THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

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Case No. 2017-CP-07-02636
Appellate Case No. 2018-001092

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Joseph Holmes, as Personal Representative of the
Estate of David Holmes, .....Respondent,

v.

Bayview Manor, LLC, d/b/a Bayview Manor,
Epic Group, LP, and Epic General, LLC, ..... Appellants.

---

# RECORD ON APPEAL
# VOLUME I

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**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF BEAUFORT**
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2017-CP-07-02636**

JOSEPH HOLMES, as Personal Representative of the ESTATE OF DAVID HOLMES
PLAINTIFF(S)

BAYVIEW MANOR, LLC, d/b/a BAYVIEW MANOR; EPIC GROUP, LP; and EPIC GENERAL, LLC
DEFENDANT(S)

| | |
|---|---|
| **Submitted by:** Eric M. Poulin | **Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant |

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Defendants' Motion for Non-Jury Trial is DENIED.

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

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

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

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

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

| **Circuit Court Judge** | **Judge Code** | **Date** |
|---|---|---|

## For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Eric M. Poulin / Stefan B. Feidler
32 Ann Street
Charleston, SC 29403
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

W. McElhaney White
101 West St. John Street, Suite 200
Spartanburg, SC 29306
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**



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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF BEAUFORT | )<br>) | IN THE COURT OF COMMON PLEAS<br>FOR THE 14TH JUDICIAL CIRCUIT<br><br>CASE NO: 2017-CP-07-02636 |
| JOSEPH HOLMES, as Personal Representative of the ESTATE OF DAVID HOLMES,<br><br>Plaintiff(s),<br>v.<br><br>BAYVIEW MANOR, LLC, d/b/a BAYVIEW MANOR; EPIC GROUP, LP; and EPIC GENERAL, LLC,<br><br>Defendant(s). | | ORDER DENYING DEFENDANTS' MOTION FOR NON JURY TRIAL |

**THIS MATTER** is before the Court on Defendants' Motion for Non-Jury Trial. Arguments were held on April 25, 2018 in the Beaufort County Courthouse. Present at the call of the case was attorney Eric M. Poulin, representing the Plaintiff, and attorney W. McElhaney White, representing the Defendants. For the following reasons, Defendants' Motion is respectfully **DENIED.**

## BACKGROUND

The Decedent, David Holmes, was a resident of Defendants' long term care facility. Decedent was first admitted on December 2, 2014, and re-admitted on February 17, 2015. Decedent was incompetent during both admissions. At each admission, Decedent's family signed an Admission Agreement.[1] The Admission Agreements contained the following provision:

[1] Plaintiff argues that the family members lacked authority to sign these Admission Agreements to the extent they contain jury waiver clauses. However, because the Court finds this waiver was invalid and unenforceable in the first instance, it is not necessary to discuss the issues of authority or agency.

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**Waiver of Jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

The Admission Agreements also contained an Arbitration Clause which states that arbitration is "Optional" and allows the person signing to decline by marking an "X." At each admission, the family declined arbitration by marking an "X." Upon Decedent's death, his Estate brought this medical negligence action against the Defendants and requested a jury trial. Defendants now seek to invoke the jury waiver clause of the Admission Agreements, and seek an order setting this case for non-jury disposition.

## LAW

An illegal contract is unenforceable. Berkebile v. Outen, 311 S.C. 50, 53 n. 2, 426 S.E.2d 760, 762 n. 2 (1993). "The general rule is that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution." Id. Federal regulations require Medicare and Medicaid certified facilities to accept Medicare/Medicaid reimbursement rates as payment in full. See 42 C.F.R. § 489.30; 42 C.F.R. § 447.15. Moreover, such facilities, in the case of an individual who is entitled to medical assistance, must "not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under

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the state plan...any other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay at the facility." 42 U.S.C. § 1396r(c)(5)(A)(iii).

Finally, it is well settled that to be valid and enforceable, a contract must be supported by valuable consideration. Benya v. Gamble, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct.App.1984)("[a] contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act."). Consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998).

**ANALYSIS**

In the instant case, it is undisputed that Decedent was a Medicare and Medicaid beneficiary while residing at Defendants' facility and that the facility was billing and accepting payment from Medicare and Medicaid for Decedent's care.[2] Therefore, the question of enforceability turns, in part, on whether the jury waiver provision was a mandatory part of the Admission Agreement and a required pre-condition to admission. During arguments, counsel for Defendants was unable or unwilling to take a position on this issue. However, in light of the following analysis, the Court finds that this provision is unenforceable in either case.

If the jury waiver provision was a required pre-condition to admission, then this requirement was a clear violation of Federal Law. 42 U.S.C. § 1396r(c)(5)(A)(iii) prohibits a

[2] During the hearing, counsel for Defendants stated his belief that Decedent was Medicare eligible but only "Medicaid pending" during his stay. However, Mr. White has since confirmed that Decedent was, in fact, Medicaid eligible during his stay.

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facility such as Defendants' from soliciting or accepting "any other consideration" as a condition to admission outside of the Medicaid payments when admitting a patient in Decedent's position. By requiring Decedent's family to waive his right to a jury trial as a condition of admission, Defendants' were requiring and accepting consideration in addition to Medicaid payments. Therefore, the jury waiver clause would be unenforceable due to its illegality.

Alternatively, if the jury waiver was not a precondition to admission, then it fails for lack of consideration. As noted, the waiver, as written, works only in one direction. When asked during arguments what the consideration for the waiver might be, counsel for Defendants argued only that the admission was the consideration for the waiver. When pushed on whether any additional consideration was present (separate and apart from the admission and care) counsel agreed there was none. Here, Defendants cannot have it both ways. They cannot, on the one hand, argue that the waiver was not consideration for the admission but, on the other, argue that the admission was valuable consideration for the waiver. For the waiver to be enforceable as a non-pre-condition to admission, it must be supported by some other valuable consideration, which it is not.

## CONCLUSION

Therefore, we are left with a clause that, if a pre-condition to admission, is unenforceable under the doctrines of illegality; if not a precondition to admission, void for lack of consideration. For these reasons, Defendants' Motion for Non-Jury trial is respectfully **DENIED.**

**IT IS SO ORDERED!**

Dated this ____ day of May, 2018
Walterboro, S.C.

The Honorable Perry M. Buckner, III
Presiding Judge, 14th Judicial Circuit

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Beaufort Common Pleas

**Case Caption:** David Holmes Estate Of , plaintiff, et al VS Bayview Manor Llc , defendant, et al

**Case Number:** 2017CP0702636

**Type:** Order/Jury Trial

It is so Ordered

s/ Perry M Buckner III 2122

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**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF BEAUFORT**
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2017-CP-07-02636**

| JOSEPH HOLMES, as Personal Representative of the ESTATE OF DAVID HOLMES | BAYVIEW MANOR, LLC, d/b/a BAYVIEW MANOR; EPIC GROUP, LP; and EPIC GENERAL, LLC |
|---|---|
| PLAINTIFF(S) | DEFENDANT(S) |

| **Submitted by:** Eric M. Poulin | **Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant |
|---|---|

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☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: **Defendants' Motion To Alter Or Amend Is Denied**

**ORDER INFORMATION**

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

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

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| **Circuit Court Judge** | **Judge Code** | **Date** |
|---|---|---|

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This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

| | |
|---|---|
| Eric M. Poulin / Stefan B. Feidler | W. McElhaney White |
| 32 Ann Street | 101 West St. John Street, Suite 200 |
| Charleston, SC 29403 | Spartanburg, SC 29306 |
| **ATTORNEY(S) FOR THE PLAINTIFF(S)** | **ATTORNEY(S) FOR THE DEFENDANT(S)** |

**CLERK OF COURT**

**Court Reporter:**



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| | |
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| IN THE STATE OF SOUTH CAROLINA )<br>COUNTY OF BEAUFORT ) | IN THE COURT OF COMMON PLEAS<br>FOR THE 14TH JUDICIAL CIRCUIT<br>CASE NO: 2017-CP-07-02636 |
| JOSEPH HOLMES, as Personal Representative of the ESTATE OF DAVID HOLMES,<br><br>Plaintiff(s),<br>v.<br><br>BAYVIEW MANOR, LLC, d/b/a BAYVIEW MANOR; EPIC GROUP, LP; and EPIC GENERAL, LLC,<br><br>Defendant(s). | **ORDER DENYING DEFENDANTS' MOTION TO ALTER OR AMEND** |

**THIS MATTER** is before the Court on Defendants' Motion to Alter or Amend this Court's May 15, 2018 Order denying Defendants' Motion for Non-Jury Trial. Defendants' timely moved under Rule 59(e) for this Court to alter or amend the May 15, 2018 Order Denying Defendants' Motion for Nonjury Trial. Pursuant to Rule 59(f) SCRCP, this Motion is decided on briefs of the parties without oral argument. After reconsidering the arguments of counsel, the materials presented, and the applicable law this Court respectfully **DENIES** Defendants' Motion.

## BACKGROUND

The Decedent, David Holmes, was a resident of Defendants' long term care facility. Decedent was first admitted on December 2, 2014, and re-admitted on February 17, 2015. Decedent was incompetent during both admissions. At each admission, Decedent's family signed an Admission Agreement. The Admission Agreements contained the following provision:

> **Waiver of Jury Trial: (Please read carefully)**
> Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the

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> Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the facility or Resident.
>
> Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

The Admission Agreements also contained an Arbitration Clause which states that arbitration is "Optional" and allows the person signing to decline by marking an "X." At each admission, the family declined arbitration by marking an "X." Upon Decedent's death, his Estate brought this medical negligence action against the Defendants and requested a jury trial.

Based on the above quoted provision, Defendants' filed a motion for non-jury trial. The Court heard arguments on the motion April 25, 2018. On May 15, 2018, this Court issued an order denying Defendants' motion, holding that 1) if the jury waiver was a precondition to admission, it was void for illegality as violative of 42 U.S.C. § 1396r(c)(5)(A)(iii); and 2) if the jury waiver was not a precondition to admission, it was void for lack of consideration.

On May 23, 2018, Defendants timely filed a motion to alter or amend said order pursuant to Rule 59(e) SCRCP.

## LAW

Rule 59 of the South Carolina Rules of Civil Procedure is "substantially the federal rule." S.C.R.Civ.P. 59, Note 1. "A party's mere disagreement with the court's ruling does not warrant a 59(e) motion, and such a motion should not be used to rehash arguments previously presented or to submit evidence which should have been previously submitted." Singletary v. Beazley Ins. Co., No. 2:13-cv-1142-DCN, 2013 WL 6850147, at *2 (D.S.C. Dec. 30, 2013) (Norton, J.), aff'd 585 F. App'x 177 (4th Cir. 2014). Further, Rule 59(e) provides an "extraordinary remedy that should be used sparingly. Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir.

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1998). The Rule does not provide a party "another bite at the apple" or create a "mechanism to just keep filing motions with new theories until it gets it right." Hanover Ins. Co. v. Corrpro Cos., 221 F.R.D. 458, 460 (E.D. Va. 2014).

**ANALYSIS**

Defendants argue that the Court's reliance on Medicare and Medicaid statutes is misplaced and that consideration for the non-jury provision was provided as part of the care, payment, and other provisions of the Admission Agreement. These arguments have been made and ruled upon, and Defendants have made no showing that the Court's ruling on these issues was a clear error of law or created a manifest injustice.

Secondly, Defendants seek a determination that the provision is not unconscionable and that the provision was conspicuous and unambiguous. Although Plaintiff did raise these arguments, this Court's Order did not invalidate the provision due to unconscionability or ambiguity. Instead, the Court invalidated the provision for illegality and lack of consideration. Therefore, whether the provision was conscionable or unambiguous (as suggested by Plaintiff) is not relevant, and this Court made no findings of fact or conclusions of law as to those issues. See e.g., Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999) (holding appellate court need not address remaining issues when the disposition of an independent issue is dispositive). Although these were additional theories presented by the Plaintiff, they did not factor into the Court's ruling.

Finally, Defendants ask for specific rulings on the alternative arguments that they presented: namely 1) that Decedent's sisters had authority to sign the Agreement on his behalf due to Margaret Holmes' status as court appointed guardian and/or pursuant to the Adult Health

Care Consent Act; and 2) that Plaintiff is bound by the non-jury provision under the doctrine of equitable estoppel.

As to the issue of authority, this was not material to the Court's Order. This Court did not invalidate the provision on the grounds that Decedents' sisters lacked authority to sign the Agreement.[1]

Therefore, the only remaining issue is Defendants' equitable estoppel argument. Defendants argue that, even if the provision is invalid, Plaintiff is equitable estopped from deviating from its terms. The elements of the equitable estoppel defense, in this context, are set forth in Thompson v. Pruitt Corp., 416 S.C. 43, 59, 784 S.E.2d. 679, 688 (Ct. App. 2016)(" In the arbitration context, the doctrine recognizes that a party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract's arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him."). Stated differently, consideration is a key element of the estoppel defense. One cannot benefit from a contract, and then seek to later invalidate the same contract where it detriments him.

In the instant case, this Court invalidated the non-jury clause as lacking consideration, meaning that it conferred no benefit upon Decedent. Because Decedent enjoyed no benefit from the provision, there is no reason that his heirs should be estopped from challenging it at this stage. See, Hodge v. UniHealth Post-Acute Care of Bamburg, LLC, 2018 WL 1177630 at *8 (S.C. Ct. App. March, 2018)("Because Mable, Husband, and the Estate received no benefit from the Arbitration Agreement, equitable estoppel [would not apply absent a benefit]").

[1] The Court's prior ruling would have been the same even had Decedent signed the Agreement himself.



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## CONCLUSION

For these reasons, Defendants' Motion to Alter or Amend is respectfully **DENIED.**

**IT IS SO ORDERED!**

Dated this ____ day of June, 2018

The Honorable Perry M. Buckner, III
Presiding Judge, 14th Judicial Circuit

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Beaufort Common Pleas

**Case Caption:** David Holmes Estate Of , plaintiff, et al VS Bayview Manor Llc , defendant, et al

**Case Number:** 2017CP0702636

**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

ELECTRONICALLY FILED - 2017 Dec 15 2:21 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP0702636

| | |
|---|---|
| IN THE STATE OF SOUTH CAROLINA )<br>COUNTY OF BEAUFORT ) | IN THE COURT OF COMMON PLEAS<br>FOR THE 14TH JUDICIAL CIRCUIT<br>CASE NO: 2017-CP-07-_____ |
| JOSEPH HOLMES as Personal Representative of the ESTATE OF DAVID HOLMES,<br><br>Plaintiff,<br><br>v.<br><br>BAYVIEW MANOR, LLC, d/b/a BAYVIEW MANOR; EPIC GROUP, LP; and EPIC GENERAL, LLC,<br><br>Defendants. | **COMPLAINT**<br>**(Jury Trial Demanded)** |

The Plaintiff, complaining of the Defendants, alleges and says as follows:

## CASE SYNOPSIS

1. David Holmes grew up in Burton, South Carolina along with his seven (7) siblings. His family was a family of faith, David having been baptized when he was twelve (12) years old. David was considered the most athletic member of his family. His siblings also considered him very out-going, highly intelligent, and an all-around successful young man. This was no doubt in their minds that big things were in David's future.
2. David was accepted into the University of South Carolina, with a focus on a science degree. However, David decided his talents would serve his community, family, and Country better if joined and served in the Vietnam War. David enlisted into the U.S. Air Force, spending several years in combat during the Vietnam era.
3. Several years later, David was unfortunately diagnosed with schizophrenia and bipolar disorder. In late 2014, David was admitted into Defendants' facility for skilled nursing care, where he would remain until his hospital visit to Beaufort Memorial Hospital in December of 2014. After he was discharged from Beaufort Memorial Hospital, he

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returned to Defendants' facility in February of 2015. David was receiving treatment and continuing on as well as possible until he was re-admitted into Beaufort Memorial Hospital. There, David was diagnosed with having twenty-five (25) pressure ulcers that had been *unreported* by Defendants' facility merely days earlier. After two months of extensive treatment at the hospital, David unfortunately succumbed to injuries received at Defendants' facility and passed away on May 29, 2015. The abuse and/or neglect and liability is clear in this case.

**PARTIES & JURISDICTION**

4. That the Plaintiff, Joseph Holmes, (herein referred to collectively with the Estate of David Holmes as "Plaintiff") is a citizen and resident of the State of Massachusetts.
5. That the Estate of David Holmes was probated in Beaufort County, State of South Carolina, and that Joseph Holmes is the duly appointed Personal Representative of said Estate.
6. That Plaintiff's Decedent, David Holmes (hereinafter referred to as "Decedent"), was a citizen and resident of Beaufort County, State of South Carolina at the time of his death.
7. That upon information and belief, Defendant Bayview Manor, LLC, d/b/a Bayview Manor, is incorporated in the State of South Carolina, with its principal place of business in Beaufort County, and Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, State of South Carolina 29201. At all times relevant herein, this Defendant is and was the licensed business which owns the entity that operates the Defendants' facility and is listed as the Home Office based on common ownership and/or control as defined by CMS-15 and the Department of Health and Humans Services. This Defendant receives payment from Defendants'

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facility for 'Management' and "Management Consulting' according to reports made to South Carolina Department of Health and Human Services. Upon information and belief, through their individual actions and acts of their agents, and in concert with the other Defendants, Bayview Manor, LLC engaged in oversight, management, direction, and operation of a nursing home facility in Beaufort County, South Carolina, deriving substantial revenue there from Beaufort County, State of South Carolina.

8. That upon information and belief, Defendant Epic Group, LP is incorporated in the State of North Carolina, with its principal place of business in Horry County, and Blanco Tackabery & Matamoros, P.A. is the representative agent who can be served with process at 110 S. Stratford Road, 5th Floor, Winston Salem, NC 27104. At all times relevant herein, this Defendant is and was a business which owns the entity that operates the Defendants' facility. Upon information and belief, through its individual actions and acts of its agents, and in concert with the other Defendants, Epic Group, LP engaged in oversight, management, direction, and operation of nursing home facilities in Sumter County, South Carolina, deriving substantial revenue there from Beaufort County, State of South Carolina. Upon information and belief, Epic Group, LP is the sole member of Bayview Manor, LLC.

9. That upon information and belief, Defendant Epic General, LLC is incorporated in the State of South Carolina, with its principal place of business in Horry County, and Banco Corporation Service Company is the representative agent who can be served with process at 1703 Laurel Street, Columbia, South Carolina 29201. At all times relevant herein, this Defendant is and was a business which owns the entity that operates the Defendants' facility. Upon information and belief, through its individual actions and acts of its agents,

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and in concert with the other Defendants, Epic General, LLC engaged in oversight, management, direction, and operation of nursing home facilities in Sumter County, South Carolina, deriving substantial revenue there from Beaufort County, State of South Carolina. Upon information and belief, Epic General, LLC, is the general partner of Epic Group, LP.

10. Upon information and belief, the above Bayview entities (Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC) act as one joint integrated enterprise blurring their corporate identity. These entities make up the Bayview Defendants referenced below.

11. That upon information and belief Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC (hereinafter, "Bayview Defendants") are or have been involved in the ownership, operation, management and/or control of Bayview Manor.

12. That upon information and belief, Defendants Epic Group, LP and Epic General, LLC, are subsidiaries and related entities of Bayview Manor. (pursuant to 42 C.F.R. §413.17).

13. That upon information and belief, Defendants Epic Group, LP and Epic General, LLC operates, and controls the nursing home facility in question as part of a for-profit chain as defined by CMS-15 §2150, and exerts control over the other Bayview Defendants including the acts and delicts by subsidiaries relating to the operation of the Defendant nursing home. Upon information and belief, all or most of the following factors exist between Bayview Manor, and its subsidiaries, and/or Defendants Epic Group, LP and Epic General, LLC:

    a. Common ownership;

    b. Common directors or officers;

    c. Financing of the subsidiary by the parent;

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d. Gross inadequacy of capital for the subsidiaries;

e. Incorporation and/or organization of the subsidiaries by the parent;

f. Payment by the parent of the salaries and other expenses or losses of the subsidiaries;

g. Lack of business dealings by the subsidiary except with the parent and lack of assets except those conveyed to it by the parent; and

h. Lack of independent action by the executives of the subsidiaries, who instead take their orders from the parent corporate in the latter's interest.

14. That upon information and belief, Bayview Defendants, delivers nursing home care for a profit and executed the delivery of nursing home care to Plaintiff's Decedent during his residency at Bayview Manor.

15. That upon information and belief, Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, were involved in the ownership, operation, and/or management of nursing homes for profit including the facility where Plaintiff's Decedent resided.

16. That upon information and belief, Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, were involved in controlling the revenue and the budget which affected the budget, staffing, training, supervision, development and implementation of policies and procedures for Bayview Manor.

17. That upon information and belief, Defendants Epic Group, LP and Epic General, LLC, at all times relevant hereto totally dominated and controlled the Defendants' facility through loans, leases, and contracts. Defendants were so organized and controlled, and their business conducted in such a manner that they were merely an agency, instrumentality,

adjunct, and/or alter ego of Bayview Manor, LLC who is therefore liable and responsible for the acts and delicts of all Defendants.

18. That upon information and belief, all Defendants or their agents have engaged in substantial business activities in South Carolina, including the management, operation, control and/or ownership of the Defendants' nursing home facility, Bayview Manor, at various times, and derived substantial revenue from services provided in South Carolina.

19. That upon information and belief, at all times relevant herein, agents, employees, servants, and apparent agents of Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, acted on behalf of themselves and on behalf of Bayview Manor, LLC, and their affiliate(s) and/or parent companies.

20. That upon information and belief, at all times relevant herein, Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, as well as their agents, employees, servants, and apparent agents owed a duty to Plaintiff and/or Plaintiff's Decedent, and were all jointly, directly, and vicariously liable for the care and treatment of Plaintiff's Decedent, who was voluntarily received as a resident at Bayview Manor.

21. That upon information and belief, at all times relevant herein, Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, are and have been operating as an amalgamation of interest creating a blurred corporate identity by sharing an internet website, officers, shareholders, and locations, policies and procedures, ownership, headquarters, in-house counsel, and by commingling funds and revenue.

22. "[N]ot every action taken by a medical professional in a hospital or doctor's office necessarily implicates medical malpractice and, consequently, the requirements of [S.C.



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Code Ann.] [S]ection 15-79-125." Dawkins v. Union Hosp. Dist., 408 S.C. 171, 178, 758 S.E.2d 501, 504 (2014).

23. "However, at all times, the medical professional must 'exercise ordinary and reasonable care to ensure that no unnecessary harm [befalls] the patient.'" Id. at 178, 758 S.E.2d at 504 (further citations omitted).

24. "The statutory definition of medical malpractice found in section 15-79-110(6) does not impact medical providers' ordinary obligation to reasonably care for patients with respect to nonmedical, administrative, ministerial, or routine care." Id. (further citation omitted).

25. "Thus, medical providers are still subject to claims sounding in ordinary negligence." Id. (further citations omitted).

26. That the wrongful death and/or the nursing home abuse and/or neglect that is the subject of this action occurred in Beaufort County, State of South Carolina.

27. That Defendants principal place of business is located in Beaufort County, State of South Carolina and/or Defendants committed a tortious act in Beaufort County, State of South Carolina which resulted in injuries to a South Carolina resident/citizen.

28. That this court has jurisdiction over the parties and subject matter of this cause of action and venue is proper in Beaufort County, State of South Carolina.

**GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

29. Relevant and consistent allegations contained in paragraphs 4-28 are incorporated by reference as if written verbatim herein.

30. That on or about December 2 2014, David Holmes was admitted to Bayview Manor.

31. That hospital documentation from Roper St. Francis Hospital showed no evidence of skin findings (breakdown).



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32. That David Holmes was admitted to Bayview Manor with the understanding that he would be provided food, water, personal hygiene, dignity, and with the care that his health reasonably required.
33. That upon admission to Bayview Manor, Bayview's records have no mention of skin ulcers on initial intake examination.
34. That an initial care plan of David Holmes states that Mr. Holmes was at risk for developing pressure ulcers due to incontinence and immobility.
35. That this same initial care plan also stated that "resident's [David Holmes] skin will remain intact" and the plan was to "monitor for incontinence episodes, follow facility skin care protocol and turn [patient] ever 2 hours as needed."
36. That on December 16, 2014, Defendants' specifically documented in David Holmes's medical records that he had *no pressure ulcers*. (emphasis added)
37. That on December 23, 2014, David Holmes was admitted to Beaufort Memorial Hospital from Defendants' facility with a diagnosis of sepsis potentially related to multiple pressure ulcers of the skin.
38. That on December 23, 2014, Beaufort Memorial Hospital documented twenty-five (25) pressure ulcers of various depth and size.
39. That Mr. Holmes developed these pressure ulcers while under Defendants' care.
40. That on February 17, 2015, David Holmes was discharged from Beaufort Memorial Hospital back to Defendants' facility.
41. That on March 29, 2015, Mr. Holmes was re-admitted to Beaufort Memorial Hospital related to sepsis secondary to an infected pressure ulcer,

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42. That sometime between David Holmes's admission on December 2, 2014, and his subsequent stays for days/weeks at Beaufort Memorial Hospital on December 23, 2014, and March 29, 2015, while at Defendants' facility, David Holmes sustained serious injuries including, but not limited to, twenty-five (25) pressure ulcers and sepsis secondary to an infected pressure ulcer(s) and Defendants':

    a. failed to prevent said injuries;

    b. caused said injuries;

    c. never acknowledged said injuries;

    d. never adequately documented said injuries;

    e. failed to assist David Holmes; and

    f. failed to timely assist David Holmes in obtaining treatment for said injuries.

1. David Holmes underwent a prolonged stay at Beaufort Memorial Hospital for two months after his March 29, 2015 re-admission.

2. That on May 29, 2015, David Holmes passed away from his inability to recover from a combination of the injuries he sustained while at Defendants' facility and his exacerbated dehydration, aspiration pneumonia, severe sepsis with shock also resulting from Defendants' lack of care.

43. That while at Bayview Manor, David Holmes was hospitalized as a result of the Defendants' neglect, negligence, and violations of care.

44. That the Defendants were on notice that David Holmes was at risk for pressure ulcers due to physician orders, his immobility, incontinence, and poor intake of fluid and food.

45. Upon information and belief, that while at Defendants' facility, there is evidence of false charting and/or fraudulent documentation.

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46. That as a result of aforementioned failures, David Holmes suffered malnutrition or undernutrition, causing discomfort, severe weight loss, and preventing the healing of his pressure ulcers.

47. That at all times relevant hereto, Bayview Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.

48. That a resident who enters the Bayview Defendants' facility without a pressure sore does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable.

49. That Bayview Manor must provide for each resident with sufficient fluid intakes to maintain proper hydration and health.

50. That Bayview Manor must develop a comprehensive care plan for each resident that includes measureable objectives and timetables to meet the resident's medical nursing, nutritional, mental, and psychological needs as identified in the comprehensive assessment.

51. That Bayview Manor must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychological well-being of each resident, as determined by resident assessments and individual plans of care.

52. That Bayview Manor has a duty to ensure that David Holmes received necessary treatment and services to promote healing and prevent infection for his pressure ulcers.

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53. That treatment and prevention of pressure ulcers in the nursing home should be part of an interdisciplinary approach.

54. That several types of personnel have essential roles in the assessment, care planning, prevention, and treatment of pressure ulcers.

55. That fortified super foods (foods that have high caloric and increased protein contents), medication pass (a high-potency nutritional supplement given with medications), snacks, assistance with meals, honoring food preferences, nutrition intervention by the registered dietitian, laboratory analysis, restorative dining, speech therapy and consistency modifications are a few of the nutrition approaches that can be used to prevent significant involuntary weight loss.

56. That the nutritionist must provide timely assessments and suggest optimal amounts of protein, calories, and vitamins for the healing of ulcers.

57. That Bayview Defendants' staff must assess the resident, provide documentation, and administer preventative and treatment measures in the prevention and treatment of pressure ulcers.

58. That rehabilitation staff such as occupational, physical, and speech therapists help to mobilize the resident and maximize physical activity to aid in the healing of pressure ulcers.

59. That evaluation, multi-disciplinary documentation of treatment and detailed individual care plans must be developed and implemented.

60. That nutritional assessment and intervention is critical to wound prevention and treatment.

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61. That multiple studies have confirmed that poor nutrition and hydration status is associated with the development of pressure wounds.

62. That nursing home residents who experience significant involuntary weight loss are more likely to experience complications and death compared to those who maintain weight.

63. That weekly weights are appropriate and necessary for residents that are experiencing poor appetites and significant unintentional weight loss.

64. That variations of weight change of greater than five (5) pounds should be re-evaluated by re-weighing the resident.

65. That prior to decedent's death, the acts and delicts of Defendants caused, and were the proximate causes of conscious pain and suffering, mental distress, medical bills and disability of the decedent. Pursuant to S.C. Code §15-5-90, said causes of action survive the death of the decedent and are properly brought by the Personal Representative on behalf of the decedent's estate.

66. That the Plaintiffs institute this action in order to recover for decedent's injuries and wrongful death and for damages to the statutory heirs of David Holmes, deceased, pursuant to and under the authority of S.C. Code §15-51-10. Pursuant to S.C. Code §15-51-20, the wrongful beneficiaries and claimants as defined by S.C. Code §15-31-26(2) are decedent's children. As a result of the death of David Holmes, the wrongful death beneficiaries have suffered grief and sorrow, mental shock and suffering, wounded feelings, loss of companionship, and deprivation of the use and comfort of the decedent's society. These damages were the proximate result of the acts and delicts of Defendants.

67. That Defendants were under an obligation to follow the provisions and standards of the Federal Nursing Home Act applicable to David Holmes as well as all applicable state

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laws, rules, regulations, and guidelines including but not limited to The Adult Protection Act of South Carolina Code §43-35-5-, *et seq*; South Carolina Department of Health and Environmental Control Regulations for Nursing Homes at Regulation Opinions; South Carolina Code of Laws Title 40 Chapter 35; South Carolina Code of Regulations Chapter 93.

68. That the Bayview Defendants were jointly, directly, and vicariously liable and responsible for the acts and delicts of their employees, agents, and servants.

69. That the Bayview Defendants hold themselves out as specialists in the field of adult-geriatric care with the expertise necessary to maintain the health, safety, and highest practicable quality of life of persons unable to adequately care for themselves.

70. That the Bayview Defendants' were under a duty to provide reasonable, appropriate and adequate care of David Holmes pursuant to state and federal laws, rules, regulations, guidelines and existing industry standards.

71. That at all times pertinent hereto, David Holmes resided at the above-named facility and as such was under the exclusive control and care of Bayview Defendants' and their employees, agents officers, and servants while a resident.

72. That the Bayview Defendants', their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to David Holmes.

73. That upon information and belief, David Holmes health conditions were aggravated and exacerbated by the Defendants' repeated failure to properly supervise him or monitor him condition in that she suffered infected unstageable pressure ulcers, follow multiple physician orders, malnourishment, undernourishment, and dehydration, a urinary tract infection, and sepsis, which all contributed to his death.

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74. That upon information and belief, David Holmes' health conditions were aggravated and exacerbated by the Defendants' failure to provide proper nutrition and hydration, resulting in significant weight loss, dehydration and renal failure which contributed to his death.

75. That upon information and belief, at all times during David Holmes' residency, the facility was understaffed, suffered a high turnover rate, and failed to properly screen train, supervise, and discipline their staff, and to put them in suitable positions for their skills, experience, and competence.

76. That upon information and belief, Bayview Defendants', were involved in the budget and staffing decisions of the facility.

77. That upon information and belief, at all times during David Holmes' residency, the facility was underfunded, under-supplied, and under-equipped to care for residents, and was forced to operate on a budget that did not allow for the best care of the residents, including David Holmes.

78. That upon information and belief, Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC and are jointly, directly, and vicariously liable and also liable as alter ego defendants in creating the budget for the facility and siphoning money away from the facility to related entities with common ownership to the Bayview Defendants.

**FIRST CAUSE OF ACTION**
**(Negligence/Recklessness)**

79. Relevant and consistent allegations contained in paragraphs 4-78 are incorporated by reference as if written verbatim herein.

80. That Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, owe a duty of due care to their patients and residents; to discover, warn and/or prevent risks; to

take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

81. The Bayview Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of David Holmes. More particularly the Bayview Defendants were negligent in the following particulars:

    a. Failing to properly supervise as required, and as promised to the family upon admission;

    b. Failing to provide the care, supervision and monitoring of patients, residents, and in particular David Holmes, which was required by law and which was necessary for his health and safety;

    c. Failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, David Holmes;

    d. Failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of David Holmes;

    e. Failing to abide by applicable federal and state laws governing long term care facilities and nursing care;

    f. Failing to hire a sufficient number of trained and competent staff;

    g. Failing to follow the licensing and regulatory rules of the State of South Carolina;

    h. Failing to develop and follow an appropriate Plan of Care (a/k/a initial care plan);

    i. Failing to properly train employees to deal with residents who were unable to care for themselves;



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j. Failing to follow physicians' orders;

k. Failing to prevent decubitus ulcers from developing and/or failing to provide necessary and proper treatment of the ulcers;

l. Failing to properly monitor David Holmes;

m. Failing to appropriately diagnose David Holmes's condition;

n. Failing to provide David Holmes with appropriate medications and/or nutrition which would promote the healing and resolve the infection to the wound areas;

o. Failing to turn and reposition David Holmes to prevent pressure ulcers from forming and to promote healing;

p. Failing to ensure that David Holmes and his wounds were kept clean and dry;

q. Failing to provide adequate nutrition and hydration;

r. Failing to conduct weekly body audits to discover pressure ulcers;

s. Failing to ensure that a pressure-relieving mattress was immediately provided for David Holmes;

t. Failing to update that written plan of care to include necessary interventions to promote wound healing;

u. Failing to include the necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;

v. Failing to consult with and/or report to the physician and/or the Registered Dietitian in a timely manner David Holmes's decrease in dietary intake;

w. Failing to assist David Holmes with his meals in order to maintain his highest practicable level of physical well-being;

x. Failing to keep David Holmes properly hydrated and nourished;

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y. Failing to keep David Holmes from suffering significant weight loss;

z. Failing to keep proper record of David Holmes's weight;

aa. Failing to keep David Holmes's chart free of fraudulent documentation;

bb. Failing to prevent David Holmes's multiple hospitalizations;

cc. Failing to monitor and assess David Holmes adequately for pain and discomfort;

dd. Failing to treat David Holmes with dignity and respect;

ee. Failing to exercise due care; and

ff. By other negligent acts and/or omissions yet to be determined or defined.

82. That as a result, David Holmes experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

83. That the aforesaid acts and delicts were a contributing cause of David Holmes's damages, injuries and death, and were the sole and proximate cause of the damage and injuries sustained by the wrongful death beneficiaries.

**SECOND CAUSE OF ACTION**
**(Corporate Negligence)**

84. Relevant and consistent allegations contained in paragraphs 4-83 are incorporated by reference as if written verbatim herein.

85. That the Bayview Defendants' entities had a duty of due care to residents; to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.

86. That the facility was negligently managed by Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, who were working together to manage and operate the facility.

87. That the facility was negligently administered in violation of 42 C.F.R. 483.75 by Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, who were working together to govern, administer, control, manage and operate the facility.

88. The Defendants by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of David Holmes. More particularly the Defendants were negligent in the following particulars:

    a. Failing to properly supervise as required, and as promised to the family upon admission;

    b. Failing to provide the care, supervision and monitoring of patients, residents, and in particular David Holmes, which was required by law and which was necessary for his health and safety;

    c. Failing to hire, train, and supervise personnel to properly prevent injuries to residents and, in particular, David Holmes;

    d. Failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of David Holmes;

    e. Failing to abide by applicable federal and state laws governing long term care facilities and nursing care;

    f. Failing to hire a sufficient number of trained and competent staff;

    g. Failing to follow the licensing and regulatory rules of the State of South Carolina;

    h. Failing to develop and follow an appropriate Plan of Care;



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i. Failing to properly train employees to deal with residents who were unable to care for themselves;

j. Failing to follow physicians' orders;

k. Failing to prevent decubitus ulcers from developing and/or failing to provide necessary and proper treatment of the ulcers;

l. Failing to properly monitor David Holmes;

m. Failing to appropriately diagnose David Holmes's condition;

n. Failing to provide David Holmes with appropriate medications and/or nutrition which would promote the healing and resolve infection to the wound areas;

o. Failing to turn and reposition David Holmes to prevent pressure ulcers from forming and to promote healing;

p. Failing to ensure that David Holmes and his wounds were kept clean and dry;

q. Failing to provide adequate nutrition and hydration;

r. Failing to conduct weekly body audits to discover pressure ulcers;

s. Failing to ensure that a pressure-relieving mattress was immediately provided for David Holmes;

t. Failing to update the written plan of care to include necessary interventions to promote wound healing;

u. Failing to include necessary interventions to monitor for signs and/or symptoms of infection in the written plan of care;

v. Failing to consult with and/or report to the physician and/or the Registered Dietitian in a timely manner David Holmes's decrease in dietary intake;



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w. Failing to assist David Holmes with his meals in order to maintain his highest practicable level of physical well-being;

x. Failing to keep David Holmes properly hydrated and nourished;

y. Failing to keep David Holmes from suffering significant weight loss;

z. Failing to keep a proper record of David Holmes's weight;

aa. Failing to keep David Holmes's chart free of fraudulent documentation;

bb. Failing to prevent David Holmes's multiple hospitalizations;

cc. Failing to monitor and assess David Holmes adequately for pain and discomfort;

dd. Failing to treat David Holmes with dignity and respect;

ee. Failing to exercise due care; and

ff. By other negligent acts and/or omissions yet to be determined or defined.

89. That as a result, David Holmes experienced prolonged conscious pain and suffering, mental anguish and incurred substantial medical bills and death. As a further result, his wrongful death beneficiaries suffered the damages and injuries stated herein above.

90. That the aforesaid acts and delicts were a contributing cause of David Holmes's damages, injuries and death, and were the sole and proximate cause of the damage and injuries sustained by the wrongful death beneficiaries.

**THIRD CAUSE OF ACTION**
**(Negligence *Per Se)***

91. Relevant and consistent allegations contained in paragraphs 4-90 are incorporated by reference as if written verbatim herein.

92. That in addition to the above, the Defendants have been negligent *per se* in their violations of The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, South Carolina Department of Health and Environmental Control Regulations for Nursing

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Homes at Regulation 61-17, *et seq*, the South Carolina Nurse Practice Act, Board of Nursing Advisory Opinions, South Carolina Code of Laws Title 40 Chapter 35; South Carolina Code of Regulations Chapter 93, and the Defendants' own Policies and Procedures as well as protective Federal Regulations and Statutes 42 U.S.C. §1396(R), *et seq*, and 42 C.F.R. §483, *et seq*.

93. That each and/or all of the foregoing state and federal laws, rules and regulations prescribe certain actions or define the standard of conduct. David Holmes was and remains in the class of persons sought to be protected by each regulation and/or statute. Moreover, David Holmes's injuries were the type of harm that each of these regulations was intended to prevent according to the extent that the Defendants' conduct violated these regulations. Such conduct amounts to negligence *per se* as that term is defined and is known and understood at law. Each act or omission constituting negligence *per se* was the proximate cause of David Holmes's injuries and damages, and was the proximate cause of the damages and injuries suffered by the wrongful death beneficiaries.

94. That as a direct and proximate result of the Defendants' acts and delicts, David Holmes endured extreme conscious pain and suffering, mental distress, medical bills and disability. As a further in direct consequence of said acts and delicts, the untimely death of David Holmes proximately resulted, causing the damages and injuries suffered by the wrongful death beneficiaries.

**FOURTH CAUSE OF ACTION**
**(Intentional Infliction of Emotional Distress)**

95. Relevant and consistent allegations contained in paragraphs 4-94 are incorporated by reference as if written verbatim herein.

96. That as a result of such intentional acts and omissions, David Holmes was inflicted with severe emotional distress.

97. That as a result of such extreme and outrageous conduct, David Holmes was also stripped of his dignity.

98. That as a result of Defendants' abusive and authoritative actions, David Holmes suffered emotional distress.

99. That as a result of Defendants' abusive and authoritative actions, David Holmes suffered severe distress which no reasonable person could be expected to endure.

100. That as a result of said behavior by Defendants, David Holmes alleges that Defendants did not act in good faith or in a reasonable manner, and so Plaintiff was subjected to considerable distress and embarrassment.

## FIFTH CAUSE OF ACTION
**(Negligent Infliction of Emotional Distress)**

101. Relevant and consistent allegations contained in paragraphs 4-100 are incorporated by reference as if written verbatim herein.

102. That as a result of such negligent acts and omissions, David Holmes was inflicted with severe emotional distress.

103. That as a result of such negligent conduct, David Holmes was also stripped of his dignity.

104. That as a result of Defendants' negligent actions, David Holmes suffered emotional distress.

105. That as a result of Defendants' negligent actions, David Holmes suffered severe distress which no reasonable person could be expected to endure.



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106. That as a result of said behavior by Defendants, David Holmes alleges that Defendants did not act in good faith or in a reasonable manner, and so Plaintiff was subjected to considerable distress and embarrassment.

## SIXTH CAUSE OF ACTION

**(Violation of South Carolina Unfair Trade Practices Act – S.C. Code §39-5-10 *et seq.*)**

107. Relevant and consistent allegations contained in paragraphs 4-106 are incorporated by reference as if written verbatim herein.

108. That Defendants were involved in the sale of services including provisions, which include but are not limited to:

a. Comprehensive screening or evaluations of all residents on admission;

b. Rehabilitation program for residents requiring specialized services;

c. Wound care; and

d. Nutritional services.

109. Upon information and belief, the deceptive act including falsely documenting David Holmes's medical records, had the potential and did, in fact, get repeated by the Defendants.

110. That as a result of this deceptive practice and/or act, Plaintiff David Holmes was injured, and suffered malnourishment, dehydration, and/or pressure wounds.

111. That poor comprehensive screening and/or evaluation is linked to pressure ulcers, nutritional intakes are linked to malnutrition, involuntary weight loss, life-threatening dehydration, pressure sore development, delayed hearing, increased infection rates, and tissue wasting.

112. That involuntary malnutrition and pressure ulcers are correlated with significant increases in morbidity and mortality rates.



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113. That the standard of care requires individualized preventative care for residents at risk for developing pressure wounds.

114. That when nursing home residents do not receive adequate supervision they are more susceptible to diseases, pressure sores, dehydration, respiratory infections, reduced cardiac output and cognitive losses.

115. That with proactive interventions pertaining to pressure ulcers, pressure ulcers can be prevented and negative health impacts avoided.

116. That lack of monitoring for pressure ulcer, can cause infections, immune depression, pressure wounds and ultimately death.

117. That residents who are at risk for developing pressure ulcers should be monitored closely.

118. That when pressure ulcers occur, even if it is not significant, immediate intervention is necessary from all treatment team members.

119. That when pressure ulcers occur wounds care should perform a comprehensive assessment on the resident.

120. That the standard of care requires that the facility provide each resident with sufficient wound care to maintain proper health and prevent untimely death as a result of infected pressure ulcers.

121. That severe pressure ulcers are considered a sentinel event and life threatening.

122. That Defendants' staff was required to properly monitor David Holmes for pressure ulcers.

123. That upon information and belief, Defendants' staff purposely falsified medical records to hide David Holmes deteriorating condition.



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124. That the falsification of these records caused David Holmes to suffer.

125. That Defendants willfully and intentionally participated in the deceptive act of falsely charting David Holmes's pressure ulcers, and Plaintiff is entitled to three times the actual damages sustained and reasonable attorney's fees and costs pursuant to S.C. Code §39-5-140(a).

**SEVENTH CAUSE OF ACTION**
**(Breach of Fiduciary Duty)**

126. Relevant and consistent allegations contained in paragraphs 4-125 are incorporated by reference as if written verbatim herein.

127. That, according to the South Caroline Adult Protection Act, at all times relevant herein, David Holmes was considered a vulnerable adult.

128. That David Holmes and/or his heirs, and/or his family members trusted in, confided in and relied upon Defendants to use their expertise and discretion for his care.

129. That Defendants accepted David Holmes and/or his heirs, and/or his family members trust and reliance and so became responsible for David Holmes's health while residing at the nursing home facility.

130. That as a result of aforementioned reliance and trust upon Defendants, David Holmes's physical, mental and emotional health was placed in the hands of Defendants.

131. That Defendants breached this fiduciary relationship by allowing David Holmes's physical, mental and emotional health to deteriorate during his residency at the nursing home facility.

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## EIGHTH CAUSE OF ACTION
**(Unjust Enrichment)**

132. Relevant and consistent allegations contained in paragraphs 4-123 are incorporated by reference as if written verbatim herein.

133. That Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, received funds both the state and federal government which were intended and required to be used to properly care for Plaintiff David Holmes.

134. That Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, did not use said funds to properly care for David Holmes, and Defendants became unjustly enriched by receiving such funds.

135. That as a result of aforementioned misuse of funds by Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, David Holmes suffered physically, mentally and emotionally, and the wrongful death beneficiaries were damaged as stated herein above.

## NINTH CAUSE OF ACTION
**(Exploitation of a Vulnerable Adult)**

136. Relevant and consistent allegations contained in paragraphs 4-135 are incorporated by reference as if written verbatim herein.

137. That, according to the South Carolina Adult Protection Act, at all times relevant herein, David Holmes was considered a vulnerable adult.

138. That Plaintiff David Holmes trusted in, confided in and relied upon Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, to use their expertise and discretion for Plaintiff's care.

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139. That Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, accepted David Holmes' trust and reliance and so became responsible for David Holmes's health while residing at the nursing home facility.

140. That as a result of aforementioned reliance and trust upon Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, David Holmes' physical, mental and emotional health was placed in the hands of Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC.

141. That Defendants Bayview Manor, LLC, Epic Group, LP, and Epic General, LLC, received compensation for the care and treatment they were responsible for providing to David Holmes during his residency but did not provide that care and treatment.

**TENTH CAUSE OF ACTION**
**(Elder Abuse)**

142. Relevant and consistent allegations contained in paragraphs 4-141 are incorporated by reference as if written verbatim herein.

143. Pursuant to §45-35-10(11) of the South Carolina Omnibus Adult Protection Act, a "vulnerable adult" means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for their own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical mental or emotional dysfunction.

144. Given David Holmes's age and health at the time he was under the supervision and care of the Defendants, David Holmes met the classification for "vulnerable adult" under the South Carolina Omnibus Protection Act §45-35-10(11).

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145. Pursuant to §45-35-10(2) of the South Carolina Omnibus Protection Act a "caregiver" is defined as a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

146. The Defendants were and are caregivers under the South Carolina Omnibus Adult Protection Act §45-35-10(2) and were responsible for the Decedent's care and well-being.

147. Under the South Carolina Omnibus Adult Protection Act §45-35-10(6), "neglect" means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult.

148. The Defendants as caregivers, neglected David Holmes within the meaning of the South Carolina Omnibus Adult Protection Act §45-35-10(6). The neglect of David Holmes was negligent, reckless, and malicious. The Defendants knew or should have known David Holmes's advanced age required an increased level of care.

149. The Defendants knew or should have known that a heightened level of observation was necessary and critical to David Holmes's well-being, health and prognosis.

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150. The Defendants knew or should have known that the patient care environment lacked the number of qualified staff necessary for proper observation and care critical to David Holmes's health and recovery.

151. The Defendants' knew or should have known that David Holmes's was left in a patient care environment where the resources that were critical for recovery and to prevent injury were unavailable constituting neglect under South Carolina Omnibus Adult Protection Act §45-35-10(6).

152. The neglect caused serious personal injuries resulting in conscious pain and suffering, and ultimately an untimely death.

153. The Defendants' negligent, reckless, and malicious acts were a direct and proximate result of the damages herein.

154. As a result, punitive damages and attorneys' fees are appropriate pursuant to South Carolina Omnibus Adult Protection Act §43-35-80(A), which allows for private civil causes of action to be brought against a person or facility based on an action or failure to act that otherwise constitutes abuse, neglect or exploitation.

**ELEVENTH CAUSE OF ACTION**
**(Alter Ego/Piercing the Corporate Veil)**

155. Relevant and consistent allegation contained in paragraphs 4-154 are incorporated by reference as if written verbatim herein.

156. That upon information and belief, Bayview Manor, LLC, as it has been known for many years under various corporate names, was dominated and controlled by Defendants Epic Group, LP, and Epic General, LLC, before, during, and after David Holmes' residency. These Defendants siphoned profits from the nursing homes chain through self-dealing between the entities, excessively compensated themselves and other

executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide uniformly poor care across the country as a result of inadequate capitalization and consequently inadequate supplies, resulting in untold numbers of unnecessary injuries, death and suffering, including that of David Holmes at Bayview Manor.

**TWELFTH CAUSE OF ACTION**
**(Amalgamation of Interests)**

157. Relevant and consistent allegations contained in paragraphs 4-156 are incorporated by reference as if written verbatim herein.

158. That the Bayview Defendants are and have been operating as an amalgamation of interest creating a blurred corporate identity through an integrated enterprise and/or joint venture

159. That upon information and belief, the Bayview Defendants share a common internet website and intranet site.

160. That upon information and belief, the Bayview Defendants share a common location; common headquarters; common policies and procedures; and common in-house counsel.

161. That the Bayview Defendants share a common executives and officers.

162. That the Bayview Defendants participate in the commingling of funds and revenue and file one tax return for all Bayview Defendants' entities.

**THIRTEENTH CAUSE OF ACTION**
**(Conversion)**

163. Relevant and consistent allegations contained in paragraphs 4-162 are incorporated by reference as if written verbatim herein.



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164. That Joseph Holmes is the duly appointed Personal Representative of the Estate of David Holmes, and has been granted full authority by the Beaufort County Probate Court to, among other duties, obtain copies of David Holmes' medical treatment records.

165. That these records belong to David Holmes and his Estate, not to Defendant Bayview Manor, LLC, and that the Estate has a right to obtain a copy of these records.

166. That Joseph Holmes hired Anastopoulo Law Firm ("Firm") to represent his brother's Estate in a wrongful death lawsuit.

167. That Firm required medical records from Defendants in order to prosecute the lawsuit.

168. That Joseph Holmes executed a HIPAA release giving Defendants permission to release the records to Firm.

169. That Firm requested the records, in writing, and offered to pay the costs of copying and mailing the records.

170. That the Firm presented Defendants with a copy of his Certificate of Appointment.

171. That Defendant facility failed to provide a complete and accurate copy of the records at his request.

172. That Defendants assumed and exercised the unauthorized right of ownership over the medical records of David Holmes to the exclusion of Plaintiff Joseph Holme's rights.

173. That as a result of Defendants' conversion of Plaintiff's decedent's medical file, Plaintiff has suffered:

a. The loss of use of these records for impending litigation;

b. Consequential and incidental damages;

c. Aggravation;

d. Inconvenience;

e. Embarrassment

174. That Defendants' conduct, as described above evidences a flagrant disregard of legal rights as to warrant the imposition of actual and punitive damages.

**FOURTEENTH CAUSE OF ACTION**
**(Survival Action S.C. Code Ann. § 15-5-90)**

175. Relevant and consistent allegations contained in paragraphs 4-174 are incorporated by reference as if written verbatim herein.

176. That as a consequence of the events set forth in this Complaint, and as a direct and proximate cause of the negligence of the Defendants as aforesaid, Decedent was caused to sustain great conscious pain and suffering prior to his death, which injuries are compensable under South Carolina Code of Laws, Section 15-5-90.

177. That Decedent was painfully and seriously injured as a result of the negligence of the Defendants, for which a claim is hereby made by his estate and administrators for full and complete compensation for his pain and suffering.

**FIFTEENTH CAUSE OF ACTION**
**(Wrongful Death)**

178. Relevant and consistent allegations contained in paragraphs 4-177 are incorporated by reference as if written verbatim herein.

179. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, decedent was severely injured in Defendants' facility.



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180. That the injuries so inflicted on the decedent were the cause of decedent's wrongful death.

181. That the sole and proximate cause of all the harms, losses, injuries and death suffered by David Holmes was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

**WHISEFORE,** the Plaintiff prays for judgment against the Defendants, on behalf of the Estate and Decedent's statutory beneficiaries, for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

**ANASTOPOULO LAW FIRM, LLC**

**s/Stefan B. Feidler**
Stefan B. Feidler, Esquire
S.C. Bar No.: 101918
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

Dated at Charleston, South Carolina

This _15__ day of _December__, 2017_.



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| STATE OF SOUTH CAROLINA | ) | |
| | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BEAUFORT | ) | |
| | | Case No.: 2017-CP-07-02636 |
| Joseph Holmes as Personal Representative of the Estate of David Holmes, | ) | |
| Plaintiff, | ) | |
| | ) | ANSWER OF BAYVIEW MANOR, LLC D/B/A BAYVIEW MANOR, EPIC GROUP, LP; AND EPIC GENERAL, LLC |
| v. | ) | |
| Bayview Manor, LLC d/b/a Bayview Manor; Epic Group, LP; and Epic General, LLC, | ) | |
| Defendants. | ) | |

Bayview Manor, LLC d/b/a Bayview Manor, Epic Group, LP (properly known as Epic Group Limited Partnership), and Epic General, LLC ("Defendants"), answering the Complaint of Plaintiff, do hereby allege as follows:

1. All allegations contained in the Complaint which are not hereinafter admitted, qualified, or otherwise explained are denied.

**FOR A FIRST DEFENSE**

2. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraphs 1 and 2, and therefore the same are denied.

3. In response to the allegations contained in Paragraph 3, Defendants admit that David Holmes was diagnosed with schizophrenia and bipolar disorder; that David Holmes was admitted into Bayview Manor, LLC for skilled nursing care in December 2014; that David Holmes was discharged to Beaufort Memorial Hospital in December of 2014; that David Holmes

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returned to Bayview Manor, LLC in February 2015; that David Holmes was readmitted to Beaufort Memorial Hospital in March 2015; that David Holmes was diagnosed with wounds; and that David Holmes died on May 29, 2015. Defendants deny all other allegations contained in Paragraph 3.

4. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraphs 4, 5 and 6, and therefore the same are denied.

5. In response to the allegations contained in Paragraph 7, Defendants admit that Bayview Manor, LLC was organized in the State of South Carolina; that its principal place of business is in Beaufort County, South Carolina; that Corporation Service Company is the registered agent for Bayview Manor, LLC; that Bayview Manor, LLC is and was the entity which held the license to operate the Bayview Manor, LLC facility; and that Bayview Manor, LLC operated its nursing home facility and derived revenue therefrom in Beaufort County, South Carolina. Defendants deny that Epic Group, LP or Epic General, LLC operated the Bayview Manor nursing home. Defendants are without sufficient information upon which to form a true and accurate belief as to the remaining allegations contained in Paragraph 7, and therefore the same are denied.

6. In response to the allegations contained in Paragraph 8, Defendants admit that Epic Group, LP was formed in the State of North Carolina; that its principal office is in Horry County, South Carolina; that Blanco Tackabery & Matamoros, P.A. is Epic Group, LP's registered agent in North Carolina; and that Epic Group, LP is the sole member of Bayview Manor, LLC. Defendants deny the remaining allegations contained in Paragraph 8.

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7. In response to the allegations contained in Paragraph 9, Defendants admit that Epic General, LLC was organized in the State of South Carolina; that Corporation Service Company is its registered agent in South Carolina; and that Epic General, LLC is the general partner of Epic Group, LP. Defendants deny the remaining allegations contained in Paragraph 9.

