

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Opinion No. 5644 (S.C. Ct. App. Filed May 1, 2019)

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Petitioners.

APPENDIX

THE WARD LAW FIRM, P.A.
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

RECEIVED
APR 17 2017
SC Court of Appeals

Case No. 2016-001732

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Appellants.

RECORD ON APPEAL

THE WARD LAW FIRM, P.A.

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased, and as Personal Representative of the Statutory Beneficiaries,

Plaintiffs,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor - Spartanburg, Inc. d/b/a White Oak of Spartanburg,

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2015-CP-42-5123

ORDER

2016 JUL 29 PM 3:35
M. HOPE BLACKLEY

Date of Hearing: March 22, 2016
Presiding Judge: Honorable J. Derham Cole
Attorney for Plaintiff: Raymond P. Mullman, Jr.
Attorney for Defendants: Matthew A. Henderson
Court Reporter: Linda Moffitt

This matter was before the Court on Defendants' Notice of Motion and Motion to Dismiss and/or Compel Arbitration. After hearing oral arguments from counsel, the Court denies the Motion to Dismiss and/or Compel Arbitration as to all parties, including both Survival and Wrongful Death actions for the reasons stated below.

A. BURDEN OF PROOF

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210,

1

WOM 000001

behalf of her uncle, Decedent. Decedent was admitted with physical injuries but Defendants' records reflect that he was awake, aware, and able to enter or refuse to enter contracts on his own. Hilda Stott signed the Agreement and the Arbitration Agreement on behalf of Decedent. However, the central question is whether Ms. Stott had authority to bind the Decedent to the agreement and to arbitration.

The Court finds that Defendants not only had an unauthorized agent sign the agreements on behalf of Decedent, they did so without asking Decedent to sign, despite his full capacity to sign. Decedent's ability to make his own decisions is evidenced by the Spartanburg Regional Healthcare System *Progress Note Addressing Decisional Capacity*, which was signed by Decedent's Attending Physician on January 2, 2013, the very same day the agreements were signed by Mrs. Stott. That Progress Note states "[t]his patient DOES possess the decisional capacity to make healthcare decisions for self."

Defendants allege in their Motion that Hilda Stott had a valid power of attorney based on a Durable Power of Attorney for Finance ("DPOA"). However that instrument was only valid *after* Decedent left the facility and did not give Hilda authority to sign at the time of signing. A valid DPOA would allow Hilda Stott to waive Jolly Davis's constitutional right to a jury trial *at the time of* the Defendant facility; however, the DPOA in the present matter was not valid *at the time of* execution of the Arbitration Agreement and Hilda Stott, therefore, did not have authority to sign on her uncle's behalf. The DPOA that was submitted with Defendants' Motion was not valid at the time of signing of the agreements as it was not filed with the Register of Deeds until after Jolly Davis had already left the facility. Under South Carolina Code § 62-5-501 (2012), a durable power of attorney requires the same executory actions as a deed, including filing with the deeds office. In the present matter, the DPOA was not recorded with the Office of Register of Deeds for

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Spartanburg County until January 8, 2013, two days after Decedent permanently left the facility and six days after Hilda Stott signed the alleged Arbitration Agreement.

Further, Decedent's South Carolina Healthcare Power of Attorney ("HPOA") clearly states in the first paragraph that the power arises only "IF YOU CANNOT MAKE THE DECISION FOR YOURSELF." This instrument does not grant Hilda authority to enter into an arbitration agreement on behalf of a competent Jolly Davis. Also, the Supreme Court for the State of South Carolina made clear in Coleman v. Mariner Health Care, Inc. that authority to make healthcare decisions does not extend to arbitration agreements.

C. LACK OF AUTHORITY

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Hilda Stott did not have that authority. Hilda Stott did not have authority under the DPOA to bind Jolly to arbitration because the DPOA was not valid at the time Hilda Stott signed the agreements and because the HPOA does not extend authority to the alleged Arbitration Agreement. Under SC Code § 62-5-501 (2012), *Protection of Persons Under Disability and Their Property*, the power of attorney must be recorded in the county's register of deeds.

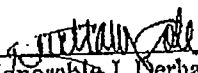
First, the DPOA was recorded six days after the agreements were signed. Decedent did not lack the capacity to contract for himself. Decedent was capable of making such a decision or demonstrating such an intention. Decedent never manifested any form of consent that established Hilda Stott was his agent, nor should Decedent have been required to manifest such consent because Decedent was wide awake, lucid, and able to make his own decisions regarding his rights.

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In this case, Defendants had the capacity to determine whether Hilda Stott had authority to sign an arbitration agreement on Decedent's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney. Defendants had the ability to ask Hilda Scott if she had a valid power of attorney and if she was Decedent's attorney in fact. Defendants had the ability to request supporting documentation for any such alleged power-of-attorney. Further, Defendants' own records indicate that Decedent possessed mental capacity, and the power-of-attorney instrument clearly states that the power arises only if Decedent is incapable of making such decisions. Since Defendants have failed to provide supporting information for the alleged valid authority of Hilda Scott, this Motion is denied.

Based upon the above, Defendants' Motion to Dismiss and to Compel Arbitration is hereby DENIED.

IT IS SO ORDERED.


The Honorable J. Derham Cole
Seventh Judicial Circuit

Spartanburg, South Carolina
July 29, 2016

SPARTANBURG COUNTY
2016 JUL 29 PM 3:35
AL HOPE BLACKLEY

5

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-42-05123

Hilda STOTT,

 PLAINTIFF(S)

WHITE OAK MANOR, Inc., et al.,

 DEFENDANT(S)

Submitted by: Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (*formal order to follow*) Statement of Judgment by the Court:

This matter came before the Court on motion of defendant to compel arbitration. After consideration of the record, submissions made, memoranda, argument of counsel, and the applicable law, the Court finds that defendant's motion should be and is therefore denied.

Plaintiff's counsel to prepare proposed order for the court's consideration.

ORDER INFORMATION

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

2016 JUL 12 PM 4:08

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

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

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

<u>J. Durham Cole</u>	<u>2053</u>	<u>7/8/16</u>
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of July, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Gary W. Pollakoff, Esq.
Post Office Box 1571
Spartanburg, S.C. 29304

Matthew Henderson, Esq.
360 East Henry Street, Suite 101
Spartanburg, S. C. 29302

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
 M. Hope Blackley, CLERK OF COURT
Marsha Long, DCU

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

	2016 JUL 12 PM 4:08

WOM 000006

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Requested)

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased, and as Personal Representative of the Statutory Beneficiaries,

C.A. NO.: 2015-CP-42- 5123

SUMMONS
(Wrongful Death and Survival Action)

Plaintiffs,

v.

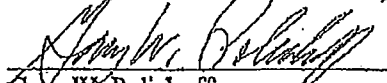
White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor - Spartanburg, Inc. d/b/a White Oak of Spartanburg,

Defendants.

FILED
SPARTANBURG
2015 DEC 16 PM 1:11
M. HOPE BLAUGLEY

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,



Gary W. Poliakoff
Raymond P. Mullman, Jr.
POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
Attorneys for Plaintiffs

December 16, 2015.
Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Requested)

Hilda Stott, individually and as Personal
Representative of the Estate of Jolly P.
Davis, deceased, and as Personal
Representative of the Statutory
Beneficiaries,)

C.A. NO.: 2015-CP-42-5129

COMPLAINT
(Wrongful Death and Survival Action)

Plaintiffs,

v.

White Oak Manor, Inc.; White Oak
Management, Inc.; and White Oak Manor -
Spartanburg, Inc. d/b/a White Oak of
Spartanburg,)

Defendants.

SPARTANBURG COUNTY
2015 DEC 16 PM 1:15
M. HOPE BLACKLEY

The Plaintiff, Hilda Stott, as Personal Representative of the Estate of Jolly P. Davis, does hereby respectfully allege as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Hilda Stott, individually as Claimant #1, and as Personal Representative of the Estate of Jolly P. Davis (Claimant #2), is a citizen and resident of the state of Virginia.
2. That, upon information and belief, White Oak Manor, Inc. (hereinafter "WOManor") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
3. That, upon information and belief, White Oak Management, Inc. (hereinafter "WOManagement") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
4. That, upon information and belief, White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg (hereinafter "WOS") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
5. That, upon information and belief, WOManor and WOManagement own, operate, manage, and oversee WOS.

6. That, upon information and belief, at all times relevant hereto, WOS has operated a nursing home facility and has done business in the state of South Carolina.
7. That, upon information and belief, at all times relevant hereto, Jolly P. Davis (hereinafter "Plaintiff Davis") was a resident of WOS and there existed a resident/facility relationship between Plaintiff Davis and the Defendants, and therefore Plaintiff Davis was thereby entitled to all the protections afforded such residents in South Carolina.
8. That, Plaintiff Davis was a resident of WOS at all times relevant hereto in the County of Spartanburg, State of South Carolina, and was a vulnerable adult as defined by S.C. Omnibus Adult Protection Act.
9. That, upon information and belief, at all times relevant hereto, WOS delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Plaintiff Davis during his residency at WOS.
10. That, upon information and belief, at all times relevant hereto, WOManor and WOManagement directly participated in the ownership, operation, and/or management of nursing homes for profit, including the facility where Plaintiff Davis resided. Further, WOManor and WOManagement, at all times relevant hereto, exerted managerial control and operational control over WOS, and that such control was so extensive and pervasive that WOManor and WOManagement actually operated and managed said facility, and did business as said facility. Further, the control by WOManor and WOManagement was so extensive and pervasive over WOS that the business of WOS was the business of WOManor and WOManagement.
11. That, upon information and belief, at all times relevant hereto, all Defendants named herein are or have been involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for WOS and have directly controlled the operations at said nursing home facility.
12. That, upon information and belief, at all times relevant hereto, all Defendants have engaged in substantial business activities in South Carolina, including the management, operation, control and/or ownership of the Defendant nursing home facility during the relevant time period.
13. That, upon information and belief, at all times relevant hereto, all Defendants named herein have promulgated and established the policies, procedures, protocols, staffing decisions, and budgetary decisions at WOS, and all Defendants named herein have directly controlled said facility at various times.
14. That, upon information and belief, at all times relevant hereto, the acts and omissions causing Plaintiff Davis' injuries deficiencies at WOS nursing home facility in Spartanburg County, South Carolina were authorized, approved and ratified by all Defendants named herein.

15. That the Court has jurisdiction over all the parties and subject matter.
16. That the acts and delicts referred to herein occurred at Defendants' facility in the County of Spartanburg, State of South Carolina.
17. That this action is being brought pursuant to the South Carolina Common Law of Negligence, Gross Negligence, Negligence Per Se, Wrongful Death, Unjust Enrichment, Breach of Fiduciary Duty and the Unfair Trade Practice Act.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

18. That on January 2, 2013, Plaintiff Davis was admitted to WOS with the understanding that he would be provided with the care that his health conditions reasonably required.
19. That while residing at Defendants' facility, Plaintiff Davis was damaged and injured, and eventually died as a result of custodial neglect and negligence, including violations of the standard of care for nursing and custodial care.
20. That Plaintiff Davis was a resident of Defendants' facility from his admission until his discharge on January 6, 2013.
20. That, while a resident at Defendants' facility, Plaintiff Davis was overmedicated and dehydrated which led to his untimely death.
21. That Defendants' facility failed to properly monitor and care for Plaintiff Davis by failing to ensure he was hydrated and not given unnecessary medications.
22. That, at all times relevant hereto, Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.
23. That during Plaintiff Davis's residency at WOS, the acts and delicts of Defendants caused, and were the proximate causes of Plaintiffs' conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
24. That the Plaintiff institutes this action in order to recover for Plaintiff's injuries. Said injuries and damages were the proximate result of the acts and delicts of Defendants.
25. That the provisions of the Omnibus Reconciliation Act of 1987 ("OBRA") were applicable with regard to Plaintiff Davis. Defendants were under an obligation to follow all rules and regulations of OBRA as well as all applicable state and federal laws, rules, regulations, and guidelines including S.C. Regulations 61-17, the South Carolina Adult Protection Act, and the South Carolina Nurse Practice Act, S.C. Code § 40-33-5 et. seq.
26. That the Defendants were liable and responsible for the acts and delicts of their employees, agents, and servants under the principle of respondeat superior.

27. That Defendants are vicariously liable for the acts and delicts of their employees, agents, and servants.
28. That the Defendants held WOS out to the State of South Carolina, the South Carolina Department of Health and Environmental Control, the public at large, and specifically to Plaintiff Davis and his family, as being:
- a. skilled in the performance of nursing, rehabilitative, and other medical support services;
 - b. properly staffed, supervised and equipped to meet the total needs of its residents;
 - c. able to specifically meet the total nursing, personal care, medical, physical therapy, and
 - d. licensed by the South Carolina Department of Health Environmental Control and complying on a continual basis with all state and federal rules, regulations, and standards established for nursing homes in South Carolina.
29. That the Defendants held WOS out to the United States of America, the Centers for Medicare and Medicaid Services, the public at large, and specifically to Plaintiff Davis and his family, as being a skilled nursing facility and as a nursing facility meeting the requirements of 42 CFR Part 483.
30. That the Defendants were under a fiduciary duty to provide reasonable, appropriate and adequate care to Plaintiff Davis pursuant to state and federal laws, rules, regulations, guidelines and existing industry standards.
31. That the Defendants owed certain non-delegable duties to Plaintiff Davis including, but not limited to, the duties set forth in the foregoing and ensuing paragraphs of this complaint.
32. That, at all times pertinent hereto, Plaintiff Davis resided at Defendants' facility, and as such was under the exclusive control and care of Defendants and their employees, agents, officers, and servants while a resident.
33. That, at all times pertinent hereto, WOS, as licensee was ultimately responsible for maintaining approved standards for the facility.
34. That the Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Plaintiff Davis.
35. That, upon information and belief, Plaintiff Davis's health conditions were aggravated and exacerbated by the Defendants' repeated failure to properly supervise him or monitor his medical conditions and keep him safe from harm in that he suffered from being overmedicated, from dehydration, neglect, and mental and emotional distresses, which ultimately led to his wrongful death. These deviations from the standard of care were the proximate causes of conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
36. That Defendant WOS, directly or indirectly, received federal and state funds as

reimbursement of the care of residents including Plaintiff Davis.

FIRST CAUSE OF ACTION
(Negligence, Recklessness, and Gross Negligence)

37. Relevant and consistent allegations contained in paragraphs 1-36 are incorporated by reference as if written verbatim herein.
38. That Defendants had a duty of due care to their patients and residents to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.
39. That Defendants, named hereinabove, had a duty to treat the Plaintiff at a level that met or exceeded the recognized standard of care, which Defendants breached.
40. That Defendants, by and through Defendants' agents, servants, and employees were negligent, reckless, grossly negligent, willful, wanton, reckless and careless in treatment of the Plaintiff, and that Defendants performed duties in a manner well below the recognized standard of care for the same or similar provisions in the same or similar circumstances.
41. That Defendants had a duty of due care to their patients and residents to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate physical, mental or emotional unreasonable risks; and to provide proper protection from harm.
42. That Defendants, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Plaintiff Davis. More particularly the Defendants were negligent in the following particulars:
 - a. failing to properly supervise as required, and as promised to the family upon admission;
 - b. failing to provide the care, supervision and monitoring of patients, residents, and, in particular, Plaintiff Davis, which was required by law and which was necessary for his health and safety;
 - c. failing to hire, train, and supervise personnel to properly avoid preventable injuries to residents and, in particular, Plaintiff Davis;
 - d. failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of Plaintiff Davis;
 - e. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
 - f. failing to hire a sufficient number of trained and competent staff and failing to sufficiently budget for same;
 - g. failing to follow the licensing and regulatory rules of the State of South Carolina;
 - h. failing to develop and follow an appropriate Plan of Care;

- i. failing to properly train employees to deal with residents who were unable to care for themselves;
- j. failing to provide emergency services when needed;
- k. failing to prevent Plaintiff Davis from becoming overmedicated;
- l. failing to properly monitor Plaintiff Davis;
- m. failing to appropriately diagnose Plaintiff Davis's condition;
- n. failing to provide adequate hydration;
- o. failing to provide an adequate plan of care to include necessary interventions to promote hydration and prevent dehydration;
- p. failing to consult with and/or report to the physician and/or the Registered Dietician in a timely manner Plaintiff Davis's decrease in fluid intake and changes in condition;
- q. failing to keep Plaintiff Davis properly hydrated and nourished;
- r. failing to keep Plaintiff Davis' chart free of fraudulent documentation;
- s. failing to monitor and assess Plaintiff Davis adequately for pain and discomfort;
- t. failing to treat Plaintiff Davis with dignity and respect;
- u. failing to exercise due care; and
- v. by other negligent acts and/or omissions yet to be determined or defined.

43. That, as a result, Plaintiff Davis experienced conscious pain and suffering, mental anguish, and suffered wrongful death.
44. That the aforesaid acts and delicts were the sole and proximate cause of Plaintiff Davis's injuries and death.
45. That the wrongful conduct of Defendants set forth in the negligence, gross negligence, and negligence per se counts of this complaint was undertaken without regard to the health and safety consequences of Plaintiff Davis who was entrusted to Defendants' care, and rises to the level of gross negligence in that Defendants' conduct was willful, wanton, reckless, and shows a conscious disregard for the health and safety of Plaintiff Davis.
46. That the Defendants independently and through their managers, officers and others yet unknown demonstrated conscious and intentional disregard of and indifference to the rights and safety of Plaintiff Davis and other patients at WOS as demonstrated by:
- a. Their business practice of attempting to care for residents with an inadequate number of trained staff, which their officers and managers knew or should have known were reasonably likely to result in injury to Jolly P. Davis and their other patients; and
 - b. Their business practice of failing to supervise and train their staff in order to ensure that their policies and procedures were known to and adhered to by licensed staff, and that licensed staff practiced within their scopes of practice.

SECOND CAUSE OF ACTION
(Negligence Per Se)

47. Relevant and consistent allegations contained in paragraphs 1-46 are incorporated by reference as if written verbatim herein.
48. That in addition to the above, Plaintiff alleges that Defendants have been negligent per se in their violations of sections of OBRA (Omnibus Budget Reconciliation Act of 1987), S.C. Regulations 61-17, the Adult Protection Act, and the Nurse Practice Act.
49. That each and/or all of the foregoing state and federal laws, rules and regulations prescribe certain actions or define the standard of conduct. Plaintiff Davis was and remains in the class of persons sought to be protected by each regulation and/or statute. Moreover, Plaintiff's injuries were the type of harm that each of these regulations were intended to prevent according to the extent that the Defendants' conduct violated these regulations. Such conduct amounts to negligence per se as that term is defined and is known and understood at law. Each act or omission constituting negligence per se was the proximate cause of Plaintiff Davis's injuries and damages.
50. That as a direct and proximate result of the Defendants' acts and delicts, Plaintiff Davis endured extreme conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
51. That reasonable custodial care requires that the facility provide each resident with sufficient fluid intakes to maintain proper hydration, per said regulations and statutes.
52. That dehydration is considered a sentinel event and life threatening.
53. That residents need at least one point five (1.5) liters of fluids daily to avoid dehydration and maintain health, which Defendants failed to provide, in further violation of said regulations and statutes.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

54. Relevant and consistent allegations contained in paragraphs 1-53 are incorporated by reference as if written verbatim herein.
55. That Defendants received funds from both the state and federal government which were intended to be used to properly care for Plaintiff Davis.
56. That Defendants did not use said funds to properly care for Plaintiff Davis, and were therefore unjustly enriched by receipt of said funds.
57. That as a result of aforementioned misuse of funds, Plaintiff Davis suffered conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

58. That relevant and consistent allegations contained in paragraphs 1-57 are incorporated by reference as if written verbatim herein.
59. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Davis was considered a vulnerable adult.
60. That a fiduciary relationship existed between Defendants and Plaintiff Davis.
61. That Plaintiff Davis trusted in, confided in and relied upon Defendants to use their expertise and discretion for his care.
62. That Defendants accepted Plaintiff Davis's trust and reliance and so became responsible for Plaintiff Davis's health while residing at the nursing home facility.
63. That as a result of aforementioned reliance and trust upon Defendants, Plaintiff Davis's physical and mental health was placed in the hands of Defendants.
64. That Defendants breached this fiduciary relationship by allowing Plaintiff Davis's physical and mental health to deteriorate during his residency at the nursing home facility.

FIFTH CAUSE OF ACTION
(Joint Venture)

65. That relevant and consistent allegations contained in paragraphs 1-64 are incorporated by reference as if written verbatim herein.
66. That a joint venture is an association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation.
67. That elements of joint venture in the State of South Carolina are:
 - a. an agreement;
 - b. a joint interest in a common business;
 - c. an understanding that profits and losses will be shared, and;
 - d. a right to joint control.
68. That a joint venture exists when there is:
 - a. contribution of resources by both parties;
 - b. joint proprietorship and control over the subject matter of the property engage in the venture;
 - c. sharing of profits by express or implied agreement, and;
 - d. an express or implied contract showing joint venture.
69. That all Defendants herein were involved in a joint venture.

SIXTH CAUSE OF ACTION

(Alter Ego)

70. Relevant and consistent allegations contained in paragraphs 1-88 are incorporated by reference as if written a verbatim herein.
71. That, upon information and belief, WOS was dominated by WOManor and WOManagement before, during, and after Plaintiff Davis's residency. These Defendants siphoned profits from the nursing home chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide poor care as a result of inadequate capitalization and consequently inadequate supplies and staffing, resulting in unnecessary injuries, death and suffering, including that of Plaintiff Davis.

SEVENTH CAUSE OF ACTION

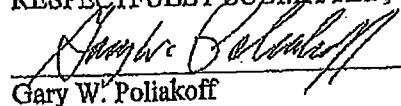
(Wrongful Death)

72. Relevant and consistent allegations contained in paragraphs 1-71 are incorporated by reference as if written verbatim herein.
73. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, decedent was severely injured in Defendants' facility.
74. That the injuries so inflicted on the decedent were the proximate cause of Plaintiff Davis's wrongful death on January 16, 2013, resulting in the damages, injuries, harms and losses to the wrongful death beneficiary – Claimant #1 Hilda Stott.
75. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Willie Wilson was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of the action, and for such other and further relief as this Court may deem just and proper.

(SIGNATURE BLOCK BELOW)

RESPECTFULLY SUBMITTED,



Gary W. Poliakoff
Raymond P. Mullman, Jr.
POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
Attorneys for Plaintiffs

December 16, 2015
Spartanburg, S.C.

CLERK OF COURT
SPARTANBURG, S.C.
2015 DEC 16 PM 1:15
M. HOPE BLACKLEY

COPY

Deviations from Standard of Care in Jolly Davis Case

1.

[REDACTED] Morphine is an opioid drug. According to the literature, "opioid is an effective palliative drug in chronic obstructive pulmonary disease patients with distressing dyspnea that is refractory to standard modalities of treatment." When it describes dyspnea that is refractory to standard treatments, it means that the usual treatments for COPD are not effective in alleviating symptoms. Standard treatments for COPD include, but may not be limited to the following, depending on the stage of COPD: smoking cessation, diet, minimizing risk factors (flu vaccine), cardiopulmonary rehab., supplemental oxygen, bronchodilators, and inhaled steroids. When these treatments fail to relieve the patient of dyspnea (breathlessness), the use of oral and parenteral opioids to palliate breathlessness is supported by a Cochrane review by Jannings et al.

In the Cochrane review of 18 studies, types, doses and routes of administration of opioid were varied; clearly, the optimal opioid dosing for relief of dyspnea has not been established. *Palliative care experts' recommendation for treatment of severe dyspnea in opioid-naïve patients is morphine sulfate 5 mg orally every 4 h; equivalent dose for break-through symptoms every 1-2 h as needed and to titrate in increments of 50-100% every 24 h. They further suggest to reduce the above-recommended doses by 50% and to titrate with increments of 25% every 24 h, as needed in severe pulmonary disease patients. Respiratory depression is a widely held concern for use of opioids in severe pulmonary disease patients. Eleven of the 18 studies included in the Cochrane review had information on blood gases or oxygen saturation. In all but one study, no significant changes were noted after opioid administration. The common gastrointestinal adverse effects of opioids are nausea, vomiting and constipation. However, except for constipation, these symptoms abate in 3 days to 2 weeks, as pharmacologic tolerance develops.*

<http://emedicine.medscape.com/article/297664-treatment#aw2aab6b6b3>

1

http://www.medscape.com/viewarticle/717217_1

On 01/02/13, an interim care-plan was filled out for Mr. Davis that included the following: monitor pain, non-drug interventions. There was no statement that he was actually experiencing any pain, and no location of any pain cited. In the White Oak physician orders, there was an order for Morphine ER (extended release) 15 mg PO Q 8 hours for a diagnosis of pain, though there was no documented evidence he was in any pain. This order was discontinued on 01/06/13, which is the day Mr. Davis was transferred to the hospital. On 01/06/13, the order was changed to Morphine 15 mg PO Q 12 hours "due to pain." This order was changed at the request of the niece, who was concerned that Mr. Davis was not alert enough to work with therapy.

According to the literature I have already cited, the recommended dose for severe dyspnea in opioid naïve patients (patients who are not chronically receiving higher doses of opioid analgesics on a daily basis) is 5 mg orally every 4 hours. This is equivalent to 30 mg/day. In addition, for patients with severe pulmonary disease, these recommended doses should be reduced by 50% due to the concern of respiratory depression.

It was a deviation for the nurses to follow an inappropriate order and not to question Dr. Warren over the inappropriate order. A nurse is a patient advocate, and when administering medication it is the standard of care to advocate for the patient by following the 5 R's of medication administration (some experts have added 3 more):

- a. Right patient
- b. Right medication
- c. Right dose
- d. Right route
- e. Right time
- f. Right documentation
- g. Right reason (confirm the rationale for the ordered medication)
- h. Right response

<http://www.nursingcenter.com/Blog/post/2011/05/27/8-rights-of-medication-administration.aspx>

Reference: Nursing 2012 Drug Handbook. (2012). Lippincott Williams & Wilkins: Philadelphia, Pennsylvania.

In considering the right reason, Mr. Davis was ordered high doses of oral Morphine for the reason of pain, though he never complained of pain, nor is there evidence in the records that he had pain. A nurse note on 01/06/13 states he receives Morphine ER 15 mg every 8 hours for pain and Lortab 5 every 4 hours for breakthrough pain. Her note then states, "no complaints of pain or discomfort." When Hospice ordered Morphine for him in September of 2012, they ordered it for his dyspnea with any exertion. This was an appropriate reason.

There is an MAR note on 01/06/13 at 1:58 PM that states, Morphine ER 15 mg scheduled for 2:00 PM was refused by resident. He stated it makes him sleep and he wants to be alert for therapy tomorrow. This is an indication that Mr. Davis's Morphine dose needed to be reevaluated and adjusted.

It was also a deviation for the nurses not to question Dr. Warren's order to give Morphine ER every 8 hours. According to the instructions for administering ER Morphine, patients should take morphine extended-release capsules on a regular schedule to get the most benefit from it. Do not take doses of morphine extended-release capsules closer than 12 hours apart.

According to Mr. Davis' MAR, he was being given the Morphine ER every 8 hours: 6 AM, 2 PM, and 10 PM.

Another deviation was an order for Lortab 5-500 on the MAR, but no doctor's order for the Lortab. It is inappropriate to administer a drug without a physician order, especially a narcotic, which is a regulated drug. The order start date was 01/04/13, and the end date was 01/06/13. It is charted in the MAR that a dose of the Lortab at 02:39 AM on 01/05/13. Nurse stated her reason for giving the Lortab was "for general discomfort."

Resident says he just sore all over and doesn't feel good." There was no investigation of why he was sore and didn't feel good, and there was no clarification with the physician over whether Mr. Davis had a legitimate order for Lortab.

According to instructions for taking Dramamine, it is inappropriate to take/give it for nausea and vomiting not caused by motion sickness. It is an antihistamine, and its use should be limited to motion sickness and only for nausea, vomiting, and dizziness associated with motion sickness. It can cause drowsiness. It is also not a drug of choice for patients with respiratory problems. The nurses should have been aware of these side effects, and should have questioned this order. There is also caution advised with giving Dramamine and Phenergan together because both can cause sedation. On 01/04/13 and 01/05/13, nurses administered 3 doses of Phenergan to Mr. Davis within 20 hours in addition to Dramamine 50 mg and 30 mg of Morphine ER. Giving this amount of drugs that have a sedative effect can increase, prolong, or intensify the sedative action of each drug, and so should be given with extreme caution, or not at all.

- [REDACTED]
- a. There is no documentation of ADL's. He initially had a catheter, so his urine outputs should have been checked each shift. There is no record of intakes and urine outputs. There is no record of his performance of any ADL's. There is no nurse or CNA documentation on the ADL sheets.
 - b. There is not consistent documentation in the nurse notes of pain medication that was administered to Mr. Davis, nor any documentation of his response to pain medication (other than a dose of Lortab). According to a guide for documentation in nursing homes, the following should be documented when pain medication is being administered: date/time, location of pain, description of pain and score on pain scale 1-10, goal for resident's relief, whether or not pain limits ADL functions or interferes with sleep, whether resident's pain goal is met, and whether the medication is effective (how

resident responded).

<https://www.gmcf.org/AlliantWeb/Files/QIFiles/Nursing%20Homes/charting-guide.pdf>

- c. There are discrepancies in the chart about whether or not Mr. Davis had a fall on 01/03/13. At 04:10 AM on 01/03/13, Beth Painter, LPN charts that Mr. Davis had a fall earlier in the day. On 01/04/13, at 04:13 AM and at 04:14 AM, Cheryl Henderson, RN, states that the note regarding the fall written on 01/03/13 did not pertain to Mr. Davis. MDS assessment on 01/06/13 states Mr. Davis has had 1 fall since admission to SNF, and he suffered minor injury. Nurse note by Karen Sylvester, RN, on 01/15/13, at 07:33 AM stated he had nausea and a fall on 01/03/13.

<https://www.gmcf.org/AlliantWeb/Files/QIFiles/Nursing%20Homes/charting-guide.pdf>

"Documentation is a matter of good clinical practice and is an expectation of trained and licensed health care professionals."

3. [REDACTED] abnormal labs drawn on 01/04/13, and resulted on either 01/04/13 or 01/05/13 were PT-23.9 (nl.-10.5-13.5), INR-2.03, Glucose-59 (nl.-70-105), BUN-60 (nl.-7-25), Iron-31 (nl.-50-212), vitamin B12-1315 (nl.-211-911)-can be elevated in patients with diabetes, WBC's-23.3 (nl.-4-11), hemoglobin-11 (nl.-13.5-17.5). The rest of the labs drawn today were WNL. By the time the facility physician noted these labs on 01/07/13, Mr. Davis was already in the hospital. The nurses should have known there was an order for these labs to be drawn, and they should have noted when the report was received, and reviewed the lab results, and reported the abnormal ones to the doctor right away. Nurses are expected to be aware of abnormal lab results and to take appropriate action by informing the physician. An elevated BUN is indicative of kidney failure, and elevated WBC's are indicative of an infection. A nurse should be aware of this. In addition, Mr. Davis was receiving B12 supplementation, and when his level was elevated, the nurse should have informed the physician so his supplement dose could

have either been lowered or discontinued. Textbook of Basic Nursing,
Edited by Caroline Bunker Rosdahl, Mary T. Kowalski

4. [REDACTED]
beginning on 01/04/13, Mr. Davis began complaining of nausea and vomiting. He also complained of watery stools. This led to his refusal to take his medications and to take in appropriate amounts of fluids. He also refused most of his meals for approximately 3 days. This was not reported to the physician. A nutrition consult was not ordered. There was no monitoring of intake and output. This combination of vomiting, diarrhea, and lack of oral intake can cause serious dehydration, and this was confirmed on his admission to SRMC on 01/06/13.

Sarah Kowalski, RN
April 30, 2015

Rosemary Wilcox 4/30/15
Comm expires Jan 10, 2024

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Hilda Stott, individually and as Personal)
Representative of the Estate of Jolly P.)
Davis, deceased, and as Personal)
Representative of the Statutory)
Beneficiaries,)

Plaintiffs,)

v.)

White Oak Manor, Inc.; White Oak)
Management, Inc.; and White Oak Manor -)
Spartanburg, Inc. d/b/a White Oak of)
Spartanburg,)

Defendants.)

