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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

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SC Court of Appeals

Polly McGill and Mary Broxton, as Co- Personal Representatives of
the Estate of Virginia Butler, deceased, Plaintiffs

Of Whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler is the Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC, Defendants,

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC is the Appellant.

RECORD ON APPEAL

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
	)	
Polly McGill and Mary Broxton, as Co-	)	
Personal Representatives of the Estate of	)	
Virginia Butler, deceased	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
The Regional Medical Center Foundation	)	
d/b/a The Regional Medical Center and	)	
Pruitt Health-Bamberg, LLC d/b/a	)	
Uni-Health Post-Acute Care of Bamberg,	)	
LLC,	)	
	)	
Defendants.	)	

FILED COUNTY
BAMBERG
OCT - 5 AM 9:52
JAMES L. HUBERT
CLERK OF COURT
BAMBERG, S.C.

This matter comes before the Court on Defendant Pruitt Health-Bamberg, LLC's Motion to Dismiss and to Compel Arbitration. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on September 9, 2015, the Court **DENIES** Defendant's motion.

BACKGROUND

Virginia Butler was a resident at Defendant's Bamberg nursing home in January-February 2014. As all times relevant to this action, Ms. Butler's medical records indicated that she suffered from dementia. Ms. Butler was transferred to Defendant's facility from The Regional Medical Center where she had received treatment for a broken leg suffered in a fall. While at Defendants' facility, Ms. Butler had pressure ulcers that progressed to stage 4. Ms. Butler's pressure ulcers became infected and she died a few weeks later. Plaintiffs' Complaint alleges that Defendant breached its duty in caring for Ms. Butler's pressure ulcers.

When Ms. Butler arrived at the nursing home, Defendant's staff approached Ms. Butler's family members with several documents. Mary Robinson, Ms. Butler's niece, was approached by a representative from Defendant while Ms. Robinson was at work. M. Robinson Aff. ¶ 4. Ms. Robinson was not Ms. Butler's guardian, conservator, or attorney in fact. M. Robinson Aff. ¶ 5. The documents included an Admission Agreement and a separate Arbitration Agreement. By its terms, "the signing of th[e] [Arbitration] Agreement [was] not a precondition to admission, expedited admission, or the furnishing of services" to Ms. Butler. Arbitration Agreement at 5. The Arbitration Agreement granted the resident 30 days to revoke its terms without affecting the resident's admission at the home. *Id.* Following Ms. Butler's death, Plaintiffs filed the current action in the Bamberg County Court of Common Pleas on June 11, 2015. On July 10, 2015, Defendant filed a Motion to Dismiss and Compel Arbitration.

ANALYSIS

Defendant presents two arguments in support of its motion. First, Defendant argues that Plaintiffs must arbitrate their claims because Ms. Robinson was authorized to enter the Arbitration Agreement by the Adult Health Care Consent Act (S.C. Code Ann. §§ 44-66-10 to -80) ("the Act"). Second, Defendant asserts the contract defense of equitable estoppel and argues Plaintiffs are equitably estopped from denying enforcement of the Arbitration Agreement. However, neither argument is supported by South Carolina law. The Act only applies to "health care decisions" and not to independent agreements regarding resolution of legal claims. Equitable estoppel does not apply in this case because Defendant has failed to meet its burden of proving all required elements of the doctrine as identified in earlier South Carolina Supreme Court precedent.

GO 2

A. Adult Health Care Consent Act

The Act's primary purpose is to identify and authorize individuals to make "decisions concerning . . . health care" on behalf of a person "unable to consent." S.C. Code Ann. § 44-66-30(A). The Act intends "to insure that the patient's wishes concerning her medical treatment are honored whenever possible." Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014) (emphasis added). The Act establishes the order of priority for those individuals authorized to make health care decisions. The first level of decision-making priority, pursuant to the Act, is granted to a legally-appointed guardian and an attorney-in-fact empowered pursuant to a duly executed durable power of attorney. S.C. Code Ann. § 44-66-30(A). An incapacitated individual's adult children and extended family members are further down in priority. Id.

The Act expressly limits the decision-making power of any individual to only "health care" decisions. S.C. Code Ann. § 44-66-30(A). "Health care" is defined in the Act and the South Carolina Supreme Court recently construed the definition to limit an individual's decision-making authority to: (1) "provision or withholding of medical care including placement in a facility which provides such care;" and (2) "certain financial decisions . . . to pay for services rendered." Coleman, 407 S.C. at 352, 755 S.E.2d at 453. An individual's power under the Act applies "primarily to traditional health care decisions" and only "secondarily" to financial matters related to those decisions. Id. at 353, 755 S.E.2d at 454.

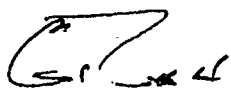
The Act grants only limited decision-making power related to nursing home admission. An individual authorized by the Act may enter an agreement to admit a resident to a nursing home and may enter a contract agreeing to pay for nursing home services. Coleman, 407 S.C. at 353-54, 755 S.E.2d at 454. A potential resident or her family are typically presented with



multiple contracts and other documents when the family contemplates admitting their loved one to a nursing home. Coleman demonstrates that the Act does not apply to all documents associated with nursing home admission. Specifically, the Act does not apply if a document “was not required for [the resident’s] admission, contained no provision for medical, nursing, or health care services to be provided for [the resident], and did not require any financial commitment to pay for such services.” Id. at 353, 755 S.E.2d at 454.

Based on the Coleman standard, the Act does not apply to the Arbitration Agreement. Plaintiffs do not contest that Ms. Butler meets the Act’s definition of a patient that is “unable to consent” and does not contest whether Ms. Robinson fits within the category of individuals identified in the Act as authorized to make “health care” decisions on Ms. Butler’s behalf. Instead, Plaintiffs argue that Ms. Robinson was not authorized by the Act to enter the Arbitration Agreement because the Arbitration Agreement does not involve “health care” decisions. The Court agrees the Arbitration Agreement does not contain any provision for medical, nursing, or health care services. The bolded and underlined language in Section 1 of the Arbitration Agreement indicates that its provisions are intended only for dispute resolution. Arbitration Agreement at 1. The Arbitration Agreement also does not contain any provisions relating to payment for medical, nursing, or health care services. Only the scope of arbitrable disputes and procedures for an arbitration hearing are included in the Arbitration Agreement.

Despite its focus on dispute resolution, Defendant argues that the Arbitration Agreement is still governed by the Act’s provisions because it merged with the Admission Agreement, a “health care” contract signed at the same time as the Arbitration Agreement. Coleman acknowledged a common law merger rule. 407 S.C. at 355, 755 S.E.2d at 455 (quoting Klutts Resort Realty, Inc. v. Down’Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).



However, there are several express limitations on the merger rule's operation. First, the rule only applies "where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction." Id. Second, the rule may be displaced by the parties' contrary intentions as expressed in the contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Third, in determining whether the rule applies and in determining whether the parties expressed a contrary intent, all ambiguities in the Arbitration Agreement must be construed against Defendant since it was the sole drafter of all contracts presented to Ms. Butler's family before her admission to Defendant's facility. Id. at 355-56, 755 S.E.2d at 455 (citing Davis v. KB Home of S.C., Inc., 394 S.C. 116, 713 S.E.2d 799 n. 4 (Ct. App. 2011)).

After reviewing the parties' memoranda along with the Arbitration Agreement and Admission Agreement, the Court finds that the common law merger rule does not apply because the parties clearly expressed their intent that the documents were to be considered separate and independent agreements.¹ The Arbitration Agreement identifies itself as a "voluntary agreement," indicating that a resident's potential admission to Defendant's facility was not dependent on any agreement to arbitrate. That notion was explicitly reaffirmed later in the Arbitration Agreement where Defendant drafted language indicating that "The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5. Additionally, the

¹ Defendant argues that the Court should not rely on the separate and independent nature of the Arbitration Agreement largely for policy reasons. Defendant argues that applying merger to separate and independent arbitration agreements is advisable because, without merger, nursing home providers have an incentive to relocate arbitration provisions from a separate document to their admission agreements where they are less likely to be noticed or seriously considered by a resident or her representative. See Coleman, 407 S.C. at 358, 755 S.E.2d at 456-57 (Toal, C.J., dissenting). With full respect for the Chief Justice's dissent, the four-justice majority in Coleman found that, under Klutts, separate and independent agreements overcome the common law merger rule. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Pursuant to *stare decisis*, this Court is bound by the opinion of the Court in Coleman and not by its dissent.

Arbitration Agreement includes a 30 day revocability period in which a resident could choose to repudiate the Arbitration Agreement without any effect on the Admission Agreement or admission to Defendant's facility. Id. Coleman identified a 30 day revocability clause in an arbitration agreement as "evidencing an intention that each contract remain separate." Id. at 355, 755 S.E.2d at 455.

Defendant attempts to distinguish Coleman by arguing the 30 day revocability clause was not essential to Coleman's holding but offers the Court nothing from the Supreme Court's opinion to support this conclusion. Coleman found that the clause "evidenc[ed] an intent that each contract remain separate." Id. There is no indication that this clause alone is insufficient to overcome the common law merger rule. Under the plain language of Klutts, the merger rule is rebutted by "**anything indicating a contrary intention.**" Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24 (emphasis added). The Court is also not persuaded by Defendant's argument that the revocability period should not be considered on the merger question because Plaintiffs did not exercise it. Coleman and Klutts considered the parties' intent based solely on the language used in the agreements and not based on any post-formation conduct. See also Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007) (finding contract parties' intention must be "derived from the language of the contract" and, in the absence of ambiguity, the contract language "alone determines the document's force and effect").

Additionally, the evidence does not demonstrate that the Arbitration Agreement and Admission Agreement meet Klutts' baseline requirements for merger. Merger can only potentially apply where two or more contracts are executed at the "same time, by the same parties, for the same purpose." Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24. The

Admission Agreement and Arbitration Agreement are not between the same parties. The Admission Agreement names Defendant and Ms. Butler as parties while the Arbitration Agreement names Defendant, Ms. Butler, and Ms. Robinson as parties. Admission Agreement at 1; Arbitration Agreement at 1. While Defendant claims the agreements were executed for the same purpose, that conclusion is not supported by the contract language. Defendant argues that both contracts were executed for Ms. Butler's "admission and care at the facility." Def.'s Mem. in Supp. of Mot. to Dismiss at 8. However, the Arbitration Agreement was not executed for Ms. Butler's admission because, as is clear from the Arbitration Agreement itself, that agreement "is not a precondition to admission . . . or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5.

In sum, there is evidence that the parties intended that the Arbitration Agreement was not to merge with the Admission Agreement even though there was not an explicit anti-merger clause. The Arbitration Agreement was "voluntary," was explicitly intended to be independent of Defendant's decision to admit a resident to its facility, and could be revoked at the resident's option for 30 days without effect on admission. This evidence indicates the parties' anti-merger intent. Plus, the evidence does not demonstrate that the two agreements were executed by the same parties for the same purpose. For all these reasons, Defendant's motion is denied.

B. Equitable estoppel

Defendant also argues that Ms. Butler and Plaintiffs² are equitably estopped from denying enforcement of the Arbitration Agreement Ms. Robinson signed at the time of Ms.

² Defendant asks the Court to find that Ms. Butler's wrongful death beneficiaries are equitably estopped from opposing arbitration even though they did not participate in Ms. Butler's nursing home admission and were not even ascertainable until Ms. Butler's death. See Jones v. Leagan, 384 S.C. 1, 16, 681 S.E.2d 6, 14 (Ct. App. 2009). Several courts have found Defendant's position untenable. Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (en banc); Bybee v.

Butler's admission. Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." Kelly v. Logan, Jolley & Smith, 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct be acted on by the other party; and (3) had actual or constructive knowledge of the real facts. Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in position in reliance on conduct of the party to be estopped. Id.

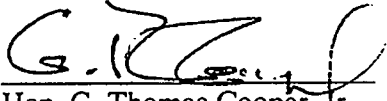
Defendant has not met its burden to establish these elements. There is no evidence Ms. Butler acted in a way amounting to a false representation to Defendant regarding Ms. Robinson's status or that Ms. Butler intended for Defendant to act in reliance on her conduct. Ms. Butler's diminished mental capacity prevented her from forming the required intent for Defendant to rely on her conduct. Additionally, the evidence shows Defendant cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendant to show it did not know Ms. Robinson lacked authority to sign the arbitration agreement on her aunt's behalf and Defendant lacked the ability to make this determination. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

Abdulla, 189 P.3d 40, 43 (Utah 2003) ("a decedent does not have the power to contract away the wrongful death action of his heirs").



In this case, Defendant had the capacity to determine whether Ms. Robinson had authority to sign an arbitration agreement on Ms. Butler's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendant is familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Ms. Robinson whether she was Ms. Butler's guardian or attorney-in-fact and had the ability to request supporting documentation. Since Defendant has not cited or provided evidence on all required elements of equitable estoppel, its Motion is **DENIED**.

IT IS SO ORDERED.


Hon. G. Thomas Cooper, Jr.
Circuit Court Judge

COLUMBIA, South Carolina
SEPTEMBER 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virginia Butler, deceased

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and Pruitt
Health-Bamberg, LLC d/b/a Uni-Health Post
Acute Care of Bamberg, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-05-00124

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

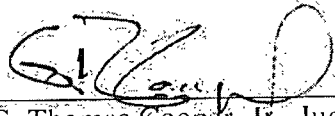
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JAN 11 2016

This matter comes before the Court by way of Defendant Pruitt Health-Bamberg, LLC's Motion to Reconsider pursuant to Rule 59(e), SCRCP. Specifically, Defendant asks this Court to reconsider its Order Denying Defendant's Motion to Compel Arbitration filed October 5, 2015.

After careful consideration of the record in this case and the submissions of the parties, this Court has decided to abandon Footnote 2 of its Order. In reviewing the remainder of its Order, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRCP, to Reconsider this Court's Order filed October 27, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
November 4, 2015


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton as Co-
Personal Representatives of the Estate of
Virginia Butler, Deceased,

Plaintiffs,

v.

The Regional Medical Center foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 15-NI-

NOTICE OF INTENT TO FILE SUIT

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

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

2015 APR -6 AM 9:33

FILED
BAMBERG COUNTY

MCGOWAN HOOD & FELDER, LLC

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton as Co-
Personal Representatives of the Estate of
Virginia Butler, Deceased,

Plaintiffs,

v.

The Regional Medical Center foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 15-NI-

NOTICE OF INTENT TO FILE SUIT

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

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

2015 APR -6 AM 9:33

FILED
BAMBERG COUNTY

MCGOWAN HOOD & FELDER, LLC

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton as Co-
Personal Representatives of the Estate of
Virginia Butler, Deceased,

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center d/b/a
TRMC and Pruitt Health-Bamberg, LLC
d/b/a Unihealth Post-Acute Care of
Bamberg, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 15-NI-

COMPLAINT

JAMES B. HERS
CLERK OF COURT
BAMBERG, SC

2015 APR -6 AM 9:33

FILED
BAMBERG COUNTY

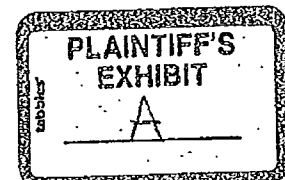
The Plaintiffs Polly McGill and Mary Broxton as Co-Personal Representatives of the Estate of Virginia Butler, by and through their undersigned counsel, for a Complaint against the Defendants, do hereby allege as follows:

PARTIES

Plaintiffs

1. The Plaintiff, Polly McGill, is both a citizen and a resident of Bamberg County, South Carolina.
2. The Plaintiff, Mary Broxton, is both a citizen and resident of Bamberg County, South Carolina.
3. The Plaintiffs' Decedent, Virginia Butler was a citizen and resident of Bamberg County, South Carolina.

Defendants



4. Defendant The Regional Medical Foundation d/b/a The Regional Medical Center d/b/a TRMC("TRMC"), is organized under the laws of the State of South Carolina with its principal place of business in Orangeburg County, SC. Defendant TRMC, at all times relevant hereto, was the entity employing certain nurses and other medical staff at a facility known as TRMC who at all relevant times, were employees or agents acting within the scope of their employment with Defendant TRMC.

5. Pruitthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC is a corporation organized and existing under the laws of South Carolina with its registered agent in Columbia, South Carolina. Defendant Pruitthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC, at all times relevant hereto, was the entity employing certain physicians who at all relevant times, were employees or agents acting within the scope of their employment with Defendant Pruitthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC.

6. At all times relevant to this action, physicians, nurses, residents, interns and staff health care providers for Decedent were employees and/or agents of the Defendants, or were apparent agents and were acting within the course and scope of their employment and/or agency or apparent agency.

7. The negligent acts, omissions and liability of the Defendants includes its agents, principals, employees and/or servants, both directly and vicariously, pursuant to principals of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

JOINT AND SEVERAL LIABILITY

8. The above-named Defendants are jointly and severally liable for all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts

and omissions, singularly or in combination, are the contributing proximate cause of the Plaintiff's damages, injuries and losses.

FACTUAL ALLEGATIONS

9. Virginia Butler presented at TRMC Bamberg Urgent Care on January 17, 2014 with general weakness. She was determined to be anemic and was transferred to TRMC for a blood transfusion. Ms. Butler was discharged from TRMC on January 22, 2014.

10. On January 25, 2014 Ms. Butler fell and fractured her leg and was readmitted to TRMC.

11. At TRMC Ms. Butler was severely anemic and was too weak to have surgery on her leg.

12. While at TRMC Ms. Butler had a stage III pressure ulcer on her right lower leg.

13. During her stay at TRMC, the pressure ulcers progressed to a stage 4 category due to the failure of the nurses and employees of TRMC to comply with the nationally recognizable standard of care.