8. Defendants deny the allegations contained in Paragraph 10.

9. In response to the allegations contained in Paragraph 11, Defendants admit only that Bayview Manor, LLC is and has been involved in the ownership, operation, management and/or control of Bayview Manor nursing home. Defendants deny the remaining allegations contained in Paragraph 11.

10. In response to the allegations contained in Paragraph 12, Defendants admit only that Epic Group, LP is the sole member of Bayview Manor, LLC, and Epic General, LLC is the general partner of Epic Group, LP. To the extent the allegations contained in Paragraph 12 assert legal conclusions, no response is required. Defendants deny the remaining allegations contained in Paragraph 12.

11. Defendants deny the allegations contained in Paragraph 13.

12. In response to the allegations contained in Paragraph 14, Defendants admit only that Bayview Manor, LLC delivers nursing home care for a profit and provided care to David Holmes during his residency at Bayview Manor nursing home. Defendants deny the remaining allegations contained in Paragraph 14.

13. In response to the allegations contained in Paragraph 15, Defendants admit that Bayview Manor, LLC was involved in the ownership, operation and management of the Bayview Manor nursing home where David Holmes resided. Defendants deny the remaining allegations contained in Paragraph 15.

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14. In response to the allegations contained in Paragraph 16, Defendants admit that Bayview Manor, LLC was involved in receiving the revenue and controlling the budget, staffing, training, supervision, development and implementation of policies and procedures for the Bayview Manor nursing home. Defendants deny the remaining allegations contained in Paragraph 16.

15. Defendants deny the allegations contained in Paragraph 17.

16. In response to the allegations contained in Paragraph 18, Defendants admit that Bayview Manor, LLC has engaged in business activities in South Carolina including the management, operation, control and ownership of the Bayview Manor nursing home facility, and further that Bayview Manor, LLC has derived revenue from services provided in South Carolina. Defendants deny all other allegations contained in Paragraph 18.

17. In response to the allegations contained in Paragraph 19, Defendants are without sufficient information upon which to form a true and accurate belief as to whether the employees of Bayview Manor, LLC acted on behalf of themselves and on behalf of Bayview Manor, LLC at all times relevant herein. Defendants deny the remaining allegations contained in Paragraph 19.

18. In response to the allegations contained in Paragraph 20, Defendants admit that Bayview Manor, LLC owed a duty to David Holmes to provide care in accordance with the standard of care. Defendants deny the remaining allegations contained in Paragraph 20.

19. Defendants deny the allegations contained in Paragraph 21.

20. The case citations and quotations contained in Paragraphs 22, 23, 24 and 25 do not require a response. Nevertheless, Defendants affirmatively allege that Bayview Manor, LLC provided appropriate care within the standard of care at all times.

21. Defendants deny the allegations contained in Paragraph 26.

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22. In response to the allegations contained in Paragraph 27, Defendants admit that Bayview Manor, LLC's principal place of business is located in Beaufort County, South Carolina. Defendants deny the remaining allegations contained in Paragraph 27.

23. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 28, and therefore the same are denied.

24. In response to the allegations contained in Paragraph 29, Defendants hereby reallege and incorporate the allegations set forth above.

25. Defendants admit the allegations contained in Paragraph 30.

26. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 31, and therefore the same are denied.

27. Defendants admit the allegations contained in Paragraph 32.

28. In response to the allegations contained in Paragraphs 33, 34 and 35, Defendants crave reference to records of Bayview Manor, LLC and deny any allegations inconsistent therewith.

29. In response to the allegations contained in Paragraph 36, Defendants specifically deny that any documentation regarding David Holmes' condition was made by Epic Group, LP or Epic General, LLC. As to the remaining allegations contained in Paragraph 36, Defendants crave reference to the records of Bayview Manor, LLC and deny any allegations inconsistent therewith.

30. In response to the allegations contained in Paragraph 37, Defendants admit that on December 23, 2014, David Holmes was admitted to Beaufort Memorial Hospital from Bayview Manor, LLC's facility. Defendants are without sufficient information upon which to form a true

and accurate belief as to any diagnosis David Holmes received at Beaufort Memorial Hospital. Defendants deny the remaining allegations contained in Paragraph 37.

31. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 38, and therefore the same are denied.

32. In response to the allegations contained in Paragraph 39, Defendants are without sufficient information upon which to form a true and accurate belief as to whether David Holmes developed all of the alleged pressure ulcers while under Bayview Manor, LLC's care. Defendants deny the remaining allegations contained in Paragraph 39.

33. In response to the allegations contained in Paragraph 40, Defendants admit that on February 17, 2015, David Holmes was discharged from Beaufort Memorial Hospital back to Bayview Manor, LLC's facility. Defendants deny the remaining allegations contained in Paragraph 40.

34. In response to the allegations contained in Paragraph 41, Defendants admit that on March 29, 2015, David Holmes was readmitted to Beaufort Memorial Hospital. Defendants are without sufficient information upon which to form a true and accurate belief as to the remaining allegations contained in Paragraph 41, and therefore the same are denied.

35. In response to the allegations contained in Paragraph 42, Defendants admit that David Holmes developed some wounds. Defendants deny the remaining allegations contained in Paragraph 42.

36. The next paragraph in the Complaint is Number 1. In response to that paragraph, Defendants admit that David Holmes was a patient of Beaufort Memorial Hospital for approximately two months after his March 29, 2015 readmission.



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37. The next paragraph in the Complaint is Number 2. In response to that paragraph, Defendants admit that David Holmes died on May 29, 2015. Defendants deny the remaining allegations contained in Paragraph 2.

38. Defendants deny the allegations contained in Paragraph 43.

39. In response to the allegations contained in Paragraph 44, Defendants admit that Bayview Manor, LLC was aware that David Holmes was at risk for skin breakdown given his condition. Defendants deny the remaining allegations contained in Paragraph 44.

40. Defendants deny the allegations contained in Paragraphs 45 and 46.

41. In response to the allegations contained in Paragraph 47, Defendants admit that Bayview Manor, LLC was required to exercise due care in accordance with the prevailing standard of care in the supervision and care of its residents. Defendants deny the remaining allegations contained in Paragraph 47.

42. In response to the allegations contained in Paragraph 48, Defendants admit that Bayview Manor, LLC has a duty to provide care within the prevailing standard of care for its residents. Defendants deny the remaining allegations contained in Paragraph 48.

43. In response to the allegations contained in Paragraph 49, Defendants admit that Bayview Manor, LLC must provide each resident with fluid in accordance with the standard of care.

44. In response to the allegations contained in Paragraph 50, Defendants admit that Bayview Manor, LLC must develop a care plan for each resident in accordance with the prevailing standard of care.



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45. In response to the allegations contained in Paragraph 51, Defendants admit that Bayview Manor, LLC must have sufficient nursing staff to provide care to the residents within the applicable standard of care.

46. In response to the allegations contained in Paragraph 52, Defendants admit that Bayview Manor, LLC had a duty to provide care to David Holmes with regard to his wounds which was within the applicable standard of care.

47. Defendants admit the allegations contained in Paragraph 53 and 54.

48. In response to the allegations contained in Paragraph 55, Defendants admit that the items listed in Paragraph 55 are some of the nutritional approaches that can be used to prevent weight loss; however, such measures will not work with all residents and all medical conditions.

49. In response to the allegations contained in Paragraph 56, Defendants admit that a nutritionist working with the nursing home must provide care within the standard of care for the promotion of healing of ulcers.

50. In response to the allegations contained in Paragraph 57, Defendants admit the allegations as they relate to Bayview Manor, LLC's staff. Defendants deny the remaining allegations contained in Paragraph 57.

51. In response to the allegations contained in Paragraph 58, Defendants admit that a rehabilitation staff can, in certain circumstances and with certain residents, provide therapies which can assist in the healing of wounds.

52. In response to the allegations contained in Paragraph 59, Defendants admit that a nursing home should evaluate, document treatment, and prepare individual care plans for residents.

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53. In response to the allegations contained in Paragraph 60, Defendants admit that a nutritional assessment and intervention can play a role in certain circumstances and with certain residents with wound prevention and treatment.

54. In response to the allegations contained in Paragraph 61, Defendants do not know what studies Plaintiff is referring to. Nevertheless, Defendants admit that nutrition and hydration are in some circumstances, and with some residents, associated with the prevention or development of wounds.

55. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 62, and therefore the same are denied.

56. In response to the allegations contained in Paragraph 63, Defendants admit that weekly weights are appropriate for some residents that are experiencing poor appetites and significant unintentional weight loss in some circumstances.

57. In response to the allegations contained in Paragraph 64, these Defendants admit that for any given resident, certain changes in weight may be re-evaluated.

58. Defendants deny the allegations contained in Paragraphs 65 and 66.

59. In response to the allegations contained in Paragraph 67, these Defendants admit that Bayview Manor, LLC is required to follow Federal and State laws and regulations applicable to skilled nursing facilities in South Carolina. Defendants deny the remaining allegations contained in Paragraph 67.

60. Defendants deny the allegations contained in Paragraph 68.

61. In response to the allegations contained in Paragraph 69, Defendants admit that Bayview Manor, LLC holds itself out as a skilled nursing facility which provides care in

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accordance with the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 69.

62. In response to the allegations contained in Paragraph 70, Defendants admit that Bayview Manor, LLC was under a duty to provide care to David Holmes which met the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 70.

63. In response to the allegations contained in Paragraph 71, Defendants admit that while David Holmes resided at Bayview Manor, LLC, Bayview Manor, LLC provided care to him. Defendants deny the remaining allegations contained in Paragraph 71.

64. Defendants deny the allegations contained in Paragraphs 72, 73, 74 and 75.

65. In response to the allegations contained in Paragraph 76, Defendants admit that Bayview Manor, LLC was involved in budget and staffing decisions of the facility. Defendants deny the remaining allegations contained in Paragraph 76.

66. Defendants deny the allegations contained in Paragraph 77 and 78.

67. In response to the allegations contained in Paragraph 79, Defendants hereby reallege and incorporate the allegations set forth above.

68. In response to the allegations contained in Paragraph 80, Defendants admit that Bayview Manor, LLC owes a duty to its residents to provide care within the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 80.

69. Defendants deny the allegations contained in Paragraphs 81, 82 and 83.

70. In response to the allegations contained in Paragraph 84, Defendants hereby reallege and incorporate the allegations set forth above.

71. In response to the allegations contained in Paragraph 85, Defendants admit that Bayview Manor, LLC had a duty to provide care to its residents which met the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 85.

72. Defendants deny the allegations contained in Paragraphs 86, 87, 88, 89 and 90.

73. In response to the allegations contained in Paragraph 91, Defendants hereby reallege and incorporate the allegations set forth above.

74. Defendants deny the allegations contained in Paragraphs 92, 93 and 94.

75. In response to the allegations contained in Paragraph 95, Defendants hereby reallege and incorporate the allegations set forth above.

76. Defendants deny the allegations contained in Paragraphs 96, 97, 98, 99 and 100.

77. In response to the allegations contained in Paragraph 101, Defendants hereby reallege and incorporate the allegations set forth above.

78. Defendants deny the allegations contained in Paragraphs 102, 103, 104, 105 and 106.

79. In response to the allegations contained in Paragraph 107, Defendants hereby reallege and incorporate the allegations set forth above.

80. In response to the allegations contained in Paragraph 108, Defendants admit that Bayview Manor, LLC provided comprehensive screening or evaluations of residents on admission, rehabilitation programs for certain residents, wound care for certain residents, and nutritional services for its residents. Defendants deny the remaining allegations contained in Paragraph 108.

81. Defendants deny the allegations contained in Paragraphs 109 and 110.



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82. The allegations set forth in Paragraph in 111 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 111.

83. The allegations set forth in Paragraph 112 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 112.

84. In response to the allegations contained in Paragraph 113, Defendants admit that individualized preventative care for residents at risk of developing pressure wounds is needed, but that not all wounds are preventable.

85. The allegations set forth in Paragraph 114 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 114.

86. In response to Paragraph 115, Defendants deny that with proactive interventions pertaining to pressure ulcers, all pressure ulcers can be prevented and negative health impacts avoided.

87. The allegations set forth in Paragraph 116 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 116.

88. In response to the allegations contained in Paragraph 117, Defendants admit that residents who are at risk for developing pressure ulcers should be monitored, with the level and frequency of monitoring depending on the individual resident's needs.

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89. The allegations set forth in Paragraph 118 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 118.

90. The allegations set forth in Paragraph 119 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 119.

91. In response to the allegations contained in Paragraph 120, Defendants admit that a nursing home facility should provide each resident with wound care that meets the applicable standard of care. Defendants are without sufficient information upon which to form a true and accurate belief as to the remaining allegations contained in Paragraph 120.

92. The allegations set forth in Paragraph 121 are very general in nature and not specific as to any individual. Thus, Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 121.

93. In response to the allegations contained in Paragraph 122, Defendants admit that Bayview Manor, LLC's staff was required to properly monitor David Holmes for pressure ulcers. Defendants deny the remaining allegations contained in Paragraph 122.

94. Defendants deny the allegations contained in Paragraphs 123, 124 and 125.

95. In response to the allegations contained in Paragraph 126, Defendants hereby reallege and incorporate the allegations set forth above.

96. In response to the allegations contained in Paragraph 127, Defendants admit that David Holmes met the definition of a "vulnerable adult" under South Carolina Code Section 43-35-10.

97. In response to the allegations contained in Paragraph 128, Defendants deny the allegations to the extent they allege David Holmes and/or his heirs and/or his family members trusted in, confided in and relied upon Epic Group, LP and Epic General, LLC in any way. Defendants are without sufficient information upon which to form a true and accurate belief as to the remaining allegations contained in Paragraph 128.

98. In response to the allegations contained in Paragraph 129, Defendants admit that Bayview Manor, LLC was responsible to provide David Holmes with care which met the applicable standard of care while he resided at its nursing home facility. Defendants deny the remaining allegations contained in Paragraph 129.

99. In response to the allegations contained in Paragraph 130, Defendants admit that Bayview Manor, LLC was responsible to provide care within the applicable standard of care for David Holmes' health. Defendants deny the remaining allegations contained in Paragraph 130.

100. Defendants deny the allegations contained in Paragraph 131.

101. In response to the allegations contained in Paragraph 132, Defendants hereby reallege and incorporate the allegations set forth above.

102. In response to the allegations contained in Paragraph 133, Defendants admit that Bayview Manor, LLC received government funds for care provided to David Holmes. Defendants deny the remaining allegations contained in Paragraph 133.

103. Defendants deny the allegations contained in Paragraphs 134 and 135.

104. In response to the allegations contained in Paragraph 136, Defendants hereby reallege and incorporate the allegations set forth above.



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105. In response to the allegations contained in Paragraph 137, Defendants admit that David Holmes met the definition of a vulnerable adult under South Carolina Code Section 43-35-10.

106. In response to the allegations contained in Paragraph 138, Defendants admit that Bayview Manor, LLC was required to provide care in accordance with the standard of care for David Holmes while he was a resident of its facility. Defendants deny the remaining allegations contained in Paragraph 138.

107. In response to the allegations contained in Paragraph 139, Defendants admit that Bayview Manor, LLC was required to provide care in accordance with the standard of care for David Holmes while he was a resident of its facility. Defendants deny the remaining allegations contained in Paragraph 139.

108. In response to the allegations contained in Paragraph 140, Defendants admit that Bayview Manor, LLC was required to provide care in accordance with the standard of care for David Holmes while he was a resident of its facility. Defendants deny the remaining allegations contained in Paragraph 140.

109. In response to the allegations contained in Paragraph 141, Defendants admit that Bayview Manor, LLC received compensation for the care and treatment provided to David Holmes. Defendants deny the remaining allegations contained in Paragraph 141.

110. In response to the allegations contained in Paragraph 142, Defendants hereby reallege and incorporate the allegations set forth above.

111. Defendants admit the allegations contained in Paragraph 143.

112. In response to the allegations contained in Paragraph 144, Defendants deny that David Holmes was ever under the supervision and care of Epic Group, LP or Epic General, LLC.



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Defendants admit that while David Holmes was under the supervision and care of Bayview Manor, LLC, he met the classification for a "vulnerable adult" under Section 45-35-10(11).

113. In response to the allegations contained in Paragraph 145, Defendants admit that a portion of the definition of "caregiver" under Section 45-35-10(2) is contained in said paragraph.

114. In response to the allegations contained in Paragraph 146, Defendants admit that Bayview Manor, LLC was responsible to provide care to David Holmes in accordance with the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 146.

115. In response to the allegations contained in Paragraph 147, these Defendants admit that a portion of the definition of "neglect" as defined under Section 45-35-10(6) is included in this paragraph.

116. Defendants deny the allegations contained in Paragraph 148.

117. In response to the allegations contained in Paragraph 149, Defendants admit that Bayview Manor, LLC understood the level of observation which was necessary for David Holmes well-being, health and prognosis. Defendants deny the remaining allegations contained in Paragraph 149.

118. Defendants deny the allegations contained in Paragraphs 150, 151, 152, 153, and 154.

119. In response to the allegations contained in Paragraph 155, Defendants hereby reallege and incorporate the allegations set forth above.

120. Defendants deny the allegations contained in Paragraph 156.

121. In response to the allegations contained in Paragraph 157, Defendants hereby reallege and incorporates the allegations set forth above.



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122. Defendants deny the allegations contained in Paragraphs 158, 159, 160, 161 and 162.

123. In response to the allegations contained in Paragraph 163, Defendants hereby reallege and incorporate the allegations set forth above.

124. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 164, and therefore the same are denied.

125. In response to the allegations contained in Paragraph 165, Defendants admit that David Holmes' Estate has a right to obtain a copy of his medical record. Defendants deny the remaining allegations contained in Paragraph 165.

126. In response to the allegations contained in Paragraph 166, Defendants admit, upon information and belief, that Joseph Holmes hired the Anastopoulo Law Firm to represent his brother's Estate. The remaining allegations contained in Paragraph 166 are denied.

127. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraphs 167 and 168, and therefore the same are denied.

128. Defendants admit, upon information and belief, the allegations contained in Paragraphs 169 and 170.

129. Defendants deny the allegations contained in Paragraphs 171, 172, 173 and 174.

130. In response to the allegations contained in Paragraph 175, Defendants hereby reallege and incorporate the allegations set forth above.

131. Defendants deny the allegations contained in Paragraphs 176 and 177.

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132. In response to the allegations contained in Paragraph 178, Defendants hereby reallege and incorporate the allegations set forth above.

133. Defendants deny the allegations contained in Paragraphs 179, 180 and 181, and further deny that Plaintiff is entitled to the relief prayed for in his Complaint.

**FOR A SECOND DEFENSE**

53. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

54. Plaintiff's causes of action fail to state facts sufficient to constitute a cause of action and therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A THIRD DEFENSE**

55. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

56. Plaintiff's claim for punitive damages against Defendants and any award of punitive damages against Defendants would violate those clauses of the United States Constitution and the South Carolina Constitution related to privileges and immunities, due process and equal protection.

**FOR A FOURTH DEFENSE**

57. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

58. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Awards Act of 2005 which is codified at

§15-32-200, *et seq* of the South Carolina Code of Laws (1976 as amended), and all pertinent provisions of that Act are pled as an affirmative defense in this action.

**FOR A FIFTH DEFENSE**

59. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

60. Defendants reserve their rights arising under §15-32-520, Code of Laws of South Carolina, as amended, as to all issues described therein, and Defendants plead the limitations on punitive damages as set forth in §15-32-530, Code of Laws of South Carolina, as amended, as a defense.

**FOR A SIXTH DEFENSE**

61. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

62. If it is determined that an Arbitration Agreement was signed in connection with David Holmes' admission to Bayview Manor, LLC, this case should be dismissed or stayed pursuant to SCRCP 12(b)(1), 12(b)(3) and 12(b)(6), as well as pursuant to applicable State and Federal law, and this case should be submitted to Arbitration.

**FOR A SEVENTH DEFENSE**

63. Defendants hereby reallege and incorporate the allegations set forth above to the extent they are consistent with this defense.

64. At the time of David Holmes' admission to Bayview Manor, an Admission Agreement was executed. The Admission Agreement contained a Wavier of Jury Trial provision. Thus, Plaintiff has waived the right to have this matter heard by a jury.



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WHEREFORE, having fully answered the Complaint and asserting these affirmative defenses, Defendants pray that the Complaint be dismissed with prejudice, that Defendants be awarded their costs and disbursements associated with this matter, and such other relief as this Court may deem just and proper.

HOLCOMBE BOMAR, P.A.

By: *W. McElhaney White*
W. McElhaney White, SC Bar 8552
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
Attorneys for Defendants

January 12, 2018

Spartanburg, South Carolina



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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br><br>Case No.: 2017-CP-07-02636 |
| Joseph Holmes as Personal Representative of the Estate of David Holmes,<br><br>Plaintiff,<br><br>v.<br><br>Bayview Manor, LLC d/b/a Bayview Manor; Epic Group, LP; and Epic General, LLC,<br><br>Defendants. | ) | NOTICE OF AND MOTION FOR NONJURY TRIAL |

TO: STEFAN B. FEIDLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned counsel, will move, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the presiding judge of the Court of Common Pleas for Beaufort County, for an Order for a non-jury trial pursuant to Rules 38 and 39, SCRCP. Defendant is entitled to a non-jury trial as a result of the Waiver of Jury Trial provision in the Admissions Agreements which are attached hereto as Exhibits A and B.

This motion is supported by the affidavit of Christy Drinkard which has been filed and served contemporaneously herewith. Furthermore, this motion is also supported by the pleadings, other affidavits, deposition testimony, exhibits and legal memoranda which may be served and filed, and the entire record herein.

The undersigned affirms that prior to filing this Motion he communicated in writing with opposing counsel and has attempted in good faith to resolve this motion.

HOLCOMBE BOMAR, P. A.

s/ W. McElhaney White
W. McElhaney White , SC Bar 8552
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendants

March 27, 2018
Spartanburg, South Carolina



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David Holmes

Admit Date 12/02/2014

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

Admission and Consent to Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

Non-Discrimination Statement: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

Hospital Transfers: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

**Hospitalization:** If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

**Hospital Services:** The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

**Refuse Treatment:** The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

**Room Transfers:** The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

**Discharge Arrangements:** If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

**Right to Leave Facility/Duration of Agreement:** The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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Resident agrees to pay accrued charges up to and including the day of **discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.**

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the
Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

*Diagnostic Consultant and Therapeutic Services: The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters: The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

*Ambulance and Transportation Services: The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

*Medical Supplies: The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

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David Holmes

Admit Date 12/02/2014

**Pharmacy Services**: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

**Personal Items and Services**: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

**Payment**: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

**Interest and Attorney's Fees**: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

**Assignment of Benefits**: The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.
(Signature required on Authorization for Assignments of Benefits)

**Failure of Others to Pay**: If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

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David Holmes Admit Date 12/02/2014

**Discontinuance of Medicaid:** If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid:** If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill:** The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills:** The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone:** Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, IPods, radio, hearing aids, eyeglasses or dentures/partials(including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall N/A

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person

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or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability**: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations**: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives**: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance**: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**
11 Todd Drive
Beaufort SC 29902

**Resident:**

**Governing Law**: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

**Venue**: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

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David Holmes

Admit Date 12/02/2014

**Waivet of jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

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David Holmes

Admit Date 12/02/2014

Guarantee: By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

Acknowledgement: **By signing this Agreement, the Resident acknowledges:** That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

Entire Agreement: This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter, Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

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David Holmes

Admit Date 12/02/2014

**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause**

X initial.

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Quinn 12/02/14

Signature of Facility Representative — Date

David Holmes

Signature of Patient/Resident — Date

Witness — Date

Witness — Date

Responsible Party — Date

Signature of Responsible Party — 12-2-14 — Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*



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ELECTRONICALLY FILED - 2018 Mar 27 4:31 PM - BEAUFORT - COMMON PLEAS - CASE#2017CP702636

David Holmes

Admit Date 02/17/2015

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

**Admission and Consent to Treat**: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

**Non-Discrimination Statement**: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

**Physician's Care**: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

**Hospital Transfers**: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

**Hospitalization**: If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

**Hospital Services**: The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

**Refuse Treatment**: The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

**Room Transfers**: The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

**Discharge Arrangements**: If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

**Right to Leave Facility/Duration of Agreement**: The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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Resident agrees to pay accrued charges up to and including the day of discharge. **Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.**

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the
Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

*Diagnostic Consultant and Therapeutic Services: The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitter: The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

*Ambulance and Transportation Services: The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

*Medical Supplies: The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

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*Pharmacy Services: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

Personal Items and Services: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

Payment: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

Interest and Attorney's Fees: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

Assignment of Benefits: The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.
(Signature required on Authorization for Assignments of Benefits)

Failure of Others to Pay: If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

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**Discontinuance of Medicaid:** If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid:** If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill:** The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills:** The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone:** Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, IPods, radio, hearing aids, eyeglasses or dentures/partials (including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs / Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person

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or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability**: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations**: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives**: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance**: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**
11 Todd Drive
Beaufort SC 29902

**Resident:**

**Governing Law**: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

**Venue**: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

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David Holmes

Admit Date 02/17/2015

**Waiver of Jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

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David Holmes

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Guarantee: By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

Acknowledgement: **By signing this Agreement, the Resident acknowledges:** That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

Entire Agreement: This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter, Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

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David Holmes

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**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause** X DH initial.

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: [redacted] [redacted]

Signature of Facility Representative — Date

David Holmes

Signature of Patient/Resident — Date

Witness — Date

Witness — Date

Responsible Party — Date

Margaret Holmes — 2/17/15

Signature of Responsible Party — Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*

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| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF BEAUFORT ) | IN THE COURT OF COMMON PLEAS<br><br>Case No.: 2017-CP-07-02636 |
| Joseph Holmes as Personal Representative of the Estate of David Holmes,<br><br>Plaintiff,<br><br>v.<br><br>Bayview Manor, LLC d/b/a Bayview Manor; Epic Group, LP; and Epic General, LLC,<br><br>Defendants. | MEMORANDUM IN SUPPORT OF MOTION FOR NONJURY TRIAL |

Defendants Bayview Manor, LLC d/b/a Bayview Manor, Epic Group, LP, and Epic General, LLC (collectively, "Defendants"), submit this Memorandum in Support of their Motion for Nonjury Trial pursuant to Rules 38 and 39, SCRCP.

## INTRODUCTION

David Holmes ("David") suffered a choking incident on or about October 13, 2014. He suffered an anoxic brain injury and remained in a vegetative state. He was admitted to Mt. Pleasant Hospital where he remained until December 2, 2014. (Mt. Pleasant Hospital Records; attached as Exhibit A).

On December 2, 2014, the day of David's admission to Bayview Manor, LLC ("Bayview"), David, through his sister and court-appointed Guardian, Dorothy Olenja ("Dorothy"), entered into an Admission Agreement ("December Admission Agreement") which set forth the rights and obligations of the parties. It also contained a waiver of jury trial provision. David was discharged from Bayview on December 23, 2014 and returned to Bayview on February 17, 2015. At the time of his readmission, David,

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through his sister and responsible party, Margaret Holmes ("Margaret"), entered into another Admission Agreement ("February Admission Agreement"), which again contained a waiver of jury trial provision. Rebecca Jensen, as Admissions Director of Bayview, executed the Admission Agreements on behalf of Bayview. (Affidavit of Drinkard, ¶¶ 3, 3 (sic); attached hereto as Exhibit B).

Bayview was the licensed operator of the Bayview Manor nursing home during David's residency. (Affidavit of Drinkard, ¶ 2). Joseph Holmes, as Personal Representative of the Estate of David Holmes ("Plaintiff"), alleges Bayview was negligent in its care of David. (See Complaint in the Court's file).

Defendants seek an order granting Defendants a nonjury trial by virtue of the waiver of jury trial clauses in the Admission Agreements. (See December Admission Agreement, p. 25; attached hereto as Exhibit C; See February Admission Agreement, p. 25, attached hereto as Exhibit D). The December Admission Agreement and February Admission Agreement will be referred to collectively as the "Admission Agreements".

## ARGUMENT

## I. DEFENDANTS ARE ENTITLED TO A NONJURY TRIAL

### a. The jury trial waivers are valid.

Plaintiff demanded a jury trial in the case at bar, but this right was waived by virtue of the waiver of jury trial clauses in the Admission Agreements which read as follows:

> **Waiver of Jury Trial: (Please read carefully)**
> Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the

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> Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.
>
> Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice. (Admission Agreements, p. 25).

Rule 39, SCRCP, provides in part that when a trial by jury is demanded as provided in Rule 38, the trial of all issues so demanded shall be by jury unless the court upon motion finds that a right of trial by jury of some or all of those issues does not exist. Rule 39(a), SCRCP.

In the case at bar, the right of trial by jury does not exist. The waiver of jury trial is enforceable. In The Beach Company v. Twillman, LTD., 351 S.C. 56, 566 S.E.2d 863 (Ct.App. 2002), the Court of Appeals held that a party may waive the right to a jury trial by contract, and that while such a waiver must be strictly construed, the terms in a contract must be construed using their plain, ordinary and popular meaning. Id. at 866.

In that case, the waiver of jury trial was contained in section 27.16 of a lease entitled "Waiver of Counterclaim", and it stated:

> Tenant waives any and all right to trial by jury or to interpose any counterclaim in any summary proceedings for eviction or nonpayment of Rent. Any and all claims or 'counterclaims' that may be asserted by Tenant shall only be made the subject of a separate action. In such separate action, it is agreed that trial by jury shall be waived by both parties. Id. at 864.

The waiver of jury trial found in the Admission Agreement is clearer that the one upheld in The Beach Company. Furthermore, rather than being included in a section entitled "Waiver of Counterclaim", the waiver in the case at bar was included in a section entitled "**Waiver of Jury Trial: (Please read carefully)**".

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Plaintiff filed the Affidavit of Robert Escarza, MD with his Notice of Intent to Sue. Dr. Escarza opined "that appropriate skin care protocols were not adhered to during at least the first two weeks after admission to Bayview". Dr. Escarsa also wrote David "was discharged back to Bayview on 2-17-15. Documentation from this point forward reflects ongoing and more diligent skin care." (Affidavit of Robert Escarza, MD, ¶¶ 4-5; attached as Exhibit E.) Plaintiff's expert expressed concern about the care and treatment provided to David during his first admission to Bayview (in December 2014) rather than his second admission (in February 2015).

As noted above, the December Admission Agreement was signed by Dorothy. Dorothy had been appointed as Temporary Guardian for David on October 27, 2014, only a week before David's admission to Bayview. Under the court's order, David was adjudged to be an incapacitated person, and Dorothy was appointed as temporary guardian with the right to care and custody of David with all the authority of a permanent guardian as set out it the Probate Code. (See Order Appointing Temporary Guardian attached as Exhibit F).

Under S.C. Code Ann. §62-5-310, a temporary guardian is entitled to the care and custody of the ward with the same authority of a permanent guardian. Under S.C. Code Ann. §62-5-312, a guardian of an incapacitated person has the same powers, rights and duties respecting his ward that a parent has respecting his unemancipated minor child. This includes, but is not limited to, the giving of any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. Id. Thus, Dorothy had the statutory power to execute the December Admission Agreement and bind David to the waiver of jury trial provision.

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Dorothy was asked about the December Admission Agreement and waiver of jury trial provision in her deposition. She admitted she initialed each page of the December Admission Agreement. She admitted she read as much of it as possible but skimmed through some of it. When asked if she had agreed to a non-jury trial, she answered "[w]ell, my signature is here. That's not forged." (Deposition of Dorothy Olenja, pp. 111-112, 118-120; attached as Exhibit G.) Thus, Dorothy had the power to, and did in fact, waive the right to a jury trial.

Margaret waived the right to a jury trial in the February Admission Agreement.[1] Margaret was asked about this agreement in her deposition, and she started by confirming that she had initialed each page. She said she skimmed through it, but she admitted she was not rushed. In fact, she admitted that although she may have skimmed it, she had the opportunity to read it. (Deposition of Margaret Holmes, pp. 89-92; attached as Exhibit H.) Here again, Margaret, as David's sister and responsible party, had the right to execute the February Admission Agreement and bind David to all the terms thereof.

**b. Plaintiff is Equitably Estopped from Denying the Existence of an Enforceable Admission Agreement.**

The Admission Agreements served as the foundation for David's admission to Bayview and the duties and obligations which David and Bayview had to one another. Bayview agreed to provide David with care and treatment, and David agreed to pay for the care and treatment. Without the Admission Agreements, there would have been no relationship between the parties.

[1] As noted above, the Plaintiff's complaint stems from David's initial admission to Bayview in December 2014; however, out of an abundance of caution, the February Admission Agreement will be addressed as well.

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All the Plaintiff's claims are dependent on the duties which arise from the terms of the Admission Agreements. Plaintiff cannot disclaim the waiver of jury trial clause which is a part of the Admission Agreements, while at the same time assert claims arising under other terms of the Admission Agreements, and Plaintiff should be equitably estopped from doing so. There is ample case law on equitable estoppel in the context of arbitration provisions, and while the following cases address the enforceability of arbitration clauses, the reasoning applies equally to wavier of jury trial provisions.

The doctrine of equitable estoppel "exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision." Southern Ill. Beverage, Inc. v. Hansen Beverage Co., 2007 WL 3046273 at *11 (S.D. Ill. 2007). The Fourth Circuit has held that "no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein." United States v. Bankers Ins. Co., 245 F.3d 315, 323 (4th Cir. 2001); see also Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 418 (4th Cir. 2000) ("To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act." (internal quotation marks omitted)). It would be manifestly inequitable to permit a party to claim the other has failed to perform on its contractual obligations, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions.

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Hughes Masonry Co. v. Greater Clark County School Bldg. Corp., 659 F.2d 836, 838-39 (7th Cir. 1981). In other words, Plaintiff cannot "have it both ways" by relying upon certain terms of the Admission Agreement when it works to his advantage and repudiating others when it works to his disadvantage. Id.

In the case THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011), the United States District Court of South Carolina addressed this issue as well. Deborah Wiggins executed an admissions contract for the admission of her father, Earl Hall, into the Magnolia Manor nursing home. After a dispute arose, Magnolia Manor moved to compel arbitration of the dispute. Wiggins countered by arguing the admissions contract was unenforceable because there was nothing in the record to indicate she had authority to act as agent for her father, to legally bind her father, or to waive her father's right to a jury trial. One of Magnolia Manor's arguments in response was that Wiggins, as personal representative of her father's estate, was estopped from denying the contract formation. Id. at *5.

The court noted that it was undisputed that the contract was signed by an immediate family member of Hall for the purpose of obtaining residential care for him at Magnolia Manor. After the contract was executed, Hall became a resident and received the benefits provided for under the admissions contract. The court then held that when Magnolia Manor performed in reliance on the terms of the admissions contract, and Hall received the benefits under the admissions contract, it would be inequitable for Hall's estate to avoid the arbitration provision within the admissions contract. The court ruled that Hall's estate was equitably estopped from disclaiming the enforceability of the admissions contract and the arbitration provision contained therein. Id. at *6.

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Plaintiff, in the instant case, has brought claims arising from services rendered to David under the Admission Agreements between the parties. In accordance with the foregoing law, Plaintiff cannot assert claims against Bayview arising under the Admission Agreements while repudiating the waiver of jury trial clause. Plaintiff should be estopped from doing so, and this Court should enforce the Admission Agreements and their waiver of jury trial clauses.[2]

**c. David is a Third-Party Beneficiary**

David, while not a signatory to the Admission Agreements, is a third-party beneficiary of the Admission Agreements. It is clear from the plain language of the Admission Agreements that David was an intended beneficiary and the purpose of the Admission Agreements was to ensure Bayview would provide the services laid out therein. David did, in fact, receive those services.

[2] It should be noted that both South Carolina's Supreme Court and Court of Appeals addressed equitable estoppel in Coleman v. Marnier Health Care, Inc. et al., 407 S.C. 346, 755 S.E.2d 450 (2014), and Thompson v. Pruitt Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct.App.2016). In neither case did the courts enforce the arbitration provisions under the doctrine of equitable estoppel; however, there was one important distinction which distinguished these cases from Wiggins and the case at bar. In both Coleman and Thompson, the courts noted the arbitration provisions were in Arbitration Agreements separate and apart from the Admission Agreements; and that there was no merger of the two agreements. As a result, the court in Coleman did not reach the actual merits of the equitable estoppel argument. The court in Thompson, on the other hand, provided a little more discussion on the topic. In discussing cases which have applied equitable estoppel, the court noted the nonsignatory's contractual benefit typically arose from another provision in the same contract that includes the arbitration provision, rather than an alleged benefit arising only under a separately executed arbitration agreement. Thompson, 784 S.E.2d at 688. Here, in the case at bar, there were contractual benefits directed to David in terms of the care and services he received under the Admission Agreement which also contained the waiver of jury trial clauses.

Also, more recently, the South Carolina Court of Appeals addressed the equitable estoppel argument in Hodge v. UniHealth Post-Acute Care of Bamberg, LLC et al., 2018 WL 1177630 (Ct.App. 2018). Again, like the facts of Coleman and Thompson, the admission agreement and arbitration agreement were separate agreements which the court found did not merge. The court in Hodge then stated that even if the agreements were merged, because the family was not suing for breach of the admission agreement, they were not attempting to enforce the admission agreement. This last point was mere dictum and is not binding authority. Hodge at *8.

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Here again, cases addressing third-party beneficiaries in the arbitration context are instructive on waiver of jury trial provisions as well. *See* Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008.) (holding that a non-signatory, deceased mother, was an intended third-party beneficiary of a nursing home admission agreement that included an arbitration provision; and the arbitration provisions were enforceable against her daughter, who signed the admission agreement, since it was evident that the admissions agreement clearly was intended to provide benefits to her mother as a resident of the facility; accordingly the court held that mother was a third-party beneficiary of the contract; therefore, plaintiff was bound to arbitrate any claims within the scope of the arbitration provision).

The court in Wiggins also addressed this same issue. It noted under South Carolina law, a third-party beneficiary is someone the contracting parties intended to directly benefit. As explained above, although Hall did not sign the admission agreement, he was named as the resident to be admitted to Magnolia Manor. The admission agreement referred to benefits and responsibilities of Hall, Magnolia Manor and the fiduciary, and Hall's care was the essential purpose of the admission agreement. The court held that Hall was the intended third-party beneficiary of the admission agreement signed by Wiggins in her capacity as an immediate family member, and that Hall and his estate were bound to the arbitration clause in the admission agreement. Id. at *6.

It follows that David, his estate and those claiming through him are bound to the waiver of jury trial provision as a result of his status as a third-party beneficiary under the Admission Agreements.

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**d. Dorothy and Margaret Possessed Statutory Authority to Bind David under the Arbitration Agreement under the S.C. Adult Health Care Consent Act.**

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes "the placement in or removal from a facility that provides these forms of care." Id.

Dorothy, both as Guardian and as an adult sibling, and Margaret, as an adult sibling, were entitled to consent to health care on behalf of David pursuant to the AHCCA.[3] S.C. Code Ann. § 44-66-30(A)(1) and (7).

David was unable to make health care decisions on his own behalf as evidenced by the medical records attached hereto as Exhibit A. As noted by his physician immediately prior to his initial admission to Bayview, he was in a vegetative state. In fact, from the time of his initial hospitalization until he died several months later, he never regained consciousness. (Deposition of Dorothy Olenja, pp. 70-71.)

The AHCCA empowered Dorothy and Margaret to sign the Admission Agreements on behalf of David, and all the provisions of that contract, including the waiver of jury trial, are therefore enforceable.

**CONCLUSION**

For the foregoing reasons, Defendants respectfully request that its Motion for Nonjury Trial be granted, and that this Court issue an Order accordingly.

[3] David had four siblings at the time of his admission to Bayview – Joseph Holmes, Alexander Holmes, Dorothy and Margaret. He was never married and had no children. His parents were deceased. (Deposition of Dorothy Olenja, pp. 18, 43; Deposition of Margaret Holmes, pp. 20-21.)

HOLCOMBE BOMAR, P.A.

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Attorneys for Defendants

April 23, 2018

Spartanburg, South Carolina

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Mt Pleasant Hospital
Discharge Summary
ADMISSION: 10/13/2014
DISCHARGE: 12/02/2014
Patient DOB: [redacted]

HOLMES, DAVID [redacted]
Jason D Huet MD


DATE OF ADMISSION: 10/13/2014

DATE OF DISCHARGE: 12/01/2014

REASON FOR ADMISSION: David Holmes is a 65-year-old African-American male with a history of bipolar disorder, schizophrenia, chronic tobacco abuse who presented to the Emergency Room on the day of admission with cardiopulmonary arrest after having a witnessed choking episode. The patient was found in pulseless electrical activity arrest by EMS. CPR was provided. Upon arrival to the hospital, the patient regained a pulse and hemodynamic stability and was intubated and placed on mechanical ventilator. Please see the history and physical dictated from 10/13/2014 for further details.

HOSPITAL COURSE:
1. Hypoxic ischemic encephalopathy/vegetative state. The patient suffered an insult to his brain during his cardiac arrest. The patient had a CT scan on the day of admission of his head which showed no acute intracranial abnormality. The patient did have a nasal fracture. He subsequently received another head CT on 11/01/2014 which showed atrophic changes but no acute intracranial abnormality. He received 2 EEG studies while inpatient here, first one on 10/13/2014, which showed no evidence of underlying seizure activity, but it was difficult to determine with certainty; however, there is very low voltage and brain wave activity. Repeat EEG was performed on 11/01/2014 which showed abnormal EEG because of prominent amplitude depression and slowing of the background rhythm. These findings were indicative of diffuse cerebral dysfunction consistent with hypoxic encephalopathy. There was no evidence of seizures. During the majority of this patient's hospitalization, his vegetative state has been persistent. He does open his eyes spontaneously and look around. He does not follow any commands or tract you. His cranial nerve reflexes intact and moves all 4 extremities to noxious stimuli and spontaneously but none to command. The patient had post-arrest myoclonic jerking issues. Due to this, he was continued on his home Klonopin and Depakote which were initially treating his psychiatric disorder; however, I kept these as they are beneficial in myoclonic jerking treatment. The myoclonic jerking had ceased and the patient's Depakote and Klonopin have been slowly weaned. Currently, he is on a very low-dose of both and consideration of further weaning may be appropriate in the near future. Would likely wean Depakote first and continue the Klonopin as is for now.

2. Schizophrenia/bipolar disorder. The patient's antipsychotic medications were held at the time of his admission due to the hypoxic ischemic encephalopathy. He has not required reinitiation of any medications from a psychiatric standpoint. He does not require any p.r.n. sedatives. He requires very infrequent pain medication.

3. Cardiac arrest. The patient had a cardiac arrest due to asphyxiation from preceding respiratory arrest. Echocardiogram performed on 10/14/2014 showed a normal left ventricular function with some impaired left ventricular relaxation consistent with mild diastolic dysfunction. His right ventricle was within normal limits. There was no tricuspid regurgitation. No aortic valve disease. The patient did not have any signs of acute coronary syndrome. He had no further issues with arrhythmia or cardiac arrest during his hospitalization after appropriate resuscitation in the field and in the Emergency Room.

4. Acute respiratory failure. This was due to respiratory arrest due to 6 East from choking. The patient's airway was cleared and he was initially intubated upon arrival to the Emergency Room. Due to his significant brain injury it was opted for early tracheostomy. This was performed by our ENT surgeons on 10/17/2014 and a percutaneous tracheostomy fashion then the ICU at the bedside. The patient tolerated the procedure well. He has been left with a #6 cuffed Shiley since this time. No issues with any tracheal malfunction. The patient subsequently was weaned from mechanical ventilator and has been on humidified room air through a Trach collar for approximately the last 2 weeks. Would continue with trach due to the patient's brain injury and airway protection necessity. The patient has received albuterol treatments as well due to his history of smoking; however, there has not been any significant wheezing or evidence of bronchoconstriction. Consideration of weaning these could be made in the future.

5. Constipation. The patient initially had evidence of constipation requiring daily MiraLax and Colace b.i.d. His constipation subsequently resolved and these medications were held due to watery loose stools. His stool improved with holding of his bowel regimen. Currently, he is not on any scheduled bowel regimen and is doing well without any evidence of diarrhea or constipation.

6. Acute kidney injury. The patient had mild acute kidney injury. Upon presentation due to his cardiac arrest. This resolved with proper resuscitation and IV fluids. His creatinine has remained normal throughout the remainder of his hospitalization. He remains with a Foley catheter due to his bedridden state.

7. Sinus tachycardia. The patient has had issues with what appears to be inappropriate sinus tachycardia or possibly compensatory sinus tachycardia. The



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patient had an evaluation for obvious causes of sinus tachycardia; however, all we could find was a right upper extremity PICC associated DVT which could suggest possible pulmonary embolism. The patient did not have a pulmonary embolism study performed as it would not change his treatment at that time. The patient has been on diltiazem to control his sinus tachycardia. This has been instituted to prevent tachycardia induced morbidity of the heart. This is currently being weaned.

8. Right upper extremity PICC associated DVT. This was diagnosed on 11/20/2014. At that time, low molecular weight heparin was provided and treatment dosage and Coumadin was started. His INR has been therapeutic in his Lovenox has been stopped. His INR on the day of discharge was 2.3. It appears that 4 mg a day of Coumadin would be appropriate in the short-term. Appropriate INR monitoring at the rehab facility has been suggested.

9. Klebsiella aspiration pneumonia. Upon arrival, the patient had evidence of a right lower lobe infiltrate, most consistent with aspiration during his cardiopulmonary arrest. His right lower lobe infiltrate improved. His sputum culture showed Klebsiella. He was treated for a 10-day course of Levaquin with clinical improvement.

10. MRSA and Serratia tracheobronchitis. The patient did develop some fever and tachycardia and tachypnea with increasing purulent secretions in the beginning first week of November. Tracheal culture was obtained which showed MRSA and Serratia organisms. CT scan of the chest at that time showed what was most likely atelectasis in the left lower lobe as interpreted by the radiologist and no significant consolidation was seen. Chest x-ray at the time as well showed no infiltrate. The patient finished 8 days of vancomycin and Rocephin and has had no further issues since this time.

11. Prophylaxis. The patient was low molecular weight heparin prophylaxis during his entire hospitalization, has been transitioned to Coumadin for his DVT. SCDs were provided as well. He received physical therapy and range of motion exercises to prevent contractures. Head of bed was kept greater than 30 degrees for aspiration precautions.

12. Fluids, electrolytes and nutrition. The patient has been on Jevity 1.2 at 60 mL per hour with free water flushes at 150 q.4 hours. He is also receiving Boost twice a day through his PEG along with Pro-Stat daily as well. His PEG tube was placed by gastroenterology on 10/18/2014. There have been no issues with the functioning of his PEG tube. His last prealbumin was obtained on 11/05/2014 which showed a level of 21.5, which is within normal limits. A registered dietitian followed along during his hospitalization.

13. Goals of care. The patient was a full code during his hospitalization.



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His family has continued to wish to proceed with a full code status as well. The patient when initially admitted, had a healthcare power of attorney who was the owner and manager of the long-term facility that he resided at for about 8 years. This was not known by the family nor the medical staff initially. His healthcare power of attorney did state that he would not want life prolonging measures in a persistent state of unconsciousness nor would he want artificial nutrition. This healthcare power of attorney was challenged by his family, most notably his sisters. They stated that he was not competent due to his psychiatric disorders to designate a healthcare power of attorney or make such decisions. This healthcare power of attorney was challenged in court. A local judge suspended the healthcare power of attorney and made his sister, Dorothy the temporary guardian and therefore, decision maker for his healthcare issues. Aggressive care was continued. The patient's disposition has been significantly delayed during his hospitalization due to the fact he has had legal situation as previously described based on his healthcare power of attorney and guardianship. His disposition has also been significantly prolonged due to the fact that his insurance would not pay for several facilities and that several facilities were requested by the family closer to their home; however, those were not able to be provided at appropriate times.

CONDITION ON DISCHARGE: On the day of discharge, the patient had stable vital signs and was on room air through humidified trach collar. He had adequate bowel and bladder function. A Foley catheter was in place along with a functioning PEG tube and tracheostomy tube. The patient is tolerating his feeds.

DISCHARGE FOLLOWUP: The patient's care will be transitioned to the physician in charge of his care at his facility. Would recommend continuing close monitoring of his PT/INR and adjustment of his Coumadin for goal INR of 2-3. Would suggest at the very minimum 3 months of Coumadin and if patient tolerates without actually suggests 6 months to treat empirically for possible concomitant pulmonary embolism. The patient's PICC line has been left in place as it is functioning and did not need to be removed per guidelines.

DISCHARGE MEDICATIONS: Please see electronic medical record for a list of the discharge medications.

DISCHARGE DIAGNOSES:
1. Hypoxic ischemic encephalopathy.



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2. Vegetative state.
3. Schizophrenia/bipolar disorder.
4. Cardiac arrest.
5. Respiratory arrest.
6. Acute respiratory failure.
7. Constipation.
8. Acute kidney injury, resolved.
9. Right upper extremity PICC associated DVT.
10. Supraventricular tachycardia/sinus tachycardia.
11. Klebsiella aspiration pneumonia.
12. MRSA and Serratia tracheobronchitis.
13. Debilitation.

I spent greater than 40 minutes of time facilitating this patient's discharge process.

Jason D Huet, MD
TR: pn DD: 12/01/2014 12:48 TD: 12/01/2014 13:26 Job#: 347143
DOC#: 449998

Authenticated by Jason D. Huet, MD On 12/02/2014 11:15:42 AM

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| **STATE OF SOUTH CAROLINA** ) | |
| ) | **IN THE COURT OF COMMON PLEAS** |
| **COUNTY OF BEAUFORT** ) | |
| | **Case No.: 2017-CP-07-02636** |
| **Joseph Holmes as Personal Representative of the Estate of David Holmes,** ) | |
| **Plaintiff,** ) | **AFFIDAVIT OF CHRISTY DRINKARD** |
| **v.** ) | |
| **Bayview Manor, LLC d/b/a Bayview Manor; Epic Group, LP; and Epic General, LLC,** ) | |
| **Defendants.** ) | |

PERSONALLY APPEARED before me Christy Drinkard, who being sworn, deposes and says as follows:

1. I am an adult over the age of eighteen years. I submit this affidavit in connection with Bayview Manor, LLC d/b/a Bayview Manor, Epic Group, LP and Epic General, LLC's ("Defendants") Motion for Non-Jury Trial in the above-captioned action. I am fully competent to make this declaration based upon my personal knowledge and knowledge obtained through review of documents. If called to testify, I would state as follows.

2. I am the Administrator of Bayview Manor, LLC ("Bayview Manor"). In this role, I am required to have knowledge about the business operations of Bayview Manor. Bayview Manor is and was the licensed owner and operator of the nursing facility known as Bayview Manor in Beaufort, South Carolina where David Holmes ("Mr. Holmes") resided.

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3. I have been provided with an Order Appointing Temporary Guardian in which Dorothy Olenja was appointed as guardian for Mr. Holmes on October 27, 2014. A copy of that Order is attached hereto as Exhibit A.

3. On December 2, 2014, the day of Mr. Holmes' initial admission to Bayview Manor, Mr. Holmes, through his sister and guardian, Dorothy Olenja, entered into an Admission Agreement which contained a waiver of jury trial provision (a true and accurate copy of which is attached as Exhibit B). Mr. Holmes was discharged from the facility on December 23, 2015, and later was readmitted to Bayview Manor on February 17, 2015. At the time of his readmission, Mr. Holmes, through his sister and responsible party, Margaret Holmes, entered into another Admission Agreement which again contained a waiver of jury trial provision (a true and accurate copy of which is attached as Exhibit C). These documents were all part of the admissions package and were kept in the course of a regularly conducted business activity, and it was the regular practice of Bayview Manor to have these documents executed at the time of a resident's admission to the facility.

4. The Admission Director for Bayview Manor at the time of Mr. Holmes' admission was Rebecca Jensen. She is no longer an employee of Bayview Manor.

5. Part of her role as Admissions Director was to meet with incoming residents or their families to explain the admissions process, the admissions paperwork, and oversee the execution of the Admission Agreement and other admissions paperwork. Rebecca Jensen executed the documents attached hereto on behalf of Bayview Manor, and she was authorized to do so in her position as Admission Director for Bayview Manor.

{signature appears on the following page}

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FURTHER DEPONENT SAYETH NOT.

Christy Drinkard

SWORN to and subscribed before me this 21 day of March, 2018.

Trista Hodge (SEAL)
Notary Public for South Carolina

My Commission Expires: September 4, 2023

TRISTA HODGE
Notary Public, State of South Carolina
My Commission Expires Sept. 4, 2023

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| STATE OF SOUTH CAROLINA<br>COUNTY OF CHARLESTON | IN THE PROBATE COURT<br>CASE NO.: 2014-GC-10-169 |
| DOROTHY OLENJA,<br><br>Petitioner,<br><br>vs.<br><br>BENJAMIN BOWLES and ROPER ST. FRANCIS MOUNT PLEASANT HOSPITAL,<br><br>Respondents.<br><br>IN RE:<br><br>DAVID HOLMES, a person alleged to be incapable of caring for or managing his own estate. | **ORDER APPOINTING TEMPORARY GUARDIAN** |

THIS MATTER came before the Court upon the Emergency *Ex Parte* Petition for Appointment of Temporary Guardian filed on October 27, 2014, by the Petitioner, Dorothy Olenja, ~~and was heard before this Court on October _____, 2014.~~ Present at the hearing were the petitioner, Dorothy Olenja, and her attorney, Veronica G. Small.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. David Holmes, is a 65 years old resident of Charleston County, South Carolina, alleged to be an incapacitated person, as defined by South Carolina law.

2. Petitioner is the sister of the alleged capacitated person, David Holmes.

3. Respondent, Benjamin Bowles, is the care giver and operation of the assistant living facility where the alleged incapacitated resides.

4. Venue and jurisdiction are properly in this Court, in accordance with applicable statutes.



Plaintiffs' Production of Docs 0020

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5. David Holmes is believed to have suffered some brain damage as a result of a choking incident at his residence, Bowles Community Care Home, McClellanville, South Carolina. David Holmes is currently on a respirator at the Roper St. Francis Mount Pleasant Hospital, 3500 Highway 17 North, Mt. Pleasant, South Carolina 29466.

6. Petitioner has been informed that the treating physician for Respondent Hospital intends to remove Petitioner from all life sustaining equipment pursuant to a Health Care Power of Attorney purported knowingly executed by David Holmes on March 27, 2011, unless an order is issued by the appropriate court prohibiting him from doing so. Petitioner is informed and believes that David Holmes, a mentally deficient person since on or before 2006, could not have and did not knowingly understand the document signed and did not willingly consent to deny himself life sustaining medical treatment.

7. No guardian has been appointed for Mr. Holmes.

8. It is essential to the welfare of Ms. Holmes that a temporary guardian be appointed to care for him, or provide for his care, until a full hearing can be held on the matter of a permanent guardianship.

9. Petitioner is further informed and believes that this Court should issue its order enjoining and restraining Respondent Roper St. Francis Mount Pleasant Hospital from withholding any and all life sustaining treatment prior to a hearing on the merits, and thereby requiring the hospital to provide Mr. Holmes all of the medical care required for his present medical condition.

10. All parties ~~to this matter have been given sufficient notice of these proceedings and this hearing.~~ will be served with a copy of this Order.



