related to the lawsuit, and you agree that questioning him about issues beyond the Arbitration Agreement does not waive our right to pursue arbitration, then it is agreeable with me to go ahead and depose Mr. Hodge on all issues related to the lawsuit.

SOWELL SG GRAY

Litigation is our Business.

I look forward to hearing from you regarding this request.

Yours truly,

COPY

Monteith P. Todd

MPT:rco

cc: James Nance, Esquire
Christopher Schoen, Esquire

Recd 4/14/14
Fee 5593/1530

W Y C H E

Attorneys at Law

April 11, 2014

SCANNED

Monteith P. Todd, Esquire
Sowell Gray Stepp Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

Re: *Camille Hodge, Sr. v. UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center, United Health Services of South Carolina, Inc., et al.*
Civil Action No: 2014-CP-05-19;
Camille Hodge, Jr. v. UniHealth Post-Acute Care of Bamberg, LLC, f/k/a Bamberg County Nursing Center, United Health Services of South Carolina, Inc.et al.,
Civil Action No: 2014-CP-05-17

Dear Monty,

I write to follow up regarding two issues you raised during our telephone conversation on April 2, 2014 and your letter dated April 8. First, you indicated that you wish to depose Mr. Camille Hodge, Sr., regarding his signing an arbitration agreement with Uni-Health Post-Acute Care of Bamberg ("UPAC"). Second, you said that you would consider withdrawing your motion to dismiss the action filed by Camille Hodge, Sr., if we would stipulate that Mr. Hodge, Sr. is not seeking medicals and other items that are being sought by the estate.

Regarding your request to depose Mr. Hodge, Sr., regarding the arbitration agreement, we do not believe that a deposition is necessary in order for a court to determine whether this arbitration agreement, drafted by UPAC, is enforceable against Ms. Hodge. In addition, he is an 80 year old man and I do not think that having him sit for multiple depositions is in his best interest.

In response to your second request, and as we discussed, the damages sought in Mr. Hodge's complaint do not necessarily overlap with the damages sought by the estate. For example, Mr. Hodge, Sr., is seeking damages for loss of consortium, which the estate is not seeking. We readily acknowledge, however, that Mr. Hodge, Sr., and the estate of Mrs. Hodge cannot both recover for the same expenses and are happy to stipulate to that fact.

As always, thank you for your consideration and professionalism in all of these matters. Please do not hesitate to call at any time.

Sincerely,

John C. Moylan, III
jmoylan@wyche.com

Todd, Monty P.

From: John C. Moylan [jmoylan@wyche.com]
Sent: Monday, April 14, 2014 2:44 PM
To: Todd, Monty P.
Subject: Re: Hodge

Hey Monty. I'm down at Edisto with my daughter for her last Spring Break before college and I'm doing my best to avoid work. I think your motion to compel arbitration is scheduled for next Wednesday and I will be prepared to address it. If you want to ask the court for Mr. Hodge's deposition, let's just tee it up then. I'll be back in the office Monday if we need to discuss.

John Moylan

Wyche, P.A.
801 Gervais Street
Columbia, SC
803-254-6542
www.wyche.com

On Apr 14, 2014, at 2:05 PM, "Todd, Monty P." <mtodd@sowellgray.com> wrote:

> John Received your letter about my motion to dismiss Mr. Hodge Sr 's case and my motion to compel arbitration.. I will agree to withdraw the motion to dismiss Mr. Hodge Sr 's case with the stipulation you propose.. I would like to depose Mr. Hodge on the issue of arbitration.before the argument of my motion. I believe the court will permit such a deposition... As indicated in my letter, I will agree to depose Mr. Hodge on all issues with the understanding that the full deposition does not act as a waiver of my arbitration motion.. I look forward to hearing from about this matter..

Monteith P. Todd v-card
Member

803 231.7837
www.sowellgray.com

Supporting Green. Please print wisely

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Thank you.

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CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Motion to Permit Deposition of Camille Hodge Sr. on Issues Related to the Arbitration Agreement

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

4/15, 2014

COPY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG	FOR THE SECOND JUDICIAL CIRCUIT
CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE, Plaintiff, -vs- UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW; Defendants.	CIVIL ACTION NO: 2014-CP-05-17

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT UPAC'S MOTION TO COMPEL ARBITRATION

Mr. Camille Hodge, Jr., acting as Personal Representative of his mother, Ms. Mabel Hodge, filed this action against UniHealth Post-Acute Care of Bamberg ("UPAC") and Doctors Padgett and Moskow, after his mother became a paraplegic following a three week stay for "rehabilitation" at UPAC's Bamberg facility.

UPAC now asserts that Mr. Hodge, Jr. and his mother's estate are bound to an arbitration agreement that Ms. Hodge never signed, that Mr. Hodge, Jr. never signed, and that neither Doctor Moscow nor Doctor Padgett ever signed. That is not the law in South Carolina.

FACTS

On August 31, 2010, Ms. Mabel Hodge, a resident of Bamberg County, and a patient of the Defendant, Dr. Moskow, entered UPAC's Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his care. Dr. Moskow's September 1, 2010, initial history and physical of Ms. Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." (attached as Exhibit 1)

By the time Ms. Hodge is discharged from UPAC to Palmetto Health Richland three weeks later, she is a paraplegic who will never walk again. The Palmetto Health Richland doctor's notes on September 24 say "it is doubtful that surgery this far after onset of her leg symptoms would be of any benefit. . . . She is paraplegic . . . Unfortunately, there is no role for open surgery in a patient paraplegic for one week." On September 27, another Palmetto Health Richland doctor reviews the facts leading up to Ms. Hodge's paralysis and draws this inevitable conclusion, "this is a disaster."

The day prior to Ms. Hodge's admission to UPAC, her husband, Camille Hodge, Sr. was asked to sign various documents in order to facilitate her admission and secure her a room at the facility. Among the documents presented to Mr. Hodge was a twelve page Admission Agreement and a separate five page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." (Admission Agreement and Arbitration Agreement are attached as Exhibits 2 and 3 respectively). UPAC failed to ever obtain Ms. Hodge's signature on the first line designated for the Patient/Resident and now asks this Court to hold that Mr. Hodge waived

his wife's right to a jury trial even though UPAC's own guidelines mandate that they must obtain the signature of a competent resident on the Arbitration Agreement.

Attached as Exhibit 4 is UPAC's internal "Arbitration Checklist." The very first line of that document mandates that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). UPAC unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident **must** initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness." In the instant case, there can be no dispute that Ms. Hodge was competent at the time of her admission and that UPAC failed to follow its own directives and have her sign the document that they drafted.

LAW

South Carolina's Supreme Court and Court of Appeals have recently decided – within the past 12 months – the precise issues that are before the Court today.

1. A Nursing Home May Not Bind a Competent Patient to an Arbitration Agreement When the Nursing Home Fails to Obtain the Patient's Signature to the Agreement and Obtains Only the Signature of a Family Member With No Health Care Power of Attorney.

South Carolina's appellate courts have recently ruled on the specific question before the Court today – may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself. Our appellate courts have ruled – this year – that the answer to that question is "no."

On March 12, 2014, the South Carolina Supreme Court issued an opinion in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). In Coleman, the circuit court denied the nursing home's motion to compel arbitration because the arbitration agreement was

signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the circuit court's denial. In that case, the Supreme Court ruled that even thought the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not waive her sister's constitutional right to a jury trial by entering into an arbitration agreement with the nursing home that would be binding on her sister. The Court held that "decision making by the surrogate is a last resort. For example, § 44-66-30(E) states that no one may consent to 'health care decisions' if the patient's inability to consent is temporary and that waiting for the patient to regain competency will not result in significant detriment to the patient's health." Coleman at 407 S.C. 353. That is, even if the patient is incompetent and there is no one else to make the decision, a family member cannot waive the patient's right to a jury trial and bind that patient to an arbitration agreement.

Even more recently, the South Carolina Court of Appeals has faced the same question before the Court today – brought by the same defendant and represented by the same lawyer – as are before the Court today. Just a few months ago, our Court of Appeals decided the case of Scott v. Heritage Healthcare of Estill, LLC., 2014 WL 3845113 (2014)(Opinion attached as Exhibit 5). In Scott, Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed the denial to the South Carolina Court of Appeals and the Court of Appeals affirmed Judge Mullen's denial. The Court of Appeals ruled as follows:

> "We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent." Scott at *1 (emphasis added).

In Scott, the Court of Appeals focused on three issues that mandated a finding that the Arbitration Agreement was unenforceable: 1) the patient was competent at the time her family member signed the Arbitration Agreement and UPAC failed to obtain the signature of the competent patient; 2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and 3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand and, as in Scott, prevent UPAC from enforcing an arbitration agreement against a patient who never signed the agreement.

First, Ms. Hodge was clearly competent at the time of her admission yet UPAC did not have her sign the Arbitration Agreement. Attached as Exhibit 1 is the History and Physical of Ms. Hodge that was taken at the time of her admission. It reflects that Ms. Hodge was "a well developed and well nourished female in no real distress" and that Ms. Hodge had a "full range of motion" of her extremities. Moreover, UPAC elected to have Ms. Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. Attached as Exhibit 6 is an "Inventory of Personal Effect" dated September 1, 2010 – the day after Ms. Hodge was admitted to UPAC – that contains Ms. Hodge's signature. When UPAC wanted Ms.

Hodge to sign documents, they knew how to have her do so. She was competent and could have signed the Arbitration Agreement but did not do so.

Second, at the time of her admission to UPAC, Ms. Hodge had vested no one with a health care power of attorney to make decisions on her behalf. Attached as Exhibit 7 is a form that was completed just days prior to Ms. Hodge's admission to UPAC while she was a patient at Providence Hospital. The form clearly indicates that Ms. Hodge has not executed a Health Care Power of Attorney. This form was in Ms. Hodge's medical record and easily accessible by UPAC if they chose to inquire.

Third, UPAC knows that it must obtain a patient's signature on its Arbitration Agreements if the patient is competent. Attached as Exhibit 4 is UPAC's own "Arbitration Checklist." The very first line of that checklist instructs UPAC employees to "Determine competency of patient/resident." Then, UPAC instructs its employees to "Secure appropriate signatures:" (emphasis in original). According to its own document, UPAC acknowledges that when a patient is "**Competent, capable of signature – Patient/resident must** initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness." (emphasis added) UPAC failed to follow its own guidelines and now UPAC asks this Court to ignore both South Carolina law and its own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement. That is not the law and UPAC's own documents acknowledge that it is not the proper procedure.

2. UPAC's Alternative Arguments of Merger, Estoppel, etc. Also Fail.

UPAC argues that Ms. Hodge should be equitably estopped from denying the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit when she arrived in "no real distress" and was wheeled out 3 weeks later as a paraplegic for the remainder of her life, there is no question that she received no "benefit" from the Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of the same contract should be enforced to benefit him." Pearson v. Hilton Head Hosp., 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Ms. Hodge received some benefit from UPAC's 12 page Admission Agreement, there can be no question that Ms. Hodge received no benefit from the separate 5 page UPAC Arbitration Agreement. Because Ms. Hodge is not seeking to enforce the Arbitration Agreement against UPAC, equitable estoppel does not apply.

In the Scott case cited above, UPAC made all of the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the resident never signed the Arbitration Agreement] is dispositive." Scott, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement prevents it from arguing that the resident is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in Coleman addressed these same merger and estoppel arguments in detail and held that the nursing home's Arbitration Agreement did not merge with the nursing home's separate Admission Agreement. The Court held that the nursing home had chosen to make the Admission Agreement and the Arbitration Agreement two separate documents and because they had drafted the documents, any ambiguity would be resolved against them. The Court then noted that the nursing home's admission agreement contains language that intentionally makes it a separate agreement from the Arbitration Agreement. That is equally true of the case at hand. UPAC's admission agreement states on its face that the Admissions Agreement "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. . ." (UPAC admission agreement at p. 9, paragraph I) The Supreme Court in Coleman then noted that "the AA [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." Coleman 407 S.C. at 355. The UPAC Arbitration Agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at page 5) Finally, the Supreme Court in Coleman held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." Coleman at 355-56. Each of those reasons applies with equal force to the case at hand and the Supreme Court has clearly held that, in such circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

CONCLUSION

For each of these reasons, the Hodge family respectfully requests that this Court deny UPAC's motion to dismiss or to compel arbitration and allow this case to move forward.

Respectfully submitted,

WYCHE, P.A.

John C. Moylan III, Esquire (S.C. Bar # 11227)
Meliah Bowers Jefferson, Esquire (S.C. Bar # 74064)
P.O. Box 12247
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Columbia, SC 29204-3999
Phone: 803-252-4800
Fax: 803-252-4801
bsellers@stromlaw.com

ATTORNEYS FOR PLAINTIFF

February 19, 2015

EXHIBIT 1

UPAC of Bamberg
History and Physical

September 1, 2010

Mable Hodge

Ms. Hodge is a female that was transferred here from Providence Hospital by Dr. Khoury. She was treated in the hospital for abdominal pain. She is admitted her on numerous medications. She has Nausea and Vomiting, Delayed Gastric Emptying, history of CAD, HCVD, Diabetes Mellitus, Generalized Weakness, Diarrhea, and Hypokalemia.

Physical examination reveals a well developed and well nourished female in no real distress. We will order necessary medications and lab work to evaluate the patient.

Lungs: clear to PA
Heart: regular sinus rhythm without murmur
Abdomen: soft and nontender, no masses
Extremities: full range of motion

Patient will be evaluated in one week. Thank you very much.

H.A.Moskow 9-13-10
H.A.Moskow, MD
HAM/shl

EXHIBIT 2

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 30th day of August, year 2010, by and between UniHealth PAC Bamberg (Healthcare Center), MABLE HODGE (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

State of South Carolina
ADMISSION AGREEMENT

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: HERBERT A MOSKOW I Padget
2. Alternate attending physician: HERBERT A MOSKOW I Padget

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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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 $5462.00EST. 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.

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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

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

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.

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- 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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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:

MABLE HODGE
Print Patient/Resident's Name

Patient/Resident's Signature

CAMILLE HODGE
Print Patient/Resident Representative's Name

Patient/Resident Representative's Signature

LUTHER REEVES
Print Administrator's Name

Administrator's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

8/30/10
Date

(Healthcare Center will maintain a copy for their records)

EXHIBIT 3

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ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 30th day of August, 2010, by and between UniHealth PAC Bamberg (the "Healthcare Center") and MABLE HODGE and CAMILLE HODGE ("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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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.

E. 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

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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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.

MABLE HODGE
Print: Name of Patient/Resident

Signature of Patient/Resident

Camille E Hodge
Signature of Patient/Resident Representative

UniHealth PAC Bamberg
Print: Name of Healthcare Center

Lisa Lane
Signature of Healthcare Center's Authorized Agent

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

CAMILLE HODGE
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.

Initials

EXHIBIT 4

New: 5/07

ID.01

ARBITRATION CHECKLIST

Patient/Resident Name: (Last) CHRISTOPHER (First) LYNN	Date: 12.29.10	Completed by: Dee Hunt
Item	**Date Completed**	**Comments**
Determine competency of patient/resident		
Provide patient/resident copy of Arbitration Agreement		
Provide spouse copy of Agreement		
Provide Durable POA or Legal Guardian copy of Arbitration Agreement		
Explain basic definition of Arbitration		
Explain advantages of Arbitration		
Inform patient/resident that acceptance is voluntary		
Inform patient/resident that accepting the Agreement means the person is giving up their right to a jury trial		
Inform patient/resident of right to consult an attorney		
Inform patient/resident of 30 day right to revoke agreement		
Provide the patient/resident an opportunity to ask questions before making a decision to execute the agreement		
Secure appropriate signatures: ***Competent, capable of signature –*** Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness. ***Competent, incapable of signature –*** Have the patient/resident verbally confirm in the presence of two (2) healthcare center/agency witnesses that the patient/resident authorizes their family member or friend to sign on the patient/resident's behalf. Have the two (2) healthcare center/agency witnesses execute the contract.		

EXHIBIT 5

2014 WL 3845113
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of South Carolina.

Cherry SCOTT, as Personal Representative of the Estate of Elizabeth Jones, Respondent,
v.
HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni-Health Post Acute Network of the Lowcountry, United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation, Appellants.
Appellate Case No.2012-207308.

No. 2014-UP-317. | Heard May 5, 2014. | Decided Aug. 6, 2014.

Appeal From Hampton County; Carmen T. Mullen, Circuit Court Judge.

Attorneys and Law Firms

Monteith Powell Todd, John Michael Montgomery, and Robert E. Horner, all of Sowell Gray Stepp & Laffitte, LLC, of Columbia; and Jason Edward Bring, W. Jerad Rissler, and Tyler Lawrence Arnold, all of Arnall Golden Gregory, LLP, of Atlanta, GA, for appellants.

Lee Deer Cope, of Peters Murdaugh Parker Eltzroth & Detrick, PA, of Hampton; Charles McCutchen, of Lanier & Burroughs, LLC, of Orangeburg; Matthew Vernon Creech, of Peters Murdaugh Parker Eltzroth & Detrick, PA, of Ridgeland; and Margie Bright Matthews, of Bright Matthews Law Firm, LLC, of Walterboro, for respondent.

Opinion

PER CURIAM.

*1 In this wrongful death and survival action alleging nursing home negligence, Heritage Healthcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or Uni-Health Post Acute Network of the Lowcountry, United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation (collectively, "Heritage") appeal from the trial court's denial of its motion to compel arbitration. Heritage argues the trial court erred in (1) concluding the arbitration agreement was not governed by the Federal Arbitration Act (FAA) when the transaction between the parties involved interstate commerce and (2) refusing to enforce the parties' Arbitration Agreement in accordance with its plain terms. We affirm.

1. We affirm as to whether Ellen Jenkins had authority to sign the Arbitration Agreement on Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent. *See New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct.App.2008) (stating an "[a]ppeal from the denial of a motion to compel arbitration is subject to de novo review"); *id.* ("Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings."); *Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 145, 425 S.E.2d 764, 773 (Ct.App.1992) ("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."); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct.App.2000) ("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.* at 433, 540 S.E.2d at 118 ("An agency may not be established solely by the declarations and conduct of an alleged agent."); *McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct.App.1987) ("A party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts."); *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939) ("[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority ...") (internal quotation marks and citation omitted); *cf. Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 353-54, 755 S.E.2d 450, 454 (2014) (finding that under the Adult Health Care Consent Act, a sister who lacked a power of attorney did not have the capacity to bind the decedent to

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the voluntary arbitration agreement because the scope of the sister's authority to consent to decisions concerning the decedent's health care extended only to the admission agreement, which was the basis upon which the facility agreed to provide health care and the sister agreed to pay for it, and because the separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between the facility and the decedent or the sister should issues arise in the future); *Life Care Ctrs. of Am. v. Smith*, 681 S.E.2d 182, 185 (Ga.Ct.App.2009) (finding "the plain language of the health care power of attorney did not give [the daughter] the power to sign away her mother's or her mother's legal representative's right to a jury trial").

*2 2. We decline to address Heritage's remaining arguments because we find this issue is dispositive. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (concluding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

Accordingly, the decision of the trial court is

AFFIRMED.

FEW, C.J., and SHORT and GEATHERS, JJ., concur.

Footnotes

1 Jones was admitted to Heritage by Jenkins, her sister, who executed the paperwork for her admission.

End of Document

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EXHIBIT 6

ADMS 3.112.00a
NURS L110.00a

INVENTORY OF PERSONAL EFFECTS FORM

Issued: 1995
Revised: (Ref: 10/07)

INVENTORY OF PERSONAL EFFECTS

Patient/Resident: Mable Hodge

Healthcare Center Name: UPAC Bamberg Room # 112

(Use separate form for additions or returns. Draw line through items that do not apply.)

1. Amount of cash: 0
2. Dentures: 0
3. Jewelry worn: Silver - Cross Necklace & gold link bracelet
4. Eyeglasses: 0
5. Other valuables:
6. Articles to be held in safekeeping:
7. Other:

CLOTHING LIST				MISCELLANEOUS	
Apron	0	Pants	Pants-1 Shorts-6	Artificial Limb	0
Bathrobe	1	Shawls	0	Books	0
Belt	0	Shirts	9	Brush	0
Blouse	1	Shoes	1	Clock	0
Bras	0	Skirts	0	Comb	0
Coat	0	Sweaters	0	Cane	1
Dresses	0	Slippers	0	Crutches	0
Gloves	0	Slips	0	Purse	0
Handkerchief	0	Stockings	0	Radio	0
Hats	0	Suspenders	0	Razor	0
Housecoats	1	Undershirts	0	Trunk	0
Jackets	0	Underpants	1-Bag Pull-up	Pajamas	1-Set
Neckties	0	Vests	0	Walker	1
Nightgowns	3			Wheelchair	0

ACKNOWLEDGMENT:

I hereby certify that the above is a correct list of my belongings.

Patient/Resident's Signature: Mable Hodge 9/1/10 Date:

Responsible Party's Signature: Date:

Center Representative's Signature: Date:

EXHIBIT 7

Advance Directive Acknowledgement Tracking Form
(Place this behind the Advance Directive tab in the Patient's Medical Record)

In order to honor your wishes, it is important for our hospital to know and clearly understand your wishes concerning health care direction.

An Advance Directive can be one of two things:
1. Health Care Power of Attorney
2. Living Will

Please read the following information concerning Advance Directives
Check the following statements that pertain to you:

NO I have executed a Health Care Power of Attorney

NO I have executed a Living Will

Medical Care is not conditional upon the establishment of an Advance Directive.

[signature] Husband
(Patient or Representative Signature)

8/12/10
(Date)

_____ The patient is unable to complete at the time of admission.
(form is to be completed at a later time by the Admissions Department)

The Admissions Representative, have reviewed the above questions with the patient and/or family and have provided the assistance with answering the above questions.

_____
(Admissions Representative Signature)

_____
(Date and Time)

TRACKING MECHANISM FOR ACTUAL PRESENCE OF THE DOCUMENT IN THE MEDICAL RECORD
1. Go to *Nursing Initial Assessment* located behind the blue tab in the Medical Record which states "Nursing Admit Assessment" for further tracking of the document.
2. Go to the *24 hour Patient Profile Flow Sheet* under the section Nursing Daily Process located behind the blue tab which states "Multidisc 24 hour Report" for ongoing documentation.

When the Advance Directive has been obtained, place behind the purple tab in the Medical Record.

SISTERS OF CHARITY
PROVIDENCE HOSPITALS
2435 Forest Drive Ly½ Columbia, SC 29204

ADMADVDIRTRACK

Rev. Date 10/07

Patient Name: HODGE,MABLE NMI
Acct# D00503836397 MR# M00050604
Sex: F Age:79 DOB: 08/09/31

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO: 2014-CP-05-17

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

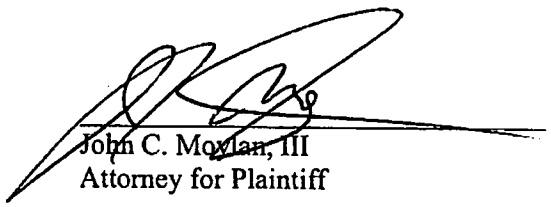
Defendants.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day true and correct copies of the within and foregoing Plaintiff's Memorandum in Opposition to Defendant UPAC's Motion to Compel Arbitration on all counsel of record by causing the same to be served via email and also deposited in the United States mail, first class postage affixed, addressed as follows:

Monteith P. Todd, Esquire
Sowell Gray Stepp Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
Email: mtodd@sowellgray.com

James D. Nance, Esquire
Nance, McCants & Massey
Post Office Box 2881
Aiken, SC 29802
Email: jimnance@nancefirm.com



John C. Moylan, III
Attorney for Plaintiff

February 19, 2015

FILED
2015 FEB 23 AM 10:04
JAMES M. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge,	)	Civil Action No. 2014-CP-05-17
Plaintiff,	)	**SUPPLEMENTAL MATERIALS SUBMITTED BY DEFENDANTS AND PLAINTIFFS IN SUPPORT OF AND IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION OR, ALTERNATIVELY, TO COMPEL ARBITRATION AND STAY PROCEEDINGS**
vs.	)	
UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,	)	
Defendants.	)	

Please see attached materials submitted by the UniHealth defendants and plaintiffs in support of and in opposition to Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings in this matter

SOWELL GRAY STEPP & LAFFITTE, LLLC

BY: _____

Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400
Email: mtodd@sowellgray.com
Attorneys for Defendants, UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.