14. For instance, the staff of TRMC failed in the following areas of care;

- a. Failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing;
- b. In failing to exercise independent skill and judgment in their role as patient advocates;
- c. In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency.

15. Ms. Butler was transferred to PruittHealth- Bamberg on January 31, 2014.
16. On February 7, 2014 Ms. Butler was sent to Colleton Medical Center for wound treatment. Colleton list Wound #1 left heel acquired pressure ulcer 02/06/2014 staged as Suspected Deep Tissue Injury, Wound #2 right lower leg pressure ulcer acquired 1/29/2014 staged as Necrotic Tissue (unstageable), Wound #3 right heel pressure ulcer acquired 2/06/2014 staged as Suspected Deep Tissue Injury, and Wound #4 Sacral pressure ulcer acquired 2/06/2014 and stage 3.
17. Colleton Medical Center sent Ms. Butler back to PruittHealth-Bamberg with wound care plan and an appointment to return in one week.
18. During her stay at PruittHealth-Bamberg, the pressure ulcers progressed to A stage 4 category due to the failure of the nurses and employees of PruittHealth-Bamberg to comply with the nationally recognizable standard of care.
19. For instance, the staff of TRMC failed in the following areas of care;
 - a. Failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing;
 - b. In failing to exercise independent skill and judgment in their role as patient advocates;
 - c. In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency.
20. On February 14, 2014 when Ms. Butler returns to Colleton Medical Center it is noted that Ms. Butler has stage III and stage IV pressure ulcers. The sacral pressure ulcer is infected and with osteomyelitis.
21. Ms. Butler was admitted to Colleton Medical Center from the Wound Center on February 14, 2014 for the management of a stage 4 sacral ulcer.
22. On February 17, 2014 Ms. Butler died at Colleton Medical Center.

23. As a direct and proximate result of the acts and/or omissions of Defendants, Ms. Butler did not receive proper treatment for her illness in a timely fashion. Ms. Butler's condition was completely treatable and with proper, standard of care medicine, Ms. Butler would not have died nor suffered the pain, indignity, and bodily harm, nor incurred the medical expenses which she did as a result of the ulcers and subsequent infection.

24. The injuries to and death of Ms. Butler were the direct and proximate result of and were caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and hospital staff under similar circumstances and thereby rendered inappropriate medical care to Ms. Butler by deviating from and falling below the prevailing and acceptable standards of care in one or more of the particulars stated above.

FOR A FIRST CAUSE OF ACTION

(Survival)

25. Plaintiffs repeat and realledge paragraphs 1- 24 above as if fully set forth verbatim herein.

26. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from professional standards of care by Defendants, Ms. Butler suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Ms. Butler is entitled to recover a sum to compensate her estate for her conscious pain and suffering, medical expenses, mental anguish, loss of enjoyment of life, and other damages. Plaintiffs are also entitled to recover a sum of punitive damages to punish and

deter these defendants and others like them from similar conduct in the future. All damages should be in the amount determined by a jury in this action.

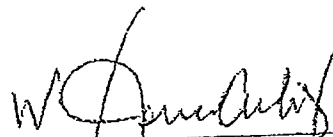
FOR A SECOND CAUSE OF ACTION

(Wrongful Death)

1. Plaintiffs reiterate paragraphs 1-26 as if set forth verbatim herein.
2. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Ms. Butler suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of her heirs at law. The estate is therefore entitled to recover from defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiffs are also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in the amount determined by a jury in this action.

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

MCGOWAN HOOD & FELDER, LLC



W. Jones Andrews, Jr.
McGowan Hood & Felder
1517 Hampton Street
Columbia, SC 29201
(803) 779-0100
(803) 256-0702 Facsimile

April 1, 2015.
Columbia, South Carolina.

FILED
BAMBERG COUNTY

2015 APR -6 AM 9:34

AFFIDAVIT of CHARLOTTE SHEPPARD RN, BSN

JAMES B. HIERS
BAMBERG COUNTY COURT
BAMBERG, SC

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, BONDWORTH COURT
SWORN, SAYS AS FOLLOWS:

1. I am a Registered Nurse and Certified Gerontological Nurse and Wound Care Nurse. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care, which should have been rendered to Virginia Butler in this case.

2. My nursing practice is primarily located in Land 'O Lakes, Florida. I have been practicing for more than 15 years.

3. I am familiar with the standard of care of what a reasonably prudent nurse would do or not do in preventing skin breakdown to a person in the same condition as Virginia Butler. Additionally, I am familiar with the potential complications that stem from not properly preventing skin breakdown and/or promoting healing like in Virginia Butler's case.

4. I have reviewed the medical records of Virginia Butler, which consisted in part of records from The Regional Medical Center, Unihealth-Bamberg, Colleton Medical Center and the death certificate. The records I have reviewed are the type of documents, which I would consider in rendering an expert opinion in this case.

5. It is my opinion, within a reasonable degree of nursing certainty, that the agents, employees and/or nurses at The Regional Medical Center and UniHealth committed negligent acts or omissions in their care and treatment of Virginia Butler. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at The Regional Medical Center and UniHealth are as follows:

- In failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing; and
- In failing to exercise independent skill and judgment in their role as patient advocates; and
- In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency;

6. Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the agents, employees and/or nurses at The Regional Medical Center and UniHealth contributed to the injuries and death of Virginia Butler.



7. The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses at The Regional Medical Center and UniHealth at this time are the medical records of Virginia Butler. The factual basis of my opinions may be supplemented at a later time.

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


CHARLOTTE SHEPPARD, RN, BSN

Sworn to and signed before me
this 6th day of March, 2015


Notary Public in and for (seal)

County of Pasco
State of Florida



FILED
BAMBERG COUNTY

2015 APR -6 AM 9:34

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

Charlotte Sheppard, RN-BC, BSN, LHRM, WCC

EXPERIENCE

5/01 – Present

Galen College of Nursing

St. Petersburg, FL

Fundamentals Clinical Instructor

The instruction of practical nursing students in the fundamentals of nursing in the clinical setting, specifically, the long-term care setting.

Academic Instructor of Nursing

Education and clinical preparation of students in the practice of nursing for acute care hospitals, long term care facilities and other nursing practice settings. Provide education in nursing theory to practical nursing students and professional registered nurse undergraduates utilizing a theory based educational process and clinical instruction.

2/03 – 7/08 **Baldomero Lopez State Veterans' Nursing Home** Land O' Lakes, FL

RN Staff Nurse, Charge Nurse, Nursing Supervisor

The provision and supervision of medication and treatment administration. Direct supervision of all patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary/nursing process including assessment, planning, implementation and evaluation of each resident's individualized needs.

12/00-1/03

Manor Care of Carrollwood

Tampa, FL

RN Supervisor

Direct supervision of patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary process. Provision and supervision of medication and treatment administration. Daily evaluation and staffing development in-patient care areas.

2/00-Present

Independent ALF Operational Consultant

ALF Consultant

Providing consultation in staffing analysis, resident placement, medication administration, quality improvement, and risk control. Provide facility coverage locum tenens.

12/98-Present

Independent Nurse Consultant

Nurse Consultant

Providing nursing consultation including, record review, quality care management, quality improvement, and analysis of services in acute and long-term care settings.

12/97- 3/99

RheoTherapy Centers of Tampa Bay

Largo, FL

Staff Nurse

Responsibilities included, assessments and total patient care of geriatric population, initiating and terminating apheresis procedures, continuous patient monitoring including telemetry, monthly QI and QA projects as responsible for overseeing equipment maintenance in the patient care setting. Developed policy and procedure manual in conjunction national physician advisory panel.

07/95-09/97 FirstStat Nursing Services Tampa, FL

Staff Nurse

Duties included pediatric and adult/geriatric in home critical care services. Delivery of services to patients requiring specialized assessment related to G-Tubes, Pacemakers, tracheostomys, and ventilators. Temporary long term care facility staffing in Pinellas, Pasco and Hillsborough counties.

11/94-12/97 Vivra Renal Care Largo, FL

Preceptor/Staff Nurse

Responsibilities included provision of hemodialysis treatments, in-service training and monthly employee education, coordinate quality improvement program, coordinate staff assignments as well as patient scheduling. Develop, implement and reassess interdisciplinary patient care plans. Accomplishments included development and implementation of state wide home hemodialysis program.

08/94-07/95 St. Petersburg Healthcare Center St. Petersburg, FL

Charge Nurse

Responsibilities included CNA assignments, total resident assessment and care delivery, supervision of staff, delivery of medications and treatments and participation in the interdisciplinary care planning process.

EDUCATION

2001 University of Tampa Tampa, FL

Bachelor of Science in Nursing

**Sigma Theta Tau, Delta Beta Chapter at Large / International Honor Society of Nursing

2000 University of New York/ Regents College Albany, NY

AD Nursing

1994 The Health Institute of Tampa Bay St. Petersburg, FL

Nursing Program

LICENSURE, CERTIFICATIONS and MEMBERSHIPS

- American Heart Association CPR Instructor
- Board Certified in Gerontological Nursing
- Florida Registered Nurse
- Assisted Living Facility Administrator
- Licensed Health Care Risk Manager
- Wound Care Certified / National Alliance of Wound Care
- American Nurses Association, Florida Nurses Association

Former Vice President - Sigma Theta Tau, Delta Beta Chapter at Large /
International Honor Society of Nursing

2002-2005

References provided upon request

FILED
BAMBERG COUNTY

2015 APR -6 AM 9:34

AFFIDAVIT of DAVID W. SEIGNIOUS, M.D., F.A.C.P.

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

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

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

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

3. I am familiar with the standard of care of what a reasonably prudent nursing home agent/employee would do or not do in preventing skin breakdown and/or promoting healing. Additionally, I am familiar with the potential complications that stem from not properly preventing skin breakdown and/or promoting healing as in Virginia Butler's case.

4. I have reviewed the medical records of Virginia Butler, which consisted in part of records from The Regional Medical Center, Unihealth-Bamberg, Colleton Medical Center and the death certificate. The records I have reviewed are the type of documents, which I would consider in rendering an expert opinion in this case.

5. It is my opinion, within a reasonable degree of medical certainty, that the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg committed negligent acts or omissions in their care and treatment of Virginia Butler. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg are as follows:

- In failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing; and
- In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency;

6. Further, it is my opinion to a reasonable degree of medical certainty that the actions or inactions of the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg contributed to the injuries and death suffered by Virginia Butler.

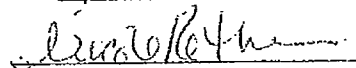


7. The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg at this time are the medical records of Virginia Butler. The factual basis of my opinions may be supplemented at a later time.

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


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

Sworn to and signed before me
this 13 day of March, 2015

 (seal)
Notary Public in and for

County of Charleston
State of South Carolina

Curriculum vitae: David W. Seignious, M.D., F.A.C.P.

Address:

Birthdate:

Charleston, S.C.

S.C. Medical License #: 13235

N.C. 29402

Education: Emory University

Atlanta, Ga.

1976-1980

BA Chemistry

Medical University of South Carolina

Charleston, S.C.

1980-1984

M.D.

Internship: New Hanover Memorial Hospital

2131 S. 17 St.

Wilmington, N.C.

1984-1985

Internal Medicine

Residency: New Hanover Memorial Hospital

1985-1987

Internal Medicine

Board Certified: American Board of Internal Medicine

Sept. 1987

Added Qualifications: Geriatrics

American Board of Internal Medicine

April 1992

Recertified: December 2002

Fellow: American College of Physicians

Member: American Geriatric Society
American Board of Occupational and Environmental Medicine

Employment: 2003-present: David W. Seignious, M.D., L.L.C.
3312 Maybank Hwy.
Johns Island, S.C. 29455

1998- 2003: Carolina Family Care
650 Ellis Oak Ave
Charleston, S.C. 29412

1995- 1998: Lowcountry Medical Associates (partner)
349 Folly Rd
Charleston, S.C. 29412

1989-1995: Island Internal Medicine (partner)
349 Folly Rd.
Charleston, S.C. 29412

1987-1988: David W. Seignious, M.D.
4137 LaCross Rd
North Charleston, S.C.

1996-present: Clinical Associate Instructor (for 3rd year students)
Medical University of South Carolina

Staff Privileges: St. Francis Hospital
Charleston, S.C.
Roper Hospital
Charleston, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton as Co-
Personal Representatives of the Estate of
Virginia Butler, Deceased,

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center d/b/a
TRMC and Pruitt Health-Bamberg, LLC
d/b/a Unihealth Post-Acute Care of
Bamberg, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 15-NI-

**PLAINTIFF'S RESPONSES TO
STANDARD INTERROGATORIES**

TO: ALL DEFENDANTS:

RESPONSES TO STANDARD INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be
Witnesses concerning the facts of the case and indicate whether or not written or recorded
statements have been taken from the witnesses and indicate who has possession of such
statements.

RESPONSE:

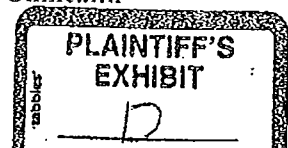
Polly McGill
126 Creekside Dr
Bamberg, SC 29003-1257

Mary A. Broxton
75 Broxton Street
Bamberg, SC 29003

Physicians and/or Employees of TRMC
3000 St. Matthews Road
Orangeburg, SC 29118

Physicians and/or Employees Pruitt Health-Bamberg, LLC d/b/a Unihealth

FILED
BAMBERG COUNTY
2015 APR -6 AM 9:34
JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC



Post-Acute Care of Bamberg, LLC
439 North Street
Bamberg, SC 29003

Physicians and/or Employees of Colleton Medical Center
501 Robertson Blvd.
Walterboro, SC 29488

All defendants listed and any or all witnesses listed by the defense in this matter.

Plaintiffs are unaware of any written or recorded statements.

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

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

RESPONSE: Medical records from TRMC, Unihealth-Bamberg, and Colleton Medical Center.

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

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

RESPONSE:

TRMC
3000 St. Matthews Road
Orangeburg, SC 29118

Pruitt Health-Bamberg, LLC d/b/a Unihealth Post-Acute Care of
Bamberg, LLC
439 North Street
Bamberg, SC 29003

Colleton Medical Center
501 Robertson Blvd.
Walterboro, SC 29488

Plaintiff is in the process of obtaining the cost involved from all the facility and reserve the right to supplement this response at a later date.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or number of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE: None known.

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

RESPONSE: Medical bills from all providers. Plaintiffs have lost their aunt.

Please note that this list is not complete and will be supplemented at a later date.

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

RESPONSE:

David W. Seignious, M.D., F.A.C.P.
4208 Chisolm Road
Johns Island, South Carolina 29455

Charlotte Sheppard, RN-BC, BSN, LHRM, WCC
4646 Balsam Drive
Land O' Lakes, Florida 34639

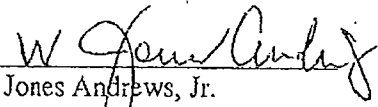
Plaintiffs reserve the right to supplement this response at a later date.

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

RESPONSE: Plaintiff is not aware of any written or recorded statements taken at this time. Plaintiff has attached are copies of Dr. Seignious' affidavit and the affidavit of Charlotte Sheppard, RN-BC, BSN, LHRM, WCC.

MCGOWAN HOOD & FELDER, LLC

April 1, 2015.
Columbia, South Carolina.


W. Jones Andrews, Jr.
McGowan Hood & Felder
1517 Hampton Street
Columbia, SC 29201
(803)779-0100
(803) 256-0702 Facsimile

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton as Co-
Personal Representatives of the Estate of
Virginia Butler, Deceased,

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center d/b/a
TRMC and Pruitt Health-Bamberg, LLC
d/b/a Unihealth Post-Acute Care of
Bamberg, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No: 15-CP-05-124

COMPLAINT

The Plaintiffs Polly McGill and Mary Broxton as Co-Personal Representatives of the Estate of Virginia Butler, by and through their undersigned counsel, for a Complaint against the Defendants, do hereby allege as follows:

PARTIES

Plaintiffs

1. The Plaintiff, Polly McGill, is both a citizen and a resident of Bamberg County, South Carolina.
2. The Plaintiff, Mary Broxton, is both a citizen and resident of Bamberg County, South Carolina.
3. The Plaintiffs' Decedent, Virginia Butler was a citizen and resident of Bamberg County, South Carolina.

Defendants

FILED
BAMBERG COUNTY
2015 JUN 15 AM 9:51
JAMES B. HERS
CLERK OF COURT
BAMBERG, SC

4. Defendant The Regional Medical Foundation d/b/a The Regional Medical Center d/b/a TRMC("TRMC"), is organized under the laws of the State of South Carolina with its principal place of business in Orangeburg County, SC. Defendant TRMC, at all times relevant hereto, was the entity employing certain nurses and other medical staff at a facility known as TRMC who at all relevant times, were employees or agents acting within the scope of their employment with Defendant TRMC.

5. Pruitthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC is a corporation organized and existing under the laws of South Carolina with its registered agent in Columbia, South Carolina. Defendant Priutthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC, at all times relevant hereto, was the entity employing certain physicians who at all relevant times, were employees or agents acting within the scope of their employment with Defendant Pruitthealth-Bamberg, LLC d/b/a Unihealth-Bamberg, LLC.

6. At all times relevant to this action, physicians, nurses, residents, interns and staff health care providers for Decedent were employees and/or agents of the Defendants, or were apparent agents and were acting within the course and scope of their employment and/or agency or apparent agency.