Plaintiffs' Production of Docs 0021

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**NOW THEREFORE**, based on the foregoing, it is hereby

**ORDERED, ADJUDGED AND DECREED**, as follows:

1. David Homes is adjudged to be an incapacitated person, as defined by §62-5-101(1) of the South Carolina Probate Code, and his immediate welfare requires the appointment of a temporary guardian.

2. Dorothy Olenja is hereby appointed as temporary guardian for Mr. Holmes with the right to care and custody of Mr. Holmes and with all the authority of a permanent guardian, as set out in South Carolina Probate Code §62-5-310(E).

3. Respondent Roper St. Francis Mount Pleasant Hospital is hereby restrained and enjoined from withholding any and all life sustaining treatment prior to a hearing on the merits, thereby providing the necessary medical care required for Mr. Holmes.

3. All interested persons shall be benefit of this appointment of temporary guardian and the upcoming ~~permanency~~ review hearing as soon as the Court docket allows.

**AND IT IS SO ORDERED** this 27th day of October, 2014 at Charleston, South Carolina.

PROBATE JUDGE
Charleston County Probate Court

CERTIFIED TRUE COPY
CLERK OF PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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David Holmes

Admit Date 12/02/2014

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party.

The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

Admission and Consent to Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

Non-Discrimination Statement: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

Hospital Transfers: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

**Hospitalization:** If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

**Hospital Services:** The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

**Refuse Treatment:** The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

**Room Transfers:** The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

**Discharge Arrangements:** If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

**Right to Leave Facility/Duration of Agreement:** The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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David Holmes Admit Date 12/02/2014

Resident agrees to pay accrued charges up to and including the day of **discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.**

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

*Diagnostic Consultant and Therapeutic Services: The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters: The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

*Ambulance and Transportation Services: The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

*Medical Supplies: The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

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David Holmes

Admit Date 12/02/2014

*Pharmacy Services: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

Personal Items and Services: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

Payment: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

Interest and Attorney's Fees: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

Assignment of Benefits: The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.
(Signature required on Authorization for Assignments of Benefits)

Failure of Others to Pay: If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

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**Discontinuance of Medicaid**: If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid**: If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill**: The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills**: The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone**: Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, IPods, radio, hearing aids, eyeglasses or dentures/partials(including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall N/A

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person.

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or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability**: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations**: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives**: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance**: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**
11 Todd Drive
Beaufort SC 29902

**Resident:**

Governing Law: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

Venue: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

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David Holmes

Admit Date 12/02/2014

**Waiver of Jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

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David Holmes

Admit Date 12/02/2014

Guarantee: By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

Acknowledgement: **By signing this Agreement, the Resident acknowledges:** That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

Entire Agreement: This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter; Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

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David Holmes

Admit Date 12/02/2014

**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause** X **initial.**

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Jensen 12/02/14

Signature of Facility Representative — Date

**David Holmes**

Signature of Patient/Resident — Date

Witness — Date

Witness — Date

Responsible Party — Date

Signature of Responsible Party — 12-2-14 — Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

*If the Resident signs with an "X" there must be two (2) witnesses.*

EXHIBIT C - Affidavit of Christy Drinkard

David Holmes

Admit Date 02/17/2015

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party.

The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

Admission and Consent to Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

Non-Discrimination Statement: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

Hospital Transfers: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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David Holmes

Admit Date 02/17/2015

Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

Hospitalization: If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

Hospital Services: The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

Refuse Treatment: The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

Room Transfers: The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

Discharge Arrangements: If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

Right to Leave Facility/Duration of Agreement: The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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EXHIBIT C - Affidavit of Christy Drinkard

David Holmes

Admit Date 02/17/2015

Resident agrees to pay accrued charges up to and including the day of discharge. **Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.**

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

*Diagnostic Consultant and Therapeutic Services: The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters: The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

*Ambulance and Transportation Services: The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

*Medical Supplies: The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

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David Holmes

Admit Date 02/17/2015

*Pharmacy Services: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

Personal Items and Services: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

Payment: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

Interest and Attorney's Fees: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

Assignment of Benefits: The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.
(Signature required on Authorization for Assignments of Benefits)

Failure of Others to Pay: If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

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David Holmes

Admit Date 02/17/2015

**Discontinuance of Medicaid:** If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid:** If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill:** The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills:** The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone:** Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, IPods, radio, hearing aids, eyeglasses or dentures/partials(including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person.

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or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability**: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations**: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives**: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance**: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**
11 Todd Drive
Beaufort SC 29902

**Resident:**

**Governing Law**: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina.

**Venue**: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

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David Holmes

Admit Date 02/17/2015

**Waiver of Jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

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EXHIBIT C - Affidavit of Christy Drinkard

David Holmes

Admit Date 02/17/2015

**Guarantee:** By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

**Acknowledgement: By signing this Agreement, the Resident acknowledges:** That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits..

**Entire Agreement:** This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter; Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

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EXHIBIT C - Affidavit of Christy Drinkard

David Holmes

Admit Date 02/17/2015

**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause** X MH initial.

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Johnson 2/17/15

Signature of Facility Representative Date

David Holmes

Signature of Patient/Resident Date

Witness Date

Witness Date

Responsible Party Date

Margaret Holmes 2/17/15

Signature of Responsible Party Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*

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David Holmes

Admit Date 12/02/2014

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be. (**MC=MEDICARE**, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

Admission and Consent to Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

Non-Discrimination Statement: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

Hospital Transfers: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

Hospitalization: If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

Hospital Services: The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

Refuse Treatment: The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

Room Transfers: The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

Discharge Arrangements: If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

Right to Leave Facility/Duration of Agreement: The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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Resident agrees to pay accrued charges up to and including the day of discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the
Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

*Diagnostic Consultant and Therapeutic Services: The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters: The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

*Ambulance and Transportation Services: The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

*Medical Supplies: The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

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*Pharmacy Services: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

Personal Items and Services: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

Payment: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

Interest and Attorney's Fees: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

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(Signature required on Authorization for Assignments of Benefits)

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David Holmes Admit Date 12/02/2014

**Discontinuance of Medicaid**: If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid**: If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill**: The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills**: The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone**: Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

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**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall N/A

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person.

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or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

Liability: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

Compliance with Facility Rules and Regulations: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

Advanced Directives: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

Liability Insurance: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

Notice: Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

Facility:
11 Todd Drive
Beaufort SC 29902

Resident:

Governing Law: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina.

Venue: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

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David Holmes Admit Date 12/02/2014

Waiver of Jury Trial: (Please read carefully)
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

Attorney's Fees: (Please read carefully)
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

Capacity: This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

Severability: The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

Assignability: (Please read carefully)
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

Withdrawal Period:
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

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David Holmes Admit Date 12/02/2014

Guarantee: By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

Entire Agreement: This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter, Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

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David Holmes

Admit Date 12/02/2014

Agreement Modifications/Changes: From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

Optional Arbitration Clause: Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause** X **initial.**

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Jensen 12/02/14

Signature of Facility Representative — Date

David Holmes

Signature of Patient/Resident — Date

Witness — Date

Witness — Date

Responsible Party — Date

Nancy Oley 12-2-14

Signature of Responsible Party — Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*

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David Holmes

Admit Date 02/17/2015

# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be. (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)

A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

Admission and Consent to Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.

The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

Non-Discrimination Statement: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.

The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

Hospital Transfers: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

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Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

Hospitalization: If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

Hospital Services: The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

Refuse Treatment: The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

Room Transfers: The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

Discharge Arrangements: If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

Right to Leave Facility/Duration of Agreement: The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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Resident agrees to pay accrued charges up to and including the day of discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.

Refunds: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

Personal Needs Account: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

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This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

Supplemental Charges: Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

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David Holmes

Admit Date 02/17/2015

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**Denial of Medicare and Medicaid**: If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill**: The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills**: The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone**: Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

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**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall

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notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

Release of Medical and Other Information: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

Patient Identification: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

Photographs/ Video Technology: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

Indemnification: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person.

Initial

or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

Liability: The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

Compliance with Facility Rules and Regulations: The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

Advanced Directives: The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

Liability Insurance: This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

Notice: Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

Facility:
11 Todd Drive
Beaufort SC 29902

Resident:

Governing Law: This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

Venue: In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

Initial



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David Holmes

Admit Date 02/17/2015

Waiver of Jury Trial: (Please read carefully)
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

Attorney's Fees: (Please read carefully)
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

Capacity: This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

Severability: The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

Assignability: (Please read carefully)
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

Withdrawal Period:
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

MH Initial

David Holmes

Admit Date 02/17/2015

Guarantee: By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and district ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits..

Entire Agreement: This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter, Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

MH Initial



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David Holmes Admit Date 02/17/2015

Agreement Modifications/Changes: From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

Optional Arbitration Clause: Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause** X ___ **initial.**

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Jensen 2/17/15

Signature of Facility Representative Date

David Holmes

Signature of Patient/Resident Date

Witness Date

Witness Date

Responsible Party Date

Margaret Holmes 2/17/15

Signature of Responsible Party Date

Responsible Party is acting as:

___ Conservator
___ Power of Attorney
___ Relative (state relationship)
___ Other: ___

Billing Address:

*If the Resident signs with an "x" there must be two (2) witnesses.*

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From: Robert Escarza MD
To: Anastopoulo Law Firm LLC
RE: Estate of David Holmes v. Bayview Nursing Home
June 14, 2017

## Affidavit of Merit

1. I, Robert Escarza, MD, am a licensed physician and am board-certified in Emergency Medicine. I am licensed to practice medicine in South Carolina and Illinois. I have been in clinical practice for nearly 17 years and have formerly served as Assistant Professor, Department of Surgery, University of Illinois College of Medicine. I have provided consultation in clinical practice and have taught in fields of Emergency Medicine and Critical Care Transport within five years of date of the acts and omissions that gave rise to this cause of action. I devote over 90% of my time to clinical practice in my specialty

2. I am an expert as defined in the South Carolina Code of Laws Section 15-36-100

3. I have reviewed provided medical records for David Holmes including admission and progress records from Bayview Nursing Home (12-2-14 to 3-29-15) and hospital records from Beaufort (SC) Memorial Hospital involving two different admissions (12-23-14 to 2-17-15 and 3-29-15 to 5-29-15) and Roper St Francis Hospital- Mt. Pleasant SC (10-13-14 to 12-2-14).

4. David Holmes was discharged from Roper St Francis Hospital to Bayview Nursing Home on 12-2-14 after a prolonged and complicated hospitalization. He had been admittedly the hospital for cardiopulmonary arrest resulting in anoxic brain injury and persistent vegetative state. Upon discharge from the hospital, documentation shows no evidence of skin findings secondary to prolonged immobilization. Upon admission to the nursing home, Bayview records have no mention of skin ulcers on initial intake examination. Initial care plan stated the patient was at risk for developing pressure ulcers due to incontinence and immobility. This initial care plan also stated that "resident's skin will remain intact" and the plan was to "monitor for incontinence episodes, follow facility skin care protocol (not provided in record) and turn (patient) every 2 hours and as needed." Exam

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documentation two weeks later (12-16-14) specifically documented "no ulcers." Mr. Holmes was admitted to Beaufort Memorial Hospital for the first time on 12-23-14 with a diagnosis of sepsis potentially related to multiple pressure ulcers of the skin resulting in secondary systemic inflammatory syndrome. Upon admission to the hospital, he was documented to have 25 pressure ulcers of various depth and size. Bayview documentation from the day of first admission to BMH shows the first mention of pressure ulcers, with 3 ulcers documented. Mr. Holmes was again hospitalized for a prolonged period related to a complicated medical course and difficulty with long-term placement. He was discharged back to Bayview on 2-17-15. Documentation from this point reflects ongoing and more diligent skin care. Mr. Holmes was re-admitted to BMH on 3-29-15 related to sepsis secondary to an infected pressure ulcer. He again underwent prolonged hospitalization until his ultimate demise due to overwhelming sepsis on 5-29-15.

5. Based on my review of the above records, it is my opinion that, within a reasonable degree of medical probability, that appropriate appropriate skin care protocols were not adhered to during at least the first two weeks after admission to Bayview. Mr. Holmes subsequently developed multiple pressure ulcers which likely resulted in severe secondary infection, two subsequent admissions to Beaufort Memorial Hospital related to these infected ulcers and his subsequent demise. Therefore, reasonable grounds exist to initiate a medical negligence claim against Bayview Nursing Home.

6. Based on my opinion, Bayview Nursing Home through its supervising providers, nursing staff and nursing assistants, fell below the standard of care in failing to provide adequate skin care for a patient at significant risk for development of pressure ulcers. As a result, Mr. Holmes experienced significant complications related to infection of these pressure ulcers requiring two different prolonged hospitalizations, with the second episode of overwhelming sepsis eventually leading to his death on 5-29-15.

7. My opinion has never been disqualified in any court.

8. I have no conflicts of interest with the plaintiff or Bowles Residential Care Facility.

9. I certify that I have not been found guilty of fraud or perjury in any jurisdiction.

10. This affidavit is based on documentation provided and does not form the whole of my medical opinion. I reserve the right to amend this information in the event that further information is provided.

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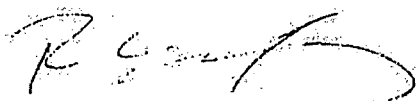
11. Under penalties of perjury, I certify that I have read the foregoing and that the facts stated in it are true.



Robert Escarza MD

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| STATE OF SOUTH CAROLINA ) | IN THE PROBATE COURT |
| ) | CASE NO.: 2014-GC-10-169 |
| COUNTY OF CHARLESTON ) | |
| DOROTHY OLENJA, ) | |
| Petitioner, ) | |
| vs. ) | |
| BENJAMIN BOWLES and ROPER ST. FRANCIS MOUNT PLEASANT HOSPITAL, ) | **ORDER APPOINTING TEMPORARY GUARDIAN** |
| Respondents. ) | |
| IN RE: ) | |
| DAVID HOLMES, a person alleged to be incapable of caring for or managing his own estate. ) | |

**THIS MATTER** came before the Court upon the Emergency *Ex Parte* Petition for Appointment of Temporary Guardian filed on October 27, 2014, by the Petitioner, Dorothy Olenja, ~~and was heard before this Court on October _____, 2014.~~ Present at the hearing were the petitioner, Dorothy Olenja, and her attorney, Veronica G. Small.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. David Holmes, is a 65 years old resident of Charleston County, South Carolina, alleged to be an incapacitated person, as defined by South Carolina law.

2. Petitioner is the sister of the alleged capacitated person, David Holmes.

3. Respondent, Benjamin Bowles, is the care giver and operation of the assistant living facility where the alleged incapacitated resides.

4. Venue and jurisdiction are properly in this Court, in accordance with applicable statutes.

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5. David Holmes is believed to have suffered some brain damage as a result of a choking incident at his residence, Bowles Community Care Home, McClellanville, South Carolina. David Holmes is currently on a respirator at the Roper St. Francis Mount Pleasant Hospital, 3500 Highway 17 North, Mt. Pleasant, South Carolina 29466.

6. Petitioner has been informed that the treating physician for Respondent Hospital intends to remove Petitioner from all life sustaining equipment pursuant to a Health Care Power of Attorney purported knowingly executed by David Holmes on March 27, 2011, unless an order is issued by the appropriate court prohibiting him from doing so. Petitioner is informed and believes that David Holmes, a mentally deficient person since on or before 2006, could not have and did not knowingly understand the document signed and did not willingly consent to deny himself life sustaining medical treatment.

7. No guardian has been appointed for Mr. Holmes.

8. It is essential to the welfare of Ms. Holmes that a temporary guardian be appointed to care for him, or provide for his care, until a full hearing can be held on the matter of a permanent guardianship.

9. Petitioner is further informed and believes that this Court should issue its order enjoining and restraining Respondent Roper St. Francis Mount Pleasant Hospital from withholding any and all life sustaining treatment prior to a hearing on the merits, and thereby requiring the hospital to provide Mr. Holmes all of the medical care required for his present medical condition.

10. All parties to this matter have been given sufficient notice of these proceedings and this hearing.

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**NOW THEREFORE,** based on the foregoing, it is hereby

**ORDERED, ADJUDGED AND DECREED,** as follows:

1. David Holmes is adjudged to be an incapacitated person, as defined by §62-5-101(1) of the South Carolina Probate Code, and his immediate welfare requires the appointment of a temporary guardian.

2. Dorothy Olenja is hereby appointed as temporary guardian for Mr. Holmes with the right to care and custody of Mr. Holmes and with all the authority of a permanent guardian, as set out in South Carolina Probate Code §62-5-310(E).

3. Respondent Roper St. Francis Mount Pleasant Hospital is hereby restrained and enjoined from withholding any and all life sustaining treatment prior to a hearing on the merits, thereby providing the necessary medical care required for Mr. Holmes.

3. All interested persons shall be benefit of this appointment of temporary guardian and the upcoming permanency hearing as soon as the Court docket allows.

**AND IT IS SO ORDERED** this 27th day of October, 2014 at Charleston, South Carolina.

PROBATE JUDGE
Charleston County Probate Court

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| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF BEAUFORT ) | IN THE COURT OF COMMON PLEAS<br><br>C.A. NO. 2017-CP-07-02636 |
| JOSEPH HOLMES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID HOLMES,<br><br>PLAINTIFF,<br><br>VS.<br><br>BAYVIEW MANOR, LLC D/B/A BAYVIEW MANOR, EPIC GROUP, LP, AND EPIC GENERAL, LLC,<br><br>DEFENDANTS. | DEPOSITION<br><br>OF<br><br>DOROTHY OLENJA |

THE DEPOSITION OF DOROTHY OLENJA, TAKEN BEFORE JILL BISHOP EDWARDS, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 11:28 A.M., FRIDAY, THE 2ND DAY OF MARCH, 2018, AT THE LAW OFFICES OF ANASTAPOULO LAW FIRM, LLC, 418 RIVER STREET, GREENVILLE, SOUTH CAROLINA.

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then my sister was born.

Q All right. Do me a favor. Start at the oldest and work to the youngest.

A Okay. Frank Holmes, Jr., John Rogers Holmes, David Holmes, Joseph Holmes, Alexander Holmes, and Margaret Holmes.

Q Is Frank Holmes still alive?

A No, he passed away.

Q When did he die?

A In 1995.

Q How about John R.?

A John passed away in 2008.

Q Okay. And then that just leaves the remaining four of you?

A Yes.

Q Of course, obviously, Mr. Holmes has died.

A Yeah, David. Yeah, May 29th.

Q Oh, yeah. And you didn't mention yourself. Where do you fit in there?

A I'm after -- wait a minute. I'm after David.

Q Okay. I was counting and I noticed that somebody was missing.

Okay. So the only remaining siblings are you, Joseph, Alexander and Margaret?

A Yes.

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So that's the role they were playing, you know, in David's life and tried to give him different placements and tried to, you know, get him places that he would -- but he had a mind of his own. And he just was not -- he wouldn't comply to basically that medication that would have helped him to be more balanced. He just would not take it. He just didn't want to.

Q Who was more -- it sounds like Margaret was more involved through these years in his care than you were.

A My mother, until she -- my mother passed away.

Q And then Margaret?

A Yeah.

Q Okay.

A Mother was there. Mother was there until she passed away.

Q Was David ever married?

A No.

Q Did he ever have any children?

A No.

Q You mentioned something about the Air Force. What was his Air Force background?

A That's it. David went to -- said he wanted to sign up for the Air Force. Of course, he passed the test.

Q He did not?

A He did.

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Q And that was withdrawn.
A Yes.
Q But they kept the trach tube?
A Yes, they did because you must supply him food to get into his body. He can't chew. He can't -- you know, so you had to have that in order to make sure.
Q Were they feeding him through his trach tube or through a stomach tube?
A Now, that, I dare not answer because I'm not quite sure.
Q Okay. Fair enough.
A I'm not quite sure.
Q But they did have some ---
A I think there was something, but I'm not sure, so I'm not going to give a precise answer.
Q But he obviously had ---
A Yeah, the food was ---
Q He couldn't chew?
A Yeah, that's right. So, obviously, you know, he couldn't do any of that on his own. The trach is to help with the breathing and that sort of thing. So...
Q Was he ever able to -- while at Mt. Pleasant hospital, was he ever able to communicate with you in any way?
A No.
Q From that point until he died, was he ever able to

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communicate in any way?
A. No.
Q. Was he unconscious that entire time?
A. Yes. Well, I mean, they would -- they -- the movements were not -- like, it might have been something like his eyes, but his eyes were open but not really seeing. You know?
Q. I understand what you're saying.
A. Yeah, it was -- yeah, David never gained consciousness.
Q. Did the doctor at Mt. Pleasant ever talk with you about the amount of brain damage from the lack of oxygen?
A. Well, it was to the point of him not being able to, you know, gain the -- but at some point, I can't even give you -- so much was going on at the time. I just kept with the basics that he's still unconscious. You know what I'm saying? There had been no change in that. I can't give you numbers, and I'm sure it was done. I'm sure we even probably discussed it. But I'll be quite frank with you. I was just dealing with -- and in a layperson's term, he's still not able to communicate with me, talk with me or respond, you know, in a way that I would want him to respond, or at all. So that's in my lay terms of not being medically inclined in terms of technical terms, okay?
Q. That's fine. Yeah, that's fine.

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-- and I just want to go over a couple documents that were signed at admission. Either signed or were not signed, rather, I should say.

A Oh. Okay. Okay.

Q Go ahead.

A I didn't have that with me because I didn't have copies of that.

Q All right. The first thing I'm going to hand you is the admission agreement, and we'll mark this as Exhibit Number 5.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 5, ADMISSION AGREEMENT, ATTACHED.)

BY MR. WHITE:

Q And this is the admission agreement from his December 2, 2014, admission. So this is directly from Mt. Pleasant hospital. And let me ask you first -- and you can flip through -- and believe me, we're not going to read through the entire thing. But as you flip through the pages, are those your initials on each page?

A Yes.

Q Okay. So let me talk to you in general for a second about the admissions process. Do you recall -- and we know that your brother came over there on December 2, 2014. Did you go through this process on the same day he was transferred, or did you do it before then? And

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actually, I can probably answer my own question.

A Let me think. Yes, please.

Q It's dated the same day.

A Yeah.

Q So it must have been the same day.

A Yeah. When he -- yeah, we had to. Yes.

Q What do you remember about -- and I will tell you there are other admission documents that were signed. This is not it. There's a larger package that was signed. As you went through the admissions agreement, did Ms. Jensen walk you through this and explain it? Did you read it, or was it something that you just turned to the back page and signed?

A Well, I read as much as possible. You know, sometimes I'm skimming through. But, so, I read through the facilities, the Medicaid, the care and all those sorts of things, the laundry, personal, that sort of thing that ---

Q Okay. Now, at the very -- on the last page of this agreement, there is something called optional arbitration clause. Do you see that?

A Yes.

Q Okay. And so it talks in terms of -- and you can read this to yourself. That's fine. I'll give you time to do that. But it talks in terms of the sorts of

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some Bates stamp numbers. Go to page nine. This is the Bates stamp nine. So right there (indicating). Go to number nine, please.

A (Complying.)

Q Okay. At the top of that, there is a provision called waiver of jury trial. And it says -- and I'll just read this into the record. It says, "Resident hereby knowingly, voluntarily and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which resident may assert, arising from or relating to this agreement, or any other document connected with this agreement, or arising out of or relating to any of the documents or any relationship between the facility and the resident, including the resident's admission itself or any other course of conduct, course of dealing, statements, whether verbal or written, or actions of the facility or resident. Resident represents and warrants that this waiver contained in this paragraph has been freely and voluntarily made after reviewing the same or having had an opportunity to review the same with counsel of resident's choice."

So, first of all, did I read that accurately?

A Well, that's what it's saying, yes.

Q Okay. So, secondly, do you recall having any

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discussion with Ms. Jensen about this waiver of jury trial?

A We never -- that's interesting. We never had a discussion -- we were going through a bunch of paperwork. David just came from Charleston and we were just trying to get this paperwork done, that I would waive a jury -- well, no. I don't remember having a discussion, but I was supposed to read through things, and maybe obviously I was reading -- reading, just reading through and skimming through and trying to deal with the situation with my brother at the time. Because this is a waiver of jury trial and this is arbitration. So what you're saying, according to this paper, but you asked me the question, though, did you not, what did I knowingly -- I would never -- well, then I have to take responsibility for that. But this is what this is saying, waiver of jury trial.

Q Right. That doesn't mean you don't get to go to court.

A I know that.

Q That just means that a judge decides instead of a jury.

A Exactly. A judge.

Q So is this what you agreed to?

A Well, my signature is here. That's not forged. So the woman didn't forge my signature, so I'm going to have to -- but I must say, I was rushing through, obviously,

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a lot of this. I was.

Q But you initialed the page.

A Right.

Q And you were telling me earlier you were skimming through and reading it.

A Well, I initialed the page, but whatever it is.

Q Okay.

A I'm not going to say she forged it, if that's what you're asking. No, she did not. This is how my signature looks.

Q Okay.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 6, ARBITRATION AGREEMENT, ATTACHED.)

BY MR. WHITE:

Q Let me hand you next Exhibit Number 6.

A But I ---

Q I'll hand you next Exhibit Number 6. And this is just a -- this was an arbitration agreement, a separate one. And on the second page, you've put an X where resident and representative's signature would have gone. So, by putting the X, were you, again, saying that you were not going to agree to arbitration?

A Why is an X there?

Q Well, I don't know. You were filling out the paperwork, so I don't know. Is that ---

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|---|---|
| STATE OF SOUTH CAROLINA )<br>)<br>COUNTY OF BEAUFORT ) | IN THE COURT OF COMMON PLEAS<br><br>C.A. NO. 2017-CP-07-02636 |
| JOSEPH HOLMES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID HOLMES,<br><br>PLAINTIFF,<br><br>VS.<br><br>BAYVIEW MANOR, LLC D/B/A BAYVIEW MANOR, EPIC GROUP, LP, AND EPIC GENERAL, LLC,<br><br>DEFENDANTS. | DEPOSITION<br><br>OF<br><br>MARGARET HOLMES |

THE DEPOSITION OF MARGARET HOLMES, TAKEN BEFORE JILL BISHOP EDWARDS, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:03 A.M., FRIDAY, THE 16TH DAY OF MARCH, 2018, AT THE LAW OFFICES OF MCDOUGALL LAW FIRM, 115 LADY'S ISLAND COMMONS, BEAUFORT, SOUTH CAROLINA.

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A Sometimes.
Q Okay.
A Sometimes. But sometimes my mom would go, you know. I'd be at home, but my mom would, you know, go, depending on the condition.
Q Was Beaufort always home base for him?
A As far as living here?
Q Yes, ma'am. Let me explain what I mean by that. The way you've described it, and this is the same way your sister described it. He would leave home at times and he would travel to different states, and sometimes it would be for a long time and sometimes a short term, time. But in terms of where he would ultimately gravitate back to, would that typically be Beaufort, or were there other areas in the country where he would go and stay for long periods of time?
A He would come back to Beaufort.
Q Okay. And when he would go on -- you know, when he would leave the house and he would go to these other states, would it sometimes be just weeks? Could it be months? I mean, how long would it be before you'd see him again?
A Could be months. We just never knew.
Q Now, your father, how long did he live? How old were you when he died?

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A I was -- let's see. He died -- let's see. He died in 1974. I'm sorry. Not 1974. He died in 1993.

Q Okay.

A So I was 33. I think 33 years old.

Q You were 33?

A Uh-huh.

Q Okay. So 1993.

A Uh-huh.

Q And your mom, when did she pass?

A '95.

Q Okay. How did they -- how did they handle this? Were they married all the way up until their deaths?

A No, they were not.

Q When did they get divorced?

A I believe it was '72.

Q Okay. Where did your dad live after they got divorced?

A In the same area.

Q Okay. So he stayed local?

A Yes, local.

Q In terms of as David would come back home to Beaufort, would he typically come and stay with you and your mom, or would he stay with his dad?

A My mother and I.

Q Now, when he was back in Beaufort, who was primarily taking care of his medical needs, in terms of making

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Q But at the same time, if you give him too much, that runs the risk of tube feeding getting up around his trachea and him aspirating. At that time, you understood that that was an issue.

A Right.

Q During this time that the doctors were talking with you and Dorothy about palliative care, hospice care, were y'all keeping your brother informed about that as well?

A Yes. Uh-huh.

Q What was their feeling?

A It was the same.

Q All right. Let's turn now to his return to Bayview Manor. So this is when he came back on February 17, 2015. What was his condition like at that point? Was it essentially the same as it had been the whole time, in terms of his level of consciousness?

A Yes.

Q Do you know whether he gained or lost weight while at Beaufort Memorial Hospital?

A I'm not certain.

Q Okay. Let me show you -- let me mark these.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 6, ADMISSIONS AGREEMENT, ATTACHED.)

BY MR. WHITE:

Q All right. I'm going to first hand you Exhibit Number

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6, which is an admissions agreement, and this document is dated February 17, 2015.

A Uh-huh.

Q The first thing I want you to do is just go through and just confirm for me -- you'll see your initials at the bottom of each page. I just want to confirm that those are your initials and that you signed on the last page.

A Yes.

Q All right. A person by the name of -- it looks like Rebecca Jensen was the person from the facility who sat through the admissions process with you. Do you remember Rebecca?

A Yes.

Q Walk me through how the admissions process worked. I know Dorothy did it the first time, but you did it the second time. So how does this -- how does the whole -- because I know that there are a lot of other admission documents than what we have here, but tell me how that process worked.

A Just went into the office and she told me about the process of what was before with Dorothy, and we just went through it. That was basically just explaining it and signing it. That's it.

Q How long did the admissions process take?

A It didn't take that long.

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Q Thirty minutes?
A Maybe an hour, maybe 30 minutes to an hour.
Q And this admissions agreement specifically, how much of this did you read before you initialed and signed it?
MR. FEIDLER: Objection. You can answer.
THE WITNESS: Just kind of skimmed through it.
BY MR. WHITE:
Q Did Ms. Jensen explain anything about it or did she hand it to you and just have you look at it?
A Basically, she had me to look at it, explaining some things and just had me to look at it.
Q Did she call out any particular provisions in specific ---
A Actually, I don't recall her calling them out to me.
Q Okay. Did you feel rushed through the process?
A No. We just know we needed David to -- we couldn't take him home. We couldn't bring him home with us because we actually didn't have a facility to do it, to care for him. And we knew that this was a place at the time that would do it for us.
Q Yes, ma'am. And, really, what I'm asking is when you sat down with Ms. Jensen to go through the paperwork, was she rushing you?
A No.
Q Okay. So you may not have taken it, but you had an

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opportunity to review, to read this admissions agreement? Even if you skimmed it, you had the opportunity to read it.

A Yes.

Q Is that right?

MR. FEIDLER: Objection. You can answer.

THE WITNESS: Yes.

BY MR. WHITE:

Q All right. So let me ask you about the last page of it, the signature page. Now, there's something there called an optional arbitration clause. And I'll let you look at that. And I just want to ask you if you recall seeing that, because you've got an X and an initial there.

A (Reviewing) Uh-huh.

Q Okay. Have you had a chance to read that?

A Yes.

Q All right. There is an X and an initial right at the end of that clause. Do you see that?

A Yes.

Q What was your intention there when you did that?

A Well, this clause is saying that any action is being claimed or controversy of any kind ---

Q Essentially that clause is -- and I'll tell you my reading of it.

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|---|---|
| STATE OF SOUTH CAROLINA ) | |
| ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF BEAUFORT ) | |
| | Case No.: 2017-CP-07-02636 |
| Joseph Holmes as Personal Representative ) of the Estate of David Holmes, ) | |
| Plaintiff, ) | NOTICE OF AND MOTION TO ALTER OR AMEND |
| v. ) | |
| Bayview Manor, LLC d/b/a Bayview ) Manor; Epic Group, LP; and Epic ) General, LLC, ) | |
| Defendants. ) | |

TO: STEFAN B. FEIDLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned counsel, will move to alter and/amend the Court's May 15, 2018 Order Denying Defendants' Motion for Non-Jury Trial (the "Order") pursuant to Rule 59(e), SCRCP and the applicable common law, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the presiding judge of the Court of Common Pleas for Beaufort County.

More particularly, Defendants interpret the Court's Order as deciding Defendants' Motion for Non-Jury Trial on one issue–whether the contractual waiver of jury trial provision ("the Provision") in dispute was enforceable. Out of an abundance of caution, Defendants expressly raise and seek a ruling on their remaining arguments set forth in their April 23, 2018 Memorandum in Support of Motion for Nonjury Trial. These arguments include but are not limited to Plaintiff being bound by the admission agreement and the Provision therein based on Dorothy Olenja's status as David Holmes' temporary guardian, Margaret Holmes' status as

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David Holmes' sister and responsible party, the doctrine of equitable estoppel, David Holmes' status as a third-party beneficiary, and Dorothy Olenja and Margaret Holmes' statutory authority pursuant to the South Carolina Adult Health Care Consent Act. These arguments are set forth in greater detail in Defendants' April 23, 2018 Memorandum which is incorporated herein.

Likewise, Defendants received Plaintiff's April 24, 2018 Response in Opposition to Defendants' Motion to Transfer to Non-Jury Trial the afternoon before the hearing. At the hearing, the Court instructed Defendants to submit a draft order raising all arguments in reply to Plaintiff's April 24, 2018 Response in lieu of Defendants filing a memorandum of law replying to those arguments. Defendants expressly raise and seek a ruling on their arguments set forth in the draft Order Granting Motion for Nonjury Trial, a copy of which is attached as Exhibit A. These arguments include but are not limited to the fact that Plaintiff's reliance on Medicare and Medicaid statutes is misplaced, the Provision is not unconscionable, consideration for the Provision was provided as part of the care, payment, and all other provisions of the Admission Agreement, the Provision was conspicuous and unambiguous, and all defendants are able to enforce the Provision based on the alleged liability arising out of the relationship between the Facility and Resident and the remaining defendants' willingness to participate in a non-jury trial. These arguments are set forth in greater detail in Defendants' draft Order Granting Motion for Nonjury Trial which is incorporated herein.

This motion is also supported by the pleadings, affidavits on file, deposition testimony, exhibits on file, legal memoranda which may be served and filed, and the entire record herein.

[Signature block on next page.]

HOLCOMBE BOMAR, P. A.

s/ W. McElhaney White
W. McElhaney White , SC Bar 8552
Post Office Box 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Defendants

May 23, 2018
Spartanburg, South Carolina



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# EXHIBIT A

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## Mac White

**From:** Mac White
**Sent:** Tuesday, May 1, 2018 4:59 PM
**To:** Eric Poulin; Buckner, Perry M. Law Clerk (Skyler Hutto); pbucknerJ@sccourts.org; Team Feidler
**Subject:** RE: Proposed Order - Holmes v. Bayview (2017-CP-07-02636)
**Attachments:** SKMBT_C22018050117170.pdf; Order Granting Nonjury Motion.docx

Judge Buckner:

Please find attached the Defendants' proposed order.

Thank you.

Mac

W. McElhaney White, Esq. | Holcombe Bomar, P.A.
101 W. St. John Street, Suite 200 | Spartanburg, SC 29306
Office: (864) 594-5309 | Fax: (864) 585-3844 mwhite@holcombebomar.com | www.holcombebomar.com

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**From:** Eric Poulin <eric@akimlawfirm.com>
**Sent:** Tuesday, May 1, 2018 2:19 PM
**To:** Buckner, Perry M. Law Clerk (Skyler Hutto) <PBucknerLC@sccourts.org>; pbucknerJ@sccourts.org; Mac White <MWhite@holcombebomar.com>; Team Feidler <teamfeidler@googlegroups.com>
**Subject:** Proposed Order - Holmes v. Bayview (2017-CP-07-02636)

Dear Judge Buckner, Mr. Nasrollahi, and Mac:

As instructed, please find attached a copy of Plaintiff's proposed order denying Defendants' Motion for Non Jury Trial in both .word and .pdf format.

Additionally, Mr. White stated during arguments that he believed Plaintiff was not on Medicaid during his stay at Defendants' facility. However, he has since confirmed with his people and verified with me that Plaintiff was, in fact, on Medicaid during his stay. I wanted to bring that point of clarification to the Court's attention since it is addressed in footnote 2 of the order.

Mr. White is, of course, attached to this email and may clarify this point in the event I misunderstood our phone conversation.

Should you require anything additional from me, please let me know.

Thanks,

Eric Poulin

--

Eric M. Poulin, Esq.
Director of Litigation

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF BEAUFORT | ) | IN THE COURT OF COMMON PLEAS<br><br>Case No.: 2017-CP-07-02636 |
| Joseph Holmes as Personal Representative of the Estate of David Holmes,<br><br>Plaintiff,<br><br>v.<br><br>Bayview Manor, LLC d/b/a Bayview Manor; Epic Group, LP; and Epic General, LLC,<br><br>Defendants. | ) | ORDER GRANTING MOTION FOR NONJURY TRIAL |

This matter is before the court on Defendants Bayview Manor, LLC d/b/a Bayview Manor, Epic Group, LP, and Epic General, LLC's (collectively, "Defendants") Motion for Nonjury Trial pursuant to Rules 38 and 39, SCRCP. The hearing in this matter took place on April 25, 2018 at the Beaufort County Courthouse. Present for the hearing were Eric M. Poulin as counsel for Plaintiff, and W. McElhaney White as counsel for Defendants.

The court has considered the arguments made by counsel at the hearing, as well as the written submissions provided by counsel. This court grants Defendants' Motion for Nonjury Trial for the reasons set forth below.

## Background

David Holmes ("David") suffered a choking incident on or about October 13, 2014. He suffered an anoxic brain injury and remained in a vegetative state. He was admitted to Mt. Pleasant Hospital where he remained until December 2, 2014.

On December 2, 2014, the day of David's admission to Bayview Manor, LLC ("Bayview"), David, through his sister and court-appointed Guardian, Dorothy Olenja

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("Dorothy"), entered into an Admission Agreement ("December Admission Agreement") which set forth the rights and obligations of the parties. It also contained a waiver of jury trial provision. David was discharged from Bayview on December 23, 2014 and returned to Bayview on February 17, 2015.

At the time of his readmission, David, through his sister and responsible party, Margaret Holmes ("Margaret"), entered into another Admission Agreement ("February Admission Agreement"), which again contained a waiver of jury trial provision. The December Admission Agreement and February Admission Agreement will be referred to collectively as the "Admission Agreements".

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

## I. DEFENDANTS ARE ENTITLED TO A NONJURY TRIAL

### a. The jury trial waivers are valid.

Plaintiff demanded a jury trial in the case at bar, but this right was waived by virtue of the waiver of jury trial clauses in the Admission Agreements which read as follows:

> **Waiver of Jury Trial: (Please read carefully)**
> Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.
>
> Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

Rule 39, SCRCP, provides in part that when a trial by jury is demanded as provided in Rule 38, the trial of all issues so demanded shall be by jury unless the court upon

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motion finds that a right of trial by jury of some or all of those issues does not exist. Rule 39(a), SCRCP.

In the case at bar, the right of trial by jury does not exist. The waiver of jury trial is enforceable. In The Beach Company v. Twillman, LTD., 351 S.C. 56, 566 S.E.2d 863 (Ct.App. 2002), the Court of Appeals held that a party may waive the right to a jury trial by contract, and that while such a waiver must be strictly construed, the terms in a contract must be construed using their plain, ordinary and popular meaning. Id. at 866.

As noted above, the December Admission Agreement was signed by Dorothy. Dorothy had been appointed as Temporary Guardian for David on October 27, 2014, only a week before David's admission to Bayview. Under the court's order, David was adjudged to be an incapacitated person, and Dorothy was appointed as temporary guardian with the right to care and custody of David with all the authority of a permanent guardian as set out it the Probate Code. Thus, Dorothy had the statutory power to execute the December Admission Agreement and bind David to the waiver of jury trial provision.[1]

Margaret waived the right to a jury trial in the February Admission Agreement. While Margaret was not appointed as guardian of David, she nevertheless had the power to waive his right to a jury trial under the doctrines of equitable estoppel, third-party beneficiary, and under the South Carolina Adult Health Care Consent Act.[2]

**b. Plaintiff is Equitably Estopped from Denying the Existence of an Enforceable Admission Agreement.**

[1] The affidavit of Plaintiff's expert, Dr. Robert Escarza, indicates he is primarily concerned with care provided during David's December admission.

[2] Dorothy derived her power to waive David's right to a jury trial under these doctrines as well.

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The Admission Agreements served as the foundation for David's admission to Bayview and the duties and obligations which David and Bayview had to one another. Bayview agreed to provide David with care and treatment, and David agreed to pay for the care and treatment. Without the Admission Agreements, there would have been no relationship between the parties.

All the Plaintiff's claims are dependent on the duties which arise from the terms of the Admission Agreements. Plaintiff cannot disclaim the waiver of jury trial clause which is a part of the Admission Agreements, while at the same time assert claims arising under other terms of the Admission Agreements, and Plaintiff should be equitably estopped from doing so. There is ample case law on equitable estoppel in the context of arbitration provisions, and the same reasoning applies in the context of jury trial waivers.[3]

Plaintiff has brought claims arising from services rendered to David under the Admission Agreements between the parties. Plaintiff cannot assert claims against Bayview arising under the Admission Agreements while repudiating the waiver of jury trial clause and Plaintiff is estopped from doing so.

**c. David was a Third-Party Beneficiary**

David, while not a signatory to the Admission Agreements, is a third-party beneficiary of the Admission Agreements. It is clear from the plain language of the Admission Agreements that David was an intended beneficiary and the purpose of the Admission Agreements was to ensure Bayview would provide the services laid out therein.

[3] *See* THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011).

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Under South Carolina law, a third-party beneficiary is someone the contracting parties intended to directly benefit. Here again, cases addressing third-party beneficiaries in the arbitration context are instructive on waiver of jury trial provisions as well.[4]

Although David did not sign the Admission Agreements, he was named as the resident to be admitted to Bayview. The Admission Agreements referred to benefits and responsibilities of David and Bayview, and David's care was the essential purpose of the Admission Agreements. David was the intended third-party beneficiary of the Admission Agreements, and it follows that David, his estate and those claiming through him are bound to the waiver of jury trial provision as a result of his status as a third-party beneficiary under the Admission Agreements.

**d. Dorothy and Margaret Possessed Statutory Authority to Bind David under the Arbitration Agreement under the S.C. Adult Health Care Consent Act.**

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes "the placement in or removal from a facility that provides these forms of care." Id.

Dorothy, both as Guardian and as an adult sibling, and Margaret, as an adult sibling, were entitled to consent to health care on behalf of David pursuant to the AHCCA. David was unable to make health care decisions on his own behalf as he was in a vegetative state.

[4] *See* THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011).

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The AHCCA empowered Dorothy and Margaret to sign the Admission Agreements on behalf of David, and all the provisions of those contracts, including the waiver of jury trial, are therefore enforceable.

## II. PLAINTIFF'S ARGUMENTS IN OPPOSITION

Plaintiff advances several arguments in opposition to Defendants' motion, all of which this court finds unavailing. Plaintiff first argues that Medicare/Medicaid regulations prohibit a nursing home from receiving any consideration (other than payments under the state plan) as a precondition of admitting the individual to the facility.[5] Plaintiff contends that if the waiver of jury trial was a precondition to admission, it is unenforceable as it constitutes other consideration. This contention is misplaced.

First, 42 U.S.C. §1396r(c)(5)(A)(iii) does not itself identify a waiver of jury trial provision as additional consideration. Second, Plaintiff does not cite to any case law supporting this notion.

This court is persuaded by holding of Owens v. Coosa Valley Health Care, Inc., 890 So. 2d 983, 989 (Ala. 2004)[6]. The plaintiff argued that requiring nursing home admittees whose fees are paid by Medicare or Medicaid to relinquish their right to a jury trial was a form of additional consideration that violated 42 U.S.C. §1396r(c)(5)(A)(iii). The court rejected the argument, finding that 'an arbitration agreement sets a forum for future disputes,' and requiring a nursing home admittee to sign one is not tantamount to 'charging an additional fee or other consideration.' The court pointed out that the plaintiff's reasoning could arguably dispose of almost any term in the admission contract. *See also* Sanford v. Castleton Health Care Center, LLC, 813 N.E.2d 411, 419 (Ind.App.2004)

[5] Plaintiff quotes to 42 U.S.C. §1396(c)(5)(A)(iii), but it appears the proper cite is to 42 U.S.C. §1396r(c)(5)(A)(iii).
[6] This case involves an arbitration agreement, but the reasoning applies equally to a waiver of jury trial provision.

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(finding that "other consideration" did not encompass an arbitration agreement); Owens v. National Health Corp., 263 S.W.3d, 876 (Tenn. 2007) (court rejected Plaintiff's argument that waiver of jury trial through arbitration provision was "other consideration")[7].

Plaintiff then contends the waiver of jury trial provision was unconscionable. This court finds the wavier of jury trial was not unconscionable. It cannot be reasonably argued that a waiver of jury trial provision is so oppressive that no reasonable person would agree to it and no fair or honest person would accept it. The law of this state allows parties to enter into contracts containing such provisions. Furthermore, Plaintiff's argument that David and his family had no meaningful choice is misplaced. There are many long-term care facilities around the State of South Carolina, and Plaintiff had the opportunity to admit David to other facilities.

Plaintiff argues a lack of consideration for the waiver. This argument fails. It is well-settled law in our state that a valid contract requires an offer, acceptance, and valid consideration. Benya v. Gamble, 282 S.C. 624, 627, 321 S.E.2d 57, 60 (Ct.App.1984). In this case there was clearly an offer, acceptance and consideration for the Admission Agreements. The agreements for care, payment and all other provisions of the Admission Agreements served as consideration for the contractual relationship. Plaintiff does not cite to any law, nor is the court aware of any law, which requires *separate* consideration for a waiver of jury trial provision.

Plaintiff next argues the waiver is inconspicuous and ambiguous. The court has reviewed the Admission Agreements as a whole and does not find the jury trial waivers

[7] In light of this court's holding, the question of whether the waiver of jury trial provision was mandatory is of no moment. Furthermore, Plaintiff has failed to present evidence that Dorothy or Margaret asked Bayview to strike the waiver of jury trial provisions, so it is impossible for the court to determine whether it was in fact mandatory.

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to be inconspicuous. The heading of the waiver is in bold and admonishes the reader to **(Please read carefully)**. Furthermore, it is clear from the deposition testimony of Dorothy and Margaret that they had a full and fair opportunity to review the Admission Agreements, and they initialed each page (including the page on which the waiver of jury trial provision is found). It is axiomatic that a party cannot avoid the obligations of a contract by claiming she did not read it.

Further, the jury trial provision is not ambiguous. It provides in part "Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation...arising from or relating to this [Admission Agreement]...or any relationship between the Facility and Resident...or any other course of conduct...or actions of the Facility and Resident". The claims asserted by Plaintiff in the case at bar clearly fall within the terms of this provision.

Finally, Plaintiff argues the waiver does not apply to the defendants Epic Group, LP or Epic General, LLC because they were not parties to the Admission Agreement. This court disagrees. As noted in the paragraph immediately above, the jury trial waiver applies with respect to any litigation concerning the actions of the Facility and Resident. Furthermore, as will be noted from a review of the Plaintiff's Complaint, Plaintiff alleges all of the Defendants were involved in David's care, and he has alleged causes of action for Alter Ego/Piercing the Corporate Veil, and Amalgamation of Interests.[8] Plaintiff cannot have it both ways – he cannot maintain the Defendants were essentially acting as one, and at the same time argue their separateness for purposes of the Admission Agreement.

[8] The court notes the Defendants have denied these allegations in their Answer.

## CONCLUSION

For the foregoing reasons, the court grants the Defendants' Motion for Nonjury Trial.

Honorable Perry M. Buckner, III
Presiding Judge

_____, 2018



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STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-07-02636

JOSEPH HOLMES AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID HOLMES — PLAINTIFF

VERSUS

BAYVIEW MANOR, LLC; EPIC GROUP, LP; AND EPIC GENERAL, LLC — DEFENDANTS

---

**APRIL 25, 2018**

**TRANSCRIPT OF HEARING**

**BEAUFORT, BEAUFORT COUNTY, SOUTH CAROLINA**

**BEFORE**

**HON. PERRY M. BUCKNER, JUDGE**

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF PLAINTIFF
JOSEPH HOLMES AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF DAVID HOLMES:

HON. ERIC M. POULIN
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ON BEHALF OF DEFENDANT
BAYVIEW MANOR, LLC;
EPIC GROUP, LP; AND
EPIC GENERAL, LLC:

HON. W. MCELHANEY WHITE
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No exhibits were admitted.

BEGINNING 11:58 A.M.

BY THE COURT:

THE COURT: Number 4 now for hearing is David Holmes Estate versus Bayview Manor. Mr. White, you're up again. This is a motion for a non-jury trial. I need a copy of the motion, David.

LAW CLERK DAVID NASROLLAHI: Yes, sir.

THE COURT: Hold on a second and let me review it.

MR. WHITE: Yes, sir, your Honor.

THE COURT: All right. Let the record reflect that I have now -- this is 2017 at 02636 in Beaufort, Holmes versus Bayview Manor. This is a motion for non-jury trial. I have read the motion. I have also read the memorandum in support of the motion. I have also read the relevant portions, in the Court's estimation, of the admission agreement, which were attached as exhibits to the motion.

When I sounded the roster this morning, Mr. White told me this was his motion. He wanted ten minutes. And Counsel, spell your last name for Wanda again.

MR. POULIN: P/o/u/l/i/n.

THE COURT: Is it Poulan or Poulin?

MR. POULIN: Poulin.

THE COURT: Poulin.

MR. POULIN: Yes, sir.

THE COURT: Mr. Poulin, is appearing on behalf of Mr. Feidler, I assume. Is that correct?

MR. POULIN: Yes, sir. I believe he pronounces it Feidler.

THE COURT: Feidler. All right. For the plaintiff, Mr. White. For the defendants, Mr. White. Read your motion. Your ten minutes begins now. Happy to hear from you.

MR. WHITE: May it please the Court, your Honor. Your Honor, we're here on the motion for a non-jury trial. I represent the defendants in the action. This case arises out of a residency of a gentleman by the name of David Holmes. Mr. Holmes, back in October of 2014, suffered a choking incident at a residential care facility, which is not a party to this action.

He suffered an anoxic brain injury. He was without oxygen for several minutes; was essentially rendered into a vegetative state. He went to the hospital for about a month, and he came to our facility, Bayview Manor. At Bayview Manor, he was admitted on December 2, 2014, where he stayed three weeks. He then went to the hospital until the middle of February; then he came back to our facility in February.

THE COURT: Let me ask you this. Since you say that this brain injury is not involved in this action,

what does this action involve that you represent Bayview for?

MR. WHITE: Your Honor, during his admission, he --

THE COURT: Which admission? First or second?

MR. WHITE: Well, there's somewhat of a dispute, but the allegation is --

THE COURT: All right, so there's allegation that overlap. Go ahead.

MR. WHITE: Right. And that there were pressure sores. That's what the case is about, primarily. Pressure sores and nutrition issues.

THE COURT: All right.

MR. WHITE: Your Honor, as a part of the admission of Mr. Holmes to our facility, Dorothy Alinga, his sister, signed an admission agreement. In the admission agreement, there was a waiver of jury trial provision. Mrs. Alinga was his temporary guardian, which, under the program --

THE COURT: Was she his temporary guardian at the time both of the admission agreements were signed?

MR. WHITE: Yes, sir, your Honor.

THE COURT: All right.

MR. WHITE: She did not sign the second one. She signed the first one, but she was still temporary guardian.

Under the probate court, she had all the probate --

THE COURT: I understand the roll of the temporary guardian. You set it out in your motion. So you believe it's binding. You also argue equitable estoppel, and that he was the third-party beneficiary, and you think I should enforce the agreement.

MR. WHITE: Yes, sir, your Honor.

THE COURT: And you're asking for a non-jury trial in Beaufort County.

MR. WHITE: Yes, sir, your Honor.

THE COURT: Anything else?

MR. WHITE: Your Honor, I think all the arguments I plan to make --

THE COURT: I'm going to ask you the same questions, Mr. Poulin. Don't be laughing at him.

MR. POULIN: I understand, your Honor.

MR. WHITE: Your Honor, all the questions -- or excuse me -- all the issues that I was prepared to discuss are addressed in the memo. Your Honor obviously has read that.

THE COURT: Yes, and I know the *Wiggins* case. Believe me, this is not the first time I've heard this motion, Mr. White.

MR. WHITE: I understand, your Honor.

THE COURT: I'd say we have it in every single

nursing home case in the Fourteenth Circuit in some form or fashion.

MR. WHITE: I understand. Your Honor, the other -- I think the other issue I wanted to raise --

THE COURT: Yes, sir.

MR. WHITE: If I can just look at my notes for just a moment.

Your Honor, the other issue that I wanted -- yesterday, I was on the road, and I got Mr. Poulin's memo. And I'm prepared to address some of the issues he raises in there. If you want me to do that in my remaining five minutes, I'll do that now, or I can wait.

THE COURT: If you'd like to wait and use it in the reply argument to him, I'll be happy to let you do that. That suit you?

MR. WHITE: Yes, sir.

THE COURT: All right, Mr. Poulin, your time begins now. Happy to hear from you.

MR. POULIN: Thank you, your Honor. The arguments that we make are set out, actually, on the very first page of our responsive memo. I have a summary of our arguments. They're several in number, but I'm going to focus on what I think the most important two arguments are.

And your Honor is right. This comes up in almost

every nursing home case. I'm sure you've seen it a hundred times. I do want to point out one thing about this case that's --

THE COURT: That doesn't make this case any less important, Mr. Poulin, because each case is different.

MR. POULIN: That's exactly right, your Honor.

THE COURT: You know what I tell my law clerk? There are no unimportant cases, no matter how many times we've heard it.

MR. POULIN: That's exactly right, your Honor. And one of the things that I think makes this case different than a lot of these arguments, are most of the cases that come before your Honor deal with arbitration. In this case, we're dealing with a non-jury waiver. And the reason that's important is because we're not looking at the *Federal Arbitration Act*. We don't have this presumption of arbitrability and everything else. It's purely state law.

Your Honor reviewed the admission agreement. In this admission agreement, it has the jury waiver agreement within the agreement.

THE COURT: We're under the *Rule 38 and 39* of the *Rules of Civil Procedure;* are we not?

MR. POULIN: We are, your Honor.

THE COURT: All right. You know what they are,

don't you, Mr. Poulin?

MR. POULIN: I -- I trust you --

THE COURT: Now, you're looking at me like you're not sure, Mr. Poulin.

MR. POULIN: I'm not entirely sure, your Honor.

THE COURT: All right. That's your right to trial by jury. And it can be waived. You know that.

MR. POULIN: Of course.

THE COURT: Though Mr. White makes a big deal of pointing out cases. He's trying to hand it to you, Mr. Poulin, over there. You have one of these, don't you, Mr. Poulin?

MR. POULIN: I have one. I --

THE COURT: All my young lawyers think that this is a dinosaur. They don't believe in books. I'm buy them that, and they leave them on their desk, because they don't think there's any way to research, other than by a computer.

But we do address the right to trial by jury. And you know, many people think that just means a trial by jury of their peers. And it's funny, because I hear -- my law clerks always think that in criminal court, you've got a constitutional right to trial by jury. That's not true. There is no such thing as a constitutional right to a jury, twelve-person jury, in

criminal court either.