ANSWER

2015-CP-42-5123

On information and belief, pursuant to a "Durable Power of Attorney for Finance" and/or a "South Carolina Statutory Healthcare Power of Attorney" the Decedent, Jolly P. Davis, gave the Plaintiff, Hilda Stott, the right to act for him, a copy of each is attached hereto and incorporated herein by reference. Pursuant to that authority, at the time the Decedent became a resident with the Defendant WOS at that Defendant's facility, the Plaintiff, Hilda Stott signed an Arbitration Agreement, a copy of which is also attached hereto and incorporated herein by reference. On information and belief, this Arbitration Agreement is valid, binding, and therefore preempts this lawsuit. Consequently, at the same time that Defendants file this Answer, they have also filed an appropriate motion to dismiss and/or compel arbitration consistent with the agreements between the parties calling for arbitration in lieu of civil litigation. Subject to this defense, and Defendants'

motion, Defendants respond to the allegations set forth by Plaintiff in her Complaint as follows:

1. Defendants admit those allegations set forth in paragraphs 1, 2, 3, 4, 5 and 6.

2. It is admitted, as alleged in paragraph 7, that there existed a "resident/facility relationship" between the Decedent, Jolly P. David, and WOS. With regard to the other two (2) Defendants these allegations are denied.

3. The allegations set forth in paragraphs 8 and 9 are admitted.

4. It is admitted, as alleged in paragraph 10, that WOManor owned the property upon which WOS conducted its business, as well as the stock in WOS. All other allegations set forth in paragraph 10 with regard to this Defendant, WOManor, are denied. It is also admitted, with regard to WOManagement, that it, although not an owner, was involved in the management of WOS, as well as other nursing homes owned and/or operated by WOManor. The other allegations set forth in paragraph 10 are denied.

5. It is admitted, as alleged in paragraph 11, that the Defendants WOManagement and WOS are involved in budget, staffing, and the other endeavors set forth therein. With regard to WOManor, it is admitted that it has some involvement with regard to implementation of policies and procedures for WOS. All other allegations set forth in paragraph 11 are denied.

6. The allegations set forth in paragraph 12 are denied insofar as they refer to all of the Defendants having engaged in "substantial business activities in South Carolina." However, as indicated above, the Defendants WOManor and WOManagement both have some involvement with WOS. All other allegations set forth in paragraph 12 are denied.

7. The allegations set forth in paragraph 13 are denied. However, the responses set forth by the Defendants above are incorporated herein by reference to the extent they apply to these

allegations.

8. The allegations set forth in paragraph 14 are not understood. Therefore they are denied. All Defendants specifically deny having committed any acts or having been involved with any omissions that caused the Decedent any injuries, or that might otherwise be accurately categorized as "deficiencies."

9. The allegations set forth in paragraph 15 are admitted.

10. On information and belief, the allegations set forth in paragraph 16 are admitted.

11. The allegations set forth in paragraph 17 require no response. To the extent they do they are denied.

12. It is admitted, as alleged in paragraph 18, that the Decedent was admitted into WOS and was provided with the care that his health conditions were reasonably required. All other allegations set forth in paragraph 18 are denied.

13. The allegations set forth in paragraph 19 are denied.

14. It is admitted, that the Decedent was a resident at WOS from the date of his admission until the date of his discharge. Insofar as WOS is concerned, the allegations set forth in paragraph 20 are admitted. All other allegations set forth in paragraph 20 are denied.

15. The allegations set forth in the second paragraph 20 and in paragraph 21 are denied.

16. The allegations set forth in paragraph 22 are denied. However, it is admitted that WOS was required to exercise due care with regard to its residents, including the Decedent. It is the Defendant's position that such due care and supervision were properly provided.

17. The allegations set forth in paragraph 23 are denied.

18. The allegations set forth in the first sentence in paragraph 24 require no response.

To the extent they do they are denied. The allegations set forth in the second sentence in paragraph 24 are denied.

19. It is admitted, as alleged in paragraph 25, that all acts and laws that were applicable to the Decedent's care by WOS were to be complied with, as they were. All other allegations set forth in paragraph 25 to the contrary are denied.

20. It is admitted, as alleged in paragraph 26, that WOS would be liable and responsible for any acts and delicts on the part of its employees, etc. All other allegations set forth in paragraph 26 are denied.

21. The allegations set forth in paragraph 27 are admitted with regard to WOS. With regard to the other Defendants they are denied.

22. The allegations set forth in paragraph 28 are admitted except with regard to the allegations set forth in subparagraph (c) where the word "total" is used. It is further admitted that WOS was licensed by the appropriate state and federal agencies, was required to fully comply with all applicable rules, regulations, standards, and the like, and in fact did so.

23. It is admitted, as alleged in paragraph 29, that WOS held itself out to be a "skilled nursing facility" and one that met the applicable rules, regulations and standards imposed by the federal government.

24. It is admitted, as alleged in paragraph 30, that WOS was under a duty to provide reasonable, appropriate and adequate care to the Decedent pursuant to both federal and state law, as well as the appropriate rules, regulations, guidelines and industry standards. This it did. All other allegations set forth in paragraph 30 are denied.

25. It is admitted that WOS owed the Decedent certain duties, some of which may have

been non-delegable, and might include some of the duties previously described by Plaintiff in her Complaint. All other allegations set forth in paragraph 31 are denied.

26. It is admitted, as alleged in paragraph 32, that the Decedent did reside at the WOS facility, and was under the control and care of its employees. All other allegations set forth in paragraph 32 are denied.

27. The allegations set forth in paragraph 33 are admitted.

28. The allegations set forth in paragraphs 34 and 35 are denied.

29. The allegations set forth in paragraph 36 are admitted.

30. The allegations incorporated by Plaintiff in her Complaint into paragraphs 37, 47, 54, 58, 65, 70 and 72 are admitted and denied to the same extent heretofore or hereafter admitted and denied.

31. The allegations set forth in paragraph 38 are admitted.

32. The allegations set forth in paragraphs 39 and 40 are denied.

33. It is admitted that WOS had most, if not all, of those duties described in paragraph 41. All other allegations set forth in paragraph 41 are denied.

34. The allegations set forth in paragraphs 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 are denied.

35. The allegations set forth in paragraph 52 are denied. However, it is admitted that dehydration is a situation that should be avoided if at all possible.

36. The allegations set forth in paragraph 53 are denied.

37. The allegations set forth in paragraph 55 are denied. However, it is admitted that WOS receives funds from both the federal and state government with the intent that they be used for

the care of its residents including the Decedent.

38. The allegations set forth in paragraphs 56 and 57 are denied.

39. The allegations set forth in paragraph 59, having heretofore been admitted, are again admitted.

40. It is admitted, as alleged in paragraph 60, that there existed a relationship between WOS and the Decedent, which relationship this Defendant honored.

41. So far as the allegations set forth in paragraph 61 apply to the Defendant WOS, it is assumed that if the Decedent had been asked, he would have indicated what is alleged. All other allegations set forth in paragraph 61 are denied.

42. It is admitted, as alleged in paragraph 62, that WOS was responsible for the Decedent's well-being while a resident at its facility. All other allegations set forth in paragraph 62 are denied.

43. The allegations set forth in paragraph 63 are denied. However, it is admitted that much of the Decedent's physical and mental health was placed in the hands of WOS.

44. The allegations set forth in paragraph 64 are denied.

45. Lacking information, the allegations set forth in paragraphs 66, 67, 68 and 69 are denied.

46. Lacking information, the allegations set forth in paragraphs 71, 72, 73 and 74 are denied.

47. All other allegations set forth by Plaintiff in her Complaint, not heretofore admitted or explained are denied.

FOR ADDITIONAL DEFENSES

FOR A SECOND DEFENSE

48. Defendant incorporates herein by reference all allegations heretofore set forth.

49. The Court lacks subject matter jurisdiction and therefore Plaintiff's Complaint should be dismissed because the Plaintiff's claims are subject to a binding arbitration. As indicated above, Defendants intend, to file an appropriate Motion to Dismiss and/or Compel Arbitration. Therefore, by filing this Answer, and otherwise participating in limited discovery, Defendants do not intend to waive, nor waive, their right to have this matter resolved by arbitration.

FOR A THIRD DEFENSE

50. Defendants incorporate herein by reference all allegations heretofore set forth.

51. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against the Defendants and therefore should be dismissed.

FOR A FOURTH DEFENSE

52. Defendant incorporates herein by reference all allegations heretofore set forth.

53. At all times relevant to the matter set forth in the Complaint herein, Defendants complied with generally accepted healthcare standards applicable to nursing homes rendering care to patients/residents under the same or similar circumstances, and as a result thereof Defendants are in no way liable to the Plaintiff for the matters set forth in her Complaint.

FOR A FIFTH DEFENSE

54. Defendants incorporate herein by reference all allegations heretofore set forth.

55. Defendants plead contributory negligence and comparative negligence on the part of decedent as a complete or partial bar to Plaintiff's claims for damages, and would further allege that

any award of damages should be reduced completely, or in part, on account of decedent's proportionate negligence.

FOR A SIXTH DEFENSE

56. Defendants incorporate herein by reference all allegations heretofore set forth.

57. Defendants plead the negligence, if any, on the part of decedent, or on the part of some other party other than the Defendants, as a complete or partial bar to Plaintiff's claims for damages, and would further allege that any award of damages should be reduced completely, or in part, on account of decedent's and/or some other third party's proportionate negligence.

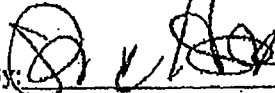
FOR A SEVENTH DEFENSE

58. Defendants incorporate herein by reference all allegations heretofore set forth.

59. Plaintiff is not entitled to an award of punitive damages against Defendants to the extent that such an award is barred by the Constitutions of the United States and State of South Carolina. Any such award of punitive damages would violate the prohibition against excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the States by way of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States. Furthermore, any punitive damages award would violate the guarantee of the Due Process found in the Fourteenth Amendment to the Constitution of the United States because of the lack of objective guidelines on which a jury might base its award and, further, that such guidelines, to the extent they exist, are arbitrary and void for vagueness.

WHEREFORE, having fully responded to all allegations set forth by Plaintiff in her Complaint, Defendants pray that it be dismissed, for the costs of this action, and for such other and further relief as to this Court seems just and proper.

HENDERSON, BRANDT & VIETH, P.A.

By:  _____

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S.C. Bar #03023
Joshua M. Henderson
S.C. Bar #09078
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Spartanburg, SC
January 14, 2016

RECEIVED
JAN 14 2016
HENDERSON, BRANDT & VIETH, P.A.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-42-5123

Hilda Stott, individually and as Personal
Representative of the Estate of Jolly P. Davis,
deceased, and as Personal Representative of
the Statutory Beneficiaries,

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

White Oak Manor, Inc., et al.)

Defendant.)

Plaintiff's Attorney: Gary W. Pollakoff, Esq., Bar No. _____ Address: P.O. Box 1571, Spartanburg, SC 29306 Phone: 864-582-5472 Fax _____ E-mail: att@gpollakoff.com Other: _____	Defendant's Attorney: Matthew A. Henders, Bar No. 3023 Address: 360 E. Henry Street, Ste. 101, Spartanburg, SC 29302-2646 Phone: 864-583-5099 Fax 864-582-2952 E-mail: mhenderson@hbvlaw.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss and/or Compel Arbitration Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendants Date submitted _____	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE _____ Date: _____

WOM 000033

STATE OF SOUTH CAROLINA)
COUNTY SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Hilda Stott, individually and as Personal)
Representative of the Estate of Jolly P.)
Davis, deceased, and as Personal)
Representative of the Statutory)
Beneficiaries,)

Plaintiff,)

v.)

White Oak Manor, Inc.; White Oak)
Management, Inc.; and White Oak Manor -)
Spartanburg, Inc. d/b/a White Oak of)
Spartanburg,)

Defendants.)

NOTICE OF MOTION AND
MOTION TO DISMISS AND/OR
COMPEL ARBITRATION

2015-CP-42-5123

TO: PLAINTIFF, HILDA STOTT, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOLLY P. DAVIS, DECEASED, AND AS PERSONAL REPRESENTATIVE OF THE STATUTORY BENEFICIARIES, AND HER ATTORNEY ATTORNEYS, GARY W. POLIAKOFF, ESQ. AND RAYMOND P. MULLMAN, ESQ.:

You will please take notice that the Defendants White Oak Manor, Inc., White Oak Management, Inc.; and White Oak Manor - Spartanburg, Inc. d/b/a White Oak of Spartanburg, acting by and through their attorneys, will move this Court on the 10th day following the service hereof, or as soon thereafter as such motion may be heard, for an Order dismissing all of Plaintiff's claims against Defendants based upon lack of jurisdiction over the subject matter under SCRCP 12(b)(1). Defendants base their motion on the ground that Plaintiff's complaints are, by agreement between the parties, subject to compulsory and binding arbitration.

By way of background, at or about the time Decedent entered Defendant WOS's facility

as a resident, on or about January 2, 2013, Plaintiff, Hilda Stott acting by and through the authority granted to her by the Decedent, as the Decedent's attorney-in-fact, signed a certain "ARBITRATION AGREEMENT," a copy of which is attached hereto and incorporated herein by reference. In addition, a copy of the two (2) Powers of Attorney involved and referred to above are also attached.

On information and belief, the said Arbitration Agreement makes it such that this civil action is no longer available to the Plaintiff, and instead any complaints Plaintiff has against the Defendants are subject to compulsory and binding arbitration pursuant to the terms and provisions of the said Arbitration Agreement.

Based upon the above, and the attached Arbitration Agreement, Defendants move that Plaintiff's suit against them be dismissed, and that this matter be determined to be subject to arbitration only.

In support of this Motion, Defendants will rely on the entire record in this matter, as well as such memoranda and arguments as the Court may consider at the hearing in this matter.

HENDERSON, BRANDT & VIETH, P.A.

By: 

Matthew A. Henderson
S.C. Bar #03023
Joshua M. Henderson
S.C. Bar #09078
Attorneys for Defendant
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Spartanburg, SC
January 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Hilda Stott, individually and as Personal
Representative of the Estate of Jolly P.
Davis, deceased, and as Personal
Representative of the Statutory
Beneficiaries,

Plaintiffs,

vs.

White Oak Manor, Inc.; White Oak
Management, Inc.; and White Oak Manor -
Spartanburg, Inc. d/b/a White Oak of
Spartanburg,

Defendants.

CERTIFICATE OF SERVICE

2015-CP-42-5123

PERSONALLY appeared before me, Laurie A. Lipscomb, who being duly sworn, deposes and says that she is employed by *HENDERSON, BRANDT & VIETH, P.A.*, 360 East Henry Street, Suite 101, Spartanburg, South Carolina, and is a person of such age and discretion as to be competent to serve papers.

That on January 14, 2016, she served a copy of the Answer and Notice of Motion and Motion to Dismiss and/or Compel Arbitration in the above-captioned action on the below named addressee by mailing a copy thereof by United States Mail, postage prepaid, to the address shown below.

ADDRESSEE:

Gary W. Poliakoff, Esq.
POLIAKOFF & ASSOCIATES, P.A.
P.O. Box 1571
Spartanburg, SC 29306

Laurie A. Lipscomb
LAURIE A. LIPSCOMB

SWORN to and subscribed before
me this the 17 day of January, 2016.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 02/23/22

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M. HOPE BLANCHET

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

Hilda stott, Individually and)
as Personal Representative of)
the Estate of Jolly P. Davis,)
Plaintiff,)
-vs-)
White Oak Management, Inc.,)
et al,)
Defendants.)
TRANSCRIPT OF RECORD
2015-CP-42-5123
March 22, 2016
Spartanburg, SC

B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

RAYMOND PAUL MULLMAN, JR., ESQUIRE
Attorney for the Plaintiff

MATTHEW A. HENDERSON, ESQUIRE
JOSHUA MATTHEW HENDERSON, ESQUIRE
Attorneys for the Defendants

Linda D. Moffitt
Circuit Court Reporter

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Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Stott vs. White Oak.

2 MR. HENDERSON: Yes, sir.

3 THE COURT: All right. Whose motion?

4 MR. HENDERSON: It's my motion, Your Honor.

5 THE COURT: All right. Mr. Henderson.

6 MR. HENDERSON: Yes, sir. May it please the Court.

7 May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 MR. HENDERSON: Your Honor, my son Josh and I are
10 here, as you realize, representing White Oak. This is the
11 facility here in Spartanburg, White Oak Manor Spartanburg.

12 This has to do with a claim by the estate of Mr. Jolly
13 Davis who was a resident there for a short period of time,
14 a number of days, during January of 2013.

15 This is our motion to compel arbitration. We believe
16 that there is in place a valid arbitration agreement, and
17 we're asking the court to dismiss the civil lawsuit and to
18 require arbitration. We're prepared to arbitrate it.

19 By way of background, I've handed up to Your Honor --
20 and I have, of course, provided Mr. Mullman with a copy.
21 There's nothing new or surprising in there, but I've handed
22 up a little package that basically contains three items.

23 The first item is the first two pages of a 12-page
24 memorandum that Mr. Mullman and Mr. Poliakoff gave me early
25 on, kind of giving a little background with regard to Mr.

1 Jolly.

2 I have attached to what I've handed up to you, Your
3 Honor, the first two pages only because I felt like there
4 was a portion of those pages that could be relevant to your
5 decision today.

6 I will note that even though I didn't highlight it in
7 your copy, Mr. Jolly was in his 70s when he died. He
8 apparently served his country honorably. He, in fact, was
9 a Green Beret until 1966 according to this. Married to his
10 one and only wife for about 50 years when she tragically
11 died of a car wreck.

12 But what I deem to be important is the bottom of the
13 first page, Your Honor. That indicates that on
14 December 22nd of 2012 Mr. Jolly called his niece, Hilda
15 Hamby Stott, also known as Hilda H. Scott, also known as
16 Hilda J. Stott, who had developed some relationship with
17 Mr. Jolly during the last part of 2012.

18 According to this, according to what Mr. Mullman and
19 Mr. Poliakoff gave us, Mr. Jolly called Hilda and explained
20 that his O2 stats had dropped. Hilda called the E.M.S.
21 The E.M.S. transferred Mr. Jolly to Spartanburg Regional
22 where he was admitted.

23 And then at the bottom of page one and over on page
24 two, at the top of page two, it indicates that he was
25 transferred to White Oak Manor on January 2nd of 2013,

1 meaning that he had apparently been at Spartanburg Regional
2 for some 10 or 11 days. So, in other words, he wasn't seen
3 and then discharged immediately. He, in fact -- his
4 condition was serious enough to not only require his
5 admission but require his stay there for 10 or 11 days.

6 Then he went to White Oak. Now, when he got to White
7 Oak, if I could direct, because this is kind a unique case
8 for me, Your Honor.

9 Typically, when we file a motion to compel
10 arbitration, because we believe there is a valid
11 arbitration agreement, typically, the fight is over our
12 agreement. You know, well, it wasn't explained properly
13 or, you know, we got an opt-out provision in it or we don't
14 have an opt-out provision in it or, you know, we identified
15 somebody that won't arbitrate these matters or whatever.

16 And so this is a little unique, because if I'm not
17 mistaken the focus today is not, I don't believe, on the
18 arbitration agreement, which I believe to be one that fully
19 complies with the law of this state, but it has to do with
20 the power of attorney, the document that was signed by
21 Ms. Stott on behalf of her uncle, Mr. Davis, at the time
22 Mr. Stott was admitted on January the 2nd of 2013 to White
23 Oak. So for me it's a little bit unique.

24 On page three, I think there's the crux of the case,
25 Your Honor, I mean, as I see it. At the top -- and this is

1 the document that I doubt that Mr. Mullman prepared. I
2 know, of course, I didn't prepare it.

3 I might say it's about as good of a durable power of
4 attorney as I've ever seen. It's not only comprehensive.
5 It's 15 pages long. But it has paragraphs that with their
6 heading identify the content. And most of the ones that I
7 have ever done or seen just ramble along and you've got to
8 spend 30 minutes searching through them to see whether or
9 not the attorney, in fact, can do what they claim that they
10 want to do.

11 But this one says, "Durable power of attorney." It
12 was recorded. It shows up there in the top right-hand
13 corner on January 8th of 2013. It's Mr. Davis giving the
14 authority to serve as attorney, in fact, to his niece,
15 Hilda J. Stott.

16 Now, this next paragraph I think is extremely
17 important, Your Honor. You know, it's just my point of
18 view, but to me the crux of the case involves this article
19 two, effectiveness -- effective-upon-disability paragraph.
20 And I've highlighted the portions that I think are relevant
21 to our case here.

22 "This power of attorney shall become effective upon my
23 disability and shall survive, continued during my
24 disability." And then it goes on to describe incompetence
25 capacity, partial incapacity. And I don't -- I don't

1 believe a record -- now, there's been no discovery yet,
2 because, obviously, this is a -- this is a precondition to
3 where we go with this case, you're ruling today. But I --
4 we don't take issue with the fact that Mr. Jolly appeared
5 to be mentally competent. So we're not over here today
6 saying that this man was incompetent and just couldn't
7 manage his own affairs. Mentally speaking, we're not
8 saying that at all.

9 But this says it shall be effective, become effective,
10 upon his disability and continue during his disability.
11 And then this paragraph goes on to define disability.
12 Disability -- and, obviously, the author, the addressing of
13 this, has distinguished disability from incompetence and
14 capacity, parts on capacity.

15 It says, "Disability shall include my inability to
16 care for myself effectively."

17 Now, here's a man that came from Spartanburg Regional
18 after being over there 10 or 11 days.

19 And then he goes on to say, "For such reasons as" --
20 and, once again, I have it highlighted on your copy --
21 "physical illness or disability."

22 I mean, this is not one that deals with mental
23 incompetency only. This deals with physical disability.
24 And this man was, obviously, at least as I see it,
25 disabled. I mean, why spend 10 or 11 days in Spartanburg

1 Regional and then be transferred to a nursing home?
2 And then it -- then it goes on there on the bottom of
3 page three, "My agent shall have all powers including,"
4 and, now, this I don't recall ever seeing before either.
5 Over on page eight, Your Honor, this says down at the
6 bottom of page eight, Paragraph G, "Power relating to
7 claims and litigation. I empower my attorney in fact to,"
8 and, low and behold, over on --

9 THE COURT: Hold on a minute.

10 MR. HENDERSON: Yes, sir, yes, sir.

11 THE COURT: Page eight?

12 MR. HENDERSON: Page eight that I have circled down
13 there.

14 THE COURT: Your page eight.

15 MR. HENDERSON: Yes, sir. I'm sorry, Your Honor. My
16 page eight, very bottom.

17 And then over on the top of the next page or the
18 middle of the next page it says, "To submit to arbitration
19 claims or litigation."

20 I mean -- I mean, it clearly says that Ms. Stott has
21 the authority to submit to arbitration, as she did, claims.
22 I mean, wow.

23 And then if we flip on over a little bit further we
24 can see over --

25 THE COURT: Is that --

1 MR. HENDERSON: -- on my numbers, once again, that on
2 page 16 Mr. Davis signed this in May of 2012.

3 Now, he went to Spartanburg Regional on
4 December 22nd of 2012. So this was seven months, more or
5 less, before he went to the hospital and before he then was
6 transferred to White Oak Manor Spartanburg.

7 And then -- then we have over on page 18 the
8 arbitration agreement.

9 And over on page 19 we see that Hilda Stott signed it
10 for Jolly P. Davis. That's on page 19. It indicates
11 that -- that he signed it.

12 And then over on page 21 of my numbers, Your Honor, in
13 paragraph 17, it says instead of the resident signing the
14 document, it's the authorized agent, slash, attorney in
15 fact signing below. "He/she has the legal right to execute
16 the document on behalf of the resident and to hereby bind
17 the resident, as well as the resident's heirs and
18 beneficiaries." so she is affirming that in signing this
19 document she believes she has the authority to do so, this
20 being the arbitration agreement.

21 And then over on, finally on, page 22 dated
22 January 2nd, the date of admission, there's Jolly P. Davis'
23 signature, and Ms. Stott signed it.

24 So -- so, I mean, Your Honor, it seems to me that if
25 you determine that this isn't subject to arbitration you're

1 saying that the power of attorney that our client relied
2 on, that somebody else prepared that's very comprehensive,
3 that clearly says it becomes effective not only if I'm
4 mentally incapacitated but also if I suffer from some
5 physical disability, that for some reason that isn't
6 binding on Mr. Davis and his estate, Your Honor. And I
7 don't -- you know, I hope you won't rule that way, because
8 I don't think that's consistent with the facts.

9 I mean, this was a legally valid power of attorney
10 that from our point of view without question bind
11 Mr. Jolly, his estate, to arbitrating his claims.

12 I mean, there's no question about the arbitration
13 agreement. I mean, it gives you all of the common law
14 rights. It doesn't eliminate any rights that you have.

15 And, once again, I don't think the issue today has
16 anything to do with the arbitration agreement. I mean,
17 it's -- it's as far as I can draft it.

18 And so I'm hopeful, Your Honor, that today you will
19 grant white oak's motion to compel arbitration based in
20 large part upon the fact that you believe that Mr. Davis'
21 power of attorney is valid, provides for it being used --
22 you might call it a springing power of attorney if he
23 becomes physical disabled, if he has a disability, empowers
24 Ms. Stott, his niece, to act in his behalf, and that she
25 acted in his behalf and should be legally bound. So that's

1 White Oak's position, Your Honor. Thank you very much.

2 THE COURT: Okay.

3 MR. MULLMAN: Thank you, Your Honor.

4 Ray Mullman for the estate of Jolly Davis.

5 There's a couple of problems in Matt's argument. One
6 is the power of attorney, which I believe has been provided
7 to you previously. It was not recorded, registered with
8 the court, until January 8th after he left the nursing
9 home. He was only there four days, Your Honor. Dehydrated
10 him to such an extent that his kidneys shut down.

11 This was a man who was Green Beret, a decorated
12 veteran in Vietnam, did special ops, we think, for the
13 C.I.A. We're pretty sure. And he had just lost his wife
14 about four months earlier. He was living at home
15 independently by himself. His niece, Hilda, would check on
16 him every couple of weeks. But he was living home
17 independently.

18 He had a touch of pneumonia December 22nd and went to
19 the hospital. They didn't want him to return home. He was
20 medically stable. He was competent. He was able to sign
21 things at the hospital when he left. But he wanted to go
22 into a nursing home for respite care to make sure he was
23 doing well. There's no evidence of dementia.

24 There are several documents from the White Oak's own
25 chart that shows that he did not have dementia and that he

1 could make decisional capacity.

2 This is from actually spartanburg when he left. The
3 day he was admitted into the nursing home the doctor says,
4 "This patient does possess the decisional capacity to make
5 healthcare decisions for himself."

6 That's very important because "Effective upon
7 disability" section, article two, the last two lines Matt
8 skipped over when they said it includes all of these
9 different disabilities -- mental, physical. It says,
10 "which may be evidenced by a written statement of my
11 regularly attending physician or two other qualified
12 physicians or by court order."

13 So even if this did apply, which we don't think it
14 did, it did not become effective on January 2nd when he
15 entered.

16 Additionally, they do a comprehensive nursing
17 admission data collection form at white oak Manor as soon
18 as you come in. On this test he's able to communicate; he
19 knew where he was. Actually, he didn't know where it was
20 located, but he knew today's date. He knew the year, how
21 old he was, when his birthday was, what year he was born,
22 the president, the previous president. In the mental
23 status summary he only scored a one. Zero to two is intact
24 mental functioning.

25 He was -- on the second page -- the third page --

1 three of ten -- he was cooperative, sociable, talkative.
2 He can hear. His speech is clear. He can respond.

3 There's absolutely no reason to ask Hilda to sign it,
4 and there's no evidence that Hilda made any
5 representations. There is no affidavit from them.

6 However, let's imagine she did. Let's imagine she
7 said, well, I'm his agent, I'm his power of attorney.
8 Doesn't matter. They can't rely on the agent. They have
9 to go to the principal and say is she your agent. They
10 didn't do that. There's no evidence they did it.

11 They have the burden of proof to show or to do due
12 diligence to make sure that the power of attorney, the
13 person signing it, actually has the authority she claims.

14 It's very interesting. There needs to be a section.
15 There's actually a section in the admission paper that says
16 what is your authority, mark it down, are you the guardian,
17 are you the conservator or are you the healthcare power of
18 attorney. It wasn't marked. They didn't ask her. They
19 didn't check it.

20 Additionally, another nursing evaluation the same day,
21 January 7th, this one states the same thing. Normal
22 speech, normal hearing, normal sight, independent mental
23 status, independent feeding.

24 This was a man who was just there for a respite. This
25 isn't your typical nursing home resident who is mentally

1 incompetent, disabled or had other issues.

2 So the power of attorney, once again, you look at the
3 statements from the doctors. Here's the doctor on
4 January 3rd. They have to do a history and physical, a
5 doctor, within 48 hours of entering the nursing home.

6 What does he say under functional status? "He can
7 walk with his walker in assisted one. He can feed himself.
8 He is timing -- times two mental status. He is oriented
9 times four -- person, place, time."

10 So -- so there's no evidence that this man is
11 disabled, no evidence that he's demented, no evidence that
12 he cannot enter into a contract for himself.

13 Then you go to there's no apparent agency, because the
14 principal -- there's no evidence that Jolly Davis himself
15 made any representations to anybody about Hilda being his
16 agent at the time. So there's no actual authority; there's
17 no apparent agency here that they relied on.

18 Lastly, this arbitration agreement does have a lot of
19 problems with it. One of the main problems it has with it
20 is despite the fact that White Oak Manor, Inc. and White
21 Oak Management did not sign the contract and are not
22 compelled, I mean, to arbitrate and cannot compel us to
23 arbitrate because they're not signatories, so White Oak
24 Manor, Inc. and White Oak Management are not signatories,
25 cannot participate in the arbitration, or at least they

1 can't compel it. I guess we could compel them in theory.
2 However, in the agreement, the arbitration agreement,
3 it says that whatever happens in arbitration between the
4 facility and the estate of Jolly Davis, that White Oak
5 Manor and White Oak Manor, Inc. and White Oak Management
6 will be released. So they're not even participating in the
7 arbitration, or they can't compel it. But they're going to
8 be released from it.

9 Additionally, there's a lot of strange parts to the
10 arbitration agreement. We didn't bring that up to our memo
11 because we don't think it's enforceable.

12 If the Court deems it enforceable we will then go
13 before the judge and ask to sever the issues that we don't
14 believe are enforceable in the admission agreement. There
15 are several. I mean, in the arbitration agreement. Excuse
16 me.

17 Lastly -- and there's a great order from Judge
18 Stilwell that I can hand up that the wrongful death part of
19 the case does not apply or arbitration doesn't apply to the
20 wrongful death case. And it's a great analysis of that
21 issue.

22 And, lastly, there's a recent case that just came out
23 that I want the Court to be aware of called Thompson vs.
24 Pruitt Health, and it discusses some of the same things
25 we're discussing today about reliance and equitable

1 estoppel and those kind of things. And it makes clear that
2 for an equitable estoppel to apply it has to be something
3 that Jolly Davis did, not something Hilda did. Hilda's not
4 acting on behalf of Jolly Davis. You can't blame -- you
5 can't blame Jolly Davis for them relying on Hilda, even
6 though there's no evidence they relied on Hilda.

7 And, lastly, I just want to object for the record.
8 The two pages he handed up, this is part of a settlement
9 package, should not be admissible, should not be discussed,
10 per se, confidential. I'm a little shock it was used.
11 Thank you, Your Honor.

12 THE COURT: Any reply?

13 MR. HENDERSON: Yes, sir, Your Honor, briefly. May I
14 approach the bench, Your Honor?

15 THE COURT: Sure.

16 MR. HENDERSON: Here is the statute on powers of
17 attorney, and I have highlighted there after the instrument
18 has been recorded, after the instrument has been -- and I
19 can flip over to the next page, Your Honor -- after it has
20 recorded. It wasn't recorded before or after the onset of
21 the principal's physical disability -- physical disability
22 or incompetency. It's effective, notwithstanding the
23 mental incompetence or physical disability. So, I mean,
24 it's effective. I mean, it's effective according to the
25 statute.

1 Now, secondly, Mr. Mullman handed up the -- the data
2 collection form. It seems to consist of -- and this is the
3 facility's numbering, not my numbering, Your Honor -- a
4 total of ten pages.

5 On the first page it goes over some of the issues --
6 depression, afib, acute renal failure. I mean, these are
7 physical disabilities, Your Honor.

8 Hopefully the Court will recall that I didn't
9 challenge the mental competency of Mr. Davis but -- but I
10 said that he was physically disabled. And that's why I
11 handed up those first two pages.

12 So if I had been smart I would have handed this exact
13 document up. Over on page six of this document there
14 are -- there is an indication of exactly the level of
15 Mr. Jolly's functioning when he arrived at white oak.

16 And down there, limited assistance for bed mobility.
17 So he needed some assistance transferring. Talley thinks
18 he needed some assistance. And then extensive assistance
19 with regard to dressing and bathing. I mean, so this man
20 was physically disabled. There's no question about it.