Feb 20, 2015

Consent and Conditions of Treatment
Sisters of Charity Providence Hospitals

In consideration of the care and treatment to be provided to the patient whose name appears at the bottom of this page at Sisters of Charity Providence Hospitals (Providence Hospital) (meaning the patient or patient's personal representative throughout this form), the undersigned, consent to and agree to the following conditions.

1. Consent to Treatment. I voluntarily consent to any and all procedures, treatments and diagnostic procedures provided by the Hospital and its associated physicians, clinicians, and other personnel. I am aware that the practice of medicine and other health care professions is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatment or examinations in the Hospitals.

2. Consent to Testing for Infectious or Contagious Diseases. I consent to being tested for infectious or contagious diseases such as, but not limited to, Hepatitis B and HIV (AIDS) infection, if such testing is deemed advisable by my/the patient's physician. I understand that consent means that I agree to have blood drawn and analyzed for any and all tests necessary to diagnose an infectious or contagious disease. I am aware that the Hospital reports all positive test results to the Department of Health and Environmental Control, as required by law.

3. Personal Valuables and Belongings. I understand that the Hospital recommends that I not bring any personal valuables to the Hospital. Articles such as jewelry, cash, valuables documents, unnecessary clothing or other items of value not necessary for my/the patient's stay should not be brought to the Hospital. Essential valuables such as eyeglasses, contact lenses, hearing aids, dentures, etc. are my/our responsibility and I understand that I must protect essential valuables brought to the Hospital carefully. I understand that the Hospital maintains a safe for the storage of valuables that are necessary for my/the patient's stay and that I will be asked to turn any valuables over to security for deposit in the safe. I agree that the Hospital is not responsible for the loss, disappearance, or damage of any valuables that I choose to keep in my/the patient's room.

4. Use and Disclosure of Protected Health Information. I consent to the use and disclosure of my/the patient's protected health information for purposes of obtaining payment for services rendered to me/the patient, treatment and health care operations consistent with the Hospital's Notice of Privacy Practices. I acknowledge that I have received a copy of the Hospital's Notice of Privacy Practices.

5. Verification and Assignment of Hospital Insurance Benefits. I understand that a bill will be sent to my/the patient's insurance company or other payor. I consent to the Hospital contacting my insurance company or other payor for the purpose of obtaining payment. I hereby consent to payment being made by the insurance company or other payor directly to the Hospital. I assign, transfer and convey to the Hospital any and all of my/the patient's rights and interests that I may have to any and all medical insurance benefits. This includes, but is not limited to, no fault insurance benefits, liability insurance benefits, workers compensation benefits, and any other benefits to which I may be entitled as a result of hospitalization or treatment/care at the Hospital. I further agree that this assignment will not be withdrawn or voided at any time until this account is paid in full. I understand and agree that I am responsible for payment for the services rendered to the fullest extent allowed by law.

6. Prior Authorization. I understand that many insurance companies or other payors require pre-authorization or referrals for certain treatment, tests and/or procedures. I understand that it is my/the patient's responsibility to obtain either pre-authorization or referral. I understand that I may be held financially responsible for treatment, tests

SISTERS OF CHARITY
PROVIDENCE HOSPITALS
2435 Forest Drive Columbia, SC 29204

ADMCONSENT

Rev: Date 10/07

Patient Name
Acct# MR#
Adm. Date: S
DOB Room#
Adm Dr

Patient Name: HODGE,MABLE NMI
Acct# 0005093853397 MR# M0005850604
Sex F Age 78 DOB 05/08/31

and/or procedures that are not reimbursed by my/the patient's insurance company or other payor due to lack of pre-authorization and/or referral as stipulated in my/the patient's particular insurance policy.

7. Private Room Difference: I understand that if I request a private room, I am responsible for the entire private room difference, unless the difference is covered by insurance.

8. Independent Status of Physician: I understand that during the course of my/the patient's stay that my/the patient's physician may request consultations and/or the services of Hospital-based health care providers, including, but not limited to, emergency physicians, radiologists, pathologists, or anesthesiologists. I recognize that any or all physicians, who furnish services to me/the patient during this admission are independent contractors and are not agents or employees of the Hospital. I understand that the Hospital does not control or have the right to control the medical decisions and actions of physicians, including Hospital-based providers and independent contractors, and that physicians are responsible and liable for their own acts or omissions. I understand and agree that each of the practitioners who render professional services to me/the patient, may bill and collect independently for these services. I understand that their bills will be separate and apart from the Hospital's billing and collections or that the Hospital may bill on the healthcare provider's behalf. Furthermore, I understand that each health care provider may be individually contracted with an HMO or PPO. These contracts could be different from the contracts the Hospital holds. I understand that it is my responsibility to find out if each health care provider is a member of my/the patient's insurance provider network.

9. Consent to Photograph : I understand that photographs, videotapes, digital, or other images may be recorded to document my care and I consent to this. I understand that these photographs, videotapes, digital, or other images will become part of my medical record and are considered protected health information. I also understand that Sisters of Charity Providence Hospitals is the owner of my medical record, but that I have a right to access my protected health information in the medical record in the manner described in the Notice of Privacy Practices. I understand that these images will be stored in a secure manner that will protect my privacy and that they will be kept at least for the time period required by law.

Guarantee of Payment

By signing the form below, I understand that:

- I am financially responsible for this account with the Hospital, regardless of any insurance benefits to the fullest extent allowed by law.
- I understand that I may be held responsible for any charges not covered for any reason by a third party payor. Should this account be turned over to a collection agency or an attorney for collection, I understand that I will be obligated to pay all collection fees and reasonable attorney's fees.

By signature below, I consent to and agree to the conditions set forth on this form. I have been given the opportunity to ask questions regarding this form, and understand the obligation I assume by signing this form.

8/17/10 2:55
DATE AND TIME

Mable V. Hodge Husband
SIGNATURES OF PATIENT
or
PATIENT'S PERSONAL REPRESENTATIVE
(Circle one: Parent, Guardian, or Legally Authorized Representative)

MA
WITNESS

SISTERS OF CHARITY PROVIDENCE HOSPITALS
2435 Forest Drive · Columbia, SC 29204

Rev. Date 10/07

ADMCONSENT

Patient Name: HODGE,MABLE NMI
Acct# D0053836397 MR# M0036503604
Sex: F Age:75 DOB: 09/09/31

Patient Name:
Acct# MR#
Adm. Date: Sex: Age:
DOB: Room#
Adm. Dr.:

Assignment of Insurance Benefits

I, the undersigned patient, acknowledge that I am responsible for all anesthesia charges for the procedure(s) that I am about to undergo, and I further understand that I will be billed for these anesthesia charges separate from the Providence Hospital/Providence Hospital Northeast charges.

I hereby assign any insurance benefits to which I am entitled to Anesthesiology Consultants of Columbia, with the understanding that I will Pay any and all costs not covered, or partially covered by the insurance benefits.

I hereby authorize the physician to furnish from his/her records any information in connection with this Assignment requested by the insurer or liable third parties. I authorize any holder of medical information about me to release to the Social Security Administration or its intermediaries or the insurer any of said information needed for the processing of a claim covered by this Assignment on a related Medicare claim.

I agree to permit a copy of this authorization to be used in place of the original. request payment of medical insurance benefits to be made either to me or the Anesthesiology Consultants of Columbia Office.

Name(s) of insurance contractor(s) whose benefits are hereby assigned:

Patient Name (please print)

Insurance Company

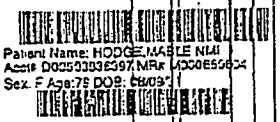
Subscriber on Insurance
(If other than patient)

Insurance Company

Subscriber on Insurance
(If other than patient)

Patient's Signature
(Parent or Guardian, if minor) Husband Date 8/17/10

Physician accepting Assignment



Advance Directive Acknowledgement Tracking Form
(Place this behind the Advance Directive tab in the Patient's Medical Record)

In order to honor your wishes, it is important for our hospital to know and clearly understand your wishes concerning health care direction.

An Advance Directive can be one of two things:
1. Health Care Power of Attorney
2. Living Will

Please read the following information concerning Advance Directives
Check the following statements that pertain to you:

NO I have executed a Health Care Power of Attorney

NO I have executed a Living Will

Medical Care is not conditional upon the establishment of an Advance Directive.

Paul E. Hodge Husband
(Patient or Representative Signature)

8/17/10
(Date)

_____ The patient is unable to complete at the time of admission.
(form is to be completed at a later time by the Admissions Department)

The Admissions Representative, have reviewed the above questions with the patient and/or family and have provided the assistance with answering the above questions.

(Admissions Representative Signature) (Date and Time)

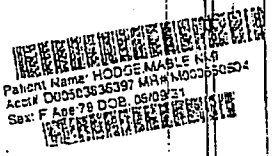
TRACKING MECHANISM FOR ACTUAL PRESENCE OF THE DOCUMENT IN THE MEDICAL RECORD
1. Go to *Nursing Initial Assessment* located behind the blue tab in the Medical Record which states "Nursing Admit Assessment" for further tracking of the document.
2. Go to the *24 hour Patient Profile Flow Sheet* under the section Nursing Daily Process located behind the blue tab which states "Multidisc 24 hour Report" for ongoing documentation.

When the Advance Directive has been obtained, place behind the purple tab in the Medical Record.

SISTERS OF CHARITY PROVIDENCE HOSPITALS
2435 Forest Drive Ext. Columbia, SC 29204

ADMADVDIRTRACK

Rev. Date 10/07



Effective Date 1/4/04

Acknowledgement of Receipt of Notice Of Privacy Practices

I acknowledge that I have received a copy of the Hospitals' Notice of Privacy Practices

Acknowledgement of Directory Inclusion / Exclusion

✓ I choose to be INCLUDED in this Sisters of Charity Providence Hospitals Directory.

____ I choose to be EXCLUDED from the Sisters of Charity Providence Hospitals Directory.

Choosing to be excluded from the Directory means:

- No information will be given regarding my hospital stay – e.g. if someone calls and request my room number, or any information, the caller will be told, "We do not have any information on that person in the system."
- Flowers received to the hospital will not be delivered.
- Mail / Cards received to the hospital will not be delivered.

___ I acknowledge that, at the time of or prior to being admitted to the hospital for inpatient care or outpatient surgery, I have received the written information required under the Patient Safety Act.

[signature] Husband

Signature of Patient or Representative

8/17/10

Date

Or

___ The patient did not receive the written information required under the Patient Safety Act prior to or upon admission to the hospital for inpatient care or outpatient surgery because the patient was admitted under emergency circumstances.

Signature of Hospital Employee verifying emergency admis

Patient Name HODGE,MABLE NMI
Acct# D00503836397 MR# M00060604
Sex F Age:79 DOB 08/09/31

SISTERS OF CHARITY PROVIDENCE HOSPITALS
2435 Forest Drive · Columbia, SC 29204

Rev. Date 10/07

ADMACKFP

Patient Name:
Acct# MR#
Adm. Date: Sex: Age:
DOB: Room#
Adm. Dr.:

Bamberg County Hospital
AND NURSING CENTER

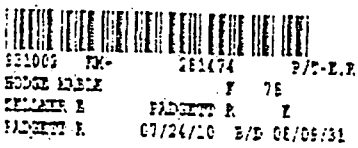
Consent and Conditions of Treatment

11. **Independent Status of Physicians:** I (the patient and/or personal representative of the patient) understand that during the course of my stay that my physician may request consultations and/or services of hospital-based physicians, including, but not limited to, emergency physicians, radiologists, or anesthesiologists. I recognize that any or all physicians, who furnish services to me during this admission are independent contractor and are not agents or employees of the hospital. I understand and agree that each of the above referenced practitioners, who render professional services to me, bill and collect independently for these services. I understand that their bills will be separate and apart from the hospital's billing and collections or that the hospital may bill on the physician's behalf, but subject to the authorizations granted by me in accordance with this agreement. Furthermore, I understand that each physician may be individually contracted with an HMO or PPO. These contracts could be different from the contracts that the hospital holds. I understand that I need to find out if each is a member of my insurance provider network. I understand that I may receive bills from my physician as well as any of the ones listed below:

- Radiologists will send a bill for reading any diagnostic X-rays, CT scans, and ultrasound procedures I may have received.

I have an Advance Directive documented as specified below:

Living Will	Yes	No
HealthCare Power of Attorney	Yes	No
Advance Directive Information Given	Yes	No



- If I answered YES, I understand that I need to ensure that my physician is aware of this document
- If I answered NO, I understand that I may request additional information, or assistance in completing an Advance Directive

Guarantee of Payment

By signing the form below, I (the patient or assigned agent of the patient) understand that:

- I am financially responsible for this account with Bamberg County Hospital, regardless of any insurance benefits.
- I understand that I may request an estimate of the approximate cost of my care, including the portion for which I will be held responsible.
- I understand that I will be held responsible for any charges not covered by a third-party payer. should this account be turned over to a collection agency or an attorney for collections, I understand that I will be obligated to pay all collection fees and reasonable attorney's fees.
- I agree that any overpayments collected on this account may be applied directly to any delinquent account for which I am legally responsible at the time of collection of the overpayment. This form is valid for care provided by Bamberg County Hospital for a 12-month period beginning with date of this document.
- By my signature below, I acknowledge the information located on the front and back of this from. I have been given the opportunity to ask questions regarding this form, and understand the obligation I assume by signing this form.

Patient's Signature — Date

Signature of Agent signing for patient (relationship) — Date 7/24/10

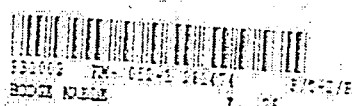
Admissions Signature — Date 7-24-10

admD017 (10/02) rev (01/03)

I have received a copy of the [illegible]

Page 2 of 2
NPCOL1:612226.2-HC-(JMB) 030001-00001

Bamberg County Hospital
AND NURSING CENTER
Discharge Order Sheet



Follow-up Appointment	Call Office for Appt
Dr Podpta 1 week	_____ Day(s)
	_____ Week(s)
	1 Month(s)
	Aug 4th 11 Lorn

SPECIAL INSTRUCTIONS TO PATIENT

DIET Cardiac

ACTIVITY As tolerated

WEIGHT MONITORING

- ☐ Give Influenza Vaccine
- ☐ Give Pneumococcal Vaccine

OTHER

☐ NO RESTRICTIONS

☐ Printed instructions have been given

In case of emergency call: _____

I the undersigned, read and understand these instructions

Patient or Responsible Party

Medications / Frequency

Medicine	When to take
Lopressor 100g	daily
Reglan 10g	Before meal & at bedtime
Spironolactone 25g	daily
Pantoprazole 40g	daily
Plavix 75g	daily
Indur ER 60g	daily
Januvia 100g	daily
ASA 81g	daily
Nexium 40mg	40mg for 2 days
Stripsol Atrophic Ointment	

Diagnosis: Intractable Nausea/Vomiting
Dehydration
Acute renal insufficiency
Abd pain

Out Patient Referrals: ☐ PT ☐ OT ☐ Home Health ☐ Procedures / ☒ Medication Reconciled at D/C

Discharge Disposition

- ☒ 01 Home
- ☐ 02 Transfer to another acute facility
- ☐ 03 DC'd/ transferred to skilled nursing facility (m'care skilled or swing bed at another facility)
- ☐ 04 DC'd/ transferred to intermediate care facility (m'care noncertified SNF/ Medicaid certified bed.)
- ☐ 05 DC'd to VA, psych, cancer or children's hospital
- ☐ 06 DC'd home health service (except for IV only)
- ☐ 07 Left AMA or DC'd care.
- ☐ 08 DC'd home under care of home IV provider
- ☐ 20 EXPIRED Autopsy Considered ☐ Yes ☐ No
- ☐ 50 Hospice – home
- ☐ 51 Hospice – medical facility
- ☐ 61 Transfer to Medicare approved Swing Bed AT BAMBERG COUNTY HOSPITAL
- ☐ 62 Transfer to rehab facility
- ☐ 63 DC'd / transfer to acute long term care hospital
- ☐ 71 DC'd / transferred / referred to another institution for out-pt services (including OT, PT, diagnostic and/or screening tests, etc)
- ☐ 72 DC'd / transferred/ referred to this facility for outpt services (including OT, PT, diagnostic and/or screening tests, etc.)

Cancel SW request 8-29-10 BSH

12/10 @ 1512

Physician's Signature

Date

Time

med002 (10/02) White – chart yellow-patient pink - physician

BAMBERG COUNTY HOSPITAL AND NURSING CENTER
OUTPATIENT QUESTIONNAIRE

(Emergency room, Laboratory, Outpatient Surgery, Physical Therapy, Radiology)

931002 RM- 381474 F/T-E.R.
HODGE MARIE F 78
ZELMER E PADGETT R E
PADGETT R 07/24/10 E/D 08/09/31

Patient Name:_____ Account #:__

If someone should call and ask for you while you are here, do you want us to let them know you are here?

[ ] Yes

[ ] I want only the following individuals to know I am

Name:_____

Name:_____

Name:_____

Name:_____

[ ] No, I do not want anyone to know I am here.

Signature: [signature] Date: 7/24/10
Patient/Legal Representative

Husband Date: 7/24/10
Authority of Legal Representative

Witness:_____

Bamberg County Hospital
AND NURSING CENTER

Consent and Conditions of Treatment

11. **Independent Status of Physicians:** I (the patient and/or personal representative of the patient) understand that during the course of my stay that my physician may request consultations and/or services of hospital-based physicians, including, but not limited to, emergency physicians, radiologists, or anesthesiologists. I recognize that any or all physicians, who furnish services to me during this admission are independent contractor and are not agents or employees of the hospital. I understand and agree that each of the above referenced practitioners, who render professional services to me, bill and collect independently for these services. I understand that their bills will be separate and apart from the hospital's billing and collections or that the hospital may bill on the physician's behalf, but subject to the authorizations granted by me in accordance with this agreement. Furthermore, I understand that each physician may be individually contracted with an HMO or PPO. These contracts could be different from the contracts that the hospital holds. I understand that I need to find out if each is a member of my insurance provider network. I understand that I may receive bills from my physician as well as any of the ones listed below:

- Radiologists will send a bill for reading any diagnostic X-rays, CT scans, and ultrasound procedures I may have received.

I have an Advance Directive documented as specified below:

Living Will	Yes	No
HealthCare Power of Attorney	Yes	No
Advance Directive Information Given	Yes	No

931002 RM- 281474 P/T-E.R.
HODGE MABLE F 78
ZELLNER E PADGETT R E
PADGETT R 07/24/10 B/D 08/09/31

- If I answered YES, I understand that I need to ensure that my physician is aware of this document
- If I answered NO, I understand that I may request additional information, or assistance in completing an Advance Directive

Guarantee of Payment

By signing the form below, I (the patient or assigned agent of the patient) understand that:

- I am financially responsible for this account with Bamberg County Hospital, regardless of any insurance benefits.
- I understand that I may request an estimate of the approximate cost of my care, including the portion for which I will be held responsible.
- I understand that I will be held responsible for any charges not covered by a third-party payer. should this account be turned over to a collection agency or an attorney for collections, I understand that I will be obligated to pay all collection fees and reasonable attorney's fees.
- I agree that any overpayments collected on this account may be applied directly to any delinquent account for which I am legally responsible at the time of collection of the overpayment. This form is valid for care provided by Bamberg County Hospital for a 12-month period beginning with date of this document.
- By my signature below, I acknowledge the information located on the front and back of this from. I have been given the opportunity to ask questions regarding this form, and understand the obligation I assume by signing this form.

Patient's Signature — Date 7/24/10

Signature of Agent signing for patient (relationship) — Date 7-24-10

Admissions Signature — Date

adm017 (10/02) rev (01/03)

I have received a copy of the Bamberg County Hospital Patient Safety Information

Bamberg County Hospital
AND NURSING CENTER
Discharge Order Sheet

931002 PH- 052-1 281474 P/I-I/P
HODGE MABLE P 78
MOORE ALF PADGETT P M
PADGETT P 07/24/10 B/D 06/09/31

Follow-up Appointment	Call Office for Appt
Dr. Padgett	_____ Day(s)
	_____ Week(s)
	Aug 4th 1120 AM Month(s)

Medications / Frequency

Medicine	When to take
Lopressor 100g	daily
Reglan 10g	before meals at bedtime
Spironolactone 25g	daily
Pantoprazole 40g	daily
Plavix 75g	daily
Indur ER 60g	daily
Januvia 100g	daily
ASA 81g	daily
Norvasc 10mg	1 tab by mouth daily
Stripsol therapy as directed	

SPECIAL INSTRUCTIONS TO PATIENT

DIET Cardiac

ACTIVITY as tolerated

WEIGHT MONITORING

- ☐ Give Influenza Vaccine
- ☐ Give Pneumococcal Vaccine

OTHER

☐ NO RESTRICTIONS

☐ Printed instructions have been given

In case of emergency call: _____

I the undersigned, read and understand these instructions

Patient or Responsible Party Mable Hodge

Diagnosis: Intractable Nausea / Vomiting
Dehydration
Acute renal insufficiency
Back pain
Anemia

Out Patient Referrals: ☐ PT ☐ OT ☐ Home Health ☐ Procedures: / ☒ Medication Reconciled at D/C

Discharge Disposition

- ☒ 01 Home
- ☐ 02 Transfer to another acute facility
- ☐ 03 DC'd/ transferred to skilled nursing facility (m'care skilled or swing bed at another facility)
- ☐ 04 DC'd/ transferred to intermediate care facility (m'care noncertified SNF/ Medicaid certified bed.)
- ☐ 05 DC'd to VA, psych, cancer or children's hospital
- ☐ 06 DC'd home health service (except for IV only)
- ☐ 07 Left AMA or DC'd care
- ☐ 08 DC'd home under care of home IV provider
- ☐ 20 EXPIRED Autopsy Considered ☐ Yes ☐ No
- ☐ 50 Hospice – home
- ☐ 51 Hospice – medical facility
- ☐ 61 Transfer to Medicare approved Swing Bed AT BAMBERG COUNTY HOSPITAL
- ☐ 62 Transfer to rehab facility
- ☐ 63 DC'd / transfer to acute long term care hospital
- ☐ 71 DC'd / transferred / referred to another institution for out-pt services (including OT, PT, diagnostic and/or screening tests, etc)
- ☐ 72 DC'd / transferred/ referred to this facility for outpt services (including OT, PT, diagnostic and/or screening tests, etc.)

Signed 30 minutes on 8-29-10 @ 5:11

8/27/10 @ 1512

Physician's Signature _____ Date 8-27-10 Time 1530

med002 (10/02) white – chart yellow-patient pink - physician

BAMBERG COUNTY HOSPITAL AND NURSING CENTER
OUTPATIENT QUESTIONNAIRE

(Emergency room, Laboratory, Outpatient Surgery, Physical Therapy, Radiology)

931002 RM- 281474 P/T-E.R.
HODGE MABLE F 78
ZELLNER E PADGETT R E
PADGETT R 07/24/10 B/D 08/09/31

Patient Name:_____ Account #:__

If someone should call and ask for you while you are here, do you want us to let them know you are here?

[ ] Yes

[ ] I want only the following individuals to know I am

Name:_____

Name:_____

Name:_____

Name:_____

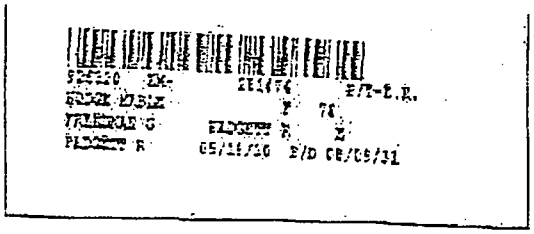
[ ] No, I do not want anyone to know I am here.