The reason we have twelve people on the juries, we don't know. The United States Supreme Court says -- some people think it's because there were twelve disciples. Some people think it's just mystics. We have no idea how we came up with twelve.

And if you'll look, you'll notice that different states have different numbers. California doesn't use unanimous. They have a lesser number than twelve. There is no constitutional right, but *Rule 38* talks about jury trial of right where there are factual issues. And obviously, our *Constitution*, our state *Constitution*, does talk about the right to trial by jury. What the United States Supreme Court said, we don't know why there's twelve; we leave to the states to decide under due process what type of jury trial due process requires. That's why we don't have consistency.

But *Rule 39* talks about not only trial by a jury of your peers, but by the court as well. And they're covered in the civil rules. So any time we have an issue of fact, whether it be for the recovery of money, which, obviously, you're asking for here, or for the recovery of real or personal property, there's an argument that it must be tried by a jury, which is why probably Bayview has decided -- you always just ask for

arbitration, but in this case, they're asking for a jury trial. So they're not taking away your right of a jury trial, but they are asking that it be non-jury, rather than with a jury of your peers.

Let me hear from you as to whether or not this temporary guardian had the power to execute this document and whether it should be enforced.

MR. POULIN: Well, your Honor, we would argue that the temporary guardian did not have the power to execute the document.

THE COURT: Why?

MR. POULIN: Because her power as a guardian applied only to make healthcare decisions and decisions -- some financial decisions that are closely related to healthcare decisions. We would argue under the *Coleman* case and other cases -- and of course, all those deal with arbitration issues, but in a similar light, that that would not apply to this.

Now, I think the key to this whole case, though, the point, though, because there's different arguments that we can make. We have to determine whether the non-jury waiver provision was actually a part of the admission agreement and was a pre-condition to admission, or whether it was separate from the admission agreement. And that's important.

THE COURT: Why have we not determined that? You mean there hadn't been any finding by the court?

MR. POULIN: Well, --

THE COURT: The parties dispute whether or not it was attached?

MR. POULIN: No, your Honor. From the plaintiff's position, it does not matter either way. The contract is not enforceable either way. The reason it's not enforceable would depend. So, your Honor, if, in fact, they are going to argue that the non-jury waiver was part of the admission agreement, and not option and not separate; that, in fact, it was a pre-condition for admission; that it had to be agreed to for admission; then that provision would violate federal law. And of course --

THE COURT: Why?

MR. POULIN: Your Honor, it is *42 U.S.C. 1396r Subsection (c)(5)(A)(iii)*. And what that says is:

> *With respect to admissions practices, a nursing facility must, in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive in addition any amount otherwise required to be paid under the State plan under this sub-chapter, but in*

*addition to the Medicaid money, any gift, money, donation, or other consideration a precondition of admission.*

So, and this is what we often see in these nursing home cases. Your Honor has probably seen many times that the arbitration agreement is separate and it says this is not a pre-condition, this is voluntary. They go through great pains to do that. And I think we can all pretty much presume that if they could force that on people as a pre-condition, most of these facilities would.

So what federal law says is, you cannot make -- if you accept Medicaid money and a Medicaid patient, which there's no dispute that Mr. Holmes was a Medicaid patient in this case and that Medicaid was paying his bills, you can only accept the Medicaid money; you can't ask for additional money on top of that; and you cannot request --

THE COURT: But if it were not a pre-condition, why would it not be enforceable?

MR. POULIN: If it were not a pre-condition, then, it would not be supported by consideration. Because the only argument they have for consideration of the jury waiver is if it's a pre-condition, then the consideration is we'll admit you to our facility, and

then, in exchange for that, you have to waive your jury right. The problem for them, though, is that if it's not a pre-condition to admission, then there's no consideration.

Now, I understand that some courts have found that arbitration agreements standing alone and separately do have consideration. And the reason for that, an argument usually made by the defendants in this case, is that, well, arbitration benefits both sides, because it's quicker, it's cheaper, you don't have to go through discovery to get everywhere, and it's a mutually promise that both parties will arbitrate their disputes. So a non-jury trial that's standing alone without admission as consideration, a non-jury trial is not -- it's not any less expensive than a jury trial as far as discovery and everything. It's not a different forum, like arbitration is.

And the other problem with this particular agreement, your Honor, is that it's a -- generally, the arbitration agreements will require both parties to submit their claims to arbitration. If you look at the wording of this particular non-jury waiver, it is worded as such that only the resident waives non-jury trial. And so, the facility would retain the right, if there were non-payment of bills or an eviction action,

whatever they wanted to do, to file a -- to require a jury trial in an action that they filed against the resident. So they're not giving up anything whatsoever in exchange for this jury trial, unless it's admission. And my client is not gaining anything whatsoever in exchange for this --

THE COURT: Thank you very much. Your ten minutes are up. Now you have your five minutes, Mr. White, to respond to the interesting argument, Number 1, the federal statute; and if it wasn't a pre-condition, the lack of consideration, which is what I think you wanted to reserve your time for.

MR. WHITE: Yes, sir, your Honor. And very briefly, let me state two things. Number 1, I was in depositions yesterday. I read this memo for the first time. It was filed yesterday. I called my client this morning because this Medicaid issue was raised. I asked my client that got with the business person this morning. She said he was Medicare, but he was Medicaid pending. He was not reimbursed based on Medicaid. And so, what I would ask this Court, hopefully, with Counsel's permission, --

THE COURT: Well, do you take the position it was a pre-condition to admission?

MR. WHITE: Your Honor, I don't know whether it was

or not, quite frankly. Let me tell you what. Let me tell you what.

THE COURT: All right.

MR. WHITE: It's in the contract if the plaintiff had said I don't want to agree to that, they may very well have stricken it. But there's no way to know, because it wasn't raised. They read the agreement, and it's in the agreement.

THE COURT: It might very well be now that we're looking at it after the fact. It might very well be a difference in how the Court might look at it, though.

MR. WHITE: Right.

THE COURT: That's why I'm asking the question.

MR. WHITE: Right. So what --

THE COURT: You argued it as if it was a pre-condition, and that he would not have been admitted and received the benefit, as you put it, of the services of Bayview had they refused to sign.

MR. WHITE: If they had refused to sign the admission agreement, he would not have been admitted.

THE COURT: I'm not saying admission. Had they refused to sign the waiver of non-jury trial.

MR. WHITE: I can't answer that question.

THE COURT: All right.

MR. WHITE: I don't know. But your Honor, briefly,

two things. One, I would like the opportunity, since this may be an issue that we have to move forward on, I would like the opportunity to file an affidavit just as to that one point, hopefully, with Counsel's permission, just as to the one issue on Medicaid pending. Because, if that's the issue, and he was not Medicaid, it's a factual question. Was he Medicaid or not. And my client is saying no, I've got the business person there; we'll produce the documents showing that. But I just didn't have time to do that this morning.

THE COURT: Well, I'm not -- I mean, you think that's outcome determinative, Mr. White. I'm not sure I agree with that. In the practical world, whether you're a Medicaid patient when you enter, they all become Medicaid patients once all their assets are utilized and they ask, in order to remain in these facilities. You know that. I know that. Everybody knows that. Some people have to be Medicaid dependant in order to remain.

MR. WHITE: Yes, sir.

THE COURT: And if they aren't eligible, and that eligibility may not always coincide with when they seek admission. What I'm asking you, though, for purpose of enforcing this agreement, regardless of whether the statute applies, tell me why it should apply. Let's assume it's a separate provision, wasn't a pre-condition

to admission, even though you say you can't answer that. And I'm asking for purpose of argument. You think it would be enforced?

MR. WHITE: Yes, sir.

THE COURT: Certainly you think the temporary guardian had the power to sign it.

MR. WHITE: That's right.

THE COURT: You argued that.

MR. WHITE: Yes, sir. Yes, sir. You've already read the brief. The reason I want to run through this very quickly is, since I have not had an opportunity to file a memo in response.

THE COURT: I understand you just got it yesterday. That's fine.

MR. WHITE: Okay. So very briefly, your Honor, all the way from a jury trial as a pre-condition, or -- yeah. First of all, as to federal law, all the federal law that he read says that if you are a Medicare or Medicaid -- Medicaid resident, that you cannot require consideration other than payment. And clearly, the intent there is --

THE COURT: What happens, then -- because the admission happens before you become Medicaid eligible. And that frequently occurs. You know that and I know that.

MR. WHITE: Right.

THE COURT: They're not all Medicaid eligible when they come in, but they become Medicaid eligible once all their assets are divested.

MR. WHITE: That's right. The point of that is, if I come in as a Medicare or Medicaid resident, you can't charge me extra; you have to accept the reimbursement rate that they're providing. That's the whole point of that statute.

THE COURT: Well, is this an additional benefit that you're asking for? Because he argues then -- assuming that it's any a pre-condition, he argues that there was no consideration for it. Do you agree?

MR. WHITE: Absolutely not, your Honor.

THE COURT: What is the consideration?

MR. WHITE: The agreement to take him on as a resident.

THE COURT: I see.

MR. WHITE: That's the admissions agreement, your Honor. Under the admissions agreement, you've got to provide services; you've got to provide benefits; he has to pay. All those things are part of the contract. All of those are subject to the same type of --

THE COURT: Thank you very much, Mr. White. Time's up. Be seated. You went past your ten minutes, Mr.

White, and I gave it to you. I understand you felt like you were at a little bit of a disadvantage because Mr. Poulin didn't give you his memo 'til yesterday, but you're going to have plenty of time.

Take out your pen, Mr. Poulin.

MR. POULIN: Yes, sir.

THE COURT: Both sides submit proposed orders to me. Very interesting argument. Both sides submit proposed orders to me within seven days of today. Submit them to me at P.O. Drawer -- nope. Excuse me. Don't do that because you'll get charged for them. Submit them to me by email at pbucknerj@sccourts.org. Send my law clerk a working copy at pbucknerlc@sccourts.org. Seven days from today. Copy opposing counsel on any transmittal to the law clerk of the judge.

Any questions about a proposed order procedure from you, Mr. White?

MR. WHITE: Yes, sir, your Honor.

THE COURT: Now you got plenty of time. What is it?

MR. WHITE: Your Honor, what I would ask the Court, because I've not been able to argue the points in response to Counsel's argument, is that I be allowed to file a memorandum within the next three days addressing

his points.

THE COURT: You're sending me a proposed order in which you can address it. I don't need another memorandum. You can put any law you want to in your proposed order, Mr. White.

MR. WHITE: Okay, your Honor. And then, the second question is --

THE COURT: I'm not in the business of creating more paper, Mr. White. You can succinctly give me your arguments in your proposed order. Your request for an additional memorandum is denied.

MR. WHITE: Yes, sir, your Honor.

THE COURT: Anything else?

MR. WHITE: Your Honor, the question was if I could be allowed to --

THE COURT: I've already got one memorandum for you in the calendar memorandum. Now you want to do another one. Just do a proposed order.

MR. WHITE: Yes, your Honor.

THE COURT: Get to the point of this matter.

MR. WHITE: Your Honor, the only other issue was whether I could file an affidavit that --

THE COURT: Well, this is a motion that you've titled *A Motion for a Non-jury Trial*. Normally, you look at it as a matter of law, rather than any factual

finding. Although, there is the issue of determining whether or not there is a factual issue for a jury trial. Mr. Poulin did kind of raise this and say -- and I'm not sure whether or not this is a pre-condition or not a pre-condition. You can't answer that. I don't know that that's outcome determinative. I don't know that I need affidavits for this motion. Although, if you file a motion for summary judgment, I would expect you to support it with depositions and affidavits, not a motion for a non-jury trial. I think it's a matter of law. Frankly, I think the require -- I don't want an affidavit from Mr. Poulin and I don't need one from you. I want you to tell me what law you think applies to this. You understand?

MR. WHITE: I do.

THE COURT: Seven days from today. Be seated.

You understand the proposed order procedure, Mr. Poulin? because you all have now taken thirty minutes on your twenty-minute motion.

MR. POULIN: I do, your Honor. May I ask one brief question?

THE COURT: Yes, you may.

MR. POULIN: We raised a couple other defenses, including -- including unconscionability and other things with the court. Would the Court prefer the

proposed orders just focus on these issues that we've discussed today of the federal law?

THE COURT: Issues raised by this motion is what I want you to do. You all turn motions into trials. This is a motion. It's a motion by Mr. White, all right. The motion is entitled *for a non-jury trial*. He's trying to enforce what he believes is a provision of a contract. You address that in your order and you have it sent to me within seven days of today.

And stop trying to be so verbose. You need to get to the point. You spend more time writing memorandums, instead of getting to the point, both of you. And lawyers need to learn to do that. Verbosity, it doesn't make you a good lawyer. You understand?

MR. POULIN: Yes, sir.

THE COURT: No affidavits, Mr. White. No affidavits, Mr. Poulin. Proposed orders. pbucknerj@sccourts.org, pbucknerlc@sccourts.org.

Both sides understand now?

MR. WHITE: Yes, sir, your Honor.

THE COURT: Look forward to getting them. Thank you. Very interesting issue.

MR. POULIN: Thank you, your Honor.

END PROCEEDING 12:25 P.M.

CERTIFICATE OF REPORTER

APRIL 25, 2018 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 25, 2018 Transcript of Hearing is a true and accurate record of the proceedings had on said date, in the case of Joseph Holmes, et al, versus Bayview, et al, Beaufort County, Court of Common Pleas, Case Number 2017-CP-07-02636; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original of this transcript requested by Hon. W. McElhaney White. Pursuant to SCACR 607, requests for copies of this or any transcript must be made to the court reporter. Unauthorized copying/emailing is prohibited.

Witness my signature August 15, 2018.

s/Wanda H. Rowe
Wanda H. Rowe, CVR-M
Official Court Reporter

| | |
|---|---|
| STATE OF SOUTH CAROLINA ) | IN THE COURT OF COMMON PLEAS |
| ) | |
| COUNTY OF BEAUFORT ) | C.A. NO. 2017-CP-07-02636 |
| JOSEPH HOLMES, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID HOLMES, | |
| PLAINTIFF, | DEPOSITION |
| VS. | OF |
| | DOROTHY OLENJA |
| BAYVIEW MANOR, LLC D/B/A BAYVIEW MANOR, EPIC GROUP, LP, AND EPIC GENERAL, LLC, | |
| DEFENDANTS. | |

THE DEPOSITION OF DOROTHY OLENJA, TAKEN BEFORE JILL BISHOP EDWARDS, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 11:28 A.M., FRIDAY, THE 2ND DAY OF MARCH, 2018, AT THE LAW OFFICES OF ANASTAPOULO LAW FIRM, LLC, 418 RIVER STREET, GREENVILLE, SOUTH CAROLINA.

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*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

STIPULATIONS

IT IS STIPULATED BY AND BETWEEN COUNSEL FOR THE RESPECTIVE PARTIES THAT ALL OBJECTIONS ARE RESERVED UNTIL THE TIME OF TRIAL, EXCEPT AS TO THE FORM OF THE QUESTION.

THIS DEPOSITION IS BEING TAKEN PURSUANT TO THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

- - - -

THE READING AND SIGNING OF THIS DEPOSITION IS WAIVED BY THE DEPONENT AND COUNSEL FOR THE RESPECTIVE PARTIES.

WHEREUPON, DOROTHY OLENJA, BEING DULY SWORN AND CAUTIONED TO SPEAK THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AND DEPOSED AS FOLLOWS:

EXAMINATION

BY MR. WHITE:

Q And it's Ms. Olenja?

A Yes.

Q Is that right? Did I pronounce it right?

A You certainly did.

Q Good. All right. Well, listen, my name is Mac White. I know we met just a moment ago.

A Yes.

Q But I'm an attorney from Spartanburg, just down the

road.
A Okay.
Q And I represent Bayview Manor Nursing Home in this case, as well as the other defendants that are named.
A Uh-huh.
Q You are, of course, here today to give a deposition. Have you ever given a deposition like this before?
A No.
Q All right. Well, I'm sure that Stefan has already explained to you the process, but let me just give you a few kind of ground rules that will help this go smoothly today.

First of all, just right out of the gate, don't worry. I'm not going to get mad. I'm not going to bang on the table.
A Okay.
Q I think Stefan will tell you I'm a nice guy.
A Okay.
Q So I'm just here to ask questions about what you know.
A Okay.
Q Now, some of those questions are going to be probing. Some of those questions, you know, you might -- you may or may not be frustrated you're being asked the questions, but understand that I'm just representing my client and at no time will I be disrespectful to you.

Okay?

A All right.

Q When you answer your questions -- you're doing well so far -- just give verbal answers. I know that it's common in our conversation to use the terms "uh-huh" and "uh-uh."

A All right.

Q If you do that, I'll just ask you, "Is that a yes or no?"

A Of course.

Q Don't worry about it. I just want to make sure that Jill here takes down an accurate testimony.

A Of course.

Q All right. If at any time you need to take a break -- we'll probably go for a couple hours, but if at any time you need a break during that period, you let me know and we'll take a break.

A Okay.

Q If you have any questions about the procedure of the deposition, just ask me if I'm asking you the questions. If Stefan's asking you questions, you ask him.

A Okay.

Q Of course, if he needs to interject anything, he can. Now, he may, from time to time, object to the form of

my question.
A All right.
Q And you may already know what that is, but, basically, it's an objection really to preserve something on the record to maybe let me know that I've asked a screwy question and give me a chance to correct it.
A All right.
Q If you understand the question, you can still go ahead and answer the question, notwithstanding his objection. And then the last thing I will say -- the last two things I will say is, if you don't understand one of my questions, if I have confused you or I jumble up a question, which I will do from time to time, stop me and ask me to repeat or rephrase the question. I am happy to do that.
A Okay.
Q I want to make sure that you are answering just what you understand.
A Okay.
Q Does all that make sense?
A It certainly does.
Q Okay. Now, one other thing to keep in mind today as we go through this is, obviously, I'm going to be asking you the questions; you're going to be giving the answers. Some of the questions will be very short.

Some of them will be a little bit longer. Try and wait until I finish asking the question before you answer.

A Okay.

Q And I will do my best to wait until you finish your answer before I ask another question. If either one of us interrupts the other, let's tell each other that you weren't quite through. That's not being rude. That's just you letting me know you have more to say, and that's the same for me. Okay?

A Yes.

Q All right. With that background, I'm just going to go through a little bit of historical background about you and to kind of see where you fit in the family and this case. So let me just start with some real basic questions.

Where do you currently live?

A In Greenville.

Q What is your address there?

A 8104 ---

Q And you can go ahead. I'm not going to write it ---

A 8104 Assembly View Circle. That's Greenville, South Carolina 29611.

Q How long have you lived there?

A Actually, I just moved there four months ago.

Q How long have you been in this area?

A Ten years. Just ten years.
Q Okay.
A Well, yeah, February made it ten years.
Q Do you work here in town?
A Well, not now. Not currently. I did substitute -- I was teaching for Greenville County for a while.
Q I see.
A And just signed up for subbing as of now. So I'll be doing a bit of subbing for the rest of the year.
Q What -- have you been a lifelong teacher?
A Yes.
Q And before coming to Greenville, where did you teach?
A Beaufort County Schools.
Q Which schools did you teach in down in Beaufort County?
A At Robert Smalls Middle.
Q And how long were you there?
A For -- actually, I taught there for seven years.
Q What grade?
A Middle school. Eighth graders.
Q And what subject?
A Social studies and English.
Q Okay. So you taught there for seven years. How long have you lived in the South?
A I'm from the South.
Q You are?

A I only went to Boston to go to college, and that was Boston College.
Q Okay.
A And stayed there, had all my children there, and then decided to move back to Beaufort in '94, I think it was, to take a teaching job.
Q Now, when you moved back in 1994, did you teach consistently up until 10 years ago, or did you take breaks here and there?
A No, consistently. Yeah.
Q And then the years you lived up in Boston were what years?
A I went up there in, let's see, 1968 and left in 1994.
Q And you went to Boston College. What did you major in there?
A Sociology.
Q Did you ever take any classes or have any training in any sort of medical care or nursing care or anything like that?
A No.
Q All right. And has your only occupation since you've gotten out of Boston College been teaching related?
A Well, no, I've done some community things.
Q Okay.
A When I came to Beaufort, I started a program -- well,

when I came back home, I realized that a lot of teachers were working but they were not certified. And so, what I did, I went -- well, I got my master's from Pepperdine University, by the way. And then ---

Q And what was that in?

A That was in education administration. And then what I wanted was to be able to, at some point, get certified in elementary ed. So I did postgraduate work at Wheelock College in Boston. Okay. And so I went there. That was quite an interesting experience. My youngest was six months at the time, you know, and the mother of eight. But it was interesting and fantastic.

So I got my certification in elementary ed in 1990, and I moved back home in '94. So, when I was teaching at the school, I realized there was so many teachers there that were subbing but they were not certified. And it seems as though there was only one place they could get certification, but they had to stop working. And then, at that point, I said, "Well, not too many of us are wealthy or have a wealthy mate where we're able to, you know, stop working just to get certified." So I said, "What can we do about this situation?" And then I realized that, at the same time, there's called a Troops to Teachers program, where you're trying to get those that are military to

get into education.

So, after I came back to Beaufort, I would send several people to Boston, because Boston had this accelerated program that I attended. From May to August, you had to get 17 graduate credits. You did student teaching, but it was a whole new program that just started. So I said, "Well, this would help quite a few people." So I would recruit certain people to go to Boston for the summer, one being my daughter, actually. And but when they came back, they were able to get their provisional certificates. So then I said, "Well, now, not everybody can travel to Boston." So I said, "What can I do about this?" So I went to the military base when I heard about Troops to Teaching, right, and I said, "Are you all interested in working with the community, if I could bring a program on your military base," which is the Marine Corps Air station. "Perhaps the community and the military people will benefit from this if they can be housed on your base." So they were very interested.

So then I wrote a proposal to the president of Wheelock College, who offers the program. So, the long and the short of it, the first program started in 1999. I got it going. I was the only person on base. They gave me an office on the base, and I recruited. Thank

God, more than 200 people are certified based on that vision.

Q Wow, that is very interesting.

A You know, yes. So, in the military people, there are wives, and it was just a very -- you know, so I've always been not just so much interested in myself, because I was certified, but I was always interested in what's happening to other people, you know. So it gave them a wonderful alternative to be able to get certified and work and whatever. So that was a great collaboration, you know, and lasted for quite some years.

Q Yeah, that's very interesting.

A Yeah.

Q Now, you had mentioned -- I know that while you were in Beaufort, you primarily taught and, of course, you've done the things you've described.

A Right.

Q Any other sort of community activities or events that you would regularly be involved in in Beaufort?

A Well, the church, of course.

Q Uh-huh.

A But, also, I started a tutoring program and got it incorporated to the State. It's called Extended Hands Academy, and Extended Hands for -- I did both things.

To help with the tutoring of children, I got it incorporated with Mark Hammond to the State of South Carolina. So I have a non-profit that's called Extended Hands, Extended Hands Academy through the State of South Carolina. And that was just to help to tutor children and to also be a consultant to help parents who wanted to find out about financial aid and how to help their children get into school. And you know, some people will just, you know, come to me to get that information, you know, that I became an expert from my own children, you know.

Q Right, right.

A You become an expert when you have eight and they all went to college. You become the expert. So I decided to share that information with other parents as well. So that's -- and to help people who are dropouts to get them back into school. So that's -- you know, so education and helping people in the community has really been -- so that's, along with the teaching and -- you know, so that's -- and how did I get to Greenville?

Q Yeah, that's right. It sounds like you were pretty busy in Beaufort. Maybe you needed a break. What -- the church you went to in Beaufort, what was the name of that church?

A Beaufort New Church of Christ.
Q I'm sorry. The what?
A Beaufort New Church of Christ.
Q Okay. And other than your sister Margaret, do you have any relatives who live in Beaufort County now?
A Oh, I have lots, you know, lots of cousins and, you know, quite a few family members. Yes.
Q Can you give me -- and you don't necessarily have to give me all the first names, but can you give me the last names of your relatives who reside in Beaufort County?
A All of my relatives?
Q As best you can. And, listen, this is for jury selection purposes if this case goes to a jury.
A Oh, I see. Okay. Holmes is a very -- you know, Mark Holmes and Gerald Holmes, and those are the Holmes family. And let's see. Because I usually go by, you know, my cousins out of there. They have names like Fergusons and -- geez. Simmons, some Simmonses. Calvin Simmons and, you know, these are some of the people in Beaufort. I have so many relatives. The Goethes.
Q How do you spell that?
A G-o-e-t-h-e.
Q Uh-huh.

A Goethe family. You know, just that's basically -- if you hear Holmes, then most likely they might -- well, then there are two sets of Holmeses, but the ones in Burton, South Carolina, and Beaufort, not St. Helena, we are from that same.

Q So are most of these folks from the Beaufort ---

A Yes.

Q From Beaufort?

A Yes. My family is centered in the Burton -- it used to be Burton, but now everything is Beaufort. You know, in that area. Yeah, that's where most of my relatives reside.

Q Okay. So Holmes, Ferguson, Simmons, Goethe. Anything else?

A Goethes. Let's see. There could be some Crantz, you know, my grandmother's side. Let's see. Goss, G-o-s-s. Okay. That's -- that's sort of -- and some Browns, also.

Q Brown?

A Yes.

Q Okay. And all these folks are from the Beaufort area?

A Yes, they are. My family is centered in that area.

Q All right.

A St. Helena or Dale, they're mostly right -- Beaufort.

Q And you think that pretty much sums up the last names

of your relatives?
A Yeah. Mostly, yeah.
Q Okay. If you think of any others during the deposition, just let me know.
A I shall.
Q All right. Let me ask you this. And through my questions today, I'm never going to ask you and I should never intend to ask you about anything you and Stefan have talked about, or any attorney or paralegal from his office. That's privileged, okay? So I'm not getting into that.
A Of course.
Q But in preparing for your deposition today, have you reviewed any documents? Photographs, anything like that?
A No.
Q All right. Let me talk to you for a second about your brother. Brother, David Holmes; correct?
A Yes.
Q Now, where do you -- how many children were there originally in your family? How many siblings did you have?
A Seven of us altogether.
Q Okay.
A I was privileged to be the only girl for 10 years, and

then my sister was born.

Q All right. Do me a favor. Start at the oldest and work to the youngest.

A Okay. Frank Holmes, Jr., John Rogers Holmes, David Holmes, Joseph Holmes, Alexander Holmes, and Margaret Holmes.

Q Is Frank Holmes still alive?

A No, he passed away.

Q When did he die?

A In 1995.

Q How about John R.?

A John passed away in 2008.

Q Okay. And then that just leaves the remaining four of you?

A Yes.

Q Of course, obviously, Mr. Holmes has died.

A Yeah, David. Yeah, May 29th.

Q Oh, yeah. And you didn't mention yourself. Where do you fit in there?

A I'm after -- wait a minute. I'm after David.

Q Okay. I was counting and I noticed that somebody was missing.

Okay. So the only remaining siblings are you, Joseph, Alexander and Margaret?

A Yes.

Q Where did you -- were all of you born in Beaufort?
A Yes.
Q What were your parents' names?
A Gladys Holmes, my mother, and Frank Holmes, Sr., my father.
Q What did your dad do for a living?
A He retired from Parris Island. He was a civil worker on Parris Island, South Carolina. In fact, he was the first African American hired after World War II.
Q He was the first what?
A African American hired on Parris Island after World War II.
Q Oh, really? Okay. So you said he was a civil ---
A Civil service worker.
Q Civil service.
A That was his official title.
Q What did he do there?
A Maintenance, grounds at Parris Island.
Q All right. And did your mom work outside the home?
A Yeah. My mother retired from the Marine Corps -- Parris Island, also. She worked in the daycare center there.
Q All right. I'm going to ask you to do another thing with regard to your brothers and, really, your older brothers. How much older was Frank than you?

A Okay. He was born in '42, eight years older.
Q Okay. John?
A John was born in '48, so he's two years older. David '49.
Q '49. And you were born what year?
A I daresay. 1950, I'm proud to say.
Q 1950. There you go. Good year. And Joseph?
A Joseph was born in '52.
Q Alexander?
A '53.
Q And Margaret?
A 1960.
Q Okay. Wow. Eighteen-year spread between top and bottom.
A Yeah. Uh-huh.
Q That's a good spread. As you were -- let's see. So David was just a year older than you?
A Yes.
Q So did y'all all grow up in the same house?
A Oh, yes.
Q And did David -- did he make it through high school?
A David went to the university and was majoring in the School of Pharmacy.
Q Okay. Where was he taking those studies?
A University of South Carolina.

Q Did he complete them?
A No, he did not.
Q Why not?
A Well, something happened that -- something happened with David when he went to the university, and none of us -- there was a -- that's where the change came. Some sort of -- we don't know what happened, literally, but the mental situation took place and, before he went there, nothing -- there were no signs or anything.

So, to this day, we're not really sure what transpired. I know he went away on spring break, his first break, to Florida somewhere, and we never -- something happened, and there was a break. And he did not finish continuing his education. It was a lot of things that happened to David mentally, and we couldn't figure out what happened.

Q So he finished -- where did he finish high school? In Beaufort?
A Beaufort High School
Q And then he went to USC?
A Yeah.
Q And was he in his first year, his freshman year, when this happened?
A Yes. His freshman year.
Q But he was going to study pharmacy?

A Yes, he was in school -- was going to be in the School of Pharmacy. He was a brilliant, brilliant student. Brilliant, you know, in everything.

Q All right. So then he went away on spring break his freshman year, and when he came back, he was just different.

A Everything happened. It was a break, and we don't know what ---

Q You mean break, as in emotional or ---

A Mentally, emotional. There was so much emotional crisis ---

Q Okay.

A --- that transpired.

Q Now, I know he was ultimately diagnosed with bipolar and schizophrenia.

A Yes.

Q When were those diagnoses made?

A I would -- in David, earlier 20s. Earlier in the 20s, because most of this -- when this -- most of this happened after the later years. I was really in Boston, you know, myself, really. So it was really, you know, my mother and sister that really dealt with a lot of what was happening with David. And he never got his footing back, you know, after this. Never got his footing back. And just like he was an A student in

school, you know, and it was just -- something happened. We're not sure.

Q Okay. So the diagnoses of schizophrenia and bipolar, you think that was in his early 20s?

A Because we never saw any such -- yeah, it would have to be in his 20s when that really happened.

Q All right. When he left, what was your relationship like with David before he went to USC?

A Well, we -- David was just excellent. You know, he was comedic with the family. He would do so many -- he was so interesting. He would do so many -- because we all watched The Ed Sullivan Show back then. You don't know anything about that, nor you. But nevertheless ---

Q I've heard of it.

A He would do some imitations and, I mean, it was just so fun. David was just such a kind, intelligent person, you know. And you know, I can remember my first pair of shoes -- he bought me some shoes, had a part-time job. And these brown shoes with little straps across. You know, he was just there and just a good person, just very kind, even in his stages of his -- his latter stages of -- anyway.

Q And, listen, we can take breaks whenever you need to.

A Even his latter stages, he was still a very, you know, kind-hearted person and very spiritual. He was, you

know, even in his confusion, he could quote, you know, certain things, you know, from the Bible, and all kinds of things. He was still able to -- his heart was pure, even in the state of confusion. That's the only way I can express it.

Q When he -- I mean, from what you're saying, it sounds like he was a pretty fun-loving guy in high school; y'all got along well.

A Right.

Q How did that change after his spring break of his freshman year?

A Well, he left, and we didn't know where he went or for the longest, they were just -- left the campus and he didn't say, "Mom or Dad, I'm going to quit school or drop out. I want to do something else." He just left. And he started traveling and hitchhiking and, you know, going all over the place. And you know, which caused -- you know, it was a lot -- it was a very, very extremely stressful time, you know, trying to find out where he was and, you know, what are you doing. And I think David might have visited every state in this country, literally. You know, he just did a lot of hitching and it was so dangerous. You know, and actually, I remembered a doctor -- it was like he had something he felt it was something like sort of wrong

and he felt like that he had some sort of physical, you know, that David wasn't, really. And you know, at one point, it looked like the doctor operated on him or his nose or something, and it wasn't even necessary, just based on what he was saying at the time.

So it was just -- or you know, it was just -- he would just be, you know, all over the place and we could not locate him. And many times, I'd be in Boston and I'd be at the door and David would be at the door. And you know, we'd try to say, "Okay, David. Now, you need to -- you need some help. You need to be seen. What is going on?" And then he would just, you know, leave and, you know. So it was a very - you know, I guess it was based on his diagnosis that we were not aware of what was really the dynamics of what was really going on. And it became a very dangerous situation for him. Anyone knows if you're hitchhiking, that can be, like -- we were just so, you know, concerned about his life in general and that sort of thing that was going on.

Q Yeah. And what I'm going to do, just to help you kind of understand where I'm going, what I want to do is focus on those early years now, because in your explanations, which I appreciate, I get the impression that maybe we're kind of jumping back and forth in

time. And I want to make sure I understand what was happening early and how things progressed. So, right now, let's focus on his freshman year in college. He goes away to spring break. He comes back, and he's different.

A Right.

Q Did he drop out at that point from college?

A No, he stayed there for a few more months.

Q Okay.

A So he didn't drop out at that point. He stayed for a few more months and then he dropped out. But he didn't finish the first year. David dropped out ---

Q All right. Then, when he dropped out, that's when he started on this kind of road trip across the country?

A Yeah, and certain things, and you know, communication, you know, was difficult contacting him and getting in touch with him and that sort of thing. And you know, that's when the spiral road truly began, literally.

Q Now, I know back then, of course, we didn't have cell phones.

A No. Oh, no.

Q So how would you -- how would your family talk to him? Would it -- he ---

A He would call.

Q He would have to call.

A Yes.
Q Okay.
A But that wouldn't, you know, necessarily say where he was, but he would always check in or call or, you know, sporadically so. But then he would come back to the -- come back to the parents and they would try to get David, you know, to be seen. And you know, at this point, we could see the deterioration that he wasn't being -- taking care of himself. Do you see what I'm saying?
Q I do.
A How are you eating? How are you supporting yourself? You know, I think -- I don't know, but it seems as though he would -- it seems that he would get little jobs here and there. Because David had a very winning personality, I can assure you.
Q Uh-huh.
A His personality was that people would be drawn to David, you know, literally. That was just his personality. There was something about him that people could go beyond what they were -- and see something or sense something about him that was just -- he wasn't a dangerous person or anything like that. Do you see what I'm saying? They sort of -- you know, because even sometimes you would wonder, people would just give

him rides and say, okay. You know, and we'd say, "Lord, thank you for letting him at least be safe," and that sort of thing.

Q Okay. So, how old were you when you went up to Boston?

A Eighteen.

Q So, when he was -- since he was only a year older than you, it sounds like you went on up to Boston while a lot of this was going on?

A Oh, yes. Yes.

Q Now, how often would you see or talk to him when you were in Boston?

A Well, David would call, but not -- he would call when he wanted to. He would make a few surprising trips that would not last very long. And then, at one point, David was in Boston, but -- oh, he was -- then he became -- he became hospitalized while in Boston.

Q Okay.

A At one point. You know, there's so much over the years, you know. But he was hospitalized in Boston, and I think David signed himself into the hospital. You see, because when you sign yourself out, you're able to get yourself out whenever you want.

Q Uh-huh.

A And I would -- you know, there was a very nice facility and David seemed to have been doing all right. He

actually signed himself in and I would, you know, visit him and see how he was doing. And then the next thing I found out that David signed himself out, you know, without notice, and would go someplace else. But he definitely -- one of the trips that David made, David signed himself into a hospital for sure.

Q And I think you told me you went to Boston in 1969?

A No, '8.

Q 1968?

A I graduated in '68 and I went to Boston in '68.

Q Okay. So you -- and four years at Boston College?

A I went to Boston College for four years, and actually, when I went to Pepperdine, I came to Parris Island, because I found out they had a program, offering a master's in administration. That was offered on the military base. So I came here -- because I graduated from college a semester early. So I came here to get my master's in administration. It was on Parris Island, South Carolina.

Q Okay. So let me do this ---

A But I went to Boston ---

Q Let me make sure I have these dates right. So, up to 1968, you were in Beaufort. Then, from '68 to '72, you were in Boston. And then, after you finished ---

A Well, I didn't do my master's just after my

undergraduate. I did -- I came to Bos- -- to South Carolina in -- when was that graduate program at Pepperdine? It was '76. I started a master's program on the military base in '76.

Q So what did you do between '72 and '76?

A I'm sorry?

Q Where were you living between 1972 and 1976?

A In Boston.

Q Okay.

A And then I came home for one year just to do that program and went back to Boston.

Q Okay. So, in 1977, you went back to Boston.

A Yeah.

Q And lived there until 1994?

A 1994.

Q All right. So let me ask this. During the time that you were in Boston from 1968 -- I know you had that year with 1976 where you were back here, but from 1968 to 1994, how often would you actually see David? Would it be once a year? Twice a year? More or less?

A Well, when I moved back home that I saw David, you know, in '94, more often.

Q Right. Let's focus on when you were in Boston.

A Okay. Let's see. How many visits would David actually make? Because that's kind of a lot of years back. I'm

trying to place it along with instances. That's how I'm trying to place, and also my address according to where I saw him too. David would just -- okay.

David came to Boston. He was there for a while because he, you know, came up for a quick visit. Well, one would call it a quick visit. And if you were to ask me the year that he signed himself into the hospital, I cannot precisely -- cannot comment exactly what year that was that David actually signed himself into the hospital there. But he signed himself into the hospital, so he was there for a few months. Yeah, he was there for a few months in that facility. And David came up again -- all this would have transpired, for the most part, in the '70s, okay? It would have transpired in the '70s, for sure, because I'm placing it to the birth of one of my children and I know that he was -- so it would have transpired in -- from the -- in the early '70s into, I would say, '77. Anytime before '77, David would have made about three or four different visits, I would say.

Q Okay. How about after that?

A Okay. After that, it would have to be more -- because I can't really recall. After that, it would have to be more after I moved home in '94.

Q Okay.

A Because David was in certain facilities in Georgia.
Q So, between 1977 and 1994 ---
A He would come home. Now, other family members would see him. My mother and sister, now, remember, because I lived away. They lived -- they saw David more often. They would have more detailed -- my mother has passed away, but it was really my mother and sister that was with David, for the most part, in what he was experiencing.
Q Okay.
A More than me, because I lived a thousand miles away, almost, in Boston. But they were the ones that -- David saw them more often because they were trying to take care of David physically and mentally, help him to certain facilities he would be in, different facilities that David would be in during that period of time. But they were dealing with him. But I was not doing that with him in Boston, because that's where I was.

But they were going through all these years and getting David the help or mental help. Coastal Mental Health. And you would be able to get rec- -- they're the ones who had lots of records on David. Coastal -- Coastal Mental Health were the people that was really dealing with David. And so, when I came home, he was in a facility in Georgia and I would, you know, go to

visit him there. He was in lots of different facilities. Or Veterans. Because he was in the Air Force for a short time. I failed to mention that. So he was in a lot of veteran's hospital facilities as well, you know.

Q Okay. So ---

A It was only after I came home that I was, you know, more, you know, seeing where he's at and, you know, going to see where he's at and that sort of thing and they were putting him in different hospitals here. So he was on St. Helena Island. Different places.

Q Let me interrupt you for a second, and this will probably help this go a little bit smoother.

A Okay.

Q I've got a whole lot of stuff, questions that I'm going to ask you today.

A Okay.

Q About his medical history and all that.

A Okay.

Q And I don't want to cut you off. You can answer as long as you want to.

A Of course. No, but ---

Q But I want to make sure we get Margaret in here today too.

A Okay.

Q If you'll just focus in on kind of the breadth of my question ---

A Right.

Q And then, don't worry. I'm going to give you an opportunity to tell me everything you want, okay?

A Oh.

Q Because, again, I'm not going to cut you off, but I think it will go smoother.

A Right.

Q So let me go back to my original question. From 1977 to 1994 ---

A Right.

Q When you were in Boston until you came back to South Carolina, how often did you see David?

A I would see David, if he was in a facility nearby, sometimes he would be in facilities in Beaufort, I would see him then. Or he would -- well, I always made a trip of coming home once a year. But it was according to, you know -- but I would see David during the course of that time. When I would come home, I would see David if he was in a hospital nearby and I would go visit him or whatever.

So, from 1977 to when I came home, I would see him about -- well, I didn't -- okay. I would see him -- it's hard for me to put a number. I would say, "Well,

I saw David exactly ten times." That would be ludicrous because you're not counting the times. All you know is you're seeing your brother. If you're in the vicinity, you go and visit him. I can't say -- it would be ludicrous to say, "You know I saw him ten times." I mean, I'm not keeping a record myself that I'm visiting him one time, or that's ludicrous. I would say I saw David at intervals during that period of time. That's the best way for me to say that, because it would be ludicrous for me to say that I'm counting the times I saw him. "Oh, I saw David 20 times this year." That's ludicrous. I would say during the period of intervals, coming home, or normal -- I would see David on those occasions that I would come home to visit. You know, I would see David certain times, but I can't give you a number.

Q Okay. Let me do it this way. Did you come home every year?

A Well, now I saw every year, but at least every two years. No more than two years ever elapsed.

Q Okay. And when you would come home every year to two years, would you always see him when you came home?

A Oh, yeah, of course. If he's in -- if he's in a facility, you know, nearby, you know, I would definitely be able to see David and that sort of thing.

For sure.
Q Okay. So I think what we've been able to do through that is kind of narrow it down.
A Right.
Q From 1977 to 2004, you were coming home every year or two, and when you would come home, you would go see David in whatever facility he was in?
A Right. Or if he's -- well, even if he's not in a facility. Sometimes he's just not in a hospital or if he leaves, but he would come by the house and I would be able to, you know, see him or whatever.
Q How were ---
A If he was in the area.
Q How were those visits with him?
A Well, they were -- they were difficult visits, in terms of, you know, his lack of coordination. It would be difficult in terms of -- you know, it's difficult because you saw that mentally there was instability there, you know, in terms of his sense of reasoning and not doing the medication, you know. It was very difficult. Mother and my sister could rarely get David to take his medication because he was adamant about not doing that, and that's what caused a lot of his problems. Because when he wouldn't take the medication, then his body reacted mentally and

physically.

So he was just -- you know, it was not a coherent visit, so to speak, always. Do you know -- because he wouldn't take his medication and he would just -- see, that was part of David's difficulty. David would not take the prescribed medication that was given to him. So it would make him very unstable, in terms of that. But never dangerous. Just, you know, not a lot of coordination or coherent ---

Q How about in 1994 when you moved back to South Carolina? How much did you see him on a regular basis then?

A Let's see. When I moved back home, I need to try to figure out. David was in -- David was in Savannah. I think he was in a facility in Savannah, and I would just, you know, simply go over to visit. And then I made a mistake because my sister had been dealing with David for more years than me, but some reason, I thought I knew some things better than she. And I would say, "Well, I will -- let me just bring him home, you know, for a couple of days." She said, "I'm telling you, if you bring David home, he will not go back. He will not go back with you." She said, "Mother and I have been dealing with this for many years and you have not." And I said, "Well, let me

try," you know. And I would, you know, bring him home, I thought. And it was time to go back, I would have to get actually the policemen to get him to go back. And I think one time a policeman had to escort him the whole way.

So I sort of learned to listen more to an experienced person rather than to my emotions, you know. And so I learned, you know, certain things, and we would try to -- you know, from '94 to, you know, when David went to another facility that was out of the area, you know, we had him in -- we tried to put him in facilities near us. You know, St. Helena is like 25 minutes from the house. And we tried -- and he wouldn't stay there. He wouldn't stay, you see, because he was confined. And then he'd go to Savannah, Georgia, and someone would find him in Savannah. They would have to bring him home, you know.

And then we tried to put him in a facility in this place called Grace Hill, which is about 20 minutes from the house. Very nice facilities, very nice people, and really cared about David. And you know, he wouldn't take his medication. There again, they couldn't, you know, make David stay if he didn't want to. And then Port Royal was 15 minutes from the house. Very nice people, but they could not -- because David, he had a

very powerful personality, now. Even in his state of confusion, he would walk into this room and you would never know because he was able to manipulate it looks like a situation if he wanted to. Or walk into a place and he was really quite a person, character, quite frankly.

So none of the people were able to, you know -- we tried to keep him near us, near home, but it wouldn't work because David was endangering his life. And that was when we realized, for his sake, because he would always go hitchhiking to Savannah and hitchhiking places, and times were different than when we were coming up. So that's when we realized that that wasn't working, you know, for David. He even went to the veteran's hospital many times in Charleston. He was in their facility.

Q So you had mentioned earlier Coastal Mental Health. Is that -- where is that located?

A They were the ones taking care of David, trying to give him medication. They also assisted in placement for David.

Q Where is that located?

A That's in Beaufort, the one that we were dealing with. Coastal Mental Health. And they were the people that were, you know, trying to put placements for David and

come up with places for him to go. And he would go in to see them as well. I would talk with people there close to mental health, and they did -- you know, they did -- well, they'd give him prescriptions for medications, but that was the core of the problem. David just wouldn't take the medicine, basically, that would help him to be more stable.

Q In the -- in the various facilities you're describing, were those hospitals ---

A No, they're privately-owned state, I guess, licensed homes for people with disabilities.

Q Okay.

A Yeah. That's what they were.

Q And I know we're going to talk a little bit about Bowles Community Center in a little while, but is that the type of facility he would be in?

A Well, Bowles was the one that was different than the others because he could not leave at will.

Q Okay.

A The others, he was able to leave and not take medication and endanger his life. See, that was the difference. His was supposed to be different.

Q So the facility -- so let me make sure I understand. Before Bowles, the facilities that he was in ---

A Come and go. They couldn't make him -- they couldn't

confine him. Just decent -- people who have homes for people with disabilities and that sort of thing. But it was not a situation where they could make David not leave. So things just became as such where people would find him in Savannah and call us, and we'd have to go and try to find him and things like that. So Bowles' facilities was supposed to be the one.

Q Okay. That helps. So, before Bowles, the facilities he was in, he could come and go as he wanted.

A Yes.

Q He didn't have to take medications if he didn't want to.

A Well, they wanted him to, but you know, David had -- you know, it was hard for them to do so.

Q Right.

A And they couldn't stop him from hitchhiking and walking the street. That was the most dangerous thing that he was doing. That was of grave concern.

Q How long was he at Bowles?

A Ten years, at least.

Q Okay. And that would have been, then, I know he left there at the end of 2014.

A Well, when he was -- it was October 13th -- was that 2014?

Q It was.

A That was the last day that David was at Bowles.
Q All right. So he was there ---
A October 13th. So I would say, like, the -- 2014 -- well, two oh four or something like that.
Q Okay. All right. Now, what -- let me ask this before we move to Bowles. From that two thousand -- well, the Coastal facility you were telling me about ---
A They were the ones that really took care of David or were the ones working precisely with David to try to get him placements ---
Q How long was he a patient there?
A With -- out of their facilities for years, literally. And my sister might have a better -- in terms of dates, you know, than I would. So I'm not going to give a date. It was not in my brain right now. Do you see what I'm saying? I can't say. I'd say for years. Those were the people that would have had -- that were in charge of trying to give him medication and trying to give a home for David in which to live in, which they were finding more and more difficult to do, because he would not take the medicine and he would not stay. But they were helping us in terms of placements for him, you know, under their -- with mental therapy, that sort of thing. David was going to them for counseling and whatever, you know, Coastal.

So that's the role they were playing, you know, in David's life and tried to give him different placements and tried to, you know, get him places that he would -- but he had a mind of his own. And he just was not -- he wouldn't comply to basically that medication that would have helped him to be more balanced. He just would not take it. He just didn't want to.

Q Who was more -- it sounds like Margaret was more involved through these years in his care than you were.

A My mother, until she -- my mother passed away.

Q And then Margaret?

A Yeah.

Q Okay.

A Mother was there. Mother was there until she passed away.

Q Was David ever married?

A No.

Q Did he ever have any children?

A No.

Q You mentioned something about the Air Force. What was his Air Force background?

A That's it. David went to -- said he wanted to sign up for the Air Force. Of course, he passed the test.

Q He did not?

A He did.

Q Oh, okay.
A Of course. And this was -- this had to have been the early -- let's see. Early '70s. Early '70s. But he didn't stay in for just a few months because of a mental situation. Then that's why David came out of the Air Force. But they sort of helped him out, because that's why he was able to be in some of the VA hospitals. And he got -- he was -- he's buried in the national cemetery.
Q In -- up in ---
A In Beaufort.
Q In Beaufort, okay. So did he ever serve overseas?
A Oh, no. He didn't stay in the Air Force long enough. He was there for just -- I don't think David was in the Air Force -- I don't think he stayed a complete year, actually. But he did the initial training to the point of being able to get veteran's hospitalization in Charleston. He was there, as well.
Q Was he ever able to hold down a job for very long?
A One of the times before -- I think before David really became -- when he signed himself in, before that, he had a job at a security, you know, parking lot. And he was there for some months, you know. But before that, of course, in high school, David worked on the military base. And he had jobs, you know. He worked on the

base on Parris Island.
Q How about after he -- let's say after he turned 25, did he ever have any jobs after that?
A Not stable.
Q Okay.
A Not at all.
Q As your brother -- when you moved back to South Carolina in 1994 -- and by this question, I don't -- I don't want to imply anything here. I know that you and your sister and your brothers, I'm sure you loved your brother dearly. We all love our siblings, no question. Other than as a caretaker -- let's say your mom took care of him, Margaret took care of him, you helped take care of him.
A At a distance, yeah.
Q Or even at a distance. Did y'all have any sort of relationship with him other than as a caretaker? In other words, was there ever a relationship as the diseases progressed where you could have a good time with him or was it always just struggling with him taking his medications and those sort of things?
A To answer that question, his nieces and nephews, I think, could answer it better. They loved Uncle David. All of his -- all of our children love him, even though he had these -- they must have remembered that David

was going to mental -- but everyone adores -- at his services, you'd hear the things they say because they loved Uncle David.

So David is incorporated, you know, in our family. Do you see what I'm saying? In terms of with respect for them, you know, he went through his changes, but even -- you're stressed because you love and you see you're not able to help, so you feel helpless. But you don't not love them and you don't not have relationships with them, even though you have to be their caretaker. Hopefully you caretake with love. You know, you're frustrated because he won't listen. He's very -- he is very stubborn.

When I say David had a mind of his own, very interestingly so. Very intelligent person because he could -- if there's a problem, but he could answer any question in a history book or academically, intellectually. He was still -- he never lost that flavor.

So, even though we're a caretaker, you know, you're frustrated because you want to help him and you don't know how to help him, but you certainly still love him. You know, so is there a relationship? Hopefully, you know, even though you're stressed because you don't -- but hopefully that doesn't

overpower your love, you know, for that relative. Frustration, yes, but you know...

Q Now, how -- let's move to Bowles Community Care Center. So he was there from 2004 to 2014. And that's in Charleston County. Is that right?

A Yes.

Q McClellanville?

A Yes, it is.

Q How often did you go visit him during those years?

A I would say that when I moved to Greenville ---

Q And what year was that, again? I'm sorry.

A I moved to Greenville in 2008. When I moved to Greenville, I might have -- I did not see David as often, but I would talk to David and call him and send a lady that I trusted, money for him. Even though he got -- he was supposed to be getting extra money for himself, but I don't know what ever happened -- you know, he was supposed to be getting pocket money. I have no idea. But there was someone there that I trusted and I would send her money that she could do something for David.

But David always wanted to say, "I want to leave." But we always knew that he wanted to leave and he would retract to being on the streets and the police. And it was just that he just would never comply, you know, to

taking his medications and things such as that. So I did not see David as often when I moved to Greenville. We would talk on the phone and I would call him and I would send him money and that sort of thing. Since I got -- when I got to Greenville, I did not see David that often but two or three or four times. Not too often did I see David when I moved to Greenville.

Q So, from 2008 to 2014, you saw him two, three, four times?

A Well, should I -- here I am, putting a number on it. I would say that I did not see David that often, but I would talk to David and call him on the phone at a distance because, when I talked to David, David would become very angry. Sometimes he -- he was furious because he felt we were supposed to -- he needed to be able to come and go. So it was not even a coherent conversation because he would just say, "I should be able to go where I want to go and do what I want to do." So sometimes he would talk on the phone and sometimes he would not even talk to me on the phone. Sometimes he would and sometimes he didn't get on the phone at all, because it was according to he just wanted to be able to go back to how he did things before where the police would call and pick him up, and someone would say, "I see your brother on the Savannah

Highway. Y'all need to see about him because he's a danger to himself." Or he would get in a car with just anybody. And he would not take the medication, so he wouldn't be even coherent. Or family members would call and pick him up and he couldn't even talk legibly because he would not be on medication and that sort of thing.

Q So, from 2008 until 2014, did you see him on a yearly basis? Every couple years, or just only a couple times over those years?

A When I would go to Beaufort, my sister and I would drive up to Charleston to see David. And I would say -- because I never came to Beaufort that often once I came to Greenville. So I would say let me try to -- what I like to do is visualize what we did. And that would help me to visualize exactly how many times I saw him, what we did. And then we would take him from there and take him out to eat. Then he'd be furious and not want to go back. But then another time we'd go there to see the facility. And when he first got into that facility, we went -- because he was placed in that facility, by the way, by people who ---

Q By whom?

A Well, Charleston, the veteran's hospital in Charleston. That's where David was. And when David would leave

Bowles, David would go to the veteran's hospital in Charleston and then David would go back. But we went to see him in the veteran's hospital in Charleston. But then, when he was done and they felt he had had treatment, they would send him back to Bowles when they felt he was more stable. So, you know, we went to visit him several times also in the veteran's hospital during this period of time as well.

Q Okay.

A But they're still connected to Bowles, but often he'd be in the veteran's hospital for some months or for some weeks there. So that's, you know, included in Bowles, being that Bowles was supposed to be the foundation of it. But then they would often be at the veteran's hospital.

Q And that's the VA hospital in Beaufort?

A No, that's in Charleston.

Q I'm sorry. Charleston.

A Yes.

Q That's what I meant.

Okay. Now, and I appreciate that explanation. Can you think, from 2008 to 2014, how many times you would have made that trip? Would it have been every couple years? Would it be every year? Would it be -- I'm just trying to get an idea. And you don't have to

give me an exact number. I'm just trying to get a ballpark figure of how often you saw him during those years.

A Okay. Because, again, the veteran's hospital in Charleston is completely connected to Bowles.

Q Yeah, and I'm talking about all those years.

A So that's why I'm saying Charleston trip is connected to the Bowles trip.

Q Uh-huh.

A So I would say when I left Beaufort -- oh, so he must have been to the veteran's hospital about maybe three times or more and Bowles' place about -- I would say two or three times at Bowles' place. So you could say -- say roughly, to be on the safe side, say about five. I'm going to say, but I'm not going to declare that to be an exact time, because I like to be precise. I'm precise only when I can reasonably -- when I know I'm precise. So I'm going to say within that period of time.

Q And how often would you call him? Did you call him on a regular basis? Like once a week or ---

A Oh, yes. I called David on a regular basis, you know, to try to -- but then sometimes, you know, he would not come to the phone. It was sort of like a difficult situation. The lady, an attendant, would say, "You

know, David doesn't feel like coming to the phone," and that sort of thing. But calling him and checking on him and the lady -- Ms. Jenkins or whatever her name is -- right now her name escapes me. She is the lady that I would talk with. And the only time I would talk to this lady -- I've got to think to probably remember her name. I would ask her how is he doing and what's going on with him when he didn't want to come to the phone. Or send her something to buy him something specifically because I sort of trusted that she would, you know.