21 And the power of attorney says that in those
22 circumstances that's when it comes into play. I mean, I
23 don't -- I don't see that not being the case here.

24 And, finally, Your Honor, there is a 2014 Justice
25 Toal -- four justices affirming a reversal, a reversing, of

1 a nursing home case where the question alleged medical
2 malpractice survival and wrongful death. And there was one
3 concurring opinion, so, essentially, a unanimous case,
4 decision.

5 May I approach, Your Honor? This is the Dean vs.
6 Heritage case, and it seems to me that if there were any
7 question about wrongful death claims and being somehow
8 different from other claims that that case surely could
9 have addressed the issue, and never did.

10 So, you know, as I see it, Your Honor, without
11 question, the power of attorney gave Ms. Stott -- she
12 thought she had the right.

13 she is the personal representative handling the estate
14 now. Kind of ironic that the lady who signed the power of
15 attorney affirmed she had the authority to do so, affirmed
16 in effect by virtue of the facts, the stay at Spartanburg
17 Regional and then the transfer to -- to White Oak that we
18 had a man that with a number of physical disabilities to
19 pursue this claim against White Oak Spartanburg and to say,
20 however, I shouldn't be bound by the arbitration agreement
21 that I signed pursuant to the authority given me by
22 Mr. Davis. I said Mr. Jolly. Mr. Davis. Under the power
23 of attorney.

24 So, Your Honor, I'm hopeful you will compel
25 arbitration.

1 Now, let me say this, Your Honor. I mean, really, as
2 I tell me kids, Your Honor, always be honest, especially in
3 court and church. And I'm going to be honest.

4 The agreement as I read it deals with the facility
5 only. So, I mean, if for some reason the Court determined
6 to bifurcate and say, well, with regard to the parent
7 company that owns the land and building and the stock or
8 with regard to the management company there should be
9 different rules apply, I mean, that's okay. I mean,
10 clearly this was a White Oak Manor Spartanburg arbitration
11 agreement. Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. MULLMAN: Yes, Your Honor, just to distinguish
14 Dean quite a bit. They didn't compel arbitration in that
15 case. They remanded it back.

16 And what's interesting about Dean is Judge Toal in
17 footnote one was very concerned that the competent person,
18 resident, did not sign the arbitration agreement, in foot
19 note one and foot note 13.

20 "We are concerned that according to the record the
21 patient did not sign either the residency agreement or the
22 agreement on her own behalf despite being competent at the
23 time."

24 I think that's the key here. It distinguishes Dean.
25 He's competent. He's mentally competent. He is not

1 physically disabled just because he needs a little
2 assistance. You know, that's pretty scary that everybody
3 loses their constitutional rights in a jury trial just
4 because they need a little healthcare at a nursing home or
5 hospital.

6 They've got -- if you go to the doctor's office with a
7 cold, am I disabled then? Can my wife sign me -- my
8 constitutional rights away just because I'm sick? I'm
9 mentally capable; I'm physically capable of signing my own
10 name. There is no physical disability.

11 This is very similar to the Fields' order from years
12 ago that I believe I have where a gentleman went into a
13 nursing home. There was no power of attorney, no valid
14 one, no healthcare power of attorney. And they were
15 arguing that he was disabled, just like today, but he was
16 only temporarily disabled.

17 In that case Judge Couch said, well, no, they could
18 have come to him the next day and had him sign it.

19 Additionally, there's a revocation clause in here. He
20 could have revoked the arbitration agreement, therefore
21 it's not a condition. They didn't rely on the arbitration
22 agreement to give him healthcare because he could have
23 revoked it up to I believe seven or ten days after entry.

24 Of course he didn't have that capability as of the
25 7th and 8th. And that's why Hilda registered the power of

1 attorney, so she would be able to.

2 Once he became disabled she recorded the power of
3 attorney so she could help the hospital make decisions.
4 Before that time he was not physically disabled. No doctor
5 suggested he was.

6 According to the P.O.A. two doctors are supposed to
7 say he's mentally incompetent or he's supposed to rely on
8 the statements in his medical record.

9 We have provided several excerpts from the chart. The
10 defendant has not produced any evidence of disability
11 except speculation that if he's in a nursing home he must
12 be disabled. That's just not true. That's not evidence.
13 That's argument.

14 And we believe that this is not enforceable to the
15 estate of Jolly Davis, certainly not enforceable for
16 wrongful death, and it's the statutory beneficiaries who
17 did not sign, and clearly not an enforceable contract
18 against White Oak Manor, Inc. and White Oak Manor -- White
19 Oak Management.

20 White Oak Manor Spartanburg should not have relied on
21 Hilda. They had the burden. They had the due diligence to
22 check the authority of the power of attorney, and they did
23 not do that.

24 They simply could have. If they wanted to they could
25 have said, hey, let me see the power of attorney, hey, this

1 hasn't been registered, go register it and come back.
2 Takes five minutes. Or they could have went to Jolly and
3 said is it okay if Hilda signs on your behalf, or they
4 could have just had Jolly sign the records. That's the
5 easy thing. Thank you, Your Honor.

6 THE COURT: All right. I'll review it and issue an
7 order.

8 END OF REQUESTED TRANSCRIPT OF RECORD
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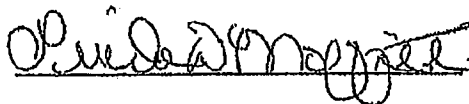
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 22nd day of March 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 31, 2016



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased, and as Personal Representative of the Statutory Beneficiaries,

Plaintiffs,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor - Spartanburg, Inc. d/b/a White Oak of Spartanburg,

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2015-CP-42-5123

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS AND/OR
COMPEL ARBITRATION**

TO: MATTHEW A. HENDERSON, ATTORNEY FOR DEFENDANT WHITE OAK MANAGEMENT, INC.:

COMES NOW, Plaintiffs, by and through the undersigned attorney, and present this Memorandum in Opposition to Defendants' Motion to Dismiss and/or Compel Arbitration.

This matter is before the Court on Defendants' Notice of Motion and Motion to Dismiss and/or Compel Arbitration. After hearing oral arguments from counsel, Plaintiffs ask this Court deny the Motion to Dismiss and/or Compel Arbitration as to all parties, including both Survival and Wrongful Death actions.

BACKGROUND

This matter arises out of both Wrongful Death and Survival actions which Plaintiffs brought against Defendants involving nursing home negligence, custodial negligence, and the resulting death of Jolly Davis ("Decedent"). Hilda Stott is Decedent's niece and serves as personal representative of Decedent's estate.

On January 2, 2013, Decedent was admitted to White Oak Manor – Spartanburg, Inc. d/b/a White Oak of Spartanburg (“facility”), a skilled nursing facility. White Oak Manor, Inc. is the parent corporation of the facility. White Oak Management, Inc. is a related entity that provides services to the facility. Plaintiffs allege that while the Corporate Defendants did not provide direct care or services to Decedent, they are Defendants in this matter because their control over the facility directly affected the quality of care received by Decedent.

At the time of admission, an employee at the facility presented Hilda Stott with the Resident and Facility Admission Agreement (the “Agreement”) and the Arbitration Agreement to sign on behalf of her uncle, Decedent. Hilda Stott entered into the Agreement and the Arbitration Agreement on behalf of Decedent without authority to bind Decedent to the agreements and specifically without the authority to bind Decedent to arbitration, thereby waiving Decedent’s right to a jury trial.

Facility staff not only had an unauthorized agent sign the agreements on behalf of Decedent, they did so without asking Decedent to sign, despite his full capacity to sign. Decedent’s ability to make his own decisions is evidenced by the Spartanburg Regional Healthcare System *Progress Note Addressing Decisional Capacity*, which was signed by Decedent’s Attending Physician on January 2, 2013, the very same day the agreements were signed by Mrs. Stott. *See Exhibit 1 – Progress Note*. That Progress Note states “[t]his patient DOES possess the decisional capacity to make healthcare decisions for self.” [emphasis in original], *See Exhibit 1*. Put simply, Decedent was admitted with physical injuries but was awake, aware, and able to enter or refuse to enter contracts on his own.

When Hilda Stott signed the Agreement, which covered issues relating to admission and care at the facility, facility staff left blank the section of the Agreement which designates the type

of authorized representative for the person signing on behalf of Decedent and the scope of that representative's authorization to make decisions for Decedent. See Exhibit 2 - Admissions Agreement at page 6. Defendants allege in their Motion that Hilda Stott had a valid power of attorney based on a Durable Power of Attorney for Finance ("DPOA") that was only valid after Decedent left the facility and a South Carolina Healthcare Power of Attorney ("HPOA") that clearly states in the first paragraph that the power arises only "IF YOU CANNOT MAKE THE DECISION FOR YOURSELF." See Exhibit 3 - HPOA, Page 1. Further, the Supreme Court for the State of South Carolina made clear in Coleman v. Mariner Health Care, Inc., attached hereto as Exhibit 4, that authority to make healthcare decisions does not extend to arbitration agreements.¹ Thus, without Jolly Davis's actual representation to facility staff that Hilda Stott could and should sign the agreements, Defendants' attempts to bind Decedent, his Wrongful Death beneficiaries, and other Defendants not party to the alleged Arbitration Agreement to binding arbitration are fruitless and without merit.

A valid DPOA would allow Hilda Stott to waive Jolly Davis's constitutional right to a jury trial against the Defendant facility, however the DPOA in the present matter was not valid at the time of execution of the Arbitration Agreement and Hilda Stott, therefore, did not have authority to sign on her uncle's behalf. The DPOA that was submitted with Defendants' Motion was not valid at the time of signing of the agreements as it was not filed with the Register of Deeds until after Jolly Davis had already left the facility. Under South Carolina Code § 62-5-501 (2012), a durable power of attorney requires the same executory actions as a deed, including filing with the

¹ See Exhibit 4 - Coleman v. Mariner Health Care, Inc., at page 7 ("The scope of Sister's authority to consent to 'decisions concerning Decedent's health care' extend to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent..." [emphasis added]).

deeds office. In the present matter, the DPOA was not recorded with the Office of Register of Deeds for Spartanburg County until January 8, 2013, two days after Decedent permanently left the facility and six days after Hilda Stott signed the alleged Arbitration Agreement. Plaintiffs contend the late filing is evidence of Defendants' knowledge of and awareness that the DPOA should have been filed with the Office of Register of Deeds in order for it to be valid. *See Exhibit 5 – Durable Power of Attorney for Finance* at page 1.

The alleged Arbitration Agreement provides that the parties agree to follow the dispute resolution procedure set forth therein. This Procedure can be summarized as follows:

1. Where one party believes he or she has a monetary claim over \$25,000.00, the first party will give the other party written notice of a claim;
2. Within thirty (30) days of the written notice, the claimant party will identify in writing "anyone that party wishes" as an arbitrator;
3. Within thirty (30) days of receipt of written notice of the claimant party's choice of arbitrator, the other party will choose another arbitrator;
4. Within thirty (30) days of the other party's notification as to the second arbitrator, the two (2) chosen arbitrators will choose a third arbitrator; and
5. A hearing will be held within ninety (90) days, the prevailing party being reimbursed for costs and expenses.

See Exhibit 6 – Arbitration Agreement.

Plaintiffs filed the instant actions on December 16, 2015. Plaintiffs have not complied with the procedures in the alleged Arbitration Agreement for Plaintiffs' claims over \$25,000.00 arising out of and in connection with Decedent's care because Plaintiffs' claims include a wrongful death claims which is outside the scope of the alleged Arbitration Agreement, because Plaintiffs brought

claim against other Defendants not parties to the alleged Arbitration Agreement, and because Jolly Davis was available to make his own decisions regarding arbitration.

LEGAL ANALYSIS AND CONCLUSIONS

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). It is well established that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007)(internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination." York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 78, 749 S.E.2d 139, 144 (Ct. App. 2013). Defendants cannot meet the burden.

Whether the parties agreed to arbitrate is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) ("General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause."). The courts, not arbitrators, are charged with deciding certain "gateway matters" including whether the parties have a valid arbitration agreement or whether the arbitration clause applies to a certain type of controversy. New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 629, 667 S.E. 2d 1, 5 (Ct. App. 2008). Even if the Court finds that the parties had a valid arbitration agreement, the agreement applies only to the Survival Action and only to the facility Defendant.

I. Wrongful Death Action Not Subject to Arbitration

The question of whether a wrongful death action is subject to mandatory arbitration pursuant to the terms of a contract is one of relative novelty in South Carolina. Case law across many jurisdictions within the United States is split as to whether an arbitration agreement covers a wrongful death claim brought by the decedent's statutory beneficiaries who were not a party to the contract. *Compare* Carter v. SSC Odin Operating Company, LLC, 2012 IL 113204, 976 N.E.2d 344, 360, 364 Ill. Dec. 66 (Ill. 2012); Lawrence v. Manor, 273 S.W.3d 525, 530 (Mo. 2009); Bybee v. Abdulla, 2008 UT 35, 189 P.3d 40, 47, 50 (Utah 2008); Peters v. Columbus Steel Castings Co., 115 Ohio St. 3d 134, 2007 Ohio 4787, 873 N.E.2d 1258, 1262 (Ohio 2007); Mcfarren v. Emeritus at Canton, 2013 Ohio 3900, 997 N.E.2d 1254, 2013 WL 4822908 (Ohio App. 2013); Pisano v. Extendicare Homes, Inc., 2013 PA Super 232, 77 A.3d 651, 2013 WL 4046673 (Pa. Super. 2013); Woodall v. Avalon Care Center-Federal Way, LLC, 155 Wn. App. 919, 231 P.3d 1252, 1257-59 (Wash. App. 2010) *with* Graves v. B.P., 568 F.3d 221, 223 (5th Cir. 2009); Peltz ex rel. Estate of Peltz v. Sears, Roebuck & Co., 367 F.Supp.2d 711, 718-19 (E.D. Pa. 2005); Laizure v. Avante at Leesburg, Inc., 109 So. 3d 752, 762 (Fla. 2013); Ruiz v. Podolsky, 50 Cal. 4th 838, 114 Cal. Rptr. 3d 263, 237 P.3d 584, 591 n. 2 (Cal. 2010); In re Labatt Food Service, L.P., 279 S.W.3d 640, 647 (Tex. 2009); Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661, 665 (Ala. 2004); Allen v. Pacheco, 71 P.3d 375, 379 (Colo. 2003); Estate of Richard Heiney v. Life Care Centers of America, Inc., 2013 Ariz. App. Unpub. LEXIS 496, 2013 WL 1846599 (Ariz. App. 2013).

South Carolina law is clear that a Wrongful Death claim exists for the statutory beneficiaries and that such claims are distinct and separate claims from those that are brought under Survival claims. *See* Bonnett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914). The alleged Arbitration Agreement, by its own terms, is an agreement

between "White Oak Spartanburg ("the Facility") and Hilda Stott/Jolly Davis ("the Resident") ... TO ARBITRATE ALL MONETARY CLAIMS that may arise between them (with the exception of monetary claims of less than \$25,000.00)." Decedent had the authority to bind himself and his claims to arbitration but was not given the chance. But even if Decedent had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries who were not a party to the Arbitration Agreement.

Without a memorandum of law in support of Defendants' Motion, Plaintiffs are unsure as to Defendants' position on the wrongful death beneficiaries' claims against them.

II. Niece Did Not Have Authority to Sign on Behalf of Decedent

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Hilda Stott did not have that authority. The evidence Defendants have produced indicating that Hilda Stott had authority to waive Jolly Davis's right to a jury trial or enter into a contract points to a broken process and an attempt by Defendants' employees to cover their tracks; Defendants knew the DPOA was not valid until recorded so they rushed over to register it the moment they realized Jolly Davis was dying. Decedent did not lack the capacity to contract for himself. Decedent was capable of making such a decision or demonstrating such an intention.

Hilda Stott did not have authority under the DPOA to bind Jolly to arbitration because the DPOA was not valid at the time Hilda Stott signed the agreements and because the HPOA does not extend authority to the alleged Arbitration Agreement. Under SC Code § 62-5-501 (2012), *Protection of Persons Under Disability and Their Property*, the power of attorney must be recorded in the county's registry of deeds.

(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded. [Emphasis added]

Here, the DPOA was recorded six days after the agreements were signed.

It is clear that Hilda Stott did not have the authority regardless of how she may have behaved. From WDI Meredith & Co. v. American Telesis, Inc., *supra*, "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such a belief. An agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 142-143, 399 S.B.2d at 433 (Ct. App. 1990) overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000)). In our present matter, the principal was never consulted.

The fact that Hilda Stott signed documents so that her uncle could be admitted to the facility and receive medical care in no way indicates a manifestation of authority by Mrs. Stott. Decedent never manifested any form of consent that established Hilda Stott was his agent, nor should Decedent have been required to manifest such consent because Decedent was wide awake, lucid, and able to make his own decisions regarding his rights. See Exhibit 7 - Scott v. Heritage Healthcare of Estill, LLC. In Scott, a nursing home case with both survival and wrongful death actions, the Court of Appeals, *per curiam*, affirmed a trial court ruling that the signatory lacked authority to sign on behalf of the resident when the resident was "competent at the time she was admitted to [the facility]." See Exhibit 7 at page 2. Here, the same situation rings true, as Jolly

Davis was competent at the time he was admitted to the facility.

Furthermore, Defendants are sophisticated and are accustomed to dealing with arbitration provisions and powers of attorney while Hilda Stott was not. See Small v. HCF of Perrysburg, Inc., 159 Ohio App.3d 66, 823 N.E.2d 19 (Ohio 2004) at 24 {¶29}. Absent any such authority, the Arbitration Agreement is null and void because Hilda Stott lacked the capacity and authority to enter into it.

III. Equitable Estoppel Does Not Apply

Upon information and belief, Plaintiffs, having not presently received a memorandum in support of Defendants' Motion, believe Defendants will argue that Plaintiffs are equitably estopped from denying enforcement of the alleged Arbitration Agreement Hilda Stott signed at the time of Decedent's admission to the facility. 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.

Defendants cannot meet their burden to establish these elements. There is no evidence that Jolly Davis or Hilda Stott acted in a way amounting to a false representation to Defendants regarding Decedent's status or that Ms. Stott intended for Defendants to act in reliance on her conduct. There is no evidence that Defendants did, in fact, rely on any representation. Decedent's

lack of knowledge of the alleged Arbitration Agreement prevented him from forming the required intent for Defendants to rely on his conduct.

Plaintiffs have shown Defendants cannot meet their burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendants to show it did not know Hilda Stott lacked authority to sign the arbitration agreement on her uncle's behalf and Defendants 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).

As to the issue of estoppel, the Supreme Court's decision in Coleman v. Mariner Health Care, Inc., attached hereto as Exhibit 4, is directly on point. The Coleman decision addressed whether an admission agreement and an arbitration agreement merged and thereby equitably estopped the plaintiffs in that case from denying the applicability of the arbitration agreement. *See Exhibit 4* at pages 8 – 9. In affirming Judge Nettles's denial of the nursing home corporate defendants' motion to compel arbitration, Justice Pleicoones explained that "[a]ppellants' equitable estoppel argument is premised on their contention that, under state law, the admission agreements and the AAs merged." *Id.* Citing Klutts Resort Realty, Inc. v. Down Round Dev. Corp., 268 S.C. 80, 88, 232 S.E.2d 20, 24 (1977), Justice Pleicoones explained that, without evidence to the contrary, South Carolina law deems contracts merged if they "were executed at the same time, by the same parties, for the same purposes, and in the course of the same transaction." *Id.*

Justice Pleicones looked to the specific language in each agreement to determine whether language from either agreement contained language which would indicate that the agreements were separate and independent, as intended by the parties. *Id.* In ruling that there was no merger despite the agreements being signed by the same parties at the same time and in the course of the same transaction, Justice Pleicones looked to the "separatedness" of the agreements and whether the agreements contained conflicting language. *Id.* In affirming the trial court and denying the nursing home defendants' motion, Justice Pleicones thought it particularly informative that the arbitration agreement contained a disclaimer clause, allowing the arbitration agreement parties to disclaim the agreement within thirty days of signing.

In the present case, the alleged Arbitration Agreement states "... beginning seven (7) days from date hereof, and for another ten (10) days thereafter, he/she has the right to 'opt out' of this Agreement, and no longer be bound by it." See Exhibit 6 at ¶16. This disclaimer/revocability clause only differs from the clause in the arbitration agreement in Coleman with the number of days that revocability is available to the parties; the clauses are identical in substance but slightly different in procedural time. Further, the Arbitration Agreement in the present matter states "[t]he within Arbitration Agreement constitutes the entire agreement ..." [emphasis added] See Exhibit 6 at ¶ 21. Applying the Coleman decision, the two agreements are separate and independent from one another and merger does not apply.

As Coleman holds, any vagueness or ambiguity as to whether the agreements merge must be construed against the drafting party, the Defendant facility in the present matter. "Even if the ... clause creates an ambiguity as to merger, the law is clear that any ambiguity in such a clause is construed against the drafter, in this case, appellants." [internal citations omitted] See Exhibit 4

page 8. Plaintiffs now request this Court deny Defendants' merger argument because the language in the Arbitration Agreement clearly makes it an independent document.

In this case, Defendants had the capacity to determine whether Hilda Stott had authority to sign an arbitration agreement on Decedent's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney, as evidenced by Defendant's employee filing the DPOA with the Office of Register of Deeds in order to make the DPOA valid, Defendant's filing the DPOA after Decedent was no longer a resident of the facility. Defendants had the ability to ask Hilda Scott if she had a valid power of attorney and if she was Decedent's attorney in fact. Defendants had the ability to request supporting documentation. Since Defendants have failed to provide supporting information for the alleged valid authority of Hilda Scott, this Motion should be denied.

CONCLUSION

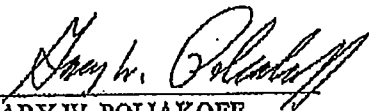
Hilda Stott lacked the legal authority to bind her uncle to any contract which removed his rights under the law and the Constitution. The determination of agency is based upon the intentions and representations of the principal, not the agent; neither Jolly Davis nor Hilda Stott displayed any such intentions or make any such representations.

The Agreement does not apply to all parties of the suit as it does not govern the claims brought by Wrongful Death beneficiaries or against Corporate Defendants. Defendants' agents presented Mrs. Stott with a stack of admission papers and told her to sign all of them so that her uncle could receive care. Even if Mrs. Stott had authority to bind other parties or to bind her own uncle to arbitration, she did not understand the ramifications of waiving a constitutional right as to a sophisticated business entity.

Based on the foregoing reasons as well as those presented at the upcoming hearing, Plaintiffs request this Court conclude that Defendants cannot bind all parties to arbitration and Deny Defendants' Motion.

RESPECTFULLY SUBMITTED,

POLIAKOFF & ASSOCIATES, P.A.



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Date: March 21, 2016.
Spartanburg, SC



STARBUCKS
National Healthcare System

W/PMC SHRC SWA

PROGRESS NOTE ADDRESSING DECISIONAL CAPACITY

Based upon my observation and involvement with this patient, it is my medical opinion that

JOHN DAVIS
(Name of Patient)

Account Number: 1235601402

Check ONE of the following statements

<input checked="" type="checkbox"/> This patient DOES meet ALL of the criteria for decisional capacity, therefore is not able to make healthcare decisions for self. Furthermore, it is my opinion that due to the patient's medical condition(s), this lack of capacity is not likely to change in the immediate future.	<input type="checkbox"/> This patient DOES possess the decisional capacity to make health care decisions for self.
<p>Criteria met with:</p> <input type="checkbox"/> Oriented to <input type="checkbox"/> person <input type="checkbox"/> place <input type="checkbox"/> time <input type="checkbox"/> Understands the nature of problem/illness <input type="checkbox"/> Ability to understand that decisions need to be made <input type="checkbox"/> Ability to communicate a decision <input type="checkbox"/> Ability to understand and use information logically to reach a decision <input type="checkbox"/> Ability to be realistic in decision making (i.e. to understand the consequences of a decision)	<p>Criteria NOT met:</p> <input type="checkbox"/> Oriented to <input type="checkbox"/> person <input type="checkbox"/> place <input type="checkbox"/> time <input type="checkbox"/> Understands the nature of problem/illness <input type="checkbox"/> Ability to understand that decisions need to be made <input type="checkbox"/> Ability to communicate a decision <input type="checkbox"/> Ability to understand and use information logically to reach a decision <input type="checkbox"/> Ability to be realistic in decision making (i.e. to understand the consequences of a decision)
<p>Progress Note</p>	<p>Progress Note</p>
<p>(Attending Physician) <u>[Signature]</u> <u>12/13</u> (Date)</p>	<p>(Second Physician Involved in Case) _____ (Date)</p>
<p>NOTE: A Psychiatric consult is NOT required. This form requires the signature of TWO PHYSICIANS. A Progress or Consult Note should be written regarding both the patient's medical condition and mental capacity. The completed form will be forwarded at discharge to the extended care facility.</p>	

Patient Label

1235601402 000-381120 12/22/12
DAVIS, JOHN PERRY 07/14/37 M 78Y
ADM: RAJU, MUDUNURI
REP: RAJU, MUDUNURI STF ALT



1891 (Rev. 10-08)



RESIDENT AND FACILITY
ADMISSION AGREEMENT

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**RESIDENT AND FACILITY ADMISSION AGREEMENT
PLEASE READ CAREFULLY AND ASK ANY QUESTIONS**

This Agreement is made by and between WOM-SPBG (hereinafter called "Facility") and Resident and his/her Authorized Representative and/or the individual who has access to Resident's income and financial resources available to pay for nursing care (hereinafter called "Authorized Representative") for the provision of nursing services for Donna Davis (hereinafter called "Resident").

Resident and/or Authorized Representative affirm that the information provided during the admission process is true and correct to the best of their knowledge, and acknowledge that the submission of any false information may constitute grounds to terminate this Agreement.

DEFINITION OF AUTHORIZED REPRESENTATIVE

The Authorized Representative is anyone authorized by the Resident or by law to act on the Resident's behalf. Please check the type and scope of authority for anyone other than the Resident who signs this Agreement.

- | TYPE (Check one) | SCOPE (check all that apply) |
|--|--|
| <input type="checkbox"/> General POA* | <input type="checkbox"/> Routine health care |
| <input type="checkbox"/> Durable POA* | <input type="checkbox"/> Unlimited health care |
| <input type="checkbox"/> Durable POA w/ Healthcare* | <input type="checkbox"/> Limited access to income / finance |
| <input type="checkbox"/> Guardianship / Conservatorship* | <input type="checkbox"/> Authorized to accept income and control financial resources of Resident |
| <input type="checkbox"/> Healthcare POA* | |
| <input type="checkbox"/> Other: _____ | |

*** DUTIES AND RESPONSIBILITIES OF AUTHORIZED REPRESENTATIVE**

The Authorized Representative, by signing this Agreement, acknowledges acceptance of the duties and responsibilities of this role.

The Authorized Representative will not incur personal financial liability except for breach of duty or contract related to the misuse of Resident's resources or the failure to use those resources to pay for the Resident's care.

PRELIMINARY STATEMENTS:

Resident individually or by and through Resident's Authorized Representative has considered appropriate care settings and is desirous of receiving care at the Facility.

Facility is a licensed nursing facility and will provide the services set forth below in accordance with the applicable standards of care, none of which cause the Facility to become an insurer nor guarantor of the health and safety of the Resident; or for that matter, the insurer or guarantor of the Resident's personal property.

NOW, THEREFORE, in consideration of the prompt payment by the Resident (and the applicable state, federal, or private insurance program) of the charges made to the Resident's account in accordance with the charge structure of the Facility, and in further consideration of the mutual covenants and promises herein, the parties agree as follows:

2. PROVISION OF SERVICES

2.1. Care and Services. The Facility offers, at the Daily Rate, the following services: room accommodations, food services, licensed routine nursing services, social services, activities, housekeeping services, laundering of linens and towels, routine hair care, and resident trust fund services.

2.2. Ancillary Services and Supplies. The Facility shall make available at an additional charge, unless included in the Daily Rate, the following items and services: therapy services, medical supplies, laboratory services, pharmaceuticals, beauty/barbershop, guest meals, and toiletries for personal comfort, grooming, or hygiene, and transportation. All items and services not included in the Daily Rate, such as Medicare A or Medicaid, will be billed to the applicable payor. The Resident is responsible for all non-covered items and services, co-payments or deductible amounts, according to the Facility's Rate Schedule, as amended from time-to-time. Items and services not included in the Daily Rate will be updated periodically upon notice to residents.

2.3. Services of Other Providers. The services of outside providers such as a licensed physician, optometrist, podiatrist and/or dentist, a registered pharmacist for the provision of medications, rehabilitation therapies and diagnostic services, i.e., laboratory, x-ray and/or ambulance services, are available at the Facility or under arrangement. These services are available under guidelines and procedures established by the Facility and may be utilized by Resident at his or her own expense unless covered by another pay source. The Facility retains the right to control the source of supply of any items and contract services used within the Facility. Resident or Authorized Representative has exercised freedom of choice by applying for admission to Facility and thereby agrees and contracts with Facility to provide said supply items and contract services as requested. The place of purchase for pharmaceutical items is within Resident's freedom of choice subject to the Facility's policy for Resident drugs.

2.4. Role of Attending Physician and Medical Director. The Resident shall obtain the services of a qualified physician who will provide medical care during the Resident's stay at the Facility. The Resident is free to receive care from any licensed physician who agrees to submit credentials to the Facility and adhere to the Facility's policies and procedures. The Resident elects ANTHONY G. GAVAN as the attending physician(s). J.S. (initials). The Facility is not obligated to provide Resident with any medicines, treatments, special diets or equipment without specific orders or directions from Resident's attending physician. In the event Resident's attending physician is unavailable, the Facility's Medical Director / Designee may issue appropriate orders. Resident is responsible to pay for all services or equipment ordered by Resident's attending physician or the Facility's Medical Director / Designee for Resident's care unless covered by Medicare / Medicaid or other third-party insurer.

2.5. Room Assignments. The Facility makes room and bed assignments according to availability and/or in accordance with the Resident's physical and psychosocial wellbeing. Resident acknowledges that bed assignments may be changed in order to provide a proper environment for all residents. Resident and family / Authorized Representative will be notified of any room changes.

3. CHARGES

3.1. Recurring / Periodic Charges for Care and Services. Resident shall pay the Daily Rate, specified in the Rate Schedule in effect at the time the service is rendered, for routine nursing services provided to Resident. The Daily Rate may be changed from time-to-time in accordance with the provisions of Section 4.3, Charges for a resident whose payor source is other than Medicare Part A or Medicaid will begin on the designated admission date or actual admission, whichever is earlier; charges for a resident whose payor source is Medicare Part A or Medicaid will begin no earlier than the date of admission.

3.2. Additional Charges for Ancillary Services and Supplies. Resident shall pay for other services and supplies provided by or through the Facility which are not covered by the Daily Rate as set forth in the Rate Schedule in effect at the time such ancillary services or supplies are rendered. Any items ordered by a physician, which are not identified on the Rate Schedule, will be provided at charges identified by the Facility. The charges for ancillary services and supplies are subject to change from time-to-time.

3.3. Charges for Outside and Non-Facility Services. In addition to the Facility's charges, Resident shall pay all fees and costs for goods or services furnished to or for Resident by anyone other than the Facility as described in Section 2.3 (Services of Other Providers) unless otherwise covered in full by Medicare or Medicaid or another third-party payor. Resident or Authorized Representative is obligated to pay such fees and costs whether the goods and services are furnished by a person or provider made available by the Facility, or by a person or provider selected by Resident, and whether the goods or services are provided at the Facility or elsewhere. These fees and costs are not included in the Daily Rate. Fees for professional services rendered by a physician are not included in the Daily Rate and will be charged directly to the Resident by the physician.

4. PERIODIC BILLINGS AND PAYMENT DUE DATE

- 4.1. Monthly Statements and Other Billings. Prepayment for one (1) month of the basic monthly rate is required at the time of admission. The Facility will mail Resident or Authorized Representative on or about the tenth (10th) day of the month a billing statement reflecting charges for care and services for the upcoming month and charges for ancillary services and supplies which were incurred in the prior month. Statements are due and payable upon receipt of the Monthly Statement.

Resident expecting Medicare coverage specifically understands that Medicare co-insurance is the responsibility of the Resident. Payment of co-insurance is required. Payment for Medicare services is not expected until services are rendered.

- 4.2. Failure to Pay and Cost of Collection. Failure to pay an account at the Facility when due is a breach of this Agreement and will allow Facility to discharge Resident upon giving a thirty (30) day written notice, during which thirty (30) day period the breach may be cured by payment of the account in full.