7. The negligent acts, omissions and liability of the Defendants includes its agents, principals, employees and/or servants, both directly and vicariously, pursuant to principals of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or respondeat superior.

JOINT AND SEVERAL LIABILITY

8. The above-named Defendants are jointly and severally liable for all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts

and omissions, singularly or in combination, are the contributing proximate cause of the Plaintiff's damages, injuries and losses.

FACTUAL ALLEGATIONS

9. Virginia Butler presented at TRMC Bamberg Urgent Care on January 17, 2014 with general weakness. She was determined to be anemic and was transferred to TRMC for a blood transfusion. Ms. Butler was discharged from TRMC on January 22, 2014.

10. On January 25, 2014 Ms. Butler fell and fractured her leg and was readmitted to TRMC.

11. At TRMC Ms. Butler was severely anemic and was too weak to have surgery on her leg.

12. While at TRMC Ms. Butler had a stage III pressure ulcer on her right lower leg.

13. During her stay at TRMC, the pressure ulcers progressed to a stage 4 category due to the failure of the nurses and employees of TRMC to comply with the nationally recognizable standard of care.

14. For instance, the staff of TRMC failed in the following areas of care;
- a. Failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing;
 - b. In failing to exercise independent skill and judgment in their role as patient advocates;
 - c. In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency.

15. Ms. Butler was transferred to PruittHealth- Bamberg on January 31, 2014.
16. On February 7, 2014 Ms. Butler was sent to Colleton Medical Center for wound treatment. Colleton list Wound #1 left heel acquired pressure ulcer 02/06/2014 staged as Suspected Deep Tissue Injury, Wound #2 right lower leg pressure ulcer acquired 1/29/2014 staged as Necrotic Tissue (unstageable), Wound #3 right heel pressure ulcer acquired 2/06/2014 staged as Suspected Deep Tissue Injury, and Wound #4 Sacral pressure ulcer acquired 2/06/2014 and stage 3.
17. Colleton Medical Center sent Ms. Butler back to PruittHealth-Bamberg with wound care plan and an appointment to return in one week.
18. During her stay at PruittHealth-Bamberg, the pressure ulcers progressed to A stage 4 category due to the failure of the nurses and employees of PruittHealth-Bamberg to comply with the nationally recognizable standard of care.
19. For instance, the staff of TRMC failed in the following areas of care;
 - a. Failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing;
 - b. In failing to exercise independent skill and judgment in their role as patient advocates;
 - c. In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency.
20. On February 14, 2014 when Ms. Butler returns to Colleton Medical Center it is noted that Ms. Butler has stage III and stage IV pressure ulcers. The sacral pressure ulcer is infected and with osteomyelitis.
21. Ms. Butler was admitted to Colleton Medical Center from the Wound Center on February 14, 2014 for the management of a stage 4 sacral ulcer.
22. On February 17, 2014 Ms. Butler died at Colleton Medical Center.

23. As a direct and proximate result of the acts and/or omissions of Defendants, Ms. Butler did not receive proper treatment for her illness in a timely fashion. Ms. Butler's condition was completely treatable and with proper, standard of care medicine, Ms. Butler would not have died nor suffered the pain, indignity, and bodily harm, nor incurred the medical expenses which she did as a result of the ulcers and subsequent infection.

24. The injuries to and death of Ms. Butler were the direct and proximate result of and were caused and occasioned by the negligence, carelessness, recklessness, willfulness, and wantonness on the part of the Defendants, in failing to possess and exercise that degree of medical training, competency, and skill ordinarily and customarily possessed and exercised by physicians and hospital staff under similar circumstances and thereby rendered inappropriate medical care to Ms. Butler by deviating from and falling below the prevailing and acceptable standards of care in one or more of the particulars stated above.

FOR A FIRST CAUSE OF ACTION

(Survival)

25. Plaintiffs repeat and realledge paragraphs 1- 24 above as if fully set forth verbatim herein.

26. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from professional standards of care by Defendants, Ms. Butler suffered from severe debilitating injuries which resulted in her permanent injury and disability, and conscious pain and suffering, as a result of which Ms. Butler is entitled to recover a sum to compensate her estate for her conscious pain and suffering, medical expenses, mental anguish, loss of enjoyment of life, and other damages. Plaintiffs are also entitled to recover a sum of punitive damages to punish and

deter these defendants and others like them from similar conduct in the future. All damages should be in the amount determined by a jury in this action.

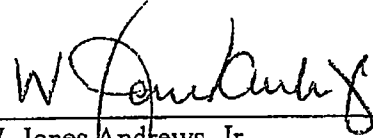
FOR A SECOND CAUSE OF ACTION

(Wrongful Death)

1. Plaintiffs reiterate paragraphs 1-26 as if set forth verbatim herein.
2. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendants, Ms. Butler suffered from severe debilitating injuries which resulted in her death, and thus the negligence was the cause of the loss of the support, aid, society, comfort, and companionship of her heirs at law. The estate is therefore entitled to recover from defendants a sum of money to compensate the heirs at law for the medical expenses, funeral expenses, mental anguish, and loss for the aid, society, comfort, and companionship of the decedent. Plaintiffs are also entitled to recover a sum of punitive damages to punish and deter these defendants and others like them from similar conduct in the future. All damages should be in the amount determined by a jury in this action.

WHEREFORE, Plaintiffs, respectfully pray for judgment against the Defendants for actual damages, special damages, consequential damages, and punitive damages in an amount to be determined by the jury at the trial of this action, for the costs and disbursements of this action and for such other and further relief as this court deems just and proper.

MCGOWAN HOOD & FELDER, LLC



W. Jones Andrews, Jr.
McGowan Hood & Felder
1517 Hampton Street
Columbia, SC 29201
(803) 779-0100
(803) 256-0702 Facsimile

June 11, 2015.
Columbia, South Carolina.

AFFIDAVIT of DAVID W. SEIGNIOUS, M.D., F.A.C.P.

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

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

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

3. I am familiar with the standard of care of what a reasonably prudent nursing home agent/employee would do or not do in preventing skin breakdown and/or promoting healing. Additionally, I am familiar with the potential complications that stem from not properly preventing skin breakdown and/or promoting healing as in Virginia Butler's case.

4. I have reviewed the medical records of Virginia Butler, which consisted in part of records from The Regional Medical Center, Unihealth-Bamberg, Colleton Medical Center and the death certificate. The records I have reviewed are the type of documents, which I would consider in rendering an expert opinion in this case.

5. It is my opinion, within a reasonable degree of medical certainty, that the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg committed negligent acts or omissions in their care and treatment of Virginia Butler. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg are as follows:

- In failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing; and
- In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency;

6. Further, it is my opinion to a reasonable degree of medical certainty that the actions or inactions of the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg contributed to the injuries and death suffered by Virginia Butler.

7. The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses at The Regional Medical Center and Unihealth-Bamberg at this time are the medical records of Virginia Butler. The factual basis of my opinions may be supplemented at a later time.

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


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

Sworn to and signed before me
this 13 day of March, 2015

 (seal)
Notary Public in and for

County of Charleston
State of South Carolina

Curriculum vitae: David W. Seignious, M.D., F.A.C.P.

Address: -----

Birthdate:

Charleston, S.C.

S.C. Medical License #: 13235

N.C. 29402

Education: Emory University

Atlanta, Ga.

1976-1980

BA Chemistry

Medical University of South Carolina

Charleston, S.C.

1980-1984

M.D.

Internship: New Hanover Memorial Hospital

2131 S. 17 St.

Wilmington, N.C.

1984-1985

Internal Medicine

Residency: New Hanover Memorial Hospital

1985-1987

Internal Medicine

Board Certified: American Board of Internal Medicine

Sept. 1987

Added Qualifications: Geriatrics

American Board of Internal Medicine

April 1992

Recertified: December 2002

Fellow: American College of Physicians

Member: American Geriatric Society
American Board of Occupational and Environmental Medicine

Employment: 2003-present: David W. Seignious, M.D., L.L.C.
3312 Maybank Hwy.
Johns Island, S.C. 29455

1998- 2003: Carolina Family Care
650 Ellis Oak Ave
Charleston, S.C. 29412

1995- 1998: Lowcountry Medical Associates (partner)
349 Folly Rd
Charleston, S.C. 29412

1989-1995: Island Internal Medicine (partner)
349 Folly Rd.
Charleston, S.C. 29412

1987-1988: David W. Seignious, M.D.
4137 LaCross Rd
North Charleston, S.C.

1996-present: Clinical Associate Instructor (for 3rd year students)
Medical University of South Carolina

Staff Privileges: St. Francis Hospital
Charleston, S.C.
Roper Hospital
Charleston, S.C.

AFFIDAVIT of CHARLOTTE SHEPPARD RN, BSN

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

1. I am a Registered Nurse and Certified Gerontological Nurse and Wound Care Nurse. My education, training and experience are set forth in the attached CV (Exhibit A). It is my belief that my education, training and experience qualify me to render expert opinions in regard to the expected care, which should have been rendered to Virginia Butler in this case.

2. My nursing practice is primarily located in Land 'O Lakes, Florida. I have been practicing for more than 15 years.

3. I am familiar with the standard of care of what a reasonably prudent nurse would do or not do in preventing skin breakdown to a person in the same condition as Virginia Butler. Additionally, I am familiar with the potential complications that stem from not properly preventing skin breakdown and/or promoting healing like in Virginia Butler's case.

4. I have reviewed the medical records of Virginia Butler, which consisted in part of records from The Regional Medical Center, Unihealth-Bamberg, Colleton Medical Center and the death certificate. The records I have reviewed are the type of documents, which I would consider in rendering an expert opinion in this case.

5. It is my opinion, within a reasonable degree of nursing certainty, that the agents, employees and/or nurses at The Regional Medical Center and UniHealth committed negligent acts or omissions in their care and treatment of Virginia Butler. Without intending to limit the scope of my opinions, some of the specific breaches of the standard of care I have identified as being perpetrated by agents, employees and/or nurses at The Regional Medical Center and UniHealth are as follows:

- In failing to ensure proper preventative measures were in place to avoid skin breakdown and when the skin breakdown occurred promote healing; and
- In failing to exercise independent skill and judgment in their role as patient advocates; and
- In failing to follow the policies and procedures of the facility, the Federal Regulations as they apply to nursing homes and caring for the elderly, and the regulations and mandates of the state regulatory agency;

6. Further, it is my opinion to a reasonable degree of nursing certainty that the actions or inactions of the agents, employees and/or nurses at The Regional Medical Center and UniHealth contributed to the injuries and death of Virginia Butler.

7. The factual basis for my opinion about the breaches of the standard of care by the agents, employees and/or nurses at The Regional Medical Center and UniHealth at this time are the medical records of Virginia Butler. The factual basis of my opinions may be supplemented at a later time.

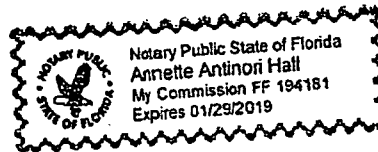
8. This affidavit is given in compliance with *South Carolina Code of Laws* §§ 15-36-100 and 15-79-125 which do not require me to state all negligent acts or omissions by any defendant. Further, I reserve the right to supplement or amend this affidavit or any testimony by me after receiving additional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

Charlotte Sheppard
CHARLOTTE SHEPPARD, RN, BSN

Sworn to and signed before me
this 6th day of March, 2015

Annette Antinori (seal)
Notary Public in and for

County of Polk
State of Florida



Charlotte Sheppard, RN-BC, RSN, LHRM, WCC

EXPERIENCE

5/01 – Present Galen College of Nursing St. Petersburg, FL
Fundamentals Clinical Instructor

The instruction of practical nursing students in the fundamentals of nursing in the clinical setting, specifically, the long-term care setting.

Academic Instructor of Nursing

Education and clinical preparation of students in the practice of nursing for acute care hospitals, long term care facilities and other nursing practice settings. Provide education in nursing theory to practical nursing students and professional registered nurse undergraduates utilizing a theory based educational process and clinical instruction.

2/03 – 7/08 Baldomero Lopez State Veterans' Nursing Home Land O' Lakes, FL
RN Staff Nurse, Charge Nurse, Nursing Supervisor

The provision and supervision of medication and treatment administration. Direct supervision of all patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary/nursing process including assessment, planning, implementation and evaluation of each resident's individualized needs.

12/00-1/03 Manor Care of Carrollwood Tampa, FL
RN Supervisor

Direct supervision of patient care staff, delivery of patient care, collaboration with physicians and administration as well as participating in the interdisciplinary process. Provision and supervision of medication and treatment administration. Daily evaluation and staffing development in-patient care areas.

2/00-Present Independent ALF Operational Consultant
ALF Consultant

Providing consultation in staffing analysis, resident placement, medication administration, quality improvement, and risk control. Provide facility coverage locum tenens.

12/98-Present Independent Nurse Consultant
Nurse Consultant

Providing nursing consultation including, record review, quality care management, quality improvement, and analysis of services in acute and long-term care settings.

12/97- 3/99 RheoTherapy Centers of Tampa Bay Largo, FL
Staff Nurse

Responsibilities included, assessments and total patient care of geriatric population, initiating and terminating apheresis procedures, continuous patient monitoring including telemetry, monthly QI and QA projects as responsible for overseeing equipment maintenance in the patient care setting. Developed policy and procedure manual in conjunction national physician advisory panel.

07/95-09/97

FirstStat Nursing Services

Tampa, FL

Staff Nurse

Duties included pediatric and adult/geriatric in home critical care services. Delivery of services to patients requiring specialized assessment related to G-Tubes, Pacemakers, tracheostomys, and ventilators. Temporary long term care facility staffing in Pinellas, Pasco and Hillsborough counties.

11/94-12/97

Vivra Renal Care

Largo, FL

Preceptor/Staff Nurse

Responsibilities included provision of hemodialysis treatments, in-service training and monthly employee education, coordinate quality improvement program, coordinate staff assignments as well as patient scheduling. Develop, implement and reassess interdisciplinary patient care plans. Accomplishments included development and implementation of state wide home hemodialysis program.

08/94-07/95

St. Petersburg Healthcare Center

St. Petersburg, FL

Charge Nurse

Responsibilities included CNA assignments, total resident assessment and care delivery, supervision of staff, delivery of medications and treatments and participation in the interdisciplinary care planning process.

EDUCATION

2001

University of Tampa

Tampa, FL

Bachelor of Science in Nursing

****Sigma Theta Tau, Delta Beta Chapter at Large / International Honor Society of Nursing**

2000

University of New York/ Regents College

Albany, NY

AD Nursing

1994

The Health Institute of Tampa Bay

St. Petersburg, FL

Nursing Program

LICENSURE, CERTIFICATIONS and MEMBERSHIPS

- American Heart Association CPR Instructor
- Board Certified in Gerontological Nursing
- Florida Registered Nurse
- Assisted Living Facility Administrator
- Licensed Health Care Risk Manager
- Wound Care Certified / National Alliance of Wound Care
- American Nurses Association, Florida Nurses Association

Former Vice President - Sigma Theta Tau, Delta Beta Chapter at Large /
International Honor Society of Nursing
2002-2005

References provided upon request

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

Polly McGill and Mary Broxton, as Co-	)	Civil Action No. 2015-CP-05-124
Personal Representatives of the Estate of	)	
Virginia Butler, deceased,	)	

Plaintiff,

vs.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,

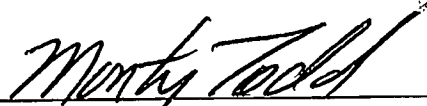
Defendants.

**DEFENDANT'S, PRUITT HEALTH-
BAMBERG, LLC d/b/a UNIHEALTH
POST-ACUTE CARE OF BAMBERG,
LLC'S, MOTION TO DISMISS AND
COMPEL ARBITRATION**

The defendant, PruittHealth-Bamberg, LLC d/b/a Unihealth Post-Acute Care of Bamberg, hereby moves to dismiss the plaintiff's Complaint and compel arbitration pursuant to Federal Arbitration Act 9 U.S.C. §1 – 16. In support of this motion, defendants rely on the Memorandum in Support, the supporting affidavit of Brandon Radford, and all attachments filed with their motion and memorandum.

Signature on Next Page

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

By: 
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Alexander E. Davis
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg, LLC

Columbia, South Carolina

, 2015

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

Polly McGill and Mary Broxton, as Co-	)	Civil Action No. 2015-CP-05-124
Personal Representatives of the Estate of	)	
Virginia Butler, deceased,	)	

Plaintiff,

vs.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,

Defendants.

**DEFENDANT'S, PRUITT HEALTH-
BAMBERG, LLC'S, MEMORANDUM
IN SUPPORT OF MOTION TO
DISMISS AND COMPEL
ARBITRATION**

The defendant, Pruitt Health-Bamberg, LLC d/b/a Unihealth Post-Acute Care of Bamberg, LLC, hereby submits the following Memorandum in Support of its Motion to Compel Arbitration. For the reasons set forth herein, the defendant respectfully requests that its motion to compel arbitration be granted.

Background

This action arises out of the care provided to Virginia Butler by the defendants, The Regional Medical Center Foundation d/b/a The Regional Medical Center ("Medical Center" or "TRMC") and Pruitt Health-Bamberg, LLC d/b/a Unihealth Post-Acute Care of Bamberg, LLC ("UPAC-Bamberg" or "the facility").