Q Was that the director there?

A No.

Q I think her name was maybe Virginia.

A She wasn't the director. She's the director?

Q Well, I may be wrong ---

A I think the name might be -- might be Virginia.

Q Okay.

A Might be Virginia. Yes, that might be her name.

Q How about -- and let me ask you this, because you -- I think you used the term you called him on a regular basis. What -- to you, what was a regular basis? I mean, how often would you call him?

A Well, I mean, I would make sure that I would call -- but no more than -- I would call him two weeks to see what's going on, or maybe once a week this week, or

maybe a two weeks. Or sometimes there would be a little discouraging because he didn't, you know -- it would be sort of like a -- not a very coherent conversation ---

Q Okay.

A --- when he would come to the phone. Or sometimes they'd say he was asleep when I would call. They'd say, "He's in bed." I'd say, "It's 8:30 and he's in bed already?" So there's times that I would call that I didn't get to speak to him at all, actually.

Q How about -- how about when you were still in Charleston and he went to Bowles from 2004 to 2008? How often were you seeing him on that -- during those years?

A Well, actually, that's the time that I'm referring to. I'm telling you the 2000 when he went to Bowles. That's what I'm referring to. When I moved here is when I hardly got a chance -- when I moved to Greenville is what I'm telling you. The experiences I'm telling you about now are times that I would visit David when David went to Bowles between that period of time and me coming here. Coming to Greenville is when I did not see him very often.

Q Okay.

A Do you understand? Those experiences with the

veteran's hospital, those were experiences during that period of time before moving here.

Q All right. So let me see if I can summarize this.

A To Greenville.

Q So the five or so times, the estimate you gave me, that was before you moved to Greenville?

A Most of the times -- well, I need to get these -- yeah. That was before literally moving to Greenville, South Carolina, which beforehand, I was about an hour and a half from David. And then I moved here, which is literally about three and a half to four hours. So it made it more confining for me, based on my obligations here.

Q All right. And so we can correct the record, because the record's going to read one way ---

A Oh, okay.

Q --- but I want to make sure it's accurate. So, from 2004 to 2008, which is when you moved up to Greenville ---

A Right.

Q During that period while you were still living in Beaufort, you think you probably saw him about five times, driving up to Charleston?

A Well, I mean, the veteran's hospital was considered to Bowles -- so I know we went to that veteran's hospital

more than two or three -- I would say maybe five or six times. I'm going to put it between five and six times.

Q All right. Now, how about when you moved to Greenville? So we're talking about you're living up here 2008 through 2014.

A Right.

Q How often did you see him during those years?

A Now, that's interesting because I would say -- I'm trying to think of when -- because I like to associate visits with -- well, actually, I hardly came to Beaufort in that period of time from 2008 -- I'm really going to say maybe about -- I'm not going to say more than maybe once, maybe twice.

Q Okay.

A And that's what I'm thinking. I have to -- not maybe more than that.

Q So, during those years, you may have seen him once or twice.

A Twice. Because I didn't even come to Beaufort often because of my responsibilities here with my grandchildren. That's why I moved here. So I was confined, in terms of my babysitting. So I really did not. That's why I got here, you know, because my daughter got married. So I had to help with the grandchildren so they could stay in college because I

wasn't approving of that age. I said, "Only if you finish college and I promise I'll come up and babysit, but you've got to stay in college." So I was confined with my grandchildren and that's how I got here from Beaufort.

Q Now ---

A Babysitting duties.

Q While you were here -- and, again, we're about to move on ---

A And I would call and I would know what's going on and I would speak to Mr. Bowles on the phone, too. You know, and referencing my brother in Boston, he came home once a year. And whenever he came, he always went, you know. He came home once a year from Boston, and he would go. And other relatives I would send. I would send my son, you know, who lived in Columbia to go see about him. And I would send other friends that I knew. I said, "Would you go and check on him?" You see, I would send certain people to please go and check on him for me.

Q What did you think of Bowles? The facility?

A I cannot say that I was a hundred percent impressed. I looked at some of the other, you know -- because we would make sure to, you know, buy David things and sent David some clothes and stuff. I looked at some of the

other clientele and they looked down and out to me. They looked a little depressed to me. They didn't look real -- some of the other people to me. And David said, you know, whatever -- we'd send him clothes and people would take his things, you know, take his things that we would buy for him. Other people there would just take it or whatever the case is. But you know, it was just not -- and, in fact, it's interesting because my brother in Boston, before this happened to David, was in the process of looking for another facility for David.

Q Uh-huh.

A Before this incident happened, because when my brother made the last visit from Boston, he was not pleased. So being that one of my brothers is a counselor for veteran's, he was in the process of getting some paperwork done to move David from this particular place.

Q Did -- was he able to come and go as he wanted from Bowles?

A Now, see, that was it.

Q Okay.

A That was the difference. That was the only reason that we were trying to work because, with that facility, unlike the others where he was endangering his life,

you know, he wasn't able to come and go. At this particular -- that was one of the things about this facility that was supposed to be different. That was different.

Q How about ---

A You know, he had -- you know, they weren't able to do that.

Q How about medications? Would they make sure he took his medications?

A From what I was told. Now, David had a counselor, Robert -- oh, geez. Roberts is his last name. David had a counselor at the veteran's hospital that worked with David that I would speak with him directly and what was going on with David. At the veteran's hospital in Charleston, South Carolina. His counselor's name -- last name was Roberts. I always thought it was the first name, but that's his last name. And I would also have dialogue with him. And when my sister and I would go see David at Charleston, you know, I would ask him what is going on. And he would, you know -- and he was the person that -- they're the ones actually that placed David, ultimately, from the veteran's hospital to Bowles.

So he was the person that I would have a dialogue with, in terms of what's happening with the medication

and what's really going on. And he would say -- he would go over there and do some activities or whatever with David. And on certain occasions, again, David would have to leave there to go to the veteran's hospital. But I would be in communication with Roberts as well.

Q Okay.

A The counselor from the veteran's hospital.

Q Did you ever have -- and let's say before the choking incident, which happened in October of 2014. Before that, did you ever have any disagreements or disputes with Mr. Bowles or anybody at his facility?

A Well, David would say to me I would speak to Mr. Bowles in reference -- he said that, on certain of the conversations, that's when my brother really went down. David would say that he is being struck by Mr. Bowles. And David said Mr. Bowles would be hitting him there. He said the people will take all of his clothes, take his food. But and then we realized that David had -- when my brother went down, and that's what started the ball to get him out of there. When they saw how thin David was, how thin, underweight. And he realized also all his teeth had been extracted, but there were no -- they had not replaced his teeth, not even -- you know, he had nothing in his -- you know, so how would -- he

was just so extremely, extremely skinny. And Joseph was just -- he says no. We have to get him -- we have to find a new facility here. David was -- if you look at his records, he was just tiny. And when I saw him when I went to the hospital and I, you know, saw him in Charleston -- no, Pleasantville. Pleasant ---

Q Mt. Pleasant?

A Mt. Pleasant. On October 13th is when I got the call, and a doctor called me and said that David had had a choking incident and cardiac arrest. So I went that afternoon, called my sister, and we went to Mt. Pleasant ---

Q Can I interrupt you for one second?

A Yeah, sure.

Q Let me -- can we hold that for a second?

A Yes, of course.

Q Because I'm going to get to that.

A You'll get to that, yes.

Q I want to go through the Bowles time.

A Yes, okay.

Q And then I'm going to go right to that.

A Right.

Q So we'll talk about that. In terms of -- let's do this first. Tell me about what you learned about -- when did you first hear about the choking incident?

A I was in the supermarket, Publix, and I got a call from a doctor who called me. It was about 2:00 or 2:30 in the afternoon. And he said -- he identified who he was, and he told me that my brother was in the hospital, that he had been admitted, that there was a choking incident and that he had cardiac arrest. So this was about 2:30. And when I got to the hospital, it must have been maybe about 6:00 or 6:30 on October 13th. That's who I got the call from. I didn't get a call from Bowles or anybody from them. I got the call from the doctor from the hospital. Nobody called, you know. I didn't get a call from the facility at all.

Q Did anybody ever explain to you how the choking incident happened?

A I called the lady, Virginia.

Q Okay.

A I said, "Well, could you explain?" She said something about he was eating a piece of -- how she explained it, that he was eating a piece of meat and I guess obviously there was no one on the facility equipped to handle the situation. She said he was like slumping over the table. And then she called 911. That's what she said to me when I spoke to her that day. And, you know, that's what their -- that's her explanation. And I said to her, "Well, you know, he doesn't have -- he

doesn't -- my brother said he doesn't have any teeth. So I'm trying to figure out how he would have a piece of meat." Well, that's another story. But at any rate, that's when I spoke to the doctors. I wasn't really focusing on her. I just went to Charleston, you know, to see what was happening. So, when I went into the room, of course, David was not conscious.

Q Okay. Can I interrupt you one more time?

A Okay. Yeah.

Q I really want to stick with Bowles. Then we're going to move to that, I promise.

A Yeah. Okay.

Q So I want to keep going.

A Right.

Q I want to go with this conversation you were having with Virginia. So you asked why he had a piece of meat without any teeth. What did she say?

A He took the meat off of somebody's plate, she said. That was her explanation to me.

Q Was he on some kind of mechanically soft or pureed diet?

A I asked her that. It appeared that they don't have a dietitian there and she was not able to confirm that to me at all.

Q All right. So he took meat off somebody else's plate

---

A That's what she ---

Q He choked on it. That's what she told you.

A And I said, "How long was it before the ambulance got there?" Well, it appears that the ambulance -- it was not one nearby. It might have been 10 or 15 minutes or something. Well, no, you know what? The people that brought David to Mt. Pleasant, those were the ambulance people. So I guess records would be more precise and finding out when they picked him up, what time they picked him up.

Q Okay.

A But my call came from the doctor, not from them. I saw Bowles three or four days later.

Q Did you -- in that conversation with Virginia, did she -- so, as I understand it, based on that conversation, you learned that he took this meat off someone else's plate. He choked -- and this is just what she told you. He choked on it. They didn't have anybody there at the facility to perform anything like the Heimlich maneuver ---

A Oh, no, no. That was never done.

Q Okay.

A David was just sitting there, laying there, waiting for an ambulance.

Q And when the ambulance got there, then they worked on him.
A Yeah. And they -- well, actually, his heart stopped and they, you know, got it back to working.
Q Okay.
A That's what I was told, that his heart had stopped and they worked on him and rushed him over to Mt. Pleasant. And the doctor there is who gave me a call in reference to David.
Q Okay. Now, you're familiar, I assume, that there's been a lawsuit brought against Bowles Community Center.
A Yes, I'm aware of that.
Q Okay. And there are certain allegations in that lawsuit about deficient care provided by Bowles. Have you read that lawsuit?
A No, I haven't.
Q Have you given any sort of statements or depositions in that case?
A No, I haven't.
Q Do you place any -- well, let me ask this. Do you feel that Bowles is responsible for the choking incident?
A How is that relevant to -- how -- when you ask me that question, may I ask why you wish to have that answer from me?
Q You really can't. I mean, you can, but I don't have to

tell you.
A Oh, okay. Okay. All right.
Q Yeah.
A Well, yes, absolutely.
Q Okay. And tell me why.
A Because, A, there should be people on staff before the ambulance ever got there to have done the Heimlich if he's choking. He can't just be over there slumped over and no one attends to that. A. Because of his mental condition, he's there because of a mental, not a physical condition. You must have people on staff to watch and see what they're doing, how they're doing it. Because, remember, he's not there for physical. He's there because of a mental condition. So, therefore, there is a special need to be taken care of. There are people there that might be there because they're ill like a nursing home and can't live in a house alone, but mentally they're quite stable.

The bottom line is he's there because of mental instability. So, therefore, A, you have to have counselors on staff, a dietitian on staff, and all that sort of thing on staff. And people to watch him very carefully, but the very least of it, there must be a training, even if it's Ms. Virginia, because any such thing can transpire there. You don't wait 10 or 15

minutes. A brain doesn't come to -- doesn't get oxygen in just a few -- what happens? So you must have qualified people not to panic but to address the issue and to pay close attention to what he does, specifically.

Q Do you blame Bowles for his death?

A I beg your pardon?

Q Do you blame Bowles for his death?

MR. FEIDLER: Objection. You can answer.

THE WITNESS: That is a question that I don't feel I wish to answer right now.

BY MR. WHITE:

Q Well, you don't really have a choice. You have to -- if you have ---

A Bowles is responsible for David having ended up in Mt. Pleasant hospital. His facility is 100 percent responsible for how he ended up. So everything -- you have to look at the beginning to get to the middle and to the ending of a situation. So he is totally and completely responsible for David ending up at Mt. Pleasant hospital.

Q Okay.

A So we can go from there.

Q All right. So do you feel that they're responsible for his death? Bowles?

A There are other -- he is one of those responsible.
Q Fair enough. Do you -- what was your understanding of -- and we'll probably get into the doctor discussions now. What was your understanding of the injury he suffered as a result of the choking?
A As the doctor described to me, he said with the choking incident, it prevented the oxygen, you know, from getting to the brain. So he was in a state of unconsciousness, you know. He never regained consciousness, and I was there from the time that he entered from the time he left. I only left three nights.

So I was there with him every day at the hospital. I stayed at the hospital. So he ended up in the heart -- there was stress on the heart as a result, you know, of that. He said when his heart stopped beating, he said, in the ambulance, that's what he was told. And then they got it working again. And so he said that's what caused, you know, the state that he was in when I entered the room. You know, his -- just being totally unconscious -- never regaining consciousness from, you know, that incident that transpired. He never regained consciousness from that.

Q So, when you went ---
A He couldn't do anything for himself.

Q When you got the call and you went to the hospital and you stayed there for three days, you said, night and day?
A No. I was there for his length of time. He came October 13th. He left the first part of December. I left only three days.
Q Oh, you left only three days.
A Yes.
Q Okay.
A I lived at the hospital with him.
Q Okay. So let me ask you this. During that time, during that hospitalization, which was about a month and a half, because half of October, all of November to the beginning of December, did his condition ever improve?
A Well, David -- everything -- the only thing when David left Mt. Pleasant, the only thing is that he was still unconscious, but his -- all his vital organs, you know, his skin texture, physical therapy, you know, everything was -- his body was in good condition in terms of his physical body was in very good condition. He was still in a state of being unconscious, but in terms of, you know, his skin texture, they oiled him down. They gave him physical therapy. They kept him, you know, mobile. You know, everything other than just

not waking up, everything was fine when he left the hospital.

Q So, when you went there the first day and you saw him, he was unconscious.

A Yeah.

Q Just lying there with tubes in him? Is that ---

A Yes.

Q Okay. Now, he had a vent; right?

A Well, later on, they put a trach in order to give him food because he could not eat, himself. So they had to -- they had to -- well, he had the IV and then later on they gave him a trachea also, in order to give him more calories. He needed more because he was extremely thin. So his weight came -- you know, his weight came up as well. He gained more weight in terms of, you know, after he got into the hospital. Even in -- you know, because they added on calories to him and all those things. He had -- body weight and everything else went up after that.

Q All right. As I understand it, for some period of time, he was on a ventilator.

A I'm sorry?

Q For some period of time at the hospital, he was on a ventilator.

A Yes, of course. Yeah, that was ---

Q And that was withdrawn.
A Yes.
Q But they kept the trach tube?
A Yes, they did because you must supply him food to get into his body. He can't chew. He can't -- you know, so you had to have that in order to make sure.
Q Were they feeding him through his trach tube or through a stomach tube?
A Now, that, I dare not answer because I'm not quite sure.
Q Okay. Fair enough.
A I'm not quite sure.
Q But they did have some ---
A I think there was something, but I'm not sure, so I'm not going to give a precise answer.
Q But he obviously had ---
A Yeah, the food was ---
Q He couldn't chew?
A Yeah, that's right. So, obviously, you know, he couldn't do any of that on his own. The trach is to help with the breathing and that sort of thing. So...
Q Was he ever able to -- while at Mt. Pleasant hospital, was he ever able to communicate with you in any way?
A No.
Q From that point until he died, was he ever able to

communicate in any way?
A No.
Q Was he unconscious that entire time?
A Yes. Well, I mean, they would -- they -- the movements were not -- like, it might have been something like his eyes, but his eyes were open but not really seeing. You know?
Q I understand what you're saying.
A Yeah, it was -- yeah, David never gained consciousness.
Q Did the doctor at Mt. Pleasant ever talk with you about the amount of brain damage from the lack of oxygen?
A Well, it was to the point of him not being able to, you know, gain the -- but at some point, I can't even give you -- so much was going on at the time. I just kept with the basics that he's still unconscious. You know what I'm saying? There had been no change in that. I can't give you numbers, and I'm sure it was done. I'm sure we even probably discussed it. But I'll be quite frank with you. I was just dealing with -- and in a layperson's term, he's still not able to communicate with me, talk with me or respond, you know, in a way that I would want him to respond, or at all. So that's in my lay terms of not being medically inclined in terms of technical terms, okay?
Q That's fine. Yeah, that's fine.

A So that's -- that's -- that, for me, is like the bottom line in terms of not waking up or not, you know, being able to call our name or that sort of thing.

Q Could you tell whether he was in any pain at Mt. Pleasant hospital?

A No, not -- I couldn't tell. Now, it's nothing that I would be able to tell, you know, because he would have to make a movement or some -- but there are certain things that they would do that David would -- you know, certain exercising, it seemed as if he would respond to it. So, definitely, there was -- I think that meant he was either -- he could feel something. I could tell. Because otherwise he would -- he would -- when they moved, certain sounds it looked like he made. Do you see what I'm saying? So, no, I would have to say -- I would not state I'm sure he was in no pain. I could not make that statement at all.

Q You just don't know one way or another?

A You know, I can't -- well, certain exercising, you know, I'm not -- I wouldn't say -- I can't -- there's nothing that I'm going to say precisely because that's like when you take your child to the doctor and the doctor says, "Oh, he doesn't feel any pain." I said, "How do you know? He's only a month old. He doesn't tell you that." Do you see what I'm saying? You're

sort of projecting what you think. But ---

Q Yeah ---

A You get that, right?

Q I do, and I'm being fair to you. If your answer is, "I don't know whether he was in pain or not" ---

A Right.

Q That's fine.

A Right.

Q But if you had -- hold on one second. But if you saw something or a doctor told you that he's in pain, I want to know that.

A There were certain exercising or movement that he seemed to -- when they were exercising, he seemed to have known that, to me -- I don't know for sure. That could have been -- sometimes it could have been a reflection -- just an automatic reflection. I'm not sure. Do you see what I'm saying? But it seemed as if, even though he might -- oh, it's hard for me to say. I just can't really say. I can only surmise, well, did he feel that? Do you see? That's in my lay terms. A doctor didn't say to me, "He can feel this." No one ever verbalized certain things. And I can tell you what I think, but I cannot give you a precise answer, was David in pain. I cannot say that. I can say I think there are certain things he might have felt

that was going on. That's just me being emotional about it or thinking that maybe he is feeling certain things. You know, they say when people are unconscious they hear you. That's what I have been -- medically, that's what they say, that they can hear you. They'll say, "Well, keep talking." I would talk to him and I would sing to him and I would read to him too, based on what they said. So, if they're telling me that I should just sit there and I would do so, then who's to say. There's a possibility, too, that he would feel pain but cannot communicate it.

Q Okay.

A But as a doctor, I'm not going to say -- as a lay person, I'm not going to say I know my brother was in pain.

Q Okay.

A I can think, you know. I can think.

Q Did the doctors there -- I'm sure the doctors at Mt. Pleasant talked to you about his possible prognosis, whether he was going to get any better or not. What sort of prognoses were you getting?

A Well, as a medical scientist, they would say, "Well, we think that he -- you know, this state that he's in will -- he will be in this state." That was -- they didn't give us any hope, you know. They didn't give us hope

that he was going to recover. They didn't say, "Well, we think after a while he's going to be okay." They never said that to us. The prognosis they were saying his state of unconsciousness, they didn't see him, you know, progressing out of that. But as they said, you know, people live for years and years and years in a state of being in a coma, which we all know that's well documented. You know, so we weren't going to -- we're spiritual people, so we weren't going to say, okay, well, we got you. Okay. We didn't, you know, agree that that's the case because, you know, they, you know -- no, we didn't -- that wasn't -- they didn't -- they didn't give us a very sunny prognosis based on his mental -- what the state that he was in.

Q Did you have some -- did the doctors recommend -- do you know what palliative care is?

A Tell me what that is.

Q Well, like hospice, where it's -- you're not providing aggressive treatment. You're just trying to treat pain to allow somebody to die naturally rather than providing aggressive treatment.

A Well, at Mt. Pleasant, because his state had gotten to a point he could have been released because his body was in such, other than being unconscious that he no longer needed to stay in their facility. So that's why

we had to move, because he, physically, other than not waking up, he was in great shape. So that's when he had -- he was no longer needing hospital care. Do you see? When he first came in, there were certain things they had to bring up to level his weight. Well, when he left Mt. Pleasant, everything was as such. And now you all need to find -- if he's going home with you all or a long-term, because he would need a lot of -- but not because of physical reasons, because they had taken care of that to the point of us then having to find a facility of which for David to get care. And that's how he ended up at Bayview.

Q Okay.

A Because physically he was fine.

Q Let me ask this. Do you recall having any discussions with the doctors about comfort care, hospice care, things like that?

A No. I think that was discussed when he was at -- when he was at Beaufort Memorial Hospital, when he was at Bayview. Several times while being at Bayview's facility, they had -- they sent him over to Beaufort Memorial Hospital because they were not able to whatever, accommodate something or another.

Q Okay.

A So the word "hospice" came up at Beaufort Memorial

hospital and not Mt. Pleasant.

Q All right.

MR. WHITE: Do you have ---

THE WITNESS: Not there.

MR. WHITE: --- exhibit stickers?

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 1, MEDICAL RECORD, ATTACHED.)

THE WITNESS: Because things were -- things were a little bit -- things went a little downhill.

BY MR. WHITE:

Q Okay. I'm going to hand you -- and we don't have a ton of documents to go through today, but we've got a few. I'm going to hand you what I've marked as Exhibit Number 1 to your deposition. And this is -- these are a few pages from the medical record at Mt. Pleasant hospital. And what I want to do is ask you about this -- the last paragraph on that first page. And so what I'm going to do is just read it to you out for the record, and then I've got some questions as we go through it.

A Okay.

Q So this says, "Interdisciplinary family meeting was had with his sisters, Margaret and Dorothy, today. Myself was present. Also, the palliative care social worker, Laurie Lybrand, and blank, nurse practitioner student."

Then, and by the way, this is by a Dr. Tiffany Richter. Do you remember Dr. Tiffany Richter?

A There were so many doctors.

Q Yeah.

A Perhaps.

Q Okay. So I'm going to read on. "We discussed their understanding of his current illness. His information was reviewed and all of their questions were answered. His sisters are very focused on his pre-hospital care and the events leading up to his arrest."

Now, do you know what she's referring to there?

A I guess the fact of what brought him to the hospital itself.

Q The choking at Bowles?

A Yes, of course. Uh-huh.

Q Then it says, "We discussed the patient's quality of life on prolonged ventilation with a very grim prognosis for any meaningful recovery and if this is what the patient would want for the remainder of his life."

So that's ---

A Sure.

Q I think earlier you were telling me that they gave a pretty bad prognosis.

A Right.

Q Is that what you're talking about?
A Yes.
Q Okay. Then it says, "They explained that they do not believe that this was what the patient would want, that he would not want to be removed from life support and allowed to die naturally."
So, at this point in the conversation, were you and Margaret telling him that -- or telling her that y'all did not think that David would want to be withdrawn from life support?
A Well, we were telling him that we wanted to give David time to -- for us to see what is and what isn't. there are many people that were given that prognosis who recovered and did well. So we were not willing to in such a short period of time to feel that this is what needed to be done because, when they took David off of the life -- breathing, David was able to breathe on his own.
Q Okay.
A Okay. So...
Q Then it says, "They explained that they are a very religious family and that they believe that he could recover even if we believed that he could not." And that's what you just said to me.
A Yeah, basically. Yeah.

Q Now, you're flipping a page. I haven't turned a page.
A Oh, okay.
Q That's fine.
A It's so small, I could hardly see it with my glasses on.
Q Yeah, it is hard. And if you'll go down, these little brackets ---
A Okay.
Q Those are just my handwriting where I wrote on the record.
A Okay. Okay. Yes, okay.
Q So, if you go to that one, I'm going to read. "We discussed the benefits and burden of tracheostomy and PEG tube" -- and PEG tube is the feeding tube in the stomach. I'll just tell you that.
A Uh-huh. Uh-huh. Yes.
Q "And also the risks of prolonged ventilation with a trach, including infection and skin breakdown and discomfort."

So let me stop there. What do you remember the doctors telling you about the possibility of him becoming infected and having skin breakdown?

A The -- what do I remember about it?
Q Yeah. So she's reciting -- she's describing a conversation she had with you and Margaret, and she's

indicating that she talked to you and Margaret about, in his condition, he could get infected and he could also have skin breakdown. And so I'm just asking you what, if anything, you remember ---

A Okay. This is right here because, literally, the writing is so small that I literally cannot even see it with my glasses on. You're saying this is what is in -- are you reading precisely?

Q Yeah. In fact ---

A Would you read that again, where you say she told us about that?

Q Sure. I will. And your counsel has got this too, so if he sees me misread anything, he'll correct me.

A Okay.

Q It says, "We discussed the benefits and burden of tracheostomy and PEG tube, and also the risks of prolonged ventilation with a trach, including infection and skin breakdown and discomfort."

A Okay.

Q So I'm just asking you if you remember the specific discussion about the possibility of infection and skin breakdown.

A I'm sure that during that period of time there's numbers of -- lots of things that were discussed in reference to prolonged being under ventilations and

being in a state of a coma and that sort of thing. I'm sure of that. But I'm sure medically they also know that there are many people that are in a state, I'm sure as your -- and maybe you might have known yourself -- in a state of -- even being in a state of unconscious and being in a state of a coma, people live for many, many years, and then sometimes they wake up. Even though there's a situation such as this, that's possible.

So I'm not going to say if she's -- if it's written here. I'm sure they gave us all kinds of the negatives, in terms of if you already have made the decision that this is a fait accompli, then you're going to assume. Then you're going to make sure you tell the families, like, you know, everything you want them to hear you to say as to -- either to sway their -- but it's not -- this is not an exact outcome. They cannot say this is a hundred percent going to happen, no matter what. No one can say that, because he was there for them and he made improvements while he was under -- in there, even in this state. He obviously made -- he made a great deal of improvement to the point of them saying, "Okay, well, he's physically now at a point that he can leave Mt. Pleasant. So now he needs a long-term place in which to live if you all

have made the decision not to pull the plug." Do you see?

Q Okay. And then the last thing I want to ask you about on this page, is the last sentence says, "We also discussed cardiopulmonary resuscitation and defibrillation at the time of cardiac arrest and they had not considered this and will discuss it further with their siblings."

A Right. But he never -- that never -- they did give us the downside if, in fact, his heart stopped beating, but that never occurred, you know.

Q Okay. Never had to do that?

A They never had to resuscitate him at all.

Q All right. Then, on the second page, under recommendations, number two, it says, "Family is considering a do not resuscitate order. We will continue to follow."

So do you know if -- when a do not resuscitate order was actually issued?

A Now, that's an interesting situation. It appears that Mr. Bowles, in David's mental state, which he was not in a mental state to make any decisions of that nature or to -- you know, he was not -- actually, there again, let's keep in mind, he's not there because of physical reasons. He's there because of a mental reason. So,

therefore, there are so many decisions you wouldn't leave to him. So we discovered, when this matter was looked into, that Mr. Bowles himself facilitated David signing a do not resuscitate. We did further investigation and that was discovered by the lawyer. So we took the matter, you know, where, you know, Mr. Bowles removed himself because it was determined by the judge in Charleston that, obviously, he was not in the -- in a mental state of being. We took the matter to court.

Q Right. And I do have that stuff. I'm going to get to that.

A Right. And the judge determined that David was not, of course, in that state to be able to make decisions or decide. And Mr. Bowles himself didn't show up. But he obviously facilitated or made himself the executor or made himself in some capacity in reference to David.

Q Okay.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 2, PROGRESS NOTE, ATTACHED.)

BY MR. WHITE:

Q All right. I'm going to hand you next what I'm marking as Exhibit Number 2, and this is a progress record from -- also from the same admission. You'll see this is dated October 24, 2014. And what I want to ask you

about -- and you can read through this, if you'd like. It's saying at the beginning that, "A family conference was held today at approximately 1:00 p.m." It says 1300, but that means 1:00 p.m. And then it lists the various people who were involved in the meeting, and it includes you and Margaret.

A Uh-huh.

Q And if you go about halfway down -- and I'll point to it for you -- where it says, "I provided the." Right here (indicating). If you start there.

A Okay.

Q So this person, this nurse who's writing this note, she says, "I provided the family the opportunity to ask questions, at which time Dorothy asked if we were competent health care providers to realize he had a mental illness." She says, "I did not answer this and reassured them we were providing the most appropriate care for their brother."

So let me stop there first.

A Yeah, power of attorney, and they gave us the one from Mr. Bowles.

Q I'm sorry?

A They -- that's what it says, that they provided a copy of a legal -- legal something with Mr. Bowles being that he was power of attorney.

Q Uh-huh.
A Okay. They provided that document. It came from -- I guess Mr. Bowles must have given this to David's doctors himself.
Q All right. So my question for you is when she's saying -- this is just her writing. I don't know if it's true or not, but she says, "Dorothy asked if we were competent health care providers to realize he had a mental illness." What was -- do you remember asking them about that and why you asked them?
A About what?
Q Well, this is indicating that you asked them whether they were competent health care providers. And so I'm just trying to determine ---
A Asked them if they were competent -- no, I don't -- why would I -- are you serious? No. I thought he was saying -- they said that I asked them are they competent health care providers?
Q Right. Right. I mean, that's what she wrote.
A Okay. Well, she wrote that.
Q Right.
A Right. So let me -- let me -- let me -- well, did you want me to tell you about that meeting? Is that ---
Q Yeah. Yeah, that's fine.
A Well, this was a meeting, I think, that might have been

on a Friday. And when we first came to the hospital, David had not been in the hospital for that length of time. But initially, they wanted us to pull the plug, it seems like, after about -- that was -- the doctor made his assessment. What they really wanted us to do was just go ahead and just pull the plug on David and not give him any time not to see what the possibilities are.

So Mr. Bowles, I think, from what I gather, he brought this document to them, to the doctor, and said that he had power of attorney and that there was a do not resuscitate on file for David. This was on a Friday afternoon that we had this meeting, if the date correlates, I think. And so Mr. Bowles must have presented that to them, and so he was making himself like he was calling or making directives in terms of David. So let's -- so he must have said to them, "I'm in charge. Forget what the family says. I'm in charge, so if I say pull the plug, then that's what's going to happen."

So they told us by Tuesday at 5:30, unless we were able -- this was on a Friday. So they said by Tuesday at 5:30 a.m. this is what they were going to do. And so, at that point, we got an attorney on Friday afternoon, and the attorney went to the courts to file

the stay. And we had a hearing with a judge in Charleston, and the bottom line is that the decision was made -- in fact, the decision was made to -- well, Mr. Bowles never showed up to present his part of it. He didn't even come there.

Q Uh-huh.

A So he was no longer to make decisions or directives for David, and they could no longer -- based on Mr. Bowles bringing this document and telling them what to do with David, they were no longer able to pull that plug at 5:30 a.m. So that's basically what happened.

He, himself, came to the hospital -- well, I was there from Tuesday -- I think he got there maybe three or four days later, saying he was out of town. And so he just, you know, came by the hospital. I think he took this to the doctors. But he was removed from making decisions for David. And in fact, the plaintiff, as it turns out, who was the lawyer, I guess, representing -- I'm not sure. But she was there, I guess, and afterwards, as it turned out, she had had a nephew who was in exactly the same position who they said pull the plug, and he survived. And so, you know, but anyway, the judge said, no, that that's not going to happen, that we have a -- it's up to us to decide.

Q Okay.
A To give David every opportunity and not to, you know, to let anyone make that decision, that he had every opportunity, that he was given an opportunity to see what's what with David.
Q All right.
A So that's how that went. And we have the legal documents, you know.
Q Yeah, and I think that's where I'm going to turn next. Why don't we take a few minute break?
A But I didn't bring that with me.
Q Okay. Thank you.

(OFF THE RECORD)

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 3, HEALTH CARE POWER OF ATTORNEY, ATTACHED.)

BY MR. WHITE:
Q All right. So what I want to do now is I want to talk a little bit about that health care power of attorney that we've talked a little bit about already. So I've marked that as Exhibit Number 3. You've seen this document before; is that correct?
A I'm sure I have. Yeah.
Q And so, if we walk through this health care power of attorney, first of all, if you'll go to the next to the last page, and at the bottom, there's what purports to

be David Holmes' signature. Do you know whether that's his signature?

A Where is this?

Q One page before that. Right there at the bottom (indicating).

A It looks -- well, I mean, normally, that's not the signature David would have had in all of his life. You know, that looks like a signature that's totally different. That's not his lifelong signature, but I guess if someone is ill or not in their right senses, they could have this. But that's not his lifelong signature that David would have had all of his life. No, that's not his original signature.

Q All right. So -- okay.

A This is not the signature that David had throughout his -- you know, that I grew up with or his signature. Do you see what I'm saying?

Q Do you think this document is forged?

A Either forged or he was under some kind of, you know, mental that would make him -- his whole handwriting would look somewhat differently. You know, that can happen, I assume. You know, but this is not -- you know, this is not how David wrote all of his life. Do you see my point?

Q Yeah. Okay. So let me ---

A You know.
Q So let me make this a little more simple.
A Yeah.
Q My question for you is do you -- do you contend that this document was forged?
A What I can -- well, it could go either way. Not -- I don't know if I would use the word "forge." They could have said, "David, sign your name." You see? And his mental -- this would be a signature under a person who's not his self. But I wouldn't say they didn't say, "David, sign your name he could have" -- because he still knew how to write. Do you -- you see my point, I'm sure. He still knew how to write. So that's the best way I can answer that question for you. But if you asked me this, is this a signature that David has had all of his life that I had known throughout the years, no. I can say that with -- with authority.
Q How -- given his mental state and the sporadic nature of how much you saw him over the years, how do you know what his signature looked like?
A No, my statement to you was this. If you were asking me the signature that David had before his extreme, extreme breakdown, this isn't it. That's all I can say to you.

Q Oh, so you remember his handwriting from back in high school?
A Who wouldn't? I know my sister's handwriting. I mean, I know my mother's handwriting. Of course. I know my brother's. You know, we look at each other, you know. I'm very precise about that.
Q Okay. Under this document, if you go to -- at the bottom right-hand corner, there are some numbers on it. If you go to the one that has number 11 on it. So this is 15. So you'll have to go backwards to number 11.
A Right-hand corner?
Q Yes, ma'am.
A Okay.
Q See right here (indicating)?
A Oh, okay.
Q There you go.
A At the bottom.
Q So you'll go back to page 11. Right.
A Okay. Where is page 11?
Q It will be before 14.
A Okay. Oh, okay. I see what you're saying. The numbers are at the bottom. You didn't say -- you said right-hand corner, not at the bottom right-hand corner. Okay. There.
Q Okay. Number 7 says, "Statement of Desires Concerning

Life-Sustaining Treatment." Which one did he initial?
A You're asking me?
Q Yes, ma'am. If you'll just read what he initialed.
A I mean, they look differently. I mean, this looks similar to this other -- this similar -- I have no idea, but I mean, this one looks -- as you can see, the Ds are somehow different. It's slightly different, but, I mean, it looks similar to what I saw when I said this is not the handwriting. I looked at this and you saw that, and I said this handwriting right here, it looks to be the same color of ink as this ink. It seems to be the same color of an ink pen. This one seems to be a different ink pen.
Q All right. Let me ask you this way.
A Okay.
Q Read into the record the sentence that is initialed.
A The sentence that is initialed?
Q Right here (indicating).
A Okay. "Directed to withhold or withdraw treatment. I do not want my life to be prolonged and I do not want life-sustaining treatment."
Q Okay. And then it goes on to A and B. What does it say there?
A A and B, "If I have a condition that is incurable or irreversible and without the administration of life-

sustaining procedures expected to result in death within a relatively short period of time, or if I'm in a state of permanent unconsciousness."

Q Okay. So, then -- so, if this is his signature, is there any reason to believe he did not feel that way?

A Yes, because he was not mentally fit and stable.

Q Okay. Had he ever ---

A He could be coerced or encouraged or whatever to sign anything.

Q Okay. Had you ever, in your entire life, had a discussion with him about what his wishes would be if he were in this circumstance?

A No.

Q All right. Go to the next page, please. And number eight says, "Statement of Desires Regarding Tube Feeding." If you'll read into the record the provision which is initialed.

A "I direct to withhold or withdraw tube feeding. I do not want my life prolonged by tube feeding."

Q Okay. And he was on a tube feeding; right?

A Yes.

Q Okay. Now, this is the health care power of attorney that Mr. Bowles presented; correct?

A Correct; right.

Q And this is the health care power of attorney which you

were challenging in court?
A Right.
Q All right. So let me get to the next document.
(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 4, COMPLAINT, ATTACHED.)
BY MR. WHITE:
Q And this is going to be Exhibit Number 4.
A Okay.
Q Now, the page numbers at the bottom are a little out of order just because I think the way they were stamped.
A Okay, at the bottom.
Q But what we're going to do is go through one page at a time. Now, this is the action that was filed where you said you went out and hired an attorney to represent you.
A Yes.
Q Okay. And in paragraph four, your pleading says, "Mr. Holmes is unable to care for himself and is unable to make sound decisions about his medical care or daily needs." And that's certainly the condition he was in in Mt. Pleasant hospital; correct?
A Correct.
Q Then, if you go over to the next page, paragraph 5, it says, "Petitioner believes the emergency ex parte appointment of a temporary conservator is necessary to

safeguard the best interests of David Holmes, his assets and income, to avoid same being wasted or dissipated."

And in this case, you were the person that was seeking to be appointed as temporary conservator.

A Exactly.

Q All right. Then, in number seven, it says, "Petitioner asks the court to appoint her as temporary conservator for Mr. Holmes pending the court's action on petitioner's petition for appointment as permanent conservator."

Now, so, just in summary, this is for -- this is a pleading asking for you to be appointed as temporary conservator; correct?

A Correct.

Q All right. The next page -- and this is where I get a little confused. The next page is called, "Acknowledgment of Consent to Appointment and Waiver of Notices." And this is signed by your sister, Margaret. And it says, "The undersigned respondent, Margaret Holmes, one of the sisters of David Holmes, hereby acknowledges service of the petition for appointment of conservator for David Holmes, and hereby consents to the appointment of Dorothy Olenja" ---

A Yeah, my name is Olenja.

Q Olenja.
A Right.
Q "As guardian for said incapacitated person." So, here, this is what I'm a little bit confused by. In the first page, or the first thing I showed you -- and just for your information ---
A Right.
Q --- there's a different between a conservator and a guardian.
A Right.
Q Are you familiar with that? Are you aware that there is a difference?
A The guardian -- well, not -- the guardian is someone who is looking at his affairs. A conservator is someone who is in charge of his assets, making decisions for him and that sort of thing.
Q Right. Okay. Good. And, so, you understand that. So, what's confusing to me, and we'll go on with the order itself, but the petition I have here is for appointment of a temporary guardian. In the acknowledgment here, it talks about not a conservator but a guardian. And then, if you flip over to the next page, it's the actual petition for appointment of conservator, and you see where that's checked right here (indicating). And then this whole document talks

about, you know, the appointment of a conservator. And then, if you go all the way over a few more pages -- and I promise I'm going to let you catch up. I've got a point to all of this.

A Okay.

Q If you go over to the actual order issued by the judge, the order is an order appointing temporary guardian.

A Okay.

Q Okay. And if you go over to page, or the next page and go to -- let me see here. Tell you what. I'd just go to the last page. The last page is where the judge orders it. In number two, it says that you are hereby appointed as temporary guardian for Mr. Holmes with the right to care and custody of Mr. Holmes and with all authority of a permanent guardian. And then, in number three, it says, "All interested persons shall have the benefit of this appointment of temporary guardian in the upcoming review hearing as soon as the court docket allows."

So, after giving you that background, let me kind of bring this into focus.

A Okay.

Q Part of the documents talk about you being appointed as a conservator. The order I have here actually has you appointed as a guardian.

A Okay.
Q So what was the request -- and I may not have all of the documents. I haven't contacted the probate court yet to get them, but were you appointed as guardian? Were you appointed as conservator? Were you appointed as both?
A The objective of the hearing is what -- at the forefront here.
Q Uh-huh.
A The objective was, A, that Mr. Bowles would no longer make decisions -- two things really were determined.
Q Okay.
A And that were on the table for consideration. David's mental state was taken into account and the question being was he in a mental state to make this decision, or was he coerced? There was too many -- too many things left to question. And, number two, to really object -- objective was to prevent them from pulling the plug based on Mr. Bowles' recommendation that that should take place because he was in charge and that David had signed this document. So that was the objective. Whether I'm conservative or guardian, that was the whole objective of the court, of going there.
Q What about his financial affairs? Was it your request that you be able to handle those?

A His financial affairs, anything that he had gotten from SSI -- and that would -- all of that, on Medicare or Medicaid, all of that was to -- that entire check or all of that is given -- we had to sign papers. All of that is directly to Bayview. Whatever his financial asset is, that is written over to them 100 percent. Whatever that is, they -- it has to be written over that, if he's in their care, all of his financial, whether whatever it is, it comes directly to them to pay for his care.

Q Okay.

A So he had no other monies or nothing that, you know, that would be -- that he had no access, rather, other than what would be devoted totally to whatever facility that goes -- just like at Bowles, all of his money went directly to Bowles, whatever amount it was. Like, when he went to Bayview, whatever his asset was, it is written over to Bowles. I mean, to Bayview. At Bowles or Bayview, wherever he is. So he didn't have assets that I would be in control of. I didn't even control when they were paid or how they were paid. They were paid directly.

Q All right.

A That's how that's done.

Q This order clearly indicates that you were appointed

his temporary guardian.

A Right, to make the decision and to see where is he going to go. When I signed the papers at Bayview, being that he can't sign for himself, I'm in the position in which to do that. That's why I was given that authority, because David can't sign himself into Bayview. I'd have to do that. And some party has to be appointed to -- not just a random person. I was given that authority to be able to do the paperwork for David to sign him into Bayview, as well as to sign over whatever funds David got from SSI or whatever extra monies he got. I was the person that was able to sign the paperwork for that because he was incapable or unable to do it for himself.

Q Okay.

A That's what this is all about.

Q So it sounds, then, like there are really a couple reasons for this. One was to address Mr. Bowles' desire to pull the plug, as I think you've put it.

A Right.

Q And then the second is to be able to then sign him into Bayview and any other place he needs to go?

A Exactly, and whatever funds he had, you know, when you go into places like that, whatever monies you have for that is given to them.

Q Okay.
A So they're totally in charge of that.
Q So let me ask you this. After this order appointing you as temporary guardian was issued ---
A Right.
Q Did you ever go back and get appointed as the permanent guardian?
A Actually, when David -- we never -- after David went to Bayview and back and forth, you know, in the hospital, he passed away that May.
Q Uh-huh.
A So I never went back to a court at all.
Q Okay. Do you know if you were ever actually appointed as a conservator as well?
A A conservator -- okay. Let's put it this way. The person -- there was some paperwork done. That would be -- if there is -- the conservator would have been my brother Joseph.
Q I'm sorry?
A It would be my brother Joseph because we signed papers in reference to Joseph being in charge of whatever concerns David.
Q Okay. Let me ask you this.
A So it was not me. I never went back to court again. I just dealt with this.

Q Okay. The ---
A That would be Joseph.
Q Signing Joseph, the stuff over to Joseph, was that after your brother's death? That's as the personal representative?
A Yes. Yes, yes. Joseph is his personal representative.
Q Okay. Before David died, was Jo- ---
A I was the person who made decisions, who went to the hospital, who met with the doctors, the nurses. That was me.
Q All right.
A Yeah.
Q I follow you. So let me just ask this question. If you don't know the answer, you can just say, "I don't know."
A Okay.
Q Were you ever appointed as a conservator, either temporary or permanent?
A In the capacity -- a conservator would be the person that would -- is that the person that would -- no, that wouldn't be me. The only thing I've ever been officially appointed is to be the person that could assist David in his state and capabilities on his own, to get him into a nursing home, to do his paperwork. That's it. That -- to my knowledge, that's it. That

was what was necessary in order to make decisions for him.

Q Okay.

A So I would say yes. That's it. Nothing more.

Q All right. How did -- let's turn over to Bayview now. How did you come to learn of what Bayview Manor was? Did you know about it just by virtue of growing up in the area?

A Well, yeah, I've always heard of Bayview.

Q Okay. Did you know anything about its reputation when the decision was made to send David there?

A Well, I spoke -- I spoke with the person in charge and had a meeting with her. We called her and they had a change of command. It looked like there was new ownership. I looked at the facilities, went there to visit it. Everything, you know, was pleasant and how -- you know, the persona or whatever the case is. So that's how -- and he was in town. We wanted him where we were.

Q Uh-huh.

A There were places, other places we could have looked at in Savannah, but we wanted him where we would be able to see him every day or be able to visit him. You know, we had heard that Bayview was under new management, and we went there. So that's how David

ended up being -- to be at Bayview.
Q Did you ever have any discussions with anyone at Bayview about whether -- you know, I just lost my track of thinking. Strike that.
A Any concerns, you mean? Is that what you ---
Q Well, I was going to ask you did -- well, let me back up, before I move to that.
Before the decision was made to send him to Bayview, had you considered any other nursing homes, any other facilities?
A Oh, we looked around.
Q Okay.
A We looked at some places, but our -- we didn't like, you know, the -- there were several places they recommended us to that was in Charleston.
Q Okay.
A But we felt like that's far. Let's try -- we wanted some place that was closer to Beaufort, you know, rather -- that was closer and not so much further away. We wanted someplace that was closer to home. So there was a facility we looked at and it did not -- was not up to -- you know, didn't look right. And then -- so we decided to, well, let's check and let's look into Bayview because we had heard that it was under new management. So we looked into Bayview, had a meeting.

And that's how David -- and they got his records and they knew the condition that David was in and, you know, Mt. Pleasant sent them everything and he was transported from Mt. Pleasant to Bayview.

Q Did ---

A And they felt that they could take care of the condition, long-term condition that David was in, you know.

Q Who did you -- who was that initial meeting with at Bayview? Do you remember?

A Director. Her name was -- her last name is Ms. Singleton.

Q Karen Singleton?

A Yes, Karen. Uh-huh.

Q Okay.

A Karen is the director.

Q So, before he ever came over there, you met with Ms. Singleton?

A Yeah. We met with Ms. Singleton and she -- because we had to find out -- first of all, we wanted to make sure. You need to see where he's at. We need you to know what condition he's in. Can Bayview -- because not all facilities we called, they were not able to handle the state that David was in. So we called a place on Hilton Head. But Bayview knew precisely, from

his medical records, precisely the condition that David was in, and are you able to handle this long-term, and they said that they were.

Q Do you ---

A So they knew exactly what he was in, his status, and prognosis. They didn't say, "Well, we can do this for six weeks and you'll have to find another place." So they knew. Yeah, that was discussed in detail.

Q Okay. Did -- the other places that said they could not handle him, were those ---

A Not long-term?

Q I'm sorry?

A There were certain things that they said they were not equipped to handle based on David's physical condition at the time.

Q Do you remember what those were?

A Well, I mean, they said because, you know, he would need lots of care in terms of his feeding and the trachea and all of that, and I think some of them were not equipped for the trachea and that sort of thing.

Q Were those other skilled nursing facilities?

A Yeah, they were supposed to -- well, their facilities are listed as such, you know, but they said they did not have experience with the trachea and that certain limitations that they simply had. But Bayview said

that they were able to handle it all.
Q Okay. And I understand that.
A Yeah.
Q My question is ---
A So not so much others that we were not -- you know, if we bypassed them and we accepted Bayview, then there had to be a reason, and also for Bayview to accept him. They were not blindsided as to his status because they got all of his medical records from the hospital he was in prior.
Q So, once he was -- before he was taken over to Bayview, other than Karen Singleton, did you talk with anybody else there at Bayview?
A She was the director. I mean ---
Q She was. I'm just asking what you did.
A Yeah. She was the director. There was another lady -- what was her capacity? She was the intake person. I think there's an intake person you do the paperwork with.
Q Uh-huh.
A But Karen was the person that we would -- she's a nurse. She's the nurse there, or the medical person there. Yeah, she's the person that would have to make the final decision, as well, but there was a person who did paperwork when I signed the documents and that sort

of thing.
Q Right. So Rebecca Jensen was the person who did the admission ---
A Paperwork, perhaps.
Q Yeah. And that's who you're referring ---
A But I think she's just an intake person. I don't know if she has medical background or what. But the director of the place is a nurse, and that's her profession.
Q Okay.
A So she's the person that we, you know, made the assessment, I'm assuming, as to -- that they were able to take care of him.
Q I'm going to -- again, I'm going to keep this very simple.
A Yeah. No.
Q That's okay. Just listen.
A Uh-huh.
Q Other than Karen Singleton and other than Rebecca Jensen, who signed or who did the paperwork with you, do you remember talking with any other person at Bayview before Mr. Holmes was transported there?
A Wait a minute. We got -- well, I mean, we had to make an appointment with her. She is the person -- any other person we spoke with, someone might have

recommended. But she is the person that had to -- that we thought was the person of importance to speak with. I might have spoken to other people, but she's the person I needed to talk with. She's the director. She's a nurse, and no one else mattered based on it would have to be her. You know what I'm saying? You know, we talked with her and that's the bottom line. You know, I had a meeting with her. And the bottom line is that, you know, we needed to find out could you handle such a person for long term. That's bottom line. And the answer was affirmative yes. You know, they were not blindsided as to his condition. So it's up to the facility to make the assessment, well, no, this is a bit more. We're not equipped. We can't handle. This is too much. This will be temporary, but they said they were able to long term, you know, that sort of thing.

Q There are two other defendants in this case, other than Bayview. There's a company called Epic Group Limited Partnership and a company called Epic General, LLC. Do you know anything about either of those two companies?

A I don't know those companies. I only know Bayview. I deal directly with the facility.

Q Okay. All right. Let's go to the admission process. So, Rebecca Jensen, who we just mentioned a moment ago

-- and I just want to go over a couple documents that were signed at admission. Either signed or were not signed, rather, I should say.

A Oh. Okay. Okay.

Q Go ahead.

A I didn't have that with me because I didn't have copies of that.

Q All right. The first thing I'm going to hand you is the admission agreement, and we'll mark this as Exhibit Number 5.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 5, ADMISSION AGREEMENT, ATTACHED.)

BY MR. WHITE:

Q And this is the admission agreement from his December 2, 2014, admission. So this is directly from Mt. Pleasant hospital. And let me ask you first -- and you can flip through -- and believe me, we're not going to read through the entire thing. But as you flip through the pages, are those your initials on each page?

A Yes.

Q Okay. So let me talk to you in general for a second about the admissions process. Do you recall -- and we know that your brother came over there on December 2, 2014. Did you go through this process on the same day he was transferred, or did you do it before then? And

actually, I can probably answer my own question.
A Let me think. Yes, please.
Q It's dated the same day.
A Yeah.
Q So it must have been the same day.
A Yeah. When he -- yeah, we had to. Yes.
Q What do you remember about -- and I will tell you there are other admission documents that were signed. This is not it. There's a larger package that was signed. As you went through the admissions agreement, did Ms. Jensen walk you through this and explain it? Did you read it, or was it something that you just turned to the back page and signed?
A Well, I read as much as possible. You know, sometimes I'm skimming through. But, so, I read through the facilities, the Medicaid, the care and all those sorts of things, the laundry, personal, that sort of thing that ---
Q Okay. Now, at the very -- on the last page of this agreement, there is something called optional arbitration clause. Do you see that?
A Yes.
Q Okay. And so it talks in terms of -- and you can read this to yourself. That's fine. I'll give you time to do that. But it talks in terms of the sorts of

disputes that have to go to arbitration. And then it says, "Optional: If the parties do not agree to this arbitration clause, please mark with an X to void this clause only." And it says, "I have X'd this clause," and then there's an X where it says initial.

Do you remember what you were doing there? And take your time and read it.

A (Reviewing.) Okay. Shall be resolved by binding arbitration. Okay. Could you explain?

Q Yeah. So what I was just trying to figure out is whether you were agreeing to arbitration or whether you were saying you do not agree to arbitration.

A Arbitration means that if ever there's a problem with the facility, that I will agree to have parties meet together to come to some conclusion?

Q Well, here's the difference. Arbitration would be where you would -- where one person or maybe up to three people would be selected to decide the case, as opposed to a jury trial which you would get in court.

A Right. Right.

Q And so I'm just trying to make sure I understand what your intent was. See, it says optional, meaning you can agree or disagree with arbitration. And then it says, "If the parties do not agree to this arbitration clause, please mark with an X to void this clause

only." And then it says, "I have X'd this clause." And you've got an X there next to where it says initial. So I wasn't sure if you were saying you X'd that, meaning you're not agreeing to arbitration, or whether you were agreeing to arbitration. I'm just trying to know what was in your mind, because Rebecca Jensen wouldn't have done that. That would have had to have been done by you.

A Okay. What I -- the only thing I can say to you is this. When we were talking, I said, "I will not sign away the right to, if something goes wrong, to address the issue." So this is not what you're saying. This is about -- the X is implying that I would not agree to an arbitration. Is that what you're saying?

Q Well, I'm asking you that ---

A Is that what this paper is saying?

Q That's what I'm asking you.

A Well, all I know that I verbalized to her that, if something goes wrong, I'm not going to sign away the right to address the issue if something -- if this facility does something to my brother that's not right. That's the bottom line.

Q Okay. So what ---

A I didn't sign away that right to do that.

Q All right. So let me ask you this way.

A That much I do know.
Q All right. Fair enough. And this clause, whether you agree to it or not, does not sign away your right to pursue a claim. It's purely on who decides the claim. In other words, let me just make sure you understand. Because I'm not -- look, I don't care what your answer is. I just want to make sure I understand what it is.
An arbitration is where you agree for one individual, or maybe even up to three individuals, to decide your claim. So let's say something goes ---
A Rather than going to court.
Q Right. Exactly.
A Right. Like a mediation, so to speak.
Q Well, it is, except ---
A Like people sometimes, so to speak ---
Q It is, except that at mediation, you just get together and you try and agree.
A Yeah.
Q An arbitration, somebody actually renders a decision. So, like, if I'm an arbitrator and you have a dispute with your lawyer ---
A Right.
Q Y'all both present your case to me, and then I award you money or I don't award you money. So that's the difference. You either have court or you have an

arbitration.
A Oh, okay.
Q So what I'm trying to determine -- and, again, I don't care what your answer is.
A Right.
Q I'm just trying to determine, when you put an X there by initial, were you X'ing that, saying you're voiding that clause, meaning you want to go to court and you don't want to go to an arbitration, or what did it mean?
MR. FEIDLER: Objection. You can answer.
THE WITNESS: I would want to -- if I would go to court, I would not X out the -- I would not -- I would want to go to court. I would -- if it's necessary, I'll go to court. I'm not going to say, guaranteed, I won't go to court. No, that's not -- I promise you I don't mean that. If it's necessary and if things are, you know, whatever, whatever, I would go -- I would take it to court.
BY MR. WHITE:
Q All right.
A That's what I mean.
Q Sure.
A I would take it to court. I'm not signing away my right to not go to court.