In the event the Facility initiates legal action to collect payments due from the Resident under this Agreement, and the Facility is successful, the Resident and/or Authorized Representative shall be responsible for reimbursing the Facility for all costs and expenses thereby incurred, including reasonable attorneys' fees.

- 4.3. Modification of Charges. The Facility reserves the right to change the Rate Schedule reflecting the amount of any of its charges or how and when charges are computed, billed or become due. The Facility shall provide thirty (30) days advance written notice of any such changes.
- 4.4. Obligations of Resident's Estate and Assignment of Property. Resident and Authorized Representative acknowledge the charges for services provided under this Agreement remain owed until paid. In the event of Resident's discharge for any reason, including death, this Agreement shall operate as an assignment, transfer and conveyance to the Facility of so much of Resident's property as is equal in value to the amount of any unpaid obligations under this Agreement. This assignment shall be an obligation of Resident's estate and may be enforced against the Resident's estate.

- 4.5. Change in Contact Information. Resident and/or Authorized Representative agree to notify the Facility within ten (10) days of any change in Authorized Representative's contact information.

5. MEDICARE / MEDICAID PROGRAMS

- 5.1. Participation in Programs. The Facility currently participates in the South Carolina / North Carolina Medicaid program and the federal Medicare program. The Facility reserves the right to withdraw from the Medicaid or Medicare programs at any time in accordance with law.

5.2. Actions of Medicaid and Medicare Agencies. The South Carolina / North Carolina Department of Health and Human Services ("DHHS") is responsible for administering benefits under the Medicaid program. The Centers for Medicare and Medicaid Services ("CMS"), of the United States Department of Health and Human Services, is responsible for administering the Medicare program through an intermediary. Resident acknowledges that the Facility is not responsible for, and has made no representations regarding, the actions or decisions of DHHS, CMS or the Medicare intermediary in administering the programs.

5.3. Medicaid Benefits.

5.3.1. Obligations of Resident. Resident is obligated to make full and complete disclosure regarding all financial resources and income during the application process. Failure to identify all resources and income, or the submission of false information, may result in the termination of this Agreement. Resident is obligated to notify the Facility when Resident's resources available to satisfy the Resident's financial obligations under this Agreement are no longer sufficient to pay all the Facility charges for Resident's care and services or when directed to do so by the Facility. Resident shall provide any documentation requested by the County Medicaid Office. Upon Facility's request, Resident shall execute an authorization for Facility to assist the Resident in securing Medicaid benefits, pursuing a hardship waiver, and bringing Resident's account current. In the event Resident applies for Medicaid benefits, Resident shall continue to pay and apply all of Resident's available resources toward the fulfillment of Resident's financial obligations under this Agreement while the Medicaid application is pending an eligibility determination by DHHS.

5.3.2. Recurring Liability Amount. For residents approved for Medicaid benefits, the Facility will accept payment from the State of South Carolina / North Carolina and, if applicable, the Resident's Recurring Liability Amount as determined by DHHS as payment in full only for those services covered by the Medicaid program. Resident remains obligated to pay such Recurring Liability Amount on a monthly basis. Services not covered by Medicaid are identified in the Rate Schedule and Resident remains obligated to pay for such services. If Resident plans to apply for Medicaid, then the Resident will have an estimated monthly Recurring Liability in the amount of \$ MM until the State determines the amount of Resident's income to be paid to the Facility. Once the approved Recurring Liability amount has been set by Medicaid, any differences must be paid or adjusted. The Recurring Liability amount is due to the Facility by the fifth (5th) day of the month. JSJ (initials)

5.3.3. Determination of Eligibility. Resident and Authorized Representative are obligated to cooperate fully in any Medicaid eligibility determination or re-determination process. In the event that Resident's eligibility for Medicaid benefits is denied, interrupted or terminated due to the failure of Resident or Authorized Representative to cooperate in the Medicaid application, re-determination or appeal process, the Resident and Authorized Representative shall be liable for the Daily Rate plus charges for ancillary services and supplies during any period of ineligibility, and the Facility may terminate this Agreement.

5.3.4. Authorization to Apply for and/or Appeal (Medicaid). In the event of Resident's incapacity and in situations where Resident's resources are depleted or appear to be depleted to the extent that Resident can no longer pay privately for nursing care, and it appears that Resident has become or will become eligible for Medicaid benefits to cover the cost of Resident's continued stay in the Facility; and if there is no other legal representative of Resident known to the Facility or other friend or relative known to the Facility who is authorized and/or is available or willing to act on Resident's behalf, after the Facility has made a good faith effort to identify such persons; then Resident hereby authorizes the Facility to request, file and/or apply for Medicaid benefits on behalf of Resident for the limited purpose of assisting Resident to secure payment through the Medicaid program for Resident's continued stay in the Facility. In the event the application for Medicaid benefits filed on behalf of the Resident is denied, or in the event Medicaid benefits are granted and subsequently discontinued, Resident hereby authorizes the Facility to file on Resident's behalf an appeal of any such denial of Medicaid eligibility or discontinuance of Medicaid benefits, and to take such actions to secure Resident's Medicaid benefits as the Facility deems reasonably necessary or appropriate and consistent with law. Resident warrants and represents that the financial information disclosed in the admission process is true and accurate and may be relied on by the Facility in pursuing Medicaid benefits on behalf of Resident.

5.3.5. Authorization to File a Hardship Waiver with DHHS on Behalf of Resident. If DHHS' application of a transfer of assets penalty operates to deprive Resident of medical care such that Resident's life would be in danger, or would deprive Resident of food, clothing or shelter, or the necessities of life, then in the event of Resident's incapacity, inability or unwillingness to act, and if there is no other Authorized Representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to file a Hardship Waiver with DHHS on Resident's behalf.

5.4. Medicare Part A and Part B Benefits. To the extent that Resident is a beneficiary under either Medicare Part A or Medicare Part B insurance and the nursing services or ancillary services or supplies ordered by a physician are covered by such insurance, the Facility or other provider will bill the charges for the covered services or supplies to the Medicare program. The Resident is responsible for and shall pay any co-insurance or deductible amounts under Medicare Part A or Part B insurance. The Facility shall accept payment from the Medicare intermediary as payment in full only for those services deemed to be covered in full under the Medicare Part A or the Medicare Part B program. Services not covered by Medicare are identified in the Rate Schedule.

5.5. Medicare Part B Payment Limitations: Therapy Caps.

5.5.1. General. Effective January 1, 2006, CMS imposed payment limitations on covered therapy services provided to individuals who are eligible beneficiaries under Medicare Part B. Under this financial limitation, Medicare will pay an annual capped amount for physical and speech therapy (combined) and an annual capped amount for occupational therapy. The capped amounts are revised by CMS

annually. Facility shall provide Resident and/or Authorized Representative with notice of the current capped amounts as appropriate.

5.5.2. Resident's Responsibility to Pay for Therapy Services Beyond the Capped Amounts. Resident is responsible to pay the charges for all medically necessary therapy services in excess of the annual capped amounts, unless such therapy services are covered in whole or in part by private insurance or another government reimbursement program. In the event that another government reimbursement program or available third-party payor or insurance program denies coverage for therapy services provided to Resident after exhaustion of the annual capped amount, then Resident or Authorized Representative shall remain responsible to pay all fees and costs for all such therapy services. If Resident is not eligible for Medicaid, then failure to pay for therapy services rendered above the capped amount shall be grounds for termination and discharge from Facility pursuant to Section 10 of this Agreement.

5.5.3. Exception Requests.

5.5.3.1. Automatic Exceptions. Medicare beneficiaries may be automatically exempted from the annual therapy caps for certain conditions or complexities that have a direct and significant impact on the need for the course of therapy being provided and the additional treatment is medically necessary.

5.5.3.2. Manual Exceptions. Medicare beneficiaries not automatically exempted from the annual therapy caps are entitled to request an exception to the annual therapy caps, for up to fifteen (15) additional treatment days. In the event that Resident has exhausted the annual capped amount, and is not automatically exempted from the therapy caps, then the following shall apply:

5.5.3.2.1. Resident and/or Authorized Representative may submit an exception request to the applicable CMS Medicare contractor; or

5.5.3.2.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to submit an appropriate exception request to the applicable CMS Medicare contractor.

5.5.3.2.3. If the exception request is granted, then therapy services provided to Resident shall be covered by Medicare for the number of additional treatments approved. Once the additional approved treatments have been exhausted, Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.5.3.2.4. If the exception request is denied, then Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.6. Medicare Part D Prescription Drug Benefits.

5.6.1. Enrollment in Medicare Part D Plan. If Resident is an eligible beneficiary under the Medicare Part D insurance program and has enrolled or has been mandatorily enrolled in a Medicare Part D Prescription Drug or Medicare Advantage Plan ("PDP"), Resident shall advise Facility in writing of Resident's chosen PDP upon admission. In the event that Resident becomes an eligible beneficiary under Medicare Part D after admission or subsequently chooses to enroll in a PDP following admission, Resident shall notify Facility in writing of Resident's chosen PDP prior to enrollment in the PDP. Resident shall advise Facility if Resident elects to change PDPs, and shall provide written notice of such election, including the name/identity of the newly selected PDP prior to the effective date of the change in the PDP. J.E. (Initial)

5.6.2. Resident's Responsibility to Pay for Pharmaceuticals. Resident is responsible to pay the charges for all prescription and other drugs or medications while a resident in Facility, except to the extent that such drugs and medications are covered in whole or in part by an applicable government reimbursement program. Some or all of the charges for prescription drugs and other drugs and medications may be covered by certain benefits available through Medicare Part D or other private insurance or governmental insurance / benefit programs, including Medicare Part A or B. In the event that coverage for any prescription drug, supply, medication or pharmaceutical provided to Resident is denied by any applicable governmental reimbursement program or other potentially available third-party payor or insurance program, then Resident or Authorized Representative shall remain responsible to pay for all such prescription drugs, supplies, other medications or pharmaceuticals.

5.6.3. Actions of Medicare Part D Plan. Facility is not responsible for and has made no representations regarding the actions or decisions of any PDP, including, but not limited to, decisions relating to the establishment of the PDP formulary, denial of coverage issues, or contractual arrangements between the PDP and the Resident, and with respect to any decisions made by the PDP relating to any long term care pharmacy provider that may be under contract with Facility.

5.6.4. Dually Eligible Residents. If Resident becomes eligible for Medicaid at any time during Resident's stay at Facility, and also qualifies for benefits under the Medicare Program, then Resident shall be required to enroll in a PDP (unless covered by private insurance) to ensure coverage of Resident's prescription drug needs. Resident and/or Authorized Representative shall take all necessary action to enroll Resident in a PDP, and shall advise Facility of such enrollment upon Resident's acceptance into the PDP. Resident acknowledges that should Resident fail to select a PDP, then CMS will assign Resident to a PDP. Resident shall provide written notice to Facility of the name of the Resident's PDP and the effective date of enrollment.

5.6.5. Billing and Resident Cost Sharing Obligations. To the extent that Resident is a beneficiary under Medicare Part D, and the pharmacy prescriptions and/or services ordered by a physician are covered by Medicare Part D, then the Pharmaceutical Provider (as required by law) shall bill the charges for the covered services to the Resident's PDP. Resident is responsible for and shall pay any and all cost-sharing amounts applicable under Medicare Part D insurance. Facility shall not be responsible to pay for any fees or cost-sharing amounts, including co-insurance and deductibles, relating to the provision of covered Medicare Part D pharmaceuticals to Resident. To the extent that Resident may qualify as a "subsidy eligible individual" who would be entitled to a reduction or elimination of some or all the cost-sharing or premium amounts under the Medicare Part D benefit, Resident and/or Authorized Representative has the sole responsibility to apply for such benefits.

5.6.6. Authorization to Request and/or Appeal Coverage Determinations. In the event that Resident is denied coverage under Resident's PDP for pharmaceutical services or supplies prescribed by Resident's attending physician, then the following shall apply:

5.6.6.1. Resident and/or Authorized Representative may independently (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determination.

5.6.6.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, or if Resident's physician is unable or unwilling to act on behalf of Resident, then Resident authorizes Facility to (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determinations.

5.6.6.3. In the event of an initial denial of coverage by the Resident's PDP, then pending the outcome of an exception request, a request for re-determination, or an appeal, and in the event that Resident's attending physician fails to prescribe a clinically and reasonably acceptable substitute prescription medication, resident authorizes Facility Medical Director / Designee to prescribe a clinically and reasonably acceptable substitute prescription medication which is covered by Resident's PDP, if such clinically and reasonably acceptable substitute is available.

5.6.6.4. If a request for exception (filed by Resident, Facility or any other authorized representative) is ultimately denied following either reconsideration by the PDP or appeal to an appropriate tribunal, and if the requested pharmaceuticals are deemed medically necessary by Resident's physician, and

no reasonably acceptable substitute, as determined by Facility's Medical Director / Designee, from the formulary of Resident's PDP exists, then Facility shall make arrangements to provide the requested pharmaceuticals to Resident. In any such situation, Resident shall be responsible to pay all fees and costs for the non-covered pharmaceuticals, consistent with the requirements of this Section.

5.6.6.5. No Effect on Medicare Part A Covered Nursing Services. Resident's Medicare Part D prescription drug benefits do not apply while the Resident's stay in Facility is covered under Medicare Part A. While Resident is in Facility on a Medicare Part A stay, Resident's pharmaceutical needs generally are covered by the Medicare Part A program.

5.7. Non-Covered Services. Resident is and remains obligated to pay the Facility for services and supplies not covered by the Medicaid or the Medicare programs.

6. MANAGED CARE ORGANIZATIONS.

6.1. Participation in Managed Care Organizations. The Facility is an authorized provider of skilled nursing services to members of certain managed care organizations (MCOs). The MCOs for whom the Facility is an authorized provider are listed on Attachment "B".

6.2. Enrollment in a Managed Care Organization. Resident or Authorized Representative shall notify the Facility in writing prior to enrolling with an MCO or switching Resident's MCO enrollment.

6.3. Actions of Managed Care Organization. Resident acknowledges that an MCO for whom the Facility is not an authorized provider may not approve payment for services provided by the Facility. Resident acknowledges that the Facility is not responsible for and has made no representations regarding the actions or decisions of any MCO for whom the Facility is an authorized provider, including decisions relating to a denial of coverage.

6.4. Obligations of Resident. The Facility will accept payment from the MCO as payment in full only for those services and supplies covered by the MCO. Resident is responsible for any co-payments or other costs assigned to Resident under the specific terms of the managed care plan. Resident also shall pay for any services or supplies not covered by the MCO under the specific terms of the managed care plan. Co-payments and other costs assigned to Resident and charges for services or supplies not covered by the specific terms of the managed care plan are identified in the Rate Schedule. Managed care plans typically require pre-authorization of services by the MCO. If Resident chooses to have services which the MCO refuses to pre-authorize, Resident shall pay the Facility for those services. Resident shall pay the Facility in a timely manner for all non-covered services retroactive to the date of the initial delivery of services.

6.5. Withdrawal from Participation in the MCO. The Facility reserves the right to terminate its contractual relationship and its status as a network or authorized provider with one or more of the listed MCOs at any time in accordance with law and the terms of the applicable agreement. In the event that the Facility terminates its contractual relationship with the MCO in which Resident is enrolled, Resident may convert his or her coverage to a health plan for which the Facility is an authorized provider or transfer to a facility that is an authorized provider for Resident's MCO. The Facility shall provide thirty (30) days advance notice of its decision to withdraw as a participating provider from Resident's MCO so Resident and the MCO can coordinate a transfer to another facility.

6.6. Notice of Change in Insurance Coverage. Resident and/or Authorized Representative shall notify the Facility immediately of any change in Resident's insurance status or coverage made by the insurance carrier including, but not limited to, being dropped by the insurance carrier for any reason, or a decrease or increase in insurance benefits. Resident and/or Authorized Representative shall give the Facility notice before Resident is unable to meet Resident's insurance premium or before Resident implements an increase, decrease or termination from insurance coverage.

7. DURABLE FINANCIAL POWER-OF-ATTORNEY.

[REDACTED]

8. THIRD-PARTY PAYMENTS.

8.1. Eligibility for Third-Party Payments. Resident may be or may become eligible to receive financial assistance, reimbursement, or other benefits from third parties, such as private insurance, employee benefit plans, Medicaid under the South Carolina / North Carolina Medicaid Program, Medicare benefits, managed care coverage, supplementary medical or other health insurance, supplemental security income insurance, or old-age survivors' or disability insurance. It is the responsibility of the Resident and/or Authorized Representative to apply for these benefits. If Resident is or becomes eligible to receive payments from any third parties for Resident's stay and care, the Facility reserves the right to collect such payments directly from the third-party source. The Resident and Authorized Representative shall at all times cooperate fully with the Facility and each third-party payor to secure payment. Cooperation includes providing information; signing and delivering documents; and assigning to the Facility (to the extent permitted by law) any payments for the Resident from federal or state governmental assistance programs or any other reimbursements or benefits to the extent of all amounts due the Facility.

8.2. Assignment of Payments. Resident irrevocably authorizes the Facility to make claims and to take other actions to secure for the Facility receipt of third-party payments to reimburse the Facility for its charges for the stay and care of Resident. To the fullest extent permitted by law, as security for payment of the Facility's charges, Resident hereby assigns to the Facility all of Resident's rights to any third-party payments now or subsequently payable to the extent of all charges due under this Agreement. Resident or Authorized Representative promptly shall endorse and turn over to the Facility any payments received from third parties to the extent necessary to satisfy the charges under this Agreement. Resident or Authorized Representative shall sign any necessary documents to forward third-party payments directly from the payor to the Facility.

8.3. Insurance. The Facility will bill Medicare and Medicaid for any services rendered to Resident by the Facility. The Facility may, at its discretion, bill Resident's private / supplemental insurance carrier for services rendered to Resident by the Facility. In the event of an initial or subsequent denial of coverage by the Resident's insurance carrier, Resident shall pay the Facility timely for all non-covered services retroactive to the date of the initial delivery of services, so long as such payment obligation is consistent with the regulations governing the Facility's participation in the Medicare and Medicaid Programs. ALS (Initial)

8.3.1. The fact that the Facility submits a claim for payment does not relieve the Resident from liability for the cost of care for any days determined by the Program Administrators of the particular insurance coverage as non-covered, or for the Resident's portion of the liability as determined by the appropriate Program Administrators. Pre-certification of insurance, if required, is the responsibility of the Resident.

9. PERSONAL FINANCES.

9.1. Personal Funds Management. Resident is responsible to provide his or her personal funds, and Resident has the right to manage his or her personal funds. Resident may authorize the Facility, in writing, on a document provided by the Facility, to hold Resident's personal funds, and may revoke at any time the Facility's authorization by providing the Facility with a written notice signed and dated by Resident or Authorized Representative. If Resident authorizes the Facility to hold Resident's personal funds, the Facility shall hold, safeguard and account for Resident's personal funds in accordance with applicable provisions in the Admission Handbook. If the Facility has been appointed by the Social Security Administration as Representative Payee for the Resident's funds, then the Facility, and not the Resident's Authorized Representative, if any, shall have control over the Resident's funds. The Facility shall follow the policies and procedures as set forth by the Social Security Administration.

9.2. Refunds of Personal Funds. Any personal funds or valuables of Resident held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, such as any costs incurred by Facility to repair Resident's room for damages caused by Resident, within thirty (30) days after Resident's discharge or death. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law.

9.3. Refunds of Prepayments or Overpayments. Any prepayments or overpayments made by Resident and held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, after all claims have been adjudicated. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law. No interest shall accrue on any funds required to be refunded under this Agreement.

10. TERMINATION, TRANSFER OR DISCHARGE.

10.1. Resident Initiated. This Agreement remains in full force and effect until discharge of Resident regardless of payment source changes. The Facility requests a three (3) day advance written or oral notification of an impending discharge.

10.2. Facility Initiated. The Facility may terminate this Agreement and Resident's stay and transfer or discharge Resident if:

10.2.1. The transfer or discharge is necessary to meet Resident's welfare and Resident's needs cannot be met in the Facility;

10.2.2. Resident's health has improved sufficiently so that Resident no longer needs the services provided by the Facility;

10.2.3. The safety or health of individuals in the Facility is or otherwise would be endangered;

10.2.4. Resident has failed, after notice, to pay for (or to have paid or treated as paid under the Medicare or Medicaid Programs) charges for Resident's care and stay at the Facility; or

10.2.5. The Facility ceases to operate.

10.3. Notice and Waiver of Notice. The Facility will notify Resident and Authorized Representative at least thirty (30) days in advance of transfer or discharge, except in situations when appropriate plans that are acceptable to the Resident can be implemented earlier, and except in cases of emergencies, including those situations described in subparagraphs 10.2.1, 10.2.2, and 10.2.3 above, or when the Resident has not resided in the Facility for at least thirty (30) days. Then only such notice as is reasonable under the circumstances shall be provided.

10.4. Withdrawal Against Advice. In the event Resident withdraws from the Facility against the advice of his/her attending physician and/or without approval of the Facility, all of Facility's responsibilities for the care of Resident are terminated.

11. FACILITY RULES, REGULATIONS, POLICIES AND PROCEDURES.

Resident shall comply fully with all governmental laws and regulations, the provisions of this Agreement, and the Facility's rules, regulations, policies and procedures as published in the Facility's Admission Handbook or other documents or publications made available by the

Facility. The Facility reserves the right to amend or change its rules, regulations, policies and procedures. The Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on the Facility or granting any contractual rights to Resident, and are subject to change from time-to-time.

12. PERSONAL AND OTHER PROPERTY.

12.1. Responsibility for Maintenance and Loss. Resident is responsible for furnishing and maintaining his or her own clothing and other items of property as needed or desired. Seasonal items and clothing must be removed timely to assure the safety and comfort of the Resident. The Facility is not responsible for the personal property / valuables or items belonging to the Resident. If damage or loss occurs to Resident's property, the Facility will investigate each incident of loss or damage.

12.2. Disposition and Storage Upon Resident's Death. Upon the Resident's death, Facility shall contact Resident's Authorized Representative and arrange for the disposition of the Resident's personal property. Facility is authorized to transfer Resident's personal property to the Authorized Representative. The Authorized Representative must acknowledge, in writing, the receipt of the personal property transferred to his or her custody by Facility. Facility, in its sole discretion, may move and place Resident's personal property into storage at Facility's expense. If property held in storage is not claimed within thirty (30) days, Facility shall donate or discard all unclaimed property.

12.3. Disposition and Storage Upon Resident's Transfer or Discharge. If Resident's personal property is not claimed or removed by the Authorized Representative following Resident's transfer or discharge, the Facility shall move and place Resident's personal property in storage until claimed. If Resident's personal property remains unclaimed after a thirty (30) day period in storage, the Facility may dispose of Resident's property. The Facility is not responsible for any damages incurred to Resident's property if storage becomes necessary.

12.4. Damage to Room or Facility Property. Resident or Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

13. RESIDENT RECORDS.

Resident consents to the release of Resident's personal and medical records maintained by the Facility for treatment, payment and operations as determined reasonably necessary by the Facility. Any such release may be to the Facility's employees, agents and to other health care providers from whom the Resident receives services, to third-party payors of health care services, to any MCO in which Resident may be enrolled, or to others deemed reasonably necessary by the Facility for purposes of treatment, payment and operations. Release of records for other purposes shall be done in accordance with applicable laws, with a specific authorization from the Resident where required. Authorized agents of the state or federal government, including the Long Term Care Ombudsman, may obtain Resident's records without the written consent or authorization of Resident.

14. TREATMENT AUTHORIZATION.

Resident authorizes the Facility to provide care and treatment consistent with the terms of this Agreement. Resident also authorizes the Facility to obtain all necessary clinical and/or financial information from the hospital or nursing facility from which Resident may be transferring.

15. DEATH OF RESIDENT.

Upon admission, Resident is required to designate a funeral home. This designation will remain in effect until otherwise notified in writing. In the event of Resident's death, the Facility shall notify the person(s) designated by Resident. The Facility is authorized to arrange for the transfer of Resident's body to the designated funeral home. Resident's estate is responsible for the payment of all costs associated with the transfer and funeral expenses. Resident shall notify the Facility of any changes of the person(s) or funeral home to be notified in the event of death.

16. CAPACITY OF RESIDENT AND GUARDIANSHIP.

[REDACTED]

17. CLINICAL ISSUES RELATED TO AGING:

17.1. The Resident has been advised of the high risks and consequences associated with aging and impaired physical condition, including (but not limited to):

17.1.1. A high risk of skin breakdown and development of pressure ulcers secondary to significant time confined to bed or inability or unwillingness to eat and/or drink.

17.1.2. The risk of significant weight loss and dehydration if the Resident's physical condition is currently chronic or hereinafter deteriorates, which may diminish Resident's nutritional and hydration input.

17.1.3. The enhanced risk of falls and subsequent bruises, cuts or fractures, which then increases the already high risk of pressure ulcers.

17.1.4. The goal of the Facility is to strive for a restraint-free environment, and processes are implemented to pursue this goal. These processes recognize and protect the Resident's rights and ensure that restraints are safe and appropriate if they must be used.

17.1.5. The above risks, and others, are inherent with the aging process. We urge the

Resident and all family members to further acquaint themselves with the risk issues inherent with aging and an impaired physical condition.

18. REPORTING COMPLAINTS.

If Resident and/or Authorized Representative believe(s) that Resident is being mistreated in any way or Resident's rights have been violated by staff or another resident, Resident or Authorized Representative shall make his/her complaint known to Facility Administrator, in accordance with the Grievance Procedure reflected in the Admission Handbook and provide Facility with sixty (60) days to resolve the complaint satisfactorily to Resident and/or Authorized Representative before the Resident / Authorized Representative may pursue arbitration (or legal action for claims involving less than \$25,000.00). This notice requirement is not intended to preclude Resident and/or Authorized Representative from filing a complaint with any appropriate governmental regulatory agency at any time.

19. MISCELLANEOUS PROVISIONS.

19.1. ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~

19.2. **Severability.** ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~

19.3. **Captions.** The captions used in connection with the sections and subsections of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement, nor shall such captions be given any legal effect.

19.4. **Entire Agreement.** ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~

19.5. **Modifications.** ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~ ~~CONFIDENTIAL~~

19.6. **Waiver of Provisions.** The Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement shall be deemed to have been waived by the Facility unless such waiver is in writing by the Facility. Any waiver by the Facility shall not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and this Agreement shall remain in full force and effect.

20. ACKNOWLEDGMENTS.

- 20.1. Rate Schedule.** Resident acknowledges the receipt of a copy of the Rate Schedule and the opportunity to ask questions about the Facility's charges.
- 20.2. Resident's Rights.** Resident acknowledges being informed orally and in writing of Resident's Rights and further acknowledges having an opportunity to ask questions about those rights. The Notice of Rights of Nursing Facility Residents is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.
- 20.3. Advance Directives.** Resident acknowledges being informed, orally and in writing, of the Facility's policy on advance directives and medical treatment decisions.
- 20.4. Bed Hold Policy -- Readmission.** Resident acknowledges being informed orally of the Facility's policy on readmission and bed hold. Resident further acknowledges having received in writing a copy of the readmission bed hold policy; and an opportunity to ask questions.
- 20.5. Agreement.** [REDACTED]
- 20.6. Smoke-Free / Tobacco-Free Policy.** Resident acknowledges that he/she has read and understands that this Facility and campus are smoke-free and tobacco-free. The terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the Smoke-free /Tobacco-free Policy.
- 20.7. Camera Policy.** Resident acknowledges that he/she has read and understands the Facility camera policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the camera policy.
- 20.8. Get a Lift Safe Resident Handling Program.** Resident acknowledges that he/she has received an oral explanation and a copy of the safe resident handling program policy and procedures. Resident further acknowledges having an opportunity to ask questions about this policy.
- 20.9. Physical Device Policy.** Resident acknowledges that he/she has read and understands the Facility physical device policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the physical device policy.
- 20.10. Admission Handbook.** Resident acknowledges the receipt of a copy of the Admission Handbook and the opportunity to ask questions about Facility's policies

contained in the Admission Handbook. The Admission Handbook is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.

- 20.11. **Consent to Care.** Resident hereby consents to all routine care and services rendered in accordance with physician's orders. Resident also consents to student care from universities or other academic programs which are under contract with the facility unless the facility receives from the Resident/Authorized Representative a signed document of denial of student services. (Revised 10/2010)
- 20.12. **Participation in Care Plan.** Resident is encouraged to participate in the care planning process. Approval of the Resident Care Plan is the preferred manner in which consent for most treatment is obtained. There are certain specific procedures for which an individual consent form will be provided.
- 20.13. **Consent to Photograph.** Resident consents to pictures taken for identification purposes only.
- 20.14. **Contents of Personal Medical Records.** Resident understands and agrees that the designated record set concerning Resident is and will continue to be the property of the Facility, provided that Facility will not disclose the same to any person or party other than the Resident except as outlined in the Privacy Practices Notice. The designated record set is defined as the medical record in its entirety and the financial record including itemized charges. The following items are specifically excluded from the designated record set: incident reports, QA/QI reports, tracking forms, resident care assignment forms, shift to shift report forms, admission waiting list and financial "work papers."
- 20.15. **Notification of Facility Symbols.** Resident / Authorized Representative hereby acknowledge being informed of the use of signs and symbols which may be observed in this facility. For the resident's safety and comfort, the facility may post on a doorway leading into a resident's room a symbol for type of lift device to be used or a star alerting staff to a potential fall risk. Other symbols may be used from time to time which may designate and alert staff to a specific need. You or your Authorized Representative may opt out of having symbols posted by signing a waiver of release from use of facility designated symbols.
- 20.16. **Competency.** Resident declares that he or she retains capacity and is competent, has never been adjudged or determined to lack capacity or competence, and knows of no petition pending to adjudicate his or her lack of capacity or competence. Alternatively, if the Resident has been or should be deemed to lack capacity or competence, then Resident's Authorized Representative declares that he or she has been given authority by the Resident when competent to act on behalf of the Resident, and/or is qualified to act as Resident's surrogate by reason of special care and concern for the Resident, familiarity with the Resident's personal values, reasonable availability, and willingness to serve.
- 20.17. **Scope of Care.** Resident acknowledges that routine nursing services do not include: continuous one-on-one care or CNA services when required by Resident's Care

plan; care for certain high acuity conditions, such as ventilator dependent care; dialysis services; treatment for drug and alcohol conditions; or psychiatric care.

21. ASSIGNMENT

[REDACTED]

22. BINDING EFFECT.

This Agreement shall be binding upon all parties hereto and upon their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have signed this Agreement this 2nd day of Jan, 2013

RESIDENT AUTHORIZED REPRESENTATIVE:

JOAN P. DAVIS
WILDA S. HANBY-STOTT
Printed Resident Name

Wilda S. Hanby-Stott
Signature / Date

Printed Authorized Representative

Signature / Date

Niece
Relationship

FACILITY STAFF / WITNESS:

White Oak Senior Care, Inc.

Date: 1/2/13

By: Mary P. Spruse
Staff Printed Name and Title

Mary P. Spruse
Staff Signature / Witness



ARBITRATION
AGREEMENT

ARBITRATION AGREEMENT
(Pursuant to the FEDERAL ARBITRATION ACT only).

PLEASE READ CAREFULLY

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, White Oak SPRINGBELL ("the Facility"), and HILMA H. STOTT / DONALD P. DAVIS ("the Resident"), AGREE TO ARBITRATE ALL MONETARY CLAIMS that may arise between them (with the exception of monetary claims of less than \$25,000.00).

Specifically, the parties hereto agree as follows:

1. All monetary claims between the parties of \$25,000.00 or more will be resolved by arbitration and will be subject to the terms and provisions of this Agreement.
2. If one party to the Admission Agreement between the parties hereto believes he, she or it (hereinafter referred to as the "first party") has a monetary claim of more than \$25,000.00 against the other party (hereinafter referred to as the "second party"), the first party shall give the second party written notice thereof. That claim may be resolved by mutual agreement. If it is, that will conclude permanently that claim, and any other claims that arise on or before the date the claim is resolved. If the claim is not resolved by mutual agreement, then the parties will proceed as subsequently set forth herein.
3. Within thirty (30) days of giving written notice of a claim, the first party will identify in writing an arbitrator of that party's choosing. That party may choose, as that party's arbitrator, anyone that party wishes, provided the person chosen may not be a party to this Agreement, or someone who will give testimony, or provide an affidavit or other written statement for presentation at the hearing provided for below. Further, if the party is the Facility, it may not choose as an arbitrator anyone associated with the Facility as a shareholder, officer, director, or employee.
4. Within thirty (30) days of receipt of written notice of the first party's choice of an arbitrator, the second party will likewise choose an arbitrator, whomever that party wishes, subject to the same restrictions on potential arbitrators set forth in paragraph 3, above, and shall give the first party written notice thereof.
5. Within thirty (30) days of the second party's notification of that party's choice of an arbitrator, the two (2) arbitrators shall confer/meet and attempt to agree upon a third arbitrator. In choosing a third arbitrator, they will be limited to choosing someone who is certified by the Bar Association of the state in which the Facility is located, to be a mediator/arbitrator, and who has substantial prior experience in mediating/arbitrating nursing home claims. In the event the two (2) arbitrators cannot agree on a third arbitrator, then either side may apply to the American Arbitration Association to seek appointment of the third arbitrator. The choice made by the American Arbitration Association will be final and binding so long as the person chosen has substantial prior

experience in mediating/arbitrating nursing home claims, and can be expected to be both fair and impartial.