The plaintiffs allege in their Complaint that the decedent, Virginia Butler, was admitted to TRMC on January 17, 2014 with general weakness and was diagnosed with anemia. Ms. Butler was treated at TRMC until being released home on January 22, 2014. Three days later, on January 25, 2014, Ms. Butler suffered a fall and was readmitted to TRMC, where she was diagnosed with a fractured femur. Ms. Butler remained at TRMC until January 31, 2014, but no surgery was performed during this time as she was determined to be a poor candidate. Plaintiffs allege that during this stay at TRMC, decedent developed a stage III pressure ulcer on her right lower leg, which progressed to a stage 4 pressure ulcer. The plaintiffs allege the development/progression of this sore was the result of negligence on the part of defendant TRMC.

Upon discharge from TRMC, Ms. Butler was admitted to UPAC-Bamberg. On February 7, 2014, Ms. Butler was sent to Colleton Medical Center for wound treatment, before returning to UPAC-Bamberg that same day. On February 14, 2014, Ms. Butler returned to the Wound Clinic at Colleton Medical Center. After being examined in the Wound Clinic, she was admitted to CMC, where she passed away on February 17, 2014. The plaintiffs allege that UPAC-Bamberg allowed the decedent's "pressure ulcers [to] progress[] to [a] stage 4 category due to the failure of the nurses and employees of PruittHealth-Bamberg to comply with the nationally recognizable standard of care." They allege these failures caused Ms. Butler's death.

Ms. Butler became a resident of the Facility on January 31, 2014.¹ To become a resident of the Facility, Ms. Butler entered into a number of agreements with UPAC-Bamberg. The contracts were each signed by Ms. Butler's representative, Mary Robinson, as representative of Ms. Butler. (Exhibit 1, Admission Agreement). These executed admissions documents include

¹ The plaintiff was previously a resident of the facility in September 2012, but there are no allegations in the plaintiffs' Complaint regarding that stay. However, the admissions documents completed in both instances included arbitration agreements, and the agreement for Ms. Butler's September 2012 admission was signed by plaintiff Polly McGill.

an arbitration agreement. (Exhibit 2). Pursuant to the agreements set forth in the admissions documents, Ms. Butler was admitted to the Facility. During her stay at the Facility, Ms. Butler accepted the benefits of the contracts entered into on her behalf by her representative, Mr. Butler, including her admission to the facility and the receipt of skilled nursing care. At the time of her admission, Ms. Butler was suffering from dementia. (Exhibit 3, Medical Chart Selections); (Exhibit 4, Death Certificate).

The arbitration agreement at issue provides that it applies to “[a]ny and all claims or controversies arising out of or in any way relating to [the] Agreement or the Patient/Resident’s Admission Agreement . . . or the Patient/Resident’s stay at, or the care of services provided by [UPAC-Bamberg], or any acts or omissions in connection with such care or services.” (Exhibit 2, p. 1) The arbitration agreement was entered into between UPAC-Bamberg and Ms. Robinson as the representative of Ms. Butler on January 31, 2014. Because the acts and omission complained of by the plaintiff fall within the scope of the arbitration agreement, the Court should dismiss the plaintiff’s action, or stay these proceedings, and compel arbitration.

Argument

a. The arbitration agreement is a valid agreement under the Federal Arbitration Act and the Complaint falls within the scope of the agreement

As an initial matter, the arbitration agreement is governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16 (2006). Under the FAA, any written provision in “a contract evidencing a transaction involving commerce” providing that disputes be settled by arbitration is “valid, irrevocable, and enforceable.” 9 U.S.C. § 2 (2006). The language of the Act is not permissive, but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides, in pertinent part, as follows:

The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, *the court shall make an order directing the parties to proceed to arbitration* in accordance with the terms of the agreement.

9 U.S.C. § 4 (2006) (emphasis added). “By its terms, the act leaves no place for the exercise of discretion by a . . . court, but instead mandates that . . . courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985). Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2 (2006).

The claims in this case fall within the scope of the arbitration agreement. As mentioned previously, the plaintiff’s Complaint alleges negligent acts or omissions in the care of Ms. Adams, which ultimately resulted her hospitalization and death. (See Complaint). The arbitration agreement signed by Ms. Robinson as Ms. Butler’s agent defines the scope of the disputes it covers:

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

(Exhibit 2, p. 1). Because all the claims in the plaintiff's Complaint relate to the care and treatment received by the decedent at the facility, they all fall within the scope of the arbitration agreement.

The arbitration agreement also involves interstate commerce and, therefore, is enforceable under the FAA. The South Carolina Supreme Court has recently held that nursing home residency agreements such as this one "implicate interstate commerce and, thus, the FAA." Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). Just as in Dean, the residency agreement in the instant case requires that meals and medical supplies be provided to the resident. (Exhibit 5, Affidavit of Brandon Radford). These meals and medical supplies are provided by out-of-state vendors and shipped across state lines. Id. Therefore, the agreement at issue involves interstate commerce and is enforceable under the FAA.

b. Ms. Robinson had the authority to enter into the arbitration agreement on behalf of Ms. Butler under the Adult Healthcare Consent Act and the common law doctrine of merger

Under South Carolina's Adult Healthcare Consent Act, S.C. Code Ann. § 44-66-10, *et seq.* (2002) ("the Act"), where an adult is "unable to appreciate the nature and implications of [her] condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner," certain individuals, including the patient's adult relatives, may consent on behalf of an incapacitated patient. S.C. Code Ann. §§ 44-66-20(8); 44-66-30(A) (2002). See also Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 351, 755 S.E.2d 450, 453 (2014). In the instant case, the evidence reveals that Ms. Butler suffered from dementia prior to her death. (Exhibit 3, Medical Chart Selections [p.493; 537; 642; 646; 649; 661; 666; 668; 731; 738]).

The Act sets forth a hierarchy of individuals who “may make healthcare decisions for [a] patient who is unable to consent.” S.C. Code Ann. § 44-66-30(A) (2002). One of the individuals authorized to make healthcare decisions under this portion of the Act is “any other relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the plaintiff.” *Id.* In the instant case, Ms. Butler was unmarried at the time of her treatment and lacked an attorney-in-fact or guardian to make decisions on her behalf. (Exhibit 4) (showing that decedent had no surviving spouse). As is clear through her admissions documents and her other medical records, Ms. Butler’s nieces were the relatives with whom she had the closest personal relationship. (Exhibit 3, Medical Chart Selections); (Exhibit 5, Face Sheet) (listing all nieces as “responsible parties”). Therefore, Ms. Robinson was empowered under the Act to make decisions on behalf of Ms. Butler. S.C. Code Ann. § 44-66-30(A) (2002).

The Act typically gives an empowered individual the ability to make only healthcare decisions for the individual who is otherwise unable to consent. § 44-66-10, *et seq.* (2002); Coleman, 407 S.C. 346, 755 S.E.2d 450. Under the common law doctrine of merger, however:

The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the documents together. The theory is that *the instruments are effectively one instrument or contract.*

Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (citing Klutts Resort Realty, Inc. v. Down Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)) (emphasis added).

In Coleman, the Supreme Court refused to construe the admissions agreement and arbitration agreement as a single document. The Supreme Court specifically held that the documents were “executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” Coleman, 407 S.C. at 355, 755 S.E.2d at 455. However, the

Court also found that an anti-merger clause in the admission agreement demonstrated an intention by the parties that the documents not merge. Id. Therefore, the documents were to be construed separately and the arbitration agreement could not fall within the Act. Id.; Klutts, 268 S.C. at 88, 232 S.E.2d at 24 (holding that documents executed at the same time by the same parties for the same purpose and in the course of the same transaction merge but only “in the absence of anything indicating a contrary intention”).

In the instant case, the agreements exhibit no such anti-merger clause. In Coleman, the anti-merger clause noted by the Supreme Court read:

This Agreement, including all Exhibits hereto, *and the Arbitration Agreement* between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement *or in the Arbitration Agreement*. This Agreement may be amended only by a written agreement signed on behalf of [...]

407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). The Court noted that this clause demonstrated the “separatedness” of the documents on its face. Id. The documents executed by Ms. Robinson not only lack an anti-merger clause, but clearly indicate an intention that all the documents, including the arbitration agreement, be construed as one.

In the instant case, there is no anti-merger clause as in Coleman, and the Admissions Agreement indicates no intention that the arbitration agreement be treated separately from the other documents which are part of the admissions packet. In fact, the Admission Agreement for the Facility contains the following language:

- I. This Agreement shall be construed, governed and enforced under the laws of the State of South Carolina. This Agreement *together with all exhibits* is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, and supersedes all prior agreements, negotiations, representations, tender documents, and proposals, written and

oral with respect to the subject matter hereof. Variance from, or additions to, the terms and conditions of this Agreement in any written notification from Patient/Resident shall be of no effect.

(Exhibit 1, p. 9) (emphasis added). By its plain language, the Admission Agreement treats the other signed documents as exhibits which are part of the admission contract.²

Because all these documents were executed at the same time (January 31, 2014), by the same parties (UPAC-Bamberg and Mary Robinson on behalf of Virginia Butler), for the same purpose (for her admission and care at the facility), and during the course of the same transaction, the documents merged and the arbitration agreement is valid as a part of the Admission Agreement, which Ms. Robinson had the authority to sign on behalf of her aunt under the Act. Unlike in Coleman, there is no anti-merger clause in this case. Therefore, the arbitration agreement joined with the other admissions documents to form a single, valid contract, and the court must grant the defendant's motion to compel arbitration.

c. Plaintiff should be estopped from denying the validity of the arbitration agreement

Finally, the Plaintiff should be estopped from repudiating the arbitration agreement. The South Carolina Court of Appeals has held that a nonsignatory could be bound by an arbitration provision within a contract executed by other parties. Pearson v. Hilton Head Hosp., 400 S.C. 281, 288-89, 733 S.E.2d 597, 600-01 (Ct. App. 2012) (“Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.”) (citing Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000)). These common law principles of

² Ms. Robinson, as representative of Ms. Butler, signed numerous documents that were part and parcel of her admissions agreement to the facility. For the sake of the clarity and brevity of the record, however, only the “admission agreement” (Exhibit 1) and “arbitration agreement” (Exhibit 2) portions of her admissions paperwork are provided herewith.

contract and agency law include estoppel, among others. Pearson, 400 S.C. at 289-90, 733 S.E.2d at 601.

“Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” Int’l Paper, 206 F.3d at 417-18 (citation and internal quotation marks omitted). “A nonsignatory is estopped from refusing to comply with an arbitration clause ‘when it receives a direct benefit from a contract containing an arbitration clause.’” Id. (quoting Am. Bureau of Shipping v. Tencara Shipyard S.P.A., 170 F.3d 349, 353 (2d Cir. 1999)).

“Generally, these cases involve non-signatories who, during the life of the contract, have embraced the contract despite their non-signatory status but then, during litigation, attempt to repudiate the arbitration clause in the contract.” E.I. DuPont de Nemours & Co. v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S., 269 F.3d 187, 200 (3d Cir. 2001) (citing Tencara Shipyard, 170 F.3d at 353 (finding non-signatory derived benefit from contract and could not avoid the arbitration clause contained therein)). As noted by the Federal District Court in Jackson v. Iris.com:

[A] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage. . . . [W]here . . . a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a direct benefit from a contract containing an arbitration clause.

524 F. Supp. 2d 742, 749-50 (E.D. Va. 2007) (citing Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp., 659 F.2d 836, 839 (7th Cir. 1981); Int’l Paper, 206 F.3d at 418; Am. Bankers Ins. Grp. v. Long, 453 F.3d 623, 628 (4th Cir. 2006); R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n, 384 F.3d 157, 162 (4th Cir. 2004); Tencara Shipyard, 170 F.3d at 353 (holding nonsignatory was estopped from denying applicability of arbitration clause when

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

This equitable estoppel is a concept separate from the concept of estoppel discussed by Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). The Coleman decision was premised entirely on the idea of the existence or non-existence of the common law doctrine of merger. However, as noted above, the common law doctrine of equitable estoppel is a separate doctrine which prevents a party from accepting the benefits of an agreement and later attempt to repudiate that agreement. The continued validity of this common law doctrine has been recognized in the arbitration context subsequent to the Coleman decision. See THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185 at *2 (D.S.C. Mar. 19, 2015) (holding that the "'rejection' of an estoppel argument" in Coleman did not prevent a finding that "the benefits of admission should operate to stop the defendant [the plaintiff was the party seeking to enforce arbitration in this case] from rejecting arbitration now," and compelling arbitration).

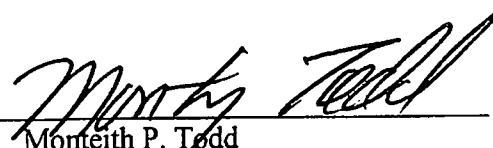
In the present case, Ms. Butler received all benefits of the Admissions Agreements despite her non-signatory status. As is cited above, numerous courts hold that where a plaintiff receives the benefits of the contract, which Ms. Butler certainly did, the plaintiff is estopped from denying an arbitration agreement merely because she did not sign the contract under which she received all of the benefits. Ms. Robinson executed numerous agreements benefitting Ms. Butler as part of her admission to the facility, and Ms. Butler accepted all the benefits of all these agreements during her stay. The plaintiffs were present at the time Ms. Robinson signed the Admission Agreement containing the arbitration agreement on behalf of Ms. Butler and made no objection to Ms. Robinson signing these agreements on behalf of Ms. Butler. (Exhibit 5, Face Sheet). Further, one of the plaintiffs, Ms. McGill, had previously read and signed an identical Admission

Agreement, including the arbitration agreement, during Ms. Butler's previous stay that the facility and was, therefore, aware of the contents on the Admission Agreement. The plaintiffs, who were fully aware of the content of the Admission Agreement allowed Ms. Robinson to sign the agreement as Ms. Butler's representative without objection, should not now be allowed to choose portions to repudiate and should be estopped from doing just that.

CONCLUSION

Based on the foregoing, the arbitration agreement signed by Ms. Robinson on behalf of Ms. Butler is binding, and the case must be referred to arbitration. Therefore, the defendant, Pruitt Health-Bamberg, LLC d/b/a Unihealth Post-Acute Care of Bamberg, LLC, respectfully requests that the Court grant its motion and compel arbitration.

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

By: 

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(803) 929-1400

Attorneys for Defendant Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg, LLC

Columbia, South Carolina

 July 10, 2015

Exhibit 1

Rev: 5/07

1A.03

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 31st day of January, year 2014, by and between UniHealth PAC Bamberg (Healthcare Center),
VIRGINIA BUTLER (Patient/Resident)
and certain other undersigned parties.

I. Definitions:

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

II. The Healthcare Center agrees:

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

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

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

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

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

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

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THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: DANETTE F MCALHANEY
2. Alternate attending physician: DANETTE F MCALHANEY

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

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: _____

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

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

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center,

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

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing
- C. The basic monthly rate is currently \$ 7175. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/ Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further,

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

Agreement to Follow Through With Medicaid Application:

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

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

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

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

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

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

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

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

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

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

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

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VII. General Agreements:

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

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to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

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

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may have hereunder shall not constitute a waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

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

VIII. Miscellaneous Provisions

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

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

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ACKNOWLEDGMENT:

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

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

X Mary Robinson
Patient/Resident Representative's Signature

DEBORAH RUTLAND
Print Administrator's Name

Deborah Rutland
Administrator's Signature

UnihHealth PAC Bamberg
Legal Name of Healthcare Center

Date

01/31/14

(Healthcare Center will maintain a copy for their records)

Exhibit 2

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ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 31st day of January, 2014, by and between UniHealth PAC Bamberg (the "Healthcare Center") and VIRGINIA BUTLER and MARY ROBINSON ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

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

A. Scope of Agreement.

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

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

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

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

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

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

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

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

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

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

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

II. Decision

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

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

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

III. Governing Law, Severability

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

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

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

IV. Patient/Resident's Understanding of Agreement

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

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MR. Initials

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Rev: 5/07

ID.02

State of South Carolina
ARBITRATION AGREEMENT

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

A. The Patient/Resident has the right to seek legal counsel concerning this Agreement;

B. The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center; and

C. This Agreement may be revoked by written notice to the Healthcare Center from the Patient/Resident within thirty (30) days of signature. If not revoked within thirty (30) days, this Agreement shall remain in effect for all care and services rendered at the Healthcare Center, even if such care and services are rendered following the Patient/Resident's discharge and readmission to the Healthcare Center.

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

VIRGINIA BUTLER
Print: Name of Patient/Resident

UniHealth PAC Bamberg
Print: Name of Healthcare Center

[Signature]
Signature of Patient/Resident

[Signature: Chris D. Arnold]
Signature of Healthcare Center's Authorized Agent

[Signature: Mary Robinson]
Signature of Patient/Resident Representative

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

01/31/14

MARY ROBINSON

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

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

Witnessed By:
[Signature: Chris Arnold]

MR Initials

Exhibit 3

SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

PASARR - Level I
SCREENING FORM

NAME: Virginia Butler

III. LIST ALL PSYCHOTROPIC DRUGS PRESCRIBED INCLUDING DOSAGE AND FREQUENCY.

- | | |
|------------------------------|----------|
| 1. <u>Haldol 2 tabs 10mg</u> | 4. _____ |
| 2. <u>BID</u> | 5. _____ |
| 3. _____ | 6. _____ |

IV. RECOMMENDATION OF REVIEWER:

- ☐ Recommend further evaluation based on mental retardation indicators.
☐ Recommend further evaluation based on mental illness indicators.
☒ No further evaluation recommended.
☐ No further evaluation recommended, but indicators present. (State reasons below.)

Comments: (Give justification for above recommendations, if needed.)

V. PERTINENT INFORMATION

- ☒ IMD admission requested; if so, indicate facility: _____
☐ Primary diagnosis of dementia; must be confirmed by a Mini-Mental Form.