Q All right. Let me ---
A So, if that's what you're asking me, I've answered you.
Q All right. Let me just make -- because I want to make sure the record is clear on this.
A I would go to court if need be, for sure.
Q All right. Let me ask you ---
A I'm not taking -- I'm not going to say no to that.
Q All right. Let me ask it this way.
A But I wouldn't put it strictly in the -- strictly in the hands of one person because, you know, I would take it to court. So, if that's what you're asking, that's my answer.
Q All right. So let me make sure I understand.
A That's my answer.
Q So what you're saying is that you would not agree to arbitration. You wanted to take your matter to court. Is that what you're telling me?
A I would take this matter to court. The reason I'm saying that to you is because, if I agree to arbitration, that could be very limited to just one person making that decision. I'd take it to court.
Q Okay.
A For sure.
Q One of the things that, if you'll flip to page -- and you'll see at the bottom right-hand corner, there are

some Bates stamp numbers. Go to page nine. This is the Bates stamp nine. So right there (indicating). Go to number nine, please.

A (Complying.)

Q Okay. At the top of that, there is a provision called waiver of jury trial. And it says -- and I'll just read this into the record. It says, "Resident hereby knowingly, voluntarily and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which resident may assert, arising from or relating to this agreement, or any other document connected with this agreement, or arising out of or relating to any of the documents or any relationship between the facility and the resident, including the resident's admission itself or any other course of conduct, course of dealing, statements, whether verbal or written, or actions of the facility or resident. Resident represents and warrants that this waiver contained in this paragraph has been freely and voluntarily made after reviewing the same or having had an opportunity to review the same with counsel of resident's choice."

So, first of all, did I read that accurately?

A Well, that's what it's saying, yes.

Q Okay. So, secondly, do you recall having any

discussion with Ms. Jensen about this waiver of jury trial?

A We never -- that's interesting. We never had a discussion -- we were going through a bunch of paperwork. David just came from Charleston and we were just trying to get this paperwork done, that I would waive a jury -- well, no. I don't remember having a discussion, but I was supposed to read through things, and maybe obviously I was reading -- reading, just reading through and skimming through and trying to deal with the situation with my brother at the time. Because this is a waiver of jury trial and this is arbitration. So what you're saying, according to this paper, but you asked me the question, though, did you not, what did I knowingly -- I would never -- well, then I have to take responsibility for that. But this is what this is saying, waiver of jury trial.

Q Right. That doesn't mean you don't get to go to court.

A I know that.

Q That just means that a judge decides instead of a jury.

A Exactly. A judge.

Q So is this what you agreed to?

A Well, my signature is here. That's not forged. So the woman didn't forge my signature, so I'm going to have to -- but I must say, I was rushing through, obviously,

a lot of this. I was.
Q But you initialed the page.
A Right.
Q And you were telling me earlier you were skimming through and reading it.
A Well, I initialed the page, but whatever it is.
Q Okay.
A I'm not going to say she forged it, if that's what you're asking. No, she did not. This is how my signature looks.
Q Okay.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 6, ARBITRATION AGREEMENT, ATTACHED.)

BY MR. WHITE:
Q Let me hand you next Exhibit Number 6.
A But I ---
Q I'll hand you next Exhibit Number 6. And this is just a -- this was an arbitration agreement, a separate one. And on the second page, you've put an X where resident and representative's signature would have gone. So, by putting the X, were you, again, saying that you were not going to agree to arbitration?
A Why is an X there?
Q Well, I don't know. You were filling out the paperwork, so I don't know. Is that ---

A I mean -- I mean, I don't see my name signed in there.
Q Right, right. That's what I'm asking. So ---
A So that doesn't make sense. I mean, I would -- why would it be X? I mean, so ---
Q Well ---
A That doesn't -- I'm trying to figure out -- you're asking me there's an X there, but why would I have an X there? You know, I don't see my name written there.
Q Well, let me just ask you this. Do you remember seeing this document?
A I don't remember seeing this document, but why would -- I don't see my name. I would never -- do I not know how to write? Why is there an X there? So I don't remember seeing this.
Q Okay.
A That seems, you know, my name isn't there. Why would I -- why would she accept an X from me?
Q I'm sorry.
A Not a signature. So, you know, that's why I'm fascinated what that's about.
Q Yeah. I don't know the answer to your question.
A I'm trying to figure -- what? I'm trying to figure this out.
Q Well, I don't know that there's any figuring it out. It may just be something that's not -- that you just

don't know the answer to, and if you don't know the answer to it, that's okay. I don't want you testifying about something that you don't know.

A Okay. Maybe she said on that -- why would she -- okay. That's a -- wait just a minute. Okay. With an X there, then at that point in time, did she tell me that she put an X there? Obviously, the X is there because she was saying put an X in that box if you agree to this. Obviously.

Q I'm not sure I'm following you. What are you saying?

A Wait a minute. That's -- no, I would never -- that -- I don't -- you know, David wouldn't put an X there, so obviously that doesn't make sense. I would -- you know, I ---

Q Okay. The point is ---

A This says the parties understand and agree that, by entering into this arbitration agreement, they are giving up and waiving their constitutional right to have any claim decided in a court of law before a judge and a jury. That's why you don't see my name there. That's why you see an X, and I don't know where that came from.

Q You're saying that you did not agree to that.

A Well, I would -- do you see my name? Does that make sense, sir? You don't see the name, Dorothy Olenja ---

Q It does, but you have to answer my question.
A No, sir.
Q My question ---
A I would have signed with a signature. No. I ---
Q Just listen to it. Just listen to my question.
A Okay.
Q Did you agree to the terms of this agreement? It's a yes or no question.
A I'd have to say no to that.
Q Fine. That's the answer.
A Because I don't see my ---
Q That's the answer. That's the answer.
A Okay.
Q Okay. And I'm not ---
A Should I have a copy -- I need to see, because I have copies also.
Q You'll get copies. And let me ---
A No, no. I said when I signed all papers for David, I was given copies of everything, also.
Q I see.
A So this should also be within my records as well; right?
Q That's fine. And, listen ---
A Okay. This should be in my records.
Q Listen, I'm not -- and I apologize, because I got a

little short. I don't want you -- I don't -- I don't want you to overthink this stuff.

A Okay.

Q Okay. Now, you give whatever answers you want.

A Right.

Q But when I ask a very straightforward question, if you could answer the question and you can give whatever explanation you want, but if you just start with an answer, that will help us move along quicker.

A Okay. That's right.

Q Does that make sense?

A We need to.

Q Okay. That's fine.

A What time is it, by the way?

Q It's 2:00.

A Oh, it is?

Q Yeah.

A Oh, gee whiz. Okay. How -- okay. I -- how much longer do you think this is going to be?

Q At this rate, probably three hours.

A More? Additional?

Q Probably. If not two, definitely.

A Okay.

Q So, if we need to take a break for you to get your granddaughter ---

A Yes.
Q That's fine. We can do that and you can just come back.
A Okay, great. I must.
Q We can go off the record.
(OFF THE RECORD)
BY MR. WHITE:
Q All right. So we've taken a break. We're back on the record now. Continuing to talk about the early days at Bayview Manor for your brother David. Once he got admitted to Bayview Manor on, as I recall, December 2, 2014, he was there until, I think, December 23, 2014, or December 24th. So he was there about three weeks before he went to Beaufort Memorial Hospital. Okay?
A Yes.
Q So what I want to do is focus our attention on that three-week period, and then we'll move to the hospital.
During that three-week period, how often were you -- I guess at that point you're still living up here in Greenville?
A No.
Q Living down there?
A Yes.
Q Okay.
A Well, David was -- well, I just gave up Greenville

completely when David went to Beaufort. I just stayed there and never came back to Greenville.

Q Okay. So were you living in Beaufort until the time that he passed in May?

A Of course. Yes. I never went back home. I just stayed there the whole time.

Q Who did you stay with?

A My sister, Margaret.

Q And how often did you go and see him when he was at Bayview?

A Once, if not twice, a day, every day. You know, if I wasn't there, my sister or another family -- but every day. Every day.

Q Okay.

A At least.

Q And Margaret did the same thing?

A After school, she would come in unless she had meetings or whatever. And if neither of us could be there, we sent a family member.

Q Did you have any complaints about the care that was being provided at that time?

A Yes. What I -- I brought several things to the attention of Karen. Several things. We would go there and the trach would be -- it had not been flushed out, not been cleaned. The mucous would be hard in his

throat and we would get someone, you know, to come in there. There were other times that his -- the connection to the trach, we came in there and it's on the floor. We wondered why that is. There -- you know, the gowns, I came there after hours one Saturday night, actually, and it was a big situation there. I called the nurse. I said, "Look at this. His trachea and his clothes is not clean. It's all wet." Because I don't usually come that late at night because they say everyone have to leave at 9:00. But for that particular night, I just went by because I didn't have a chance to get there during the day. And I called this woman in there and I said, "Now, you all have to do something. Look at his gown. It's not clean." I said, "It is wet." You know, and I called Karen on several occasions, you know, whenever there was a complaint like that; you know, I would get in touch with her.

You know, there was once there was a bruise on his forehead. And I said, "Well, how does he get a bruise?" He can't get up out of his bed. And by the way, you know, we have -- you know, any concerns that we had, I would immediately, you know, take a photo and date it, photo, any complaint I had. So there was a bruise on his forehead. The trach is always congested.

The things, you know, on the floor, gowns aren't always clean. And I, you know, complained to her. And as I said, for everything I'm verbalizing, there's a photo and a date to substantiate it of what would be the situation there. And I asked her, I said, "Well, is he getting physical therapy," I said, "because when he was at the other hospital before he came here in Mt. Pleasant, you have to have someone to turn him constantly." I said, "He needs to be turned because, if not, he's going to get bedsores." I said, "And, also, is there anyone here -- do you have a physical therapist," I said, "because they exercised him." And I said, "You're going to have to make sure that this happens, that there's someone up in here" -- because they kept him, so that his muscles would not all clam up because he wasn't walking around. And I said, "Now, also, even to have him to be able to sit up in a wheelchair," I said, "you know, to give him some kind of mobility." I said, "These are things that are going to have to be." But those were just constant, you know, complaints. And other people that we would have when we couldn't get there, they would have to call someone in and say, "Well, you need to do something to that trach. It's congested." And as I said, everything that I'm verbalizing, I have photos for.

Q Where are the photos?
A Well, I mean, that's for -- I mean, give to you? I mean, it's photos that we took at the time.
Q Right. Do you still have them?
A I'm sorry?
Q Do you still have the photos?
A But of course. Yes.
Q Okay. Well, those need to be given to your attorney.
A Yes.
Q If you don't mind.
A That's -- the attorney. That's what I meant. We'll give them to the attorney.
Q Okay.

MR. WHITE: Stefan, I may need to hold her deposition open in the event I need to ask her questions about the photos.

MR. FEIDLER: Okay.

BY MR. WHITE:

Q Because -- were you the one taking the photos?
A No.
Q Who took the photos?
A My sister.
Q Margaret took the photos?
A Right.
Q Did you ever take any photos?

A I -- what I did was take notes, and I would just say, now, what's going on here and that sort of thing. And I don't even know with some of those if it's one of my children got on my computer and wiped out a great deal of things. I'm hoping on a disk or something that I would have some kind of backup, but I can't confirm. I can't say I know where it is, because when I looked on my computer, I could see my notes on there. So I'm going to look in the trash. But I don't -- you know, I don't -- whatever.

Q Let's stop right here. So let's confirm a couple things. The photos, if you took any photos -- I know you said Margaret took the photos, mainly.

A Yeah, I didn't realize that, though, until yesterday.

Q That's okay. We'll get them, and then I can ask her about them. But do you have any photos yourself of your brother, relating to his health care?

A I don't have any -- no, I don't have any of those, that I know of, on my phone.

Q Do you have ---

A A different phone, anyway.

Q I'm sorry?

A No. I don't have any on my phone. No. I don't have any.

Q You were mentioning that you might have been keeping

notes. Will you go back and look, and if you have any notes, will you provide them to your attorney?

A Yeah, I will look. I will definitely look for those.

Q Okay. Let's see.

MR. WHITE: Stefan, you don't have those photos yet, do you?

MR. FEIDLER: I do not. I found out about them this morning.

MR. WHITE: Okay. No, and that's fine. I didn't think you did. If you did, I was going to ask her about them now. But does Margaret have them on her phone?

THE WITNESS: She does have -- it's on her phone, but we would ---

MR. WHITE: Does she have her phone with her?

THE WITNESS: Yes, but I don't know whether -- I'd have to confer with my attorney what he wants -- how that should be handled.

MR. WHITE: Oh, well, yeah. He'll ---

MR. FEIDLER: We're good.

MR. WHITE: But I was going to say if she's got them on the phone, I can go ahead and ask her about them.

MR. FEIDLER: Okay. Are you going to hold her deposition open if she doesn't have -- or we don't

produce the photos today? Her deposition?

THE WITNESS: Because I don't have it on my phone.

MR. WHITE: Why don't we go off the record for a second?

MR. FEIDLER: Yeah, that's fine.

(OFF THE RECORD)

BY MR. WHITE:

Q All right. We're back on the record. On the break, Stefan showed me the photographs that are on Margaret's phone. There are six of them, so I looked at them. I don't think I have anything to ask you about them. I'll just save them and ask her about them for her deposition.

A Yeah. All right.

Q Okay. So we were -- let me go back. We were talking about concerns that you had expressed to the facility.

A Yes.

Q And the last thing you said, you were talking about physical therapy. You wanted therapy to be involved.

A Yeah, because if you're in his condition where he can't move around, he has to always have some sort of physical therapy in order that the muscles don't clam up completely. And we had suggestions for him to be able to do that. So, you know, all these things, you know, before, you know, they accepted David, they

understood what his past treatments were as well as to their capabilities of being able to handle what they were. They were not blindsided.

Q Okay.

A You know, that sort of thing. So we were given the assurity, you know, with what he's had, what he's going to need. Because as professionals, if a person is in the bed, you know, you're going to have to do something if they can't walk like you and I, and that sort of thing. So that's what we were assured.

Q All right. Were there any other concerns during that first -- that three-week period that you had at that time?

A Well, these concerns was throughout.

Q Oh, throughout, okay.

A You know, there were -- you know, we'd go there and, you know, again, the trach or something would not be clean and his room was right in front of the front desk. So we would, you know, the trach would not be -- or, you know, it looks as though things are, you know, just clogged up. Or you know, his gowns are not being cleaned and is he being moved, and we were concerned about that. You know, they were saying that he was getting the physical therapy, but then we realized very soon he's getting these sores, which means you're in

one spot. So he has to be turned over constantly, you know, in order to -- well, you know what I mean. Continuously, in order to not put pressure. That's where it stems from, on one given side.

And so those were concerns when we saw that that was happening, because he was in the other facility for more than two months, and as I said, when David left there, he was not on -- when he first got there, he was on a ventilator. When he left, he was not even on -- he didn't need life support. He breathed on his own, so it wasn't even a matter of him leaving on a ventilator, where someone said, "Let's pull the plug," and an hour later you're gone. That was not a situation with David at all.

So they knew that, but this was long term and, you know, could you address long-term care. So we had concerns, you know, especially when you would go to -- have to go to the hospital. And they didn't seem to be surprised, you know, as some of what they saw when he came from Bayview.

Q What do you mean by that?

A Well, they said -- well, that's neither here nor there because that is something they would have to say to you. But I'm saying to us, as family members, you know, that would -- you know, you would be coming there

and they would -- that would be some of the comments that were made to us.

Q Who was -- and tell me what the comments were.

A I'm sorry? Well, some of the comments were they were not necessarily surprised because they get quite a few patients sometimes that have some similar.

Q Do you remember who told you that?

A Not really. It was just some of the personnel or people that would be, you know -- but that's neither here nor there. We saw -- we were concerned and whenever we had a concern, we brought it to their attention. And one of the times -- well, my sister would have to speak on this because it was in reference to her. She went there and she was concerned about what she saw. And based on her concern, they rushed him to the hospital. But that's up to her because that was not me speaking on that. That's something that she went there and saw something and said, "Well, what's going on here?" and whatever, and then they -- based on her concern, that's when he was sent to the hospital.

Q What was the issue?

A It had something to do with -- was it a breathing -- again, I don't wish to speak on that because it's best when you speak with her.

Q I understand, but don't worry. Let me say this.

A Yeah.
Q The hearsay rules that you would have in court don't apply here.
A Right.
Q So, if you remember that your sister told you something about his care, I want you to tell me about that.
A Well, it was just a matter -- well, that wasn't -- it was a situation that was dealing with his breathing and he doesn't seem to be breathing or what is going on here. So, but again, you know, that is something that she herself would be well more than I, because all I know is he went to the hospital. We went to the hospital and blah blah blah. But that is something that it's best to speak with her.
Q All right. Let me go through a few of the things you mentioned.

All right. As to the trach being clean, when y'all complained to the staff about it not being clean, did they come in and clean it?

A Well, at that time, but it was more than -- it was not as if we would complain and it never happens again. You see what I'm saying? It wasn't just, oh, we complained and now the problem is solved. You know, it happened more -- on more than one occasion. It wasn't a complaint -- well, there's no -- you know, we saw one

of the tubing on the floor. You know, how is that possible if you have people that come in? And CPNs and CNAs and don't they see that on the floor? What is this equipment doing on the floor?

Q And what is this that's on the floor?

A Like, a tube that goes into the breathing apparatus that he had. It was on the floor somewhere.

Q But he wasn't on a vent, was he?

A No, but your tubing connects to the trach that connects to his feeding and everything else that he had going with David.

Q Did you think he was being fed through his throat?

A No, no, no. David -- they had an incision in David's stomach also.

Q Yeah. Yeah.

A And then they had the trach. The trach is in his throat because his breathing, his respirator, you have to suction -- help him to, because he can't really breathe on his own sometimes. So you have to help get that mucous out. But then again, I'm not a registered nurse, so I don't -- it would just be their expertise. So the trach plays a very important role. It must be suctioned at all times in order to prevent him from getting pneumonia.

Q Okay.

A Because, otherwise, if it's not suctioned properly, that's when pneumonia comes in.
Q Okay. Let me ---
A To a patient such as my brother.
Q Okay. Let me ask this.
A Yes.
Q At this point, what I'm trying to determine is what the tube was that was on the floor. What role did that play with him?
A It was a tube connected with him, or a tube that they had used or something, somehow connected to his care.
Q All right. But do you know what it was? Was it connected to his stomach, to his trach, anywhere?
A I do not know exactly what it was connected to.
Q Okay.
A But it was connected to his care, and it should never be lying around in the floor because of whatever.
Q Was the tube connected to something else?
A I'm not -- well, the tube connects to something.
Q Right.
A So, obviously, either that was out and they didn't realize it was on the floor or what was happening with that. They didn't realize that it had come -- it was disconnected and on the floor. I'm not sure. But if you're coming in constantly and the nurse's desk is

right there, and that's the reason they had it there. It's -- everything -- that shouldn't even happen.

Q Well, what if the tube fell off a cart that was in there?

A No, it was not -- oh, no, it was connected to David. I'm sorry. Let's make that perfectly clear, either to his stomach, to his trachea or something.

Q That's what I'm trying to figure out.

A Oh, yes. Of course. It was directly connected to his care.

Q All right.

A Oh, yeah.

Q So did you see that tube that was on the floor -- okay, a tube has two ends.

A Right.

Q It has a right end and it has a left end. Okay?

A Right.

Q Were either the right end or the left end connected to anything when you saw it on the floor?

A There's a feeding -- there was a feeding tube there, and to memory, all I can tell you is that this was affirmative. The tube is connected in some way to something connected to David. But we were just focusing -- what is a tube that's connected to his care doing on this floor. So that's all I can tell you on

that.
Q But you're going -- see, again, you're going beyond my question.
A See, I can't tell you whether it was to the throat or the stomach, but it was a tube connected to his care.
Q But let me ---
A Okay.
Q Listen carefully to my question because it's a simple one.
A Okay.
Q I promise.
A All right.
Q A tube has two ends.
A Okay.
Q Okay?
A That's true.
Q It's connected to one thing on one end and one thing on the other end, okay?
A Okay.
Q In this particular case, when you saw that tube on the floor, was either end connected to anything?
A Now, see, that's interesting that you should ask me, because ---
Q Why is that interesting?
A The tube fell out, and that's it. This is interesting,

now. The reason I'm saying because, at the time, we were so frustrated that a tube that's connected either to his trachea or to -- it could have -- it could have been -- but right now, this is what I won't say, that I remembered it being connected to his ventilator. This is what I would say to you. When we came in there, there was a tube that was connected to his care, but I must say this to you. I cannot remember -- maybe my sister can -- whether it was connected to his ventilator. It would -- the trachea or what he had in his stomach. That's my answer.

Q Okay.

A But all I can -- but this I will say. It was connected to some aspect of his care. And the woman came in, which was Karen at the time, was very, you know, upset with that having happened.

Q All right. Now ---

A She's the person that we called.

Q Okay. So, when Karen came in about that tube ---

A Right.

Q What did she say about it?

A Well, she apologized and she -- it's interesting because she, herself, did a connection or something herself, actually, but she apologized that, you know, to -- she apologized for it. That much I do remember.

But this has been quite a while, but that I remember.
Q All right. How about the -- you had mentioned that his clothes were not clean and he was wet at times.
A Oh, yes.
Q Did you ask that he be changed?
A Oh, of course.
Q Did they change ---
A I said why -- well, I said, "Now, listen" -- but it would be something, here again, that was not one single occasion. See, that's the problem. You know, it was once and we never had to address it again, that would be great. But this was not just a single occasion. My sister has come at a different time and she has seen it. I've come at different times and I've seen it. Gown was wet, the tube is needing to be cleaned and he just needed, you know, to be cleansed and the tube -- I -- different occasions, not once.
Q Let me ask you this. With all these concerns, did y'all ever consider moving him out of Bayview?
A Well, actually, the last -- David never returned to Bayview after his last hospital visit.
Q Well, he was there twice.
A Yeah, but the last time, he never went back.
Q Uh-huh. I understand. I understand. But my point is ---

A So the second ---
Q Hold on one second.
A Okay. Go ahead.
Q My point is, during the first time he was there for three weeks or the second time he was there for a month, did you ever consider or try to move him out of Bayview if you had these concerns?
A Okay. The concerns that I had mentioned, some of what I have mentioned to you, I didn't say that necessarily -- they didn't necessarily take place in that initial three weeks. Do you see what I'm saying? Not the initial three weeks. This was -- this is -- not the initial three weeks. It happened during the period of time that we would come, the first week or two, when everything is looking good or looking fine. And then we would come and we would see these different kinds of things. So, in the family, we were concerned about what was happening.

His second time, when he went back to Bayview, the second time he went -- had to go back to the hospital, then we said, "Okay, well, something is wrong with this place." The only difference is -- and no one -- we never stopped looking around for a place for David to be. We never stopped being concerned. The only difference is it appeared that many places were not

equipped for the trachea. That was the tricky business. Because Bayview, we were looking around and Bayview was the only person that assured us -- they were under new management, that they could take care of these things.

Q Okay.

A So we were concerned and, after David's last trip to Beaufort Memorial Hospital, David never returned to Bayview after that.

Q All right. Let me -- okay.

A So we didn't have to -- we were busy watching out and going there every day to watch out for David and visit him there every day. We never focused on -- we were just focusing on what was happening to David at the time.

Q All right. Let me ask you about the ---

A That was ---

Q Let me ask you about the turning and repositioning. Did you guys, as family members, did y'all reposition him in the bed?

A What we would do is do some of the exercising, because they taught me when we were in Mt. Pleasant. They showed me some of the physical activity for David. So we would do some of that. And we would also -- they said -- you know, they showed me. Showed me some of

what I could do with David. So I, myself, did some of that, you know, with David myself. But I wasn't there 24/7 or whatever the case is. But Karen said that they would have someone -- once we told them that David needed this, they said that they would have someone to do some of the physical -- and she said that someone was coming in. You know, I never was there when they were actually doing it. But someone was actually coming in. And even when he was at Beaufort Memorial, I did some of the -- the therapist showed me some of what I could do with David. And I, myself, would do it with him with his feet while he was in the hospital in Beaufort. But they would show me what I could do with his arms and how I could stretch some of his toes and do some of the things.

So I did some of that, even at Beaufort Memorial with him. And so I'm not -- I don't know -- I've never been there when the actual therapist, you know, was actually doing the activities with David because the people that showed me how to do it was at Beaufort Memorial and Mt. Pleasant.

Q Let ---

A They're the ones that showed me, not Bayview.

Q Okay. Let me go back to my original question. Did you ever turn and reposition him in the bed?

A Oh, no. David was like -- it was -- his weight was as such, you know, that I was not able to turn, but to reposition him in the bed. But what I did do was, when he was -- because he spent so much time at Beaufort Memorial, I would do some of the bathing of his -- you know, they showed me again how to do that. So I would do some of that with him, but not the actual physical -- because it takes two people to do that. You can't do that yourself.

Q Did you ---

A It takes two professionals, and you don't want to -- you know, that wasn't -- that was beyond my training.

Q Okay.

A I could do the simple things that they would show me, or how to get a pail and bathe his feet, but not the turning. Absolutely. You know, you have to have two able-bodied persons and they would know exactly how to do that under certain intervals. That, no, because I was not equipped to do that.

Q Could David turn on his own?

A Oh, no. No.

Q Okay. Did you ever see anyone at Bayview Manor actually turn him?

A I'm sure. I've seen someone actually turn David, you know. I think -- yeah, I've been there and I've seen

them turn him, but more the other place, they seem to have done it like every 30 minutes or, you know, every hour. They had a specific amount of time that it needed to be done continuously. But in Charleston, you know, that -- and Mt. Pleasant, that was just done more often.

Q Okay.

A But I wasn't there all day. But I'm sure I have seen them, you know, turn. And we would always inquire, especially when he was beginning to get the sores. They would say, "Well, is he being turned? Are you doing it at intervals?" And they would say verbally, but the signs showed otherwise.

Q All right. Let me ask this. Do you know how often he was being turned at Bayview Manor?

A Well, no, I don't, but I can say this. I knew how often he was turned before he got there, and it prevented him from having any kind of sores, although he was there for more than -- well, about -- almost two solid months. So I knew what they did then, because I was there 24/7. They did it very often. And he never had any kind of sores at all because it would be like every 30 minutes or 45 minutes. They did it continuously. They said they had to. But we would begin to see the sores and we said, "Okay, is he being

turned?" Obviously, he's not being turned sufficiently because of what we're seeing here. And this was not the first time he has been straight on his back. So that's all I can tell you.

Q Did you ever meet with the administrator at Bayview Manor? Do you know who that was?

A The admin- -- Karen is considered the director and administrator.

Q Okay. So Karen was the director of nursing. They should have had a separate administrator.

A Well, she is not the director of nursing. Karen is the administrator.

Q Karen was the administrator then?

A Well, I mean, when I went -- Karen is the person that handled -- she was not head of nurses, you know.

Q I'm pretty sure she was.

A Yeah, but she's also considered the administrator. That's who we met with. That's who called all our meetings.

Q Okay. Well ---

A It was actually Karen.

Q Because a nursing home will have an administrator who, I think in this case, was Teddie Simmons, and then you have ---

A Oh, I've never met with a Mr. Simmons.

Q Mrs.
A Mrs. Simmons.
Q Yeah, I think that's who it was.
A Yeah.
Q And then Karen Singleton would have been the director of nursing.
A Oh, okay. Well, Ms. Simmons, I don't remember meeting with a Ms. Simmons.
Q That's fine.
A It was always our contact person. It was always with ---
Q With Karen?
A Karen.
Q Okay. Let's see here. Did you talk at all with Dr. McNeil, who was David's doctor at Bayview Manor?
A Dr. McNeil, I did speak with Dr. McNeil. In fact, someone had recommended him, but if he was a doctor, he was not -- it looks as though -- he spoke with David, but it looks as if Karen was the person -- the go-to person, or there was another doctor there on certain occasions that was involved with David. But it wasn't that many meetings with Dr. McNeil, per se. You know, I didn't have that many meetings, but they were saying what his progress was and what was happening, you know, with David. Because David's vitals, there was nothing

wrong with his vitals. It was still a state of being in a state of unconsciousness. But you know, as I said, when he left Charleston and came there, that's why they admitted him into Bayview.

Q Did you ever raise any complaints, either with DHEC or the ombudsman or anyone, about his care at Bayview?

A I never raised a complaint with DHEC.

Q Okay. Did you get -- other than Karen Singleton, do you remember the names of any nurses or CNAs who provided care to David?

A No, not really. Not directly, no. They were just people that worked at the hospital on different shifts and different times and different aides. But I never really -- you know, there are different people. They had CNAs. They had different people working. But I never really took their -- you know, their names specifically. I just -- if there was a concern, I just took it to the top.

Q How about, did you ever attend any care plan meetings at Bayview Manor?

A Oh, yes. We did.

Q Okay. Tell me about that.

A Well, in the care plan, they outlined to us the treatments that they were giving David. And we also questioned -- when he came to Bayview, he lost some

more weight. And so we had -- we questioned that on several occasions, that it looked like he was getting somewhat smaller. So we had a meeting, and my brother would come from Boston for that meeting, for that care plan meeting. And we voiced our concerns and what we wanted for David, that we wanted his -- we wanted them to do something with his nutrition, that calories should be higher because it seems as though he was losing weight. And we said whatever -- and I needed to say, "Well, why is it so low? Obviously, he needs more nutrition and more calories." He couldn't afford to lose any more weight, and that would be some of the things that they would tell us about. We would say what he needed to have done, the exercising and whatever. And so, you know, what we think and our concerns about certain things, you know, that we saw. And so the word is that, you know, they'll be -- they would adhere to our concerns and what our expectations were and are, you know, in reference to David.

But quite frankly, we were focused on what was happening with David and focused on what we could do to better his care and focused on getting people to take it, you know, to really -- if you're a professional, be a professional. You know, you have a facility. Be well equipped to do what needs to be done without

question. Or get staff that will do their jobs properly. See, with him, we were always there questioning, you know, like a parent at school. You know, your children are going to make As and the teachers know who that parent is that they've got -- you know, because someone is going to be there to care. Someone is going to -- so we would just question things and say, "Well, this is what we're seeing." And you must -- there was a tad bit of -- at Bayview, as I said, in terms of the promises of what they could do. They said they could handle these extremes. And not -- they didn't say we could do it for a short visit. This could be long term. Because people in David's condition can live for many, many years.

Q Let me just interrupt you for one second.

A All right.

Q Because I -- I can't help but get the feeling that we're going to be here late tonight.

A Okay. All right. Well, no, we're done. Go ahead.

Q And I'm not ---

A Okay.

Q If Stefan feels like I'm cutting you off ---

A Okay.

Q He can tell me ---

A But I'm trying to answer your questions, but maybe it's

long-winded.
Q It is.
A Okay.
Q Now, that's okay. That's okay. I just want everybody to be prepared that we're going to be here late ---
A Okay. So, tell me this.
Q --- because I've got a good bit more to go.
A You're asking questions that needs explanation. You're not asking me yes or no questions. It's not a questionnaire. You know, there's a test called multiple choice. Okay. Do you see what I mean?
Q See, that's where we're going. We're going on and on and on.
A But I need to break it down to you. You're asking me detailed questions and you need detailed answers. So maybe you need to abridge your questions or present it to me in a different way. That's all I can tell you.
Q Okay. I'll do my best.
A Do your best.
Q Did you attend care plan meetings?
A Yes.
Q You discussed weight loss?
A Yes.
Q What other topics did you discuss?
A We discussed physical therapy to make sure ---

Q I'm sorry?
A Physical therapy, that he needed to have that.
Q Okay.
A That he be turned continuously.
Q Okay. What else?
A And that -- you know, making sure that he is cleaned and that sort of thing, cleanliness.
Q What else?
A Beddings, everything else that needed to be -- we wanted him to fight to have him to sit up in a chair because we felt the need to do that, make sure that's done. And the most important thing was his nutrition and his care and the trachea, and to make sure that that's done because of the tubing and all that. And that's it.
Q All right. In terms of his -- you had mentioned on his weight loss and his calories needed to be higher. Do you know if his nutrition was changed?
A Let me -- they -- to my knowledge, they changed it and added a little more to it, they did, once we brought the complaint. Yes, to my knowledge.
Q Okay. Did that affect his weight?
A There -- not in any great -- not in any great way, but it appears that I think he was gaining a little. But some of this is very vague to me. But you know, I

can't -- you know, but we just wanted -- we just looked at him physically and did ask that.

Q All right. The physical therapy that you requested, did they do therapy for him at the facility?

A Not as often -- they said that they were going to put that into plan, or someone would be coming in. But as I said, I never actually saw someone doing it, like, you know. So that's like -- they said that would be in the plan, but I never -- while sitting there, I didn't see when they were actually doing it. So I can only say what they said they were going to do. And that's something I would not be able to verify either way.

Q All right. Okay. I think we covered the other issues already. Thank you.

A Okay.

Q Do you know if your brother David was in any pain at Bayview Manor?

A I cannot say for sure, but there was one thing that I saw once, and it resonated with me. There was a tear, just from his eyes. A tear.

Q Did anyone ever use the term with you that he was essentially brain dead, either at the hospitals or at Bayview Manor?

A Not that he was brain dead. They said that he had -- that was something that was a positive thing, because

they didn't say that it's confirmed that he's a hundred percent brain dead. So that's why there was hope. And we kept pressing towards that hope, because it was never confirmed, you know what, he's dead. He's just brain -- no, no. No.

Q Okay. While he was at -- and, again, I'm talking about this three-week period before he went to Beaufort Memorial Hospital. Did his -- was he unconscious that entire time, from what you could tell?

A David has been unconscious from day one, from October 13th. He never regained consciousness.

Q Okay. When did you first learn, again, during that three-week period, that David had a wound?

A I don't -- I cannot give you the date.

Q Okay.

A I cannot give you a date on that because I didn't get my notebook out to say, well -- no, I can't give you a date. I just dealt with seeing it and that's it. I can't give you a date on that. I can't.

Q All right. Before he went to the hospital in December -- so, just three weeks after he was there, before he went to the hospital, how many wounds did you see on him?

A The wounds on the side that we saw, there was one near -- I -- there were several darkened spots that had not

yet turned into a wound. And there was a wound to the extent that you could almost see his bone in there. But I can't give you the date of that. All I can say to you is this. I cannot even give you the precise day or -- now, as we speak, the wounds were there. So I cannot give you the precise date. I can only tell you -- my sister might be better at remembering the exact time. I'm not sure. But I cannot give you the exact date or time. All I know is we noticed the wounds being there and they were not getting better. So that's when -- the true question is how often is he being turned because obviously not often enough.

Q Okay.

A All right.

Q Now, let me go back to my question. Before he went to Beaufort Memorial Hospital, how many wounds or things that were suspected to be wounds did you actually see? I'm not asking for a date. Just sometime during that first three weeks.

A At least one on this side -- at least one or two.

Q Left hip?

A Yes. I think it was left hip.

Q Okay.

A I think.

Q All right. Did you take any photographs of his wounds?

A Is that on -- is that one of the photos?
MR. FEIDLER: I can't talk to you.
THE WITNESS: Oh, I'm sorry.
BY MR. WHITE:
Q Yeah, that's okay.
A I didn't take any photos. I'm sorry. No.
Q That answers the question.
A I beg your pardon.
Q That's fine. No, that answers it. It's that simple.
A I beg your pardon.
Q It's that simple. Yeah, that's fine.
A Okay. Let me be -- simplify so we can leave out of here and take my granddaughter home.
Q That's right.
A I'll give you as many yeses or nos as I can henceforth.
Q All right. Let's move now to Beaufort Memorial Hospital. Okay? So this is his admission. He was there from December 24, 2014, until February 17, 2015. So he was there almost two months. It is my understanding that he was transported to Beaufort Memorial Hospital due to respiratory distress and aspiration pneumonia. Is that your understanding?
A That -- yes.
Q Okay.
A Yes.

Q All right. How often did you see him while he was at Beaufort Memorial Hospital?
A Every day.
Q What do you remember, in terms of the care he was being provided? What were they doing for him there?
A Well, they were making sure that the trach was always cleaned, that the feeding tube was done properly. He was -- someone would come in every day, you know, to bathe him. And the physical therapist came in, and he's the one that showed me some things that I could do while I was there as well. And there were -- so they -- you know, those are the things that they were doing while he was there. And his nutrition, the bathing, everything that needed to be done, they were doing it. And I've seen the physical therapist. As I said, he showed me -- he would be there while I was actually there with David and do the exercising and physical therapy. The turning over, two nurses would come in and be in charge of turning over and whatever with David as well.
Q Okay. Did his condition improve there?
A Yes. That's why he was sent back to Bayview.
Q All right. Tell me about the improvements that you saw.
A Well, they took care of the pneumonia that he was, you

know, going to have. And by -- well, this is where the extra conversation comes in now. I think that is the time that my sister observed him and said you all need to send him to the hospital. That was the incident, I think.

Q Okay.

A But I'm not sure.

Q Okay.

A But I couldn't remember the exact ---

Q So his pneumonia got better.

A Yes.

Q Did you see any other improvements in his condition while he was at Beaufort Memorial Hospital?

A Oh, yes. Everything in terms of, you know, his pneumonia got better. They attended to the bedsores or whatever David had, and he was stabilized. Because they never allowed him to go back until he was at the point that he could be received at Bayview. So that's why he was there for two months, and they took care of whatever those concerns were. And he was able to then -- just like in Charleston, you know, they only let him go back when they feel he is stabilized and was able to be in that facility at Bayview.

Q Did you feel like, during his time at Beaufort Memorial Hospital, that first one in December and January and

into February of 2015, did you feel like he was going to come out of his coma state?

A It's -- we were taking it one day at a time. Was he going to come out just because he, you know -- we just was taking it one day at a time, you know, that sort of thing.

Q How ---

A You know, just taking one day at a time in reference to David.

Q How long ---

A Because ---

Q I'm sorry. I didn't mean to cut you off. Go ahead.

A Go ahead.

Q How long did you intend to do that?

A Well, I can't answer that, because David was not on a respirator. He was not on life support. See, that's the difference that we need to make a clear difference with that. David was not on life support where, if you pulled the plug, he dies. David was able to breathe and do that on his own. So, you know, I wouldn't dare say, "Oh, we want to let him do five years, six years." No. I -- we never thought in reference. We just wanted him to have a fighting chance because this was under a year that this happened to David. And David was never diagnosed with being a hundred percent brain

dead. That was never a diagnosis of David.
Q In his unconscious state -- and I realize that he was not on the ventilator. I realize that. Of course, he had the feeding tube. He couldn't eat, so he was being fed through that. How long -- did you and your family ever discuss how long y'all intended to leave him in that condition before changing it to comfort care, palliative care, hospice care?
A We never got together and said we're going to let him be there. We never had that meeting, no. We were just working with David as we see.
Q Okay. Sitting here today, do you know how long you would have left him in that condition?
A No, I never thought of it. I never -- he passed away. I just never -- I was just focused on what was happening with David. I never had that number, no.
Q Okay. What were the doctors -- did the doctors talk to you about his condition? I'm sure the doctors talked to you about his condition.
A Sure.
Q Did they talk to you about appropriate care, in terms of whether he ought to be maintained as he was, or whether you should turn to comfort care measures?
A Actually, the doctors wanted this to happen. One doctor said there's a method that they have, they said,

that they will take him off of his feeding and then that way, in about two weeks or so, you essentially starve to death.

Q Uh-huh.

A That's what they were suggesting. That, you know, well, maybe if he's like this, maybe what we should do is just, you know, not -- they -- at the time, I think they suggested it would be hospice.

Q Okay.

A Or whatever. That means we just don't feed him, don't give him water, don't give him feeding tube, and just let him die that way. But you literally starve to death.

Q Did they talk to you about whether that's a painful process or not?

A Well, unless one of them had experienced it, I think that would be far-reaching. But if you go for two weeks or even a week without eating, as a human being, I'm assuming he was -- David was still alive. So how would you feel if there's three days without water or food.

Q Uh-huh.

A So I think it's -- since they couldn't say he was brain dead, that meant he would be aware of his starvation and depravation of water.

Q Did they talk to you about that, about whether he would be aware of it?
A I beg your pardon?
Q Did the doctors ever talk to you ---
A Well, that was my question to them, and they could not assure me. My question to them is the one I'm giving you.
Q Gotcha.
A So they couldn't say no, no, no, no. He's not going to feel that. They didn't do that, no.
Q Did anyone -- I know you mentioned earlier about some people saying something about -- well, strike that.

Did any of the doctors or nurses that you recall place blame on Bayview Manor for his wounds?
A No one came to me and placed -- I'm not going to say that. But you know, well, not even place blame. They asked, you know, was he being turned or they would ask, well, how often was he being turned and that sort of thing.
Q Uh-huh.
A You know, that was a question they would ask us.
Q Right.
A And I said on my knowledge, you know, they -- you know, that is supposed to be protocol. Of course, they would ask that, you know, because it's a standard thing. You

know, because that's what they did when he went to the hospital. It was a constant situation where they turned him constantly.

Q Okay. I'm going to ask you about a few more records here.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 7, DISCHARGE SUMMARY, ATTACHED.)

BY MR. WHITE:

Q Okay. I'm going to give you Exhibit Number 7.

MR. FEIDLER: Thank you.

MR. WHITE: You're welcome.

BY MR. WHITE:

Q And this is a discharge summary from David's -- at the end of his time at Beaufort Memorial Hospital on February 17, 2015. So this is when he's about to go back to Bayview. Okay?

A Okay.

Q And if you look at the bottom of that first page, and I'll just read this into the record. This is the doctor writing this. "We have been discussing with the family and had ethics committee regarding whether continuation of care should be provided. Family has had many conversations with different physicians regarding our recommendations and, at this point, they do not want to back off. They would like to continue

aggressive care. However, reportedly, they will consider making him a DNR prior to admission to Bayview."

And, so, let me ask you about that.

A Uh-huh.

Q During his time at Beaufort Memorial Hospital, how many different doctors do you recall coming up to you guys as a family and saying, "This is what we think ought to be done with his care," in terms of hospice care or comfort care?

A Well, he had a main doctor.

Q And is that the main person y'all talked with?

A He had a -- he had a regular doctor. There were other doctors from different aspects of his care. But certain people took care of different aspects of David, you know.

Q Uh-huh.

A A respiratory person. You have different people. But that would be -- so more than one doctor would recommend, you know, well, just let him die, and that was the suggestion of how it should happen. Because obviously if you did not deprive him of food and water, he could live. He would be able to stay alive. So that was a very drastic, you know ---

Q All right. Let's go over to the fourth page of this

document. And it will be one -- I think it's the next page. There you go. So these are called care coordinator notes. These are notes being made by nurses. And the bottom note is called a discharge planning note of February 11, 2015. Do you see that?

A Which one? Discharge planning note?

Q Yes, ma'am.

A Okay.

Q The second paragraph says, "CC" -- and that means care coordinator. So, "Care coordinator called patient's sister, POA Dorothy Olenja, to alert her to above. She was happy to hear that Bayview may take patient back. However, she is out of town and won't be able to be at the hospital tomorrow. So she asked CC to call her other sister, Margaret Holmes, to let her know when Karen would be coming to see patient."

So let me ask you this. When he was at Bayview -- excuse me. When he was at Beaufort Memorial Hosiptal ---

A Right.

Q --- with the wounds and the aspiration, did you have any concerns about the care he had received at Bayview Manor for the first three weeks he was there?

A You keep saying the first three weeks that he was actually there, but some of this -- he went to the

hospital, Beaufort Memorial Hospital -- what day was it?

Q Well, let me -- I guess let me put the timelines. In fact, I'll write it down for you. It will be easier if you look at it. So ---

MR. FEIDLER: And I don't mean to interrupt, but we have pages two, three ---

MR. WHITE: For that, no. I just printed them off the thing. I think they were not Bates stamped.

MR. FEIDLER: Oh, okay.

MR. WHITE: So, when I -- it was in, like, 6,000 pages, so I just found these.

MR FEIDLER: Okay. Thank you.

MR. WHITE: Yeah. Okay.

BY MR. WHITE:

Q All right. So let me write this down.

Okay. So what I've done here -- and I want you to have this, because I want to make sure we're all talking about the same times.

A All right.

Q BVM stands for Bayview Manor.

A Right.

Q BMH stands for Beaufort Memorial Hospital. So these are the dates he was at each of them.

A Right.

Q And that last one, the March 29, '15, he stayed there two months before he died.
A Right.
Q Okay. So, when I say the three weeks, what I'm referring to is this first admission to Bayview.
A Okay.
Q So let me go back to the original question. The question was, when he was at Beaufort Memorial Hospital in this admission, 12/25/14 admission, did you have concerns about the care he had received at Bayview Manor during that first admission?
A When you're talking -- we had concerns because that is when -- the first time he went there, it was due to respiratory -- had something to do with -- let me see what was going on with David. We had concerns in terms of we still had gone there and seen the tubes and things. I had voiced things, you know, within that period of time for sure. You know what I'm saying? Voiced certain concerns about the tube or the trach. You know, there are certain things that we saw. It wasn't a perfect care package for the first three weeks. Otherwise, you know, that's why he was sent to the hospital, to take care of some situations that arrived with David. That's why he was sent to Beaufort Memorial Hospital. So there were concerns or certain

things that we saw in coming there. Do you see what I'm saying?

Q Uh-huh.

A But being that he was only there for three weeks and he went to the hospital, then he was there for a length of time. But the concerns still persisted, and the situation still persisted. That's why he had to be sent back for the second time of which he passed away. Do you see all of -- all of our concerns transpired before he went the first time after he came back, and then, his final stay, he never came back.

Q Okay.

A So anything that I voice to you were things that actually happened, were happening, and then he was sent back again. And, again, he never came back. But remember, anything that we saw, in terms of the trach, in terms of the bruise, those things happened between those visits. None of those things transpired at Beaufort Memorial Hospital. He didn't have the bruise on the head. That didn't take place there. That happened at Bayview. We didn't see the trachea -- you know, that happened at Bayview. The things about the tube that happened at Bayview, or the lack of cleaning that happened at Bayview. So you can just put it in that manner. Sandwich it that way. Our concerns took

place during his presence at Bayview, not at Beaufort Memorial Hospital.

Q The bruise on his ---

A Certain dates I may not be able to give you precise dates right now, but I'd have to -- you know, you'd have to recollect your thoughts or whatever.

Q The bruise on his head -- and your sister has a picture of that -- did y'all ever determine what caused that?

A Well, we asked them how does he get a bruise? No one could answer. We said he can't walk, he can't fall. Where did it -- where does this bruise come from? And no one gave us a straight answer for that.

Q You don't think there was any sort of abuse, do you?

A I can only say to you we questioned the bruise and we said how does he get a bruise on the head, a person who's in the bed the whole time. You know, he can't walk around where he can trip and fall. Where is this bruise? He didn't always have a bruise on his head. A bruise is a bruise. So that had to have gotten there by someone other than David.

Q Did he have side rails on his bed?

A Of course. You know, he had to have side rails, but his head, this is his head and the rails comes, you know, to the elongated part of his body. So we questioned the head -- the head bruise.

Q Well, let me ask you this ---
A But no one said someone accidentally did it. We never knew what was going on with that.
Q Let me ask it this way, because this will short cut it. If this case goes to trial and you were called as a witness, are you going to allege that there was some sort of abuse that caused the bruise?
A What I will say and not allege is that my brother had a bruise on his head and he cannot walk. He cannot hurt himself, so the bruise had to have come from where he resided. That's all I can say.
Q Okay.
A Because it was a bruise.
Q All right. Let's go ---
A On the temple.
Q If you'll flip over one page, let's see if we're on the same -- actually, let me get to the page for you. Yes, the next to the last page. You'll see something called the ethics committee consult. Do you see that? And then it lists a number of members who were present for that. And let me ask you about this. So let me point -- I'm going to tell you what I'm going to do, is I'm just going to highlight some first words here. It will make it a lot easier for us to go through this.
Okay. There you go. Now, if you look at the

first word I highlighted with "family," it says, "Family continues to exhibit a lack of understanding and/or acceptance of patient's current status and prognosis." That's what "px" stands for.

A Uh-huh.

Q "Mentioning such things as patient needs to eat more to regain his strength, et cetera." So let me ask this. Did you have a concern while he was at Beaufort Memorial Hospital that they were not feeding him enough?

A What -- I did speak with a nutritionist and wondering, you know, how many calories. I had that discussion with someone actually there. I'm sure I did, in terms of is he getting enough calories. And I spoke with a nutritionist on several occasions. And you know, regarding my concerns. And she was -- she, in turn, you know, medically was saying how much they were giving him, how much he could tolerate, et cetera, et cetera. But you know, as a layperson, if I see that it looks like he's small, how many calories, of course, I would question those things about everything that I see. So, yes, I would have a concern and I'm sure I did discuss that.

Q When the nutritionist explained to you how many calories he was getting and what they were doing for

him, did you accept that or did you still have a concern?

A At some point, they did, if I'm not mistaken, at some point, they added more calories at some point to David.

Q Okay.

A I'm sure, at some point, if I'm not mistaken, I think that they actually did add more to it.

Q All right. Let me ask you about the next start, where I highlighted. It says, "It does not appear that any family member has visited patient during this hospitalization except at initial admission."

A Who is this? This is Beaufort Memorial Hospital?

Q It is.

A Oh, that's not true. We were there every day, and when we couldn't go, we sent someone. So why -- who -- that's ludicrous.

Q Okay.

A I mean, they were tired of seeing our faces. Gee whiz. Are you serious? Oh, my God. It's like, what? Okay. I spent nights there, days.

Q That's right. And I'm not vouching for what's said here.

A Oh, no problem there.

Q I just wanted to get your thoughts.

A They were tired of seeing me. I'm surprised. I'm very

surprised. They knew us so well. We questioned everything.

Q Okay. So, in that same -- two sentences down from there, it says, "Care coordination has diligently sought placement in the entire surrounding area to no avail. No facility will accept this patient. BV" - which is Bayview ---

A Right.

Q --- "refused to take patient back" ---

A After the last.

Q --- "when he was medically discharged from acute care, although he had returned to his baseline status." So let me ask you about that.

Was there some concern with Bayview not taking him back from Beaufort Memorial Hospital?

A Well, I think they were beginning to realize that some of why David had been placed in Beaufort Memorial had a great deal to do with what was happening there at our complaints to them and said, "Well, what is going on?" and I think that they began to realize that they were not giving him the care, although they assured us that they were more than equipped to take care of David. But I'm surprised that that's a report. That's interesting that they would actually put that.

Q All right. Then, if you go down to the last paragraph

that I started highlighting, it says, "The committee -- and here again, it's referring to the ethics committee -- "discussed patient's history and current status as per above. All were in agreement with the recommendations of the various physicians for DNR and palliative care or hospice as an inpatient if placement cannot be found."

So, here, whoever's writing this, which looks like it's a social worker who's making the note here. It's saying that the various physicians agree that a do not resuscitate and hospice care is appropriate for him. And we've talked a little bit about that already.

And then it goes on and it says, "At the conclusion of this discussion, Dr. Gambia attempted to reach patient's POA, Ms. Olenja, by his personal cell phone and was successful. Dr. Gambia reviewed the patient's current status and prognosis, discussed what constitutes palliative care and DNR, reassured sister POA that neither DNR nor palliative care means that stop taking care of the patient or caring about him as a person." And it says, "POA," which is you, "advised Dr. Gambia that she could not make decisions without consulting the rest of the family, the other sister and also a niece in Boston who had just graduated from physician's assistant school."

So let me ask you about that. This niece that graduated from PA school, did you talk with her about this?

A Sure.

Q What was her recommendation?

A Well, her recommendation was the same as ours. This is what -- here we go into a dialogue, perhaps. They wanted us to agree to letting David starve to death, and we could not and would not agree to that.

Q Did it -- does it seem strange to you that a doctor -- and I know that, you know, you're saying allow him to starve to death, and maybe on one level that's an apt description, but does it seem strange to you that multiple doctors would be recommending this?

A Well, when you say multiple -- no, have you had any contact with anyone who's been ever ill in the hospital? Seriously ill?

Q Yeah.

A Well, if you had, they have a protocol, it seems, that they're very quick to say that they have the last word about, oh, this patient is going to die, so why don't we let them die? There have been many cases I'm sure that you know of that that has been what they have said. But the actual difference has happened.

Q Okay.

A We are not secular people. We're very spiritual. So we don't -- we also rely in a serious manner -- we are people that are very spiritual people and what that implies for us. Because every human being, you're just a human being. And sometimes, in many occasions, and unfortunately at many hospitals, that is what is -- in many situations in the medical profession, that is the first thing that they say. In fact, when he was in Mt. Pleasant, that is what this person wanted to do after, what? Less than a week or two. So, you know, so we did not agree to that. But that is what is -- that's protocol for many hospitals. Protocol.

Q Okay. Thank you. The last thing I want to ask you about this document is where I had started highlighting "However." And it says, "However, if the family continues to refuse the medical recommendations made in the patient's best interests, legal advice can be sought to have the family's decision-making ability set aside and another guardian appointed by the court who will receive the information and make an independent decision." So ---

A Well, we were never notified of this.

Q Okay.

A This is new.

Q I was going to ask you about that.

A No, I never heard of it.
Q So they're talking internally in the ethics committee about being so upset with the family's decision to not change the course of his treatment that they're actually discussing now seeking the court's involvement, or they're talking about possibly getting the court involved. Does that surprise you?
A Well, I would think that, if this was something they were considering, perhaps they should have at least informed the family or say, "If you all do not agree with us, we may have to take this further." I daresay you have more information than we have ever had. So we never knew that this was on the table, and I had quite a few meetings. They saw our faces every day. So this is quite interesting. You know, they never discussed -- well, they never came to us with that proposal to say, "Well, we have come to the conclusion that if you don't do this we're going to do that, you know." So, as I said, you have been privy to information that I have -- that I've never seen or heard this. This was never brought to us, in terms of going to courts and et cetera, et cetera.
Q All right.
(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 8, MEDICAL RECORD, ATTACHED.)

BY MR. WHITE:

Q Let me hand you next Exhibit Number 8. And Exhibit Number 8, what I'm going to ask you about is this first note up here. This is a wound care note by Cynthia Greene, RN. And let me just read through this and ask you a few questions.

She says, "Per request from Dr. Johnson, this CWCN," which is a certified wound care nurse, "spoke with the patient's sister Dorothy yesterday regarding the patient's wounds that were noted by this CWCN on admission. This was because Dr. Johnson said Dorothy did not think it was possible that he had 20 plus wounds on admission to the hospital. She stated she knew he had some open wounds on admission and questioned what types of wounds the other multiple wounds that had been noted by the CWCN were."

All right. Let me stop there. Do you recall talking with the doctor about that?