Signature: [signature] Date: 7/24/10
Patient/Legal Representative

Husband Date: 7/24/10
Authority of Legal Representative

Witness:_____

Bamberg County Hospital and Nursing Center
Transfer Form



1. Request Transfer – I have been informed of my rights regarding examination, treatment, and transfer, including the hospital's obligation to provide screening and emergency medical treatment. I acknowledge my medical condition has been evaluated and explained to me by the physician who has recommended and offered to me further medical examination and treatment. The potential benefits of such examination and treatment as well as the potential risks associated with transfer to another facility have been explained to me and I understand them. In spite of this understanding, I refuse to consent to further examination and treatment, which has been offered to me, and request transfer.

Signature of Patient of legally responsible person | Witness

Relationship to Patient | Date and Time

2. Refusal of Transfer – I have been informed of my rights regarding examination, treatment, and transfer, including the hospital's obligation to provide screening and emergency medical treatment. I acknowledge that my condition has been evaluated and explained to me by the physician who has recommended that I be transferred to the service of Dr. _____ at _____.
The benefits of such transfer, the risks associated with transfer, and the probable risks of not being transferred have been explained to me and I understand them. Even though the doctor believes it is in my best interest to be transferred, I refuse to be transferred and I request instead to continue receiving treatment at Bamberg County Hospital and Nursing Center.

Signature of Patient of legally responsible person | Witness

Relationship to Patient | Date and Time

3. Consent for Transfer – I have been informed of my rights regarding examination, treatment, and transfer, including the hospital's obligation to provide screening and emergency medical treatment. I acknowledge that my condition has been evaluated and explained to me by the physician, who has recommended I be transferred to the service of Dr. Delaine at Providence.
The benefits of such transfer, the risks associated with such transfer, and the risks of not being transferred have been explained to me and I understand them. With this knowledge and understanding, I agree and consent to be transferred.

Tammie E. Hodges | Rebecca Cummings RN

Signature of Patient of legally responsible person | Witness

Husband | 5/19/10 1400

Relationship to Patient | Date and Time

Er101 (03/02) rev (01/04)
Original - Chart

Bamberg County Hospital
AND NURSING CENTER

Consent and Conditions of Treatment

1. **Consent to Treatment:** The patient and/or authorized representative of the patient, whose signature is affixed below, does hereby consent to any and all medical and emergency medical procedures on an inpatient or outpatient basis as recommended by the ordering physician, his physicians, assistants, or designees. This includes but not being to grant authority to the ordering physician, his physicians, assistants, or designees to administer and to perform all examinations, treatment, anesthesia, operations and diagnostic procedures which may not or during the course of my/his patient's care be deemed advisable or necessary. I understand that the administration of blood or blood products may be deemed necessary for my treatment, and I hereby consent to the administration thereof.
2. **Medical and Surgical Treatment:** I (the patient and/or authorized agent of the patient) agree and understand that all physician's, including Emergency Room physicians, treating me are responsible and liable for their own acts or omissions. I understand that Bamberg County Hospital is not responsible or liable for a physician's acts or omissions. Furthermore, I am aware that the practice of medicine is not an exact science and I further state that I understand that no guarantee has been or can be made as to the results of the treatments or examinations in the hospital.
3. **Consent to Testing for Infectious (or Contagious) Disease:** I (the patient and/or authorized agent of the patient) understand that in order to protect hospital employees, patients and visitors, I am consenting to being tested for infectious diseases such as, but not limited to Hepatitis B and HIV (Aids) infection. I understand that consent means that I agree to have my blood drawn, and that I allow my blood to be analyzed for any and all tests necessary to determine if I have an infectious disease. I am aware that Bamberg County Hospital reports all positive test results to the Department of Health and Environmental Control, as required by law.
4. **Personal Valuables and Belongings:** I (the patient and/or authorized agent of the patient) understand that it is recommended that I not bring any personal valuables with me to Bamberg County Hospital. Articles such as jewelry, cash, valuable documents, unnecessary clothing or other items of value not necessary for my stay should not be brought to the hospital. Essential valuables such as eyeglasses, contact lenses, hearing aids, dentures, etc. are my responsibility and I understand that I must protect my essential valuables carefully. I agree that Bamberg County Hospital is not responsible for the loss, disappearance, or damage of any valuables that I choose to keep in my room.
5. **Release of Information:** I (the patient and/or authorized agent of the patient) authorize Bamberg County Hospital to release all information contained in my medical record that is necessary solely to obtain payment for services rendered to me. I understand that I cannot revoke the disclosure of this information until Bamberg County Hospital has received all payments to which it is entitled as a result of providing services to me. Furthermore, I understand that Bamberg County Hospital may release or disclose any information concerning my care which is required by law, including but not limited to, reports required if I am tested for and have an infectious disease.
6. **Medicare Patient Certification:** I (the patient and/or authorized agent of the patient) certify that the information given by me in applying for payment under Title XVIII of the Social Security Act is correct. I authorize any holder of medical or other information about me to release to the Social Security Administration or its intermediaries or carriers any information needed for this or a related Medicare claim. I permit a copy of this authorization to be used in place of the original and request payment of authorized benefits be made on my behalf.
7. **Medicare Patients:** I (the patient and/or authorized agent of the patient) understand that Medicare does not cover items that are considered "self-administered" drugs (including, but not limited to), Tylenol, Vicodin, topical ointments, eye drops, etc. Furthermore, I understand that Medicare may not pay for certain Outpatient tests. If I am having Outpatient tests done, I have been advised as to whether or not Medicare considers the test my doctor ordered "medically necessary". I have been offered the opportunity to either sign an Advanced Beneficiary Notice or to refuse the tests the physician ordered.
8. **Verification and Assignment of Hospital Insurance Benefits:** I/we authorize Bamberg County Hospital and Nursing Center to act in my/our behalf as attorney in fact: (1) in the collection of benefits from any responsible third party through whatever means may be deemed necessary; and (2) in the endorsement of benefit checks made payable to myself and/or Bamberg County Hospital and Nursing Center. I/we hereby authorize payment directly to and assign to Bamberg County Hospital and Nursing Center and physician(s) any and all rights that the patient and I have, or to which we may become entitled, under any policy of insurance or any employee welfare benefit plan governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., including, but not limited to, hospital benefits, medical benefits, health benefits, PIP benefits, benefits due to sickness or injury, or any other health, accident, or welfare benefit of any type or form relating to or benefiting the patient, whether insured or self-funded, and the proceeds of all claims relating from or relating to the liability of or payments made by a third party or by any person, employer, or insurance company on the third party's behalf to or for the patient unless the account is paid in full upon discharge. I/we further warrant and represent that any insurance that we assign is valid insurance and in effect, and that we have the right to make this assignment. If eligible for Medicare, I/we request Medicare services and benefits. I understand that I am responsible for any charges not covered by insurance, Medicare, Medicaid, or any other form of health or welfare benefits. Furthermore, I designate Bamberg County Hospital and Nursing Center or any representative and authorize it to act on my behalf to (1) request and receive a copy of the summary plan description; (2) pursue a benefit claim; (3) appeal and receive benefit determination; and/or (4) file a legal equitable action to receive benefits due under the Plan.
9. **Outpatient Tests and/or Procedures:** I (the patient and/or authorized agent of the patient) understand that many insurance companies require pre-authorization or referrals for certain outpatient tests and/or procedures. I understand that it is the responsibility of the physician ordering my tests and/or procedures to obtain either pre-authorization or referral. Furthermore, I understand that I will be held financially responsible for such prior procedures that are not reimbursed by my insurance company due to lack of pre-authorization and/or referral as required in my particular insurance policy.
10. **Private Room Difference:** I (the patient and/or authorized agent of the patient) understand that if I request a private room, I am responsible for the extra private room difference, unless the difference is covered by insurance.

Bamberg County Hospital
AND NURSING CENTER

Consent and Conditions of Treatment

11. Independent Status of Physicians: I (the patient and/or authorized agent of the patient) understand that during the course of my stay that my physician may request consultations and/or services of hospital-based physicians, including, but not limited to, emergency physicians, radiologists, or anesthesiologists. I recognize that any or all physicians who furnish services to me during this admission are independent contractors and are not agents or employees of the hospital. I understand and agree that each of the above referenced practitioners who render professional services to me, or my child, are solely responsible for those services. I understand that this does not include the charges for the hospital's facility and ancillary services. I understand that I may be separately billed by the hospital and by each of the physicians listed above. I understand that the hospital may bill on the physician's behalf, but subject to the instructions given by me in accordance with this consent. Furthermore, I understand that each physician may be independently contracted with HCO or PHO. These contracts could be different from the contracts that the hospital holds. I understand that I need to find out if certain physicians are members of my insurance provider network. I understand that I may receive bills from my physician or from any of the areas listed below.

- Radiologists will send a bill for reading any diagnostic X-rays, CT scans, and ultrasound procedures I may have performed.

I have an Advance Directive documented as specified below:

Living Will	Yes	No
HealthCare Power of Attorney	Yes	No
Advance Directive Information Given	Yes	No

- If I answered YES, I understand that I need to ensure that my physician is aware of this document.
- If I answered NO, I understand that I may request additional information or assistance in completing an Advance Directive.

Guarantee of Payment

By signing the form below, I (the patient or assigned agent of the patient) understand that:

- I am financially responsible for this account with Bamberg County Hospital, regardless of any insurance benefits.
- I understand that I may request an estimate of the approximate cost of my care, including the portion for which I will be held responsible.
- I understand that I will be held responsible for any charges not covered by a third-party payer. Should this account be turned over to a collection agency or an attorney for collections, I understand that I will be obligated to pay all collection fees and reasonable attorney's fees.
- I agree that any overpayments collected on this account may be applied directly to any delinquent account for which I am legally responsible at the time of collection of the overpayment. This form is valid for care provided by Bamberg County Hospital for a 12-month period beginning with date of this document.
- By my signature below, I acknowledge the information located on the front and back of this from. I have been given the opportunity to ask questions regarding this form, and understand the obligation I assume by signing this form.

Patient's Signature

Date 5-19-10

Signature of Agent signing for patient (relationship) (husband)

Date 5-19-10

Admissions Signature

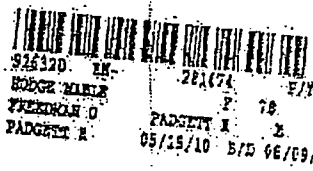
Date 5-19-10

admsn / (none) rev 9/10/09 (none)

I have received a copy of this

BAMBERG COUNTY HOSPITAL AND NURSING CENTER
OUTPATIENT QUESTIONNAIRE

(Emergency room, Laboratory, Outpatient Surgery, Physical Therapy, Radiology)

Patient Nar  Account #: _____

If someone should call and ask for you while you are here, do you want us to let them know you are here?

[✓] Yes

[ ] I want only the following individuals to know I am

Name: _____

Name: _____

Name: _____

Name: _____

[ ] No, I do not want anyone to know I am here.

Signature: Connie E Hodge
Patient/Legal Representative

Date: 5-19-10

Authority of Legal Representative

Date: 5-19-10

Witness: Sherry Long

Advance Directive Acknowledgement Tracking Form
(Place this behind the Advance Directive tab in the Patient's Medical Record)

In order to honor your wishes, it is important for our hospital to know and clearly understand your wishes concerning health care direction.

An Advance Directive can be one of two things:
1. Health Care Power of Attorney
2. Living Will

Please read the following information concerning Advance Directives
Check the following statements that pertain to you:

NO I have executed a Health Care Power of Attorney

NO I have executed a Living Will

Medical Care is not conditional upon the establishment of an Advance Directive.

Husband
(Patient or Representative Signature)

8/12/10
(Date)

_____ The patient is unable to complete at the time of admission.
(form is to be completed at a later time by the Admissions Department)

The Admissions Representative, have reviewed the above questions with the patient and/or family and have provided the assistance with answering the above questions.

(Admissions Representative Signature)

(Date and Time)

TRACKING MECHANISM FOR ACTUAL PRESENCE OF THE DOCUMENT IN THE MEDICAL RECORD

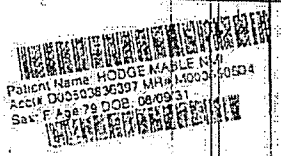
1. Go to *Nursing Initial Assessment* located behind the blue tab in the Medical Record which states "Nursing Admit Assessment" for further tracking of the document.
2. Go to the *24 hour Patient Profile Flow Sheet* under the section Nursing Daily Process located behind the blue tab which states "Multidisc 24 hour Report" for ongoing documentation.

When the Advance Directive has been obtained, place behind the purple tab in the Medical Record.

SISTERS OF CHARITY PROVIDENCE HOSPITALS
2435 Forest Drive Ext. Columbia, SC 29204

ADMADVDIRTRACK

Rev. Date 10/07



CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Supplemental Materials Submitted by UniHealth Defendants and Plaintiffs in Support of and In Opposition to Defendants' Motion to Dismiss and Compel Arbitration or, Alternatively, to Compel Arbitration and Stay Proceedings

FILED
BAMBERG COUNTY
2015 FEB 23 AM 10:05
JAMES B. INERS
CLERK OF COURT
BAMBERG, SC

Counsel Served:

John C. Moylan, III, Esquire
Christopher B. Schoen, Esquire
Wyche, PA
801 Gervais Street, Suite B
Post Office Box 12247
Columbia, SC 29211

James D. Nance, Esquire
Nance, McCants & Massey
218 Newberry Street, SW
Post Office Box 2881
Aiken, SC 29802

Robin Owens

2/20, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG	)	
	)	CASE NO.: 14-CP-05-17
	)	
Camille Hodge Jr., as PR of Est. of Mable Hodge;	)	MOTION AND ORDER INFORMATION
Plaintiff,	)	FORM AND COVERSHEET
vs.	)	
	)	
UniHealth Post Acute Care of Bamberg, et al.	)	
Defendant.	)	

FILED
BAMBERG COUNTY
2014 APR 13 AM 10:56
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Plaintiff's Attorney:	Defendant's Attorney:
John C. Moylan, III, Bar No. _____	Monteith P. Todd, Bar No. 5591
Address:	Address:
Wyche PA	Sowell Gray Stepp & Laffitte, LLC
Post Office Box 12247	Post Office Box 11449
Columbia, SC 29211	Columbia, SC 29211
Phone: 803-254-6542Fax 803-254-6544	Phone: 803-929-1400 Fax803-929-0300
E-mail: _____Other: _____	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: Defendants' Motion for Reconsideration
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.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

FILED
BAMBERG COUNTY
2015 MAR 13 AM 10:56
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2014-CP-05-17 **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDERS DENYING REQUEST TO DEPOSE MR. HODGE SR. ON ISSUES LIMITED TO ARBITRATION AND DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION**

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr., Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 14-CP-05-19

The defendants hereby move for reconsideration of the Court's order denying the defendants' request to depose Mr. Camille Hodge, Sr., on issues related to arbitration and its order denying these defendants' Motion to Compel Arbitration pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. These two Orders are attached as Exhibits 1 and 2. The Court should reconsider and revise its orders to either require a deposition of Mr. Hodge Sr. limited to issues related to arbitration or should compel arbitration because the Court failed to consider and address the following matters:

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 plaintiff does not dispute that the Federal Arbitration Act ("FAA") controls this matter. The FAA requires courts to resolve "any doubts concerning the scope of arbitrable issues in favor of arbitration, whether the problem at hand is the construction of the contract itself or an allegation of waiver, delay or a like defense to arbitration." Moses H. Cole Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 2425, 103 S. Ct. 927, 74 L.Ed.2d 765 (1983) This case was cited with approval in Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014).

In this matter before the Court, Mr. Hodge, Sr., signed the Arbitration Agreement on behalf of his wife. He represented to the defendants that he had authority to do so. Furthermore, he had documents from other hospitalizations of Ms. Hodge in 2010 in which Mr. Hodge, Sr., executed documents and consents on behalf of his wife. The plaintiffs at no time have submitted any kind of affidavit or response from Mr. Hodge, Sr., in which Mr. Hodge denied he had authority from his wife to execute the Arbitration Agreement on her behalf. The fact that he has executed documents and contracts on her behalf on multiple occasions should give rise to a presumption that he had authority to act on her behalf. The plaintiff has not submitted anything in this case to rebut such a presumption or to dispute the defendants' claim that he had authority to execute the contract for his wife.

The South Carolina Court of Appeals has held that a nonsignatory can 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.

The issue in the case is whether or not Mr. Hodge Sr. had authority to execute the contract on behalf of his wife. The record indicates that Mr. Hodge has executed numerous documents on behalf of his wife prior to his execution of the Arbitration Agreement. Furthermore, Mr. Hodge has not in any way disclaimed his authority to execute the Arbitration Agreement on behalf of his wife. Therefore, the Court should reconsider its orders and either order Mr. Hodge Sr. to submit to a deposition to address issues limited to arbitration, including the authority to execute this Arbitration Agreement on behalf of his wife, or should conclude that he did have authority to execute the contract and compel arbitration because Mr. Hodge Sr. has not disclaimed in any way his authority to execute this contract on behalf of Ms. Hodge.

SOWELL GRAY STEPP & LAFFITTE, LLC

BY: _____

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Counsel for Defendants

Columbia, South Carolina

April 9, 2015

Exhibit 1

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10: 03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

ORDER DENYING DEFENDANTS' MOTION TO COMPEL DEPOSITION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

The Defendant, Unihealth Post-Acute Care of Bamberg, LLC ("UPAC") moves to compel the deposition of Camille Hodge, Sr. related solely to issues concerning its Arbitration Agreement. For the reasons explained fully in this Court's Order on Defendant's Motion to

Dismiss or to Compel Arbitration, the motion to compel the deposition of Mr. Hodge is DENIED.

The Honorable Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~ Florence, South Carolina

Exhibit 2

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10: 03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

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

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

This matter is before the Court on the motion of the UPAC Defendants to dismiss this action for want of jurisdiction, or in the alternative, to compel arbitration and to stay proceedings. The issue presented by the motion is whether a nursing home can bind a mentally

1 of 12

and legally competent adult to an arbitration agreement that divests the competent patient of her right to a trial by jury when the agreement is signed only by a family member and the person whom the nursing home wishes to bind has not signed the agreement, has not given her family member a power of attorney or other authority to make contractual commitments on her behalf, and has done nothing to hold the family member out to others as having such authority. In the circumstances of the undisputed facts of this case, the Court answers that question in the negative and denies the motion.

Factual and Procedural Background

On August 31, 2010, Mable Hodge, a resident of Bamberg County and a patient of Defendant Dr. Herbert Moskow, entered Unihealth Post-Acute Care of Bamberg, LLC's ("UPAC's") Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his and UPAC's care. Dr. Moskow's September 1, 2010, initial history and physical of Mable Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." Approximately three weeks after her admission to UPAC, Ms. Hodge was discharged, by ambulance, as a paraplegic. She never walked again and is now deceased.

This lawsuit ensued. Plaintiffs allege that Ms. Hodge developed a Spinal Epidural Abscess that the Defendants failed to diagnose or to treat. Camille Hodge, Jr., acting as Personal Representative of the estate of his mother, Mable Hodge, filed this action against UPAC and related entities United Health Services of South Carolina, Inc., United Health Services, Inc., and UHS-Pruitt Holdings, Inc. (these four Defendants referred to jointly as the "UPAC Defendants"), Dr. Herbert Moskow, and Dr. Dale Padgett, P.A. Camille Hodge, Sr., has filed a separate action against the same Defendants for loss of consortium.

The UPAC Defendants' motion is based on documents signed on August 30, 2010, the day prior to Mable Hodge's admission to UPAC, by her husband, Camille Hodge, Sr. At that time, Ms. Hodge was a patient at Providence Hospital in Columbia. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." UPAC never obtained Mable Hodge's signature on either the Admission Agreement or the Arbitration Agreement and, instead, asks this Court to hold that Mr. Hodge waived his wife's right to a jury trial even though (as discussed below) UPAC's own guidelines mandate that its employees must obtain the patient's signature on the Arbitration Agreement if the patient is competent.

At the motion hearing, UPAC acknowledged that Mable Hodge was competent at the time of her admission, that she did not sign the Arbitration Agreement (or any other document incorporating it by reference), and that she had not executed a health care power of attorney. Thus, there is no dispute as to the following facts:[1]

1) The Arbitration Agreement was signed only by UPAC and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.[2]
3) Mable Hodge was competent at the time she was admitted to UPAC on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge Sr. on August 30, 2010.

[1] UPAC asked the Court to order a deposition of Mr. Hodge, Sr. solely on the arbitration issue. Because the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision.

[2] All parties agreed at the hearing that this motion affects only UPAC and that Plaintiffs' claims against the doctor Defendants, Moskow and Padgett, would proceed to a jury trial regardless of the court's ruling on UPAC's motion.

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4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC or at the time the Arbitration Agreement was signed by Mr. Hodge Sr.

5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge Sr. signed the Arbitration Agreement with UPAC in Bamberg.

6) UPAC presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement.

Analysis

South Carolina's Supreme Court and Court of Appeals have recently faced the precise issue that is before the Court today: may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself, and when the relative does not have the patient's power of attorney?

On March 12, 2014, the South Carolina Supreme Court issued its opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). In *Coleman*, the Circuit Court denied the nursing home's motion to compel arbitration because the arbitration agreement was signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the Circuit Court's denial. In that case, the Supreme Court ruled that even though the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care

Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not bind her sister to an Arbitration Agreement with the nursing home.

Three months after the *Coleman* decision, the Supreme Court addressed other nursing home arbitration issues, most of which are not before the Court today. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). In *Dean*, however, the Court *sua sponte* raised the question of whether a competent patient could be bound to a nursing home arbitration agreement when the family member signing the Arbitration Agreement does not possess the patient's health care power of attorney. The Court stated, "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [Arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean*, 408 S.C. at 389 n. 13. This Court shares that concern in this case.

Even more recently, the South Carolina Court of Appeals faced the same question before the Court today – in a lawsuit involving the same issues, the same defendant, and represented by the same lawyer as are before the Court today.[3] In *Scott v. Heritage Healthcare of Estill, LLC*, 2014 WL 3845113, Circuit Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed. The Court of Appeals affirmed Judge Mullen's denial, ruling as follows:

[3] While South Carolina Appellate Court Rule 268(d)(2) provides that unpublished opinions generally have no precedential value, there is an exception in the rule for "proceedings in which they are directly involved." The *Scott* case involves the same defendant, represented by the same lawyer, making the same argument that they are making before this Court today, and thus falls close to the rule's exception. Moreover, the Court does not treat *Scott* as controlling precedent, but instead views it as persuasive reasoning on the precise issue presented here.

> We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent.

2014 WL 3845113, at *1 (emphasis added).

In *Scott*, the Court of Appeals focused on three facts leading to the conclusion that UPAC's Arbitration Agreement was not enforceable against the patient: (1) the patient was competent at the time her family member signed the Arbitration Agreement, and UPAC failed to obtain the signature of the competent patient; (2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and (3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand. This Court finds the reasoning of the Court of Appeals in *Scott* persuasive, and likewise concludes that these three factors prevent UPAC from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case.

First, Mable Hodge was clearly competent at the time of her admission, yet UPAC did not have her sign the Arbitration Agreement. UPAC conceded these facts at the hearing. Moreover, UPAC elected to have Mable Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. For instance, the Court was presented with an "Inventory of Personal Effect" dated September 1, 2010 – the day after Mable Hodge was admitted to UPAC – that bears Mable Hodge's signature. When UPAC wanted Mable

Hodge's signature, UPAC knew how to obtain it. She was competent and could have signed the Arbitration Agreement, but did not do so.

Second, at the time of her admission to UPAC, Mable Hodge had vested no one with a health care power of attorney (or general power of attorney or any such document for that matter) to make decisions, contractual commitments, or waivers on her behalf. Again, at the hearing, UPAC conceded that Mable Hodge had not executed a health care power of attorney. The Court was presented with a form that was completed just days prior to Mable Hodge's admission to UPAC, while she was a patient at Providence Hospital in Columbia. The form clearly indicates that Mable Hodge had not executed a Health Care Power of Attorney. This form was in Mable Hodge's medical record and easily accessible by UPAC if it had chosen to inquire.