Information obtained from: Patient / chart CLTC Area #: _____

Signature and title of assessor: Helinda L. Sooley, CO

Agency/Institution completing form: TRMC

Admitting Nursing Facility: UHPAC Bamberg Date of Admission (if known) 1/31/14

FOR CLTC/IOC USE ONLY

FOR CLTC USE ONLY

Reviewed by Nurse Consultant _____ (Initials)
Date Reviewed: _____

VI. ADVANCE CATEGORICAL DETERMINATION

☐ Advance categorical determination that specialized services are not required:

- ☐ 1. Severity of physical impairments overrides need for specialized services (MI only)
☐ 2. Nursing facility respite not to exceed 14 days (MR or MI)
☐ 3. Emergency admission due to suspected abuse/neglect under authority of DSS (MR or MI)
☐ 4. 30-Day time limited certification (MR or MI)
☐ 5. Mental retardation with concurrent diagnosis of dementia (MR only)

Signature of CLTC Nurse Consultant:

Date sent to nursing facility:

Initials:

Elopement Risk Observation Form

Issued: April, 2012

Revised: 8/12

Healthcare Centers

NURS E.104a

Version: 2

Patient/Resident: Virginia Butler

Date: 02/01/14

Policy: Elopement Prevention Program

Guideline: All patients/residents will be assessed on admission, re-admission, significant change in condition, and at least quarterly. Patients/residents who score (11) or more, interventions should be promptly be put in place.

If patient/resident who verbally express the desire to go home, prior history of elopement, history of leaving center without needed supervision or informing staff, these be on behavior management program with immediate interventions (i.e. placed in wander book, wander guard)

Admission: _____ Readmission: _____ Significant Change: _____ Quarterly: _____

Condition	Possible Points	Score	Comments
Orientation			
Alert (oriented x 3)	0	0	
Disoriented x 3 / Dementia or Intermittent Confusion	6		
Locomotion/Mobility			
Chair or Bed Bound	0	0	
Ambulatory with assistive device, Independently			
Ambulatory, or wheels self independently in wheelchair	2		
Sensory/Deafness			
Hearing loss	4		
Poor Vision (with or without glasses)	2		
Legally Blind	4		
Can Communicate needs	0	0	
Cannot Communicate needs	2		
Psychiatric/Behavioral			
Does the patient/resident have dementia, OBS, Alzheimer's, Delusions, Hallucinations, Anxiety Disorder, Depression, Manic Depression or Schizophrenia			
None	0		
1-2 present	3	3	
3 or more present	4		
Pain			
No	0		
Yes	2	2	
Routine medication Effective	2		
Routine medication Not Effective	4		
PRN use of pain medication	4		
Medication			
No new meds or changes	0		
New medication or change last 7 days (per Resident /Family Interview or Hospital Documentation)	4	4	
Any medications that increase restlessness or agitation	6		
Life-disrupting conditions			
Sustained a personal tragedy, received upsetting information, wandering/seeking to find spouse and/or family member, new admission, wander aimlessly, has the patient/resident approached exit doors repeatedly			
None	0	0	

Printed copies are for reference only. Please refer to the electronic copy for the latest version.



Antipsychotic Prior Authorization Form

Antipsychotic Medications

Atypical Antipsychotics		Typical Antipsychotics	
Abilify (aripiprazole)	Risperdal (risperidone)	Haldol (haloperidol)	Orap (pimozide)
Clozaril (clozapine)	Saphris (asenapine)	Loxitane (loxapine)	Prolixin (fluphenazine)
Fanapt (iloperidone)	Seroquel (quetiapine)	Mellaril (thioridazine)	Stelazine (trifluoperazine)
Geodon (ziprasidone)	Symbyax (fluoxetine/olanzapine)	Moban (molindone)	Thorazine (chlorpromazine)
Invega (paliperidone)	Zyprexa (olanzapine)	Navane (thiothixene)	Trilafon (perphenazine)
Latuda (lurasidone)			

1. CMS Approved Diagnosis

Patient Last Name: Butler

Patient First Name: Virginia

Healthcare Center Name: UPAC - Bamberg

Room Number: 211

Prescriber Last Name: McAlhanev

Prescriber First Name: Danette

Prescriber Phone: (803)245-5168

Prescriber Fax:

Medication Ordered: HALOPERIDOL TAB 10MG

Directions: 1 TAB BY MOUTH EVERY 12 HOURS
(DX: DEMENTIA)What is the patient's diagnosis? ☐ Schizophrenia ☐ Huntington's Chorea ☐ Tourette's Syndrome

If diagnosis not listed above, please complete Section 2 below

2. Off-Label Diagnosis

COMPLETE PRIOR AUTHORIZATION QUESTIONS BELOW

What is the patient's diagnosis for antipsychotic medication?

dementia

Has the Behavior Management Coordinator been notified to initiate placement in the Behavior Management Program?

☒ Yes ☐ No

Has the Director of Health Services been notified?

☒ Yes ☐ No

Nurse Signature

Date

Fax to pharmacy with antipsychotic order. Per policy, antipsychotic medication for an off-label diagnosis **will not** be dispensed until Prior Authorization is received.

Rev. 9/2012

Fixed
2/1/14
1200

Physical Therapy Plan Of Care

PATIENT LAST NAME Butler		FIRST NAME Virginia		M.I.	PROVIDER NO. 425104	HICN A
PROVIDER NAME PH Bamberg			MEDICAL RECORD NO.		ONSET DATE 01/25/2014	SOC DATE 02/03/2014
DATE OF BIRTH	MEDICAL DX 1 (Pertinent Medical D.X.) 821.00 FX FEMUR NOS-CLOSED			TREATMENT DIAGNOSIS 728.87 MUSCLE WEAKNESS, 781.2 ABNORMALITY OF GAIT		PAYOR Medicare Part A
MEDICAL DX 2 V15.88 History of fall	ONSET 01/25/2014	MEDICAL DX 3	ONSET	MEDICAL DX 4		ONSET

Qualifying Hospital Stay: From Date: 01/25/2014 To Date: 01/31/2014 ☐ NA

Reason For Referral:

INCREASE STRENGTH AND ROM AT RT LOWER EXT ABOUT NEW FX OF FEMUR RESULTING FROM ATTEMPTS TO TRANSFER FROM BED TO COMMODORE AT HOME--ALONE. AT 92 YRS OF AGE SHE NEEDS CONSTANT SUPERVISION WITH OLD CVA RESIDUAL & LT LOWER LEG ANGULATION FRACTURE WITH FLEXION CONTX AND INTERNALLY ROTATED AT LT HIP. BED MOBS SEVERELY LIMITED & WE WILL ATTEMPT TO SAFELY BUILD UP HER STRENGTH AND DYNAMIC TRUNK BALANCE AND INC HER ADLS PARTICIPATION.

Therapy Necessity:

Therapy necessary for INC STRENGTH AND BALANCE IN BED MOBS & REDUCE OR CORRECT FLEXION DEFORMITIES AT RT AND LT KNEE JTS.. Without therapy patient at risk for FALLS.

Medical History Related to Diagnosis/Condition:

SEVERE ANGULATION OF OLD LT HIP FX WITH INTERNAL ROTATION AND LEG LENGTH DISCREPENCY. SHE HAS ODOR TO RT LOWER LATERAL LEG SKIN BREAKDOWN AND DRY DRESSING OF SAME & HAS A RT KNEE IMMOBILIZER IN PLACE. HTN, ESOPHAGEAL REFLUX, HYPERLIPIDEMIA, DJD, DEMENTIA, CVA, CHRONIC ANEMIA

Medications:

PERCOCET, AULODIPINE, HALOPENIDOL, OMEPROZOLE, PRAVATATIN

Environmental Factors / Social Support:

APPARENTLY HAS DAUGHTER TO CAREGIVE

Prior Residence and Living Arrangement:

AT HOME WITH GRANDDAUGHTER AND DAUGHTER

Previous Therapy:

YES

Precautions:

MULTIPLE FLEXION CONTX ANT HIP AND KNEES BILAT, LLD OF LEAST 2" LT, POOR VISION & BALANCE

Discharge Plans:

TO DAUGHTER AT HER HOME AS CAREGIVER

Initial Assessment

Functional Deficits	Prior Level	Current Level
Bed Mobility, Supine-sit	contact guard assist (contact with patient due to unsteadiness)	maximum assistance (76-99% assist)
Bed Mobility, Sit-supine	contact guard assist (contact with patient due to unsteadiness)	maximum assistance (76-99% assist)
Gait, Distance	5 feet	unable
Gait, Assistive Device	front wheeled walker	front wheeled walker
Weight Bearing Status, Right LE	full weight bearing	non-weight bearing
Weight Bearing Status, Left LE	non-weight bearing	non-weight bearing
Transfers, Bed/Chair	contact guard assist (contact with patient due to unsteadiness)	maximum assistance (76-99% assist)
Balance, Static Sitting	F- static (able to maintain static balance with UE support)	P static (unable to maintain balance without mod/max support)
Balance, Dynamic Sitting	P+ dynamic (able to maintain balance with minimum assistance, mod assist to reach ipsilateral side and unable to weight shift)	P dynamic (unable to maintain balance without mod/max support)
Balance, Static Standing	P+ static (requires handhold support and moderate assistance to maintain position)	P static (requires handhold support and maximal assistance to maintain position)
Balance, Dynamic Standing	P dynamic (unable to accept challenge or move without loss of balance)	P dynamic (unable to accept challenge or move without loss of balance)
Balance, Fall Risk	high risk	high risk
Balance, Fall Recovery	unable	unable
Functional Deficit Other		
APPARENT INFECTION IN RT LOWER LATERAL FEMUR --DRY DRESSING IN PLACE AND SHE NEEDS NEW(CLEAN) IMMOBILIZER ON SAME RT KNEE.		

Plan Of Care Change Log

PATIENT Butler, Virginia	ID	CERTIFICATION FROM 02/03/2014 TO 03/16/2014
--------------------------	----	---

Section: History

Changed By: Ralph Lucarelli, PT (1660) Changed Date: 02/14/2014 12:55PM

Prior Text: SEVERE ANGULATION OF OLD LT HIP FX WITH INTERNAL ROTATION AND LEG LENGTH DISCREPENCY. SHE HAS ODOR TO RT LOWER LATERAL LEG SKIN BREAKDOWN AND DRY DRESSING OF SAME & HAS A RT KNEE IMMOBILIZER IN PLACE WITH IS FILTHY AND NEEDS TO BE REPLACED. THE DON AND WOUND CARE NURSE WERE NOTIFIED TODAY. HTN, ESOPHGEAL REFLUX, HYPERLIPIDEMIA, DJD, DEMENTIA, CVA, CHRONIC ANEMIA

Occupational Therapy Plan Of Care (Evaluation Only)

PATIENT LAST NAME Butler		FIRST NAME Virginia		M.I.	PROVIDER NO.	HICN
PROVIDER NAME PH Bamberg		MEDICAL RECORD NO.		ONSET DATE 01/25/2014		SOC DATE 02/03/2014
DATE OF BIRTH	MEDICAL DX 1 (Pertinent Medical D.X.) 820.00 FX FEMUR INTRCAPS NOS-CL			TREATMENT DIAGNOSIS 728.87 MUSCLE WEAKNESS		PAYOR Medicare Part A
MEDICAL DX 2 V15.88 History of fall	ONSET 01/25/2014	MEDICAL DX 3	ONSET	MEDICAL DX 4		ONSET
EOC DATE 02/03/2014	EOC REASON Evaluation Only			EOC DESTINATION		

Qualifying Hospital Stay: From Date: 01/25/2014 To Date: 01/31/2014 ☐ NA

Reason For Referral:

OT evaluation completed this date in order to establish a baseline. No further services recommended at this time.

Therapy Necessity:

Skilled OT services not recommended at this time d/t current physical and medical limitations. Patient however will follow-up with skilled PT services for proper bed positioning and mobility to protect LE joints per restrictions.

Medical History Related to Diagnosis/Condition:

SEVERE ANGULATION OF OLD LT HIP FX WITH INTERNAL ROTATION AND LEG LENGTH DISCREPENCY. SHE HAS ODOR TO RT LOWER LATERAL LEG SKIN BREAKDOWN AND DRY DRESSING OF SAME & HAS A RT KNEE IMMOBILIZER IN PLACE WITH IS FILTHY AND NEEDS TO BE REPLACED. THE DON AND WOUND CARE NURSE WERE NOTIFIED TODAY. HTN, ESOPHGEAL REFLUX, HYPERLIPIDEMIA, DJD, DEMENTIA, CVA, CHRONIC ANEMIA

Medications:

PERCOCET, AULODIPINE, HALOPENIDOL, OMEPROZOLE,, PRAVATATIN

Environmental Factors / Social Support:

Patient to return home with granddaughter and daughter with assistance.

Prior Residence and Living Arrangement:

AT HOME WITH GRANDDAUGHTER AND DAUGHTER WHERE SHE WAS MAX ASSIST WITH MOST BADLS.

Previous Therapy:

Inpatient rehab at hospital

Precautions:

MULTIPLE FLEXION CONTX ANT HIP AND KNEES BILAT, LLD OF LEAST 2" LT, POOR VISION & BALANCE

Discharge Plans:

Patient wishes to return home with increasing assist for ADLs from family.

Rehab Potential: Poor due to: Patient not medically or physically stabilized at this time.

Informed Consent: Treatment plan, including benefits, risk and alternatives discussed with patient and/or family, who agree to treatment.

Requires skilled services to focus on:

97003 - OT Evaluation

Frequency/Duration: 1 times a week for 1 weeks (Evaluation Only)

Electronically Signed by Therapist: Shannon Brown, OT (3739)

Date: 02/03/2014 3:12PM

I agree, and it is my intent, to sign this record/document and affirmation of electronic signature for electronic submission and printed record/document. I understand that my signing and submitting this record/document in this fashion is the legal equivalent of having placed my handwritten signature on the submitted record/document and this affirmation. I understand and agree that by electronically signing and submitting this record/document in this fashion I am affirming to the truth of the information contained therein.

I CERTIFY THE NEED FOR THESE SERVICES FURNISHED UNDER THIS PLAN OF TREATMENT AND WHILE UNDER MY CARE

Certification:

Physician Name: DANETTE MCALHANEY (1043275282)

☒ Signature Required

From 02/03/2014 **To** 02/09/2014

Physician Signature:

Date:

Speech Therapy Plan Of Care

PATIENT LAST NAME Butler		FIRST NAME Virginia		M.I.	PROVIDER NO. 425104	HICN
PROVIDER NAME PH Bamberg		MEDICAL RECORD NO.		ONSET DATE 01/25/2014		SOC DATE 01/31/2014
DATE OF BIRTH	MEDICAL DX 1 (Pertinent Medical D.X.) 821.00 FX FEMUR NOS-CLOSED			TREATMENT DIAGNOSIS 784.69 SYMBOLIC DYSFUNCTION NEC		PAYOR Medicare Part A
MEDICAL DX 2 V15.88 History of fall	ONSET 01/25/2014	MEDICAL DX 3	ONSET	MEDICAL DX 4		ONSET

Qualifying Hospital Stay: From Date: 01/25/2014 To Date: 01/31/2014 ☐ NA

Reason For Referral:

This 92 year old new admit to facility presents to ST with impairments in cognition for self care safety. Patient demonstrates a decline in safety as evidenced by recent fall and subsequent hip fracture.

Therapy Necessity:

Therapy necessary for increasing cognition for self care safety. Without therapy patient at risk for further decline in safety.

Medical History Related to Diagnosis/Condition:

HTN, Dementia, Chronic Anemia, Acute Kidney Injury, CKD stage 3, Hx CVA, Hx of falls

Medications:

Patient has 4 current medications including Anti-Hypertensives medications with potential risk for cough, depression, fainting, GI disturbances, lethargy, and nausea. Possible impact on speech therapy progress includes no effect on ST.

Environmental Factors / Social Support:

Patient will be discharged with highest level of cognition attainable for self care and safety.

Prior Residence and Living Arrangement:

Patient lived at home alone with assist from niece periodically. Patient completed ADLs with modified independence. She transferred independently from bed to bed side toilet. She communicated without difficulty.

Previous Therapy:

ST from 9/6/12-9/26/12

Precautions:

Fall Risk, Non weight bearing R LE, Unrepaired fx of L LE, Confusion

Discharge Plans:

Patient wishes to return home with increasing assist for ADLs from family.