A When -- again, what she said is quite true, because, you know, if you're not seeing his whole body, well, it was far worse than we ever thought. We knew that it was bad, but we had no idea. And she said, "Look at this." She said, "Well, it's worse than what you all think." Because you know, we don't take his gown, and we're not the nurse and we don't -- she said, "Well, he

has more than 20." And that was shocking to us, that it was far worse than we ever imagined that had transpired.

Q All right. Then it goes on and says, "She was instructed" -- talking about you -- "instructed that most of the additional wounds were suspected deep tissue injuries." So let me stop there. Did someone explain to you what a suspected deep tissue injury was?

A There's so many conversations not -- if you were to ask me the definition right now, I wouldn't be able to say. But we're, you know ---

Q Okay. And that's fine, and I know you're not a medical person, so I get it. So this says, "She was instructed that not all wounds have to be open to be categorized as wounds and that suspected deep tissue injuries usually present in dark-skinned individuals as darker color over bony prominences, and they are suspected to be the result of pressure injuries over those bony prominences."

So then it goes on and says, "She was also instructed that, on admission, we have only the first 24 hours to document anything that appears to be possibly any tissue injury and that he had many of these types of discolored area over his bony prominences when this CWCN performed the wound

assessment within the first 24 hours of admission, and each one of them had been measured."

And then it says, "She stated that she now had a better understanding of why these sites were documented because she didn't realize that something could be called a wound if it was not open."

A Well, should Bayview have been privy to that information and not Beaufort Memorial? Shouldn't they have also been privy to that 20 wounds?

Q I don't know.

A Well, they weren't because they never informed us of them.

Q Okay.

A So, if their nurses and their practitioner -- I should not have had someone at Beaufort Memorial to point this out to us. No one ever spoke of that, about those 20 wounds.

Q All right. Let me ask you this. Of those suspected deep tissue injuries, where they're talking about the darker spots ---

A Right.

Q It's my understanding from reading these records, and I want your take on this, that not all of those ultimately opened up as wounds. Do you know whether or not that's the case?

A Eventually -- eventually, I'm sure that they will open up as wounds.
Q Now, are you sure about that, or are you just assuming?
A Well, no, I'm not going to say -- well, I dare not say I'm sure.
Q Okay.
A Okay. But they never gave us the assessment that Beaufort Memorial did. My word. It was far worse than we thought. They never told us that.
Q Understanding that, you know, and taking your testimony from what you just said and looking at the records, and understanding that he had these many more wounds than what you thought he did when he left Bayview ---
A Because they never told us at Bayview that he had them, so someone here from Beaufort Memorial told me.
Q Right. Were you concerned enough by that that you looked at other nursing home options rather than returning to Bayview?
A Actually, we -- there was someone at -- the social worker at Beaufort Memorial that were helping us with doing some searches as well. There were a social worker that was helping us to find places or to see the possibility of places of which to place David. And they also said that, if he was at home, they spoke that -- you know, told us what that would encompass, that if

we had a 24-hour person. There were different options that we were -- that they -- that they were discussing with us. But as I said, his last trip there, you know, he passed away at the hospital.

Q All right. Let me ask you ---

A So we never had to proceed with that, but we weren't going to give up. We were going to do whatever we needed to do. We weren't going to not continue to press to do whatever we possibly could in reference to David in reference to what we wanted to do. But they also needed to respect that families also, you know, are interested in what happens to their family members as well, and so you will keep being interested and keep trying to do the best that you can. But we never had to -- had to -- it -- he passed away.

Q Okay.

A So, but I can't tell you we weren't going to keep trying and doing what we had to do, because we would have.

Q All right. So let me -- I'm going to ask you a series of very straightforward questions, or I'll try and make them straightforward.

Did you work with the social worker at Bayview, or excuse me, at Beaufort Memorial Hospital to look at other locations than Bayview to place him?

A There were times, yeah, I did speak with someone and someone was looking and seeing other places during this period of time, if memory serves me right. For sure.
Q Okay. Do you know why these other places would not take him?
A Well, some were saying that they -- it had something to do with the trach or his extreme, the kind of care that he would have. But mostly they seem to have been more concerned with the fact that they would have to deal with the trachea with David.
Q Okay.
A Because, remember, this was not just a person -- this was extreme care. And that seemed to have been a place. But and there at the end, there was a place in Georgia. But again, we never pursued it because he passed away. It was some place -- and I forget. Above Atlanta, Georgia, somewhere we had found there was a place somewhere near there. But we never, you know, pursued the issue because David passed away.
Q Did the social worker or anyone from the hospital ever express any concerns to you about whether you should return him to Bayview Manor?
A No one ever came out and said, because we just -- no one ever said -- we never -- I never discussed, you know, that whether or not -- they're not -- they didn't

verbalize to me, "Do not take him there because of this and because of that." You know, I mean, they did not make that recommendation. They just said certain, whatever, comments or whatever, the record.

Q All right. So now he comes back to Bayview Manor, and now we're at this admission. So he comes back on February 17, 2015, and stays for about a month and a half until March 29, '15. So now I want to focus on that one.

I know you've already told me some concerns about the trach care and the cleanliness and that kind of stuff. Was there anything about that admission, about the February 17, 2015, admission to Bayview that raised any additional concerns beyond the concerns you've already told me about?

A To my knowledge, it had to do -- I think it had to do with David either having pneumonia or about to get pneumonia. Something to that effect. I have to -- I can't -- it was just the whole conglomeration of -- the whole accumulation of his health, and mostly with them, it had to do with his breathing or the threat of pneumonia or something happening with David. That's all I can say right now, to my recollection, about that admission. There were some extreme situations going on with David. There was also -- he also had the -- some

additional -- the sores and everything. But I think it had something to do with David either about to get pneumonia or something was happening with David at that time.

Q Now ---

A I can't truly -- but it was extreme enough for them to say we better send him -- let's get an ambulance and get him there, you know. So I can't really recall it had to do with a serious situation. I think, to my knowledge, it was a threat of pneumonia, respiratory. Something was going on in reference to that with David, because it wasn't -- it wasn't his heart. It wasn't, you know, whatever. I think that was it. I'm not sure. But I know it was serious enough for them to send him back and he never returned after that.

Q Okay. So what you're talking about is what sent him back to the hospital on March 29th.

A Exactly.

Q Okay. Now, what I'm talking about -- and I appreciate that and we're going to get there.

A Right.

Q What I'm talking about is from this date, from February 17th ---

A Month and a half.

Q --- until March 29th, other than what sent him out to

the hospital, did you have any additional concerns about the care Bayview Manor was providing to him beyond the things you've already mentioned. I just want to know if there was anything new during that admission.

A No, it's the sores, it's the trachea. It's the -- the trachea is what leads to the pneumonia because that's the only way he can flush out his lungs. So it was the sores, and the trachea plays a very important role in terms of it never being cleaned and suctioned because that's when pneumonia gets into his body.

Q Well, now, you say "never suctioned."

A Well, I'm sorry. With the trachea, being that that was an ongoing problem, that is what would make the body vulnerable to getting pneumonia when a person is in David's position. So that was vital, you know, in terms -- there's accumulation of what was happening with David that would send him back to the hospital and whatever was going on with David.

Q Was there anything else? Any other concerns?

A Well, those are the concerns that would keep him either well or not well, being turned over, whether you're taking care of his wounds, physical exercise, the trachea -- those are -- that's where he was with his treatment. That's what he needed in order to continue

until -- or if something made a difference in his life.

Q From when he left Beaufort Memorial Hospital and came back to Bayview on February 17, 2015 ---

A Right.

Q --- did his condition essentially remain the same until he went back out to the hospital on March 29th?

A Well, the condition would have to -- when you say does it remain the same ---

Q Let me clarify.

A It was something they felt they could handle that wasn't extreme enough, I guess, they thought that he would not have -- that he could be with them rather than to be back in the hospital.

Q All right. Let me clarify that.

A But obviously -- go ahead.

Q Let me clarify it because that was -- that was a tough question.

In your mind's eye, picture him when he came from Beaufort Memorial Hospital back to Bayview Manor on February 17, 2015, how he was. You don't have to explain it to me.

A Right.

Q Just picture that in your mind's eye. Now, think about him, over the course of that time, from February 17, 2015, until he got sick and had to go back out on March

29th. I don't want to talk about him getting sick again yet.

A Of course.

Q I just want to talk about those several weeks there. Okay. So you've got it in your mind's eye what he was like when he came back, and now you think about the next five weeks through Bayview Manor. Did his condition get better, did it get worse, or did it stay essentially the same?

A It did not get better, because if it got better, he would not have been sent back to the hospital. No, it did not get better, because better means you don't get sent back to Beaufort Memorial Hospital.

Q No, wait a minute. Wait a minute. We were talking about ---

A Okay. Well, no, let me answer.

Q We're talking about two different time periods, then.

A It did not get better ---

Q But you're answering the wrong time period.

A After he was ---

Q That's my concern.

A Oh, I'm sorry. Okay.

Q I don't want you to ---

A Since he came back from the 17th ---

Q Yes, that's what I'm talking about.

A Okay. That's what I'm saying.
Q I'm talking about while he's at Bayview Manor.
A While he was at Bayview Manor, he was still unconscious, yes.
Q Okay.
A There was still some ongoing concerns about, you know, certain things that we still had to watch him closely to make sure, once he would turn that it's being done. We still had some concerns. We still came to the hospital and saw some things that we were still yet concerned about. All right. So, you know, in terms of him returning from February 17th, if you're asking me did we stop, everything was fine and we no longer had concerns, we still had concerns.
Q Okay. But, again, that's not my question. Listen carefully ---
A No, we didn't see improvement. I didn't see any improvement.
Q Okay. Didn't see improvement.
A Right.
Q Did you see any deterioration? See, I asked you three questions. Did you see any improvement, did it stay the same, or did he deteriorate? It's got to be one of those three.
A Oh, the wound? Deterioration in terms of that wound?

Q Anything.
A Yes.
Q Anything about his condition.
A Oh, yes. Deterioration in terms of that wound.
Q Okay. Which wound deteriorated?
A The one -- I think it was his left hip bone. I cannot be sure, but I'm sure that would be in the record. It was almost now -- it was not getting better.
Q Okay.
A Getting worse. It wasn't getting -- that was not improved.
Q Okay. So, during this February 17, 2015, admission, his left hip wound got worse. Do you remember any other changes in his condition over that period of time?
A Let me think.
Q Take your time. I want you to be as accurate as you can be.
A Well, when you observe -- well, I can only say that I do not know if the trachea is not cleaned as it should be. You know, I'm not a nurse, so I couldn't diagnose what that was doing daily in his body. Do you see my point? If I say, "Well, that needs to be suctioned again," I couldn't say, well, that needed to be suctioned because it wasn't -- that happened. You can

only look at situations and see what's going on in terms of activity or not activity and what's happening. Do you see that's the only thing you can possibly do? I can't say that. I can only say if you ask me did I still have concerns about his care, the answer is yes.

Q But that's not what I'm asking you.

A Oh, well, that's ---

Q And I'm sorry.

A Well, no, you want me to speak on a physician and a medical way ---

Q No, no, no. No, and understand -- please understand I am not trying to be rude. I'm just trying to keep you focused on the question I'm asking, because I've got in my mind what I want to ask, and you've got in your mind what you want to answer. I just want to try and match those two things up.

A All right.

Q So listen to my question again, okay? I'm going to make it very straightforward. And I'm not lecturing you. I just want to get this moving.

A Right. But of course. I don't see it as a lecture.

Q Good. I want to know if, during this residency from February 17, '15, to March 29, '15, whether his condition, from you as a layperson -- I know you're not medical ---

A Worsened?
Q But you are his sister and you've been watching his care ---
A Exactly.
Q So I want to know whether his condition got better, stayed the same or worse. Now, you've already told me it didn't get better and you've told me the left hip wound got worse. So was there anything else you observed, as his sister, about his condition that led you to believe he was either getting better, worse or staying the same?
A I would have to say, and the reason I'll say worse, and the reason I'm saying that is because of the concerns that I still had in reference to his position. So I would say worse. Not the same, because if it was the same, he wouldn't have to be returned. So worse, because he had to be returned because of his condition.
Q Well, he had to be returned because he started having that sickness there at the end; right?
A Well, he had -- yeah, the sickness, but the sickness connected with the -- you know, with certain things. The sickness was not separate from why he was returned.
Q I understand, and I understand what you're saying.
A It wasn't a separate issue.
Q Okay. So, other than his left hip wound getting worse,

and also his condition sending him to the hospital ---
A Like the pneumonia possibility, which connects to the trachea, and we complained about that.
Q Oaky.
A And you have pictures to look at them. You can be able to see them. Yeah, go ahead.
Q Was there anything else about his condition that worsened, other than the wound on his hip or when he started having the breathing problems and had to go back to the hospital? Do you remember any other part of his condition worsening?
A You have the wounds. You have -- those -- you have the wounds, which was the issue with the trachea. Because he couldn't walk, so I cannot say what was the impact of the physical therapy or not there was because he still could not do anything or stiffen up, or whatever the case is. So I would say those are the basic issues that had a lot to do with his deterioration.
Q Okay. All right. Now, we're going to go to the last hospitalization. So this is the March 29th one, okay? It's one of the very last stages of his treatment.

(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 9, MEDICAL RECORD, ATTACHED.)

BY MR. WHITE:
Q I'm just going to go ahead and start with this

document. This will probably help us move through this. I'm going to hand you what I've marked as Exhibit Number 9, which is a hospital discharge summary.

A This is from after ---

Q This is from Beaufort Memorial Hospital, and this is done by -- let's see who prepared this. This was done by James Zeccola, Z-e-c-c-o-l-a. Do you remember Dr. Zeccola?

A Of course. I'm sure I do.

Q You do? Okay.

A I think so.

Q Was he the -- and now, there's also listed an attending doctor of Mary Hawes, H-a-w-e-s.

A I remember her, of course.

Q So you remember both David and Mary?

A Right.

Q Okay.

A But he was -- yeah.

Q Excuse me. James, not David. I was talking about your brother. James Zeccola, you remember him, and you remember Mary Hawes.

A Yes, I'm sure.

Q All right.

A That was a female doctor.

Q So, down under hospital course -- you know what? Can I borrow yours? I'm just going to highlight these first words again. It's just going to save us a lot of time in running through this.

Okay. There you go. All right. On the first page, the first words I highlighted is the beginning of the sentence, "I have recommended to family comfort measures on multiple occasions. However, they are not interested in this at this time."

So let me ask you about that. During this hospitalization, did the doctors talk to y'all again about comfort measures?

A The measure that he discussed with us was hospice where, again, in lay terms, where he would not -- he would be taken off of liquids and food.

Q Okay. And y'all refused?

A Right.

Q Okay. The next page, at the very bottom, it says, "I have updated the patient's sister, power of attorney Dorothy today about his decline. She reiterates that she wants everything done." So was his -- was David's condition declining at Beaufort Memorial Hospital?

A He had pneumonia, and as it says here, he was in intensive care unit and he was taken out of intensive care unit because of improvement. So, being in

intensive care and then taken out and put on the regular floor, that means his condition did not decline.

Q Okay.

A Because he would have remained in intensive care.

Q All right. So, if we go to the next page, in that first paragraph, about halfway down, it says, "Patient is also having residuals and tube feed and subsequently aspirated and tube feeds were held. Due to the aspiration and relative hypotension, he was transferred to the intensive care unit."

So do you remember that happening?

A Oh, sure. I remember David making several trips there and then when he improved -- and he did improve -- and he would be back on the regular floor.

Q Okay.

A Yeah.

Q Now, if we go down to the next section, the last couple sentences, it says ---

A Okay. At ---

Q I'm sorry?

A Now, you're looking at the part where it says, "The patient has his chest tube successfully removed"?

Q No, ma'am. Did I highlight the wrong thing? I may have highlighted the wrong thing.

A I have updated the patient's sister power of attorney Dorothy today about his decline -- is that ---

Q Oh, we're on -- I think you're on the wrong page.

A Oh, okay.

Q Let me see this here. Yeah. We already covered that. Let me take you to the next page.

So this is page three of six, is what's typed at the bottom of this. So the middle one where it says hospital course, May 9, '15. The last two sentences say, "There is still no consideration of any comfort measures, even though this has been recommended on multiple occasions. He remains very high risk for continued aspiration, respiratory compromise, and clinical deterioration." Okay. Do you see that?

A Uh-huh.

Q Now, do you understand that the doctors were telling you, even while he was in the hospital, he was very high risk for aspiration?

A Of course.

Q Okay.

A Yeah.

Q So, even where they were cleaning his trach on a regular basis, he was still at very high risk for aspiration.

A So you know it must be much worse than if you're

cleaning it and you're high risk, then it must triple dipple if you're not cleaning it, then. So I agree.

Q Okay. So, whether he was at Bayview or whether he was at Beaufort, he was still at high risk for aspiration.

A But high risk doesn't mean -- you know, you have students that are high risk. That doesn't mean that they necessarily are going to be -- they're going to fall. It's simply high risk. You know, if your father has heart trouble and you're his son, you could be at high risk of also having heart conditions. It doesn't mean you're necessarily going to happen.

Q Okay. All right. Let's go to the next page. And about halfway down in that first paragraph, it says, "Family continued to want full support, including dialysis." Had he -- do you remember talking about dialysis?

A Well, there was something that took place in the hospital that brought his kidney to fail. It had nothing -- it had something to do -- something totally unrelated.

Q What was that?

A Well, I -- that is something that does not relate to what we're talking about. It's something that he didn't have kidney problems with his kidney heretofore. So there was a situation that came up with one of the

nurses.
Q Okay.
A I think that might have brought that into ---
Q So what happened?
A Well, something -- he had some sort of -- it appeared that something happened with his kidneys while -- something happened with his kidneys.
Q I understand, but you understand this is a medical malpractice case. I'm entitled to ask anything I want about his health.
A Okay.
Q So what happened at the hospital?
A Oh, at the hospital, there was something that happened with one of the nurses and his trachea. She did something with his trachea to cause him to do a lot of bleeding. This was a couple -- this was seven days, weeks before he passed.
Q Okay. So what was it that happened?
A Well, she -- I think she punctured his trachea, and it caused him to bleed, to bleed. And so it was attended to the next day, but that's what -- that's what prompted the kidney failure, the bleeding.
Q Why did you hesitate to tell me that?
A Because I didn't see how it was connecting to what you were asking me. I didn't see -- the kidneys were so

unrelated to what you were asking me heretofore. And the treatment that they're talking about is something totally different. That's why.

Q Right. But what I've just learned is ---

A I was trying to -- I thought you want a course of questioning in reference to how it relates to Bayview.

Q Well, I'm ---

A And this -- there's no connection with this. I thought you were concerned and focused in that area. I didn't know that you were focused elsewhere. This happened about a week before he passed away. I didn't know that that was what our line of -- your line of questioning was.

Q Okay. So this nurse -- what was she doing? Was she cleaning, doing a suction?

A Yes, she was.

Q And during the suction, she punctured his trachea, and it caused bleeding from his trachea?

A Yes.

Q Now, do you know what the connection between that was and his kidney failure?

A Yes, it was, because it started bleeding and they switched him to intensive care. But the doctor, you know, the situation wasn't adherent to or handled until Sunday. This happened on a Saturday night, of course,

one of the nights I'm there. Saturday night and the doctor came on Sunday about 10:30 and addressed the issue. But by then, the kidney had been damaged. And it was not much that they could do because the hours that they needed to do it had not happened.

Q All right. And so y'all wanted to put him on dialysis?

A Well, that's what they were saying, that if his kidney has failed, they could do two things. Intravenously do something with a procedure they have, but because they waited so long, there was not very much, it appears, that they would do. So someone came in to do an evaluation about David's status, you know, with the kidney situation. And, well, actually, he passed away just a few days after they were making an evaluation of what can be done but cannot be done in reference to David. But that's what happened to him, and a week later that's how he passed -- well, that was one of the components of it. So that's what happened to him in the hospital.

Q Did -- okay. So let's go down ---

A So he continued to deteriorate, and that's true, and he passed away.

Q All right. So then it says -- the other thing I highlighted, it says, "The family knows that death is certain, but the patient is still a full code per their

request."

Let me ask you this. Do you know what a full code means? What that means?

A No.

Q Okay. Do you know why y'all were asking for a full code?

A I beg your pardon?

Q Do you know why y'all were asking for a full code?

A Oh, you asked do I know what that means?

Q Yes, ma'am.

A Oh, that -- well, what a full code means is that would they -- you know, if his heart gives out, would they try to resuscitate his heart at that point.

Q Right. And that was y'all's intention at that point?

A I'm sorry?

Q That was your intention, at that point, if his heart stopped, that he would get cardiopulmonary resuscitation.

A Right, at that point, because they were still trying to evaluate what to do and what could he tolerate about this new situation that he was unfortunately dealing with, with the kidneys. That was something totally that happened about a week before he passed away.

Q Did the doctors ever say that his death was connected in any way to the kidney problem?

A No.
Q All right. The next thing I've highlighted is down near the bottom, and it says, "Family updated daily. There was a request from their lawyer not to discuss code status and comfort care."
So who was your lawyer at that time?
A You said the family discussed with a lawyer?
Q I'm sorry. I'm just quoting from what the note she wrote. Have you -- I think you've turned the page already. Let's go back one page.
A Okay. No, this is -- what it might have been is that the lady that took me when we were in Charleston ---
Q Let me get you ---
A The woman that -- maybe they're talking about Veronica. She was the only -- because when you said lawyer, she's the only person we ever spoke with about what can and cannot be done.
Q Yeah.
A That's right. So the lady is the same, Veronica Smalls in Charleston that we had to get ---
Q And let me stop you real quick.
A Yeah, that's what that is.
Q I don't want you to tell me anything she told you because that would be privileged.
A No, no. I was going to say that she ---

Q So, just out of fairness to you, I want to say that.
A Of course not. Not that she told us. I was wondering what they're talking about the family lawyer have to do with this.
Q Yeah. So you'll see where I highlighted "family." It says, "Family updated daily. There was a request from their lawyer not to discuss code status and comfort care."

So did y'all talk -- and, again, I don't want to get into anything you talked with your lawyer about.
A Of course.
Q But did your lawyer contact the hospital directly or did you tell them, "Hey, our lawyer doesn't want you to discuss code status and comfort care with us"?
A I do know that we had gotten Ms. Smalls to make a call, so I'm thinking that perhaps my brother or someone might have contacted her. She may very well have done so. Yeah, that's possible.
Q Do you know why she would call ---
A I'm not sure.
Q Do you know why she would call the hospital and ask them not to discuss code issues with you?
A You said that she called not to discuss it with us?
Q Well, this ---
A With whom? I mean, I'm confused now about what you're

saying.
Q Well, the sentence I'm reading, and believe me, I don't understand what it means either.
A But the patient is still -- I don't even know what this -- this sounds a tad -- let's put it this way. Any lawyer that called for us, that lawyer will only be verbalizing what we tell and what we want to do. So I don't know who is -- if the lawyer is -- if what you're indicating, that a lawyer called and said don't discuss it with the family, you're saying? I'm confused about what you're saying.
Q I'm just reading that sentence ---
A I'm really confused.
Q Okay. Let me ask it this way.
A Okay.
Q Let me ask it this way. I think this will sum it up.
A Yeah.
Q At some point, did y'all want the hospital and the doctors to stop talking to you about hospice and comfort care?
A At some point, I told the doctors verbally that we have not -- that we will not agree for David to starve to death.
Q Okay. I gotcha.
A That's affirmative.

Q All right.
A Our family never agreed to that procedure to be done, never.
Q Okay. So let me ask you on the page five, are you on page five now?
A Yeah.
Q Okay. So the main paragraph on page five says, "Multiple attempts were made to have open discussions with patient's power of attorney/sister Dorothy about his deteriorating condition. During these conversations, she remained fixated on the fact that Mr. Holmes was not being fed or given any IV fluids and we were thus starving him and dehydrating him, and she demanded that we feed and hydrate him."

What can you tell me about that?

A Okay. We found out, quite frankly, that they were, without our permission, not giving him -- yeah, we did find that out. Now you're refreshing my -- I can remember. We found out that they were actually, on their own, made the decision without our consent to deprive him of anything to eat or -- that's right. They were. You're right. So that was our reason for calling that -- the attorney.
Q All right. Let me ---
A We found that out.

Q Okay. Good.
A Either the nurse said it or something, but it was not done with our permission. And all of this, this extreme deterioration that he was talking about right now happened after the failure of the kidneys.
Q So his condition took a real decline after that?
A Yes. That -- and five days later. All of this changed the -- what was normally he was dealing with. And this happened, that it became even more exasperated with the kidney situation. That was another component, as you well know, can be quite deadly.
Q Right.
A Because your system is being poisoned. And that happened.
Q Okay.
A And he passed away just about a week more, a week or so after that.
Q Did you bring any sort of claim against Beaufort Memorial Hospital for that event?
A No.
Q Why not?
A Let's see. Right now, I handled my brother -- everything -- he handles everything right now after, you know, being there for nine months and having to deal with doctors. Everything is over to him to

handle. Do you see what I'm saying? So I wouldn't even -- you know, he's the person that's over that sort of thing. I never did. You know, so I'm not sure what's what.

Q Okay. All right. I'm going to keep reading here in this same note. So it says, "I attempted multiple times through multiple explanations to explain to her that he could not be fed through the NG tube." That's nasogastric, so it's through the nose. "Because through multiple explanations" -- excuse me. "Because his bowel is not functioning from edema, and he also has a gastrointestinal bleed."

A Because it came from the kidney.

Q That's related to the kidney issue?

A All of it is. This part here at the bottom, when he's talking about the edema, you know, the swelling, extreme swelling, that was -- that extreme swelling was a result of the kidneys. And that's what happened with the overload, and the fluid overload was from the kidney.

Q All right. Then it says ---

A And they couldn't get it to go down and get the swelling to go down because not knowing and not being able to treat the situation that resulted from the kidneys. So that's -- everything went from that --

from that particular Saturday night, you will see a whole different -- lots of other complications, extremely complicated that were not there heretofore.

Q Okay.

A That came as a result of that, of the kidney situation.

Q All right. Then it says, "He is also at extreme risk for aspiration, which another insult to his lungs would certainly cause further deterioration. All those things being said, attempting to feed him was completely inappropriate. As for providing him with hydration, as stated above, the patient was suffering from severe fluid overload with fluid literally weeping from his face and gurgling in his lungs."

Do you remember that?

A We would go in and see that he was extremely swollen and, at that point in time, quite frankly, when we see the effect of what has happened with David's kidney, you know, that -- and nothing -- you know, it looks as though they were not able to treat that. There was -- we just sort of, you know, I just felt what more -- you know, what's happening with him is so extreme right now. So we remembered them doing that, but at the same time, they were talking about possible things of what they can do, about what was happening with the kidneys collapsing completely, and what they cannot do. So

that's -- those last three or four days was based on what they were able to do and what they could not do. And we knew that with that kidney failure, that put him in a totally different -- that put him in a totally different state, you know, with that. It was totally something totally different. And us saying, well, you know, that was something totally different. At this point, they knew what had happened.

Q Below that, in the last two paragraphs, on that same page -- you're on the right page there. It says, "On May 29, 2015, his condition deteriorated to the point that his heart rate started to drop and a pulse became undetectable. And code blue was called and he was found to be in PEA," which is an acronym for pulseless electrical activity. So it's ---

A Right.

Q You know what that is. "And the appropriate protocols were followed and he returned to spontaneous circulation within about 15 minutes. The family, including power of attorney, Dorothy, was kept up to date on what was going on. Throughout that evening, he proceeded to have three additional code blues with appropriate resuscitation measures taken, and he finally expired at 2248 after an unsuccessful resuscitation effort."

Were you there at that time?
A Yes, we were at the hospital.
Q You were at the hospital?
A Sure.
Q Did you witness them doing this, these resuscitative efforts?
A Well, we know that -- well, I was not in the room, but we were at the hospital when they were, you know, trying to give him resuscitation.
(MARKED FOR IDENTIFICATION, DEFENDANT'S EXHIBIT NUMBER 10, MEDICAL RECORD, ATTACHED.)
BY MR. WHITE:
Q Did -- this is the last document I'm going to show you. This is Exhibit Number 10. And the note I want to ask you about, if you go down to the next to the last note, it's dated May 1, 2015. It's a note by Frances Boyne. It says, "Nurse reports that family is not opposed to patient returning to Bayview Manor skilled nursing facility, and they will accept him."
So, when he was in Beaufort Memorial Hospital that last time, y'all were still willing to send him back to Bayview?
A By the same token -- you said we were willing to send him back -- when was this?
Q This is -- it's dated May 1, 2015.

A And the note states family is not opposed -- if David were stabilized. But in the meantime, we were still looking for other places for David. But at that point, the hospital felt that David would -- that his position would be unstable. So we were still looking for places for David because, if he's not at the hospital, he cannot be on the street. So we will not say, "Well, no, we're not going to have him back there." He has to have a place at hospital, saying he can't be there. We couldn't have him in the hallway somewhere. But it did not stop us from still yet looking on our own and researching on our own and trying to find places, you know, for David to be.

So, Bayview, at the point, they were willing to still yet accept him back at their facilities. And so that's our position on that. We were still looking for ways for David, to find a place for David to be placed. But there -- at that point, at Beaufort Memorial was not there. That was the only place that they -- you know, that was still yet on the record that David could be. So we would say, well, if he's not at the hospital and he can't be outside, but in the meantime, let us still yet see what we can do. But it never happened because he never left the hospital.

Q Right. I understand.

A So, you see what -- you see we didn't put on record officially, well, no, he can't go back there, because if we can't go back there, we're still looking. On our own, as our family, we were looking for places for David.

Q But if you couldn't find anything else ---

A Well, we never had to come to that conclusion.

Q Right.

A But I still will hold you never know. They were giving us alternatives about people being able to come to the house. We were discussing different alternatives in order to be -- we were discussing the alternative of being able to have David at the house and having someone who knows how to deal with a trach, who was trained to deal with a trach to come and clean that trach. We were still discussing that as an option as well. And we were given some names of someone who does this kind of thing at the house. So we were looking into that, just bringing him home and just have -- rather than, you know, whatever we couldn't find a place. And finding if there was a therapist who knows how to do the trach. That's basically what they were doing, the trach, the physical activity, being able to move him, and he had his own insurance, SSI or whatever, or Medicare and Medicaid. And that was also

something that we were willing to do for him.
Q Okay.
A Rather than, you know -- so we just never stopped working for David. We never stopped wanting and fighting for him.
Q Through all this time, either before David died or after he died, did any medical professional, whether it be a doctor or a nurse, did they ever place blame on Bayview Manor for anything regarding his care?
A While he was there -- how you mean -- you mean you want me to put names or place ---
Q Well, what I'm curious about is this ---
A Well, this is what -- this is what I will say to you. And I did not write names down. When David came back with certain ailments from Bayview, they said, "Well, this is not new to us. Many of the patients, you know, seem to have to come to us and we have to fix them up and then they go back from Bayview." But if you're asking me -- if you're asking did anyone ever say that to me, under oath, I will say yes.
Q Okay.
A That someone has said that, you know, when we, you know, they looked at the wound and said this is not, you know, new about what we're seeing right now.
Q Do you remember who any of those people were?

A No, that's -- no, I don't remember who they are, but under oath, I could say that it was actually, you know, voiced.

Q Okay. Did anyone ever talk with you -- and not, of course, your attorney, but did any medical professional ever talk with you about the cause of his death?

A They were -- the cause of the death?

Q Yes, ma'am.

A Well, we go back from the initial everybody had dealt with how he initially got into the hospital and what was going on and the trail that goes on and on and on. There were a number of things going on with David. The kidney that I mentioned, the constant, you know, depletion of his immune system. X numbers of things were going on with David at the time.

Q Okay.

A There were a number -- there's no one -- there were a number of causes. Pneumonia was always, you know, very high on the list. That's why they were very careful about the trach and making sure that was suctioned and making sure, you know, because that's one of the causes -- the main things. If you cannot breathe on your own properly or if there's, you know, a problem, then that builds up in your lungs.

Q Uh-huh.

A And that's why that trach is -- it's A, number one, most important thing that has to be adhered to and suctioned properly to get all that mucous out so it does not accumulate in the body.

Q Right. And ---

A So a number of things.

Q Let me make sure I'm clear on this. I'm not asking you to give an opinion as to what caused his death.

A Right. Right.

Q And so let me ask it a little bit differently, or maybe it's the same. I don't know. Did any doctor ever talk with you about the specific causes of his death? In other words, did the doctors say he died from A, B, C?

A Well, he could not say any one specific because there were so many different elements, so many different things going on that dealt with the pneumonia, you know, that sort of thing. And I will say I'm sure that this kidney has a lot to do -- that's an aspect. There were different aspects of it that was going on with him that made him more vulnerable -- some situations made him more vulnerable than others to be susceptible to the illnesses such as pneumonia, et cetera, et cetera.

Q Are you aware of any sort of investigation that was ever done into his care, either by DHEC, the ombudsman, anyone like that?

A No.
Q Did you have any criticisms about the doctors who took care of David while he was at Bayview?
A I -- well, my -- here again, my contact was with Karen. She was over the nurses or the doctors. It was really -- she was in charge about giving instructions about my care were mostly with her, with our concerns and what really was going on. She was the go-to person. There was a doctor -- I forget what role she played and in terms of I think the respiratory and checking those kinds of things. But primarily, you know, we dealt with -- if there was any concern, that's who we took it to, who was in charge of the medical staff, you know, being that she is in charge of the medical staff. So that was basically, you know, how -- I'm not even sure, you know, that -- you know, she was in charge of that. So that's who we primarily took concerns to and fortunately she was not just the director but a medical nurse as well, so she knew things as well.
Q Okay. So let me, again, and I want to -- I appreciate your explanation, but I'm going to make this real straightforward. And let me say this.
A Right.
Q Just so you understand this part of it. The medical director, the doctors that come into nursing homes are

not employees of the nursing home. They're contracted. In other words, they have a contract to come in and treat patients. But they're not actually employees.

A Right.

Q So Karen Singleton, who's a nurse, doesn't tell the doctor how to do his business. Okay?

A Right.

Q So let me ask it with that understanding. Is there anything specifically -- any specific concerns that you have about the doctors that were treating David while he was at Bayview?

A The doctors that were treating -- the doctor -- our concerns were ---

Q No. I know you've got a lot of concerns.

A You keep saying the doctors, but it's interesting you should say that to us because there's not a lot of doctors that we were ever introduced to.

Q Okay. Well, then, is the answer you don't have any complaints?

A Okay. Yes. We did have complaints.

Q About the doctor?

A We had complaints about his care that the doctor was giving -- I'll say yes.

Q Okay. So what ---

A Yes, of course.

Q Okay. So ---
A Whoever they contracted with, yes -- my answer to you is yes.
Q Okay.
A But I never went to the doctor. I went to the liaison that they gave us and let her pass it to the doctors. There's my answer. Obviously, there were concerns because, if they were actually coming in there and treating him and these things were going on, well, obviously, I would hope so, but it's up to her because they never gave us -- Dr. Brown was doing this for David. Dr. Brown -- because it appears that the trachea and that sort of thing -- I don't know whether the doctors did that or the nurses did that. I'm not sure. So, yeah, concerns, for sure.
Q Did anyone from Bayview, a nurse, a CNA or anyone else, administrator, did any of them ever admit any wrongdoing, any poor care or anything like that to you?
A Oh, that's an interesting question. Well, that's your husband, you're having an affair, or your wife, yeah. No, we just spoke with Karen and with our concern. None of them came to us and said, "You're right. We didn't clean the trachea. You're right. We're not doing" -- none of them admitted that to us, you know.
Q Did Karen ever admit to any poor care?

A That she would look -- well, she said that she would look into it, but we did a complaint to her because we brought it to her. And she would -- I'm assuming she talked to her staff about it, because our complaint was taken to her. She didn't say, "Well, no, what you're saying isn't true because how can you? We can see it. Visualize."

Q So, in other words, when you would bring a concern to Karen, Karen would say, "I'll take care of it"?

A Well, "I will look into it," and she had to accept our complaint because we could actually show her ---

Q Okay. Fair enough.

A --- what we're talking about. It wasn't just verbalization.

Q All right.

A This page -- geez, great.

Q No, this is the last page, yeah.

A Bravo.

Q All right. So here's what we're going to do. I'm going to make a deal with you.

A Okay. Okay.

Q I'm going to ask you very straightforward questions ---

A Okay. I'm going to give you yes or no.

Q --- and you're going to give me very straightforward answers.

A But you know, that's interesting you should say that. Okay.

Q I've asked you a lot of interesting things ---

A Listen, listen, my father said you should be a lawyer because no one can out talk you. And I went to law school for one year, had to give it up for my children.

Q Bless your heart.

A Go ahead, go ahead.

Q That's all right. You've had a good life.

Okay. So here we go. I'm going to ask you some simple questions.

A Okay. Better be yes or no, multiple choice now. You've asked me multiple choice. Don't ask for discussion or essay now.

Q All right. If you want to answer the yes or no, that will be fine.

A Okay.

Q Are you aware of Bayview Manor fraudulently charting anything about David's condition?

A I'm not aware, no.

Q Okay. Are you aware of any shortage of staffing at Bayview Manor?

MR. FEIDLER: Objection. You can answer.

THE WITNESS: I never -- I don't -- I'm not aware of what's going on with that.

BY MR. WHITE:

Q Okay. Are you aware of any -- well, strike that.

Have you kept up with his medical bills, or have you left that to your brother Joseph to handle?

A Joseph handles everything, whatever.

Q Okay. How has David's passing affected you?

A I lost a family member, a brother, a part of who I am. He is -- we miss him. We love him. And he's not with us, and we are always saddened when we think of how he suffered, how he suffered that particular day, you know. And we think about that, you know.

Q Which day? I'm sorry.

A Well, when he choked and nobody was there.

Q Okay. I gotcha. Right.

A And what he must have gone through, you know. And we think about that. And the pain and how he felt and just how he suffered during the last nine months, you know, of his life. So, you know, we miss David and still talk about David. You know, he's my brother. We love David.

Q I appreciate that.

MR. WHITE: Well, I appreciate that, and believe it or not, I don't have any further questions.

THE WITNESS: Great, great.

MR. FEIDLER: Believe it or not, I don't have any

follow-ups.

MR. WHITE: Thank you.

(WHEREUPON, THE DEPOSITION CONCLUDED AT 5:35 P.M.)

CERTIFICATE

This is to certify that the foregoing deposition of DOROTHY OLENJA, consisting of 225 pages, is a true and correct transcript of the testimony given by said deponent after first being duly sworn; said deposition was reported by method of Stenomask with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 14th day of April, 2018.

Jill Bishop Edwards, CVR-CM
Certified Verbatim Reporter

Notary in and for the State of South Carolina
My Commission Expires: July 14, 2020

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Patient DOB: 01/18/1949

REFERRING PHYSICIAN: Dr. Jason Huet.

REASON FOR CONSULTATION: Complex decision making and options for medical treatment. The patient's capacity to make healthcare decisions today is fully dependent. He is not expected to regain capacity. The patient's healthcare surrogate is his sister, Margaret and Dorothy. He also has 2 brothers that live in Boston, who are in close communication with Margaret and Dorothy and also assist with decision making.

LIVING WILL PRIOR TO ADMISSION: No.

CURRENT CODE STATUS: Remains full code.

ASSESSMENT: This is a 65-year-old African-American male. He is status post out of hospital arrest after a choking incident. He is now with hypoxic ischemic encephalopathy with a very grim prognosis for any meaningful recovery. He is dependent on the ventilator. There is a question regarding prolonged ventilation versus compassionate withdrawal and also code status.

Interdisciplinary family meeting was had with his sisters Margaret and Dorothy today, myself was present, also the palliative care social worker Laurie Lybrand and _____, nurse practitioner student. We discussed their understanding of his current illness, his information was reviewed and all of their questions were answered. His sisters are very focused on his prehospital care and the events leading up to his arrest. We discussed the patient's quality of life on prolonged ventilation with a very grim prognosis for any meaningful recovery and if this is what the patient would want for the remainder of his life. They explained that they do believe that this was what the patient would want that he would not want to be removed from life support and allowed to die naturally. They explained that they are very religious family and that they believe that he could recover even if we believe that he could not. We discussed the benefits and burden of tracheostomy and PEG tube and also the risks of prolonged ventilation with a trache including infection and skin breakdown and discomfort. They have agreed that they would want to go forward with these procedures and have him placed on long-term facility. We also discussed cardiopulmonary resuscitation and defibrillation at the time of cardiac arrest and they had not considered this and will discuss it further with their siblings.

EXHIBIT 1
Deponent Olenja
Date 3.2.18 Rptr. JE
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Patient DOB: 01/18/1949

RECOMMENDATIONS:
1. Family wishes to go forward with a trache and PEG and long-term placement discussed this with case management who will work on placement.
2. Family is considering a do not resuscitate order. We will continue to follow.

HISTORY OF PRESENT ILLNESS: This is a 65-year-old African-American male with history of bipolar disorder, schizophrenia and chronic tobacco abuse who presented today after EMS brought him in for cardiopulmonary arrest. He apparently lives in an assisted facility in McClellanville, South Carolina. He was in his normal state of health on several psychotropic drugs for his bipolar and schizophrenic diagnosis being treated by a psychiatrist. Apparently he had an episode of choking and during lunch, was unable to breathe. He had respiratory arrest. EMS was called. When they got there, he was unresponsive, apneic and in PEA. They cleared his airway of food bolus. CPR was started and he was intubated upon arrival. He regained spontaneous rhythm and has been in the intensive care unit since. According to critical care doctor, he still has cranial nerve reflexes, however, he has significant swelling on his EEG. He does not respond to any commands or withdraw to any stimuli.

REVIEW OF SYSTEMS: Unable to be obtained, patient is unresponsive on the ventilator.

PAST MEDICAL HISTORY: Bipolar disorder, schizophrenia, tobacco abuse.

PAST SURGICAL HISTORY: Unknown.

ALLERGIES: THORAZINE, HALDOL AND LITHIUM.

HOME MEDICATIONS: Clonazepam, clozapine, benztropine and Depakote.

FAMILY HISTORY: Unknown.

SOCIAL HISTORY: He is a smoker, 1-2 packs a day for most of his adult life. No drug use reported. He is a veteran, lives in assisted living facility in McClellanville, no recent travel.

PHYSICAL EXAMINATION: The patient is a thin male. He does appear to be chronically ill. He is unresponsive on the ventilator. HEENT: His eyes are

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Patient DOB: 01/18/1949

rolled back. They are anicteric. He does not follow any commands. He has an ET tube. NECK: Supple. HEART: Regular rate and rhythm. LUNGS: Clear to auscultation. ABDOMEN: Soft, nontender, nondistended, normal bowel sounds. NEUROLOGIC: He has no response to noxious or physical stimuli. I do not notice any myoclonus or seizure activity.

CONCLUSION: Plan of care regarding his condition and preferences were discussed with his nurse, case management, family and his attending physician.

Total time spent on this visit 60 minutes. Total face-to-face time spent 45 minutes, greater than 50% of this time was spent on counseling and coordination of care.

Thank you for allowing our team to be involved in the care of this patient and his family.

Tiffany E Richter, DO
TR: sn DD: 10/16/2014 15:22 TD: 10/16/2014 15:44 Job#: 330886
Doc#: 433695

Authenticated by RICHTER-DO,TIFFANY E On 10/21/2014 08:25:54 PM

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[Patient Identifier]

MRN: 000106618 DOB: 01/18/49
HOLMES,DAVID
Mt Pleasant IPD 2106-01
PHYS: HUET-MD,JASON DANI
ACCT#: 14286-01201 10/13/14

# PROGRESS RECORD

| Date/ Time | |
|---|---|
| 10/24/14 13:25 | Family Conference was held today at approximately 13:00. Those present were: Talia Beck, CNO, Mary Barney Case Management, Gretchen King, Risk Management, Dorothy Olenja Sister, and Margaret - sister. I, Talia discussed the purpose of the Power of Attorney with the family. I explained that according to the POA (Dr. Boles is the point person for all decisions. I also explained to the family that they can contest the POA and gave them a print out of resources they could contact should they decide to proceed. I further gave them a deadline of 5pm on Monday, Oct. 27, 2014 to produce a legal document from the Court stating they were going to contest. If they did not produce this documentation, we would honor Mr. Holmes POA and discontinue items he did not want as documented in the POA. I provided the family the opportunity to ask questions at which time Dorothy asked if we were competent health care providers to realize he had a Mental illness. I did not answer this and reassured them we were providing the most appropriate care for their brother. At this point I provided them with a copy of the POA and the list of legal resources. ~~At ##~~ I also stressed that they could not restrict Mr. Boles from seeing their brother. At this point they thanked us and the meeting ended. Dr. Huet has been updated on this conversation and is in agreement.<br>Beck, RN<br>CNO |

08/06

EXHIBIT 2
Deponent Olenja
Date 3.2.18 Rptr JE
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# SOUTH CAROLINA HEALTH CARE POWER OF ATTORNEY

## 1. DESIGNATION OF HEALTH CARE AGENT

I, David Holmes Hereby appoint:

(Principal)

(Agent's Name) Benjamin Bowles, Caregiver

(Agent's Address) 9270 Hwy 17 N McClellanville, SC 29458

Telephone: home: _____ work: 843-887-4180 mobile: 843-693-1514

as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

a. First Alternate Agent: _____

Address: _____

Telephone: home: _____ work: _____ mobile: _____

b. Second Alternate Agent: _____

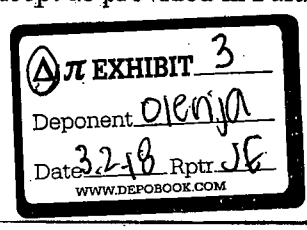
Address: _____

Telephone: home: _____ work: _____ mobile: _____

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

## 2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.



3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Information Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

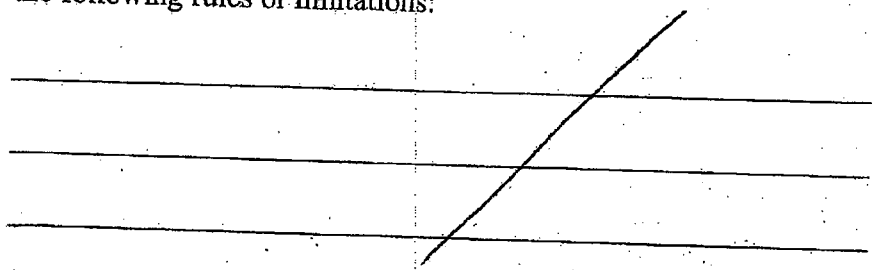
A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:



5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Item 7, (INITIAL ONLY ONE OF THE FOLLOWING THREE PARAGRAPHS):

(a) ____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(b) DH DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(c) ____ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN ITEM 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on

this 17 day of March, 20 11. My current home address is:
9270 Hwy 17 N McClellanville SC

Principal's Signature: David Holmes

Print Name of Principal: David Holmes

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: La Sherrald Jamison Date: 3/17/2011

Print Name: La Sherrald Jamison Telephone: 843/724-2965

Address: 316 Calhoun St - Chas, SC 29401

Witness No. 2

Signature: Virginia A Drayton Date: 3/17/2011

Print Name: Virginia A Drayton Telephone: 843-359-5781

Address: 7800 Church St. Apt F4

Georgetown, SC 29440

*(This portion of the document is optional and is not required to create a valid health care power of attorney.)*

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

The foregoing instrument was acknowledged before me by Principal on March 17, 20 11.

Notary Public for South Carolina La Sherrald K Jamison

My Commission Expires: 2/10/2020

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>DOROTHY OLENJA,<br><br>Petitioner,<br><br>vs.<br><br>BENJAMIN BOWLES,<br><br>Respondent.<br><br>IN RE:<br><br>DAVID HOLMES, a person alleged to be incapable of caring for or managing his own estate. | ) | IN THE PROBATE COURT<br>CASE NO.: 2014-GC-10-169<br><br>EMERGENCY *EX PARTE* PETITION FOR APPOINTMENT OF TEMPORARY CONSERVATOR |

FILED FRANKIE T. CAMPSEN III
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THE PETITIONER, DOROTHY OLENJA, STATES AS FOLLOWS:

1. Petitioner is the biological sister of David Holmes, the alleged incapacitate person.

2. Respondent, Benjamin Bowles, is believed to the owner and operator of Bowles Community Care Home, located at 9270 Highway 17N, McClellanville, SC 29458.

3. David Holmes is 65 years old and is a resident of Bowles Community Center Home. David Holmes is currently a patient at Roper St. Francis Mount Pleasant Hospital under the care of attending hospital physicians. It is believed Mr. Holmes may have suffered some brain injury due to a lost of oxygen from choking. He is currently on a ventilator.

4. Mr. Homes, is an incapacitated person under the meaning of § 62-5-101(1) of the South Carolina Probate Code. Mr. Holmes is unable to care for himself and is unable to make sound decisions about his medical care or daily needs. He is a person who requires a guardian to



EXHIBIT 4
Deponent Olenja
Date 3.2.18 Rptr. JE
WWW.DEPOBOOK.COM

make decisions about his health, well-being and living arrangements. No conservator has been legally appointed for Mr. Holmes.

5. Petitioner believes the Emergency Ex Parte Appointment of a Temporary Conservator is necessary to safeguard the best interests of David Holmes, his assets and income to avoid same being wasted or dissipated.

6. Petitioner further believes that the appointment of a permanent conservator, with full responsibility to make decisions about Mr. Holmes' financial arrangements, is necessary to safeguard the best interests of Mr. Holmes.

7. Petitioner asks this Court to appoint her as temporary conservator for Mr. Holms pending the court's action on Petitioner's Petition for Appointment as permanent conservator.

WHEREFORE, the petitioner prays as follows:

1. The Court finds that Mr. David Holmes is an incapacitated person who requires the appointment of a conservator.

2. That Dorothy Olenja be appointed as temporary conservator for David Holmes on an ex parte, emergency basis pending the hearing on Petitioner's Petition for the Appointment of a Permanent Conservator for Mr. Holmes.

3. For such other and further relief deemed just and equitable by this Court.

Veronica G. Small, Esquire
**Family Legal Services, LLC**
Attorney for the Petitioner
1847 Ashley River Road, Suite 200
Charleston, South Carolina 29407
(843) 556-8838; fax: (843) 763-5347

Charleston, South Carolina
October 27, 2014



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| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF CHARLESTON | ) | IN THE PROBATE COURT<br>CASE NO.: 2014-GC-10-_____ |
| DOROTHY OLENJA,<br><br>Petitioner,<br><br>vs.<br><br>BENJAMIN BOWLES,<br><br>Respondent.<br><br>IN RE:<br><br>DAVID HOLMES, a person alleged to be incapable of caring for or managing his own estate. | ) | **ACKNOWLEDGMENT OF CONSENT TO APPOINTMENT WAIVER OF NOTICES** |

The undersigned Respondent, Margaret Holmes, one of the sisters of David Holmes, hereby acknowledges service of the Petition for Appointment of Conservator for David Holmes and hereby consents to the appointment of Dorothy Olenja as Guardian for said incapacitated person, and hereby waives any and all future Notices and/or service in this matter.

DATED: 10/27/2014

Margaret Holmes

**WITNESS:**

Signature

VERONICA G. Small
Name

1847 Ashley River Rd. Ste 200
Address Charleston, SC 29407

STATE OF SOUTH CAROLINA )
) IN THE PROBATE COURT
COUNTY OF: CHARLESTON )

IN THE MATTER OF: DAVID HOLMES

CASE NUMBER: 2014-GC-10-169

DOROTHY OLENJA,

Petitioner

**PETITION FOR:**

☐ **MINOR**
☒ **ADULT**

vs.

☐ **PROTECTIVE ORDER**
☒ **APPOINTMENT OF CONSERVATOR**

BENJAMIN BOWLES,

Respondent(s)

Petitioner: DOROTHY OLENJA

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.

   BIOLOGICAL SISTER

2. Information – Minor/Allegedly Incapacitated Person

   Name: DAVID HOLMES
   Date of Birth: 1-18-1949 Age: 65
   Last Four Digits of Social Security Number: XXX-XX-8423
   Address: 9270 HIGHWAY 17 N
   City/State/Zip: MCCLELLANVILLE, SC 29458
   Telephone (Home): (Office/other):

   To my knowledge, the above-named ☐ DOES ☐ DOES NOT have a Will

   To my knowledge, the above-named ☐ DOES ☐ DOES NOT have a Power of Attorney

3. Jurisdiction and Venue

   South Carolina has jurisdiction over the allegedly incapacitated adult because:

   A. ☒ South Carolina is the "Home State" because the allegedly incapacitated person has been physically present in South Carolina for the six month period immediately preceding the filing of this petition or for at least six consecutive months ending within the six month period immediately preceding the filing of this petition; or

   ☐ If the allegedly incapacitated person has not been physically present in South Carolina for that period, set forth on an additional sheet sufficient information on which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707.

☐ Special jurisdiction is appropriate, if South Carolina does not have jurisdiction pursuant to Sections 62-5-707(1) through (3), to:
(1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for a respondent who is physically present in this State;
(2) issue a protective order with respect to real or tangible personal property located in this State; or
(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62-5-714.

B. Venue for this proceeding is proper in this county because the above minor/alleged incapacitated person:
☒ resides in this county
☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:
NONE

5. Information -- Family (list nearest relative first) of minor/alleged incapacitated person, including dates of birth of minors:

| Name | Date of Birth | Address | Relationship |
|---|---|---|---|
| DOROTHY OLENJA | ADULT | 155 RIDGE RD., APT 1006, GREENVILLE, SC 29607 | SISTER |
| MARGARET HOLMES | ADULT | 91 BARNARD RD., BURTON, SC 29406 | SISTER |
| ALEXANDER HOLMES | ADULT | 232 HAROLD ST. DORCHESTER, MA | BROTHER |
| JOSEPH HOLMES | ADULT | 232 HAROLD ST., DORCHESTER, MA | BROTHER |

(use additional sheet if necessary)

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

| Description | Value |
|---|---|
| NONE | |
| | |
| | |
| | |

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

DAVID HOLMES RECEIVES SSI BENEFITS WHICH WILL HAVE TO BE MANAGED AND USED FOR HIS CARE.

8. I request the appointment of:

Name: DOROTHY OLENJA
Address: 155 RIDGE RD., APT 1006
GREENVILLE, SC 29607
Telephone (O): 864-395-1930
Telephone (H):
Email:

whose priority for appointment as conservator for the above person is as follows:

☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the minor/alleged

incapacitated person resides

- ☐ individual or corporation nominated by the minor/alleged incapacitated person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☐ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by will of deceased parent
- ☒ other relative of protected person (specify): SISTER
- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify): _____
- ☐ other (specify) _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

| Name | Address | Relationship |
|---|---|---|
| MARGARET HOLMES | ADULT | SISTER |
| JOSEPH HOLMES | ADULT | BROTHER |
| ALEXANDER HOLMES | ADULT | BROTHER |
| | | |

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this day of , 20 .

Signature: _____

## VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 27th day of October, 20 14

Notary Public for South Carolina
My Commission Expires: 5/17/2016

Signature: Dorothy Olenja
Name: DOROTHY OLENJA
Address: 155 RIDGE RD., APT 1006
GREENVILLE, SC 29607
E-mail:
Telephone (O): 864-395-1930
(H):

Signature: _____
Name: _____
Address: _____
_____
E-mail: _____
Telephone (O): _____
(H): _____

## QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of .

Executed this day of , 20 .