Third, UPAC's internal documents demonstrate that UPAC knows that it is required to obtain a patient's signature on its Arbitration Agreements if the patient is competent. Prior to the hearing, the Court was presented with UPAC's internal "Arbitration Checklist." The very first line of that document states that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). The UPAC checklist unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness" (bold and italics in original, underlining added). These guidelines appear to have been drafted to comply with a federal regulatory mandate, which states: "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative

only when the resident is unable to make the decision." Interpretive Guidelines to 42 CFR § 483.10(a)(3) and (4) (emphasis added).

UPAC failed to follow its own guidelines. This Court will not ignore both South Carolina law and the movants' own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement, particularly when the effect of such a result would be to divest the individual of a fundamental right.

In the absence of any evidence that Mable Hodge gave her husband any express authority to act for her, UPAC argues that Mable Hodge "represented" that her husband was authorized to act on her behalf by "allowing" him to procure her admission to the Bamberg facility. UPAC contends that such "acquiescence" established an apparent agency on which it relied in providing its services to Mable Hodge. UPAC submitted, and the Court considered, the affidavit of Deborah Rutland, its administrator, who states that Mr. Hodge Sr. signed the Arbitration Agreement. Tellingly, however, Ms. Rutland does not state that Mable Hodge actually represented, by words or conduct, that her husband had authority to act on her behalf, or that she otherwise held out her husband to UPAC as having authority to execute the arbitration agreement for her.

South Carolina's appellate courts have repeatedly ruled that:

> [t]he 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. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993). *See also Moore v. North American Van Lines*, 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added).

It is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or "held out" the purported agent as having been given authority by the principal.

UPAC has presented no such evidence to the Court. Mable Hodge is now deceased. Thus, only UPAC is in a position to come forward with evidence of words or actions by Mable Hodge holding out her husband to UPAC as her agent with authority to make a contractual waiver for her, and only UPAC can show that it reasonably relied on its belief in Mr. Hodge's authority. This UPAC has not done, other than pointing out the obvious fact that Mable Hodge was admitted to the facility and stayed there. Under the cases discussed above, this is not enough. Nor can UPAC demonstrate "reasonable reliance" when its own "Arbitration Checklist" directs that its employees must obtain the patient's own signature on the Arbitration Agreement when the patient is competent, and when the Arbitration Agreement itself recites that its execution "is not a precondition to admission." (UPAC Arbitration Agreement at 5)

Similarly, UPAC argues that Mable Hodge should be equitably estopped from denying the enforceability of the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit to Mable Hodge, there is no question that she received no "benefit" from the entirely separate Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of

the same contract should be enforced to benefit him." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Mable Hodge received some benefit from UPAC's 12-page Admission Agreement, there can be no question that Mable Hodge received no benefit from the separate 5-page UPAC Arbitration Agreement. Because Mable Hodge is not seeking to enforce any part of the Arbitration Agreement against UPAC, equitable estoppel does not apply.[4]

In the *Scott* case cited above, UPAC made precisely the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the fact that the resident never signed the Arbitration Agreement] is dispositive." *Scott*, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement signed by a competent patient prevents it from arguing that the resident, simply by staying at its facility, is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in *Coleman* addressed these same merger and estoppel arguments in detail and held that the nursing home's arbitration agreement did not merge with the nursing home's separate admission agreement. The Court held that the nursing home had chosen to make the admission agreement and the arbitration agreement two separate documents and because it had drafted the documents, any ambiguity would be resolved against it. The Court then noted that the nursing home's admission agreement contained language that expressly and intentionally made it a separate agreement from the arbitration agreement. That is equally

[4] UPAC also argues that Mable Hodge was a third-party beneficiary of the Arbitration Agreement, and therefore is bound by it. The Court finds this argument unpersuasive, as the third-party beneficiary doctrine operates to allow a third party to enforce a contract to which he or she is not a party. Since the Plaintiffs are not seeking to enforce the Arbitration Agreement, the third-party beneficiary doctrine does not apply.

true of the case at hand. UPAC's Admission Agreement states on its face that it is governed by South Carolina law and "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. . ." (UPAC Admission Agreement at 9, paragraph I (emphasis added)) UPAC's Arbitration Agreement, by contrast, provides that it is governed by federal law and that "[t]he signing of this Agreement is not a precondition to admission." (UPAC Arbitration Agreement at 5) That is, both documents prepared by UPAC acknowledge that the Admissions Agreement is the sole agreement governing the terms and conditions of the patient's admission to the nursing home, and thus Mable Hodge's admission did not operate to merge these two separate agreements or to bind her to an Arbitration Agreement she never signed.

The Supreme Court in *Coleman* also noted that "the [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." 407 S.C. at 355. The UPAC arbitration agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at 5) Finally, the Supreme Court in *Coleman* held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id.* at 355-56. Each of those reasons applies with equal force to the case at hand, and the Supreme Court has clearly held that, in these circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

For each of these independent reasons, the Court finds that UPAC did not enter into a binding Arbitration Agreement with Mable Hodge and the Motion to Dismiss or to Compel Arbitration is DENIED.

~~The Honorable~~ Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

FILED
BAMBERG COUNTY
2015 APR 13 AM 11:00
JAMES B. SHAVERS
CLERK OF COURT
BAMBERG, S.C.

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Defendants' Notice of Motion and Motion for Reconsideration of Orders Denying Request to Depose Mr. Hodge Sr. on Issues Limited to Arbitration and Denying Defendants' Motion to Compel Arbitration

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4/9, 2015

Robin Owens

FILED
BAMBERG COUNTY
MAR 13 AM 11:01
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BAMBERG)	
)	CASE NO.: 14-CP-05-19
Camille Hodge Sr.)	**MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
Plaintiff,)	
vs.)	
)	
UniHealth Post Acute Care of Bamberg, et al.)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney:
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☒ **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: Defendants' Motion for Reconsideration
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.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
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STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 2014-CP-05-17 **DEFENDANTS' NOTICE OF MOTION AND MOTION FOR RECONSIDERATION OF ORDERS DENYING REQUEST TO DEPOSE MR. HODGE SR. ON ISSUES LIMITED TO ARBITRATION AND DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION**

STATE OF SOUTH CAROLINA COUNTY OF BAMBERG	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT
Camille Hodge, Sr., Plaintiff, vs. UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc., UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow, Defendants.	)	Civil Action No. 14-CP-05-19

The defendants hereby move for reconsideration of the Court's order denying the defendants' request to depose Mr. Camille Hodge, Sr., on issues related to arbitration and its order denying these defendants' Motion to Compel Arbitration pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. These two Orders are attached as Exhibits 1 and 2. The Court should reconsider and revise its orders to either require a deposition of Mr. Hodge Sr. limited to issues related to arbitration or should compel arbitration because the Court failed to consider and address the following matters:

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 plaintiff does not dispute that the Federal Arbitration Act ("FAA") controls this matter. The FAA requires courts to resolve "any doubts concerning the scope of arbitrable issues in favor of arbitration, whether the problem at hand is the construction of the contract itself or an allegation of waiver, delay or a like defense to arbitration." Moses H. Cole Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 2425, 103 S. Ct. 927, 74 L.Ed.2d 765 (1983) This case was cited with approval in Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014).

In this matter before the Court, Mr. Hodge, Sr., signed the Arbitration Agreement on behalf of his wife. He represented to the defendants that he had authority to do so. Furthermore, he had documents from other hospitalizations of Ms. Hodge in 2010 in which Mr. Hodge, Sr., executed documents and consents on behalf of his wife. The plaintiffs at no time have submitted any kind of affidavit or response from Mr. Hodge, Sr., in which Mr. Hodge denied he had authority from his wife to execute the Arbitration Agreement on her behalf. The fact that he has executed documents and contracts on her behalf on multiple occasions should give rise to a presumption that he had authority to act on her behalf. The plaintiff has not submitted anything in this case to rebut such a presumption or to dispute the defendants' claim that he had authority to execute the contract for his wife.

The South Carolina Court of Appeals has held that a nonsignatory can 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.

The issue in the case is whether or not Mr. Hodge Sr. had authority to execute the contract on behalf of his wife. The record indicates that Mr. Hodge has executed numerous documents on behalf of his wife prior to his execution of the Arbitration Agreement. Furthermore, Mr. Hodge has not in any way disclaimed his authority to execute the Arbitration Agreement on behalf of his wife. Therefore, the Court should reconsider its orders and either order Mr. Hodge Sr. to submit to a deposition to address issues limited to arbitration, including the authority to execute this Arbitration Agreement on behalf of his wife, or should conclude that he did have authority to execute the contract and compel arbitration because Mr. Hodge Sr. has not disclaimed in any way his authority to execute this contract on behalf of Ms. Hodge.

SOWELL GRAY STEPP & LAFFITTE, LLC

BY: _____

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Counsel for Defendants

Columbia, South Carolina
April 9, 2015

Exhibit 1

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10: 03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

ORDER DENYING DEFENDANTS' MOTION TO COMPEL DEPOSITION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

The Defendant, Unihealth Post-Acute Care of Bamberg, LLC ("UPAC") moves to compel the deposition of Camille Hodge, Sr. related solely to issues concerning its Arbitration Agreement. For the reasons explained fully in this Court's Order on Defendant's Motion to

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Dismiss or to Compel Arbitration, the motion to compel the deposition of Mr. Hodge is DENIED.

The Honorable Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~ Charleston, South Carolina

Exhibit 2

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10:03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

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

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

This matter is before the Court on the motion of the UPAC Defendants to dismiss this action for want of jurisdiction, or in the alternative, to compel arbitration and to stay proceedings. The issue presented by the motion is whether a nursing home can bind a mentally

and legally competent adult to an arbitration agreement that divests the competent patient of her right to a trial by jury when the agreement is signed only by a family member and the person whom the nursing home wishes to bind has not signed the agreement, has not given her family member a power of attorney or other authority to make contractual commitments on her behalf, and has done nothing to hold the family member out to others as having such authority. In the circumstances of the undisputed facts of this case, the Court answers that question in the negative and denies the motion.

Factual and Procedural Background

On August 31, 2010, Mable Hodge, a resident of Bamberg County and a patient of Defendant Dr. Herbert Moskow, entered Unihealth Post-Acute Care of Bamberg, LLC's ("UPAC's") Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his and UPAC's care. Dr. Moskow's September 1, 2010, initial history and physical of Mable Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." Approximately three weeks after her admission to UPAC, Ms. Hodge was discharged, by ambulance, as a paraplegic. She never walked again and is now deceased.

This lawsuit ensued. Plaintiffs allege that Ms. Hodge developed a Spinal Epidural Abscess that the Defendants failed to diagnose or to treat. Camille Hodge, Jr., acting as Personal Representative of the estate of his mother, Mable Hodge, filed this action against UPAC and related entities United Health Services of South Carolina, Inc., United Health Services, Inc., and UHS-Pruitt Holdings, Inc. (these four Defendants referred to jointly as the "UPAC Defendants"), Dr. Herbert Moskow, and Dr. Dale Padgett, P.A. Camille Hodge, Sr., has filed a separate action against the same Defendants for loss of consortium.

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The UPAC Defendants' motion is based on documents signed on August 30, 2010, the day prior to Mable Hodge's admission to UPAC, by her husband, Camille Hodge, Sr. At that time, Ms. Hodge was a patient at Providence Hospital in Columbia. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." UPAC never obtained Mable Hodge's signature on either the Admission Agreement or the Arbitration Agreement and, instead, asks this Court to hold that Mr. Hodge waived his wife's right to a jury trial even though (as discussed below) UPAC's own guidelines mandate that its employees must obtain the patient's signature on the Arbitration Agreement if the patient is competent.

At the motion hearing, UPAC acknowledged that Mable Hodge was competent at the time of her admission, that she did not sign the Arbitration Agreement (or any other document incorporating it by reference), and that she had not executed a health care power of attorney. Thus, there is no dispute as to the following facts:[1]

1) The Arbitration Agreement was signed only by UPAC and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.[2]
3) Mable Hodge was competent at the time she was admitted to UPAC on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge Sr. on August 30, 2010.

[1] UPAC asked the Court to order a deposition of Mr. Hodge, Sr. solely on the arbitration issue. Because the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision.

[2] All parties agreed at the hearing that this motion affects only UPAC and that Plaintiffs' claims against the doctor Defendants, Moskow and Padgett, would proceed to a jury trial regardless of the court's ruling on UPAC's motion.

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4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC or at the time the Arbitration Agreement was signed by Mr. Hodge Sr.

5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge Sr. signed the Arbitration Agreement with UPAC in Bamberg.

6) UPAC presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement.

Analysis

South Carolina's Supreme Court and Court of Appeals have recently faced the precise issue that is before the Court today: may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself, and when the relative does not have the patient's power of attorney?

On March 12, 2014, the South Carolina Supreme Court issued its opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). In *Coleman*, the Circuit Court denied the nursing home's motion to compel arbitration because the arbitration agreement was signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the Circuit Court's denial. In that case, the Supreme Court ruled that even though the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care

Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not bind her sister to an Arbitration Agreement with the nursing home.

Three months after the *Coleman* decision, the Supreme Court addressed other nursing home arbitration issues, most of which are not before the Court today. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). In *Dean*, however, the Court *sua sponte* raised the question of whether a competent patient could be bound to a nursing home arbitration agreement when the family member signing the Arbitration Agreement does not possess the patient's health care power of attorney. The Court stated, "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [Arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean*, 408 S.C. at 389 n. 13. This Court shares that concern in this case.

Even more recently, the South Carolina Court of Appeals faced the same question before the Court today – in a lawsuit involving the same issues, the same defendant, and represented by the same lawyer as are before the Court today.[3] In *Scott v. Heritage Healthcare of Estill, LLC*, 2014 WL 3845113, Circuit Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed. The Court of Appeals affirmed Judge Mullen's denial, ruling as follows:

[3] While South Carolina Appellate Court Rule 268(d)(2) provides that unpublished opinions generally have no precedential value, there is an exception in the rule for "proceedings in which they are directly involved." The *Scott* case involves the same defendant, represented by the same lawyer, making the same argument that they are making before this Court today, and thus falls close to the rule's exception. Moreover, the Court does not treat *Scott* as controlling precedent, but instead views it as persuasive reasoning on the precise issue presented here.

> We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent.

2014 WL 3845113, at *1 (emphasis added).

In *Scott*, the Court of Appeals focused on three facts leading to the conclusion that UPAC's Arbitration Agreement was not enforceable against the patient: (1) the patient was competent at the time her family member signed the Arbitration Agreement, and UPAC failed to obtain the signature of the competent patient; (2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and (3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand. This Court finds the reasoning of the Court of Appeals in *Scott* persuasive, and likewise concludes that these three factors prevent UPAC from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case.

First, Mable Hodge was clearly competent at the time of her admission, yet UPAC did not have her sign the Arbitration Agreement. UPAC conceded these facts at the hearing. Moreover, UPAC elected to have Mable Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. For instance, the Court was presented with an "Inventory of Personal Effect" dated September 1, 2010 – the day after Mable Hodge was admitted to UPAC – that bears Mable Hodge's signature. When UPAC wanted Mable

Hodge's signature, UPAC knew how to obtain it. She was competent and could have signed the Arbitration Agreement, but did not do so.

Second, at the time of her admission to UPAC, Mable Hodge had vested no one with a health care power of attorney (or general power of attorney or any such document for that matter) to make decisions, contractual commitments, or waivers on her behalf. Again, at the hearing, UPAC conceded that Mable Hodge had not executed a health care power of attorney. The Court was presented with a form that was completed just days prior to Mable Hodge's admission to UPAC, while she was a patient at Providence Hospital in Columbia. The form clearly indicates that Mable Hodge had not executed a Health Care Power of Attorney. This form was in Mable Hodge's medical record and easily accessible by UPAC if it had chosen to inquire.

Third, UPAC's internal documents demonstrate that UPAC knows that it is required to obtain a patient's signature on its Arbitration Agreements if the patient is competent. Prior to the hearing, the Court was presented with UPAC's internal "Arbitration Checklist." The very first line of that document states that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). The UPAC checklist unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness" (bold and italics in original, underlining added). These guidelines appear to have been drafted to comply with a federal regulatory mandate, which states: "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative

only when the resident is unable to make the decision." Interpretive Guidelines to 42 CFR § 483.10(a)(3) and (4) (emphasis added).

UPAC failed to follow its own guidelines. This Court will not ignore both South Carolina law and the movants' own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement, particularly when the effect of such a result would be to divest the individual of a fundamental right.

In the absence of any evidence that Mable Hodge gave her husband any express authority to act for her, UPAC argues that Mable Hodge "represented" that her husband was authorized to act on her behalf by "allowing" him to procure her admission to the Bamberg facility. UPAC contends that such "acquiescence" established an apparent agency on which it relied in providing its services to Mable Hodge. UPAC submitted, and the Court considered, the affidavit of Deborah Rutland, its administrator, who states that Mr. Hodge Sr. signed the Arbitration Agreement. Tellingly, however, Ms. Rutland does not state that Mable Hodge actually represented, by words or conduct, that her husband had authority to act on her behalf, or that she otherwise held out her husband to UPAC as having authority to execute the arbitration agreement for her.

South Carolina's appellate courts have repeatedly ruled that:

> [t]he 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. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993). *See also Moore v. North American Van Lines*, 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added).

It is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or "held out" the purported agent as having been given authority by the principal.

UPAC has presented no such evidence to the Court. Mable Hodge is now deceased. Thus, only UPAC is in a position to come forward with evidence of words or actions by Mable Hodge holding out her husband to UPAC as her agent with authority to make a contractual waiver for her, and only UPAC can show that it reasonably relied on its belief in Mr. Hodge's authority. This UPAC has not done, other than pointing out the obvious fact that Mable Hodge was admitted to the facility and stayed there. Under the cases discussed above, this is not enough. Nor can UPAC demonstrate "reasonable reliance" when its own "Arbitration Checklist" directs that its employees must obtain the patient's own signature on the Arbitration Agreement when the patient is competent, and when the Arbitration Agreement itself recites that its execution "is not a precondition to admission." (UPAC Arbitration Agreement at 5)

Similarly, UPAC argues that Mable Hodge should be equitably estopped from denying the enforceability of the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit to Mable Hodge, there is no question that she received no "benefit" from the entirely separate Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of

the same contract should be enforced to benefit him." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Mable Hodge received some benefit from UPAC's 12-page Admission Agreement, there can be no question that Mable Hodge received no benefit from the separate 5-page UPAC Arbitration Agreement. Because Mable Hodge is not seeking to enforce any part of the Arbitration Agreement against UPAC, equitable estoppel does not apply.[4]

In the *Scott* case cited above, UPAC made precisely the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the fact that the resident never signed the Arbitration Agreement] is dispositive." *Scott*, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement signed by a competent patient prevents it from arguing that the resident, simply by staying at its facility, is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in *Coleman* addressed these same merger and estoppel arguments in detail and held that the nursing home's arbitration agreement did not merge with the nursing home's separate admission agreement. The Court held that the nursing home had chosen to make the admission agreement and the arbitration agreement two separate documents and because it had drafted the documents, any ambiguity would be resolved against it. The Court then noted that the nursing home's admission agreement contained language that expressly and intentionally made it a separate agreement from the arbitration agreement. That is equally

[4] UPAC also argues that Mable Hodge was a third-party beneficiary of the Arbitration Agreement, and therefore is bound by it. The Court finds this argument unpersuasive, as the third-party beneficiary doctrine operates to allow a third party to enforce a contract to which he or she is not a party. Since the Plaintiffs are not seeking to enforce the Arbitration Agreement, the third-party beneficiary doctrine does not apply.

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true of the case at hand. UPAC's Admission Agreement states on its face that it is governed by South Carolina law and "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. . ." (UPAC Admission Agreement at 9, paragraph I (emphasis added)) UPAC's Arbitration Agreement, by contrast, provides that it is governed by federal law and that "[t]he signing of this Agreement is not a precondition to admission." (UPAC Arbitration Agreement at 5) That is, both documents prepared by UPAC acknowledge that the Admissions Agreement is the sole agreement governing the terms and conditions of the patient's admission to the nursing home, and thus Mable Hodge's admission did not operate to merge these two separate agreements or to bind her to an Arbitration Agreement she never signed.

The Supreme Court in *Coleman* also noted that "the [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." 407 S.C. at 355. The UPAC arbitration agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at 5) Finally, the Supreme Court in *Coleman* held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id.* at 355-56. Each of those reasons applies with equal force to the case at hand, and the Supreme Court has clearly held that, in these circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

For each of these independent reasons, the Court finds that UPAC did not enter into a binding Arbitration Agreement with Mable Hodge and the Motion to Dismiss or to Compel Arbitration is DENIED.

~~The Honorable~~ Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

FILED
BAMBERG COUNTY
2015 APR 13 AM 11:01
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

CERTIFICATE OF SERVICE

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, UniHealth Post Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Pleadings:

Defendants' Notice of Motion and Motion for Reconsideration of Orders Denying Request to Depose Mr. Hodge Sr. on Issues Limited to Arbitration and Denying Defendants' Motion to Compel Arbitration

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4/9, 2015

Robin Owens

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-17

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Deceased ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are ..... Appellants.

NOTICE OF APPEAL

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. appeal the Order Denying Defendants' Motion to Dismiss or, Alternatively, to Compel Arbitration and Stay Proceedings of the Honorable Clifton Newman dated March 16, 2015, the Order Denying Defendants' Motion to Compel Deposition of the Honorable Clifton Newman dated March 16, 2015, and the Order Denying Defendant UPAC's Motion for Reconsideration of the Honorable Clifton Newman dated April 30, 2015. Appellants received written notice of entry of Judge Newman's Order Denying Defendant UPAC's Motion for Reconsideration on May 19, 2015.

June 2, 2015

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FILED
BAMBERG COUNTY
2015 MAR 27 AM 10:03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

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

RECEIVED
JUN 02 2015
SC Court of Appeals

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

This matter is before the Court on the motion of the UPAC Defendants to dismiss this action for want of jurisdiction, or in the alternative, to compel arbitration and to stay proceedings. The issue presented by the motion is whether a nursing home can bind a mentally

and legally competent adult to an arbitration agreement that divests the competent patient of her right to a trial by jury when the agreement is signed only by a family member and the person whom the nursing home wishes to bind has not signed the agreement, has not given her family member a power of attorney or other authority to make contractual commitments on her behalf, and has done nothing to hold the family member out to others as having such authority. In the circumstances of the undisputed facts of this case, the Court answers that question in the negative and denies the motion.

Factual and Procedural Background

On August 31, 2010, Mable Hodge, a resident of Bamberg County and a patient of Defendant Dr. Herbert Moskow, entered Unihealth Post-Acute Care of Bamberg, LLC's ("UPAC's") Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his and UPAC's care. Dr. Moskow's September 1, 2010, initial history and physical of Mable Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." Approximately three weeks after her admission to UPAC, Ms. Hodge was discharged, by ambulance, as a paraplegic. She never walked again and is now deceased.

This lawsuit ensued. Plaintiffs allege that Ms. Hodge developed a Spinal Epidural Abscess that the Defendants failed to diagnose or to treat. Camille Hodge, Jr., acting as Personal Representative of the estate of his mother, Mable Hodge, filed this action against UPAC and related entities United Health Services of South Carolina, Inc., United Health Services, Inc., and UHS-Pruitt Holdings, Inc. (these four Defendants referred to jointly as the "UPAC Defendants"), Dr. Herbert Moskow, and Dr. Dale Padgett, P.A. Camille Hodge, Sr., has filed a separate action against the same Defendants for loss of consortium.

The UPAC Defendants' motion is based on documents signed on August 30, 2010, the day prior to Mable Hodge's admission to UPAC, by her husband, Camille Hodge, Sr. At that time, Ms. Hodge was a patient at Providence Hospital in Columbia. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." UPAC never obtained Mable Hodge's signature on either the Admission Agreement or the Arbitration Agreement and, instead, asks this Court to hold that Mr. Hodge waived his wife's right to a jury trial even though (as discussed below) UPAC's own guidelines mandate that its employees must obtain the patient's signature on the Arbitration Agreement if the patient is competent.