Initial Assessment

Functional Deficits	Prior Level	Current Level
Language, Expressive	minimal (mostly normal, self-monitor/corrects)	marked (expresses needs 50-74% of time, some cueing)
Language, Auditory Comprehension	minimal (81-90% ability; compensatory strategies needed or needs more time)	marked (31-50% ability; understands basics; may require repetition/rephrasing)
Cognition, Cognition	minimal (81-90% ability; minimal problems; distractible)	marked (31-50% ability; frequent direction required in several situations)
Cognition, Safety-Judgement	mild (71-80% ability; occasional direction needed, difficulty with memory)	moderate (51-70% ability; frequent direction required in occasional situations)

Underlying Impairments

Cognition, Executive Function marked (31-50% ability; frequent direction required in several situations)
--

Standardized Tests

BCRS: A Conversation- severe self care deficits and deficits in recall GDS Rating Scale- stage 6

Short Term Goal (s)	Current Level of Function	Goal	Goal Date
The patient demonstrates delayed recall of functional information presented verbally with visual aids assistance in a functional structured therapy setting requiring 50% verbal instruction/cues and displaying marked (31-50% ability; frequent direction required in several situations) impairment level.		The patient will demonstrate delayed recall of functional information presented verbally with visual aids assistance in a functional structured therapy setting given 10% verbal instruction/cues increasing to mild (71-80% ability; occasional direction needed, difficulty with memory) in order to increase communication competence.	03/14/2014
The patient demonstrates functional problem solving and safety awareness for daily living tasks requiring 50% verbal instruction/cues displaying marked (31-50% ability; frequent direction required in several situations) impairment level.		The patient will demonstrate functional problem solving and safety awareness for daily living tasks given 10% verbal instruction/cues increasing to mild (71-80% ability; occasional direction needed, difficulty with memory) impairment level in order to complete activities of daily living.	02/14/2014
The patient exhibits safety awareness for self care tasks with maximum assistance (76-99% assist).		The patient will improve safety awareness for self care tasks with minimal assistance (1-25% assist).	02/28/2014

Plan Of Care Change Log

PATIENT Butler, Virginia	ID	CERTIFICATION FROM 01/31/2014 TO 03/13/2014
---------------------------------	----	---

Section: History

Changed By: Stacy Garvin, ST (2120)

Changed Date: 01/31/2014 8:52PM

Prior Text: HTN, Dementia, Chronic Anemia, Acute Kidney Injury, CKD stage 3, Hx CVA

Discharge Summary-Physician/Mid-Level

Butler, Virginia -

* Final Report *

slid down and was unable to get up. Her hemoglobin today is 7.7 and was 8 at the time of discharge last week. The only new medication she states she was started on as an outpatient on Monday was Haloperidol for her dementia. The patient is being admitted for management of the fracture as described above.

Hospital Course:

The patient was admitted to the general medical floor and remained hemodynamically stable. She was transfused packed red blood cells in anticipation of surgery. However, she was seen by the orthopedics service and was deemed not to be appropriate for surgery because of the nature of her fracture. She developed acute renal injury with a maximum creatinine of 2.4, but this improved to 1.4 with IVF. Nursing home placement was sought for continued rehabilitation and she has been accepted to Unipac in Bamberg. She is to be non-weight bearing in the right leg but she is to continue to receive therapy for transfers. She will be reevaluated by Dr. Ajibade in 2 weeks.

Physical Examination on Discharge:

AF VSS

General: Alert, NAD

Respiratory: Lungs are clear to auscultation.

Cardiovascular: Normal rate, Regular rhythm, S1, S2, 2/6 systolic murmur at LLSB.

Gastrointestinal: Soft, Non-tender, Non-distended, Normal bowel sounds.

Musculoskeletal: Distal extremities NVI

Condition on discharge: Stable

Medications on discharge:

Fill New Prescriptions:

acetaminophen-oxycodone (Percocet 5/325 oral tablet) 2 tab Oral Every 6 hours as needed for pain

Continue These Medications:

amlodipine (amlodipine 10 mg oral tablet) 10 mg Oral Every day

haloperidol (haloperidol 10 mg oral tablet) 1 tab po bid

omeprazole (omeprazole 40 mg oral delayed release capsule) 40 mg Oral Every day

pravastatin (pravastatin 40 mg oral tablet) 40 mg Oral Once a day (at bedtime)

Diet: General

Activity: As per PT/OT

Follow-up: As per NH physician and with Dr. Ajibade in 2 weeks

Discharge time: 40 minutes

Printed by: Kendall, Brian W
Printed on: 01/31/2014 08:22 EST

Page 2 of 3
(Continued)

History and Physical

Butler, Virginia -

cc: S.N. Babar, M.D.

Result type: History and Physical
Result date: 26 January 2014 06:39 EST
Result status: Active
Result title: Hist and Phys
Performed by: Babar MD, Syed Nabil, MD on 25 January 2014 20:29 EST
Encounter info: 1000988836, RMC, Inpatient, 01/25/2014 -
Contributor system: SOFTMED

Printed by: Dooley, Melinda M
Printed on: 01/29/2014 11:53 EST

Page 4 of 4
(End of Report)

Exhibit 4

DEATH CERTIFICATION

STATE FILE NUMBER: 139-14-006406 AMENDED

DECEDENT'S NAME: VIRGINIA MIDDLETON RUTLER

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH:

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: COLLETON MEDICAL CENTER, WALTERBORO, SC 29488

PLACE OF DISPOSITION: BAMBERG MEMORY GARDEN

DISPOSITION LOCATION: BAMBERG, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 439 NORTH STREET, BAMBERG, BAMBERG COUNTY, SC, 29003

PLACE OF BIRTH: SOUTH CAROLINA

SEX: FEMALE

SOCIAL SECURITY NUMBER:

AGE: 91 YEARS

COUNTY OF DEATH: COLLETON

WALTERBORO, SC 29488

MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: CLYDE MIDDLETON

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: POLLY GLOVER

INFORMANT'S NAME: POLLY MCGILL

MAILING ADDRESS: 126 CREEKSIDE DRIVE, BAMBERG, SC, 29003

FUNERAL HOME: DASH FUNERAL HOME OF BAMBERG, 12409 HERITAGE HIGHWAY, BAMBERG, SC, 29003

FUNERAL DIRECTOR: FRANKLIN DASH

EMBALMER'S NAME: FRANKLIN DASH

ACTUAL OR PRESUMED DATE OF DEATH: FEBRUARY 17, 2014

ACTUAL OR PRESUMED TIME OF DEATH: 1600

CAUSE OF DEATH - PART I

RENAL FAILURE

HTN

DEMENTIA

RELATIONSHIP: NIECE

LICENSE NUMBER: 1552

LICENSE NUMBER: 1552

MANNER OF DEATH: NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? NO

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD MOHAMED MAHMOUD MIDANI

LICENSE NUMBER: 8484

CERTIFIER'S ADDRESS: NA

DATE FILED: MARCH 07, 2014

DATE OF ISSUANCE: MARCH 07, 2014

SPECIAL INSTRUCTIONS:

NA

SC03240469

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Guang Zhao
Guang Zhao
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 03/11/2012

ROA 91

Exhibit 5

FACE SHEET

UniHealth PAC - Bamberg

Page 1 of 1
4/16/15 2:34 PM
R16100A

VIRGINIA BUTLER
PO BOX 84
389 WEIMER ST.
BAMBERG, SC 29003

Res No.: -----
Loc: -----
Ph: -----
Sex: F

Admit Date: 9/06/12 6:00 pm Admitted From: 4
ReAdmitted: 1/31/14 2:00 pm Readmitted From: 4
Discharged: 2/14/14 8:30 am Discharged To: 02
Discharge Status: Return Not Anticipated
D.O.B.: ----- SSN: -----

MEDICAL INFORMATION

Med Record no: -----
Height: 66 in.
Admit Weight: lbs.
Primary Phys: MCALHANEY, DANETTE (803) 245-5168
450 NORTH ST.
BAMBERG, SC 29003
Alternate Phys: -----
Referring Phys: MCALHANEY, DANETTE (803) 245-5168
450 NORTH ST.
BAMBERG, SC 29003
QL Hospital stay: MEDICAL UNIV OF S.C-CHARL
From/Thru: 9/02/12 thru 9/06/12
Rehab Potential: -----

Allergies: -----

Admit Dx:
821.00 Fx Femur Nos-Closed
Discharge Dx:
Current Dx:
V15.88 Personal history of fall
821.00 Fx Femur Nos-Closed
728.87 Muscle weakness-general
781.2 Abnormality Of Gait
784.69 Symbolic Dysfunction Nec
593.9 Renal & Ureteral Dis Nos
285.29 Anemia-other, chronic dis
401.9 Hypertension Nos
443.9 Periph Vascular Dis Nos
438.9 Late Effect Cv Dis Nos

Admitted with: ☐ Catheter present ☐ Contractures ☐ Restraint Orders ☐ Pressure Sores (other than Stage 1)
☒ Received pneumococcal vaccine ☐ Received influenza immunization ☐ In facility

DEMOGRAPHICS

Marital Status: Widowed County: BAMBERG
Race: African American Primary Lang: English
Religion: Birthplace: -----
Occupation: -----
☒ U.S. Citizen ☐ Military Srv.

SERVICE PROVIDERS and PREFERENCES

BILLING INFORMATION

A/R Type: MRA CMG: RVB Resources: -----
Medicare #: Ancillary A/R Type: MRB
Medicaid #: + Ancillary Co-ins A/R Type: PXB
Ins 1: Grp: -----
Pol: -----
Ins 2: Grp: -----
Pol: -----
Recurring Room Chg: -----
☒ Adv Bill ☐ Resident is Self Responsible
TrustFund: ☐ Apply Interest ☒ Max Balance Reminder

Part D Plan: -----
Effective: ----- RxBIN: ----- RxPCN: -----
Cardholder ID: -----
Group No: ----- Issuer: -----

RESPONSIBLE PARTY

MARY ROBINSON

SECOND CONTACT

POLLY MCGILL

THIRD CONTACT

MARY BROXTON

Relationship: Niece
Phone: (Day) (803) 245-5998
(Eve)
(Cell)

Relationship: Niece
Phone: (Day) (803) 245-1071
(Eve)
(Cell)

Relationship: Niece
Phone: (Day) (803) 245-4582
(Eve)
(Cell)

ADDITIONAL INFORMATION

ARBITRATION AGREEMENT (Y OR N)

Y

Exhibit 6

STATE OF SOUTH CAROLINA

COUNTY OF BAMBURG

) IN THE COURT OF COMMON PLEAS

)

) SECOND JUDICIAL CIRCUIT

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virginia Butler, deceased,

Plaintiff,

vs.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,

Defendants.

) Civil Action No. 2015-CP-05-124

)

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**AFFIDAVIT OF BRANDON
RADFORD**

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)

Brandon Radford, after being first duly sworn, deposes and says as follows:

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

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

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

4. I have reviewed the admission records for Virginia Butler, the plaintiff's decedent in this matter.

5. Mary Robinson, as the representative of Ms. Butler, signed various documents that are part of the standard admission packet. These documents include an admission

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

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

7. A review of Ms. Butler's file indicates that the arbitration agreement has never been modified, amended, revoked, or rescinded.

8. Ms. Robinson, as the representative of Ms. Butler, signed various other documents as part of the standard admission packet, which agreed to provide additional services to Ms. Butler, set forth Ms. Butler's preferences while at UPAC-Bamberg, and acknowledged certain policies of the facility, among other things.

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

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

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

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

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

FURTHER AFFIANT SAYETH NOT.

Brandon Radford (L.S.)
Brandon Radford

7-7, 2015

SWORN TO AND SUBSCRIBED BEFORE ME.

this 7 day of July, 2015.

Mary A. Kinard (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/10/2022

Exhibit A

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State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 31st day of January, year 2014, by and between UniHealth PAC Bamberg (Healthcare Center),
VIRGINIA BUTLER (Patient/Resident)
and certain other undersigned parties.

I. Definitions:

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

II. The Healthcare Center agrees:

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

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

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

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

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

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

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THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: DANETTE F MCALHANEY
2. Alternate attending physician: DANETTE F MCALHANEY

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

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: _____

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

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

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center,

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

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing
- C. The basic monthly rate is currently \$ 7175. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/ Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further,

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

Agreement to Follow Through With Medicaid Application:

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

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

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

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

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

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

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

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

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

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

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

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VII. General Agreements:

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

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to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

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

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may have hereunder shall not constitute a waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

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

VIII. Miscellaneous Provisions

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

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

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ADMISSION AGREEMENT

ACKNOWLEDGMENT:

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

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER
Print Patient/Resident's Name

Patient/Resident's Signature

DEBORAH RUTLAND
Print Administrator's Name

Deborah Rutland
Administrator's Signature

MARY ROBINSON
Print Patient/Resident Representative's Name

X Mary Robinson
Patient/Resident Representative's Signature

UniHealth PAC Bamberg
Legal Name of Healthcare Center

Date

01/31/14

(Healthcare Center will maintain a copy for their records)

Exhibit B

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1D.02

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 31st day of January, 2014, by and between UniHealth PAC Bamberg (the "Healthcare Center") and VIRGINIA BUTLER and MARY ROBINSON ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

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

A. Scope of Agreement.

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

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

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

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

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

III. Governing Law, Severability

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

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

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

IV. Patient/Resident's Understanding of Agreement

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

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ARBITRATION AGREEMENT

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

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

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

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

II. Decision

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

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~~State of South Carolina~~
ARBITRATION AGREEMENT

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

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

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

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

Admission Packet-South Carolina Healthcare Centers

MR Initials —

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State of South Carolina
ARBITRATION AGREEMENT

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

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

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

VIRGINIA BUTLER

Print: Name of Patient/Resident

Signature of Patient/Resident

UniHealth PAC Bamberg

Print: Name of Healthcare Center

Signature of Healthcare Center's Authorized Agent

MARY ROBINSON

Signature of Patient/Resident Representative

CHRIS ARNOLD

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

01/31/14

MARY ROBINSON

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

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

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

Polly McGill and Mary Broxton, as Co-	)	Civil Action No. 2015-CP-05-124
Personal Representatives of the Estate of	)	
Virginia Butler, deceased,	)	

Plaintiff,

vs.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg,
LLC,

Defendants.

**DEFENDANT'S, PRUITT HEALTH-
BAMBERG, LLC'S NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant Pruitt Health-Bamberg, LLC ("Defendant") hereby moves this Court for reconsideration of its Order Denying Defendants' Motion to Compel Arbitration dated September 30, 2015, and filed October 5, 2015. Counsel for Defendants received notice of this Order via hand delivery from co-defendant's counsel in this case on October 13, 2015. Accordingly, this motion is timely pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

In the interest of judicial economy, the Defendant will not repeat the facts, as the Court is aware of them. Additionally, the Defendant incorporates verbatim, as if repeated herein, the prior Memorandum submitted in support of its position in favor of arbitration.

The Court's Order in this case addresses two issues raised by Plaintiff in opposition to Defendant's, Pruitt Health-Bamberg, LLC's Motion to Compel Arbitration – merger under the Adult Healthcare Consent Act and Estoppel.

I. The Court erred in holding that the arbitration agreement was not part of the admissions agreement and, therefore, binding.

In its Order, the Court held “that the common law doctrine of merger rule does not apply because the parties clearly expressed their intent that the documents were to be considered separate and independent agreements.” In support of this, the Court relied on the fact that the arbitration agreement “identifies itself as a ‘voluntary agreement’ and that the arbitration agreement has a thirty day revocability clause. Further, the Court held that there can be no merger because the documents were not executed at same time, by the same parties, and for the same purpose.

In holding that there was no merger, the Court relied on the South Carolina Supreme Court decision Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014). The arbitration agreement in that decision, however, where the court held there was no merger between the arbitration agreement and the admissions agreement, was not the same as the arbitration agreement in the instant case. In Coleman, the anti-merger clause noted by the Supreme Court read:

This Agreement, including all Exhibits hereto, *and the Arbitration Agreement* between the Facility and the Resident, if the parties sign one, supersede all other agreements, either oral or in writing between the parties, and contain all of the promises and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, or promises have been made by any party or anyone acting on behalf of any party, that are not contained in this Agreement *or in the Arbitration Agreement*.

407 S.C. at 355, 755 S.E.2d at 455 (emphasis added). As the Coleman court held, “[o]n its face, *this clause* recognizes the ‘separatedness’ of the AA and the admission agreement, not a merger of the two contract.” Id. (emphasis added). This was the primary basis for the Supreme Court’s holding that there was no merger in Coleman. Yet this language is absent from the instant case. Instead, the admission and arbitration agreement in the instant case contain language of *inclusion*, including the statement that the agreement includes *all exhibits thereto*. See Exhibit 1, p. 9,

Defendant's, Pruitt Health-Bamberg, LLC's, Memorandum in Support of Motion to Dismiss and Compel Arbitration (hereinafter "Exhibit 1").¹ Moreover, the arbitration agreement itself denotes at the bottom of each page that it is part of the "Admission Packet – South Carolina Healthcare Centers." Exhibit 2, Defendant's, Pruitt Health-Bamberg, LLC's, Memorandum in Support of Motion to Dismiss and Compel Arbitration (hereinafter "Exhibit 2").² This same language is present at the bottom of each page of the admission agreement. Exhibit 1.

The Court held that in spite of this inclusionary language in the admissions and arbitration agreements, and a lack of exclusionary language like that relied upon by the South Carolina Supreme Court in Coleman, the merger doctrine does not apply because the arbitration agreement was "voluntary" and included a 30 day revocability period. The voluntariness of the arbitration agreement fails to distinguish it in any meaningful way from the admissions agreement. Defendant concedes that the agreement is voluntary, as the entire admissions agreement for admission to the Pruitt-Health Bamberg facility was voluntary. Similarly, a patient being admitted to the facility is able to make a number of elections regarding his/her care at the facility as part of their admissions paperwork. See, e.g., Exhibit 1, p. 3 (indicating doctor and pharmacy choices of patient); Exhibit 3³ (additional choices and acknowledgements with regard to care at the facility). This is no different from the ability of the patient to opt in or out of arbitration as part of the admissions agreements.

Similarly, the admissions agreement expressly includes the right of the facility and the patient/patient's representative to modify the terms of the agreement. This can be done by the consent of the parties, and the patient/representative also maintains the ability to reject within thirty

¹ This exhibit has been previously provided to the Court.

² This exhibit has been previously provided to the Court.

³ Attached hereto.

(30) days any changes to the admissions agreement offered by the facility. Exhibit 1, p. 9. In fact, this thirty (30) day time period for changes to the agreement is utilized throughout the admission agreement. Exhibit 1. Thus, nothing about the voluntariness of the arbitration agreement or the thirty (30) day time period for this decision sets it apart or distinguishes it from the remaining provisions of the admissions packet.