SWORN to before me this 27th day of October, 20 14

Notary Public for South Carolina

My Commission Expires: 5/17/2016

Signature:

Name: DOROTHY OLENJA

Address: 155 RIDGE RD., APT 1006
GREENVILLE, SC 29607

E-mail:

Telephone (O): 864-395-1930

(H):

Signature:

Name:

Address:

E-mail:

Telephone (O):

(H):

| | |
|---|---|
| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>DOROTHY OLENJA,<br><br>Petitioner,<br><br>vs.<br><br>BENJAMIN BOWLES and ROPER ST. FRANCIS MOUNT PLEASANT HOSPITAL,<br><br>Respondents.<br><br>IN RE:<br><br>DAVID HOLMES, a person alleged to be incapable of caring for or managing his own estate. | IN THE PROBATE COURT<br>CASE NO.: 2014-GC-10-169<br><br>**ORDER APPOINTING TEMPORARY GUARDIAN** |

**THIS MATTER** came before the Court upon the Emergency *Ex Parte* Petition for Appointment of Temporary Guardian filed on October 27, 2014, by the Petitioner, Dorothy Olenja, ~~and was heard before this Court on October _____, 2014.~~ Present at the hearing were the petitioner, Dorothy Olenja, and her attorney, Veronica G. Small.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. David Holmes, is a 65 years old resident of Charleston County, South Carolina, alleged to be an incapacitated person, as defined by South Carolina law.

2. Petitioner is the sister of the alleged capacitated person, David Holmes.

3. Respondent, Benjamin Bowles, is the care giver and operation of the assistant living facility where the alleged incapacitated resides.

4. Venue and jurisdiction are properly in this Court, in accordance with applicable statutes.



Plaintiffs' Production of Docs 0020

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5. David Holmes is believed to have suffered some brain damage as a result of a choking incident at his residence, Bowles Community Care Home, McClellanville, South Carolina. David Holmes is currently on a respirator at the Roper St. Francis Mount Pleasant Hospital, 3500 Highway 17 North, Mt. Pleasant, South Carolina 29466.

6. Petitioner has been informed that the treating physician for Respondent Hospital intends to remove Petitioner from all life sustaining equipment pursuant to a Health Care Power of Attorney purported knowingly executed by David Holmes on March 27, 2011, unless an order is issued by the appropriate court prohibiting him from doing so. Petitioner is informed and believes that David Holmes, a mentally deficient person since on or before 2006, could not have and did not knowingly understand the document signed and did not willingly consent to deny himself life sustaining medical treatment.

7. No guardian has been appointed for Mr. Holmes.

8. It is essential to the welfare of Ms. Holmes that a temporary guardian be appointed to care for him, or provide for his care, until a full hearing can be held on the matter of a permanent guardianship.

9. Petitioner is further informed and believes that this Court should issue its order enjoining and restraining Respondent Roper St. Francis Mount Pleasant Hospital from withholding any and all life sustaining treatment prior to a hearing on the merits, and thereby requiring the hospital to provide Mr. Holmes all of the medical care required for his present medical condition.

10. All parties ~~to this matter have been given sufficient notice of these proceedings~~ will be served with a copy of this Order. EJ and this hearing.



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**NOW THEREFORE,** based on the foregoing, it is hereby

**ORDERED, ADJUDGED AND DECREED,** as follows:

1. David Homes is adjudged to be an incapacitated person, as defined by §62-5-101(1) of the South Carolina Probate Code, and his immediate welfare requires the appointment of a temporary guardian.

2. Dorothy Olenja is hereby appointed as temporary guardian for Mr. Holmes with the right to care and custody of Mr. Holmes and with all the authority of a permanent guardian, as set out in South Carolina Probate Code §62-5-310(E).

3. Respondent Roper St. Francis Mount Pleasant Hospital is hereby restrained and enjoined from withholding any and all life sustaining treatment prior to a hearing on the merits, thereby providing the necessary medical care required for Mr. Holmes.

3. All interested persons shall be benefit of this appointment of temporary guardian and the upcoming ~~permanency~~ review hearing as soon as the Court docket allows.

**AND IT IS SO ORDERED** this 27th day of October, 2014 at Charleston, South Carolina.

PROBATE JUDGE
Charleston County Probate Court



Plaintiffs'
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# ADMISSION AGREEMENT

This is an agreement between David Holmes (Resident") and Bayview Manor ("Facility"), for admission to our health care facility located at: 11 Todd Drive Beaufort SC 29902.
In this Agreement, when we speak of Resident, it means the Resident or Responsible Party.
The Resident payor source is expected to be: (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MPS=MEDICAID PEND, HSP=HOSPICE, VA=VETERAN'S AFFAIRS, RSP=RESPITE)
A copy of the Resident's Medicare card, Social Security card and other insurance cards must be provided at time of admission. If a copy is not provided by the Resident or the Responsible Party within three (3) days of admission, the Resident will be charged as a private pay resident.

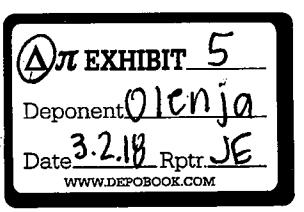
**Admission and Consent to Treat**: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders.
The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

**Non-Discrimination Statement**: This Facility will not deny admission, medical treatment or discriminate in any way based on color, race, sex, national origin, disability, or age. If you feel your Civil Rights have been violated in any way, please contact the Administrator of this Facility.

**Physician's Care**: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident.
The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

**Hospital Transfers**: If a doctor orders the Resident transferred to a hospital, the Facility will arrange for the transfer to the hospital. The Facility will also notify the Responsible Party, if possible, of the transfer. If the Resident is transferred, the Facility will hold the bed for the Resident as long as the Resident pays for the bed at a fee based on the then current daily rate.

DD Initial



Medicare will not pay to hold the bed and the resident is discharged. Medicaid may hold the bed for the Resident up to (10) days for a single hospital stay. If the Resident is hospitalized for more than 10 consecutive days, the Resident will be discharged. Medicaid will also hold a bed for the Resident up to 18 days per calendar year, if the Resident has a therapeutic pass from his/ her physician. Therapeutic leaves may be a maximum of 9 days and periods of leave may not be consecutive. The Resident or Responsible party may choose to hold the bed with private pay funds. (The Resident and Responsible Party must sign Bed Hold and Readmission Policy)

**Hospitalization**: If The Resident leaves the Facility to go into a hospital or for other medical reasons, the Facility will not charge the Resident past the day the Resident leaves unless the Resident wishes to reserve the bed for when the Resident returns.

**Hospital Services**: The Resident agrees to be responsible for all hospital charges if the Resident is taken to a hospital, unless paid by Medicaid, Medicare or other third party coverage. The Resident has the right to refuse treatment and to be informed of the consequences of the decision.
(See Authorizations and Acknowledgements to enter selection)

**Refuse Treatment**: The Resident has the right to refuse any medical treatment, as defined by law, and to be informed of the consequences of refusing treatment. The appropriate notification and documentation will be provided if the Resident communicates this wish.

**Room Transfers**: The Facility reserves the right to change the Resident's room or roommates when the Facility determines it is appropriate. The Facility will make changes if the Facility determines that is in the best interest of the Resident, other patients or the Facility, in accordance with state and federal regulations.

**Discharge Arrangements**: If The Resident is to be discharged, the Facility will notify the Resident, the Responsible Party, the attending physician, and the appropriate agencies at least 30 days prior to the date of discharge unless the Facility determines that an emergency exists or the Resident's needs can no longer be met in the Facility. The Facility's Case Management/Social Services Department will help the Resident make arrangements for his/her discharge.

**Right to Leave Facility/Duration of Agreement**: The Resident's stay with the Facility is voluntary. The Resident may leave the Facility at any time, provided the Resident gives the Facility adequate notice, so the Facility may obtain a discharge order from the Resident's physician. The Resident may terminate this agreement upon a five (5) day written notice to the Facility. Upon termination,

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_____ Initial

Resident agrees to pay accrued charges up to and including the day of **discharge. Upon the effective date of termination of the agreement, the Resident must leave the Facility. Otherwise, this agreement will remain in effect until a different written agreement is executed. At no time does this mean that the Resident will be forced to remain in the Facility against his/her will.**

**Refunds**: If The Resident leaves the Facility, The Facility will refund any overpayment within 30 days. In the event of the Resident's death, refunds* and any of the Resident's personal property remaining in the Facility will be returned to the Resident's family or designee within 30 days.

**Personal Needs Account**: The Resident may leave personal spending money with the Facility. If the Resident wants a personal needs account maintained by the Facility, the Facility will not charge an additional fee for this service. The Facility will hold the Resident's funds in trust in accordance with applicable federal and South Carolina laws. The Resident and the Responsible Party may see the
Facility's records of his/her account. Interest will be credited according to State and Federal regulations. The Facility will provide the Resident with a quarterly accounting of all funds held in trust in accordance with South Carolina law. (For this service, the Resident must sign authorization form, Resident Trust Management Account Agreement.)

**Basic Charges**: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of $ .00 per day as Basic Charges. Routine care and services included in the per diem rate are:

a. Room and board
b. Nursing services/personal care needed for Resident health, safety, and wellbeing as required by Facility license.
c. Linens bedding
d. Social Service consultations by the Facility Social Service Department
e. Oxygen on an emergency basis
f. Facility based Personal Needs Account for personal funds (if authorized)
g. Personal laundry service (see Extra Charge Sheet if applicable); excluding dry cleaning
h. Dietitian consultation and services
i. Therapeutic recreational activities
j. Pastoral care
k. Routine personal care Items

DO Initial

This rate may be increased during the year; however, the Facility will notify the Resident of future rate changes thirty (30) days before they go into effect.

If the Resident receives Medicaid or Medicare, the cost of room and board and other services and supplies listed below will normally be paid for by the payer, however, the Resident is ultimately responsible.

If the Resident is receiving Medicaid the State has required the Resident to pay directly to the Facility the following (by the 10th of every month):

a. All resource monies as specified by the Department of Social Services
b. Adjustment as specified by the State
c. Previous balances prior to Medicaid approval
d. Other

As it may be necessary, the Resident agrees to provide the Facility with statements of his/her assets, debts, and income. If the Resident is not receiving Medicaid, Medicare or other third party payer, this statement will be confidential, unless law requires disclosure of information.

**Supplemental Charges:** Extra charges include, but are not limited to, the services and supplies described below. A list of the extra charges for services and supplies that are available to the Resident but are not covered by Medicare or Medicaid is included in this packet. The Facility will provide written notice to the Resident of any changes in the extra charges at least 14 days in advance or as otherwise required by South Carolina or Federal law.

***Diagnostic Consultant and Therapeutic Services:** The Resident agrees to have any diagnostic, consultant, or laboratory services or test ordered by his/her physician and agreed to by the Resident. Resident agrees to pay for these services unless paid for by Medicaid, Medicare, or other third party coverage.

* **Physical, Occupational and Speech Therapy and Private Duty Nurse/Sitters:** The Resident agrees to be responsible for any charges for Physical, Occupational and Speech Therapy, Private Duty Nurse and/or CNA services unless paid by Medicare, Medicaid, or other third party payer.

***Ambulance and Transportation Services:** The Resident agrees to be responsible for any charges for ambulances or other transportation the Resident may need, unless paid by Medicaid, Medicare, or other third party coverage.

***Medical Supplies:** The Resident agrees to be responsible for all charges for medicine, oxygen, dental, eyeglasses, hearing aids, medical appliances, expenses other that transportation connected with activities, etc., unless paid by Medicaid, Medicare, or other third party coverage.

DD Initial

***Pharmacy Services**: Pharmacy services are available through the Facility. The Resident may choose another pharmacy only if that Pharmacy will sign an agreement with the Facility to provide services in accordance with all applicable federal and state statutes and regulations and our requirements, including but not limited to: 24 hour service and delivery, labeling, unit dose form, and monitoring. The Facility is authorized to use generic name medications except as otherwise ordered, in writing, by the Resident's physician. See additional form for Brand-name requests) The Facility's Director of Nursing Services and the Consultant Pharmacist are authorized to destroy any excess or undesired medications in accordance with applicable law. The Resident agrees to pay for charges unless paid by Medicaid, Medicare, or other third party coverage.

**Personal Items and Services**: The Resident agrees to pay for personal items and services. These include: clothes, personal laundry not done at the Facility, barbers, hairdressers, toiletries, and sundries, which the Facility does not routinely provide. The Resident understands the Facility is not responsible for damage to personal clothing. (See Authorizations and Acknowledgements.)

**Payment**: The Resident agrees to pay one month's Basic Charges in advance, unless the Resident is receiving Medicaid, Medicare or other third party coverage. If the Resident is admitted during the month, the Resident will pay in advance for the remaining days of that month. The Facility will bill on the 28th of the month for the upcoming month and payment is due on the 10th of the month. Payment of Medicaid resource will be made in accordance with the Department of Public Welfare policy (or other state agency with authority). If, during the Resident's course of stay, there is a change of primary payer status, The Resident agrees to abide by payment terms or regulations governing that payer status.

**Interest and Attorney's Fees**: The Resident agrees to pay the Facility a late charge of 1.5% per month on any unpaid balances not paid within 30 days of billing. If the Facility hires an attorney to collect the bill, the Resident agrees to pay reasonable attorney's fees and the costs of collection.

**Assignment of Benefits**: The Resident authorizes the facility to receive benefit payments directly from Medicare, Medicaid, or other party insurance company.
(Signature required on Authorization for Assignments of Benefits)

**Failure of Others to Pay**: If any Resident charges are not paid for by insurance, anyone or any agency, the Resident agrees to pay them.

DA Initial

**Discontinuance of Medicaid**: If the Resident receives Medicaid and it is discontinued, the Resident agrees to pay the then current Basic Charges and other charges for self-paying patients. Such charges will begin on the date Medicaid is discontinued.

**Denial of Medicare and Medicaid**: If the Resident applies for benefits under Medicare or Medicaid after the Resident becomes a patient, and the application is denied, the Resident agrees to pay the Facility for all charges from the day the Resident entered the Facility.

**Failure to Pay the Facility's Bill**: The Resident agrees to pay the Facility's bill upon receipt of the statement, or no later than the 1st of each month following the receipt of the statement. The Resident agrees to make arrangements to leave the Facility if bills are not paid as agreed. If the Resident does not make arrangements, then the Facility can make them for the Resident. If the need arises for the Facility to make such arrangements, the Facility will provide a notice of intent to discharge the Resident in accordance with state and federal regulations.

**Failure to Pay Other Bills**: The Resident agrees to pay the bill of others providing services or supplies. The Resident agrees to pay his/her bills within 15 days after billing, unless other acceptable arrangements are made in advance.

**Telephone**: Each Resident room is wired for telephone service. The Resident must make arrangement for service with the carrier of their choice. All costs for private telephone use are the responsibility of the Resident. In addition, a phone will be made available for the resident at a specific location within the facility. All long distance charges will be billed to the resident. As the telephone is for the use of all the residents on each unit, we ask that each resident be reasonable and considerate with individual demands for the unit telephone.

**Valuables:** The Resident agrees to be responsible for all valuables, money, appliances, and other personal property in his/her possession while the Resident is at the Facility. Although the Facility will work to see that misplaced belongings are recovered, the Facility is not responsible for replacing lost or stolen cell phones, computerized person assistance devices, IPods, radio, hearing aids, eyeglasses or dentures/partials(including, but not limited to the fore mentioned).

**Guardianship:** If the Resident, who has not had a guardian appointed by a court of law, is or becomes unable to make or communicate his/her medical decisions, as determined by the Resident's attending physician, the Facility shall N/A

DO Initial

notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge that above and beyond the surrogate or proxy's statutory abilities, the surrogate or proxy is authorized to bind the Resident to all terms in this agreement. If neither is available the Responsible Party agrees to initiate and maintain a proceeding in a court of competent jurisdiction to appoint a legal guardian. If the Responsible Party fails to do so, the Facility shall have the right, but not the obligation, to commence a legal proceeding to adjudicate the Resident incapacitated and to have the court appoint a guardian for the Resident. The cost of the legal proceedings, including attorney's fees, shall be paid by the Resident, Responsible Party or the Resident's estate.

**Release of Medical and Other Information**: The Resident agrees that the Facility can release all or part of his/her medical records to any agency or person with the right, by law, to review such records.

**Patient Identification**: The Facility is authorized to require a standard method of Patient identification, e.g., an identification bracelet and/or photographic print.

**Photographs/ Video Technology**: The Resident authorizes the Facility to take photographs of his/her person or portions thereof for medical or identification purposes. The Resident also understands that photographs may be taken during activities or special events and displayed in the Facility or in the Facility newsletter. Photographs are confidential and will not be released for other purposes without the Resident's written permission. (See Authorizations and Consents for further information) The Resident/ Responsible party understands that video technology of any type is prohibited in recognition of the privacy of the other residents, visitors and staff members.

**Indemnification**: The Facility is required by law to exercise reasonable care toward the Resident; however, the Facility is not an insurer of the health, safety, and welfare of the Resident and assumes no liability as such.
The Facility is not responsible for the health, safety, and welfare of any Resident who is away from the Facility with any person not directly employed by the Facility or when the Resident knowingly leaves the Facility against the medical advice of the Resident's attending physician or without the approval of the Facility, with or without the knowledge of the Facility.
The Resident shall defend, indemnify an hold the Facility harmless from any and all claims, demands, suit actions, and related costs and expenses, including without limitation attorney's fees made against the Facility by any person arising out of or relating to any damage or injury caused by the Resident to any person

DD Initial

or the property of any person or entity (including the Facility).
The Resident or the Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

**Liability:** The Facility shall not be liable for injuries of any kind unless caused by the willful act or negligence of the Facility or the Facility's employees.

**Compliance with Facility Rules and Regulations:** The Resident agrees to comply with all Patient/Resident's Responsibilities established by the Facility. The Resident has read and been given a copy of the Facility's rules and regulations which set forth these responsibilities.

**Advanced Directives:** The Resident acknowledges receipt of information concerning advance directives and his/her rights to make decisions about medical care.

**Liability Insurance:** This Facility maintains a liability insurance policy with minimal coverage. This policy meets the requirements of all applicable state regulations relative to the licensure and certification for Medicare/Medicaid and other related programs.

**Notice:** Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

**Facility:**
11 Todd Drive
Beaufort SC 29902

**Resident:**

**Governing Law:** This Agreement shall be interpreted and enforced in accordance with the laws of the State of South Carolina

**Venue:** In the event that any litigation arises under, or in any manner in relation to this Agreement, whether *ex contractu* or *ex delicto*, the venue of same shall lie exclusively in Beaufort County, South Carolina and no other location.

DC Initial

**Waiver of Jury Trial: (Please read carefully)**
Resident hereby knowingly, voluntarily, and intentionally waives the right to trial by jury with respect to any litigation, including any counterclaim which Resident may assert, arising from or relating to this Agreement or any other document connected with this Agreement, or arising out of or relating to any of the said documents or any relationship between the Facility and Resident, including the Resident's admission itself, or any other course of conduct, course of dealing statements (whether verbal or written) or actions of the Facility or Resident.

Resident represents and warrants that the waiver contained in this Paragraph has been freely and voluntarily made after reviewing the same, or having had an opportunity to review the same, with counsel of Resident's choice.

**Attorney's Fees: (Please read carefully)**
In any legal action or other proceeding brought by the Facility to enforce or interpret any provision of this Agreement or to enforce any remedy for the breach thereof, the Facility shall be entitled to receive reasonable attorney's fees and costs actually incurred in connection therewith, including all costs and fees incurred in any appellate proceeding.

The Facility is also entitled to recover attorney's fees and costs, including all fees incurred in any appellate proceeding, for any legal action or proceeding brought by the Resident and/or responsible party upon a finding by the body before which the legal action or proceeding is brought that the Facility committed no wrongdoing.

**Capacity:** This Agreement has been executed by the Facility's duly authorized agent, and no officer, director, agent, or employee of the Facility shall have any personal liability under the Agreement, to the Resident under any circumstances.

**Severability:** The parties agree that should any provision of this Agreement be declared invalid by any court of competent jurisdiction, or rendered invalid by any statute or regulation, then such provision shall be severed from this Agreement and the remainder of this Agreement will remain binding and in full force. Titles and/or captions in this Agreement are for convenience only.

**Assignability: (Please read carefully)**
This Agreement is fully assignable by the Facility. In the event that the Facility is sold, or license is transferred such that a new licensee operates the Facility, this Agreement shall be automatically assigned to the new licensee and shall be fully binding upon both parties.

**Withdrawal Period:**
Each party to this agreement shall have three (3) business days from execution of this agreement to cancel the agreement by notifying the other party in writing, by certified mail return receipt or traceable overnight delivery, of its desire to cancel.

DD Initial

**Guarantee:** By his/her execution below, Responsible Party (jointly and full severally if more than one) hereby guarantees full compliance with the Agreement and full payment of all monies due by Resident under this Agreement, including all attorney's fees and court costs incurred by the Facility in the interpretation or enforcement of this Agreement, as well as in the enforcement of this Guarantee against Responsible Party. Venue of any such proceedings shall lie in* Beaufort County, South Carolina

**Acknowledgement: By signing this Agreement, the Resident acknowledges:** That the Resident has received a copy of entire agreement with any attachments.
That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.
That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.
That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.
That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.
That the Resident has received a copy of the procedures of the state and distrtict ombudsman councils.
That the Resident has received a copy of the transfer and discharge policies.
That the Resident has received a copy of the Federal and State Resident's Bill of Rights.
That the Resident has received a copy of the Privacy Act Statement.
That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.
That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards
That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self-Administration of Medications and Assignment of Benefits .

**Entire Agreement:** This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior Agreements, understanding, and discussions relative to such subject matter, Resident acknowledges that in entering into this Agreement, Resident has not relied on any representation, warranties (whether express or implied) or covenants, other than those set forth herein. Nothing in this Agreement shall be construed to give any person or entity other than the parties hereto any rights to remedies.

DO Initial

**Agreement Modifications/Changes:** From time to time the Facility may modify, change or amend this Agreement and will provide a thirty (30) day written notice of such changes to the Resident or Responsible Party.

Immoral/ Illegal review: As dictated by state and/or federal law a review for specific activity may be conducted (i.e. sexual predator).I have received a copy of Facility Responsibilities Regarding Convicted Sex Offenders,

**Optional Arbitration Clause:** Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims of violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration. Such binding arbitration shall be governed by the provisions of the South Carolina Arbitration Code. As appropriate and in the event that the South Carolina Arbitration Code is deemed to not apply, binding arbitration shall be governed by the Federal Arbitration Act. **OPTIONAL: If the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only. I have X this clause**

X **initial.**

Resident and or Responsible Party has read or has been read and understands and agrees to all terms and conditions of this agreement unless specifically noted on the agreement.

By: Rebecca Jensen [redacted] 12/02/14

Signature of Facility Representative Date

**David Holmes**

Signature of Patient/Resident Date

Witness Date

Witness Date

Responsible Party Date

Signature of Responsible Party 12-2-14 Date

Responsible Party is acting as:

_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing Address:

***If the Resident signs with an "x" there must be two (2) witnesses.***

# RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
## (READ CAREFULLY)

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by **BAYVIEW MANOR LLC** (the "Facility") and David Holmes (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.

This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. X **(resident's initials).**

The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

**THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.**

X

Resident/Representative Signature / Date

[redacted] 12/02/14

Facility's Authority Agent / Date

Rebecca Jensen

[redacted]

Resident/Representative Printed Name

Facility's Authorized Agent Printed Name

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, South Carolina 29902

**Discharge Summary**

Patient Name: HOLMES,DAVID
Date of Birth: 01/18/1949
Admit Date: 12/23/14
Attending Doctor: Linh Dastous, MD

Account Number: H02434124
Unit Number: D047280
Discharge Date:

DATE OF ADMISSION: 12/23/2014

DATE OF ANTICIPATED DISCHARGE: 02/17/2015

DISCHARGE DIAGNOSES:
1. Anoxic brain injury with chronic vegetative state.
2. Pneumonia, status post treatment, possible aspiration.
3. Atelectasis.
4. UTI, Citrobacter, status post treatment.
5. Upper extremity DVT.
6. Severe protein calorie malnutrition.
7. Multiple decubitus ulcers that were present on admission.
8. History of nonsustained SVT.

CONSULTATIONS: Dr. Stock, with Infectious Disease. Cardiology, with Dr. Schultz. Pulmonology, Dr. Manos.

PROCEDURES PERFORMED: None.

HOSPITAL COURSE: Patient was originally admitted on 12/23, please refer to admission notes for full details. Initially, he was admitted and started on antibiotics. Patient does have a history of a severe anoxic brain injury, secondary to asphyxiation, and had been treated at a hospital in Charleston. The patient subsequently had a trach placed and patient did have a history of MRSA and Serratia tracheobronchitis while there. The patient was admitted and noted to have a culture positive for MRSA and was started on antibiotics. Patient was eventually transitioned to room air via the trach; however, patient has had a somewhat prolonged course due to significant medical conditions. Patient was also noted to have a right upper extremity DVT and has been started on Coumadin. Patient was also noted to have over 23 decubitus ulcers that were being treated aggressively by nursing and wound care. These were confirmed to be present on admission. Patient also received broad-spectrum antibiotics for pneumonia and a urinary tract infection. Patient did complete an appropriate course for his UTI with citrobacter, and was also treated for yeast in the urine. Patient continued to have some low-grade fevers while here, and patient has been continually followed by Infectious Disease. They had recommended monitor off antibiotics after he had completed appropriate courses of antibiotics for his PNA and UTI. ID has to continued to follow the patient. There was no clear evidence of a pneumonia; however, they feel that the fevers likely represent atelectasis and/or chronic aspiration. Patient, due to his mental status, cannot participate with aggressive pulmonary toilet, but patient is on aspiration precautions. Infectious Disease did not feel the recent low-grade fever warranted any treatment.

We have been discussing with the family and had ethics committee regarding whether continuation of care should be provided. Family has had many conversations with different physicians regarding our recommendations, and at this point they do not want to back off. They would like to continue with aggressive care; however, reportedly, they will consider making him a DNR prior to admission to Bay View. In

CC: Christopher Walker, MD



EXHIBIT 7
Deponent Olenja
Date 3.2.16 Rptr. JE
482
WWW.DEPOBOOK.COM

**Discharge Summary**

Patient Name: HOLMES,DAVID
Date of Birth: 01/18/1949
Admit Date: 12/23/14
Attending Doctor: Linh Dastous, MD

Account Number: H02434124
Unit Number: D047280
Discharge Date:

regards to his decubitus ulcers, he has been treated with aggressive local wound care. Will need to continue with nutrition and frequent turning.

In regards to his upper extremity DVT, he is currently on Coumadin. His INR is 1.66 today. We will increase his Coumadin dosing to 7 mg and continue to monitor his INR. This can be further monitored at Bay View upon arrival. Patient will continue with tube feeds. He does have significant protein calorie malnutrition, and will need to continue with this while there. Patient was also noted to have nonsustained ventricular tachycardia while here and was seen by Cardiology, and is currently being treated with beta blocker. Current dosing 25 mg p.o. q.6.

Patient has also been seen by Physical Therapy due to his significant contractures. They have recommended passive ROM exercises and there were demonstrated to the family as well.

CONDITION: Stable.

FOLLOWUP PLANS: Follow with primary care physician at Bay View Nursing Home. Will need repeat INR to be obtained within 1 to 2 days and have his Coumadin levels adjusted. Currently he is on 7 mg daily.

DISCHARGE MEDICATIONS: Please see med rec, but should include:

1. Tylenol 650 p.o. q.6 p.r.n. pain or fever.
2. Albuterol inhaler every 2 hours p.r.n. shortness of breath.
3. Artificial Tears b.i.d. in both eyes.
4. Calcium carbonate 500 mg p.o. b.i.d. with meals.
5. Klonopin 0.5 mg 2 b.i.d.
6. Pepcid 20 mg 2 b.i.d.
7. Gentamicin 2 drops in the right eye every 6 hours.
8. Guaifenesin 600 mg 2 b.i.d.
9. Hydrogen peroxide 240 mL topically p.r.n. to clean the trach.
10. Bacid 1 cap 2 b.i.d.
11. Lopressor 25 mg tube q.6.
12. Scopolamine patch topically every 72 hours.
13. Depakene 250 mg 2 b.i.d.
14. Coumadin 7 mg 2 b.i.d.

This overall discharge process took greater than 45 minutes.

Dictated By: Christopher Walker, MD
Dictated Date and Time: 02/16/15 1728
Transcriptionist Initials: MHS
Transcription Date and Time: 02/16/15 2235
Dictating Provider E-Sign: <Electronically signed by Christopher Walker, MD>
Dictating Provider E-Sign Date and Time: 02/17/15 0825

CC: Christopher Walker, MD

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, South Carolina 29902

**Discharge Summary**

Patient Name: HOLMES,DAVID
Date of Birth: 01/18/1949
Admit Date: 12/23/14
Attending Doctor: Linh Dastous, MD

Account Number: H02434124
Unit Number: D047280
Discharge Date:

Report Number: 0216-0404

This Document has been reviewed
Co-Sign Physician E-Sign:
Cos-Sign Date and Time:

CC: Christopher Walker, MD

**HOLMES,DAVID**
**Fac:** Beaufort Memorial Hospital **Loc:** 3RD Floor (Medical) **Bed:** 328-1
66 M 01/18/1949 **Med Rec Num:** D047280 **Visit:** H02434124
**Attending:** Chris L Walker MD **Reg Date:** 12/23/14
**Reason:** FAST HEART RATE, PNA

## *Care Coordinator Notes*

02/17/15 13:26 Care Coordination Note by Turbeville,Ashley N RN/CC
CC Note:
Patient discharged to Bay View Manor. CC faxed all discharge paperwork to Rebecca at Bay View Manor. Patient transported via personal care. RN called report prior to transfer. CC spoke with patient sister Dorothy Olenja 864-395-1930 to notify of discharge. No further needs at this time.

Initialized on 02/17/15 13:26 - END OF NOTE

02/12/15 14:07 Care Coordination Note by Turbeville,Ashley N RN/CC

Addendum entered by Turbeville,Ashley N, RN 02/13/15 15:06:

Jeanne from Bay View Manor in to assess patient for possible admission. Karen Singleton will contact Carrie Confare, CC Director, with admission decision on Monday 2/16/15.

Original Note:

CC Note:
Karen Singleton from Bay View Manor is coming to BMH to evaluate patient in am for possible admission. CC will follow up once evaluation complete.

Initialized on 02/12/15 14:07 - END OF NOTE

02/11/15 15:19 Care Coordination Note by Confare,Carrie J SS/CC

Addendum entered by Turbeville,Ashley N, RN 02/13/15 15:15:

CC left VM for patient sister Dorothy informing her that Bay View can to evaluate patient for possible admission.

Original Note:

DISCHARGE PLANNING NOTE 2/11/15

Care Coordination Director received email from Teddie, Administrator at Bayview Nursing home, who states that her DON, Karen will be over tomorrow to evaluate patient for possible placement at Bayview. Teddie and Karen are at a conference out of town and will return to work tomorrow so Karen will call then to let CC know when she will be over to see patient. If she needs to speak to other disciplines that have been involved in patient's case, CC will make those arrangements.

CC called patient's sister/POA, Dorothy Olenja, to alert her to above, she was happy to hear that Bayview may take patient back however she is out of town and won't be able to be at the hospital tomorrow so she asked CC to call her other sister, Margaret Holmes, to let her know when Karen would be coming to see patient.

CC will follow up with Bayview staff and assist with placement efforts.

HOLMES,DAVID
Fac: Beaufort Memorial Hospital Loc:3RD Floor (Medical) Bed:328-1
66 M 01/18/1949 Med Rec Num:D047280 Visit:H02434124

Care Coordinator Notes - Continued

**NHC Facilities do not accept Medicaid**
**Ridgeland Nursing Center--No Medicaid Beds, No Trach's**
**Uni-Health Post Acute Care Oakwood--No Medicaid Bed, No Trach's**
**Veterans Victory House--VA Only**

**CC will follow up and continue to look for placement.**

**Initialized on 01/26/15 13:57 - END OF NOTE**

**01/16/15 13:01 Care Coordination Note by Hitchcox,Peggy B SS/CC**

**Addendum entered by Hitchcox,Peggy B, SS/CC 01/16/15 14:46:**
**Please note that Carrie Confare, LBSW, Dir of Care Coordination also attended. And that pt's siter Margaret Holmes has visited pt in the evenings. If she cannot make a day-time appt to meet with us, we will arrange an evening or weekend appointment to make it convenient for her schedule. -MBH**

**Original Note:**

ETHICS COMMITTEE CONSULT

Members Present: M. B. "Peggy" Hitchcox, LMSW, Facilitator; Dr. Kurt Gambla, DO, CMO; Rita Brown, LISW, Sr Pt Representative; Diane Razo, RN, ICU/PCU Dept Dir; Daniel Mock, Sr Dir Cardiopulmonary & Imaging

This pt is a 65 yo black male who was referred by Dr. Johnston, Hospitalist, due to family disagreement with the medical recommendations for DNR and palliative or hospice care. The family want pt to be a full code and under all active Tx possible. Family con't to exhibit a lack of understanding &/or acceptance of pt's current status & Px, mentioning such things as the pt needs to eat more to regain his strength, etc. His sister Dorothy Olenja is his POA, lives in Greenville & works in Atlanta, and another sister Margaret Holmes is also listed as a contact person. Facilitator was unable to speak w/ either sister prior to this mtg; today, Ms. Olenja's VM remains full, and a message was left on Ms. Holmes' VM. However, the CC's and physicians have been able to speak w/ them by phone. It does not appear that any family member has visited pt during this hospitalization except at initial admission. Family is not opposed to continuing nursing home placement, but do want him in the Low Country area rather than Upstate. Care Coordination has diligently sought placement in the entire surrounding area to no avail, no facility will accept this pt. BV refused to take pt back when he was medically discharged from acute care, although he had returned to his baseline status.
This pt was admitted to BMH late 12/23/14 from Bay View Manor due to respiratory distress. Currently is in a persistent vegetative state with trach (no longer vent dependent), PEG tube-feedings, and multiple decubiti/wounds. Prior to this hospitalization, there are remote records at BMH for 2003 4. Pt came to BV from a hospital in Charleston, where he had been treated for asphyxiation w/ resultant hypoxic brain injury. He also carries a Dx of schizophrenia and bipolar disorder.

Pt's current Hospitalist Dr. Dingus spoke w/ this Facilitator and also made written recommendations for his care: consult Infectious Ds to see if there is any possibility of addressing in a curative fashion pt's infection(s) which have not thus far responded to Tx. An 8 -14 day course of IV ABx has been recommended by ID Dr. Stock. Pulmonology Dr. Manos has also been consulted.

The Committee discussed pt's Hx and current status as per above. All were in agreement w/ the recommendations of the various physician's for DNR and palliative care or hospice, as an inpt if placement cannot be found. At the conclusion of this discussion, Dr. Gambla attempted to reach pt's POA Ms. Olenja by his personal cell phone and was successful. Dr. Gambla reviewed the pt's current status & Px, discussed what constitutes palliative care and DNR, reassured sister/POA that neither DNR nor palliative care means that stop taking care of the pt or caring about him as a person. POA advised Dr. Gambla that she could make no decisions w/out consulting the rest of his family, the other sister and also a niece in Boston who has just graduated from Physician's Assistant school. Dr. Gambla requested that when the family have had a chance to talk, that

they make arrangements to come here to discuss matters face-to-face and assured POA that we would work w/ them to be available at a time convenient for them when they come.

Further discussion was held among the Committee when Dr. Gambla reported the content of his conversation w/ the POA. CMS rules do not require the pt/family to accept a bed further than a 50 mi radius of the hospital. However, if a placement were to be found w/in that radius and the family refuse it, pt's care would no longer be covered by Medicare/Medicaid. We also want to be doubly sure whether the POA incl healthcare decision-making as well as financial authority. However, even if not, under the SC Adult Healthcare Consent Act, the family may still make healthcare decisions for an incapacitated pt. While a pt can be made DNR w/out the family's consent and also futile care is not required to be provided, few to no facilities &/or physicians will institute DNR or discontinuation of care over the family's objections, unless the pt himself left clear instructions in a format recognized by law. However, if the family con't to refuse the medical recommendations made in the pt's best interest, legal advice can be sought to have the family's decision-making ability set aside and another guardian appointed by the Court who will receive the information and make an independent decision.

While the Committee concurs fully w/ the medical recommendations of pt's physicians, we want the make every effort to engage the family and have them come to an agreement about what is in the pt's best interests. Therefore, we will await the family to discuss this matter among themselves, get back w/ us, and come here to meet face-to-face to come to a decision. If not, we will pass the case along to the BMH Risk Manager for consideration of other actions as outlined above.

M. B. "Peggy" Hitchcox, LMSW, ACSW, CASWSC
Ethics Committee Facilitator

Initialized on 01/16/15 13:01 - END OF NOTE

01/14/15 14:07 Care Coordination Note by Turbeville,Ashley N RN/CC
CC Note:
CC spoke with patient sister Dorothy re: placement options. CC notified Dorothy that the places in Savannah both did not offer patient a bed because they were unable to handle the amount of care that he required. Dorothy wanted to talk to her sister and decide on other options. CC also spoke with her about home placement and she wanted info about care givers. CC left caregiver list at bedside for her sister Margaret. CC will follow up with her about other placement options. No further needs at this time.

Initialized on 01/14/15 14:07 - END OF NOTE

01/13/15 13:54 Care Coordination Note by Turbeville,Ashley N RN/CC

Addendum entered by Turbeville,Ashley N, RN 01/14/15 10:20:

CC spoke with Monique at PruittHealth Savannah and they are unable to make a bed offer at this time. No further needs at this time.

Original Note:

CC Note:
CC spoke with Lucinda at Pruitt Health In Savannah and they requested add'l information. CC faxed the requested info. CC will follow up.

Initialized on 01/13/15 13:54 - END OF NOTE

01/12/15 14:59 Care Coordination Note by Turbeville,Ashley N RN/CC
CC Note:

Wound Care Notes - Continued

precautions were used during the wound evaluation. No family were present at the time of this evaluation. Cindy Greene, BSN, RN, CWCN

Initialized on 02/04/15 16:49 - END OF NOTE

02/03/15 07:54 Wound Care Note by Greene,Cynthia C RN
Per request from Dr. Johnston, this CWCN spoke with the patient's sister Dorothy yesterday regarding this patient's wounds that were noted by this CWCN on admission. This was because Dr. Johnston said Dorothy did not think it possible that he had 20+ wounds on admission to the hospital. She stated she knew he had some open wounds on admission, and questioned what type of wounds the other multiple wounds that had been noted by this CWCN were. She was instructed that most of the additional wounds were suspected deep tissue injuries. She was instructed that not all wounds have to be open to be categorized as wounds, and that suspected deep tissue injuries usually present in dark-skinned individuals as darker color over bony prominences, and they are suspected to be the result of pressure injuries over those bony prominences. She was also instructed that on admission we have only the first 24 hours to document anything that appears to be possibly any tissue injury, and that he had many of these type of discolored areas over his bony prominences when this CWCN performed the wound assessment within the first 24 hours of admission, and each one of them had been measured. She stated that she now had a better understanding of why these sites were documented, because she didn't realize that something could be called a wound if it is not open. She stated she appreciated this CWCN coming to speak with her. She was encouraged to have the nurses call this CWCN if she has any further questions or concerns from now on. Cindy Greene, BSN, RN, CWCN

Initialized on 02/03/15 07:54 - END OF NOTE

01/14/15 10:19 Wound Care Note by Greene,Cynthia C RN
1/14/15 at 0900: Wound care clinician to assess status of this patient's wounds. Please see the Wound Ulcer Intervention for assessment details for each of his many pressure ulcers. All of the wounds but one appear basically the same as they did at the time of last week's follow-up assessment. That one wound is the right hip wound, which now has a partially eschar-covered wound bed and the rest of the wound bed is mostly non-granulating. Would recommend changing the wound care for this wound to daily application of Acticoat Flex dressing to reduce bacterial burden that is likely present in the wound bed. Standard precautions were used during the wound evaluation. Cindy Greene, BSN,RN, CWCN

Initialized on 01/14/15 10:19 - END OF NOTE

01/06/15 13:38 Wound Care Note by Greene,Cynthia C RN
1/6/15 at 0915: Wound care nurse follow-up to assess status of this patient's wounds. All of his wounds appear basically the same, with the exception of the left posterior hip wound, which is now covered with hard eschar. There is a scant ring of non-granulation tissue around the eschar. Would recommend changing the wound care for this wound to daily application of betadine solution followed by a dry gauze dressing. There are no signs of infection noted with any of his wounds, and the wounds that are open are clean, aside from the left posterior hip wound. This patient's most recent serum albumin level is 1.4 and most recent prealbumin level is 11.2, so we would not expect to have healing progress under those conditions. Would recommend continuing all other wound care orders. Standard precautions were used during the wound evaluation. Cindy Greene, BSN, RN, CWCN

Initialized on 01/06/15 13:38 - END OF NOTE

Continued on Page 428

EXHIBIT 8
Deponent Olenja
Date 3.2.18 Rptr. JE
WWW.DEPOBOOK.COM

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES,DAVID
Date of Birth: 01/18/1949
Admit Date: 03/29/15
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449
Unit Number: D047280
Discharge Date: 05/29/15

**Primary Care Physician:**
Edward McNeil

**Date of Admission:**
03/29/15

**Date of Discharge:**
06/02/15

**Admitting Diagnosis:**

Primary Diagnosis sepsis

**Discharge Diagnosis:**
Severe sepsis with shock and multiorgan failure
Acute oliguric renal failure
**Consultations:** DR. MANOS: PULMONARY. DR. STOCK: ID. DR. ADARI: NEPHROLOGY. DR. MANSKER: GENERAL SURGERY. DR. SPEARMAN: ANESTHESIA
**Procedures performed this visit? Y/N:** Yes
**Procedures Performed:** MECHANICAL VENTILATION. THORACENTESIS. ARTERIAL LINE. CENTRAL LINE. ATTEMPTED DIALYSIS CATHETER PLACEMENT
**Pending Results? Y/N:** No
**Hospital Course:**
This is a 66-year-old male who is admitted with sepsis secondary to underlying decubitus ulcer as well as aspiration pneumonia. Patient has history of chronic vegetative state and has a trach in take tube in place. Patient was admitted to the Intensive Care Unit. Patient was a DO NOT RESUSCITATE however family reverse this and then later decided to make him a DO NOT RESUSCITATE. However they do want to continue with pressor support, they merely did not want chest compressions in the event of a code. Patient has remained in the Intensive Care Unit. Surgery has seen him as well. It was recommended to family that patient would not tolerate surgery well and it would be difficult for his wounds to heal and they were in agreeance at that time. Currently on norepinephrine and we are attempting to wean. Patient did develop a pneumothorax this past Friday and a chest tube was placed. He continues to have greater than 100 mL of output in 24 hours so chest tube remains in place. Pulmonology following. I have recommended to family comfort measures on multiple occasions however they are not interested in this at this time. Surgery remains on standby if needed. (Dictated by Dr. Walker)

Hospital course 04/09-04/15:
The patient has been transferred out from the intensive care unit and has been off of pressors. He

CC: James Zeccola, MD



EXHIBIT 9
Deponent Olenja
Date 3.2.18 Rptr. JE
WWW.DEPOBOOK.COM

**Hospitalist Discharge Summary**

Patient Name: HOLMES,DAVID
Date of Birth: 01/18/1949
Admit Date: 03/29/15
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449
Unit Number: D047280
Discharge Date: 05/29/15

was on IV Zosyn which was discontinued on April 11, 2015 after finishing a 14 day course. He has a chest tube in place and is being followed by pulmonary service. He remained severely hypoalbuminemic although there was some response with increase in serum albumin from <0.1 to 1.1 and prealbumin from 5.4 to 7.3. He is on maximal protein supplementation. Over the last 48 hours he has had on and off fevers. Blood cultures have been negative. He remains with pulmonary infiltrates on CXR and extensive decubitus ulcers. His sister/MPOA Dorothy was kept updated of his condition and is aware of his extremely poor prognosis.

Hospital course: 04/16-04/26 (Dr. Hawes)
The patient was followed by Dr. Botse then Dr. Rodriquez. He has remained on the floor. He continues on cefepime and vanc for pulmonary infiltrates. His CXR was looking worse and BNP was elevated so some superimposed volume overload was suspected. Echo shows good EF but he is hypoalbuminemic and was receiving IVF for hypernatremia. His fluids were stopped and he was given several doses of lasix which did decrease his FIO2 requirement somewhat. But sodium began to rise again despite increasing free water flushes so he will get 500cc of hypotonic fluid and will increase free water flushes again.

It was thought he might have some autonomic dysfunction so he was started on midodrine which has helped. He did have an ACTH stim test but at the time he was on a trial of hydrocortisone. He is now off that and BP is stable. He could now have an ACTH stim test so will order for the morning.

Wound care has been diligent and as of last Monday's wound care nurse evaluation, all wounds were stable with no deterioration. Prealbumin has increased somewhat. He continues on tube feeds with maximum protein intake.

Family rescinded DNR so he is now full code. Sister Margaret updated today.

Hospital course: 4/27/15-5/1/15 (Dr. Zeccola)
Patient had his chest tube successfully removed and completed his course of IV antibiotics and had been doing relatively well for several days. However over the past few days the patient has started to deteriorate somewhat. He remains hypotensive and has started to spike fevers and tachycardia. Some purulent drainage was noted around his subclavian central line. This was removed and the tip was cultured and is so far grown nothing. He has been restarted on IV vancomycin and cefepime. Blood and urine cultures were repeated and found to be negative. His sputum culture is showing heavy growth of gram-negative rods. His chest x-ray actually shows some improvement of the infiltrates. His respirations have become very shallow and tachypneic. His prognosis remains very poor. He remains a full code so he may require transfer at some point to PCU or Intensive Care Unit depending on his clinical course.

I have updated the patient's sister/power of attorney Dorothy today about his decline. She reiterates that she wants everything done.



CC: James Zeccola, MD

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, South Carolina 29902

**Hospitalist Discharge Summary**

Patient Name: HOLMES,DAVID
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Admit Date: 03/29/15
Attending Doctor: Mary L. Hawes, MD

Account Number: H02481449
Unit Number: D047280
Discharge Date: 05/29/15

Hospital course: 5/2/15 - 5/8/15 (Dr. Walker)
Patient remained in continuous state. He was transferred to the PCU and sputum culture was growing acinetobacter and his antibiotics were adjusted to ceftaz and inhale tobramycin. Patient actually was in stabilizing and we are considering transfer back to the floor however he became more tachypneic and repeat chest x-ray revealed fluid overload. He was given a dose of Lasix and albumin with some improvement and volume overload. Patient is also having residuals and tube feed and subsequently aspirated and tube feeds were held. Due to the aspiration and relative hypotension he was transferred to the Intensive Care Unit. PICC line was going to be placed however this could not be done because of contractures. I have asked anesthesia to attempt a central line today and have received consent from Dorothy, the power of attorney. She met with the physician last night with concerns about him being on Klonopin and Depakote. Apparently he was on this previously for bipolar disorder and review records indicate this was on his MAR from outside facility when he was admitted in December of last year. This was stopped last night at her request. She has been thoroughly updated today. Overall prognosis still remains very poor but family wants everything to be done. Will need to give Lasix albumin combination again today. Have discussed with critical care as well.

Hospital Course: 5/9/15 - 5/15/15 (Dr. Zeccola)
His respiratory status started to improve somewhat and he was stabilized off the ventilator and subsequently transferred back to the floor. Since then he has remained in his debilitated state with severe bilateral lung infiltrates. He is maintaining adequate saturations however today he is starting to have some tachypnea. His wounds are not necessarily getting worse but are certainly not getting any better. He had been tolerating his feeds without any residuals however today there seems to have been an issue and he may have aspirated again. Repeat chest x-ray today shows the terrible bilateral infiltrates again without much significant change. However a close eye should be kept on his respiratory and overall status. He remains a full code at this point. I have talked to the patient's power of attorney Dorothy today and updated her. There is still no consideration of any comfort measures even though this is been recommended on multiple occasions. He remains very high risk for continued aspiration, respiratory compromise and clinical deterioration.

Hospital Course: 5/17-5/24/15 (Dr. Hawes)
Sunday morning the 17th I was contacted by the PCU for tracheal bleeding that began during the night after tracheal suctioning. The patient's blood pressure was on the low side and blood gas showed some CO2 retention. Hemoglobin was 7.8. He was transferred to the ICU and given one unit of blood plus IVF. Dr. Manos and Dr. Christian were consulted and both came to see the patient that morning. His anticoagulation for DVT prophylaxis was discontinued. Both Dr. Manos and Dr. Christian felt the bleeding would stop spontaneously which it did. The patient was placed on the ventilator to treat his CO2 retention and he has remained on the ventilator since then. His CXR showed worsening consolidation consistent with worsening pneumonia. His BP was low despite IVF and one unit of blood so he was started on levophed. His WBC was elevated so sepsis was suspected and he was started on Merrem. His creatinine on the 15th was 1.0 which was slightly elevated for him. His urine output also started to fall off on the 16th. By the 17th his creat was 1.6 which was definitely elevated for him.

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Unit Number: D047280
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His vancomycin was discontinued as it can be nephrotoxic. Urine eosinophils were negative (he had been on cefepime). Imaging did not show obstruction of the kidneys. Nephrology was consulted for acute oliguric renal failure. He has remained oliguric despite high dose bumex and subsequently lasix drip. The most likely diagnosis is ATN secondary to poor renal perfusion from sepsis. He was pancultured. The sources are likely the hip decubitus that is nonhealing and growing two new GNR's sensitive to Merrem. He is also growing Moraxalla in sputum and CXR continues to worsen every day. He required second pressor (phenylephrine) and is now on maximum doses of both pressors. He has continued to decline despite maximum support. Dr. Adari did not want to initiate dialysis because of two pressors and hypotension. There was no acute indication such as hyperkalemia or acidosis. His volume did become a problem as he remained oliguric and did not respond to lasix drip. On the 22nd Dr. Hasaan covering for nephrology recommended an arterial line since BP's were in the 50's and she wanted to know if these readings were valid. An arterial line was placed by Dr. Spearman and did verify BP in the 50's. The main indication for dialysis at that time was volume removal. Family continued to want full support including dialysis. They were aware that dialysis might cause death but they knew that death was certain without it. Therefore Dr. Mansker was consulted for dialysis access placement. The patient had developed coagulopathy along with sepsis so before line placement he received vitamin K and two units of FFP. Line placement was unsuccessful and Dr. Mansker did not feel it was safe or in patient's best interest to attempt placement in another location. The patient did lose blood during the procedure. Therefore the patient has not received dialysis. The family knows that death is certain but the patient is still a full code per their request. He remains on two pressors, antibiotics, lasix drip. Fentanyl patch was added for pain. He has tremendous anasarca and evidence for fluid overload. He is off clinimex as he cannot tolerate the added volume. He is off tube feeds as he developed coffee ground emesis so had NG placed to LIS. He was started on protonix at that time.

His pulmonary status has deteriorated. Mid week Dr. Manos did a thoracentesis on the right for a pleural effusion that was exudative but not empyema. He did this to attempt to improve pulmonary status but it did not make much difference. His pulmonary consolidation continued to worsen despite aggressive pulmonary toilet and antibiotics. He was not acidotic until the 22nd when he developed a significant respiratory acidosis that has not been able to be corrected despite Dr. Manos' best efforts with ventilator adjustment.

It is not expected that the patient will survive for much longer. His pressure remains in the 50's and his heart rate is starting to decline. Pulmonary and renal failure continue to worsen. Family updated daily. There was a request from their lawyer not to discuss code status and comfort care.

Hospital Course: 5/25/15 - 5/29/15 (Dr. Zeccola)
The patient's status continued to deteriorate over the next 5 days. He was remarkably edematous from head to toe. His renal function was deteriorating and he was completely oliguric. His blood pressure remained in the 40s despite being on 2 pressor agents. His respiratory status deteriorated due to fluid overload and overwhelming pneumonia. This fluid overload did not respond to Lasix drip. He was coagulopathic with elevated INR and had coffee ground material suctioning from his NG tube. He had frothy bloody material from his mouth and ET tube. He became hypothermic with

temperatures in the low 90s Fahrenheit. He was clearly suffering from overwhelming severe sepsis with shock and multiorgan failure with no response to aggressive therapy.

Multiple attempts were made to have open discussions with the patient's power of attorney/sister Dorothy about his deteriorating condition. During these conversations she remained fixated on the fact that Mr. Holmes was not being fed or given any IV fluids and we were thus "starving him and dehydrating him" and she demanded that we feed and hydrate him. I attempted multiple times through multiple explanations to explain to her that he could not be fed through the NG tube because his bowel is not functioning from edema and he also has a gastrointestinal bleed. He is also at extreme risk for aspiration which another insult to his lungs would certainly cause further deterioration. All those things being said, attempting to feed feed him was completely inappropriate. As for providing him with hydration as stated above the patient was suffering from severe fluid overload with fluid literally weeping from his face and gurgling in his lungs. Adding exogenous fluid to his already overloaded body was completely inappropriate as well. Dorothy could not accept this answer and continued to demand that we feed him. Dr. Gambia was actively involved in the case and spoke with her multiple times as well to little avail.

On May 29, 2015 his condition deteriorated to the point that his heart rate started to to drop and a pulse became undetectable. A CODE BLUE was called and he was found to be in PEA and the appropriate protocols were followed and he returned to spontaneous circulation within about 15 minutes. The family including power of attorney Dorothy was kept up-to-date on what was going on.

Throughout that evening he proceeded to have 3 additional code blues with appropriate resuscitation measures taken and he finally expired at 22:48 after an unsuccessful resuscitation effort. The family was contacted at that time. Appropriate postmortem measures were taken.

**Assessment and Plan:**

1. Severe sepsis with shock and multiorgan failure
2. Acute renal failure: oliguric, secondary to ATN
3. Acute on chronic respiratory failure with severe CO2 retention and acidosis
4. Severe volume overload with diffuse edema and pleural effusions
5. Hematologic failure: Anemia, thrombocytopenia
6. Recurrent aspiration pneumonia
7. Extensive decubiti ulcers
8. Gastrointestinal failure
9. Neurologic deterioration
10. Hypothermia
11. Severe protein calorie malnutrition.
12. Severe anoxic encephalopathy
13. Cardiac arrest, status post for resuscitation attempts

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**Plan:**
-Postmortem care appropriately performed

**Discharge Medications:**

**Condition at Discharge:** Expired
**Discharge Instructions:**
None, patient expired
**Preliminary Cause of Death:** severe sepsis with shock and multiorgan failure, acute renal failure
**Time Spent:** 45 minutes

Dictated By: James Zeccola, MD
Dictated Date and Time: 06/02/15 1717
Transcribed Electronically: Physician Documentation
Transcribed Electronically Date and Time: 06/02/15 1717
Dictating Provider E-Sign: <Electronically signed by James Zeccola, MD>
Dictating Provider E-Sign Date and Time: 06/02/15 1751

Report Number: 0602-0290

Co-Sign Physician E-Sign:
Cos-Sign Date and Time:

CC: James Zeccola, MD