At the motion hearing, UPAC acknowledged that Mable Hodge was competent at the time of her admission, that she did not sign the Arbitration Agreement (or any other document incorporating it by reference), and that she had not executed a health care power of attorney. Thus, there is no dispute as to the following facts:[1]

1) The Arbitration Agreement was signed only by UPAC and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.[2]
3) Mable Hodge was competent at the time she was admitted to UPAC on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge Sr. on August 30, 2010.

[1] UPAC asked the Court to order a deposition of Mr. Hodge, Sr. solely on the arbitration issue. Because the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision.

[2] All parties agreed at the hearing that this motion affects only UPAC and that Plaintiffs' claims against the doctor Defendants, Moskow and Padgett, would proceed to a jury trial regardless of the court's ruling on UPAC's motion.

3 of 12

4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC or at the time the Arbitration Agreement was signed by Mr. Hodge Sr.

5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge Sr. signed the Arbitration Agreement with UPAC in Bamberg.

6) UPAC presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement.

Analysis

South Carolina's Supreme Court and Court of Appeals have recently faced the precise issue that is before the Court today: may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself, and when the relative does not have the patient's power of attorney?

On March 12, 2014, the South Carolina Supreme Court issued its opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). In *Coleman*, the Circuit Court denied the nursing home's motion to compel arbitration because the arbitration agreement was signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the Circuit Court's denial. In that case, the Supreme Court ruled that even though the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care

Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not bind her sister to an Arbitration Agreement with the nursing home.

Three months after the *Coleman* decision, the Supreme Court addressed other nursing home arbitration issues, most of which are not before the Court today. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). In *Dean*, however, the Court *sua sponte* raised the question of whether a competent patient could be bound to a nursing home arbitration agreement when the family member signing the Arbitration Agreement does not possess the patient's health care power of attorney. The Court stated, "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [Arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean*, 408 S.C. at 389 n. 13. This Court shares that concern in this case.

Even more recently, the South Carolina Court of Appeals faced the same question before the Court today – in a lawsuit involving the same issues, the same defendant, and represented by the same lawyer as are before the Court today.[3] In *Scott v. Heritage Healthcare of Estill, LLC*, 2014 WL 3845113, Circuit Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed. The Court of Appeals affirmed Judge Mullen's denial, ruling as follows:

[3] While South Carolina Appellate Court Rule 268(d)(2) provides that unpublished opinions generally have no precedential value, there is an exception in the rule for "proceedings in which they are directly involved." The *Scott* case involves the same defendant, represented by the same lawyer, making the same argument that they are making before this Court today, and thus falls close to the rule's exception. Moreover, the Court does not treat *Scott* as controlling precedent, but instead views it as persuasive reasoning on the precise issue presented here.

> We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent.

2014 WL 3845113, at *1 (emphasis added).

In *Scott*, the Court of Appeals focused on three facts leading to the conclusion that UPAC's Arbitration Agreement was not enforceable against the patient: (1) the patient was competent at the time her family member signed the Arbitration Agreement, and UPAC failed to obtain the signature of the competent patient; (2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and (3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand. This Court finds the reasoning of the Court of Appeals in *Scott* persuasive, and likewise concludes that these three factors prevent UPAC from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case.

First, Mable Hodge was clearly competent at the time of her admission, yet UPAC did not have her sign the Arbitration Agreement. UPAC conceded these facts at the hearing. Moreover, UPAC elected to have Mable Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. For instance, the Court was presented with an "Inventory of Personal Effect" dated September 1, 2010 – the day after Mable Hodge was admitted to UPAC – that bears Mable Hodge's signature. When UPAC wanted Mable

Hodge's signature, UPAC knew how to obtain it. She was competent and could have signed the Arbitration Agreement, but did not do so.

Second, at the time of her admission to UPAC, Mable Hodge had vested no one with a health care power of attorney (or general power of attorney or any such document for that matter) to make decisions, contractual commitments, or waivers on her behalf. Again, at the hearing, UPAC conceded that Mable Hodge had not executed a health care power of attorney. The Court was presented with a form that was completed just days prior to Mable Hodge's admission to UPAC, while she was a patient at Providence Hospital in Columbia. The form clearly indicates that Mable Hodge had not executed a Health Care Power of Attorney. This form was in Mable Hodge's medical record and easily accessible by UPAC if it had chosen to inquire.

Third, UPAC's internal documents demonstrate that UPAC knows that it is required to obtain a patient's signature on its Arbitration Agreements if the patient is competent. Prior to the hearing, the Court was presented with UPAC's internal "Arbitration Checklist." The very first line of that document states that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). The UPAC checklist unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness" (bold and italics in original, underlining added). These guidelines appear to have been drafted to comply with a federal regulatory mandate, which states: "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative

only when the resident is unable to make the decision." Interpretive Guidelines to 42 CFR § 483.10(a)(3) and (4) (emphasis added).

UPAC failed to follow its own guidelines. This Court will not ignore both South Carolina law and the movants' own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement, particularly when the effect of such a result would be to divest the individual of a fundamental right.

In the absence of any evidence that Mable Hodge gave her husband any express authority to act for her, UPAC argues that Mable Hodge "represented" that her husband was authorized to act on her behalf by "allowing" him to procure her admission to the Bamberg facility. UPAC contends that such "acquiescence" established an apparent agency on which it relied in providing its services to Mable Hodge. UPAC submitted, and the Court considered, the affidavit of Deborah Rutland, its administrator, who states that Mr. Hodge Sr. signed the Arbitration Agreement. Tellingly, however, Ms. Rutland does not state that Mable Hodge actually represented, by words or conduct, that her husband had authority to act on her behalf, or that she otherwise held out her husband to UPAC as having authority to execute the arbitration agreement for her.

South Carolina's appellate courts have repeatedly ruled that:

> [t]he 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. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993). *See also Moore v. North American Van Lines*, 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added).

It is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or "held out" the purported agent as having been given authority by the principal.

UPAC has presented no such evidence to the Court. Mable Hodge is now deceased. Thus, only UPAC is in a position to come forward with evidence of words or actions by Mable Hodge holding out her husband to UPAC as her agent with authority to make a contractual waiver for her, and only UPAC can show that it reasonably relied on its belief in Mr. Hodge's authority. This UPAC has not done, other than pointing out the obvious fact that Mable Hodge was admitted to the facility and stayed there. Under the cases discussed above, this is not enough. Nor can UPAC demonstrate "reasonable reliance" when its own "Arbitration Checklist" directs that its employees must obtain the patient's own signature on the Arbitration Agreement when the patient is competent, and when the Arbitration Agreement itself recites that its execution "is not a precondition to admission." (UPAC Arbitration Agreement at 5)

Similarly, UPAC argues that Mable Hodge should be equitably estopped from denying the enforceability of the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit to Mable Hodge, there is no question that she received no "benefit" from the entirely separate Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of

the same contract should be enforced to benefit him." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Mable Hodge received some benefit from UPAC's 12-page Admission Agreement, there can be no question that Mable Hodge received no benefit from the separate 5-page UPAC Arbitration Agreement. Because Mable Hodge is not seeking to enforce any part of the Arbitration Agreement against UPAC, equitable estoppel does not apply.[4]

In the *Scott* case cited above, UPAC made precisely the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the fact that the resident never signed the Arbitration Agreement] is dispositive." *Scott*, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement signed by a competent patient prevents it from arguing that the resident, simply by staying at its facility, is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in *Coleman* addressed these same merger and estoppel arguments in detail and held that the nursing home's arbitration agreement did not merge with the nursing home's separate admission agreement. The Court held that the nursing home had chosen to make the admission agreement and the arbitration agreement two separate documents and because it had drafted the documents, any ambiguity would be resolved against it. The Court then noted that the nursing home's admission agreement contained language that expressly and intentionally made it a separate agreement from the arbitration agreement. That is equally

[4] UPAC also argues that Mable Hodge was a third-party beneficiary of the Arbitration Agreement, and therefore is bound by it. The Court finds this argument unpersuasive, as the third-party beneficiary doctrine operates to allow a third party to enforce a contract to which he or she is not a party. Since the Plaintiffs are not seeking to enforce the Arbitration Agreement, the third-party beneficiary doctrine does not apply.

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true of the case at hand. UPAC's Admission Agreement states on its face that it is governed by South Carolina law and "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. . ." (UPAC Admission Agreement at 9, paragraph 1 (emphasis added)) UPAC's Arbitration Agreement, by contrast, provides that it is governed by federal law and that "[t]he signing of this Agreement is not a precondition to admission." (UPAC Arbitration Agreement at 5) That is, both documents prepared by UPAC acknowledge that the Admissions Agreement is the sole agreement governing the terms and conditions of the patient's admission to the nursing home, and thus Mable Hodge's admission did not operate to merge these two separate agreements or to bind her to an Arbitration Agreement she never signed.

The Supreme Court in *Coleman* also noted that "the [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." 407 S.C. at 355. The UPAC arbitration agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at 5) Finally, the Supreme Court in *Coleman* held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id.* at 355-56. Each of those reasons applies with equal force to the case at hand, and the Supreme Court has clearly held that, in these circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

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For each of these independent reasons, the Court finds that UPAC did not enter into a binding Arbitration Agreement with Mable Hodge and the Motion to Dismiss or to Compel Arbitration is DENIED.

~~The Honorable~~ Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10:03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

ORDER DENYING DEFENDANTS' MOTION TO COMPEL DEPOSITION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

The Defendant, Unihealth Post-Acute Care of Bamberg, LLC ("UPAC") moves to compel the deposition of Camille Hodge, Sr. related solely to issues concerning its Arbitration Agreement. For the reasons explained fully in this Court's Order on Defendant's Motion to

Dismiss or to Compel Arbitration, the motion to compel the deposition of Mr. Hodge is DENIED.

The Honorable Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NOS: 2014-CP-05-17 and

ORDER DENYING DEFENDANT UPAC'S MOTION FOR RECONSIDERATION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

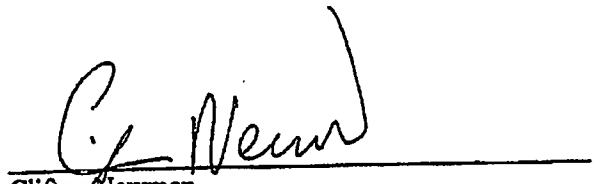
CIVIL ACTION NO: 2014-CP-05-19

FILED
BAMBERG COUNTY
2015 MAY -4 PM 12:01
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

This matter is before the Court on Defendant UPAC's Motion for Reconsideration of the Court's Orders dated March 16, 2015.

After careful review of the submissions of counsel and applicable law, the Motion is hereby denied.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

April 30, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 02 2015
SC Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-17

Camille Hodge, Jr., as Personal Representative of the Estate of Mable Hodge, Deceased ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are ..... 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):

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Robin C. Owens, Legal Assistant

June 2, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUN 02 2015
SC Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-19

Camille Hodge, Sr., ... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are ..... Appellants.

NOTICE OF APPEAL

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. appeal the Order Denying Defendants' Motion to Dismiss or, Alternatively, to Compel Arbitration and Stay Proceedings of the Honorable Clifton Newman dated March 16, 2015, the Order Denying Defendants' Motion to Compel Deposition of the Honorable Clifton Newman dated March 16, 2015, and the Order Denying Defendant UPAC's Motion for Reconsideration of the Honorable Clifton Newman dated April 30, 2015. Appellants received written notice of entry of Judge Newman's Order Denying Defendant UPAC's Motion for Reconsideration on May 19, 2015.

June 2, 2015

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Counsel for R. Dale Padgett, MD, PA and Dr. Herbert A. Moskow

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STATE OF SOUTH CAROLINA

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COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

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-vs-

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Defendants.

CIVIL ACTION NO: 2014-CP-05-17

RECEIVED
JUN 02 2015
SC Court of Appeals

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

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

This matter is before the Court on the motion of the UPAC Defendants to dismiss this action for want of jurisdiction, or in the alternative, to compel arbitration and to stay proceedings. The issue presented by the motion is whether a nursing home can bind a mentally

and legally competent adult to an arbitration agreement that divests the competent patient of her right to a trial by jury when the agreement is signed only by a family member and the person whom the nursing home wishes to bind has not signed the agreement, has not given her family member a power of attorney or other authority to make contractual commitments on her behalf, and has done nothing to hold the family member out to others as having such authority. In the circumstances of the undisputed facts of this case, the Court answers that question in the negative and denies the motion.

Factual and Procedural Background

On August 31, 2010, Mable Hodge, a resident of Bamberg County and a patient of Defendant Dr. Herbert Moskow, entered Unihealth Post-Acute Care of Bamberg, LLC's ("UPAC's") Bamberg facility for rehabilitation. Dr. Moskow's records indicate that Ms. Hodge was functioning well when she was admitted to his and UPAC's care. Dr. Moskow's September 1, 2010, initial history and physical of Mable Hodge states: "Physical examination reveals a well developed and well nourished female in no real distress . . . Extremities: full range of motion." Approximately three weeks after her admission to UPAC, Ms. Hodge was discharged, by ambulance, as a paraplegic. She never walked again and is now deceased.

This lawsuit ensued. Plaintiffs allege that Ms. Hodge developed a Spinal Epidural Abscess that the Defendants failed to diagnose or to treat. Camille Hodge, Jr., acting as Personal Representative of the estate of his mother, Mable Hodge, filed this action against UPAC and related entities United Health Services of South Carolina, Inc., United Health Services, Inc., and UHS-Pruitt Holdings, Inc. (these four Defendants referred to jointly as the "UPAC Defendants"), Dr. Herbert Moskow, and Dr. Dale Padgett, P.A. Camille Hodge, Sr., has filed a separate action against the same Defendants for loss of consortium.

The UPAC Defendants' motion is based on documents signed on August 30, 2010, the day prior to Mable Hodge's admission to UPAC, by her husband, Camille Hodge, Sr. At that time, Ms. Hodge was a patient at Providence Hospital in Columbia. Among the documents presented to Mr. Hodge was a twelve-page Admission Agreement and a separate five-page Arbitration Agreement. Both agreements, drafted by UPAC, have separate signature lines for (1) "Patient/Resident's Signature" and (2) "Patient/Resident Representative's Signature." UPAC never obtained Mable Hodge's signature on either the Admission Agreement or the Arbitration Agreement and, instead, asks this Court to hold that Mr. Hodge waived his wife's right to a jury trial even though (as discussed below) UPAC's own guidelines mandate that its employees must obtain the patient's signature on the Arbitration Agreement if the patient is competent.

At the motion hearing, UPAC acknowledged that Mable Hodge was competent at the time of her admission, that she did not sign the Arbitration Agreement (or any other document incorporating it by reference), and that she had not executed a health care power of attorney. Thus, there is no dispute as to the following facts:[1]

1) The Arbitration Agreement was signed only by UPAC and Camille Hodge, Sr.
2) The Arbitration Agreement was not signed by Mable Hodge, by her personal representative Camille Hodge, Jr., by Dr. Moskow, or by Dr. Padgett.[2]
3) Mable Hodge was competent at the time she was admitted to UPAC on August 31, 2010, and at the time the Arbitration Agreement was signed by Mr. Hodge Sr. on August 30, 2010.

[1] UPAC asked the Court to order a deposition of Mr. Hodge, Sr. solely on the arbitration issue. Because the facts material to the Court's decision are not contested and because the parties submitted, without objection, all documents that they wished the Court to consider, the Court concludes that the deposition of Mr. Hodge would not provide any additional material facts that would be helpful to the Court in reaching its decision.

[2] All parties agreed at the hearing that this motion affects only UPAC and that Plaintiffs' claims against the doctor Defendants, Moskow and Padgett, would proceed to a jury trial regardless of the court's ruling on UPAC's motion.

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4) Mable Hodge had not executed a general power of attorney or health care power of attorney (or any other document giving authority to her husband or any other family member to make contractual commitments or waivers on her behalf) at the time she was admitted to UPAC or at the time the Arbitration Agreement was signed by Mr. Hodge Sr.

5) Mable Hodge was a patient at Providence Hospital in Columbia on August 30, 2010, when Mr. Hodge Sr. signed the Arbitration Agreement with UPAC in Bamberg.

6) UPAC presented Mable Hodge with other documents to sign at the time of her admission, and Mable Hodge signed those documents, but not the Arbitration Agreement.

Analysis

South Carolina's Supreme Court and Court of Appeals have recently faced the precise issue that is before the Court today: may a nursing home enforce an arbitration agreement against a patient when the nursing home has obtained the signature of the patient's relative but has failed to obtain the signature of the patient herself, and when the relative does not have the patient's power of attorney?

On March 12, 2014, the South Carolina Supreme Court issued its opinion in *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014). In *Coleman*, the Circuit Court denied the nursing home's motion to compel arbitration because the arbitration agreement was signed by the patient's relative but not by the patient. The nursing home appealed and the South Carolina Supreme Court affirmed the Circuit Court's denial. In that case, the Supreme Court ruled that even though the patient was incompetent at the time of her admission to the nursing home, and even though the patient's sister had statutory authority under the Adult Health Care

Consent Act (S.C. Code § 44-66-10 *et seq.*) to make health care decisions for her sister, she could not bind her sister to an Arbitration Agreement with the nursing home.

Three months after the *Coleman* decision, the Supreme Court addressed other nursing home arbitration issues, most of which are not before the Court today. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727 (2014). In *Dean*, however, the Court *sua sponte* raised the question of whether a competent patient could be bound to a nursing home arbitration agreement when the family member signing the Arbitration Agreement does not possess the patient's health care power of attorney. The Court stated, "[w]e are concerned that, according to the Record, the patient did not sign either the residency agreement or the [Arbitration] Agreement on her own behalf, despite being competent at the time, nor did Respondent possess a health care power of attorney to sign either contract on the patient's behalf." *Dean*, 408 S.C. at 389 n. 13. This Court shares that concern in this case.

Even more recently, the South Carolina Court of Appeals faced the same question before the Court today – in a lawsuit involving the same issues, the same defendant, and represented by the same lawyer as are before the Court today.[3] In *Scott v. Heritage Healthcare of Estill, LLC*, 2014 WL 3845113, Circuit Judge Carmen Mullen denied UPAC's motion to compel arbitration when UPAC had obtained the signature of the patient's sister but had failed to obtain the patient's own signature on its arbitration agreement. UPAC appealed. The Court of Appeals affirmed Judge Mullen's denial, ruling as follows:

[3] While South Carolina Appellate Court Rule 268(d)(2) provides that unpublished opinions generally have no precedential value, there is an exception in the rule for "proceedings in which they are directly involved." The *Scott* case involves the same defendant, represented by the same lawyer, making the same argument that they are making before this Court today, and thus falls close to the rule's exception. Moreover, the Court does not treat *Scott* as controlling precedent, but instead views it as persuasive reasoning on the precise issue presented here.

> We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on [her sister] Elizabeth Jones' behalf when Jones was competent at the time she was admitted to Heritage, and Jenkins did not possess a health care power of attorney to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's findings that Jenkins lacked authority to enter into the Arbitration Agreement on Jones' behalf because Jones was competent at the time of her admission, and Sally Dobson, the admissions director for Heritage, agreed it would have been more appropriate for Jones to sign the contract herself because she was competent, and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the Arbitration Agreement is not enforceable against Respondent.

2014 WL 3845113, at *1 (emphasis added).

In *Scott*, the Court of Appeals focused on three facts leading to the conclusion that UPAC's Arbitration Agreement was not enforceable against the patient: (1) the patient was competent at the time her family member signed the Arbitration Agreement, and UPAC failed to obtain the signature of the competent patient; (2) the family member had no health care power of attorney vesting her with authority to sign on the patient's behalf; and (3) UPAC acknowledged that it should have obtained the patient's signature on the arbitration agreement. All three of those factors are present in the case at hand. This Court finds the reasoning of the Court of Appeals in *Scott* persuasive, and likewise concludes that these three factors prevent UPAC from compelling arbitration pursuant to the Arbitration Agreement under the facts of this case.

First, Mable Hodge was clearly competent at the time of her admission, yet UPAC did not have her sign the Arbitration Agreement. UPAC conceded these facts at the hearing. Moreover, UPAC elected to have Mable Hodge personally sign certain documents – but not the Arbitration Agreement – at the time of her admission. For instance, the Court was presented with an "Inventory of Personal Effect" dated September 1, 2010 – the day after Mable Hodge was admitted to UPAC – that bears Mable Hodge's signature. When UPAC wanted Mable

Hodge's signature, UPAC knew how to obtain it. She was competent and could have signed the Arbitration Agreement, but did not do so.

Second, at the time of her admission to UPAC, Mable Hodge had vested no one with a health care power of attorney (or general power of attorney or any such document for that matter) to make decisions, contractual commitments, or waivers on her behalf. Again, at the hearing, UPAC conceded that Mable Hodge had not executed a health care power of attorney. The Court was presented with a form that was completed just days prior to Mable Hodge's admission to UPAC, while she was a patient at Providence Hospital in Columbia. The form clearly indicates that Mable Hodge had not executed a Health Care Power of Attorney. This form was in Mable Hodge's medical record and easily accessible by UPAC if it had chosen to inquire.

Third, UPAC's internal documents demonstrate that UPAC knows that it is required to obtain a patient's signature on its Arbitration Agreements if the patient is competent. Prior to the hearing, the Court was presented with UPAC's internal "Arbitration Checklist." The very first line of that document states that UPAC must "Determine competency of patient/resident." UPAC employees are then directed to "Secure appropriate signatures" (emphasis in original). The UPAC checklist unequivocally instructs its employees that if the patient/resident is "***Competent, capable of signature*** – Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness" (bold and italics in original, underlining added). These guidelines appear to have been drafted to comply with a federal regulatory mandate, which states: "the facility may seek a health care decision (or any other decision or authorization) from a surrogate or representative

only when the resident is unable to make the decision." Interpretive Guidelines to 42 CFR § 483.10(a)(3) and (4) (emphasis added).

UPAC failed to follow its own guidelines. This Court will not ignore both South Carolina law and the movants' own guidelines by allowing a family member with no health care power of attorney to bind a competent individual to a nursing home arbitration agreement, particularly when the effect of such a result would be to divest the individual of a fundamental right.

In the absence of any evidence that Mable Hodge gave her husband any express authority to act for her, UPAC argues that Mable Hodge "represented" that her husband was authorized to act on her behalf by "allowing" him to procure her admission to the Bamberg facility. UPAC contends that such "acquiescence" established an apparent agency on which it relied in providing its services to Mable Hodge. UPAC submitted, and the Court considered, the affidavit of Deborah Rutland, its administrator, who states that Mr. Hodge Sr. signed the Arbitration Agreement. Tellingly, however, Ms. Rutland does not state that Mable Hodge actually represented, by words or conduct, that her husband had authority to act on her behalf, or that she otherwise held out her husband to UPAC as having authority to execute the arbitration agreement for her.

South Carolina's appellate courts have repeatedly ruled that:

> [t]he 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. *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979); *Visual Graphics Leasing Corp. v. Lucia*, 311 S.C. 484, 429 S.E.2d 839 (Ct.App.1993). *See also Moore v. North American Van Lines*, 310 S.C. 236, 423 S.E.2d 116 (1992) (basis of apparent authority is representations made by principal to third party and reliance by third party on those representations).

R & G Const., Inc. v. Lowcountry Regional Transp. Authority, 343 S.C. 424, 540 S.E.2d 113, 118 (Ct. App. 2000) (emphasis added).

It is essential to the doctrine of apparent agency that the purported principal has in some fashion represented or "held out" the purported agent as having been given authority by the principal.