The Court also found that there could be no merger because the documents were not executed "at the same time, by the same parties, for the same purpose." Klutts Resort Realty, Inc. v. Down Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977). The Court does address whether the agreements were executed at the same time. However, it appears clear from the face of these documents that both were executed on January 31, 2014. Exhibits 1; 2. Thus, this element is met.

The Court found that the agreements were not between the same parties. This finding is error. While the Court held that the admission agreement was only between Ms. Butler and the Defendant, while the arbitration agreement was between Ms. Butler, the Defendant, and Ms. Robinson, this conclusion is not borne out by the language of the contracts. On the first page, the admission agreement states that it is "made and entered into this 31st day of January, year 2014, by and between UniHealth PAC Bamberg (Healthcare Center), Virginia Butler (Patient/Resident), *and certain other undersigned parties.*" Exhibit 1, p. 1 (emphasis added). The agreement goes on to make it clear that these undersigned parties are the patient's representative(s) who sign the agreement. See Exhibit 1, p. 2-3 (setting forth the responsibilities of the patient and/or her representative). Ms. Robinson signed this agreement and, therefore, is bound by the agreement. Thus, both agreements involve the same parties.

While the Court found that the agreements are not for the same purpose, this holding cannot stand under Coleman. In examining the arbitration agreement in Coleman, the Supreme Court explicitly held that the arbitration agreement and admissions agreement in that case “were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction.” 407 S.C. at 355, 755 S.E.2d at 455. See also McCutcheon v. THI of S.C. at Charleston, LLC, 2011 WL 6318575 at * 3 (D.S.C. Dec. 15, 2011) (holding that “the Arbitration Agreement and Admissions Agreement, while separate documents, while separate documents, were executed by the same parties, at the same time, and regarding the same transaction; therefore, they constitute the entire agreement between the parties”) (citing Klutts, 268 S.C. 80 232 S.E.2d 20). There is nothing in this case that distinguishes the purpose of the arbitration agreement at issue from the one at issue in Coleman. Therefore, the Court is bound by the decision in Coleman with regard to the purpose of the arbitration agreement, and any holding to the contrary is error.

II. The Court erred in holding that the Plaintiffs are not equitably estopped from denying validity of the arbitration agreement

The Court also held that the Plaintiff could not be equitably estopped from denying the validity of the arbitration agreement. The Court held that Defendants cannot establish equitable estoppel because it cannot show false representation and reliance by the Defendant. This is error.

In the instant case, Ms. Robinson, acting through Ms. Butler has her representative, represented to the Defendant that Ms. Butler was authorized to sign agreements on behalf of Ms. Robinson. She signed all the admissions paperwork as a representative of Ms. Butler, who was the third-party beneficiary of the contracts at issue. See, e.g., Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (“A third-party beneficiary is a party that the contracting parties intend to directly benefit.”). Additionally, she specifically represented through these signatures that she was authorized to sign the agreement on behalf of Ms. Butler. See Exhibit

2, p. 2 (“If this Agreement is signed by the Patient’s/Resident’s representative, that individual represents that he or she is authorized [to sign the agreement]”).

Nothing in the South Carolina case law suggests that a nursing home is required to verify and authenticate legal documents appointing guardians or attorneys-in-fact prior to admission. The failure to do so does not constitute a lack of reasonable diligence on the part of the nursing home, especially where the representative has made specific representations to the contrary to the nursing home. Further, a nonsignatory can be bound by an arbitration provision within a contract executed by other parties. Pearson v. Hilton Head Hosp., 400 S.C. 281, 288-89, 733 S.E.2d 597, 600-01 (Ct. App. 2012) (“Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties.”) (citing Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416-17 (4th Cir. 2000)). Instead, the concept of “[e]quitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” Int’l Paper, 206 F.3d at 417-18 (citation and internal quotation marks omitted).

In fact, trial courts in South Carolina continue to enforce arbitration agreements signed by representative family members on the basis of estoppel and third-party beneficiary doctrines. See THI of S.C. at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. Sept. 13, 2011) (rejecting argument that family member did not have authority to bind resident to arbitration under concepts of equitable estoppel and third-party beneficiary doctrine); THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2015 WL 1268185 at *2 (D.S.C. Mar. 19, 2015); McCutcheon v. THI of S.C. at Charleston, LLC, 2011 WL 6318575 (D.S.C. Dec. 15, 2011) (holding that personal representative was bound under doctrines of equitable estoppel and third-party beneficiary). In Gilbert, the court

explicitly rejected the defendant's claim that the Coleman decision operates to prohibit an agreement from binding a personal representative of the estate of a nursing home patient under common law principles of third-party beneficiary doctrine and equitable estoppel. Id. As the Gilbert court held, "Coleman's 'rejection' of an estoppel argument" based on the explicit separateness of the arbitration agreement and admissions agreement in that case does not prevent "the benefits of admission [from] operat[ing] to stop the defendant from rejecting arbitration now." Id. at *2.⁴ Thus, the Court should reconsider its denial of the Defendant's Motion to Compel Arbitration.

III. The arbitration agreement is enforceable under the FAA

The Court's Order did not explicitly rule on whether the arbitration agreement itself was valid and enforceable under the Federal Arbitration Act (FAA). Under the FAA, a party seeking arbitration must only show two things in order to compel arbitration: (1) that a written agreement to arbitrate exists, and (2) that the written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2 (2006).

The claims in this case fall within the scope of the arbitration agreement. The plaintiff's Complaint alleges negligent acts or omissions in the care of Ms. Adams, which ultimately resulted her hospitalization and death. (See Complaint). The arbitration agreement signed by Ms. Robinson as Ms. Butler's agent covers all claims related to the patient's stay at the Defendant's facility. Exhibit 2, p. 1. Further, as the South Carolina Supreme Court has recently held, nursing home residency agreements such as this one "implicate interstate commerce and, thus, the FAA." Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). Just as in Dean, the residency agreement in the instant case requires that meals and medical

⁴ Although it is unclear in the Order, the Court suggests that the wrongful death beneficiaries of the decedent cannot be equitably estopped from opposing arbitration based on extrajurisdictional case law. However, the South Carolina

supplies be provided to the resident. (Exhibit 4, Affidavit of Brandon Radford). These meals and medical supplies are provided by out-of-state vendors and shipped across state lines. Id. Therefore, the agreement at issue involves interstate commerce and is enforceable under the FAA.

IV. Ms. Butler's wrongful death beneficiaries may be bound by the arbitration agreement

Although it is unclear in the Order, the Court suggests in a footnote that the wrongful death beneficiaries of the decedent cannot be equitably estopped from opposing arbitration based on extrajurisdictional case law. However, this case law is contrary to the South Carolina Supreme Court's decision in Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014). In Dean, the supreme court stated that "that courts may not refuse to compel arbitration simply because a wrongful death claim is involved." 408 S.C. at 378, 759 S.E.2d at 731, n.3 (citing Marmet Heath Care Ctr., Inc. v. Brown, ___ U.S. ___, 132 S.Ct. 1201, 1203-04, 182 L.Ed.2d 42 (2012)). See also S.C. Code Ann. § 62-3-703 ("a personal representative of a decedent domiciled in this State at his death has the same standing to sue and be sued in the courts of this State . . . as his decedent had immediately prior to his death"); THI of S.C. at Magnolia Manor-Inman, LLC v. Gilbert, 2014 WL 6863550 at *3 (D.S.C. Oct. 31, 2014) (holding that personal representative in survival/wrongful death action was bound by arbitration agreement signed during nursing home admission). Dean involved a claim similar to the one in the instant case, discussing enforcement of a nursing home arbitration agreement. Thus, to the extent the Court's Order holds to the contrary, this portion of the Order should be reconsidered based on controlling supreme court precedent.

Conclusion

For the reasons set forth herein, the Court erred in concluding that the Arbitration Agreement was not binding on the decedent or her heirs. The Defendant respectfully requests the

Court to reconsider its prior Order, withdraw it, and find that Plaintiff's lawsuit should be dismissed or stayed pending arbitration.

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

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

Attorneys for Defendant Pruitt Health-Bamberg, LLC d/b/a
Unihealth Post-Acute Care of Bamberg, LLC

Columbia, South Carolina

Oct 23, 2015

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

Patient/Resident Name: VIRGINIA BUTLER

Patient/Resident Social Security Number: _____

I understand that UniHealth PAC Bamberg (healthcare center/agency name) is part of a corporation which may share my health information for treatment, billing and healthcare operations. I have been given a copy of the organization's Notice of Privacy Practices that describes how my health information is used and shared. I understand that the corporation has the right to change this notice at any time. I may obtain a current copy by contacting this healthcare center/agency at (803)245-7525 (healthcare center/agency telephone number) or by contacting the Corporate Privacy Officer by calling 1-800-222-0321.

For Healthcare Center/Agency Use Only:

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

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

PATIENT/RESIDENT/REPRESENTATIVE:VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's SignatureMARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's SignatureCHRIS ARNOLD

Print Healthcare Center/Agency Representative's Name

Chris H. Arnold
Healthcare Center/Agency Representative's SignatureUniHealth PAC Bamberg

Legal Name of Healthcare Center/Agency

Date01/31/14

**PNEUMOCOCCAL VACCINE
CONSENT / REFUSAL**

It is the policy of UniHealth PAC Bamberg (healthcare center) that a one time Pneumococcal Vaccine be given to each patient/resident who resides in this healthcare center unless contraindicated by the physician or refused by the patient/resident or family.

Permission to receive the vaccine will be obtained on admission. A one-time order for the vaccine will be obtained from the physician upon admission to the healthcare center.

CONSENT

Had IN 2013

1 I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do wish to receive the Pneumococcal Vaccine.

REFUSAL

✓ I have been informed of this policy and the side effects, benefits and risks* of the vaccine. I do not wish to receive the Pneumococcal Vaccine.

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD

Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg

Legal Name of Healthcare Center

Date

01/31/14

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

**ANNUAL INFLUENZA (FLU) VACCINE
CONSENT / REFUSAL**

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

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

CONSENT

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

REFUSAL

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

Had IN Oct. 2013

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON

Print Patient/Resident Representative's Name

X Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD

Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg

Legal Name of Healthcare Center

Date

01/31/14

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

BUTLER-00487

PATIENT/RESIDENT OR AUTHORIZED PERSON
ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM

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

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

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

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

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's SignatureMARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's SignatureCHRIS ARNOLD

Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's SignatureUniHealth PAC Bamberg

Legal Name of Healthcare Center

Date01/31/14

BUTLER-00489

**ACKNOWLEDGMENT
OF TRANSFER/LIFT PROGRAM**

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

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

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

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

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

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD

Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg

Legal Name of Healthcare Center

Date

01/31/14

ADVANCE DIRECTIVE

Healthcare Center: UniHealth PAC Bamberg

Patient/Resident Name: VIRGINIA BUTLER

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

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

Please check one of the following statements:

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

PATIENT/RESIDENT/REPRESENTATIVE:

VIRGINIA BUTLER

Print Patient/Resident's Name

Patient/Resident's Signature

MARY ROBINSON

Print Patient/Resident Representative's Name

Mary Robinson
Patient/Resident Representative's Signature

CHRIS ARNOLD

Print Healthcare Center Representative's Name

Chris D. Arnold
Healthcare Center Representative's Signature

UniHealth PAC Bamberg

Legal Name of Healthcare Center

01/21/14
Date

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

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124

RECEIVED
DEC 04 2015
SC Court of Appeals

Polly McGill, as Personal Representative of
the Estate of Virginia Butler, deceased Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC,

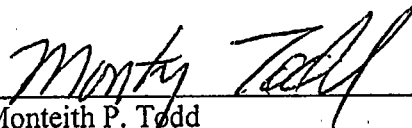
Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC is Appellant.

NOTICE OF APPEAL

Pruitt Health-Bamberg, LLC d/b/a UniHealth Post Acute Care of Bamberg, LLC, appeals
the Order Denying Defendant Pruitt Health-Bamberg, LLC's Motion to Dismiss and Compel
Arbitration of the Honorable G. Thomas Cooper, Jr., dated September 30, 2015, and the Order
Denying Defendant Pruitt Health-Bamberg, LLC's Motion for Reconsideration of the Honorable
G. Thomas Cooper, Jr., dated November 4, 2015. Appellant received written notice of entry of
Judge Cooper's Order Denying Defendant Pruitt-Health Bamberg's Motion for Reconsideration on
November 11, 2015.

SOWELL GRAY STEPP & LAFFITTE, LLC

December 4, 2015



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d/b/a The Regional Medical Center*

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virginia Butler, deceased

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and
Pruitt Health-Bamberg, LLC d/b/a
Uni-Health Post-Acute Care of Bamberg,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

RECEIVED

DEC 04 2015

SC Court of Appeals
ORDERFILED
BAMBERG COUNTY
CLERK OF COURT
2015 OCT -5 AM 9:52

This matter comes before the Court on Defendant Pruitt Health-Bamberg, LLC's Motion to Dismiss and to Compel Arbitration. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on September 9, 2015, the Court **DENIES** Defendant's motion.

BACKGROUND

Virginia Butler was a resident at Defendant's Bamberg nursing home in January-February 2014. As all times relevant to this action, Ms. Butler's medical records indicated that she suffered from dementia. Ms. Butler was transferred to Defendant's facility from The Regional Medical Center where she had received treatment for a broken leg suffered in a fall. While at Defendants' facility, Ms. Butler had pressure ulcers that progressed to stage 4. Ms. Butler's pressure ulcers became infected and she died a few weeks later. Plaintiffs' Complaint alleges that Defendant breached its duty in caring for Ms. Butler's pressure ulcers.

When Ms. Butler arrived at the nursing home, Defendant's staff approached Ms. Butler's family members with several documents. Mary Robinson, Ms. Butler's niece, was approached by a representative from Defendant while Ms. Robinson was at work. M. Robinson Aff. ¶ 4. Ms. Robinson was not Ms. Butler's guardian, conservator, or attorney in fact. M. Robinson Aff. ¶ 5. The documents included an Admission Agreement and a separate Arbitration Agreement. By its terms, "the signing of th[e] [Arbitration] Agreement [was] not a precondition to admission, expedited admission, or the furnishing of services" to Ms. Butler. Arbitration Agreement at 5. The Arbitration Agreement granted the resident 30 days to revoke its terms without affecting the resident's admission at the home. *Id.* Following Ms. Butler's death, Plaintiffs filed the current action in the Bamberg County Court of Common Pleas on June 11, 2015. On July 10, 2015, Defendant filed a Motion to Dismiss and Compel Arbitration.

ANALYSIS

Defendant presents two arguments in support of its motion. First, Defendant argues that Plaintiffs must arbitrate their claims because Ms. Robinson was authorized to enter the Arbitration Agreement by the Adult Health Care Consent Act (S.C. Code Ann. §§ 44-66-10 to -80) ("the Act"). Second, Defendant asserts the contract defense of equitable estoppel and argues Plaintiffs are equitably estopped from denying enforcement of the Arbitration Agreement. However, neither argument is supported by South Carolina law. The Act only applies to "health care decisions" and not to independent agreements regarding resolution of legal claims. Equitable estoppel does not apply in this case because Defendant has failed to meet its burden of proving all required elements of the doctrine as identified in earlier South Carolina Supreme Court precedent.



A. Adult Health Care Consent Act

The Act's primary purpose is to identify and authorize individuals to make "decisions concerning . . . health care" on behalf of a person "unable to consent." S.C. Code Ann. § 44-66-

30(A). The Act intends "to insure that the patient's wishes concerning her medical treatment are honored whenever possible." Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 353, 755 S.E.2d 450, 454 (2014) (emphasis added). The Act establishes the order of priority for those individuals authorized to make health care decisions. The first level of decision-making priority, pursuant to the Act, is granted to a legally-appointed guardian and an attorney-in-fact empowered pursuant to a duly executed durable power of attorney. S.C. Code Ann. § 44-66-30(A). An incapacitated individual's adult children and extended family members are further down in priority. Id.

The Act expressly limits the decision-making power of any individual to only "health care" decisions. S.C. Code Ann. § 44-66-30(A). "Health care" is defined in the Act and the South Carolina Supreme Court recently construed the definition to limit an individual's decision-making authority to: (1) "provision or withholding of medical care including placement in a facility which provides such care;" and (2) "certain financial decisions . . . to pay for services rendered." Coleman, 407 S.C. at 352, 755 S.E.2d at 453. An individual's power under the Act applies "primarily to traditional health care decisions" and only "secondarily" to financial matters related to those decisions. Id. at 353, 755 S.E.2d at 454.

The Act grants only limited decision-making power related to nursing home admission. An individual authorized by the Act may enter an agreement to admit a resident to a nursing home and may enter a contract agreeing to pay for nursing home services. Coleman, 407 S.C. at 353-54, 755 S.E.2d at 454. A potential resident or her family are typically presented with



multiple contracts and other documents when the family contemplates admitting their loved one to a nursing home. Coleman demonstrates that the Act does not apply to all documents associated with nursing home admission. Specifically, the Act does not apply if a document "was not required for [the resident's] admission, contained no provision for medical, nursing, or health care services to be provided for [the resident], and did not require any financial commitment to pay for such services." Id. at 353, 755 S.E.2d at 454.