6. Within ninety (90) days of the determination of the third arbitrator, a hearing ("the hearing") shall be held at a mutually convenient location before a board consisting of the three (3) arbitrators. At the hearing each side may present whatever evidence that side deems appropriate. This "evidence" may be presented in any reasonable manner, and need not conform to the normal rules of evidence utilized in a court of law. All testimony will, however, be under oath.

7. At the arbitration hearing, each party may, but need not, be represented by an attorney. In other words, should the Resident wish to be represented by a family member, subject to the limitations set forth in paragraph 3 above, that is permissible.

8. Subject to paragraph 13 below, each party shall be responsible for paying that party's own arbitrator. Furthermore, prior to the actual arbitration hearing, each party will pay one-half (1/2) of the fees and costs associated with the third arbitrator and the hearing.

9. Each party shall promptly provide the other party with copies of all documents upon which the producing party intends to rely at the hearing. Under all circumstances, all such documents shall be made available to the other party at least ten (10) days prior to the hearing. If not, they will not, under any circumstances, be admissible at the hearing.

10. Prior to the hearing, depositions may be taken by the parties. If a dispute arises regarding these depositions, the number that may be taken, their length, etc., it will be resolved by a majority of the arbitrators. Under all circumstances, this decision by a majority of the arbitrators, and any other decisions made by a majority of the arbitrators, will be both final and binding.

11. All time limits set forth herein may, by mutual agreement or by a majority of the arbitrators, be extended or otherwise modified. Furthermore, all other issues that may arise between the parties hereto will likewise be resolved by a majority of the arbitrators.

12. At least ten (10) days prior to the hearing, each party shall submit in writing to the other party that party's best demand/offer of settlement. The parties may continue to negotiate up to and even through the actual hearing. At the hearing, each party shall provide, in writing, the arbitrators with that party's best offer/demand. When the arbitrators make their decision, they will be limited to selecting one of the two (2) figures presented by the parties. That determination will be both final and binding, will be in writing, and will be signed by at least two (2) of the arbitrators.

13. When a determination is made by a majority of the arbitrators, they shall also award the "prevailing party," as defined herein, reimbursement by the other party of all reasonable costs and expenses associated with the arbitration, such as the third arbitrator's fees, travel expenses, witness fees, deposition expenses, and other costs associated with the hearing, but excluding attorneys' fees. Each party will be responsible

for paying that party's own attorney. For purposes of this paragraph, "the prevailing party" shall be the party whose final offer or demand submitted at the hearing is the amount ultimately awarded by a majority of the arbitrators.

14. An award against the Facility will be paid within thirty (30) days after the arbitrators make their decision and notify the Facility in writing of that decision. Upon payment, the Facility, as well as all other "White Oak" facilities, including specifically White Oak Manor, Inc. and White Oak Management, Inc., and their respective shareholders, directors, officers and employees, will deemed to be released and forever discharged from any and all other claims arising prior to the date of the hearing.

15. In the event payment is not made by the Facility within thirty (30) days of written notification of the arbitrators' decision, judgment against the Facility may be entered of record in any County in which it does business, and will accrue interest at the applicable statutory rate until payment is made.

16. At the time of signing this Agreement, the Resident/Authorized Representative/Attorney-in-Fact acknowledges having received a copy; having been told that he/she has the right to have this Agreement reviewed by an attorney of his/her own choosing prior to signing it; and having been advised that, beginning seven (7) days from date hereof, and for another ten (10) days thereafter, he/she has the right to "opt out" of this Agreement, and no longer be bound by it. In the event the party signing below determines to opt out, he/she must give the Facility written notice thereof within the time provided. TIME IS OF THE ESSENCE. If written notification of the Resident/Authorized Representative/Attorney-in-Fact having opted out of this Agreement is not received within the time frame set forth, the within Agreement will remain and continue in full force and effect. By initialing here, the undersigned acknowledges having specifically read this paragraph. W.S. (Initials)

17. If signed below by the Resident, the Resident intends to indicate that he/she believes himself/herself to be mentally competent and, in signing this Agreement, is doing so freely and voluntarily. If instead of the Resident, it is the Authorized Representative/Attorney-in-Fact signing below for the Resident, he/she has the legal right to execute this document in behalf of the Resident, and to thereby bind the Resident, as well as the Resident's heirs/beneficiaries; that so far as he/she knows, other than himself/herself, no one else has the legal right to act in behalf of the Resident and that no one else is an attorney-in-fact for the Resident pursuant to any Power of Attorney; and that all representations set forth in this paragraph are accurate.

18. Except as may be required by law, neither party hereto nor any arbitrator may disclose the determination made by the arbitrators without the prior written consent of the other party, or by court order.

19. To the extent that any questions arise that are not covered by this Agreement, they will be resolved by a majority of the arbitrators. That decision will be both final and binding.

20. In the event any portion of this Agreement is determined to be invalid or unenforceable, the remainder will nevertheless continue in full force and effect and be binding upon the parties hereto, and upon their respective heirs, personal representatives, successors or assigns.

21. The within Arbitration Agreement constitutes the entire agreement by and between the parties hereto; incorporates all representations supposedly made at or before being signed by the undersigned; and may not be modified or otherwise amended except by subsequent written agreement entered into by and between all parties hereto. This Agreement shall be governed by the Federal Arbitration Act and, to the extent not inconsistent therewith, the laws of the state where the Facility is located.

22. This Agreement provides for Arbitration as the sole method of resolving disputes of \$25,000.00 or more. However, nothing herein contained shall be construed to reduce, diminish, or have any affect upon the substantive rights either party hereto may have by virtue of either statute or case law.

23. By signing below, the undersigned certifies and affirms that he/she has been given sufficient time to read this Agreement, and that any questions that the undersigned had, if any, were satisfactorily answered.

IN WITNESS WHEREOF, the undersigned have hereunto caused their hands and seals to be affixed as of this 2ND day of Jan, 2013.

RESIDENT / AUTHORIZED REPRESENTATIVE:

TOLLY P. DAVIS
Printed Resident Name

Signature / Date

NILDA SHAMBYSTOTT
Printed Authorized Representative

NILDA SHAMBYSTOTT
Signature / Date

Director
Relationship

FACILITY STAFF / WITNESS:

White Oak EDMUNDSVILLE, Inc.

Date: 1/2/13

By: MARIE P. SPANSE
Staff Printed Name and Title

Marie P. Spanse
Staff Signature / Witness

**SOUTH CAROLINA STATUTORY HEALTH CARE POWER OF ATTORNEY
OF
JOLLY P. DAVIS**

(S.C. STATUTORY FORM)

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT, UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.
2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.
3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.
4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.
5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.
6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO

Health Care Power of Attorney
Jolly P. Davis

Page 1 of 7

Initials

JD

Date: 5/11/12

PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

- A. YOUR SPOUSE; YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.
- B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.
- C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.
- D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.
- E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.
- F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.
- G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND

GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY FORM

1. DESIGNATION OF HEALTH CARE AGENT

I, Jolly P. Davis (Principal), hereby appoint:

Hilda J. Stott (my niece) (Agent)

1828 Broadfield Rd, Norfolk, VA 23503 (Address)

Home Telephone: _____ Work Telephone: _____ as
my agent to make health care decisions for me as authorized in this
document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E, below, my agent is authorized as follows:

- A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;
- B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage,

addiction, or hasten the moment of, but not intentionally cause, my death;

- C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;
- D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.
- E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

4. ORGAN DONATION (INITIAL ONLY ONE)

My agent may _____; may not ~~do~~ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 4 PARAGRAPHS)

- (1) _____ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the

possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) ~~NO~~ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) ~~NO~~ 3 DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) _____ DIRECTIVE IN MY OWN WORDS:

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that (INITIAL ONLY ONE)

_____ I do not want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

~~NO~~ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND

HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN
BE WITHDRAWN.

8. SUCCESSORS

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named.

A. First Alternate Agent:

Address: _____

Telephone: _____

B. Second Alternate Agent:

Address: _____

Telephone: _____

9. ADMINISTRATIVE PROVISIONS

- A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.
- B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE, I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 11TH day of MAY, 2012. My current home address is: 766 Gatewood Dr, Roebuck, SC 29376

Signature: Jolly Perry Davis

Name: JOLLY PERRY DAVIS

WITNESS STATEMENT

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he signed or acknowledged this Health Care Power of Attorney in my presence, and that he appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: George Gallitt Date: MAY 11 2012

Print Name: George GALLITT Telephone: _____

Residence Address: 9573 7TH BAY ST. NORFOLK VA. 23518

Witness No. 2

Signature: Kathleen Robbins Date: 5-11-12

Print Name: Kathleen Robbins Telephone: _____

Residence Address: 217 Cobb Hill Court Beating Springs, S.C 29316

Health Care Power of Attorney
Jolly P. Davis

Page 1 of 7

Initials: JPD

Date: 5/11/12

**DURABLE POWER OF ATTORNEY FOR FINANCE
OF
JOLLY P. DAVIS**

DEE-2013-899
Recorded 15 Pages on 1/8/2013 2:09:34 PM
Recording Fee: \$26.00 Documentary Stamps: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Kaul, Register

**ARTICLE I
Creation**



I, Jolly P. Davis, as Principal and a resident of the State of South Carolina designate my niece, Hilda J. Stott to serve as Attorney-in-Fact (my "Agent") for me and to act as the guardian or limited guardian of my estate should guardianship proceedings become necessary or desirable.

**ARTICLE II
Effectiveness; Effective Upon Disability**

This Power of Attorney shall become effective upon my disability and shall survive and continue during my disability, incompetence, incapacity, or partial incapacity. This Power of Attorney shall not be affected by my subsequent disability or incapacity or by lapse of time. Disability, incompetence, incapacity or partial incapacity shall include, without limitation, my inability to manage my property and affairs or caring for myself effectively, for reasons such as mental illness, mental deficiency or other mental incapacity, physical illness or disability, advanced age, senility, chronic use of drugs, chronic intoxication, which may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order.

**ARTICLE III
Powers**

My Agent shall have all powers of an absolute owner over my assets and liabilities, whether located within or without the State of South Carolina, including, without limitation, the following power and authority:

A. Power relating to real property transactions. I empower my attorney-in-fact to:

1. accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;
2. sell, exchange, or convey, with or without covenants; quitclaim; release; surrender; mortgage; encumber; partition; consent to partitioning; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to platting; develop; grant

- options concerning; lease; sublet; or otherwise dispose of an interest in real property or a right incident to real property;
3. release, assign, satisfy, and enforce, by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is asserted;
 4. do any act of management or of conservation with respect to an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including:
 - a. insuring against a casualty, liability, or loss;
 - b. obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;
 - c. paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and
 - d. purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;
 5. use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;
 6. participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization and to act with respect to them, including:
 - a. selling or otherwise disposing of them;
 - b. exercising or selling an option, conversion, or similar right with respect to them; and
 - c. voting them in person or by proxy;
 7. change the form of title of an interest in or right incident to real property;
 8. dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

B. Power relating to tangible personal property transactions. I empower my attorney-in-fact to:

1. accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;
2. sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;
3. release, assign, satisfy, or enforce, by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and
4. do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:
 - a. insuring against casualty, liability, or loss;
 - b. obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;
 - c. paying, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
 - d. moving from place to place;
 - e. storing for hire or on gratuitous bailment; and
 - f. using, altering, and making repairs or alterations.

C. Power relating to stock and bond transactions. I empower my attorney-in-fact to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes; receive certificates and other evidences of ownership with respect to securities; exercise voting rights with respect to securities in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote.

DEED 02 K PG 576

D. Power relating to banking and other financial institution transactions.
I empower my attorney-in-fact to:

1. continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
2. establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
3. hire a safe deposit box or space in a vault;
4. contract to procure other services available from a financial institution as the agent considers desirable;
5. withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
6. receive bank statements, vouchers, notices, and similar documents from a financial institution and to act with respect to them;
7. enter a safe deposit box or vault and withdraw or add to the contents;
8. borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;
9. make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; receive the cash or other proceeds of those transactions; and accept a draft drawn by a person upon the principal and pay it when due;
10. receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;
11. apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
12. consent to an extension of the time of payment with respect to

DEED 02 K PG 577

commercial paper or a financial transaction with a financial institution.

E. Power relating to insurance transactions. I empower my attorney-in-fact to:

1. continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
2. procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and to select the amount, type of insurance or annuity, and mode of payment;
3. pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
4. designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;
5. apply for and receive a loan on the security of the contract of insurance or annuity;
6. surrender and receive the cash surrender value;
7. exercise an election;
8. change the manner of paying premiums;
9. change or convert the type of insurance contract or annuity, with respect to which the principal has or claims to have a power described in this section;
10. change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);
11. apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

NEED 102 K PG 578

12. collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and
13. pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

F. Power relating to estate, trust, and other beneficiary transactions. I empower my attorney-in-fact to act for me in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which I am or may become, or may claim to be entitled as a beneficiary to a share or payment, including to:

1. accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;
2. demand or obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;
3. initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;
4. initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;
5. conserve, invest, disburse, and use anything received for an authorized purpose; and
6. transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.
7. This Power does NOT give my agent the power to revoke or change any estate planning or testamentary documents previously executed by me, unless the document authorizes changes with court approval.

G. Power relating to claims and litigation. I empower my attorney-in-fact to:

1. assert and prosecute before a court or administrative agency a claim, counterclaim, or offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;
2. bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;
3. in connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
4. in connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;
5. submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;
6. waive the issuance and service of process upon the principal; accept service of process; appear for the principal; designate persons upon whom process directed to the principal may be served; execute and file or deliver stipulations on the principal's behalf; verify pleadings; seek appellate review; procure and give surety and indemnity bonds; contract and pay for the preparation and printing of records and briefs; and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
7. act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; and
8. pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or

DEED 102 K PG 580

litigation.

H. Power relating to personal and family maintenance. I empower my attorney-in-fact to:

1. do the acts necessary to maintain the customary standard of living of the principal and the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract or paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal and occupied by those individuals;
2. provide for the individuals described in subsection (1) normal domestic help; usual vacations and usual travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;
3. pay for the individuals described in subsection (1) necessary medical, dental, and surgical care, hospitalization, and custodial care;
4. continue any provision made by the principal for the individuals described in subsection (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;
5. maintain or open charge accounts for the convenience of the individuals described in subsection (1) and open new accounts the agent considers desirable to accomplish a lawful purpose; and
6. continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or continue contributions to those organizations.

I. Power relating to benefits from Social Security, Medicare, Medicaid, or other governmental programs or from military service. I empower my attorney-in-fact to:

1. execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the principal and the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, and for shipment of their household effects;

JPD

5/11/12

2. take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
3. prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;
4. prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and
5. receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

J. Power relating to retirement plan transactions. I empower my attorney-in-fact to:

1. select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
2. designate beneficiaries under those plans and change existing designations;
3. make voluntary contributions to those plans;
4. exercise the investment powers available under any self-directed retirement plan;
5. make "rollovers" of plan benefits into other retirement plans;
6. if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and
7. waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

K. Power relating to tax matters. I empower my attorney-in-fact to:

1. prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns;

claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

2. pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;
3. exercise any election available to the principal under federal, state, local, or foreign tax law; and
4. act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

L. Power relating to Medical Care Assistance Transfers. I empower my attorney-in-fact to make any transfer of resources not prohibited under state law as now or hereafter amended or recodified, when the transfer is for the purpose of qualifying me for state or federal medical care assistance or a limited casualty program for the medically needy, or for the purpose of preserving for my spouse, other relative or domestic partner, the maximum amount of property allowed under applicable law if an application has been made for governmental medical assistance, or in anticipation of such application and for the purpose of avoiding a Medicaid Recovery Lien.

M. Power relating to Gift Transfers. I empower my attorney-in-fact with the following authority with respect to gift transactions, whether the gift is to be made outright, in trust, in custodial account or otherwise, whether the object of the gift is located in the state or elsewhere:

1. make gifts from any or all of the principal's real and personal property, and in the kinds or shares that the agent considers prudent for any purpose, including that the agent or a person whom the agent has a legal obligation to support when the gift is in full or partial satisfaction of that obligation may be the beneficiary of the gift;
2. submit to arbitration or settle, and to propose or accept a compromise with respect to a controversy or claim that affects the gift;
3. hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers the action to be

desirable for the proper execution of the powers described in the subsection, and for the keeping of records about that action;

4. do any other act or acts that the principal can do through an agent, with respect to any gift.

ARTICLE IV

Purposes

My Agent shall have all powers as are necessary or desirable to provide for my support, maintenance, health, emergencies, and urgent necessities.

ARTICLE V

Limitations on Powers

My Agent shall not exercise any of the powers for my Agent's own benefit or in satisfaction of a legal obligation of my Agent except and unless specifically provided for above.

ARTICLE VI

Termination and Revocation

A. **In General.** This power of attorney revokes and supersedes all prior financial powers of attorney executed by me, whether recorded or not. This power of attorney may be revoked, suspended or terminated by me at any time or by court order. If this Power of Attorney has been recorded, the written instrument of revocation may be recorded in the office of the recorder or auditor of the place where the power was recorded. Upon my death, this power of attorney shall terminate upon actual knowledge or receipt of written notice thereof by the Agent.

B. **By Guardian.** A Guardian of my estate appointed by the Court shall have the power to revoke, suspend or terminate this power of attorney, subject to the approval of the court. A Guardian of my person only shall not have the power to revoke, suspend or terminate this power.

C. **Dissolution/Legal Separation.** The designation of my spouse or domestic partner as Agent shall terminate upon the filing of a petition for dissolution of relationship, equitable distribution of property, separation or like instrument by either me or my partner, without further notice to my Agent/spouse/domestic partner.

ARTICLE VII

General Provisions

A. Accounting. My Agent shall keep accurate records of my financial affairs, including documentation of all transactions in which the Agent is involved. My Agent shall account for all actions taken by my Agent for or on behalf of me upon request by me, any guardian or limited guardian of my estate or of my person, any subsequently appointed Agent, any successor Agent acting in such capacity, any primary or alternate Agent named herein, and/or to any subsequently appointed personal representative of my estate.

B. Reliance. Any person acting in good faith and in reasonable reliance on this power of attorney shall not incur any liability thereby, so long as such party has not received actual knowledge or actual notice of revocation, suspension or termination of this Power of Attorney by death or otherwise. Any action so taken unless otherwise invalid or unenforceable, shall be binding on my heirs, devisees, legatees, or personal representative.

C. Indemnity. My estate shall hold harmless and indemnify my Agent from all liability for acts or omissions done in good faith.

D. Compensation. My Agent serving hereunder shall be entitled to receive at least annually, and without court proceedings, reasonable compensation and reimbursement for costs expended. My Agent is authorized and encouraged when s/he deems it desirable or necessary to employ others to aid in the management of my assets, or the exercise of powers under this Power of Attorney or any Power of Attorney for Health Care that I have executed, including but not limited to, lawyers, accountants, financial advisors, physicians or other appropriate persons.

E. Guardianship. One of the purposes of this document is to avoid the need for a guardianship in the event of my disability or incapacity and this document should be broadly construed to accomplish that purpose. In the event a proceeding is initiated to appoint a guardian of my estate, I nominate the person designated as my Agent to serve as Guardian and if s/he is unwilling or unable to serve as Guardian, I nominate my alternate Agent above named.

If someone other than my first above-named Agent ("primary Agent") is appointed as Guardian or Limited Guardian of my estate, my primary Agent shall have the power and authority when s/he is competent, willing and able to act as Guardian to petition the Court to discharge my then appointed Guardian or Limited Guardian, and s/he shall be so appointed by the Court, unless the Court finds good cause against her/his appointment.

F. Court Enforcement. My Agent shall have the power to seek appropriate court orders mandating acts which my Agent deems appropriate if a third party refuses to comply with decisions made by my Agent which are authorized by this document, or enjoining acts by third parties which my Agent has not authorized. My Agent may bring legal action against any third party who fails to comply with actions I have authorized my

Agent to take and demand damages on my behalf for such noncompliance.

G Reliance On Photocopy. Third parties shall be entitled to rely on a photocopy of the signed Original hereof.

H. Applicable Law. The laws of the State of South Carolina shall govern this Power of Attorney. This Power of Attorney is intended to be valid in any jurisdiction in which it is presented.

I. HIPAA Release Authority. I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164. I authorize: any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my agent, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The authority given my agent shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health-care provider.

DATED this 11th day of MAY, 2012.

Jolly P. Davis
Jolly P. Davis, Principal

Social Security Number: _____
Residing at: _____
766 Gatewood Dr
Robuck, SC 29376

The principal is personally known to me and I believe the principal to be of sound mind. I am eighteen (18) years of age or older. I am not related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage. The principal has declared to me that this instrument is his power of attorney granting to the named attorney-in-fact the power and authority specified herein, and that he has willingly made and executed it as his free and voluntary act for the purposes herein expressed.

George Balliett
[Witness Signature]

Kathleen Robbins
[Witness Signature]

George BALLIETT
[Print Name]

Kathleen Robbins
[Print Name]

DEED 102 K PG 587

STATE OF SOUTH CAROLINA }
 } SS.
COUNTY OF SPARTANBURG }

This is to certify that on this 11th day of may, 2012, before me, the undersigned Notary Public in and for the State of South Carolina, duly commissioned and qualified, personally appeared Jolly P. Davis, to me known to be the person described in and who executed the within and foregoing Power of Attorney, and acknowledged to me that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Frances E. Bose
Notary Signature
Print Name: FRANCES E. BOSE
NOTARY PUBLIC in and for the
State of South Carolina, residing at 1440 Rock Hill Church Road
Indian, SC 29349
My commission expires: 10-13-2015

441

12:30

NURSING EVALUATION

White Oak Manor

585-0241

- 8. Speech: Normal Impaired Unable to Speak
- 9. Hearing: Normal Impaired Deaf
- 10. Sight: Normal Impaired Blind
- 11. Mental Status: Independent Occasionally Confused Always Confused
- 12. Feeding: Independent Help with Feeding Cannot Feed Self
- 13. Dressing: Independent Help with Dressing Cannot Dress Self
- 14. Elimination: Independent Bedpan or Urinal Required Help to Bathroom Incontinent
- 15. Bathing: Independent Bed Bath with Help Bathing with Help Bed Bath
- 16. Ambulatory Status: Independent Help from Bed to Chair Walks with Assistance Bed Bound
- 17. Skin Assessment: Intact Reddened - Location: Sacrum
 Breakdown - Stage: _____ Location: _____

18. Dressings and Bandages: or, Check None

Last BM 1/1/13

19. Appliances or Supports: or Check None

IV Site: Date started: _____ Type of Device/Gauge: _____

20. Immunization Status: PPD, Given: 12/25 Pneumovax, Given: Up to date
 Flu Vaccine, Given: Up to date Td - Date Given: _____

21. Vital Signs at Discharge: Blood Pressure 124/56 Pulse 75 Respirations 20 Temperature 98.1

22. Signature/Title: Amy Bunch RN Date 01/02/2013

Tara Johnson, LBSW
Printed Name of Person Coordinating Transfer

800-0399
Contact Telephone Number

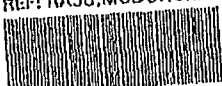
Tara Johnson
Signature of Person Coordinating Transfer

CMS
Title

1-2-13
Date

Unit 4
Beth

Patie 1235801402 000-361128 12/22/12
 DAVIS, JOLLY PERRY 07/14/37 M 75Y
 ADM: RAJU, MUDUNURI
 REF: RAJU, MUDUNURI STF ALT



NURSING ADMISSION DATA COLLECTION FORM (#N004)

White Oak Manor - Spartanburg Inc (SP)

7/1/2014 2:58 PM
QA7000A

Davis, Jolly P. (7554)

Date: 01/03/2013

Admit Date		Readmit Date		Birthdate
Physician	Warren, Edward S.			
Diagnoses				
250.00	Dmii Wo Cmp Nt St Uncntr	486	Pneumonia, Organism Nos	
272.1	Pure Hyperglyceridemia	492.8	Emphysema Nec	
311	Depressive Disorder Nec	496	Chr Airway Obstruct Nec	
401.9	Hypertension Nos	516.31	Idiopath pulmon fibrosis	
412	Old Myocardial Infarct	518.81	Acute Respiratry Failure	
427.31	Atrial Fibrillation	586	Renal Failure Nos	
428.0	ChFNos	V45.01	Status Cardiac Pacemaker	
443.9	Periph Vascular Dis Nos	V46.2	Depend-Supplement Oxygen	
444.22	Lower Extremity Embolism	V57.89	Rehabilitation Proc Nec	

Allergies

Ativan
Cytotec
latex

Tussin
bee stings

PERSONAL DATA

Score

- Admitted From/ Via/ Accompanied By:
Admitted from SRMC via stretcher & 2 attendants. Niece is here with resident upon his arrival.
- Primary language:
 English Other (details below)
- Reason(s) for admission; include applicable current diagnoses and medical/surgical history:
Rehab with possibility of being able to return home.
- Personal Data Comments:

Group Total: 0

VITAL SIGNS/HEIGHT/WEIGHT

Score

- Verify Vital Signs in eChart
- Verify Height in eChart
- Verify Weight in eChart

Group Total: 0

MENTAL STATUS

Score

- Check if resident is able to communicate and proceed with Mental Status Questionnaire. Ask the resident the following questions and record their exact response to each item.
Scoring: 0 per correct answer, 1 point per incorrect response.
- Ask: What is the name of this place?
 Correct Answer (0 Point) Incorrect Response (1 Point)
- Response:
White Oak Manor
- Ask: Where is it located?
 Correct Answer (0 Point) Incorrect Response (1 Point).
- Response:
No idea
- Ask: What is today's date (day of the month)?
 Correct Answer (0 Point) Incorrect Response (1 Point)
- Response:
2nd
- Ask: What month is it?

WOM 000127

NURSING ADMISSION DATA COLLECTION FORM (#N004)

White Oak Manor - Spartanburg Inc (SP)

Davis, Jolly P. (7554)

Date: 01/03/2013

- Correct Answer (0 Point) Incorrect Response (1 Point) 0

• Response:
January
- Ask: What year is it?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
2013
- Ask: How old are you?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
75
- Ask: When is your birthday (month and day)?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
7/14
- Ask: What year were you born?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
1937
- Ask: Who is the President of the United States?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
Obama
- Ask: Who was President before the current President?
 Correct Answer (0 Point) Incorrect Response (1 Point) 0
- Response:
Bush
- Mental Status Comments:

Group Total: 1

MENTAL STATUS SUMMARY

Score

- Enter Score:
(From Group Total Above - Subtract 1 Point for Less than High School Education or Add 1 Point for Education Beyond High School):

1

• MENTAL STATUS SCORE INTERPRETATION:

- 0 - 2 = Intact Mental Functioning
- 3 - 4 = Mild Cognitive Impairment
- 5 - 7 = Moderate Cognitive Impairment
- 8 - 10 = Severe Impairment or Unable to Respond

0

Group Total: 0

NURSING ADMISSION DATA COLLECTION FORM (#N004)

White Oak Manor - Spartanburg Inc (SP)

Davis, Jolly P. (7554)

Date: 01/03/2013

BEHAVIOR/ MOOD Score

- Behavior/ Mood - answer all that apply:
 - No Interaction
 - Cooperative
 - Sociable/ Talkative
 - Uncooperative
 - Crying
 - Combative
 - Verbally Abusive
 - Physically Abusive
 - Resists Care
 - Self Image Issue
 - Withdrawn
 - Socially Inappropriate Behavior
 - Other (describe below)
- Responds to:
 - Touch
 - Voice
 - Painful Stimuli
 - None of the above
 - Other (describe below)
- Behavior/ Mood Comments: Group Total: 0

SENSORY/ COMMUNICATION Score

- Speech:
 - Clear
 - Garbled
 - Nonverbal
- Swallowing:
 - Difficulty
 - Precautions
 - No Known Problems
- Vision:
 - No Known Problems
 - Wears Glasses
 - Contact Lenses
 - Vision Blurred
 - Blind in Rt Eye
 - Blind in Left Eye
 - Unable to Determine
 - Other Eye Concern - Infection, Drainage, Dryness (describe below)
- Hearing:
 - WNL - Left Ear
 - WNL Rt Ear
 - Some Hearing Loss - Rt Ear
 - Some Hearing Loss - Left Ear
 - Deaf - Rt Ear
 - Deaf - Left Ear
 - Reads Lips
 - Unable to Determine
 - Other (describe below)
- Hearing Aid:
 - Right Ear
 - Left Ear
 - Available at Admission
 - NOT Available at Admission
 - None of the above
- Sense of Smell:
 - Good
 - Fair
 - Poor
 - Unable to Determine
- Nasal:
 - Epistaxis
 - Other Nasal Problem (describe below)
 - No Known Problem
- Sensory/ Communications Comments:

WOM 000129

NURSING ADMISSION DATA COLLECTION FORM (#N004)

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White Oak Manor - Spartanburg Inc (SP)

QA7000A

Davis, Jolly P. (7554)

Date: 01/03/2013

Group Total: 0

RESPIRATORY

Score

- ♦ Breath Sounds:
 - Normal
 - Abnormal (describe below) 0

- ♦ Respiratory Observations/ History:
 - Oxygen Use - Continuous
 - Oxygen Use - PRN
 - Cyanotic
 - Abnormal Breathing Pattern (describe below)
 - Productive Cough
 - Nonproductive Cough
 - Tracheostomy
 - Ventilator
 - None of the above0

- ♦ Respiratory Comments:

Noted wheezes & rhonchi. Suctions self using Yanker suction.