UPAC has presented no such evidence to the Court. Mable Hodge is now deceased. Thus, only UPAC is in a position to come forward with evidence of words or actions by Mable Hodge holding out her husband to UPAC as her agent with authority to make a contractual waiver for her, and only UPAC can show that it reasonably relied on its belief in Mr. Hodge's authority. This UPAC has not done, other than pointing out the obvious fact that Mable Hodge was admitted to the facility and stayed there. Under the cases discussed above, this is not enough. Nor can UPAC demonstrate "reasonable reliance" when its own "Arbitration Checklist" directs that its employees must obtain the patient's own signature on the Arbitration Agreement when the patient is competent, and when the Arbitration Agreement itself recites that its execution "is not a precondition to admission." (UPAC Arbitration Agreement at 5)

Similarly, UPAC argues that Mable Hodge should be equitably estopped from denying the enforceability of the Arbitration Agreement because she received the "benefit" of staying in their nursing home. Putting aside the issue of whether the stay was a benefit to Mable Hodge, there is no question that she received no "benefit" from the entirely separate Arbitration Agreement that UPAC seeks to enforce against her. Equitable estoppel applies only to prevent a party from relying on one part of a contract while seeking to deny another part of the same contract. As our Court of Appeals has ruled: "[i]n the arbitration context, the doctrine [of equitable estoppel applies] when [one party] has consistently maintained that other provisions of

the same contract should be enforced to benefit him." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (2012) (emphasis added) (internal citations omitted). Assuming that Mable Hodge received some benefit from UPAC's 12-page Admission Agreement, there can be no question that Mable Hodge received no benefit from the separate 5-page UPAC Arbitration Agreement. Because Mable Hodge is not seeking to enforce any part of the Arbitration Agreement against UPAC, equitable estoppel does not apply.[4]

In the *Scott* case cited above, UPAC made precisely the same arguments to Judge Mullen and to the Court of Appeals that it is making to this Court today. The Court of Appeals gave short shrift to those arguments: "We decline to address Heritage's remaining arguments because we find this issue [the fact that the resident never signed the Arbitration Agreement] is dispositive." *Scott*, at *2. That is, UPAC's failure to follow its own procedures and obtain a valid Arbitration Agreement signed by a competent patient prevents it from arguing that the resident, simply by staying at its facility, is somehow bound to an agreement that she never signed.

Moreover, the Supreme Court in *Coleman* addressed these same merger and estoppel arguments in detail and held that the nursing home's arbitration agreement did not merge with the nursing home's separate admission agreement. The Court held that the nursing home had chosen to make the admission agreement and the arbitration agreement two separate documents and because it had drafted the documents, any ambiguity would be resolved against it. The Court then noted that the nursing home's admission agreement contained language that expressly and intentionally made it a separate agreement from the arbitration agreement. That is equally

[4] UPAC also argues that Mable Hodge was a third-party beneficiary of the Arbitration Agreement, and therefore is bound by it. The Court finds this argument unpersuasive, as the third-party beneficiary doctrine operates to allow a third party to enforce a contract to which he or she is not a party. Since the Plaintiffs are not seeking to enforce the Arbitration Agreement, the third-party beneficiary doctrine does not apply.

CWJ
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true of the case at hand. UPAC's Admission Agreement states on its face that it is governed by South Carolina law and "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. . ." (UPAC Admission Agreement at 9, paragraph I (emphasis added)) UPAC's Arbitration Agreement, by contrast, provides that it is governed by federal law and that "[t]he signing of this Agreement is not a precondition to admission." (UPAC Arbitration Agreement at 5) That is, both documents prepared by UPAC acknowledge that the Admissions Agreement is the sole agreement governing the terms and conditions of the patient's admission to the nursing home, and thus Mable Hodge's admission did not operate to merge these two separate agreements or to bind her to an Arbitration Agreement she never signed.

The Supreme Court in *Coleman* also noted that "the [Arbitration Agreement] could be disclaimed within thirty days of signing while the admission agreement could not, evidencing an intention that each contract remain separate." 407 S.C. at 355. The UPAC arbitration agreement in the case at hand contains the exact same language: "This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature." (UPAC Arbitration Agreement at 5) Finally, the Supreme Court in *Coleman* held that even if there is "an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter." *Id.* at 355-56. Each of those reasons applies with equal force to the case at hand, and the Supreme Court has clearly held that, in these circumstances, the nursing home cannot prevail on a claim for merger or equitable estoppel.

For each of these independent reasons, the Court finds that UPAC did not enter into a binding Arbitration Agreement with Mable Hodge and the Motion to Dismiss or to Compel Arbitration is DENIED.

~~The Honorable~~ Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~, South Carolina
Charleston

FILED
BAMBERG COUNTY
2015 MAR 27 AM 10: 03
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-17

ORDER DENYING DEFENDANTS' MOTION TO COMPEL DEPOSITION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NO: 2014-CP-05-19

A TRUE COPY
Attest
CLERK OF COURT
BAMBERG COUNTY, SC

The Defendant, Unihealth Post-Acute Care of Bamberg, LLC ("UPAC") moves to compel the deposition of Camille Hodge, Sr. related solely to issues concerning its Arbitration Agreement. For the reasons explained fully in this Court's Order on Defendant's Motion to

Dismiss or to Compel Arbitration, the motion to compel the deposition of Mr. Hodge is DENIED.

The Honorable Clifton Newman
South Carolina Circuit Court Judge

March 16, 2015
~~Kingstree~~ Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

CAMILLE HODGE, JR, as personal representative of the estate of MABLE HODGE,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

CIVIL ACTION NOS: 2014-CP-05-17 and

ORDER DENYING DEFENDANT UPAC'S MOTION FOR RECONSIDERATION

CAMILLE HODGE, SR.,

Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC f/k/a Bamberg County Nursing Center; UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC.; UNITED HEALTH SERVICES, INC.; UHS-PRUITT HOLDINGS, INC. a/k/a UHS-Pruitt Corp.; R. DALE PADGETT, M.D., P.A.; and DR. HERBERT A. MOSKOW;

Defendants.

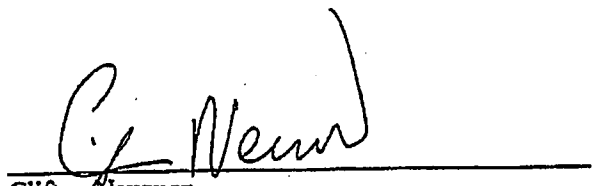
CIVIL ACTION NO: 2014-CP-05-19

FILED
BAMBERG COUNTY
2015 MAY -4 PM 12:01
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

This matter is before the Court on Defendant UPAC's Motion for Reconsideration of the Court's Orders dated March 16, 2015.

After careful review of the submissions of counsel and applicable law, the Motion is hereby denied.

AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

April 30, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-19

Camille Hodge, Sr., ... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County Nursing Center; United Health Services of South Carolina, Inc.; United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a UHS-Pruitt Corp. are ..... 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):

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Robin C. Owens, Legal Assistant

June 2, 2015

STATE OF SOUTH CAROLINA

CIRCUIT COURT

COUNTY OF BAMBERG 2014-CP-05-00017 & 00019

TRANSCRIPT OF RECORD

CAMILLE HODGE, JR., as personal representative of the ESTATE OF MABLE HODGE,
Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF Bamberg, LLC f/k/a Bamberg COUNTY NURSING CENTER, UNITED HEALTH SERVICES OF SOUTH CAROLINA, INC., UHS, INC; UHS-PRUIT HOLDINGS, INC. a/k/a UHS-PRUIT CORP., R. DALE PADGETT, MD, PA, and DR. HERBERT A. MOSKOW,
Defendant.

CAMILLE HODGE, SR.,
Plaintiff,

-vs-

UNIHEALTH POST-ACUTE CARE OF BAMBERG, LLC, et al,
Defendant.

Heard on Friday, February 20, 2015
Bamberg, South Carolina

BEFORE:
THE HONORABLE CLIFTON NEWMAN

APPEARANCES:
Counsel on Behalf of the Plaintiff:
John Carroll Moylan III, Esq.
Melia Bowers-Jefferson, Esq.

Counsel on Behalf of the Defendant:
Monteith "Monty" Powell Todd, Esq.
James D. Nance, Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

ON FRIDAY, FEBRUARY 20, 2015 AT 11:12 A.M.:

THE COURT: Yes, sir.

MR. TODD: Thank you for being here and holding this hearing. It's, I think we were scheduled to have this hearing last April. Judge Early recused himself, but anyway.

THE COURT: Last April?

MR. TODD: Okay. Yes, sir.

THE COURT: 10 months later.

MR. TODD: Yes, sir. But, anyway, I think we e-mailed the motions to you yesterday and I think I've got a motion to compel arbitration. And there's two cases that essentially arise out of the same situation. Now, I did file another, a motion to dismiss.

And just to give you a little background --

THE COURT: Okay.

MR. TODD: -- this case arises out of a nursing home medical malpractice case. The Plaintiff's decedent suffered from a number of medical conditions and she was admitted to UPAC Bamberg which is a nursing home right over here. She had long standing back pain. She's in the nursing home for about a month. During the time the pain is, she's continuing to complain of pain. There's a number of calls. Doctors come over. Dr. Moskow comes over, evaluates her. And there's two or three days then

eventually she gets transferred out. She ends up having some paraplegia. She had some discitis and the allegation in the case is a delay in the diagnosis of the discitis.

THE COURT: And what's that?

MR. TODD: It's an infection of the disc.

THE COURT: Okay.

MR. TODD: And they claim that that delay caused her to be paralyzed and eventually contributed to her death some two years later. So I think that's sort of the case in a nutshell. My friend over here can elaborate on that if he needs to.

The Plaintiff filed -- there's two lawsuits. One lawsuit is on the Estate for survival and wrongful death. There's also a lawsuit by the surviving husband. And I did file a motion to dismiss the lawsuit of Mr. Camille Hodge, Sr., on the basis that his damages would be subsumed in the lawsuit, the wrongful death survival case.

Now we've resolved that motion. The Plaintiff's attorney is going to stipulate that he will not be seeking duplicate damages. So that motion has been resolved. And I don't even think we sent you a copy of that motion because it had been resolved.

So that brings us to, I have two motions. One is the motion to compel arbitration in both cases. We filed

motions in both cases. We've only filed -- there's, a memo was filed in the case involving the Estate but it basically covers both cases. The issue is the same in both cases.

THE COURT: All right.

MR. TODD: I filed a motion to be allowed to take the deposition of Mr. Hodge, Sr., who is the gentleman who's the husband who signed the arbitration agreement. And I'll go ahead and argue, explain in arguing the motion to compel arbitration why I would like to take the deposition of Mr. Hodge, Sr., just limited to issues of the arbitration. And if the Plaintiffs prefer me to do, you know, a full deposition at the time then I'm happy to do that as long as it doesn't constitute a waiver. Okay. So that's the background.

Here's the motion. It's a nursing home. When Ms. Hodge was admitted I think the evidence will show the record indicates that she was competent. I think there's no disagreement from any of the parties that she was competent. She did not sign the agreement, her husband did. And so, the basis of the motion is it's a motion to compel arbitration under the Federal Arbitration Act. And the act holds that arbitration is favored. Any doubts about arbitration should be resolved in favor of arbitration. That's all set forth in our brief.

I think the issue at dispute in this case will be whether or not Mr. Hodge had the authority to sign the arbitration agreement on behalf of Mrs. Hodge who was the Plaintiff. I don't believe there will be any issue about -- and if there is I can address it then.

But I'm going to hand up a case, and Mr. Moylan has it. It's Dean versus Heritage Healthcare of Ridgeway. It's a Supreme Court case, decided April -- or June of last year. But in that case the resident was admitted to the nursing home. Her daughter signed the arbitration agreement. The Supreme Court addressed -- Judge Kinard denied the motion to compel arbitration on a number of reasons, interstate commerce, the fact that the designated arbitrator that was no longer available, and then there were other grounds.

But the Supreme Court said, well, this is interstate commerce. The issue about the arbitrator is not a valid issue. And they held that there had not been a waiver. But what they did is, if you look at the case, they remanded the case back to the Circuit Court to determine the issue of agency. In that case the footnote says that -- if you look at the footnote number one, it says that the resident was competent, her daughter signed for it. And so the Supreme Court remanded it back to the Circuit Court to resolve the issue of agency.

Now in this case what we have is, I've made several arguments. One is, and I would like to take the deposition so I can elaborate on this, is that when Mrs. Hodge was admitted her husband did sign. But our argument is, or what we think the evidence will show, is that she authorized her husband to sign this agreement on her behalf and that there's an actual or an apparent agency there. It's an issue of contract. So it's -- essentially the issue is, is what did Mr. Hodge, was he her agent for the purposes of admitting her to the nursing home and executing this arbitration agreement. And we think that he was. And that, you know, when we take his deposition the deposition will support that.

The Plaintiffs have provided us with records, medical records. And the medical records, when Mrs. Hodge was admitted to other hospitals before, Mr. Hodge he executed consents and admissions agreements. And I can hand those up if the Court wants them, but if I'm going to be allowed to take the deposition then I can present those other instances in other -- where he did execute documents on her behalf for healthcare and for responsibility for paying bills and that kind of thing in other situations.

So I think what this will show, and what -- I can hand them up -- is that he was her agent for executing these kinds of documents.

THE COURT: All right. Mr. Moylan?

MR. MOYLAN: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. MOYLAN: Your Honor, Ms. Mabel Hodge was admitted to UPAC Bamberg on August 31st, 2010. On the day that Ms. Hodge was admitted, this is the medical record from her physician. It says the physical examination reveals a well developed and well-nourished female in no real distress. Her extremities show a full range of motion.

Three weeks later Ms. Hodge was discharged from UPAC Bamberg in an ambulance as a paraplegic. She had developed a spinal epidural abscess. A spinal epidural abscess if detected is easily treated. It's drained and the patient is given antibiotics. But Ms. Hodge was never given a blood test. And they never performed a CAT scan. Instead she lay in bed for days screaming, and she was prescribed an antidepressant.

This is a lawsuit brought by Camille Hodge, Jr., as the representative of his mother, Mabel Hodge. It is against the Defendants UPAC, Dr. Moskow, and Dr. Padgett. Of those five entities one signed the arbitration agreement at issue in this case - UPAC. Only UPAC signed that agreement of those five entities.

Now, UPAC makes the argument to this Court that,

well, Ms. Hodge didn't sign it but a relative should be allowed to waive my constitutional right to a jury trial. My wife, my father, my sister, they can waive my right to a jury trial.

That is not the law. And the South Carolina Supreme Court and South Carolina Court of Appeals have addressed that issue three times in the past 12 months. And never have they said, yeah, it's okay for somebody else to waive your constitutional right.

The first time that that issue arises, Your Honor, it arises in a case called Coleman versus Mariner Healthcare. In the Coleman case the resident was actually found to be incompetent. That is, the resident could not make decisions on her own.

Under the Adult Healthcare Consent Act, the authority to make those decisions fell statutorily to the resident sister, Ms. Coleman's sister. She was allowed to make healthcare decisions for her sister and she signed the arbitration agreement on her sister's behalf.

The Supreme Court said, sorry, that is not enforceable against the resident even though she was incompetent. And the Supreme Court said this in the Coleman case: Decision making by the surrogate is a last resort. For example, Section 44-36-30, that's the Adult Healthcare Consent Act, states that no one may consent to

healthcare decisions if the responsible medical provider determines that the patient's inability to consent is temporary and that waiting for the patient to regain competency will not result in significant detriment to the patient's health.

That is even here. Even when you have a patient who cannot make decisions on their own a surrogate cannot, is not allowed to make that decision for them. Not -- they cannot bind them to an arbitration agreement and the Court in Coleman made that clear.

The next case, Your Honor, would be the one that Mr. Todd handed up, Your Honor. And, Your Honor, in that case, as Mr. Todd said, it was a different issue. It involved interstate commerce and the Federal Arbitration Act, but the Supreme Court did this sui sponte. If you look at the very last footnote in that Dean case, it's footnote 13, the Supreme Court says: We are concerned that according to the record the patient did not sign either the residency agreement or the agreement -- meaning the arbitration agreement -- on her own behalf despite being competent at the time, nor did respondent possess a healthcare power of attorney to sign either contract on the patient's behalf.

And then the third decision, Your Honor, that came down just a few months ago. And this, Your Honor, if ever

we were looking for a case directly on point, I will submit this case to Your Honor because this is a case brought by the same defendant, UPAC, represented by the same lawyer, my friend Mr. Todd, on this identical issue. And this case is called Scott versus Heritage Healthcare. UPAC argued to Judge Carmen Mullen that, Judge Mullen, we have an arbitration agreement. The resident didn't sign that. The patient didn't sign it, but her sister did. And therefore she should, the patient should be bound by it. Judge Mullen said, no, of course you're not going to bind a patient to an arbitration agreement that she didn't sign.

Well, UPAC appeals that decision. They take it up to the Court of Appeals. The Court of Appeals says, of course not. And here is the language from the Court of Appeals' decision in that case, Your Honor. The Court of Appeals affirms Judge Mullen's refusal to compel arbitration. And they say this: We affirm as to whether Ellen Jenkins had authority to sign the arbitration agreement on her sister's, Elizabeth Jones, behalf. When Jones was competent at a time she was admitted to Heritage, Jenkins did not possess a healthcare power of attorney -- same issue the Supreme Court just noted in the Dean case -- to sign either contract on Jones' behalf. We find the evidence reasonably supports the trial court's

finding that Jenkins lacked authority to enter into the arbitration agreement on Jones' behalf because Jones was competent at the time of her admission. And Sally Dobson, the admissions director for Heritage, agreed it would've been more appropriate for Jones to sign the contract herself because she was competent and Dobson did not know if Jenkins had a power of attorney. Therefore, we find the arbitration agreement is not enforceable against respondent. Same defendant. Court of Appeals within the past few months addressed this exact same issue.

And, Your Honor, it's important to note here, the Court of Appeals and the Supreme Court in the footnote of the Dean case that we cited earlier focuses on three issues in determining whether a non-patient may be bound by someone else's signature.

First patient -- first factor they focus on is this; competency. And you'll see this throughout this decision, competent, competent, competent. That's the first thing that the Court wants to know, was the patient competent at the time someone else signed this on their behalf. That is, could the nursing home have had the patient sign. Could she make that decision on her own.

Here Mr. Todd has said, there's no question she was competent. And we know she was competent based on a number of things. Based on the finding of the physician

at the time she was checked in, that she's in no distress.

We also know she was competent, Your Honor, because when UPAC wanted her to sign documents, they got her to sign documents. This is a document that UPAC presented Ms. Hodge to sign the day after she was admitted. This is an inventory of personal effects. And guess who signs it? Mabel Hodge. September 1, the day after she's admitted.

They knew how to put documents before her for her signature when they wanted that to happen. They chose not to here. There's no question she was competent to make her own decisions.

The second factor, Your Honor, that the Court focused on in this case is: Does the person signing possess a healthcare power of attorney. You see that in the footnote, footnote 13 to the Dean case. And you see that also here: Was there -- did the signatory have a power of attorney.

In this case, no question, there was no power of attorney. And, Your Honor, we submitted a memorandum yesterday and attached to that memorandum is a document that has been produced in discovery in this case. It is a document executed by the Hodges about 10 days before she was admitted to UPAC while she's a patient at Providence

Hospital. And that document makes clear that she's asked healthcare power of attorney and there's a big no written on that. She has no power of attorney. That's in her medical records. I'll hand a copy of that document up to the Court if you wish. That is on the memorandum that we submitted. But there's no question she had no power of attorney. It's in her medical records. UPAC had access to her records.

THE COURT: I'll take a look at a copy if you have it.

MR. MOYLAN: Certainly. (Document handed to the Judge.)

MR. MOYLAN: To issue number two. Issue number one, was she competent. Mr. Todd and I agree she was competent at the time she was admitted. Second is her healthcare power of attorney. That document, I believe, is dated August 17th just before she was admitted. No healthcare power of attorney. And then the third, Your Honor, that the Court in the Scott case focused on was this, and that is the nursing home itself. What does the nurse -- did the nursing home, here they concede there was a better way to do it. They should have had the patient sign. So what does UPAC know.

Well, we know that UPAC knows that in order for a contract, an arbitration agreement to be enforceable

against the resident the resident must sign it. How do we know that. We know that because UPAC has created an arbitration checklist for its employees. And this checklist is also attached as an exhibit to the memorandum that we submitted yesterday, Your Honor. In this arbitration checklist, UPAC document, first -- the first thing their employees are told to do, determine the competency of the patient or resident. Very first thing. Determine if that patient is competent.

And then UPAC is directed this: Secure the appropriate signatures. And if the patient is competent and capable of signature -- this is what UPAC tells its employees -- the patient resident must initial each page in the lower right-hand corner and sign and date the final page in the presence of the admissions coordinator and one witness. UPAC's own guidelines tell their employees that if a patient is competent the patient must initial and sign the document. And that's right. That's the law. They know that's the law.

But here they ask this Court to ignore its own internal guidelines and to ignore a decision by the Court of Appeals that was handed down just months ago involving UPAC, the same defendant making the same arguments.

And then, Your Honor, UPAC argues in its brief that, well, if it's not enforceable because she didn't

sign it, it still ought to be enforceable under the notions of equitable estoppel, merger, or some other notion. But, again, that doesn't work.

Equitable estoppel, as Your Honor knows, applies only when a party to a contract seeks to enforce one part of the contract while denying the other part of that same contract. Here what we have, UPAC has chosen to present its patients with two separate agreements. One is a 12-page admission agreement, and then there's a second five-page arbitration agreement.

Putting aside the issue of whether Ms. Hodge accepted any benefit from her three-week stay at UPAC that left her a paraplegic, putting that aside, there's no question she effected no benefit from this arbitration agreement that she never signed. And there are a couple of ways for the Court to deal with that issue.

One, the easiest way to deal with it is the way the Court of Appeals dealt with it in this recent Scott case. And what the Court of Appeals said in Scott is simply this, Your Honor: We decline to address Heritage's remaining arguments because we find this issue is dispositive. That is, the fact that the resident did not sign the arbitration agreement is dispositive. And the other issues don't matter. Because if there is no enforceable agreement there is no enforceable agreement

and you cannot back door into that agreement.

The other way to address it is the way, according to the Coleman case that we looked at earlier. The Supreme Court in the Coleman case performed a detailed analysis comparing the admission agreement and the arbitration agreement to determine if they had merged into one separate agreement that would be binding on the patient. And the Court said no. And the Court said this: The reason that they do not merge is because the nursing home has chosen to make it two separate agreements and they have included language in those agreements making it clear that they are two separate documents that do not merge with one another.

And this is what the Supreme Court said in the Coleman case, Your Honor: The arbitration and admission agreement recognized the separateness of the arbitration agreement and the admission agreement, not a merger of the two contracts. Moreover, the arbitration agreement could be disclaimed within 30 days of signing while the admission agreement could not, evidencing an intention that each contract remain separate. By their own terms the contracts between these parties indicated an intent that a common law doctrine of merger not apply. The law is clear that any ambiguity in such a case is construed against the drafter. Since there was no merger here,

appellant's equitable estoppel argument was properly denied by the Circuit Court.

And, Your Honor, if you compare the admission agreement and the arbitration agreement that has been submitted as a part of this motion you'll notice a number of things. One, the admissions agreement is governed by South Carolina, the arbitration agreement by federal law. The admission agreement has a clause in it, Paragraph I on page nine, that says: This agreement, the admission agreement, shall be construed, governed and enforced under the laws of South Carolina. This agreement is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein. Meaning the admission. The admission agreement is a self-contained document.

And that language is reinforced, Your Honor, in the arbitration agreement. Because the arbitration agreement -- which you'll note has a line for Ms. Hodges' signature which is blank. The arbitration agreement is explicit. The signing of this agreement is not a pre-condition to admission. It's a part of the admission package. It's a separate agreement.

And it also, Your Honor, you'll notice that the Supreme Court in the Coleman case focused on whether the arbitration agreement could be disclaimed within 30 days

of admission. Exact same language in this agreement. This agreement may be revoked by written notice to the healthcare center from the patient resident within 30 days of admission. This is the identical situation the Court found was not a merger.

What we have, Your Honor, is an attempt to enforce an arbitration agreement against a woman who never signed it. This Court has been clear three times in the past 12 months. It is not enforceable.