Based on the Coleman standard, the Act does not apply to the Arbitration Agreement. Plaintiffs do not contest that Ms. Butler meets the Act's definition of a patient that is "unable to consent" and does not contest whether Ms. Robinson fits within the category of individuals identified in the Act as authorized to make "health care" decisions on Ms. Butler's behalf. Instead, Plaintiffs argue that Ms. Robinson was not authorized by the Act to enter the Arbitration Agreement because the Arbitration Agreement does not involve "health care" decisions. The Court agrees the Arbitration Agreement does not contain any provision for medical, nursing, or health care services. The bolded and underlined language in Section 1 of the Arbitration Agreement indicates that its provisions are intended only for dispute resolution. Arbitration Agreement at 1. The Arbitration Agreement also does not contain any provisions relating to payment for medical, nursing, or health care services. Only the scope of arbitrable disputes and procedures for an arbitration hearing are included in the Arbitration Agreement.

Despite its focus on dispute resolution, Defendant argues that the Arbitration Agreement is still governed by the Act's provisions because it merged with the Admission Agreement, a "health care" contract signed at the same time as the Arbitration Agreement. Coleman acknowledged a common law merger rule. 407 S.C. at 355, 755 S.E.2d at 455 (quoting Kluttz Resort Realty, Inc. v. Down'Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977)).



However, there are several express limitations on the merger rule's operation. First, the rule only applies "where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction." Id. Second, the rule may be displaced by the parties' contrary intentions as expressed in the contract. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Third, in determining whether the rule applies and in determining whether the parties expressed a contrary intent, all ambiguities in the Arbitration Agreement must be construed against Defendant since it was the sole drafter of all contracts presented to Ms. Butler's family before her admission to Defendant's facility. Id. at 355-56, 755 S.E.2d at 455 (citing Davis v. KB Home of S.C., Inc., 394 S.C. 116, 713 S.E.2d 799 n. 4 (Ct. App. 2011)).

After reviewing the parties' memoranda along with the Arbitration Agreement and Admission Agreement, the Court finds that the common law merger rule does not apply because the parties clearly expressed their intent that the documents were to be considered separate and independent agreements.¹ The Arbitration Agreement identifies itself as a "voluntary agreement," indicating that a resident's potential admission to Defendant's facility was not dependent on any agreement to arbitrate. That notion was explicitly reaffirmed later in the Arbitration Agreement where Defendant drafted language indicating that "The signing of this Agreement is not a precondition to admission, expedited admission, or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5. Additionally, the

¹ Defendant argues that the Court should not rely on the separate and independent nature of the Arbitration Agreement largely for policy reasons. Defendant argues that applying merger to separate and independent arbitration agreements is advisable because, without merger, nursing home providers have an incentive to relocate arbitration provisions from a separate document to their admission agreements where they are less likely to be noticed or seriously considered by a resident or her representative. See Coleman, 407 S.C. at 358, 755 S.E.2d at 456-57 (Toal, C.J., dissenting). With full respect for the Chief Justice's dissent, the four-justice majority in Coleman found that, under Klutts, separate and independent agreements overcome the common law merger rule. Coleman, 407 S.C. at 355, 755 S.E.2d at 455. Pursuant to *stare decisis*, this Court is bound by the opinion of the Court in Coleman and not by its dissent.

Arbitration Agreement includes a 30 day revocability period in which a resident could choose to repudiate the Arbitration Agreement without any effect on the Admission Agreement or admission to Defendant's facility. Id. Coleman identified a 30 day revocability clause in an arbitration agreement as "evidencing an intention that each contract remain separate." Id. at 355, 755 S.E.2d at 455.

Defendant attempts to distinguish Coleman by arguing the 30 day revocability clause was not essential to Coleman's holding but offers the Court nothing from the Supreme Court's opinion to support this conclusion. Coleman found that the clause "evidenc[ed] an intent that each contract remain separate." Id. There is no indication that this clause alone is insufficient to overcome the common law merger rule. Under the plain language of Klutts, the merger rule is rebutted by "anything indicating a contrary intention." Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24 (emphasis added). The Court is also not persuaded by Defendant's argument that the revocability period should not be considered on the merger question because Plaintiffs did not exercise it. Coleman and Klutts considered the parties' intent based solely on the language used in the agreements and not based on any post-formation conduct. See also Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 501 (Ct. App. 2007) (finding contract parties' intention must be "derived from the language of the contract" and, in the absence of ambiguity, the contract language "alone determines the document's force and effect").

Additionally, the evidence does not demonstrate that the Arbitration Agreement and Admission Agreement meet Klutts' baseline requirements for merger. Merger can only potentially apply where two or more contracts are executed at the "same time, by the same parties, for the same purpose." Klutts Resort Realty, Inc., 268 S.C. at 88, 232 S.E.2d at 24. The

GT 6

Admission Agreement and Arbitration Agreement are not between the same parties. The Admission Agreement names Defendant and Ms. Butler as parties while the Arbitration Agreement names Defendant, Ms. Butler, and Ms. Robinson as parties. Admission Agreement at 1; Arbitration Agreement at 1. While Defendant claims the agreements were executed for the same purpose, that conclusion is not supported by the contract language. Defendant argues that both contracts were executed for Ms. Butler's "admission and care at the facility." Def.'s Mem. in Supp. of Mot. to Dismiss at 8. However, the Arbitration Agreement was not executed for Ms. Butler's admission because, as is clear from the Arbitration Agreement itself, that agreement "is not a precondition to admission . . . or the furnishing of services to the Patient/Resident by the Healthcare Center." Arbitration Agreement at 5.

In sum, there is evidence that the parties intended that the Arbitration Agreement was not to merge with the Admission Agreement even though there was not an explicit anti-merger clause. The Arbitration Agreement was "voluntary," was explicitly intended to be independent of Defendant's decision to admit a resident to its facility, and could be revoked at the resident's option for 30 days without effect on admission. This evidence indicates the parties' anti-merger intent. Plus, the evidence does not demonstrate that the two agreements were executed by the same parties for the same purpose. For all these reasons, Defendant's motion is denied.

B. Equitable estoppel

Defendant also argues that Ms. Butler and Plaintiffs² are equitably estopped from denying enforcement of the Arbitration Agreement Ms. Robinson signed at the time of Ms.

² Defendant asks the Court to find that Ms. Butler's wrongful death beneficiaries are equitably estopped from opposing arbitration even though they did not participate in Ms. Butler's nursing home admission and were not even ascertainable until Ms. Butler's death. See Jones v. Leagan, 384 S.C. 1, 16, 681 S.E.2d 6, 14 (Ct. App. 2009). Several courts have found Defendant's position untenable. Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (en banc); Bybee v.

Butler's admission. Equitable estoppel is a contract defense and the party asserting this defense bears the burden of proving all of its elements." Kelly v. Logan, Jolley & Smith, 388 S.C. 626,

638, 682 S.E.2d 1, 7 (Ct. App. 2009). Equitable estoppel requires proof that the party to be

estopped (1) acted in a way amounting to a false representation; (2) intended that such conduct

be acted on by the other party; and (3) had actual or constructive knowledge of the real facts.

Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007). The party asserting

estoppel must (1) lack knowledge and the means of knowledge of the truth of the facts in

question; (2) rely on the conduct of the party estopped; and (3) make a prejudicial change in

position in reliance on conduct of the party to be estopped. Id.

Defendant has not met its burden to establish these elements. There is no evidence Ms. Butler acted in a way amounting to a false representation to Defendant regarding Ms. Robinson's status or that Ms. Butler intended for Defendant to act in reliance on her conduct. Ms. Butler's diminished mental capacity prevented her from forming the required intent for Defendant to rely on her conduct. Additionally, the evidence shows Defendant cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendant to show it did not know Ms. Robinson lacked authority to sign the arbitration agreement on her aunt's behalf and Defendant lacked the ability to make this determination. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. See Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn, 348 S.C. 58, 70-71, 558 S.E.2d 902, 908-09 (Ct. App. 2001).

Abdulla, 189 P.3d 40, 43 (Utah 2003) ("a decedent does not have the power to contract away the wrongful death action of his heirs").



In this case, Defendant had the capacity to determine whether Ms. Robinson had authority to sign an arbitration agreement on Ms. Butler's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendant is familiar with the legal concepts of guardianship and powers-of-attorney. Defendant had the ability to ask Ms. Robinson whether she was Ms. Butler's guardian or attorney-in-fact and had the ability to request supporting documentation. Since Defendant has not cited or provided evidence on all required elements of equitable estoppel, its Motion is DENIED.

IT IS SO ORDERED.


Hon. G. Thomas Cooper, Jr.
Circuit Court Judge

COLUMBIA, South Carolina
SEPTEMBER 30, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

Polly McGill and Mary Broxton, as Co-
Personal Representatives of the Estate of
Virginia Butler, deceased

Plaintiffs,

v.

The Regional Medical Center Foundation
d/b/a The Regional Medical Center and Pruitt
Health-Bamberg, LLC d/b/a Uni-Health Post
Acute Care of Bamberg, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-05-00124

ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER

2015-10-9 AM 11:15

This matter comes before the Court by way of Defendant Pruitt Health-Bamberg, LLC's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Defendant asks this Court to reconsider its Order Denying Defendant's Motion to Compel Arbitration filed October 5, 2015.

After careful consideration of the record in this case and the submissions of the parties, this Court has decided to abandon Footnote 2 of its Order. In reviewing the remainder of its Order, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRPC, to Reconsider this Court's Order filed October 27, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
November 4, 2015


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

1 State of South Carolina) In the Court
2 County of Bamberg) Of Common Pleas
3
4 Docket No. 2015-CP-05-00124
5
6 Polly McGill and Mary Broxton,)
7 as Co-Personal Representatives of the)
8 Estate of Virginia Butler, deceased,)
9 Plaintiffs,)
10 vs.) Transcript of Record
11 The Regional Medical Center)
12 Foundation d/b/a The Regional Medical)
13 Center and Pruitt-Health-Bamberg, LLC)
14 d/b/a UniHealth Post-Acute Care of)
15 Bamberg, LLC)
16 Defendants.)

17
18 September 5, 2015
19 Bamberg, South Carolina
20

21 B E F O R E:

22 The Honorable G. Thomas Cooper, Jr., Judge.
23

24 A P P E A R A N C E S:

25 Monteith P. Todd, Esquire
Attorney for the Plaintiffs

W. Jones Andrews, Jr., Esquire
Michael Tanner, Esquire
Attorneys for the Defendants

Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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13	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. Mr. Todd.

2 MR. TODD: May it please the Court, Your Honor,
3 Monty Todd, I represent Pruitt-Bamberg. We -- I filed a
4 motion to compel arbitration on behalf of Pruitt-Bamberg.

5 This is a case that has been filed by the
6 plaintiff. It's a wrongful death survival case. The
7 plaintiff, decedent, is Ms. Virginia Butler. She was 92
8 years old, suffered a fall, was admitted to Orangeburg
9 Regional Medical Center, diagnosed with a fractured hip,
10 and was treated and was placed in an immobilizer. And then
11 on January 31st, 2014, after about -- several weeks in
12 Orangeburg, a week or two, was transferred to
13 Pruitt-Bamberg, who is my client.

14 When she was admitted, she suffered from dementia.
15 I don't think there's an issue about her being demented,
16 but if there is, I've got some additional documents that I
17 can support. But anyway --

18 MR. ANDREWS: Your Honor, for the record, we are
19 not disputing she was demented.

20 MR. TODD: Her niece -- Ms. Butler was a widow.
21 She had no children. Her next of kin were her niece. One
22 of her nieces signed the admission agreement, the
23 arbitration agreement, and she was -- Ms. Butler was
24 admitted to Pruitt-Bamberg. She passed away about
25 two-and-a-half weeks later from multiple medical

1 conditions. The allegations in the complaint against
2 Orangeburg is the failure to prevent pressure sores. The
3 allegations against my client is the failure to prevent the
4 progression of pressure sores, as indicated. We're here on
5 a motion to compel arbitration. The -- and I think the
6 issue in the case, just to get to the -- sort of the meat
7 of the case, is there was an arbitration agreement. The
8 arbitration agreement would cover this lawsuit and I think
9 that the issue that will be decided is did the niece,
10 Ms. Broxton, have the authority to execute the arbitration
11 agreement on behalf of her aunt.

12 The answer to that question is she did under the
13 Healthcare Consent Act since she was the next of kin. She
14 was familiar with Ms. Butler and she signed the arbitration
15 agreement and the admission agreement.

16 The plaintiff, I believe, is -- and I can
17 anticipate his argument, but he's relying on the Coleman
18 case and the difference in the Coleman case and this case
19 is that in this case, the contracts merged. In the Coleman
20 case, there was an antimerger clause and so the Court made
21 a distinction in Coleman because of the failure of the
22 admission agreement and the arbitration agreement to merge.

23 The other thing and -- is that -- so she did have
24 the authority to execute the arbitration agreement. It's a
25 binding arbitration agreement and it should be applied.

1 The other argument that we made is estoppel and
2 is -- I think -- I handed Mr. Andrews a copy of the order,
3 the Dean case which was remanded back to you. I don't know
4 if you want it, but I can provide it to you, where you
5 address --

6 THE COURT: Wasn't that just last month?

7 MR. TODD: Well, you address these very issues.

8 MR. ANDREWS: Mr. Andrews?

9 MR. ANDREWS: Yes, Your Honor, I know you've been
10 down this road. I'll try to point out a few differences
11 between that argument, your order, and this case.

12 First of all, with regard to the parties, if you
13 look at the admission agreement, the only party on the
14 admission agreement would be Ms. Butler.

15 THE COURT: Well --

16 MR. TODD: And that --

17 THE COURT: Just, let me --

18 MR. TODD: Yes, sir.

19 THE COURT: Are these in your packet, Mr. Todd?

20 MR. ANDREWS: They're in Mr. Todd's packet.

21 THE COURT: All right. I've got the admission
22 agreement.

23 MR. ANDREWS: The admission agreement is between
24 UniHealth, PAC Bamberg and Virginia Butler.

25 THE COURT: All right.

1 MR. ANDREWS: As far as -- that's -- excuse me the
2 arbitration agreement -- excuse me, admission. If you go
3 to arbitration, the parties are different. You've got
4 Virginia Butler and then they tried to add -- then they
5 added Mary Broxton. So you've got different parties in the
6 agreement.

7 THE COURT: All right. Hold on, let me find that.
8 The agreement is 18 pages.

9 MR. ANDREWS: I've got --

10 THE COURT: I've got the arbitration agreement.

11 MR. ANDREWS: Okay sir. The arbitration agreement
12 says UniHealth, PAC Bamberg, Virginia Butler and Mary
13 Broxton --

14 THE COURT: And Mary Broxton.

15 MR. ANDREWS: Yes, sir.

16 If you look at the admissions agreement, it's just
17 Virginia Butler.

18 THE COURT: Right.

19 MR. ANDREWS: So they're different parties. That's
20 what's different from your last order.

21 The other thing is, with regard to the 30 days,
22 with the revocation of the arbitration agreement, it hadn't
23 even been 30 days. She died two-and-a-half weeks later.
24 There seemed to be a distinction that was noted in the
25 footnote in the order I just read. That's different than

1 the last case. The full 30 days hadn't expired.

2 THE COURT: Okay. Go ahead.

3 MR. ANDREWS: Just a couple more points, Your
4 Honor, and I'll sit down. And I would just argue as far as
5 the purpose of the intent -- the admission agreement, it
6 covers death policy, pharmacy selection, and other
7 activities incident to nursing homes. The arbitration
8 agreement is solely for alternative dispute resolution. I
9 don't think they have anything to do with one another.

10 And based on the reasons that I stated, I would
11 argue that they don't merge, Your Honor. Thank you.

12 THE COURT: All right.

13 MR. TODD: Your Honor, I would say, just briefly,
14 Ms. Broxton, who was Ms. Butler's niece because Ms. Butler
15 could not sign consent because of her dementia, it had to
16 be by her next of kin, who was Ms. Broxton, so she was the
17 one who was executed it on behalf of Ms. Butler, so they're
18 valid agreements -- it's a valid agreement.

19 THE COURT: Anything from you?

20 MR. TANNER: The hospital doesn't really have a dog
21 in this fight, Your Honor, but obviously, whatever the
22 ruling is, we're sort of drug in either way in circuit
23 court or going into arbitration.

24 THE COURT: All right. Let me have proposed
25 orders.

1 MR. ANDREWS: Thank you, Your Honor.

2 MR. TODD: Thank you, Your Honor.

3 THE COURT: Ten days.

4 MR. TANNER: Good to see you.

5

6 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

Certificate of Reporter

2 County of Aiken)

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I, THE UNDERSIGNED, Brenda J. Sigwald,
Official Court Reporter for the Eleventh Judicial Circuit
of the State of South Carolina, do hereby certify that I
reported the proceedings in the captioned case in the Court
of Common Pleas in and for the State of South Carolina on
the 9th day of September, 2015.

I FURTHER CERTIFY that the foregoing pages,
constitute a true, accurate and complete transcript of said
hearing.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 8th day of February, 2016.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BAMBERG
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2015-CP-05-00124
Appellate Case No. 2015-002493

RECEIVED
JUN 14 2016
SC Court of Appeals

Polly McGill and Mary Broxton, as Co- Personal Representatives of
the Estate of Virginia Butler, deceased, Plaintiffs

Of Whom Polly McGill, as Personal Representative of the Estate of
Virginia Butler is the Respondent,

v.

The Regional Medical Center Foundation d/b/a The Regional Medical
Center and Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC, Defendants,

Of Whom Pruitt Health-Bamberg, LLC d/b/a Uni-Health Post Acute
Care of Bamberg, LLC is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
and agreed to be included by the parties and not any other material.

SOWELLGRAY STEPP & LAFFITTE, LLC

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Columbia, SC 29211
(803) 929-0300

Attorneys for Appellant

MAY 25, 2016