Group Total: 0

CARDIOVASCULAR

Score

- ♦ Heart Rhythm:
 - Regular
 - Irregular
 - Other (describe below)0

- ♦ Cardiac Complaints:
 - Chest Pain
 - Palpitations
 - Other (describe below)

- ♦ Cardiac Observations/ History:
 - Edema (describe below)
 - Fluid Restrictions
 - Thrombophlebitis
 - Peripheral Vascular Disease
 - Hypertension
 - Hypotension
 - Postural Hypotension
 - Diminished / Absent Peripheral Pulse(s)
 - Pacemaker (describe below)
 - Other (describe below)
 - None of the above0

- ♦ Check if Pacemaker Checks Indicated and Note Next Scheduled: 0
- ♦ Cardiac Comments: Group Total: 0

NEUROLOGICAL

Score

- ♦ Level of Consciousness:
 - Alert
 - Lethargic
 - Comatose
 - Semicomatose0

- ♦ Is Oriented To:
 - Time
 - Place
 - Situation
 - Person
 - None of the above0

- ♦ Neurological Observations/ History:
 - Weakness - Rt Upper Extremity
 - Weakness - Left Upper Extremity
 - Weakness - Rt Lower Extremity
 - Weakness - Left Lower Extremity
 - None of the above
 - Other (describe below)0

- ♦ Pupils:
 - Rt - Reacts to Light
 - Left - Reacts to Light
 - Rt - Does Not React to Light
 - Left - Does Not React to Light0

- ♦ Size of Rt Pupil (mm):

WOM 000130

NURSING ADMISSION DATA COLLECTION FORM (#N004)

White Oak Manor - Spartanburg Inc (SP)

Davis, Jolly P. (7554)

Date: 01/03/2013

- 2
- Size of Left Pupil (mm):
2
- Other Concerns:
 - Headache
 - Tremors
 - Seizures
- Neurological Comments:

- Vertigo
- Numbness (note location below)
- Other (describe below)

Group Total: 0

MUSCULO-SKELETAL

Score

- Extremities:
 - Amputation (describe below)
 - Contractures - Rt Upper Extremity
 - Contractures - Left Upper Extremity
- Musculo-Skeletal Observations/ History (describe details in comments):
 - Arthritis
 - Splint
 - Fracture
- Musculoskeletal Comments:

- Contractures - Rt Lower Extremity
- Contractures - Left Lower Extremity
- None of the above

0

Group Total: 0

GASTRO-INTESTINAL

Score

- Bowel Status:
 - Bowel Sounds Present
 - Bowel Sounds Not Present (note location below)
 - Bowel Sounds Normoactive
 - Bowel Sounds Hypoactive
- Observations/ History:
 - Nausea
 - Vomiting
 - Diarrhea
 - Constipation
- Last BM and BM Frequency/Pattern (describe laxative use):
1/2/13
- Bladder:
 - Incontinent
 - Frequency
 - Retention
- Gastrointestinal Comments:

- Bowel Sounds Hyperactive
- Ostomy
- Other (describe below)

- Bleeding
- Incontinent
- Uses Laxative
- None of the above

0

0

0

Group Total: 0

PAIN OBSERVATION SUMMARY

Score

- Behavior Indicating Possible Pain (1 point per indicator):
 - Facial Expressions
 - Vocalizations
 - Verbalizations
 - Motor Activity
 - Activity
 - Distress
 - Other
 - None of the above

1

Group Total: 1

WOM 000131

NURSING ADMISSION DATA COLLECTION FORM (#N004)

Davis, Jolly P. (7554)

Date: 01/03/2013

PAIN	Score
<ul style="list-style-type: none"> • Pain Intensity (Recent or Chronic): <ul style="list-style-type: none"> <input type="radio"/> None <input checked="" type="radio"/> Mild <input type="radio"/> Moderate <input type="radio"/> Severe <input type="radio"/> Worst Possible 	0
<ul style="list-style-type: none"> • Current Pain on Scale of 0 (none) to 10 (worst possible): Show resident graphic of a pain scale line and ask them to say or point to current level of pain. 0 	
<ul style="list-style-type: none"> • Recent Pain on Scale of 0 (none) to 10 (worst possible): Show resident graphic of a pain scale line and ask them to say or point to highest level of pain in last 7 days. 3 	
<ul style="list-style-type: none"> • Pain Scale Based on Observation: <ul style="list-style-type: none"> <input checked="" type="radio"/> 0 = None <input type="radio"/> 1 - 2 = Mild Distress <input type="radio"/> 3 - 5 = Moderate Distress <input type="radio"/> 6 - 7 = Unbearable Distress 	0
<ul style="list-style-type: none"> • Pain Details and How Control is Obtained: Glucosamine Gel. Morphine 	0
Group Total:	0

ADL ABILITIES	Score
<ul style="list-style-type: none"> • ADL Functioning - INDEPENDENT for: <ul style="list-style-type: none"> <input type="checkbox"/> Bed Mobility <input type="checkbox"/> Transferring <input type="checkbox"/> Toileting <input checked="" type="checkbox"/> Eating <input type="checkbox"/> Dressing <input type="checkbox"/> Bathing <input type="checkbox"/> None of the above 	0
<ul style="list-style-type: none"> • ADL Functioning - SUPERVISED for: <ul style="list-style-type: none"> <input type="checkbox"/> Bed Mobility <input type="checkbox"/> Transferring <input type="checkbox"/> Toileting <input type="checkbox"/> Bathing <input type="checkbox"/> Dressing <input type="checkbox"/> Bathing <input type="checkbox"/> None of the above 	
<ul style="list-style-type: none"> • ADL Functioning - LIMITED ASSISTANCE for: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Bed Mobility <input checked="" type="checkbox"/> Transferring <input checked="" type="checkbox"/> Toileting <input type="checkbox"/> Bathing <input type="checkbox"/> Dressing <input type="checkbox"/> Bathing <input type="checkbox"/> None of the above 	0
<ul style="list-style-type: none"> • ADL Functioning - EXTENSIVE ASSISTANCE for: <ul style="list-style-type: none"> <input type="checkbox"/> Bed Mobility <input type="checkbox"/> Transferring <input type="checkbox"/> Toileting <input type="checkbox"/> Bathing <input checked="" type="checkbox"/> Dressing <input checked="" type="checkbox"/> Bathing <input type="checkbox"/> None of the above 	0
<ul style="list-style-type: none"> • ADL Functioning - TOTAL DEPENDENCE for: <ul style="list-style-type: none"> <input type="checkbox"/> Bed Mobility <input type="checkbox"/> Transferring <input type="checkbox"/> Toileting <input type="checkbox"/> Bathing <input type="checkbox"/> Dressing <input type="checkbox"/> Bathing <input type="checkbox"/> None of the above 	
<ul style="list-style-type: none"> • Mobility Observations: 	

Davis, Jolly P. (7554)

Date: 01/03/2013

- | | |
|---|---|
| <input checked="" type="checkbox"/> Chairbound/ Bedfast | <input type="checkbox"/> Wanders |
| <input type="checkbox"/> Requires ARÖM | <input type="checkbox"/> Exit Seeking |
| <input type="checkbox"/> Requires PROM | <input type="checkbox"/> Other (describe below) |
| <input type="checkbox"/> Requires Turning and Positioning | <input type="checkbox"/> None of the above |

Group Total: 0

SKIN HISTORY AND OBSERVATIONS Score

- History - Note any skin problems resident experienced prior to admission. Include preventive measures and treatments utilized for each condition, noting whether effective. Identify any skin problems at home and/or in the hospital or other nursing center.
 - Has pacemaker scar
 - Mobility Concerns - Identify elements of the resident's condition or medical treatments that inhibit repositioning (e.g. contractures, medical equipment, medical symptoms, etc.):
 - Date of and Details for Debridement of Wound(s):
 - Check to Indicate "Skin Report" Completed 0
 - Observation - Color:

<input checked="" type="checkbox"/> Normal	<input type="checkbox"/> Cyanotic
<input type="checkbox"/> Pale	<input type="checkbox"/> Jaundice
<input type="checkbox"/> Ashen	<input type="checkbox"/> Other (describe in comments)
<input type="checkbox"/> Dusky	

0
 - Observation - Turgor:

<input type="checkbox"/> Within Normal Limits	<input type="checkbox"/> Other (describe below)
<input checked="" type="checkbox"/> Slow to Return to Normal Position	

0
 - Observation - Integrity:

<input checked="" type="checkbox"/> Dry	<input type="checkbox"/> Flaky
<input checked="" type="checkbox"/> Warm	<input type="checkbox"/> Venous Ulcer
<input type="checkbox"/> Clammy	<input type="checkbox"/> Pressure Ulcer
<input type="checkbox"/> Cold	<input type="checkbox"/> Other (describe below)

0
 - Observation - Scars:

<input checked="" type="checkbox"/> Pacemaker Site	<input type="checkbox"/> Other (describe below)
--	---

0
- Group Total: 0

SKIN RISK Score

- Nutritional Intake:

<input checked="" type="radio"/> Excellent - Eats All or Most (0 points)	<input type="radio"/> Probably Adequate - Generally Eats < 50% (2 points)
<input type="radio"/> Adequate - Eats 50% or TF/TPN (1 point)	<input type="radio"/> Very Poor - Rarely Eats > 25% (3 points)

0
- Level of Consciousness:

<input checked="" type="radio"/> Alert (0 points)	<input type="radio"/> Semi-Conscious (2 points)
<input type="radio"/> Lethargic (1 point)	<input type="radio"/> Comatose (3 points)

0
- Activity:

<input type="radio"/> Ambulatory (0 points)	<input checked="" type="radio"/> Chairbound (2 points)
<input type="radio"/> Walk / Help (1 point)	<input type="radio"/> Bedfast (3 points)

2
- Bed Mobility:

WOM 000133

NURSING ADMISSION DATA COLLECTION FORM (#N004)

White Oak Manor - Spartanburg Inc (SP)

Davis, Jolly P. (7554)

Date: 01/03/2013

- Full/ Independent (0 points)
- Slightly Limited (1 point)
- Very Limited (2 points)
- Immobile (3 points)

Incontinence:

- Continent (0 points)
- Occasionally Incontinent (1 point)
- Frequently Incontinent (2 points)
- Always Incontinent (3 points)

Skin Risk - Comments:

Group Total: 3

SKIN RISK SUMMARY Score

Skin Risk Score (enter from above group total):
3

SKIN RISK SCORE INTERPRETATION:

- 0 - 3 = No Skin Risk (No Interventions Indicated)
- 4 - 8 = At Risk (Preventive Interventions Required)
- 9 - 15 = High Risk (Preventive Interventions Required)

Group Total: 0

GENITO-URINARY Score

Urinary Status:

- Continent
- Incontinent
- Stress Incontinence
- Overflow Incontinence
- Foley Catheter (describe below)
- Painful Urination
- Change in Bladder Habits
- Recent UTI
- Hematuria
- Suprapubic Catheter (describe below)
- Ostomy (describe below)
- Texas Catheter (describe use below)
- Other (describe below)

Time of Last Voiding:
1/2/13

Urinary Comments:

Reproductive Status:

- Breast Changes
- Pre-Menopausal
- Vaginal Discharge
- Penile Discharge
- Prostate Problems
- None of the above
- Other (describe below)

Group Total: 0

FALL RISK Score

History of Fall:

- Fall within the last 30 days
- Fall within the last 180 days
- None of the above

Ambulatory/ Continece:

- Ambulatory with or without assistance
- Ambulatory with uncontained incontinence
- Not ambulatory and attempts to get out of bed or chair without assistance
- None of the above

Other Fall Risk Factors:

WOM 000134

NURSING ADMISSION DATA COLLECTION FORM (#N004)

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White Oak Manor - Spartanburg Inc (SP)

QA7000A

Davis, Jolly P. (7554)

Date: 01/03/2013

- Gait disturbance
- Orthostatic Hypotension
- Weakness
- Sedation
- Fatigue
- Seizures
- Syncope
- Vertigo
- Severe vision impairment
- Severe hearing impairment
- Amputee - single
- Amputee - bilateral
- Other (explain below)
- None of the above

2

• Ability to Request Assistance with Transfer/Ambulation:

- Able
- Physically unable
- Cognitively unable
- Uses poor judgement regarding need for assistance

• Underlying Medical Condition:

- MS
- Terminal Dx
- Fracture
- Parkinson's
- Diabetes
- Other (explain below)
- None of the above

• Medications Related to Fall Risk:

- Psychotropic
- Diuretic
- Analgesic
- Antihistamine
- Anti-hypertensive
- Muscle relaxant
- Angina medication
- Other (explain below)
- None of the above

4

• Fall Risk Comments (Include Environmental or Other Fall Risk Factors Present):

- If any "Fall Risk" areas are checked, resident should be considered at risk for falls until reviewed and input given by the Safety Committee.
- No "Fall Risk" areas checked
- One of more "Fall Risk" area checked

0

Group Total: 7

ORAL Score

• Natural Teeth - # of Upper
0 - Has upper plate that is broken

• Natural Teeth - # of Lower
8

• Dentures:

- Full Upper
- Full Lower
- Partial Upper
- Partial Lower
- Fit Poor (describe below)
- Irritation (describe below)
- Denture Fit Poor (describe below)

0

• Gums/ Oral Cavity:

- Normal/Firm
- Bulbous
- Swollen
- Shrunken
- Mouth Pain
- Abscess (describe below)
- Other (describe below)

0

Group Total: 0

WOM 000135

NURSING ADMISSION DATA COLLECTION FORM (#N004)

Page 10 of 10

1/1/2014 2:58 PM

White Oak Manor - Spartanburg Inc (SP)

QA7000A

Davis, Jolly P. (7554)

Date: 01/03/2013

NUTRITIONAL SCREEN Score

- Nutritional Information (Chart Review):
 - Food Allergies/ Intolerances (describe below)
 - Dysphagia
 - Malnutrition/ Weight Loss
 - Tube Fed
 - Renal Failure w/Renal Diet
 - Malabsorption
 - Pressure Ulcer
 - Vomiting/ Diarrhea
 - Sore Mouth/ Mouth Pain (describe below)
 - None of the above

- Nutritional Information (Interview):
 - Leaves at least 1/2 normal meal uneaten
 - Takes Supplements
 - Unplanned Weight Loss
 - Trouble Chewing
 - Trouble Swallowing
 - Food Allergies/Intolerances (describe below)
 - Drinks less than 4 glasses of fluid/day
 - Other (describe below)

- Information received from:
 - Resident
 - Family
 - Other (explain in note area)

- If any "Nutritional Screen" areas are checked, notify Dietary for further assessment.
 - No "Nutritional Screen" areas checked or answered "yes"
 - One or more "Nutritional Screen" area checked or answered "yes" ***COMPLETE DIETARY SLIP FOR REFERRAL***

- Nutrition Comments:

Group Total: 0
GRAND TOTAL: 12

COMPLETION INFORMATION		
Date/Time	Activity	Name
1/2/2013 5:04:00PM	Entered By	Mitzi Horne, RN
1/3/2013 4:20:00PM	Completed By	Mitzi Horne, RN

WOM 000136

PATIENT: DAVIS, JOLLY (07/14/1937)
DOS: 1/3/2013
COMPANY: Network Geriatric Services

FACILITY: WHITE OAK MANOR-SPTBG
NGS MRN: 1614541 (DID: 1402951)
CONTACT: 864-327-1510

PROGRESS NOTE

HISTORY

Social Security Number:

Personal Contacts:

Hilda Hamby-Stott; 1828 Broadfield Rd.; Norfolk, VA 23503 757-963-2925

864-574-7672 757-842-1723

Care Contacts:

SRMC

Dr. Taylor, primary care

Rodak, cardiology

Dr. J, ophth.

Clark, pulm

Chief Complaint / Nature of Presenting Problem:

This patient is here for rehab and possible long term care for the multiple listed conditions.

History Of Present Illness: This man presented to the hospital with respiratory failure. He has end-stage COPD with pulmonary fibrosis. He was treated in the hospital and stabilized and sent here for rehabilitation possibly long-term care. He has apparently been on hospice at home in the recent past.

Past Medical History: The past history is essentially contained in the list of diagnoses at the end of this workup.

Past Surgical History: Past history of surgery includes pacemaker insertion, thought will carotid endarterectomy on both sides, cardiac A Boulet should, multiple embolectomies in the left leg, and bilateral cataract extractions.

Medication List:

Bupirone 5 mg t.i.d.

Diltiazem 180 mg q.12h

atorvastatin 40 mg q.d.

Lovaza 1 gm po bid

magnesium oxide 400 mg q.d.

MS Contin 15 mg q.8 h.

Omeprazole 40 mg q.d.

Sertraline 50 mg q.d.

Tamsulosin 0.4 mg q.d.

TriCor 145 mg p.o. q.d.

Vitamin B12 1000 µg p.o. q.d.

Vitamin D3 4000 units daily

Metformin 500 mg b.i.d.

Prednisone 10 mg q. day

Spiriva q.d.

Coumadin 2 mg q.d.

Albuterol 2.5 mg by nebulizer q.i.d. and q.6 h. p.r.n.

Fingerstick blood sugars a.c. and h.s.

These are well tolerated and effective for the control of properly indicated illness. Dosage adjustment has been considered fully at this visit and not felt to be warranted unless plan changes follow.

WOM 000137

PATIENT: DAVIS, JOLLY (07/14/1937)
 DOS: 1/3/2013
 COMPANY: Network Geriatric Services

FACILITY: WHITE OAK MANOR-SPTBG
 NGS MRN: 1614541 (DID: 1402951)
 CONTACT: 864-327-1510

Allergy List: Lorazepam, misoprostol, latex, and bee stings.

Social History: This patient is been living at home alone and currently on hospice. The family is in and out. He is a widower. He works in retail sales. He went to school through the 12th grade and has fathered no children. he goes to the Pentecostal church

Family History: Family history is positive for diabetes and cardiac disease in himself. His father had a stroke. His sister had cancer.

Habits: He has a greater than 50-pack-year smoking history. He doesn't use ethanol or street drugs.

Functional Status: He can walk with his walker and assist of one. He can feed himself. He is continent x2.

Mental Status: He is oriented x4.

REVIEW OF SYSTEMS

General: No fever, chills, or sweats reported.

Eyes: The patient has no vision loss and no complaints regarding itching nor pain in the eyes.

Ears/Nose/Mouth/Throat:

The hearing is adequate and there is no pain, itching nor drainage from the ears. The nose is open and not draining nor painful. Dentition is absent and the throat has no pain.

Respiratory: He has coughing dyspnea and pulmonary congestion.

Cardiovascular: No angina, PND, DOE, nor palpitations.

Gastrointestinal: No dyspepsia, heartburn, reflux, diarrhea, nor constipation. he has had some nausea.

Genitourinary: No dysuria, frequency, nor hesitancy.

Musculoskeletal: No arthralgias, myalgias, nor back pain.

Neurological: No seizures, neuropathy, paralysis, nor tremor.

Skin/Breast: No rashes, pruritis, nor burning of the skin.

Psychiatric: No anhedonia, anxiety, nor psychosis.

Endocrine: No weight loss, weight gain, temperature sensitivity, nor sweating.

Hematological/Lymphatic: No bleeding, lymphadenopathy, weakness, nor lymphedema.

Allergic/Immunologic: No rhinitis, rashes, nor opportunistic infections.

VITAL SIGNS/CONSTITUTIONAL

Temperature 97.3 Fahrenheit; Pulse 77 BPM; Respiratory Rate 20 Breaths per minute; Blood Pressure 96/57; Weight 143 pounds; Height 68 inches;

PHYSICAL EXAM

General: Well developed, poorly nourished, white female who is in no distress

Eyes: Pupils equal, round, sluggishly reactive to light with red reflexes intact. There is no inflammation.

Ears/Nose/Mouth/Throat: Ears are normal with minimal wax and normal TM's. The nose is open. The mouth and oropharynx are normal with no teeth and no inflammation.

Neck: The neck is normal with no tenderness nor lymphadenopathy and with a FROM.

Respiratory: The lungs are filled with rhonchi and wheezes.

Cardiovascular: The heart has a regular rate and rhythm with no murmurs and no JVD.

Arterial: The dorsalis pedis pulses are not palpable bilaterally, but there are adequate radial and femoral pulses.

WOM 000138

PATIENT: DAVIS, JOLLY (07/14/1937)
DOS: 1/3/2013
COMPANY: Network Geriatric Services

FACILITY: WHITE OAK MANOR-SPTBG
NGS MRN: 1614541 (DID: 1402951)
CONTACT: 864-327-1510

Edema/Varicosities of Extremities: There is venous insufficiency with 3+ leg edema and venous stasis changes.

Chest: The breasts are normal to inspection and palpation and there are no axillary nodes.

Gastrointestinal: Abdomen: Soft, nontender, and without masses. Bowel sounds active.

Hernia: No hernias are present.

Genitourinary: The external genitalia is normal for gender.

Lymphatics: No palpable adenopathy.

Musculoskeletal: The joints show DJD changes with no inflammation. ROM is limited generally. The back is straight with no gross deformities.

Skin:

The skin is intact with no rashes, suspicious lesions, nor decubiti.

Neurological: Cranial nerves: CNs II-XII are grossly intact.

Deep tendon reflexes: DTRs 2+/4 and symmetrical.

Sensation grossly normal to touch. Motor function is normal.

Psychiatric: There is no anxiety, psychosis, nor anhedonia.

SUMMARY OF PLANS

Diagnostic: We will obtain a CBC, Fe, TIBC, B12, and folic acid level. We will also get a TSH and BMP, he needs a pre-albumin.

Therapeutic: The medications are appropriate as listed.

Rehab: Rehabilitation will provide care to improve strength and function.

Nursing: Nursing will see to it that this patient is safe and comfortable and watch for complications and let us know.

Preventive Care: He had a flu shot and a Pneumovax. He needs a Tdap.

Consults: No consultations or indicated. Podiatry will provide foot care due to PVD

Goals: The goals were to provide safety and comfort and to improve function were possible.

Prognosis: The prognosis is poor.

Rehabilitation Potential: The rehabilitation potential is fair.

End-of-Life Treatment Status: This man requests a full code. He also wishes to go to the hospital is ill and have his aggressive management as possible. He is not really appropriate for hospice because of this. He does not want feeding tubes.

DIAGNOSIS AND ASSESSMENT

Assessment

CPT Codes:

99306

0518F

1100F

1123F

G8482

ICD Codes:

WOM 000139

PATIENT: DAVIS, JOLLY (07/14/1937)
DOS: 1/3/2013
COMPANY: Network Geriatric Services

FACILITY: WHITE OAK MANOR-SP'BG
NGS MRN: 1614541 (DID: 1402951)
CONTACT: 864-327-1510

496.COPD;
515 FIBROSIS, PULMONARY;
414.00 CAD;
401.1 HYPERTENSION, ESSENTIAL;
250.02 DIABETES MELLITUS, ADULT-ONSET;
443.89 PVD;
296.31 DEPRESSION, MAJOR - MILD;
427.31 ATRIAL FIBRILLATION;
300.02 DISORDER, ANXIETY;
530.11 ESOPHAGITIS, REFLUX;
272.2 HYPERLIPIDEMIA, MIXED;
268 DEFICIENCY VITAMIN D;

Plan: The RP was present and we all discussed our findings and recommendations. The plan is essentially as outlined above. He is going to have rehabilitation when he is stronger and able to function we will discharge him back home. The decision about hospice will be between him and his primary care physician.

**** Document e-signed by Dr. Edward Warren on Jan 3 2013 4:20PM ****

Network Geriatric Services - Network Geriatric Services 864-327-1510

WOM 000140

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 17 2017

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2015-CP-42-5123

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg,
Appellants,

v.

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents.

CERTIFICATE OF COUNSEL

Counsel certifies that this Record on Appeal contains all material proposed to be included
by any of the parties and not any other material.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants

Ginger D. Goforth

John E. Rogers, II (SC Bar #72779)

Ginger D. Goforth (SC Bar # 6904)

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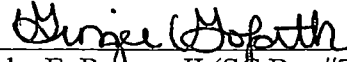
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April 11, 2017

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Attorneys for Defendants



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April 11, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Requested)

Hilda Stott, individually and as Personal)
Representative of the Estate of Jolly P.)
Davis, deceased, and as Personal)
Representative of the Statutory)
Beneficiaries,)

C.A. NO.: 2015-CP-42- 5123

SUMMONS
(Wrongful Death and Survival Action)

Plaintiffs,

v.


White Oak Manor, Inc.; White Oak)
Management, Inc.; and White Oak Manor -)
Spartanburg, Inc. d/b/a White Oak of)
Spartanburg,)

Defendants.

2015 DEC 16 PM 1:11
M. HOPE BLACKEY
SPARTANBURG, SC

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at their offices, 215 Magnolia Street, Post Office Box 1571, Spartanburg, South Carolina, 29306 (29304) within thirty (30) days after service thereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,



Gary W. Poliakoff
Raymond P. Mullman, Jr.
POLIAKOFF & ASSOCIATES, P.A.
215 Magnolia Street
P. O. Box 1571
Spartanburg, SC 29304
(864) 582-5472
Attorneys for Plaintiffs

December 16, 2015.
Spartanburg, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
(Jury Trial Requested)

Hilda Stott, individually and as Personal)
Representative of the Estate of Jolly P.)
Davis, deceased, and as Personal)
Representative of the Statutory)
Beneficiaries,)

C.A. NO.: 2015-CP-42-5123

COMPLAINT
(Wrongful Death and Survival Action)

Plaintiffs,)

v.)

White Oak Manor, Inc.; White Oak)
Management, Inc.; and White Oak Manor -)
Spartanburg, Inc. d/b/a White Oak of)
Spartanburg,)

Defendants.)

SPARTANBURG COUNTY
2015 DEC 16 PM 1:15
M. HOPE BLACKLEY

The Plaintiff, Hilda Stott, as Personal Representative of the Estate of Jolly P. Davis, does hereby respectfully allege as follows:

PARTIES AND JURISDICTION

1. That the Plaintiff Hilda Stott, individually as Claimant #1, and as Personal Representative of the Estate of Jolly P. Davis (Claimant #2), is a citizen and resident of the state of Virginia.
2. That, upon information and belief, White Oak Manor, Inc. (hereinafter "WOManor") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
3. That, upon information and belief, White Oak Management, Inc. (hereinafter "WOManagement") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
4. That, upon information and belief, White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg (hereinafter "WOS") is a for-profit entity incorporated under the laws of the State of South Carolina and is licensed and doing business in the County of Spartanburg, State of South Carolina.
5. That, upon information and belief, WOManor and WOManagement own, operate, manage, and oversee WOS.

6. That, upon information and belief, at all times relevant hereto, WOS has operated a nursing home facility and has done business in the state of South Carolina.
7. That, upon information and belief, at all times relevant hereto, Jolly P. Davis (hereinafter "Plaintiff Davis") was a resident of WOS and there existed a resident/facility relationship between Plaintiff Davis and the Defendants, and therefore Plaintiff Davis was thereby entitled to all the protections afforded such residents in South Carolina.
8. That, Plaintiff Davis was a resident of WOS at all times relevant hereto in the County of Spartanburg, State of South Carolina, and was a vulnerable adult as defined by S.C. Omnibus Adult Protection Act.
9. That, upon information and belief, at all times relevant hereto, WOS delivered nursing home care for a fee and had authority, express or implied, to control the means and agencies employed to execute the delivery of nursing home care to Plaintiff Davis during his residency at WOS.
10. That, upon information and belief, at all times relevant hereto, WOManor and WOManagement directly participated in the ownership, operation, and/or management of nursing homes for profit, including the facility where Plaintiff Davis resided. Further, WOManor and WOManagement, at all times relevant hereto, exerted managerial control and operational control over WOS, and that such control was so extensive and pervasive that WOManor and WOManagement actually operated and managed said facility, and did business as said facility. Further, the control by WOManor and WOManagement was so extensive and pervasive over WOS that the business of WOS was the business of WOManor and WOManagement.
11. That, upon information and belief, at all times relevant hereto, all Defendants named herein are or have been involved in budget, staffing, training, supervision, development, management, consulting and implementation of policies and procedures for WOS and have directly controlled the operations at said nursing home facility.
12. That, upon information and belief, at all times relevant hereto, all Defendants have engaged in substantial business activities in South Carolina, including the management, operation, control and/or ownership of the Defendant nursing home facility during the relevant time period.
13. That, upon information and belief, at all times relevant hereto, all Defendants named herein have promulgated and established the policies, procedures, protocols, staffing decisions, and budgetary decisions at WOS, and all Defendants named herein have directly controlled said facility at various times.
14. That, upon information and belief, at all times relevant hereto, the acts and omissions causing Plaintiff Davis' injuries deficiencies at WOS nursing home facility in Spartanburg County, South Carolina were authorized, approved and ratified by all Defendants named herein.

15. That the Court has jurisdiction over all the parties and subject matter.
16. That the acts and delicts referred to herein occurred at Defendants' facility in the County of Spartanburg, State of South Carolina.
17. That this action is being brought pursuant to the South Carolina Common Law of Negligence, Gross Negligence, Negligence Per Se, Wrongful Death, Unjust Enrichment, Breach of Fiduciary Duty and the Unfair Trade Practice Act.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

18. That on January 2, 2013, Plaintiff Davis was admitted to WOS with the understanding that he would be provided with the care that his health conditions reasonably required.
19. That while residing at Defendants' facility, Plaintiff Davis was damaged and injured, and eventually died as a result of custodial neglect and negligence, including violations of the standard of care for nursing and custodial care.
20. That Plaintiff Davis was a resident of Defendants' facility from his admission until his discharge on January 6, 2013.
20. That, while a resident at Defendants' facility, Plaintiff Davis was overmedicated and dehydrated which led to his untimely death.
21. That Defendants' facility failed to properly monitor and care for Plaintiff Davis by failing to ensure he was hydrated and not given unnecessary medications.
22. That, at all times relevant hereto, Defendants were required to exercise due care in the supervision and care of their residents to prevent the occurrence of new adverse health conditions and to prevent currently existing adverse health conditions from deteriorating.
23. That during Plaintiff Davis's residency at WOS, the acts and delicts of Defendants caused, and were the proximate causes of Plaintiffs' conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
24. That the Plaintiff institutes this action in order to recover for Plaintiff's injuries. Said injuries and damages were the proximate result of the acts and delicts of Defendants.
25. That the provisions of the Omnibus Reconciliation Act of 1987 ("OBRA") were applicable with regard to Plaintiff Davis. Defendants were under an obligation to follow all rules and regulations of OBRA as well as all applicable state and federal laws, rules, regulations, and guidelines including S.C. Regulations 61-17, the South Carolina Adult Protection Act, and the South Carolina Nurse Practice Act, S.C. Code § 40-33-5 et. seq.
26. That the Defendants were liable and responsible for the acts and delicts of their employees, agents, and servants under the principle of respondeat superior.

27. That Defendants are vicariously liable for the acts and delicts of their employees, agents, and servants.
28. That the Defendants held WOS out to the State of South Carolina, the South Carolina Department of Health and Environmental Control, the public at large, and specifically to Plaintiff Davis and his family, as being:
 - a. skilled in the performance of nursing, rehabilitative, and other medical support services;
 - b. properly staffed, supervised and equipped to meet the total needs of its residents;
 - c. able to specifically meet the total nursing, personal care, medical, physical therapy, and
 - d. licensed by the South Carolina Department of Health Environmental Control and complying on a continual basis with all state and federal rules, regulations, and standards established for nursing homes in South Carolina.
29. That the Defendants held WOS out to the United States of America, the Centers for Medicare and Medicaid Services, the public at large, and specifically to Plaintiff Davis and his family, as being a skilled nursing facility and as a nursing facility meeting the requirements of 42 CFR Part 483.
30. That the Defendants were under a fiduciary duty to provide reasonable, appropriate and adequate care to Plaintiff Davis pursuant to state and federal laws, rules, regulations, guidelines and existing industry standards.
31. That the Defendants owed certain non-delegable duties to Plaintiff Davis including, but not limited to, the duties set forth in the foregoing and ensuing paragraphs of this complaint.
32. That, at all times pertinent hereto, Plaintiff Davis resided at Defendants' facility, and as such was under the exclusive control and care of Defendants and their employees, agents, officers, and servants while a resident.
33. That, at all times pertinent hereto, WOS, as licensee was ultimately responsible for maintaining approved standards for the facility.
34. That the Defendants, their officers, agents, servants, and employees negligently and carelessly failed to provide care and treatment to Plaintiff Davis.
35. That, upon information and belief, Plaintiff Davis's health conditions were aggravated and exacerbated by the Defendants' repeated failure to properly supervise him or monitor his medical conditions and keep him safe from harm in that he suffered from being overmedicated, from dehydration, neglect, and mental and emotional distresses, which ultimately led to his wrongful death. These deviations from the standard of care were the proximate causes of conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
36. That Defendant WOS, directly or indirectly, received federal and state funds as

reimbursement of the care of residents including Plaintiff Davis.

FIRST CAUSE OF ACTION
(Negligence, Recklessness, and Gross Negligence)

37. Relevant and consistent allegations contained in paragraphs 1-36 are incorporated by reference as if written verbatim herein.
38. That Defendants had a duty of due care to their patients and residents to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate unreasonable risks; and to provide proper protection from harm.
39. That Defendants, named hereinabove, had a duty to treat the Plaintiff at a level that met or exceeded the recognized standard of care, which Defendants breached.
40. That Defendants, by and through Defendants' agents, servants, and employees were negligent, reckless, grossly negligent, willful, wanton, reckless and careless in treatment of the Plaintiff, and that Defendants performed duties in a manner well below the recognized standard of care for the same or similar provisions in the same or similar circumstances.
41. That Defendants had a duty of due care to their patients and residents to discover, warn and/or prevent risks; to take reasonable safety precautions; to eliminate physical, mental or emotional unreasonable risks; and to provide proper protection from harm.
42. That Defendants, by and through their agents, servants, and employees, were negligent, willful, wanton, reckless, careless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Plaintiff Davis. More particularly the Defendants were negligent in the following particulars:
 - a. failing to properly supervise as required, and as promised to the family upon admission;
 - b. failing to provide the care, supervision and monitoring of patients, residents, and, in particular, Plaintiff Davis, which was required by law and which was necessary for his health and safety;
 - c. failing to hire, train, and supervise personnel to properly avoid preventable injuries to residents and, in particular, Plaintiff Davis;
 - d. failing to provide sufficient numbers of qualified personnel including nurses, nurses assistants, medication aides, and/or orderlies to meet the total needs of Plaintiff Davis;
 - e. failing to abide by applicable federal and state laws governing long term care facilities and nursing care;
 - f. failing to hire a sufficient number of trained and competent staff and failing to sufficiently budget for same;
 - g. failing to follow the licensing and regulatory rules of the State of South Carolina;
 - h. failing to develop and follow an appropriate Plan of Care;

- i. failing to properly train employees to deal with residents who were unable to care for themselves;
 - j. failing to provide emergency services when needed;
 - k. failing to prevent Plaintiff Davis from becoming overmedicated;
 - l. failing to properly monitor Plaintiff Davis;
 - m. failing to appropriately diagnose Plaintiff Davis's condition;
 - n. failing to provide adequate hydration;
 - o. failing to provide an adequate plan of care to include necessary interventions to promote hydration and prevent dehydration;
 - p. failing to consult with and/or report to the physician and/or the Registered Dietician in a timely manner Plaintiff Davis's decrease in fluid intake and changes in condition;
 - q. failing to keep Plaintiff Davis properly hydrated and nourished;
 - r. failing to keep Plaintiff Davis' chart free of fraudulent documentation;
 - s. failing to monitor and assess Plaintiff Davis adequately for pain and discomfort;
 - t. failing to treat Plaintiff Davis with dignity and respect;
 - u. failing to exercise due care; and
 - v. by other negligent acts and/or omissions yet to be determined or defined.
43. That, as a result, Plaintiff Davis experienced conscious pain and suffering, mental anguish, and suffered wrongful death.
44. That the aforesaid acts and delicts were the sole and proximate cause of Plaintiff Davis's injuries and death.
45. That the wrongful conduct of Defendants set forth in the negligence, gross negligence, and negligence per se counts of this complaint was undertaken without regard to the health and safety consequences of Plaintiff Davis who was entrusted to Defendants' care, and rises to the level of gross negligence in that Defendants' conduct was willful, wanton, reckless, and shows a conscious disregard for the health and safety of Plaintiff Davis.
46. That the Defendants independently and through their managers, officers and others yet unknown demonstrated conscious and intentional disregard of and indifference to the rights and safety of Plaintiff Davis and other patients at WOS as demonstrated by:
- a. Their business practice of attempting to care for residents with an inadequate number of trained staff, which their officers and managers knew or should have known were reasonably likely to result in injury to Jolly P. Davis and their other patients; and
 - b. Their business practice of failing to supervise and train their staff in order to ensure that their policies and procedures were known to and adhered to by licensed staff, and that licensed staff practiced within their scopes of practice.