So to subject Mr. Hodge who's 83 years old, who lost his wife of 56 years to a deposition in which he cannot change any of the facts that happened five years ago, there's nothing that he can say that will change the fact that she was competent, nothing he can say that will change the fact that he had no healthcare power of attorney, and nothing he can say that will change the fact that UPAC knew they had to have the resident's signature.

Your Honor, these injuries occurred almost five years ago. And we would very respectfully ask that this case be allowed to proceed to trial at this time.

And I thank you very much for your attention.

THE COURT: All right. What was the arbitration agreement designed to address?

MR. MOYLAN: The arbitration agreement, Your Honor, is basically designed to address anything and everything

that may ever arise out of a nursing home.

THE COURT: All right.

MR. MOYLAN: Thank you, Your Honor.

THE COURT: Mr. Todd?

MR. TODD: Yes, sir. May it please the Court.

The Coleman case is not applicable to this case. It's irrelevant but -- and because I think -- well, there are certainly things we do agree on. That, I don't think there's any dispute that Mrs. Hodge was competent. And I don't think she had not at the time, at least that we're aware of, executed a healthcare power of attorney.

But, the Coleman case addressed the issue involving an incompetent resident who did not have the capacity to contract, who at that time did not have the capacity to designate somebody to be her agent.

And what the Court turned on in the Coleman case, what they focused on was the Adult Healthcare Improvement Act and then an anti-merger clause. And those really aren't at issue here. I mean, if Coleman -- if Ms. Hodge were incompetent then what we would be doing in this case is we would be talking about the lack of an anti-merger clause in this situation. But since Ms. Hodge was competent then the Coleman case really doesn't apply.

And so I think what we're looking at -- this is an issue primarily involving agency. And was Mr. Hodge

authorized to be her agent or was he her apparent agent, and is Ms. Hodge estopped from allowing Mr. Hodge once she lets him sign this document and many other healthcare documents before this time to deny that he had the authority to sign on her behalf.

And I think if you look at the Dean case and I think Mr. Moylan bringing up footnote 13 sort of really focuses on, you know, it really points out why I should be allowed to depose Mr. Hodge. Now, I mean, he's brought the lawsuit. If he's able he's going to be deposed at some point because I think he's a witness. But if you look at footnote 13, this is in the Dean case and in the Dean case according to footnote one the nursing home resident was competent. There was no healthcare power of attorney, but what -- the Supreme Court in footnote 13, they note that it was not signed by the resident who according to footnote one was competent.

But -- and so they note that and say they're troubled by it. They say: Accordingly, we merely note that on remand the Circuit Court must engage in a full inquiry into this matter prior to any attempt to enforce the agreement.

So, I think that says that there should be an inquiry. I should be allowed to take a deposition. And if they want to limit it just to the arbitration

agreement, we can do that. If they want us to go ahead and do it all, the whole deposition at once, we can do that. But I'm going to go ahead and hand these documents up.

I've got a copy, but these are documents -- and the document Mr. Moylan handed up about the healthcare power of attorney, it was signed by Mr. Hodge who signed here. There's a number of documents that Mr. Hodge has signed on behalf of his wife.

Those are from Providence Hospital, August 17th; Bamberg Hospital, July 24th; Bamberg Hospital, May 19th. And, you know, there are additional documents -- consent for treatment, Bamberg Hospital, again, May 19th. But a number of documents that show that Ms. Hodge allowed Mr. Hodge to be her agent or at least her apparent agent for the purposes of executing documents on her behalf.

And so at this stage there's evidence that he is her agent and but, you know, we would request the right to do the deposition to elaborate on that. And as the Court indicated, the Supreme Court indicated in Dean, make a full inquiry into that so that we can present that to the Court so that the Court can make a determination.

THE COURT: So if you were to do that deposition would you be -- not simply the deposition, but are you seeking to litigate and arbitrate?

MR. TODD: No, we're seeking to arbitrate.

THE COURT: Okay.

MR. TODD: And then the reason --

THE COURT: At what point do you waive your right to arbitrate by taking depositions and filing pleadings and so forth?

MR. TODD: Well, Your Honor, that was addressed -- that's why we -- the motion was to request the deposition merely for the purpose of arbitration.

THE COURT: Okay.

MR. TODD: And that's why, you know, I didn't want -- I didn't ask to take a full deposition because I was concerned about a waiver.

THE COURT: And that was addressed in where?

MR. TODD: Well, in the Dean case they addressed the issue of waiver.

THE COURT: Okay.

MR. TODD: I don't know that they specifically addressed the issue of depositions, but the issue of waiver was addressed in Dean. There was, you know, discovery had been done and there was an argument about waiver.

THE COURT: What did they say about it?

MR. TODD: If there are page numbers on this copy I handed you, I can't see them. Maybe that's an eight.

THE COURT: I have a lot of paragraph numbers.

MR. TODD: It's Paragraph 15.

THE COURT: All right.

MR. TODD: You know, Your Honor, if you look down here it says during this mediation process appellants requested limited discovery in order to engage in meaningful settlement talks.

THE COURT: All right. Just one more question for Mr. Todd and I'll hear from you, Mr. Moylan.

The number of parties, I think Mr. Moylan said there were five defendants or --

MR. TODD: I think there's --

THE COURT: -- four.

MR. TODD: I'm not sure how many. There's essentially two Defendants which is the nursing home and then Dr. Moskow who -- and then his practice. So I don't know whether this -- Dr. Moskow was working for Dr. Dale Padgett, PA, who the PA, I believe, is being sued because it employed Dr. Moskow.

THE COURT: All right. So is that right, that's the number of party Defendants?

MR. MOYLAN: In essence that's right, Your Honor. There's three Defendants Mr. Todd just mentioned. And then the other parties I just mentioned are Mr. Camille Hodge, Jr., who is suing as the PR for the Estate of his

I mean, that's kind of my point. If they want two separate things they've got to rephrase it and send it. I'll be happy to respond but I'm just responding to what they sent me.

THE COURT: All right. How about that, Ms. Jefferson? He thinks that you should resubmit them and clarify it in a more segregated fashion in order for it to be clear.

MS. BOWERS-JEFFERSON: Well, Your Honor, I anticipated he might say that which is why before filing my motion I sent him a letter saying, you know, perhaps you misunderstood what I said. And I, on April 30th I sent him a letter saying just to clarify let me give you a couple of definitions. And one of my definitions says: You or your shall refer to Defendants, Dr. Dale Padgett, MD, PA and/or Dr. Herbert A. Moskow.

So to the extent that there was any confusion that I should have used another pronoun to refer to the Defendant, I made an attempt to clarify that before filing my motion to compel. I got no response to that. So, you know, I also clarified other definitions. Like, when I asked him to identify I asked him, I said: Identify means to describe people by their first and last name, their address, their phone number. I didn't get any of that.

You know, I just feel a bit like Mr. Nance is not

it's -- I just think he was a little bit flippant to respond to my clear interrogatory request in that manner. I'm just asking him to clarify his answers.

THE COURT: All right.

MR. NANCE: Well, Your Honor, these, this request -- these interrogatories are addressed to Dr. Moskow who is a person and to an entity, business entity which is a PA. And this is the question: Describe your positions and employment at UPAC Bamberg since 2009.

Now, if that's addressed to the PA, it's got to be an its because it can't be a your. And I responded on behalf of Dr. Moskow which is directed to by its clear provision. The second one's the same thing: Describe your professional relationship and privileges. And I answered that. Then it says: Describe -- and these aren't even questions, these are commands -- describe the circumstances of how Dr. Moskow surrendered his medical license and stopped practicing medicine. Well, he's the only one that can answer that, and he retired.

I mean, I answered them in the manner in which they were posed. And if they want an answer from a PA that's got to be an ifs. It's not a your. And a your would refer to a person which every time it says that or specifically states Dr. Moskow, I responded along that line.

THE COURT: Two separate.

MR. NANCE: Requests for production, interrogatories, whatever. One addressed to one party and one addressed to another. I mean, that's the way I do it.

THE COURT: All right. Ms. Jefferson, yes, ma'am.

MS. BOWERS-JEFFERSON: Your Honor, I just wanted to submit that I, I did ask for them to respond to them separately. If you would look at my request it says to Dr. Dale Padgett, MD, PA, and Dr. Herbert Moskow. And it requests that the Defendants produce or respond to the document -- respond to the question. And the nature of questions says: Describe your positions and employment at UPAC. And then I get response like -- I'm sorry. Give me one second -- I get responses like physician and medical director.

Well, if I've directed my request to two Defendants and your, the response is physician and medical director how am I supposed to know if Dr. Dale Padgett is telling me he's the physician and medical director or Dr. Moskow is telling me he's the physician and medical director?

I don't, I don't know which Defendant is responding to what interrogatory or what capacity. I just -- if I want to ask questions in a deposition regarding these interrogatories, I'm just not really sure who responded to what interrogatory. And, quite frankly, I just think

file on the patient?

MS. BOWERS-JEFFERSON: I would think so, Your Honor. So I would ask that you compel him to produce those documents from 2009 to the present.

THE COURT: All right. Anything else then, Mr. Nance?

MR. NANCE: Your Honor, I just don't think -- I don't have this in front of me, unfortunately, but I recall when I was putting this together and it's my recollection that --

MR. TODD: Here are your responses.

MR. NANCE: It's my recollection that Dr. Padgett was not always his family doctor. He started treating him at some period of time. And we gave him all the records and office notes we had pertaining to that. I remember giving them out. I mean, it wasn't all hospital records that I recall. But I'll revisit it. I mean, I'll get the records that they give me and pass them on if that's the case but I think I've given them everything he had.

THE COURT: How about the request that you separately respond on behalf of each party as opposed to filing a joint response?

MR. NANCE: Well, I don't know of any rule that says I got to do that. They can file two separate ones. I mean --

THE COURT: Correspondence.

MR. MOYLAN: Thank you.

THE COURT: All right. On this motion, what else? Yes, ma'am.

MS. BOWERS-JEFFERSON: On this motion, again, I go back to the medical records. I would like for Your Honor to compel him to compel the Defendants to provide me with Dr. Moskow's medical record from 2009 or if he says he doesn't have the medical records in his possession then I, I mean, I think that the 12 pages that he's given me is demonstrated that Dr. Padgett is his family physician. And he stated that Dr. Padgett only has 12 pages of medical records in his possession as his family -- as Dr. Moskow's family physician. I find that a little bit unbelievable. I mean, I think you probably have more than 12 pages from one visit to your family physician in doctor's notes. But given that one -- just one document I showed you says that he has a clinical history of altered mental state.

THE COURT: What they provided were records from the hospital and nothing from his doctor?

MS. BOWERS-JEFFERSON: Right.

THE COURT: And he's his family doctor?

MS. BOWERS-JEFFERSON: And he's his family doctor.

THE COURT: And he's required to have a separate

expert and they want a copy of that letter.

MR. NANCE: Okay.

THE COURT: Are you saying that they can get it or they can't get it?

MR. NANCE: I'll give them a copy.

THE COURT: Because they're asking for correspondence with experts because under Rule 702, -3, -4, they're entitled to whatever data or things that the expert considered in giving, in rendering or formulating an opinion. So if you've got a letter from a lawyer that lays the case out, he doesn't have a right to discover that. Asks: Did this factor in your opinion. So that's where the correspondence comes in. So they want discovery of what you provided the expert.

MR. NANCE: I have one letter to him. It tells him what I'm sending him. And I'll be happy -- I'll give it to them if that's what they want.

THE COURT: All right. Does that go far enough or are you looking for something else?

MS. BOWERS-JEFFERSON: I think I can't ask for more than what he has.

MR. MOYLAN: I can, Your Honor. The only thing I'd make clear is that I understand there's one letter sending him information but are there e-mails, other correspondence. What we request is all correspondence.

medical records, Your Honor, is -- are also something that I've requested that I have not received. And although he says that he doesn't have, that he's given me everything in his possession. The documents clearly show that Dr. Dale Padgett is Dr. Moskow's family physician and I don't have the records from Dr. Moskow's -- I mean, from Dr. Padgett's files. And we've received 12 pages of documents --

THE COURT: Well, that's a separate one.

MS. BOWERS-JEFFERSON: Okay.

THE COURT: If they have records someplace, if he has a separate, if he separately has office records regarding Dr. Moskow, that's a separate issue from trying to get their expert's --

MS. BOWERS-JEFFERSON: It is, Your Honor.

THE COURT: -- material and discovery and letters and all of that. So that's the one we are kind of dwelling on.

MS. BOWERS-JEFFERSON: Okay.

THE COURT: If Mr. Nance has more ideas about it.

MR. NANCE: I'm not going any further on that, Your Honor. I think that it's been adequately addressed but --

THE COURT: So if you write a letter to the expert and say I want you to be my expert in this case and here are the facts as we believe them to be, will you be my

on the same subject by other means, a party is not required to disclose nor produce an expert who was only consulted informally or consulted and not retained or specifically employed.

That's what that rule says.

MS. BOWERS-JEFFERSON: And, Your Honor, I'm royally screwing this up.

THE COURT: I'm just --

MS. BOWERS-JEFFERSON: So thank you.

THE COURT: I'm a rules man. I'm the head of the Rules Advisory Committee.

MS. BOWERS-JEFFERSON: Yes. So let me refer you to the rule ahead of that (4)(A).

THE COURT: Rule (4)(A). Okay. Discovery of facts known and opinions held by experts otherwise discoverable under the provisions of Subsection (B)(1) of this rule and acquired or developed in anticipation of litigation or for trial may be obtained by any discovery method subject to Subdivisions (B)(4)(B) and (C) of this rule concerning fees and expenses.

MS. BOWERS-JEFFERSON: Now I have the right rule.

THE COURT: Okay. All right. Anything else before Mr. Nance gets to comment about this, or do you want to hear from Mr. Nance first?

MS. BOWERS-JEFFERSON: Your Honor, just that the

discovery of expert.

THE COURT: Okay. 26(B)(2) says insurance agreements. I'm wondering whether you're in the federal book or the state book.

MS. BOWERS-JEFFERSON: Perhaps I'm giving you the wrong reference, Your Honor.

THE COURT: All right.

MS. BOWERS-JEFFERSON: 26(2) -- 26(2) --

THE COURT: It's subdivided ABCD.

MS. BOWERS-JEFFERSON: Wait. 26-(2), 26(A) -- no 26(B).

THE COURT: All right.

MS. BOWERS-JEFFERSON: (4)(B).

THE COURT: All. Right. Let me read that. 26(B)(4)(B).

MS. BOWERS-JEFFERSON: Yes. And I apologize for giving you the wrong --

THE COURT: Party may discover facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial.

Only as provided in Rule 35(B) or upon a showing of exceptional circumstances under which it is impractical for a party seeking discovery to obtain facts or opinion

I have no report to be honest.

THE COURT: Isn't -- I think you quoted federal. In federal court where you have an expert, aren't they required to do a report?

MS. BOWERS-JEFFERSON: Your Honor, in the federal court they are required to do a report. And if its expert does not have a report that's fine. I'm not asking him to produce anything that he doesn't have, but to the extent that he has had correspondence or memoranda or other types of communication, written communication with his expert, I think that I'm entitled to have that for the very purpose of my deposition.

Because under rule seven -- under rules of evidence 703 and 705 I'm entitled to confront that evidence, that expert witness about the basis of their testimony. And if there's a possibility that the expert used any of the information that was disclosed them through that correspondence in forming their testimony, I get to confront them about that and possibly impeach them with it.

THE COURT: And I'm again still trying to follow this discovery rule that you're relying on because you said, you said 26(B)(2)?

MS. BOWERS-JEFFERSON: I referred you to 26(B)(2) for the discovery rule, the rule allowing me to have

have an expert from Newberry or someplace like that, some other town.

MR. NANCE: Yes, sir.

THE COURT: Defense expert. And they're seeking to get copies of correspondence with the expert.

MR. NANCE: It's my understanding.

THE COURT: All right. And you're saying --

MR. NANCE: Well, this is what I saw. And really, I apologize, I don't have this document in front of me, but number six is what they requested in regards to an expert. And they want all documents, photographs, videos, diagrams, books, pamphlets, tests or other materials, A, relied upon by each and every expert or consultant Defendant intends to call as an expert at trial in preparation of his or her testimony or, B, that invite, reflect, refer to, or summarize reports or memoranda prepared for the party to this litigation by any person the party expects to call as an expert. You know -- I mean, I thought that's why they have depositions and things.

THE COURT: Well, is that the state rule versus the federal rule? In the federal rule the expert must prepare a report and in state court they don't have to do a report.

MR. NANCE: No, sir. And I don't ask for reports.

that are not in the Defendant's possession, I don't think there's anything that requires us to go out and get them. I think we -- a party in a motion to produce is required to produce documents that they have, like hospital records. I don't know of anything that requires a defendant to go out and get his records, doctor's records or anything else.

I mean, that's why they have subpoenas. And it's just a simple matter of subpoenaing these things if they want more. We gave them what we had -- well, we gave them what we know is there.

And Dr. Padgett as the guardian ad litem for Dr. Moskow responded to these document as well as we could. I mean, it's just documents he has. But I've inquired of Dr. Moskow's wife if they have any records and the answer was no, we provided everything that we've got. You know, they want something -- and, you know, if they want I'll give them some type of authorization to go get these records. That's fine with me. I don't mind doing that.

THE COURT: These would be records from who?

MR. NANCE: Well, they want medical records and we don't have medical records other than what's in Dr. Padgett's records and that's what he's produced.

THE COURT: I think somewhere in the papers you all

adopt that exclusion.

THE COURT: And so the rule I'm to apply to that, read it to me again.

MS. BOWERS-JEFFERSON: Rule 26(2)(B), that a party may discover the facts known and opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation.

And then, Your Honor, in accordance with the Rules of Evidence 703, that rule other than 703 allows for a party to -- 703 and 705 requires an expert to disclose underlying facts or data upon which his opinion, his or her opinion is based upon. And, Your Honor, to the extent that the expert has been given any documents or anything other than documents that have been produced during discovery I'm entitled to know what those documents are. And if there is a claim of privilege, the Defendant has the burden to demonstrate to us what that privilege is by producing the privilege log to allow us to assess whether or not those documents are subject to such privilege. And he has not done so.

THE COURT: All right.

MS. BOWERS-JEFFERSON: And that's it, Your Honor.

THE COURT: All right. Mr. Nance?

MR. NANCE: Your Honor, it was kind of hard for me to follow all of this, Your Honor, but as to documents

for you, if you'll look at the -- I'm sorry, Your Honor. I'm referring you to the wrong document.

It's a stapled document that is captioned Nance, McCants and Massey.

THE COURT: Okay.

MS. BOWERS-JEFFERSON: On page two of four, which is the third page of that document, number six, I asked the Defendants to produce any and all correspondence, documents, memoranda, or reports to and from any experts who may or will testify at the trial in this case on behalf of Defendants. The response is: Defendants object to anything provided to the expert upon the basis that this request is attorney work product.

THE COURT: Which rule addresses that issue?

MS. BOWERS-JEFFERSON: In Rule 26 of the South Carolina Rules, civil rules, specifically Rule 26 (2)(B) says that a party may discover facts known or opinions held by the expert who has been retained and there is no exception for the communications between the expert and the attorney.

And I would note for Your Honor that in contrast to the federal rules which have been amended several times where there is an express exclusion for opinion work product, and that while that exclusion has been adopted by the federal rules, our courts have expressly chosen not to

In response I got a computer printout of his schedule which for me does, or may or may not reflect what Dr. Moskow really did during those days. I would ask the Court to compel the Defendants to provide to me any actual calendar of what he really did do during those days and not necessarily what was just scheduled for him to do and fully answer that request for production.

Additionally you'll note in number six and seven, I would ask the Court to compel Dr. Moskow and Dr. Padgett to provide for me any and all documents that they, including correspondence and memoranda that they have had with their expert. They have given me reference to documents produced in discovery which they have provided to their expert. However, they have refused to produce to me any correspondence or memoranda that they've had with their expert on the grounds of work-product privilege.

However our, our discovery rules are pretty clear that I'm entitled to have all the information that the expert has used in coming up with their opinion or testimony for their expert opinion. And if there is any exclusion or any claimed exclusion for privilege it is on the Defendant to meet the burden of that, of proving --

THE COURT: What was their response to that one?

MS. BOWERS-JEFFERSON: Their response, Your Honor, in the packet that's paper clipped, that is binder clipped

that we can understand better his clinical history of altered medical state.

I -- and specifically I requested that, those documents in my first request for production number seven. Also my first request for production in number five I asked for documents that evidence when Dr. Padgett learned of Dr. Moskow's dementia or diminished mental capacity. You will also notice on that page that I just pointed out to you, 187, Dr. Padgett is noted as Dr. Moskow's family physician.

And he is copied on that radiology report. So, despite the fact that he responded to my interrogatory that he may have learned of his incapacity to practice medicine in 2012, I don't have any documents from Dr. Padgett as Dr. Moskow's family physician at all in these responses. And I would request that Dr. Padgett's practice produce to me Dr. Moskow's medical records from 2009 to the present in his capacity as his family physician.

In my first request for production number six, I asked for all documents reflecting Dr. Moskow's actual calendar appointments, actual calendar appointments, calls, messages, general entries and diaries for the time period from September 1st through the 24th of 2010, which is the relevant period in which Ms. Hodge was treated.

medical records related to his medical capacity from 2009 to the present. And we got a response, approximately 15 pages of documents, regarding Dr. Moskow's medical records that don't, I believe don't even begin to scratch the surface regarding Dr. Moskow's medical capacity. And in particular if you will look at page, record page 184 of the documents produced by Dr. Padgett -- and let me hand that to you. Your Honor, that document is tabbed for you. It will note for you that in May of 2011 Dr. Padgett (sic) was seen at Bamberg County Hospital and there's a radiology report where he had a head CT and the reason noted was AMS which means altered mental state and --

THE COURT: Of Dr. Moskow?

MS. BOWERS-JEFFERSON: Dr. Moskow, yes.

THE COURT: All right.

MS. BOWERS-JEFFERSON: And there's a clinical history noted of altered mental state. However, I don't have any of the medical records related to that hospital visit. I don't have any of the radiological reports, the radiological scans from that CT. And I don't have any other documents known about that clinical history of altered mental state.

And so at this point, Your Honor, I would ask for you to compel the Defendants to give me all of Dr. Moskow's medical records from 2009 to the present so

Defendants to fully and separately respond to our interrogatories.

As the Defendant, as Mr. Nance just told you he represents both Dr. Moskow and Dr. Dale Padgett, PA. And Dr. Dale Padgett is acting as the guardian for Dr. Moskow. If you will take a look at the responses to our interrogatories and our discovery requests -- do you have a copy of that, Your Honor?

THE COURT: I think y'all e-mailed those yesterday as well.

MS. BOWERS-JEFFERSON: I'll hand you a copy.

(Documents handed to the Judge.)

THE COURT: Thanks.

MS. BOWERS-JEFFERSON: If you will look at those interrogatory responses you will see, one, that although my discovery requests were directed to each of them individually, the responses came back to me as one vague response from them collectively. So I don't know on behalf of whom the response is from, which Defendant it's from, or as -- I'm -- also don't know whether or not the interrogatory's fully responded to. So I would request that the Defendants be compelled to fully respond to my interrogatories.

But more importantly an issue that was referred to in the motion to strike. I have asked for Dr. Moskow's

as I'm talking and she says that's what the Court in what did?

THE CLERK: In Chapman.

THE COURT: In Chapman. Is that one we already talked about, Chapman?

THE CLERK: Not the same ...(inaudible).

THE COURT: Her Chapman analysis she's telling me I'm right. Go ahead.

MS. BOWERS-JEFFERSON: Always a good move for a law clerk.

Judge, I'm going to discuss Plaintiff's motion to compel discovery from Dr. Moskow and Dr. Padgett, PA. I don't -- I'm pretty sure I do not need to recite all of the law regarding the requirements for discovery.

THE COURT: I know all these famous lawyers and I've gone to battle with Mr. Moylan, Mr. Todd, Mr. Nance. And I've seen you at many CLEs but I can't remember your name.

MS. BOWERS-JEFFERSON: Meliah Bowers-Jefferson.

THE COURT: Meliah Bowers-Jefferson.

MS. BOWERS-JEFFERSON: Yes, sir.

And if you start right with me, I'm going to hand up to you a document just outlining the discovery that I am requesting Your Honor compel doctor Defendants to give to us today. Specifically, I am asking you to require the

I'm just looking at this one page that he, Mr. Moylan, had submitted that in a progress note despite the fact that Dr. Moskow examined Ms. Hodge more than two weeks prior and despite the fact that she had been a patient there ever since, Dr. Moskow appears to think he is meeting Ms. Hodge for the first time and describes her as a newly-admitted African-American female to UPAC of Bamberg.

Now I don't know how all of that ties in with whatever the theory of liability is or what the disputed evidence might be. But for me to conclude at this point that none of that is relevant to anything in this litigation would be inappropriate. So I cannot grant that motion.

I think that if it is to be raised it should be raised after discovery is completed and at the time perhaps that sort of in a motion-of-limine type of thing if it's appropriate, but not to cut off or to frustrate Plaintiff's efforts in trying to prove certain aspects of their case.

I deny the motion and it certainly can be reintroduced at a later time if it becomes an issue.

MR. MOYLAN: One more motion, Your Honor, I think.

MS. BOWERS-JEFFERSON: Your Honor, we have Plaintiff's motion to compel.

THE COURT: Just a moment. My clerk is researching

Mr. Moylan?

MR. MOYLAN: Your Honor, I don't think I need to say much more about it. I mean, I think it's clearly highly relevant in this case. We obviously don't have to present proof at the time that our complaint is filed.

Again, the motion to strike is highly disfavored. Right in the middle it refers to these motions as time wasters. I don't know any way we could have put that -- again, put it in the pleadings in any less derogatory manner than we tried to do. But I do think it's going to be relevant in this case and I think we should be allowed to go forward and determine that.

THE COURT: I think this type of issue is more like a motion in limine where the Trial Judge sort of addresses it right before trial. And right before trial counsel says, Judge, I have a motion in limine. I don't think that counsel should be able to say that he gave up his practice because that's too prejudicial and not probative or something.

So I sort of see a motion like this in that vein but for a judge during discovery to make a ruling or prior to discovery or prior to the case being prepared for trial for the judge to start chopping off pleadings I think is inappropriate because of the liberal pleadings in our state. And the, sort of the gist of the claim here that

something, then that would -- then the Court would then un-strike it?

MR. NANCE: Well I think they, they could amend their pleadings maybe if it came up with that and they could support it. But if they came into trial, I don't think that would -- because it's not pled would prevent them from putting up evidence to show that. I mean --

THE COURT: At this stage, how much discovery has been done on all these issues and everything in this case?

MR. NANCE: Basically zero. Had some interrogatories and requests for production and that's it. I mean, what's holding the discovery up in this case is these motions.

THE COURT: Regarding the arbitration.

MR. NANCE: Right.

THE COURT: So that's --

MR. NANCE: That's kind of where we are.

THE COURT: That's back to my case in the Horry County case where everyone has agreed to hold everything in abeyance until the arbitration is complete. So that's, again, that's that type of limit when you're trying to operate in two forums.

MR. NANCE: Yes, sir.

THE COURT: All right. What do you say about it,

facts sufficient to constitute a claim. And they have this allegation in there that he gave up his -- voluntarily gave up his license to practice medicine which as I said is true but they are trying to claim that his dementia had something to do with his actions in this particular case. And in our, in answers to the Plaintiff's interrogatories, they asked this question: Describe when you first became aware of Dr. Moskow's diminished capacity to practice medicine.

Now he has a guardian ad litem. In fact, it's Dr. Padgett. And they practice together and he was employed by that practice at the time. And his answer is in 2012. It's two years after this incident occurred and after his giving up his license to practice.

So his dementia -- I mean, there's just nothing there to indicate that the dementia had anything to do with this particular situation.

Now, if during discovery we ever get to that point in this case and they come up with something, I think they could prove it. They could do that. But just putting it in the pleadings and relying upon that, in view of these particular facts just -- it's just immaterial. It's irrelevant. And to this point in time it's really calculated to sort of take --

THE COURT: If during discovery they come up with

in and of itself create a separate issue or claim of negligence, however it is relevant when that alcoholism translates into conduct falling below the applicable standard of care. The part if any which Dr. Chapman's alcohol dependency made in his decision-making process was a highly-contested issue in this case and was properly submitted to the jury for decision.

And, Your Honor, we would submit that if you were to substitute the word dementia for the word alcoholic you would get our precise case. The fact that a physician may have been suffering from dementia while practicing medicine does not in and of itself create a separate issue or claim of negligence, however it is relevant when that dementia translates into conduct falling below the applicable standard of care.

And, Your Honor, you clearly don't have to make a decision today on whether this agreement is going to be admitted into evidence but we do think we are clearly entitled to make the allegation. It is highly relevant to this case. We've made it in as non-derogatory fashion as I possibly know how to make it and would ask that the motion to strike be denied.

THE COURT: All right. Yes, sir, Mr. Nance.

MR. NANCE: Well, Your Honor, my recollection when I was in law school that pleadings require in a compliant

Board of Medical Examiners, is an agreement between Dr. Moskow and the Board of Medical Examiners. It arises out of a 2010 compliant which is the same time that Ms. Hodge is being treated by Dr. Moskow. And it concerns, quote, conditions which could affect respondent's ability to perform the essential functions of his practice. That is clearly highly relevant to this case.

And in fact, Your Honor, our Court of Appeals has said that these agreements between a physician and the South Carolina Board of Medical Examiners are not only relevant but they may actually be introduced into evidence in a case when it relates to the same matter.

There's a case called Watson ex rel Watson versus Chapman. In that case, the Watson case, the allegation was that the physician who was being sued for malpractice was addicted to drugs and alcohol, a much more derogatory statement than anything we have said here.

And the Court was faced with the question of that allegation. Could the Plaintiff introducing the evidence, the agreement between Dr. Chapman and the Board of Medical Examiners in which Dr. Chapman had agreed to seek treatment for his alcoholism, and this is what the Court in the Watson case said: The fact that a physician may have been an alcoholic while practicing medicine does not

up his license to practice medicine.

THE COURT: All right. Yes, sir, Mr. Moylan.

MR. MOYLAN: Your Honor, we have briefed this fairly extensively. Jim, do you have a copy? This has been filed forever. I'll hand up a copy, Your Honor, if that's okay.

As Mr. Nance said, Your Honor, Dr. Moskow has moved to strike one portion of one sentence from the complaint. The law, Your Honor, on a motion to strike in South Carolina is this, and I'll quote: Striking a party's pleading is considered an extreme measure and thus such motions are viewed with disfavor and granted sparingly, closed quote. In order to prevail on a motion to strike, the moving party must show the allegation has no possible relation to the subject matter or that the allegation is, quote, cruelly derogatory.

Your Honor, this allegation that Dr. Moskow gave up his license to practice medicine is not cruelly derogatory. In fact, I couldn't really think of a nicer way to say it. And it is highly relevant to this case. Your Honor, in short, we believe that Dr. Moskow's dementia may have played a role in his prescribing an antidepressant for a woman who was suffering from a spinal epidural abscess.

This agreement, Your Honor, with the South Carolina

to get any type of information I try to get.

But in the compliant in the second paragraph it of course establishes Dr. Moskow being a citizen and resident of Bamberg County and that he practiced medicine here at all relevant times. And then it goes on to make this statement: Dr. Moskow has subsequently agreed to give up his license to practice medicine.

And that's true, but it is immaterial and it's irrelevant and it shouldn't be in these pleadings. And quite frankly, the reason I move to strike it was because all of the pleadings aren't submitted to the jury, certainly they can be read or some mention be made. And Dr. Moskow did give up his license to practice but it had nothing to do with this particular case or any actions he took in this case.

And I think it's put in there in order to really sort of infer that maybe it did.

THE COURT: What paragraph is it again?

MR. NANCE: Two.

THE COURT: Of the complaint.

MR. NANCE: Last sentence.

THE COURT: All right.

MR. NANCE: And I move pursuant to Rule 12(F) of the South Carolina Rules of Civil Procedure to strike that last sentence: Dr. Moskow has subsequently agreed to give

MR. TODD: I would ask for 10 days.

MR. MOYLAN: That's fine.

THE COURT: Okay. 10 days. Give me a chance to review.

MR. TODD: 10 days would be March 2nd with February...

THE COURT: Give me time to review my notes from the briefs from my construction cases where the same thing was argued essentially and then also these cases which you all have submitted. And we'll get on it.

MR. MOYLAN: Thank you very much, Your Honor.

THE COURT: All right. So necessarily we'll have to defer ruling on your motion for a deposition.

MR. TODD: We'll -- I'll address that in the proposed order. I'm assuming Mr. Moylan will as well.

THE COURT: Okay. Very good. All right. What else do we have?

MR. MOYLAN: Mr. Nance has a motion to strike.

THE COURT: Okay.

MR. NANCE: Your Honor, my name is Jim Nance.

THE COURT: Yes, sir.

MR. NANCE: I represent the PA, the practice, R. Dale Padgett, MD, and Dr. Herbert A. Moskow. Dr. Moskow suffers from dementia. And, quite frankly, I can't confer with him and I have to go through his wife and Dr. Padgett

MR. TODD: And this, I think I may have said this at the beginning but I filed two separate -- there's two cases. I filed motions to compel arbitration for both cases but just one memo in support. And Mr. Moylan is fine with me not filing, you know, a duplicate memo for the other case. So --

THE COURT: Okay.

MR. TODD: -- the one memo I've already supported would be for both cases and then I guess when we submit proposed orders we will double caption it.

THE COURT: Okay.

MR. MOYLAN: (Nods head.)

THE COURT: You all fairly acknowledge that whatever ruling applies to all the pending matters, I guess.

MR. MOYLAN: Yes. I would -- I think what Mr. Todd is saying is accurate. We would submit one proposed order for Your Honor to make a decision.

THE COURT: And how much time would you want to do that?

MR. MOYLAN: Maybe next week.

THE COURT: I'm not in a rush. I mean, you all have had this pending awhile.

MR. MOYLAN: I think the case needs to be moving. I can have it to you no later than the end of the week.

instances things are at a standstill totally. Because any, any party that then engages in any kind of discovery, deposition or otherwise, then, you know, they feel as they waived their right because they can't arbitrate and litigate. So same issues all over again.

Of course, this one has the third layer of whether it's any type of enforceable agreement if the party is competent. And that 8th amendment argument about the right of a jury trial and the, taking away that right and enforcing some arbitration agreement in this context.

So, I didn't know that, even though I briefly looked at what you all sent yesterday, you know, hearing your argument -- really argue it really crystallizes the issue for me.

Now, how do you all want me to proceed with this? I'm going to read these cases. I'm going to study it, ponder it, receive proposed orders. How do you want me to proceed?

MR. MOYLAN: I would suggest we submit proposed orders, Your Honor, if that's okay with Mr. Todd.

MR. TODD: Yes, sir. That would be fine.

THE COURT: Okay.

MR. TODD: And I would, you know, I can present the documents we handed up, file those with the clerk.

THE COURT: Okay.

subcontractors used in 2007 and in 2008. Some of the ones in 2007 have no arbitration clause and then they get hired to do more work in 2008 and then there's an arbitration clause.

So then the question is they're being sued over two different buildings that they allegedly performed defective work and they have an arbitration clause on one, no arbitration clause on the other. It's further complicated by the fact that you have maybe 20 defendants and that same scenario, some of them have arbitration agreements and some of them don't.

Then the ones who have no arbitration agreement and they want to litigate theirs or do they litigate or do we hold the whole thing in abeyance until the ones who have a right to arbitrate, some may have an arbitration agreement in 2008 and they didn't do any work in 2007. So those have arbitration agreements only, not a mixed bag. So I've seen this issue.

And that's why I raised the question about how do you deal with it if you have three parties and you're alleging one has an arbitration agreement and two doesn't and really how do you deal with that. And then -- two don't.

Then you have the second issue of the, conducting discovery and litigation because in most of those

do depositions of an 83 year old man. It is not necessary. It does not tell us anything that we do not already know.

THE COURT: You started out I think there was an 8th amendment argument, the right to a jury trial.

MR. MOYLAN: I do reference that. To me, Your Honor, it is a little hard to swallow that someone can waive anyone else's constitutional right on their behalf. I mean, I would not want my wife to be able to consent to the police if they were to conduct a strip search on me. You know, I own that right. If I choose to waive that right I may make that decision. If Ms. Hodge wanted to waive her right to a jury trial she could make that decision, but to allow somebody to get up and do it for you doesn't, doesn't seem right.

THE COURT: Well, you know, I've been confronted with this same issue quite a bit lately but mostly in the context of construction defects litigation where you have, you know, a homeowners association and/or someone suing many parties over defective construction or alleged defective construction.

And most recently with where there are a number of buildings that were constructed, you know. One constructed in 2007, one constructed in 2008, and the same subcontractors were used. The same contractors and

would be just -- it would be limited to the issue of this, the signing of the other documents, the other cases that we signed up and the situation about the execution of this, the admission documents and arbitration. And we would ask, you know, if I'm allowed to do that we would ask the Court to, you know, keep the case and then we submit briefs for your final decision at that point.

THE COURT: After the deposition?

MR. TODD: Yes, sir.

THE COURT: After discovery?

MR. TODD: Yes, sir.

THE COURT: Okay. How about all of that, Mr. Moylan?

MR. MOYLAN: Your Honor, I would just point out I really don't believe there are any disputed facts here. I mean, we acknowledge Mr. Hodge signed documents for Ms. Hodge. We acknowledge he signed the arbitration agreement.

The Court in Hill says it's posed on three factors: Was the patient competent to sign; does the person who exercised have her healthcare power of attorney; and does the nursing home have knowledge of other procedures that are not appropriate.

We know the answer to all of those questions in this case. We can delay the case and delay the case and

THE COURT: Well --

MR. TODD: I think it says we're concerned.

THE COURT: Yeah. All right. So the final word is on the issue, Mr. Todd?

MR. TODD: Well, the only thing is I guess, you know, I guess I haven't heard your ruling yet but if I'm allowed to take the deposition on the issue of agency and, you know, we have to move. The Plaintiffs do not agree to arbitration. So we have to move the Court to enforce the arbitration that they signed. So it's, we have to ask the Court so we don't waive arbitration by asking the Court to enforce arbitration.

THE COURT: How about the part that you want me to order a deposition, you want -- you're going to litigate and arbitrate.

MR. TODD: Well-

THE COURT: If you're utilizing this Court in ordering and taking depositions then do I have a deposition that I have to monitor in a few weeks where the lawyers you can't agree on any question. So I'm going to be on the phone and ruling as the disputes pop up as to, yes, you can ask that, no, you can't.

MR. TODD: Well, I think, you know -- I hope we won't get to that point. I think we're all friends here but I don't envision us getting to that point. But it

enter into the arbitration agreement on Jones's behalf because Jones was competent at the time of her admission.

And that the, I guess the documents, records, at least here says, Sally Dobson says it would be more appropriate for Jones to sign it herself because she was competent. And the other person didn't have a power of attorney. So the arbitration agreement was not enforceable against the respondent. So what is the difference --

MR. TODD: Well --

THE COURT: -- in this case?

MR. TODD: -- again, it goes back to a factual determination. It goes back to footnote 13 indeed. Is -- you know, if all it was is that you have a competent resident there's no healthcare power of attorney and then the Supreme Court in that case could have just ruled against arbitration. But instead they remanded it back for a determination regarding agency or apparent agency or estoppel.

THE COURT: Well, they seemed pretty leery in that footnote 13 about enforcing an agency agreement where there is no power of attorney and the other person is otherwise competent.

MR. TODD: I think -- the footnote says what it says. I'd have to pull it to read it.

THE COURT: Though she was competent to sign it herself?

MR. TODD: The evidence is she was competent.

THE COURT: All right.

MR. TODD: Okay.

THE COURT: I'm just wondering the distinction that you -- you know, Judge Mullen, who, I think I was just reading about her, was it the newspaper or she had some video. I think she must have been interviewed most recently about her decision in the Stinney case. And I was about to watch her decision. This is a case involving Clarendon County which has nothing to do with the civil case obviously but I was just thinking about her because I saw that she had given an interview which is kind of unusual. And I haven't had a chance to watch it yet. But what distinguishes that situation that she was confronted with with this one?

MR. TODD: Your Honor, it's a factual determination into whether or not there was an agent -- the person signing was the agent and had the authority to sign under either an actual agency, apparent agency, or whether or not estoppel applies.

THE COURT: Well, the part that Mr. Moylan just highlights says we find the evidence reasonably supports the Trial Judge's finding that Jenkins lacked authority to

Because that is the only purpose of asking you to exert your authority and then say you don't have jurisdiction. It seems it's got to be one or the other. You either have authority to order it but I would tell you you do, to do whatever want us to do, but in order to have that authority you have to have jurisdiction of the parties which I would also argue that you do.

And, Your Honor, I failed to hand up a copy of the Scott case that I referred to which, again, I would just note is the exact same party, UPAC, exact same lawyer, Mr. Todd, making the exact same argument decided within the past six months.

THE COURT: How about that, Mr. Todd? He says you've lost this argument.

MR. TODD: I'm sorry?

THE COURT: He says you've lost this argument on the same, involving the same party and the same Court and the Appellate Court.

MR. TODD: It's a factual determination into agency. And that's --

THE COURT: Is that the same factual determination in the other one or is there a distinction or no?

MR. TODD: Well, there would be a distinction because in this case the evidence indicates that Mrs. Hodge authorized Mr. Hodge to sign the agreement.

mother, Mabel Hodge. So there's five.

THE COURT: So three Defendants. And how many are claiming that they're entitled to arbitrate?

MR. TODD: Just my client. Just one.

THE COURT: Dr -- the Uni?

MR. TODD: (Nods head.)

THE COURT: So under your vision of things there would be a trial involving the two parties and an arbitration involving the one party?

MR. TODD: Yes, sir.

THE COURT: And how does that work? How do you do that?

MR. TODD: Just two separate proceedings.

THE COURT: And there's precedent for that as well?

MR. TODD: Not in South Carolina. I'm not -- I can -- but it is a matter of contract. And there may be, but I'll have to research that question and get back to you on that one.

THE COURT: Okay. Mr. Moylan?

MR. MOYLAN: Your Honor, I'll be very brief. It does seem to be more than a little odd that this Court would be asked to exert its authority to order a deposition in order that it may then be argued that this Court has no jurisdiction.

taking -- he understands exactly what I'm asking for in my discovery requests but he wants to play semantics with me. And now he wants to play semantics with this Court. And I just think that's a bit flippant and frustrating the whole process of discovery.

You know, I just want to get the answers to the questions so that we can move on with this case. And I don't think that my questions were confusing. My -- I asked very pointed questions. I didn't ask a lot of, you know, pointless, wandering questions. I asked very pointed questions. And I felt like he did his best to give me evasive responses.

So all I'm asking today is that we just, he just give me valid responses to the questions that I ask and just give me straight forward answers. For Dale Padgett, PA, what's the answer; for Dr. Moskow, what's the answer.

And you can't tell me that because Dale Padgett is the guardian for Dr. Moskow that he can't give me the answer because he doesn't know because Dr. Moskow has dementia. If you are the guardian you still have to give me an answer. You can't just use the fact that he has dementia to say that he doesn't know. Well, I'm sorry, it's your responsibility as the guardian to take upon you to find out what the answer is.

And, you know, I don't think you get to shield

yourself from responding by saying my client has dementia. He has a guardian who by the way just happens to be the other Defendant in this case. You don't, you just don't get to shield yourself from that now. So I don't think I'm asking for a very complicated request. He's making it way more complicated than it needs be.

THE COURT: All right. Anything further, Mr. Nance?

MR. NANCE: Your Honor, we do discovery pursuant to the rules and when they -- someone comes up with some obscure meaning for a word to try to give it some definition which isn't really there or really doesn't apply, it just can't be enforceable. Your refers to a person. It refers to an entity. And, you know, I'm just answering the things that are sent to me in the manner that I'm allowed to do.

If they take some issue with it they can take some issue with it, but redefining you and your and these other things they're trying to do just doesn't apply here. They send me two requests, I'll be happy to respond at that time. I mean, that's a simple thing to do.

THE COURT: All right. The motion to compel is made pursuant to Rule 37. I find that the motion should be granted as to this medical record that's sought. It says AMS. And where Dr. Padgett's office was copied it

would seem as if that's an incomplete response to that particular discovery request. And it references some other records somewhere.

The calendar of what was done and the issue during the calendar, I grant that motion.

Grant it with regard to the correspondence, e-mails and all included to the expert.

With regard to the, providing separate responses for individual questions I find that the, that the responses were adequate under the circumstances and that the Plaintiff is given leave to submit any additional individual questions with greater clarity so that there won't be any basis to question the intent of the letter, whether it's singular or plural, that additional wording could be done to, on that issue.

So leave is granted to submit any additional questions in greater clarity.

MS. BOWERS-JEFFERSON: Thank you, Your Honor.

THE COURT: All right.

MR. NANCE: Thank you, Your Honor.

THE COURT: That covers everything?

MR. NANCE: I think so.

MR. TODD: Your Honor, just one thing. We've -- we're not going to argue again but we've submitted some items to the Court. We'll just, Mr. Moylan and I will

provide to the clerk what we provided to you.

THE COURT: Okay. Very good.

So with the order that you prepare regarding that, Ms. Jefferson, shoot it by Mr. Nance any copies you submit to the Court, and you'll have an opportunity to comment on the wording of her order. All right.

MR. MOYLAN: Your Honor, thank you for your time.

THE COURT: Sure. No problem.

MR. NANCE: Thank you, Your Honor.

TOP LEFT: Thank you.

END OF PROCEEDINGS: 1:00 P.M.

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CERTIFICATE OF REPORTER

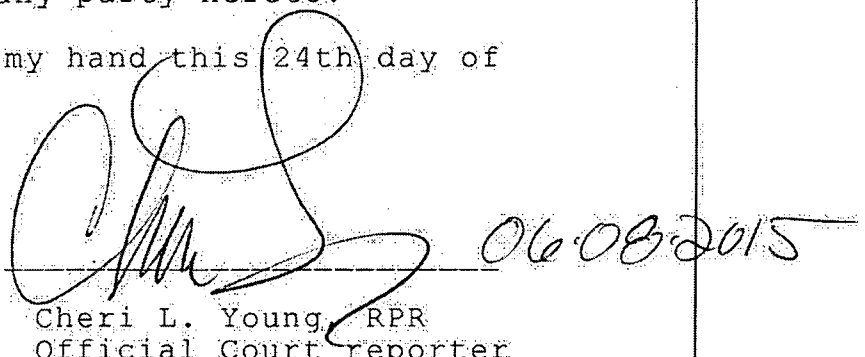
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Bamberg County, on the 20th day of February, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

I have hereunder set my hand this 24th day of February, 2015.



Cheri L. Young, RPR
Official Court reporter

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2014-CP-05-17 and 19
Appellate Case No. 2015-001183

Camille Hodge, Jr., as Personal Representative of the Estate
of Mable Hodge, Deceased ..... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County
Nursing Center; United Health Services of South Carolina, Inc.;
United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a
UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County
Nursing Center; United Health Services of South Carolina, Inc.;
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a
UHS-Pruitt Corp. are ..... Appellants.

Camille Hodge, Sr., ... Respondent,

v.

UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County
Nursing Center; United Health Services of South Carolina, Inc.;
United Health Services, Inc.; UHS-Pruitt Holdings, Inc. a/k/a
UHS-Pruitt Corp.; R. Dale Padgett, MD, PA; and Dr. Herbert A. Moskow,

of Whom UniHealth Post-Acute Care of Bamberg, LLC f/k/a Bamberg County
Nursing Center; United Health Services of South Carolina, Inc.;
United Health Services, Inc.; and UHS-Pruitt Holdings, Inc. a/k/a
UHS-Pruitt Corp. are ..... 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.

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September 23, 2015