SECOND CAUSE OF ACTION
(Negligence Per Se)

47. Relevant and consistent allegations contained in paragraphs 1-46 are incorporated by reference as if written verbatim herein.
48. That in addition to the above, Plaintiff alleges that Defendants have been negligent per se in their violations of sections of OBRA (Omnibus Budget Reconciliation Act of 1987), S.C. Regulations 61-17, the Adult Protection Act, and the Nurse Practice Act.
49. That each and/or all of the foregoing state and federal laws, rules and regulations prescribe certain actions or define the standard of conduct. Plaintiff Davis was and remains in the class of persons sought to be protected by each regulation and/or statute. Moreover, Plaintiff's injuries were the type of harm that each of these regulations were intended to prevent according to the extent that the Defendants' conduct violated these regulations. Such conduct amounts to negligence per se as that term is defined and is known and understood at law. Each act or omission constituting negligence per se was the proximate cause of Plaintiff Davis's injuries and damages.
50. That as a direct and proximate result of the Defendants' acts and delicts, Plaintiff Davis endured extreme conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.
51. That reasonable custodial care requires that the facility provide each resident with sufficient fluid intakes to maintain proper hydration, per said regulations and statutes.
52. That dehydration is considered a sentinel event and life threatening.
53. That residents need at least one point five (1.5) liters of fluids daily to avoid dehydration and maintain health, which Defendants failed to provide, in further violation of said regulations and statutes.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

54. Relevant and consistent allegations contained in paragraphs 1-53 are incorporated by reference as if written verbatim herein.
55. That Defendants received funds from both the state and federal government which were intended to be used to properly care for Plaintiff Davis.
56. That Defendants did not use said funds to properly care for Plaintiff Davis, and were therefore unjustly enriched by receipt of said funds.
57. That as a result of aforementioned misuse of funds, Plaintiff Davis suffered conscious pain and suffering, mental distress, medical bills, funeral bills, loss of dignity, and wrongful death.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty)

58. That relevant and consistent allegations contained in paragraphs 1-57 are incorporated by reference as if written verbatim herein.
59. That, according to the South Carolina Adult Protection Act, at all times relevant hereto Plaintiff Davis was considered a vulnerable adult.
60. That a fiduciary relationship existed between Defendants and Plaintiff Davis.
61. That Plaintiff Davis trusted in, confided in and relied upon Defendants to use their expertise and discretion for his care.
62. That Defendants accepted Plaintiff Davis's trust and reliance and so became responsible for Plaintiff Davis's health while residing at the nursing home facility.
63. That as a result of aforementioned reliance and trust upon Defendants, Plaintiff Davis's physical and mental health was placed in the hands of Defendants.
64. That Defendants breached this fiduciary relationship by allowing Plaintiff Davis's physical and mental health to deteriorate during his residency at the nursing home facility.

FIFTH CAUSE OF ACTION
(Joint Venture)

65. That relevant and consistent allegations contained in paragraphs 1-64 are incorporated by reference as if written verbatim herein.
66. That a joint venture is an association of two or more individuals engaged in a solitary business enterprise for profit without actual partnership or incorporation.
67. That elements of joint venture in the State of South Carolina are:
 - a. an agreement;
 - b. a joint interest in a common business;
 - c. an understanding that profits and losses will be shared, and;
 - d. a right to joint control.
68. That a joint venture exists when there is:
 - a. contribution of resources by both parties;
 - b. joint proprietorship and control over the subject matter of the property engage in the venture;
 - c. sharing of profits by express or implied agreement, and;
 - d. an express or implied contract showing joint venture.
69. That all Defendants herein were involved in a joint venture.

SIXTH CAUSE OF ACTION
(Alter Ego)

70. Relevant and consistent allegations contained in paragraphs 1-88 are incorporated by reference as if written a verbatim herein.
71. That, upon information and belief, WOS was dominated by WOManor and WOManagement before, during, and after Plaintiff Davis's residency. These Defendants siphoned profits from the nursing home chain through self-dealing between the entities, excessively compensated themselves and other executives, and participated in other methods of divesting the licensee entities of needed capital and assets, while allowing the chain to suffer financial losses and provide poor care as a result of inadequate capitalization and consequently inadequate supplies and staffing, resulting in unnecessary injuries, death and suffering, including that of Plaintiff Davis.


SEVENTH CAUSE OF ACTION
(Wrongful Death)

72. Relevant and consistent allegations contained in paragraphs 1-71 are incorporated by reference as if written verbatim herein.
73. That as a direct and proximate result of Defendants' negligent, willful, wanton, reckless, careless and grossly negligent conduct, by and through their agents, servants, and employees, decedent was severely injured in Defendants' facility.
74. That the injuries so inflicted on the decedent were the proximate cause of Plaintiff Davis's wrongful death on January 16, 2013, resulting in the damages, injuries, harms and losses to the wrongful death beneficiary – Claimant #1 Hilda Stott.
75. That the sole and proximate cause of all the harms, losses, injuries and death suffered by Willie Wilson was the combined and concurrent acts and delicts of all the Defendants and their agents acting in a joint venture and integrated enterprise.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual and punitive damages in the sums deemed appropriate by the jury, for the costs of the action, and for such other and further relief as this Court may deem just and proper.

(SIGNATURE BLOCK BELOW)

RESPECTFULLY SUBMITTED,



Gary W. Poliakov
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(864) 582-5472
Attorneys for Plaintiffs

December 16, 2015
Spartanburg, S.C.

CLERK OF COURT
SPARTANBURG, S.C.
2015 DEC 16 PM 1:15
M. HOPE BLACKLEY

COPY

Deviations from Standard of Care in Jolly Davis Case

1. Breach in the standard of care regarding medication orders and administration: Morphine is an opioid drug. According to the literature, "opioid is an effective palliative drug in chronic obstructive pulmonary disease patients with distressing dyspnea that is refractory to standard modalities of treatment." When it describes dyspnea that is refractory to standard treatments, it means that the usual treatments for COPD are not effective in alleviating symptoms. Standard treatments for COPD include, but may not be limited to the following, depending on the stage of COPD: smoking cessation, diet, minimizing risk factors (flu vaccine), cardiopulmonary rehab., supplemental oxygen, bronchodilators, and inhaled steroids. When these treatments fail to relieve the patient of dyspnea (breathlessness), the use of oral and parenteral opioids to palliate breathlessness is supported by a Cochrane review by Jennings et al.

In the Cochrane review of 18 studies, types, doses and routes of administration of opioid were varied; clearly, the optimal opioid dosing for relief of dyspnea has not been established. *Palliative care experts' recommendation for treatment of severe dyspnea in opioid-naïve patients is morphine sulfate 5 mg orally every 4 h; equivalent dose for break-through symptoms every 1–2 h as needed and to titrate in increments of 50–100% every 24 h. They further suggest to reduce the above-recommended doses by 50% and to titrate with increments of 25% every 24 h, as needed in severe pulmonary disease patients. Respiratory depression is a widely held concern for use of opioids in severe pulmonary disease patients. Eleven of the 18 studies included in the Cochrane review had information on blood gases or oxygen saturation. In all but one study, no significant changes were noted after opioid administration. The common gastrointestinal adverse effects of opioids are nausea, vomiting and constipation. However, except for constipation, these symptoms abate in 3 days to 2 weeks, as pharmacologic tolerance develops.*

<http://emedicine.medscape.com/article/297664-treatment#aw2aab6b6b3>

http://www.medscape.com/viewarticle/717217_1

On 01/02/13, an interim care-plan was filled out for Mr. Davis that included the following: monitor pain, non-drug interventions. There was no statement that he was actually experiencing any pain, and no location of any pain cited. In the White Oak physician orders, there was an order for Morphine ER (extended release) 15 mg PO Q 8 hours for a diagnosis of pain, though there was no documented evidence he was in any pain. This order was discontinued on 01/06/13, which is the day Mr. Davis was transferred to the hospital. On 01/06/13, the order was changed to Morphine 15 mg PO Q 12 hours "due to pain." This order was changed at the request of the niece, who was concerned that Mr. Davis was not alert enough to work with therapy.

According to the literature I have already cited, the recommended dose for severe dyspnea in opioid naïve patients (patients who are not chronically receiving higher doses of opioid analgesics on a daily basis) is 5 mg orally every 4-hours. This is equivalent to 30 mg/day. In addition, for patients with severe pulmonary disease, these recommended doses should be reduced by 50% due to the concern of respiratory depression.

It was a **deviation** for the nurses to follow an inappropriate order and not to question Dr. Warren over the inappropriate order. A nurse is a patient advocate, and when administering medication it is the standard of care to advocate for the patient by following the 5 R's of medication administration (some experts have added 3 more):

- a. Right patient
- b. Right medication
- c. Right dose
- d. Right route
- e. Right time
- f. Right documentation
- g. Right reason (confirm the rationale for the ordered medication)
- h. Right response

<http://www.nursingcenter.com/Blog/post/2011/05/27/8-rights-of-medication-administration.aspx>

Reference: Nursing 2012 Drug Handbook. (2012). Lippincott Williams & Wilkins: Philadelphia, Pennsylvania.

In considering the right reason, Mr. Davis was ordered high doses of oral Morphine for the reason of pain, though he never complained of pain, nor is there evidence in the records that he had pain. A nurse note on 01/06/13 states he receives Morphine ER 15 mg every 8 hours for pain and Lortab 5 every 4 hours for breakthrough pain. Her note then states, "no complaints of pain or discomfort." When Hospice ordered Morphine for him in September of 2012, they ordered it for his dyspnea with any exertion. This was an appropriate reason.

There is an MAR note on 01/06/13 at 1:58 PM that states, Morphine ER 15 mg scheduled for 2:00 PM was refused by resident. He stated it makes him sleep and he wants to be alert for therapy tomorrow. This is an indication that Mr. Davis's Morphine dose needed to be reevaluated and adjusted.

It was also a **deviation** for the nurses not to question Dr. Warren's order to give Morphine ER every 8 hours. According to the instructions for administering ER Morphine, patients should *take morphine extended-release capsules on a regular schedule to get the most benefit from it. Do not take doses of morphine extended-release capsules closer than 12 hours apart.*

According to Mr. Davis' MAR, he was being given the Morphine ER every 8 hours: 6 AM, 2 PM, and 10 PM.

Another **deviation** was an order for Lortab 5-500 on the MAR, but no doctor's order for the Lortab. It is inappropriate to administer a drug without a physician order, especially a narcotic, which is a regulated drug. The order start date was 01/04/13, and the end date was 01/06/13. It is charted in the MAR that a dose of the Lortab at 02:39 AM on 01/05/13. Nurse stated her reason for giving the Lortab was "for general discomfort.

Resident says he just sore all over and doesn't feel good." There was no investigation of why he was sore and didn't feel good, and there was no clarification with the physician over whether Mr. Davis had a legitimate order for Lortab.

According to instructions for taking Dramamine, it is inappropriate to take/give it for nausea and vomiting not caused by motion sickness. It is an antihistamine, and its use should be limited to motion sickness and only for nausea, vomiting, and dizziness associated with motion sickness. It can cause drowsiness. It is also not a drug of choice for patients with respiratory problems. The nurses should have been aware of these side effects, and should have questioned this order. There is also caution advised with giving Dramamine and Phenergan together because both can cause sedation. On 01/04/13 and 01/05/13, nurses administered 3 doses of Phenergan to Mr. Davis within 20 hours in addition to Dramamine 50 mg and 30 mg of Morphine ER. Giving this amount of drugs that have a sedative effect can increase, prolong, or intensify the sedative action of each drug, and so should be given with extreme caution, or not at all.

2. Breach in the standard of care for nurse documentation
 - a. There is no documentation of ADL's. He initially had a catheter, so his urine outputs should have been checked each shift. There is no record of intakes and urine outputs. There is no record of his performance of any ADL's. There is no nurse or CNA documentation on the ADL sheets.
 - b. There is not consistent documentation in the nurse notes of pain medication that was administered to Mr. Davis, nor any documentation of his response to pain medication (other than a dose of Lortab). According to a guide for documentation in nursing homes, the following should be documented when pain medication is being administered: date/time, location of pain, description of pain and score on pain scale 1-10, goal for resident's relief, whether or not pain limits ADL functions or interferes with sleep, whether resident's pain goal is met, and whether the medication is effective (how

resident responded).

<https://www.gmcf.org/AlliantWeb/Files/QIOFiles/Nursing%20Homes/charting-guide.pdf>

- c. There are discrepancies in the chart about whether or not Mr. Davis had a fall on 01/03/13. At 04:10 AM on 01/03/13, Beth Painter, LPN charts that Mr. Davis had a fall earlier in the day. On 01/04/13, at 04:13 AM and at 04:14 AM, Cheryl Henderson, RN, states that the note regarding the fall written on 01/03/13 did not pertain to Mr. Davis. MDS assessment on 01/06/13 states Mr. Davis has had 1 fall since admission to SNF, and he suffered minor injury. Nurse note by Karen Sylvester, RN, on 01/15/13, at 07:33 AM stated he had nausea and a fall on 01/03/13.

<https://www.gmcf.org/AlliantWeb/Files/QIOFiles/Nursing%20Homes/charting-guide.pdf>

“Documentation is a matter of good clinical practice and is an expectation of trained and licensed health care professionals.”

3. Failure to follow-up on lab results and to report abnormal lab results: abnormal labs drawn on 01/04/13, and resulted on either 01/04/13 or 01/05/13 were PT-23.9 (nl.-10.5-13.5), INR-2.03, Glucose-59 (nl.-70-105), BUN-60 (nl.-7-25), Iron-31 (nl.-50-212), vitamin B12-1315 (nl.-211-911)-can be elevated in patients with diabetes, WBC's-23.3 (nl.-4-11), hemoglobin-11 (nl.-13.5-17.5). The rest of the labs drawn today were WNL. By the time the facility physician noted these labs on 01/07/13, Mr. Davis was already in the hospital. The nurses should have known there was an order for these labs to be drawn, and they should have noted when the report was received, and reviewed the lab results, and reported the abnormal ones to the doctor right away. Nurses are expected to be aware of abnormal lab results and to take appropriate action by informing the physician. An elevated BUN is indicative of kidney failure, and elevated WBC's are indicative of an infection. A nurse should be aware of this. In addition, Mr. Davis was receiving B12 supplementation, and when his level was elevated, the nurse should have informed the physician so his supplement dose could

have either been lowered or discontinued. Textbook of Basic Nursing.
Edited by Caroline Bunker Rosdahl, Mary T. Kowalski

4. Failure to report change in condition and to monitor Mr. Davis closely: beginning on 01/04/13, Mr. Davis began complaining of nausea and vomiting. He also complained of watery stools. This led to his refusal to take his medications and to take in appropriate amounts of fluids. He also refused most of his meals for approximately 3 days. This was not reported to the physician. A nutrition consult was not ordered. There was no monitoring of intake and output. This combination of vomiting, diarrhea, and lack of oral intake can cause serious dehydration, and this was confirmed on his admission to SRMC on 01/06/13.

Sevch Kowalski, RN
April 30, 2015

Rosemary E Wilcox 4/30/15
Comm expires Jan 10, 2024

COPY



SPARTANBURG
Regional Healthcare System

SRMC

SHRC

VH

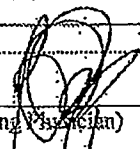
PROGRESS NOTE ADDRESSING DECISIONAL CAPACITY

Based upon my observation and involvement with this patient, it is my medical opinion that

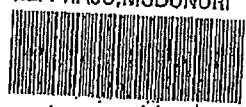
JOLLY DAVIS
(Name of Patient)

Account Number: 1235601402

Check ONE of the following statements

<input checked="" type="checkbox"/> This patient DOES possess the decisional capacity to make healthcare decisions for self.	<input type="checkbox"/> This patient DOES possess the decisional capacity to make healthcare decisions for self.
<input type="checkbox"/> This patient DOES NOT meet ALL of the criteria for decisional capacity, therefore is not able to make healthcare decisions for self. Furthermore, it is my opinion that due to the patient's medical condition(s), this lack of capacity is not likely to change in the immediate future.	<input type="checkbox"/> This patient DOES NOT meet ALL of the criteria for decisional capacity, therefore is not able to make healthcare decisions for self. Furthermore, it is my opinion that due to the patient's medical condition(s), this lack of capacity is not likely to change in the immediate future.
Criteria not met: Oriented to <input type="checkbox"/> person <input type="checkbox"/> place <input type="checkbox"/> time Understands the nature of his/her illness Ability to understand that decisions need to be made Ability to communicate a decision Ability to understand and use information logically to reach a decision Ability to be realistic in decision making (i.e. to understand the consequences of a decision)	Criteria not met: Oriented to <input type="checkbox"/> person <input type="checkbox"/> place <input type="checkbox"/> time Understands the nature of his/her illness Ability to understand that decisions need to be made Ability to communicate a decision Ability to understand and use information logically to reach a decision Ability to be realistic in decision making (i.e. to understand the consequences of a decision)
Progress Note 	Progress Note
(Attending Physician) 	(Second Physician Involved in Care) _____
(Date) 1.2.13	(Date) _____
NOTE: A Psychiatric consult is NOT required. This form requires the signature of TWO PHYSICIANS! A Progress or Consult Note should be written regarding both the patient's medical condition and mental capacity. The completed form will be forwarded at discharge to the extended care facility.	

Patient Label
 1235601402 000-361128 12/22/12
 DAVIS, JOLLY PERRY 07/14/37 M 75Y
 ADM: RAJU, MUDUNURI
 REF: RAJU, MUDUNURI
 STF ALT



1691 (Rev. 10-08)



RESIDENT AND FACILITY
ADMISSION AGREEMENT.

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**RESIDENT AND FACILITY ADMISSION AGREEMENT
PLEASE READ CAREFULLY AND ASK ANY QUESTIONS**

This Agreement is made by and between WOM-SPB6 (hereinafter called "Facility") and Resident and his/her Authorized Representative and/or the individual who has access to Resident's income and financial resources available to pay for nursing care (hereinafter called "Authorized Representative") for the provision of nursing services for JOHN R. DAVIS (hereinafter called "Resident").

Resident and/or Authorized Representative affirm that the information provided during the admission process is true and correct to the best of their knowledge, and acknowledge that the submission of any false information may constitute grounds to terminate this Agreement.

Identification of Authorized Representative (if applicable):

The Authorized Representative is anyone authorized by the Resident or by law to act on the Resident's behalf. Please check the type and scope of authority for anyone other than the Resident who signs this Agreement.

TYPE (Check one)

- General POA*
- Durable POA*
- Durable POA w/ Healthcare*
- Guardianship / Conservatorship*
- Healthcare POA*
- Other: _____

SCOPE (check all that apply)

- Routine health care
- Unlimited health care
- Limited access to income / finance
- Authorized to accept income and control financial resources of Resident

*** Must provide copies of any and/or all documents checked above**

The Authorized Representative, by signing this Agreement, acknowledges acceptance of the duties and responsibilities of this role.

The Authorized Representative will not incur personal financial liability except for breach of duty or contract related to the misuse of Resident's resources or the failure to use those resources to pay for the Resident's care.

ADPK 001

WOM 000079

PRELIMINARY STATEMENTS:

Resident individually or by and through Resident's Authorized Representative has considered appropriate care settings and is desirous of receiving care at the Facility.

Facility is a licensed nursing facility and will provide the services set forth below in accordance with the applicable standards of care, none of which cause the Facility to become an insurer nor guarantor of the health and safety of the Resident, or for that matter, the insurer or guarantor of the Resident's personal property.

NOW, THEREFORE, in consideration of the prompt payment by the Resident (and the applicable state, federal, or private insurance program) of the charges made to the Resident's account in accordance with the charge structures of the Facility, and in further consideration of the mutual covenants and promises herein, the parties agree as follows:

2. PROVISION OF SERVICES

- 2.1. Care and Services. The Facility offers, at the Daily Rate, the following services: room accommodations, food services, licensed routine nursing services, social services, activities, housekeeping services, laundering of linens and towels, routine hair care, and resident trust fund services.
- 2.2. Auxiliary Services and Supplies. The Facility shall make available at an additional charge, unless included in the Daily Rate, the following items and services: therapy services, medical supplies, laboratory services, pharmaceuticals, beauty/barbershop, guest meals, and toiletries for personal comfort, grooming, or hygiene, and transportation. All items and services not included in the Daily Rate, such as Medicare A or Medicaid, will be billed to the applicable payor. The Resident is responsible for all non-covered items and services, co-payments or deductible amounts, according to the Facility's Rate Schedule, as amended from time-to-time. Items and services not included in the Daily Rate will be updated periodically upon notice to residents.
- 2.3. Services of Other Providers. The services of outside providers such as a licensed physician, optometrist, podiatrist and/or dentist, a registered pharmacist for the provision of medications, rehabilitation therapies and diagnostic services, i.e., laboratory, x-ray and/or ambulance services, are available at the Facility or under arrangement. These services are available under guidelines and procedures established by the Facility and may be utilized by Resident at his or her own expense unless covered by another pay source. The Facility retains the right to control the source of supply of any items and contract services used within the Facility. Resident or Authorized Representative has exercised freedom of choice by applying for admission to Facility and thereby agrees and contracts with Facility to provide said supply items and contract services as requested. The place of purchase for pharmaceutical items is within Resident's freedom of choice subject to the Facility's policy for Resident drugs.

2.4. Role of Attending Physician and Medical Director. The Resident shall obtain the services of a qualified physician who will provide medical care during the Resident's stay at the Facility. The Resident is free to receive care from any licensed physician who agrees to submit credentials to the Facility and adhere to the Facility's policies and procedures. The Resident elects W. W. Crum as the attending physician(s), W.S. (initials). The Facility is not obligated to provide Resident with any medicines, treatments, special diets or equipment without specific orders or directions from Resident's attending physician. In the event Resident's attending physician is unavailable, the Facility's Medical Director / Designee may issue appropriate orders. Resident is responsible to pay for all services or equipment ordered by Resident's attending physician or the Facility's Medical Director / Designee for Resident's care unless covered by Medicare / Medicaid or other third-party insurer.

2.5. Room Assignments. The Facility makes room and bed assignments according to availability and/or in accordance with the Resident's physical and psychosocial wellbeing. Resident acknowledges that bed assignments may be changed in order to provide a proper environment for all residents. Resident and family / Authorized Representative will be notified of any room changes.

3. CHARGES

3.1. Recurring / Periodic Charges for Care and Services. Resident shall pay the Daily Rate, specified in the Rate Schedule in effect at the time the service is rendered, for routine nursing services provided to Resident. The Daily Rate may be changed from time-to-time in accordance with the provisions of Section 4.3. Charges for a resident whose payor source is other than Medicare Part A or Medicaid will begin on the designated admission date or actual admission, whichever is earlier; charges for a resident whose payor source is Medicare Part A or Medicaid will begin no earlier than the date of admission.

3.2. Additional Charges for Ancillary Services and Supplies. Resident shall pay for other services and supplies provided by or through the Facility which are not covered by the Daily Rate as set forth in the Rate Schedule in effect at the time such ancillary services or supplies are rendered. Any items ordered by a physician, which are not identified on the Rate Schedule, will be provided at charges identified by the Facility. The charges for ancillary services and supplies are subject to change from time-to-time.

3.3. Charges for Outside and Non-Facility Services. In addition to the Facility's charges, Resident shall pay all fees and costs for goods or services furnished to or for Resident by anyone other than the Facility as described in Section 2.3 (Services of Other Providers) unless otherwise covered in full by Medicare or Medicaid or another third-party payor. Resident or Authorized Representative is obligated to pay such fees and costs whether the goods and services are furnished by a person or provider made available by the Facility, or by a person or provider selected by Resident, and whether the goods or services are provided at the Facility or elsewhere. These fees and costs are not included in the Daily Rate. Fees for professional services rendered by a physician are not included in the Daily Rate and will be charged directly to the Resident by the physician.

4. PERIODIC BILLINGS AND PAYMENT DUE DATE

- 4.1. Monthly Statements and Other Billings. Prepayment for one (1) month of the basic monthly rate is required at the time of admission. The Facility will mail Resident or Authorized Representative on or about the tenth (10th) day of the month a billing statement reflecting charges for care and services for the upcoming month and charges for ancillary services and supplies which were incurred in the prior month. Statements are due and payable upon receipt of the Monthly Statement.

Resident expecting Medicare coverage specifically understands that Medicare co-insurance is the responsibility of the Resident. Payment of co-insurance is required. Payment for Medicare services is not expected until services are rendered.

- 4.2. Failure to Pay and Cost of Collection. Failure to pay an account at the Facility when due is a breach of this Agreement and will allow Facility to discharge Resident upon giving a thirty (30) day written notice, during which thirty (30) day period the breach may be cured by payment of the account in full.

In the event the Facility initiates legal action to collect payments due from the Resident under this Agreement, and the Facility is successful, the Resident and/or Authorized Representative shall be responsible for reimbursing the Facility for all costs and expenses thereby incurred, including reasonable attorneys' fees.

- 4.3. Modification of Charges. The Facility reserves the right to change the Rate Schedule reflecting the amount of any of its charges or how and when charges are computed, billed or become due. The Facility shall provide thirty (30) days advance written notice of any such changes.
- 4.4. Obligations of Resident's Estate and Assignment of Property. Resident and Authorized Representative acknowledge the charges for services provided under this Agreement remain owed until paid. In the event of Resident's discharge for any reason, including death, this Agreement shall operate as an assignment, transfer and conveyance to the Facility of so much of Resident's property as is equal in value to the amount of any unpaid obligations under this Agreement. This assignment shall be an obligation of Resident's estate and may be enforced against the Resident's estate.
- 4.5. Change in Contact Information. Resident and/or Authorized Representative agree to notify the Facility within ten (10) days of any change in Authorized Representative's contact information.

5. MEDICARE / MEDICAID PROGRAMS

- 5.1. Participation in Programs. The Facility currently participates in the South Carolina / North Carolina Medicaid program and the federal Medicare program. The Facility reserves the right to withdraw from the Medicaid or Medicare programs at any time in accordance with law.

5.2. Actions of Medicaid and Medicare Agencies. The South Carolina / North Carolina Department of Health and Human Services ("DHHS") is responsible for administering benefits under the Medicaid program. The Centers for Medicare and Medicaid Services ("CMS"), of the United States Department of Health and Human Services, is responsible for administering the Medicare program through an intermediary. Resident acknowledges that the Facility is not responsible for, and has made no representations regarding, the actions or decisions of DHHS, CMS or the Medicare intermediary in administering the programs.

5.3. Medicaid Benefits.

5.3.1. Obligations of Resident. Resident is obligated to make full and complete disclosure regarding all financial resources and income during the application process. Failure to identify all resources and income, or the submission of false information, may result in the termination of this Agreement. Resident is obligated to notify the Facility when Resident's resources available to satisfy the Resident's financial obligations under this Agreement are no longer sufficient to pay all the Facility charges for Resident's care and services or when directed to do so by the Facility. Resident shall provide any documentation requested by the County Medicaid Office. Upon Facility's request, Resident shall execute an authorization for Facility to assist the Resident in securing Medicaid benefits, pursuing a hardship waiver, and bringing Resident's account current. In the event Resident applies for Medicaid benefits, Resident shall continue to pay and apply all of Resident's available resources toward the fulfillment of Resident's financial obligations under this Agreement while the Medicaid application is pending an eligibility determination by DHHS.

5.3.2. Recurring Liability Amount. For residents approved for Medicaid benefits, the Facility will accept payment from the State of South Carolina / North Carolina and, if applicable, the Resident's Recurring Liability Amount as determined by DHHS as payment in full only for those services covered by the Medicaid program. Resident remains obligated to pay such Recurring Liability Amount on a monthly basis. Services not covered by Medicaid are identified in the Rate Schedule and Resident remains obligated to pay for such services. If Resident plans to apply for Medicaid, then the Resident will have an estimated monthly Recurring Liability in the amount of \$ MM until the State determines the amount of Resident's income to be paid to the Facility. Once the approved Recurring Liability amount has been set by Medicaid, any differences must be paid or adjusted. The Recurring Liability amount is due to the Facility by the fifth (5th) day of the month. H.S. (initials)

5.3.3. Determination of Eligibility. Resident and Authorized Representative are obligated to cooperate fully in any Medicaid eligibility determination or re-determination process. In the event that Resident's eligibility for Medicaid benefits is denied, interrupted or terminated due to the failure of Resident or Authorized Representative to cooperate in the Medicaid application, re-determination or appeal process, the Resident and Authorized Representative shall be liable for the Daily Rate plus charges for ancillary services and supplies during any period of ineligibility, and the Facility may terminate this Agreement.

5.3.4. Authorization to Apply for and/or Appeal (Medicaid). In the event of Resident's incapacity and in situations where Resident's resources are depleted or appear to be depleted to the extent that Resident can no longer pay privately for nursing care, and it appears that Resident has become or will become eligible for Medicaid benefits to cover the cost of Resident's continued stay in the Facility; and if there is no other legal representative of Resident known to the Facility or other friend or relative known to the Facility who is authorized and/or is available or willing to act on Resident's behalf, after the Facility has made a good faith effort to identify such persons; then Resident hereby authorizes the Facility to request, file and/or apply for Medicaid benefits on behalf of Resident for the limited purpose of assisting Resident to secure payment through the Medicaid program for Resident's continued stay in the Facility. In the event the application for Medicaid benefits filed on behalf of the Resident is denied, or in the event Medicaid benefits are granted and subsequently discontinued, Resident hereby authorizes the Facility to file on Resident's behalf an appeal of any such denial of Medicaid eligibility or discontinuance of Medicaid benefits, and to take such actions to secure Resident's Medicaid benefits as the Facility deems reasonably necessary or appropriate and consistent with law. Resident warrants and represents that the financial information disclosed in the admission process is true and accurate and may be relied on by the Facility in pursuing Medicaid benefits on behalf of Resident.

5.3.5. Authorization to File a Hardship Waiver with DHHS on Behalf of Resident. If DHHS' application of a transfer of assets penalty operates to deprive Resident of medical care such that Resident's life would be in danger, or would deprive Resident of food, clothing or shelter, or the necessities of life, then in the event of Resident's incapacity, inability or unwillingness to act, and if there is no other Authorized Representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to file a Hardship Waiver with DHHS on Resident's behalf.

5.4. Medicare Part A and Part B Benefits. To the extent that Resident is a beneficiary under either Medicare Part A or Medicare Part B insurance and the nursing services or ancillary services or supplies ordered by a physician are covered by such insurance, the Facility or other provider will bill the charges for the covered services or supplies to the Medicare program. The Resident is responsible for and shall pay any co-insurance or deductible amounts under Medicare Part A or Part B insurance. The Facility shall accept payment from the Medicare intermediary as payment in full only for those services deemed to be covered in full under the Medicare Part A or the Medicare Part B program. Services not covered by Medicare are identified in the Rate Schedule.

5.5. Medicare Part B Payment Limitations: Therapy Caps.

5.5.1. General. Effective January 1, 2006, CMS imposed payment limitations on covered therapy services provided to individuals who are eligible beneficiaries under Medicare Part B. Under this financial limitation, Medicare will pay an annual capped amount for physical and speech therapy (combined) and an annual capped amount for occupational therapy. The capped amounts are revised by CMS

annually. Facility shall provide Resident and/or Authorized Representative with notice of the current capped amounts as appropriate.

5.5.2. Resident's Responsibility to Pay for Therapy Services Beyond the Capped Amounts. Resident is responsible to pay the charges for all medically necessary therapy services in excess of the annual capped amounts, unless such therapy services are covered in whole or in part by private insurance or another government reimbursement program. In the event that another government reimbursement program or available third-party payor or insurance program denies coverage for therapy services provided to Resident after exhaustion of the annual capped amount, then Resident or Authorized Representative shall remain responsible to pay all fees and costs for all such therapy services. If Resident is not eligible for Medicaid, then failure to pay for therapy services rendered above the capped amount shall be grounds for termination and discharge from Facility pursuant to Section 10 of this Agreement.

5.5.3. Exception Requests.

5.5.3.1. Automatic Exceptions. Medicare beneficiaries may be automatically exempted from the annual therapy caps for certain conditions or complexities that have a direct and significant impact on the need for the course of therapy being provided and the additional treatment is medically necessary.

5.5.3.2. Manual Exceptions. Medicare beneficiaries not automatically exempted from the annual therapy caps are entitled to request an exception to the annual therapy caps, for up to fifteen (15) additional treatment days. In the event that Resident has exhausted the annual capped amount, and is not automatically exempted from the therapy caps, then the following shall apply:

5.5.3.2.1. Resident and/or Authorized Representative may submit an exception request to the applicable OMS Medicare contractor, or

5.5.3.2.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, then Resident authorizes Facility to submit an appropriate exception request to the applicable OMS Medicare contractor.

5.5.3.2.3. If the exception request is granted, then therapy services provided to Resident shall be covered by Medicare for the number of additional treatments approved. Once the additional approved treatments have been exhausted, Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.5.3.2.4. If the exception request is denied, then Resident shall be responsible to pay all fees and costs for additional therapy services provided as noted in Section 5.5.2.

5.6. Medicare Part D Prescription Drug Benefits.

5.6.1. Enrollment in Medicare Part D Plan. If Resident is an eligible beneficiary under the Medicare Part D insurance program and has enrolled or has been mandatorily enrolled in a Medicare Part D Prescription Drug or Medicare Advantage Plan ("PDP"), Resident shall advise Facility in writing of Resident's chosen PDP upon admission. In the event that Resident becomes an eligible beneficiary under Medicare Part D after admission or subsequently chooses to enroll in a PDP following admission, Resident shall notify Facility in writing of Resident's chosen PDP prior to enrollment in the PDP. Resident shall advise Facility if Resident elects to change PDPs, and shall provide written notice of such election, including the name/identity of the newly selected PDP prior to the effective date of the change in the PDP. S.E. (Initial)

5.6.2. Resident's Responsibility to Pay for Pharmaceuticals. Resident is responsible to pay the charges for all prescription and other drugs or medications while a resident in Facility, except to the extent that such drugs and medications are covered in whole or in part by an applicable government reimbursement program. Some or all of the charges for prescription drugs and other drugs and medications may be covered by certain benefits available through Medicare Part D or other private insurance or governmental insurance / benefit programs, including Medicare Part A or B. In the event that coverage for any prescription drug, supply, medication or pharmaceutical provided to Resident is denied by any applicable governmental reimbursement program or other potentially available third-party payor or insurance program, then Resident or Authorized Representative shall remain responsible to pay for all such prescription drugs, supplies, other medications or pharmaceuticals.

5.6.3. Actions of Medicare Part D Plan. Facility is not responsible for and has made no representations regarding the actions or decisions of any PDP, including, but not limited to, decisions relating to the establishment of the PDP formulary, denial of coverage issues, or contractual arrangements between the PDP and the Resident, and with respect to any decisions made by the PDP relating to any long term care pharmacy provider that may be under contract with Facility.

5.6.4. Dually Eligible Residents. If Resident becomes eligible for Medicaid at any time during Resident's stay at Facility, and also qualifies for benefits under the Medicare Program, then Resident shall be required to enroll in a PDP (unless covered by private insurance) to ensure coverage of Resident's prescription drug needs. Resident and/or Authorized Representative shall take all necessary action to enroll Resident in a PDP, and shall advise Facility of such enrollment upon Resident's acceptance into the PDP. Resident acknowledges that should Resident fail to select a PDP, then CMS will assign Resident to a PDP. Resident shall provide written notice to Facility of the name of the Resident's PDP and the effective date of enrollment.

5.6.5. Billing and Resident Cost Sharing Obligations. To the extent that Resident is a beneficiary under Medicare Part D, and the pharmacy prescriptions and/or services ordered by a physician are covered by Medicare Part D, then the Pharmaceutical Provider (as required by law) shall bill the charges for the covered services to the Resident's PDP. Resident is responsible for and shall pay any and all cost-sharing amounts applicable under Medicare Part D insurance. Facility shall not be responsible to pay for any fees or cost-sharing amounts, including co-insurance and deductibles, relating to the provision of covered Medicare Part D pharmaceuticals to Resident. To the extent that Resident may qualify as a "subsidy eligible individual" who would be entitled to a reduction or elimination of some or all the cost-sharing or premium amounts under the Medicare Part D benefit, Resident and/or Authorized Representative has the sole responsibility to apply for such benefits.

5.6.6. Authorization to Request and/or Appeal Coverage Determinations. In the event that Resident is denied coverage under Resident's PDP for pharmaceutical services or supplies prescribed by Resident's attending physician, then the following shall apply:

5.6.6.1. Resident and/or Authorized Representative may independently (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determination.

5.6.6.2. In the event of Resident's incapacity, and if there is no other legal representative of Resident known to the Facility or any other friend or relative known to the Facility who is authorized and/or is promptly available or willing to act timely on behalf of Resident, or if Resident's physician is unable or unwilling to act on behalf of Resident, then Resident authorized Facility to (i) request an exception from Resident's PDP to cover non-formulary or non-covered Medicare Part D drugs that are otherwise needed or required by Resident; (ii) file a request for a re-determination of any coverage denial issued by Resident's PDP; (iii) file an appeal with the appropriate agency and judicial tribunals to challenge any denial of a request for re-determinations.

5.6.6.3. In the event of an initial denial of coverage by the Resident's PDP, then pending the outcome of an exception request, a request for re-determination, or an appeal, and in the event that Resident's attending physician fails to prescribe a clinically and reasonably acceptable substitute prescription medication, resident authorizes Facility Medical Director / Designee to prescribe a clinically and reasonably acceptable substitute prescription medication which is covered by Resident's PDP, if such clinically and reasonably acceptable substitute is available.

5.6.6.4. If a request for exception (filed by Resident, Facility or any other authorized representative) is ultimately denied following either reconsideration by the PDP or appeal to an appropriate tribunal, and if the requested pharmaceuticals are deemed medically necessary by Resident's physician, and

no reasonably acceptable substitute, as determined by Facility's Medical Director / Designee, from the formulary of Resident's PDP exists, then Facility shall make arrangements to provide the requested pharmaceuticals to Resident. In any such situation, Resident shall be responsible to pay all fees and costs for the non-covered pharmaceuticals, consistent with the requirements of this Section.

5.6.6.5. No Effect on Medicare Part A Covered Nursing Services. Resident's Medicare Part D prescription drug benefits do not apply while the Resident's stay in Facility is covered under Medicare Part A. While Resident is in Facility on a Medicare Part A stay, Resident's pharmaceutical needs generally are covered by the Medicare Part A program.

5.7. Non-Covered Services. Resident is and remains obligated to pay the Facility for services and supplies not covered by the Medicaid or the Medicare programs.

6. MANAGED CARE ORGANIZATIONS.

6.1. Participation in Managed Care Organizations. The Facility is an authorized provider of skilled nursing services to members of certain managed care organizations (MCOs). The MCOs for whom the Facility is an authorized provider are listed on Attachment "B".

6.2. Enrollment in a Managed Care Organization. Resident or Authorized Representative shall notify the Facility in writing prior to enrolling with an MCO or switching Resident's MCO enrollment.

6.3. Actions of Managed Care Organization. Resident acknowledges that an MCO for whom the Facility is not an authorized provider may not approve payment for services provided by the Facility. Resident acknowledges that the Facility is not responsible for and has made no representations regarding the actions or decisions of any MCO for whom the Facility is an authorized provider, including decisions relating to a denial of coverage.

6.4. Obligations of Resident. The Facility will accept payment from the MCO as payment in full only for those services and supplies covered by the MCO. Resident is responsible for any co-payments or other costs assigned to Resident under the specific terms of the managed care plan. Resident also shall pay for any services or supplies not covered by the MCO under the specific terms of the managed care plan. Co-payments and other costs assigned to Resident and charges for services or supplies not covered by the specific terms of the managed care plan are identified in the Rate Schedule. Managed care plans typically require pre-authorization of services by the MCO. If Resident chooses to have services which the MCO refuses to pre-authorize, Resident shall pay the Facility for those services. Resident shall pay the Facility in a timely manner for all non-covered services retroactive to the date of the initial delivery of services.

6.5. Withdrawal from Participation in the MCO. The Facility reserves the right to terminate its contractual relationship and its status as a network or authorized provider with one or more of the listed MCOs at any time in accordance with law and the terms of the applicable agreement. In the event that the Facility terminates its contractual relationship with the MCO in which Resident is enrolled, Resident may convert his or her coverage to a health plan for which the Facility is an authorized provider or transfer to a facility that is an authorized provider for Resident's MCO. The Facility shall provide thirty (30) days advance notice of its decision to withdraw as a participating provider from Resident's MCO so Resident and the MCO can coordinate a transfer to another facility.

6.6. Notice of Change in Insurance Coverage. Resident and/or Authorized Representative shall notify the Facility immediately of any change in Resident's insurance status or coverage made by the insurance carrier including, but not limited to, being dropped by the insurance carrier for any reason, or a decrease or increase in insurance benefits. Resident and/or Authorized Representative shall give the Facility notice before Resident is unable to meet Resident's insurance premium or before Resident implements an increase, decrease or termination from insurance coverage.

7. DURABLE FINANCIAL POWER-OF-ATTORNEY.

Resident shall submit, as appropriate, to Facility, no later than the date of admission, a durable Power-of-Attorney executed by Resident as Principal designating someone other than the Facility or a representative or affiliate of Facility as Agent, for the limited purpose of financial decisions and payment of services. In the event Resident fails to designate an Agent under a Power-of-Attorney, Resident shall be responsible to pay for any guardianship proceedings related to the appointment of someone or a legal entity to make decisions on behalf of Resident, if and when Resident lacks capacity to make such decisions as determined by Facility.

8. THIRD-PARTY PAYMENTS.

8.1. Eligibility for Third-Party Payments. Resident may be or may become eligible to receive financial assistance, reimbursement, or other benefits from third parties, such as private insurance, employee benefit plans, Medicaid under the South Carolina / North Carolina Medicaid Program, Medicare benefits, managed care coverage, supplementary medical or other health insurance, supplemental security income insurance, or old-age survivors' or disability insurance. It is the responsibility of the Resident and/or Authorized Representative to apply for those benefits. If Resident is or becomes eligible to receive payments from any third parties for Resident's stay and care, the Facility reserves the right to collect such payments directly from the third-party source. The Resident and Authorized Representative shall at all times cooperate fully with the Facility and each third-party payor to secure payment. Cooperation includes providing information; signing and delivering documents; and assigning to the Facility (to the extent permitted by law) any payments for the Resident from federal or state governmental assistance programs or any other reimbursements or benefits to the extent of all amounts due the Facility.

8.2. Assignment of Payments. Resident irrevocably authorizes the Facility to make claims and to take other actions to secure for the Facility receipt of third-party payments to reimburse the Facility for its charges for the stay and care of Resident. To the fullest extent permitted by law, as security for payment of the Facility's charges, Resident hereby assigns to the Facility all of Resident's rights to any third-party payments now or subsequently payable to the extent of all charges due under this Agreement. Resident or Authorized Representative promptly shall endorse and turn over to the Facility any payments received from third parties to the extent necessary to satisfy the charges under this Agreement. Resident or Authorized Representative shall sign any necessary documents to forward third-party payments directly from the payor to the Facility.

8.3. Insurance. The Facility will bill Medicare and Medicaid for any services rendered to Resident by the Facility. The Facility may, at its discretion, bill Resident's private / supplemental insurance carrier for services rendered to Resident by the Facility. In the event of an initial or subsequent denial of coverage by the Resident's insurance carrier, Resident shall pay the Facility timely for all non-covered services retroactive to the date of the initial delivery of services, so long as such payment obligation is consistent with the regulations governing the Facility's participation in the Medicare and Medicaid Programs. A.H.S. (initial)

8.3.1. The fact that the Facility submits a claim for payment does not relieve the Resident from liability for the cost of care for any days determined by the Program Administrators of the particular insurance coverage as non-covered, or for the Resident's portion of the liability as determined by the appropriate Program Administrators. Pre-certification of insurance, if required, is the responsibility of the Resident.

9. PERSONAL FINANCES.

9.1. Personal Funds Management. Resident is responsible to provide his or her personal funds, and Resident has the right to manage his or her personal funds. Resident may authorize the Facility, in writing, on a document provided by the Facility, to hold Resident's personal funds, and may revoke at any time the Facility's authorization by providing the Facility with a written notice signed and dated by Resident or Authorized Representative. If Resident authorizes the Facility to hold Resident's personal funds, the Facility shall hold, safeguard and account for Resident's personal funds in accordance with applicable provisions in the Admission Handbook. If the Facility has been appointed by the Social Security Administration as Representative Payee for the Resident's funds, then the Facility, and not the Resident's Authorized Representative, if any, shall have control over the Resident's funds. The Facility shall follow the policies and procedures as set forth by the Social Security Administration.

9.2. Refunds of Personal Funds. Any personal funds or valuables of Resident held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, such as any costs incurred by Facility to repair Resident's room for damages caused by Resident, within thirty (30) days after Resident's discharge or death. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law.

9.3. Refunds of Prepayments or Overpayments. Any prepayments or overpayments made by Resident and held by the Facility will be refunded, subject to deductions for payment of any outstanding bills or other amounts due the Facility, after all claims have been adjudicated. In the event of Resident's death, such refund will be made to the Resident's estate in accordance with state law. No interest shall accrue on any funds required to be refunded under this Agreement.

10. TERMINATION, TRANSFER OR DISCHARGE.

10.1. Resident Initiated. This Agreement remains in full force and effect until discharge of Resident regardless of payment source changes. The Facility requests a three (3) day advance written or oral notification of an impending discharge.

10.2. Facility Initiated. The Facility may terminate this Agreement and Resident's stay and transfer or discharge Resident if:

10.2.1. The transfer or discharge is necessary to meet Resident's welfare and Resident's needs cannot be met in the Facility;

10.2.2. Resident's health has improved sufficiently so that Resident no longer needs the services provided by the Facility;

10.2.3. The safety or health of individuals in the Facility is or otherwise would be endangered;

10.2.4. Resident has failed, after notice, to pay for (or to have paid or treated as paid under the Medicare or Medicaid Programs) charges for Resident's care and stay at the Facility; or

10.2.5. The Facility ceases to operate.

10.3. Notice and Waiver of Notice. The Facility will notify Resident and Authorized Representative at least thirty (30) days in advance of transfer or discharge, except in situations when appropriate plans that are acceptable to the Resident can be implemented earlier, and except in cases of emergencies, including those situations described in subparagraphs 10.2.1, 10.2.2, and 10.2.3 above, or when the Resident has not resided in the Facility for at least thirty (30) days. Then only such notice as is reasonable under the circumstances shall be provided.

10.4. Withdrawal Against Advice. In the event Resident withdraws from the Facility against the advice of his/her attending physician and/or without approval of the Facility, all of Facility's responsibilities for the care of Resident are terminated.

11. FACILITY RULES, REGULATIONS, POLICIES AND PROCEDURES.

Resident shall comply fully with all governmental laws and regulations, the provisions of this Agreement, and the Facility's rules, regulations, policies and procedures as published in the Facility's Admission Handbook or other documents or publications made available by the

Facility. The Facility reserves the right to amend or change its rules, regulations, policies and procedures. The Facility's rules, regulations, policies and procedures shall not be construed as imposing contractual obligations on the Facility or granting any contractual rights to Resident, and are subject to change from time-to-time.

12. PERSONAL AND OTHER PROPERTY.

12.1. Responsibility for Maintenance and Loss. Resident is responsible for furnishing and maintaining his or her own clothing and other items of property as needed or desired. Seasonal items and clothing must be removed timely to assure the safety and comfort of the Resident. The Facility is not responsible for the personal property / valuables or items belonging to the Resident. If damage or loss occurs to Resident's property, the Facility will investigate each incident of loss or damage.

12.2. Disposition and Storage Upon Resident's Death. Upon the Resident's death, Facility shall contact Resident's Authorized Representative and arrange for the disposition of the Resident's personal property. Facility is authorized to transfer Resident's personal property to the Authorized Representative. The Authorized Representative must acknowledge, in writing, the receipt of the personal property transferred to his or her custody by Facility. Facility, in its sole discretion, may move and place Resident's personal property into storage at Facility's expense. If property held in storage is not claimed within thirty (30) days, Facility shall donate or discard all unclaimed property.

12.3. Disposition and Storage Upon Resident's Transfer or Discharge. If Resident's personal property is not claimed or removed by the Authorized Representative following Resident's transfer or discharge, the Facility shall move and place Resident's personal property in storage until claimed. If Resident's personal property remains unclaimed after a thirty (30) day period in storage, the Facility may dispose of Resident's property. The Facility is not responsible for any damages incurred to Resident's property if storage becomes necessary.

12.4. Damage to Room or Facility Property. Resident or Resident's estate is responsible for any damages caused to the Facility property beyond normal wear and tear, and shall pay for the repair and replacement of damaged property, based on the actual charge or cost to the Facility for such repair or replacement.

13. RESIDENT RECORDS.

Resident consents to the release of Resident's personal and medical records maintained by the Facility for treatment, payment and operations as determined reasonably necessary by the Facility. Any such release may be to the Facility's employees, agents and to other health care providers from whom the Resident receives services, to third-party payors of health care services, to any MCO in which Resident may be enrolled, or to others deemed reasonably necessary by the Facility for purposes of treatment, payment and operations. Release of records for other purposes shall be done in accordance with applicable laws, with a specific authorization from the Resident where required. Authorized agents of the state or federal government, including the Long Term Care Ombudsman, may obtain Resident's records without the written consent or authorization of Resident.

14. TREATMENT AUTHORIZATION.

Resident authorizes the Facility to provide care and treatment consistent with the terms of this Agreement; Resident also authorizes the Facility to obtain all necessary clinical and/or financial information from the hospital or nursing facility from which Resident may be transferring.

15. DEATH OF RESIDENT.

Upon admission, Resident is required to designate a funeral home. This designation will remain in effect until otherwise notified in writing. In the event of Resident's death, the Facility shall notify the person(s) designated by Resident. The Facility is authorized to arrange for the transfer of Resident's body to the designated funeral home. Resident's estate is responsible for the payment of all costs associated with the transfer and funeral expenses. Resident shall notify the Facility of any changes of the person(s) or funeral home to be notified in the event of death.

16. CAPACITY OF RESIDENT AND GUARDIANSHIP.

If Resident is, or becomes, unable to understand or communicate, and is determined by Resident's Physician or the Facility's Medical Director / Designee after admission to be incapacitated, the Facility shall have the right, in the absence of Resident's prior designation of an authorized legal representative, or upon the unwillingness or inability of the legal representative to act, to commence a legal proceeding to adjudicate Resident incapacitated and to have a court appoint a guardian for Resident. The cost of the legal proceedings, including attorneys' fees, shall be paid by Resident or Resident's estate.

17. CLINICAL ISSUES RELATED TO AGING:

17.1. The Resident has been advised of the high risks and consequences associated with aging and impaired physical condition, including (but not limited to):

17.1.1. A high risk of skin breakdown and development of pressure ulcers secondary to significant time confined to bed or inability or unwillingness to eat and/or drink.

17.1.2. The risk of significant weight loss and dehydration if the Resident's physical condition is currently chronic or hereinafter deteriorates, which may diminish Resident's nutritional and hydration input.

17.1.3. The enhanced risk of falls and subsequent bruises, cuts or fractures, which then increases the already high risk of pressure ulcers.

17.1.4. The goal of the Facility is to strive for a restraint-free environment, and processes are implemented to pursue this goal. These processes recognize and protect the Resident's rights and ensure that restraints are safe and appropriate if they must be used.

17.1.5. The above risks, and others, are inherent with the aging process. We urge the

Resident and all family members to further acquaint themselves with the risk issues inherent with aging and an impaired physical condition.

18. REPORTING COMPLAINTS.

If Resident and/or Authorized Representative believe(s) that Resident is being mistreated in any way or Resident's rights have been violated by staff or another resident, Resident or Authorized Representative shall make his/her complaint known to Facility Administrator, in accordance with the Grievance Procedure reflected in the Admission Handbook and provide Facility with sixty (60) days to resolve the complaint satisfactorily to Resident and/or Authorized Representative before the Resident / Authorized Representative may pursue arbitration (or legal action for claims involving less than \$25,000.00). This notice requirement is not intended to preclude Resident and/or Authorized Representative from filing a complaint with any appropriate governmental regulatory agency at any time.

19. MISCELLANEOUS PROVISIONS.

19.1. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina / North Carolina.

19.2. Severability. The various provisions of this Agreement shall be severable one from another. If any provision of this Agreement is found by a court or administrative body of proper jurisdiction and authority to be invalid, the other provisions shall remain in full force and effect as if the invalid provision had not been a part of this Agreement.

19.3. Captions. The captions used in connection with the sections and subsections of this Agreement are inserted only for the purpose of reference. Such captions shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement, nor shall such captions be given any legal effect.

19.4. Entire Agreement. This Agreement, the Authorized Representative Agreement, the Arbitration Agreement, and the admission documentation represent the entire Agreement and understanding between the parties and supersedes, merges and replaces, all prior negotiations, offers, warranties and previous representations, understandings or agreements, oral or written, between the parties.

19.5. Modifications. The Facility reserves the right to modify unilaterally the terms of this Agreement to conform to subsequent changes in law, regulation or operations. To the extent reasonably possible, the Facility will give Resident and Resident's Authorized Representative thirty (30) days advance written notice of any such modifications. Resident may not modify this Agreement except by a writing signed by the Facility.

19.6. Waiver of Provisions. The Facility reserves the right to waive any obligation of Resident under the provisions of this Agreement in its sole and absolute discretion. No term, provision or obligation of this Agreement shall be deemed to have been waived by the Facility unless such waiver is in writing by the Facility. Any waiver by the Facility shall not be deemed a waiver of any other term, provision or obligation of this Agreement, and the other obligations of Resident and this Agreement shall remain in full force and effect.

20. ACKNOWLEDGMENTS.

- 20.1. Rate Schedule. Resident acknowledges the receipt of a copy of the Rate Schedule and the opportunity to ask questions about the Facility's charges.
- 20.2. Resident's Rights. Resident acknowledges being informed orally and in writing of Resident's Rights and further acknowledges having an opportunity to ask questions about those rights. The Notice of Rights of Nursing Facility Residents is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.
- 20.3. Advance Directives. Resident acknowledges being informed, orally and in writing, of the Facility's policy on advance directives and medical treatment decisions.
- 20.4. Bed Hold Policy -- Readmission. Resident acknowledges being informed orally of the Facility's policy on readmission and bed hold. Resident further acknowledges having received in writing a copy of the readmission bed hold policy, and an opportunity to ask questions.
- 20.5. Agreement. Resident acknowledges that he/she has read and understands the terms of this Agreement, that the terms have been explained to him/her by a representative of the Facility, and that he or she has had an opportunity to ask questions about this Agreement, and has received a copy of this Agreement.
- 20.6. Smoke-Free / Tobacco-Free Policy. Resident acknowledges that he/she has read and understands that this Facility and campus are smoke-free and tobacco-free. The terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the Smoke-free /Tobacco-free Policy.
- 20.7. Camera Policy. Resident acknowledges that he/she has read and understands the Facility camera policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the camera policy.
- 20.8. Get a Lift Safe Resident Handling Program. Resident acknowledges that he/she has received an oral explanation and a copy of the safe resident handling program policy and procedures. Resident further acknowledges having an opportunity to ask questions about this policy.
- 20.9. Physical Device Policy. Resident acknowledges that he/she has read and understands the Facility physical device policy and that the terms have been explained by a representative of the Facility and he/she has had an opportunity to ask questions and has received a copy of the physical device policy.
- 20.10. Admission Handbook. Resident acknowledges the receipt of a copy of the Admission Handbook and the opportunity to ask questions about Facility's policies

contained in the Admission Handbook. The Admission Handbook is subject to change from time-to-time and shall not be construed as imposing any contractual obligations on the Facility or granting any contractual rights to Resident.

20.11. Consent to Care. Resident hereby consents to all routine care and services rendered in accordance with physician's orders. Resident also consents to student care from universities or other academic programs which are under contract with the facility unless the facility receives from the Resident/Authorized Representative a signed document of denial of student services. (Revised 10/2010)

20.12. Participation in Care Plan. Resident is encouraged to participate in the care planning process. Approval of the Resident Care Plan is the preferred manner in which consent for most treatment is obtained. There are certain specific procedures for which an individual consent form will be provided.

20.13. Consent to Photograph. Resident consents to pictures taken for identification purposes only.

20.14. Contents of Personal Medical Records. Resident understands and agrees that the designated record set concerning Resident is and will continue to be the property of the Facility, provided that Facility will not disclose the same to any person or party other than the Resident except as outlined in the Privacy Practices Notice. The designated record set is defined as the medical record in its entirety and the financial record including itemized charges. The following items are specifically excluded from the designated record set: incident reports, QA/QI reports, tracking forms, resident care assignment forms, shift to shift report forms, admission waiting list and financial "work papers."

20.15. Notification of Facility Symbols. Resident / Authorized Representative hereby acknowledge being informed of the use of signs and symbols which may be observed in this facility. For the resident's safety and comfort, the facility may post on a doorway leading into a resident's room a symbol for type of lift device to be used or a star alerting staff to a potential fall risk. Other symbols may be used from time to time which may designate and alert staff to a specific need. You or your Authorized Representative may opt out of having symbols posted by signing a waiver of release from use of facility designated symbols.

20.16. Competency. Resident declares that he or she retains capacity and is competent, has never been adjudged or determined to lack capacity or competence, and knows of no petition pending to adjudicate his or her lack of capacity or competence. Alternatively, if the Resident has been or should be deemed to lack capacity or competence, then Resident's Authorized Representative declares that he or she has been given authority by the Resident when competent to act on behalf of the Resident, and/or is qualified to act as Resident's surrogate by reason of special care and concern for the Resident, familiarity with the Resident's personal values, reasonable availability, and willingness to serve.

20.17. Scope of Care. Resident acknowledges that routine nursing services do not include: continuous one-on-one care or CNA services when required by Resident's Care

plan; care for certain high acuity conditions, such as ventilator dependent care; dialysis services; treatment for drug and alcohol conditions; or psychiatric care.

21. ARBITRATION.

WITH REGARD TO ALL MONETARY CLAIMS ARISING BETWEEN THE FACILITY AND RESIDENT / AUTHORIZED REPRESENTATIVE, TO THE EXTENT THAT THEY ARE FOR MORE THAN \$25,000.00, ARBITRATION (PURSUANT TO THE FEDERAL ARBITRATION ACT) IS MANDATORY (SUBJECT TO THE "OPT OUT" PROVISIONS SET FORTH IN PARAGRAPH 16 OF THE ARBITRATION AGREEMENT), BINDING AND FINAL. THE EXACT TERMS FOR ARBITRATION ARE SET FORTH IN A SEPARATE DOCUMENT OF EVEN / RECENT DATE, ENTITLED "ARBITRATION AGREEMENT" AND ARE INCORPORATED HEREIN BY REFERENCE. WITH REGARD TO ANY NONMONETARY CLAIM, OR ANY CLAIM FOR LESS THAN \$25,000.00, ARBITRATION SHALL NOT BE REQUIRED.

22. BINDING EFFECT.

This Agreement shall be binding upon all parties hereto and upon their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have signed this Agreement this 2nd day of Jan, 2013

RESIDENT / AUTHORIZED REPRESENTATIVE:

Julia H. Davis
Julia H. Davis - STOTT
Printed Resident Name

Julia H. Davis - STOTT
Signature / Date

Printed Authorized Representative

Signature / Date

Niece
Relationship

FACILITY STAFF / WITNESS:
White Oak Senior Care Inc. Date: 1/2/13
By: Mary P. Spruce Mary P. Spruce
Staff Printed Name and Title Staff Signature Witness

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Appellants.

FINAL BRIEF OF APPELLANTS

THE WARD LAW FIRM, P.A.

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STATEMENT OF ISSUE ON APPEAL

- I. The trial court erred in denying Appellants' Motion to Compel Arbitration by finding that Hilda Stott was not an authorized agent to execute the White Oak Manor-Spartanburg admission documentation on behalf of Jolly Davis, including the Admission Agreement and Arbitration Agreement.**

STATEMENT OF THE CASE

On December 16, 2015, Respondent Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased, and as Personal Representative of the Statutory Beneficiaries ("Ms. Stott") filed a Summons and Complaint raising claims for negligence, recklessness, and gross negligence, negligence per se, unjust enrichment, breach of fiduciary duty, joint venture, alter ego, and wrongful death. (R. pp. 7-23). Appellants White Oak Manor, Inc., White Oak Management, Inc., and White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg (collectively "White Oak" for purposes of reference in this appeal) timely answered on January 19, 2016. (R. pp. 24-32). White Oak raised the issue of binding arbitration as an affirmative defense, and also filed a Motion to Dismiss and/or Motion to Compel Arbitration. (R. pp. 33-36).

The trial court heard arguments on White Oak's Motion to Dismiss and/or Compel Arbitration on March 22, 2016. (R. pp. 37-59). The trial court issued a Form 4 denying White Oak's Motion to Compel Arbitration, and a formal Order followed. (R. pp. 1-6). White Oak timely filed its Notice of Appeal.

FACTS

On December 22, 2012, Jolly Davis ("Mr. Davis") was admitted to Spartanburg Regional Medical Center ("SRMC") when he became gravely ill with numerous respiratory symptoms. Mr. Davis was admitted to White Oak Manor-Spartanburg on January 2, 2013. On January 6, 2013, Mr. Davis was discharged from White Oak and transferred back to SRMC. On January 11, 2013, Mr. Davis was discharged from SRMC to Restorative Care. Mr. Davis passed away on January 16, 2013.

Upon his entry to White Oak on January 2, 2013, Mr. Davis's niece, Hilda Stott, executed an Authorized Representative Agreement, Admission Agreement, and Arbitration Agreement on his behalf. (R. pp. 74-102). Ms. Stott held a durable power of attorney and a health care power of attorney on behalf of Jolly Davis, both executed on May 11, 2012. (R. pp. 103-125). The Durable Power of Attorney for Finance was recorded on January 8, 2013.

Following are key terms from documents applicable to the issue on appeal:

Admission Agreement: The Admission Agreement in Section 19.4 identified the Entire Agreement as including "[t]his Agreement, Authorized Representative Agreement, the Arbitration Agreement, and the admission documentation." (R. p. 94). The terms of the Arbitration Agreement are incorporated by reference into the Admission Agreement. (R. p. 97).

Arbitration Agreement: The Arbitration Agreement contained a provision that the person signing it acknowledges that "[h]e/she has the legal right to execute the document on behalf of the resident and to hereby bind the resident." (R. p. 45). The Arbitration Agreement further provided that "beginning 7 days from the date hereof, and for another 10 days thereafter, he/she has the right to opt out of this Agreement and no longer be bound by it." If written notice is not given, then the Arbitration Agreement remains and continues in full force. The Arbitration Agreement was signed

by Mr. Davis's attorney-in-fact Hilda Stott on January 2, 2013. Pursuant to its terms, Mr. Davis could opt out of the Arbitration Agreement on or before January 19, 2013.

January 2, 2013 Progress Note: A January 2, 2013 Progress Note Affecting Decisional Capacity presented below contains one notation that indicates that Mr. Davis was, on that date, able to make healthcare decisions for himself. The form also clearly provides, however, that "[t]his form requires the signature of TWO PHYSICIANS! A Progress or Consult Note should be written regarding both the patient's medical condition and mental capacity." The second physician's signature block is blank, and the requirement of this form was not met. (R. p. 73).

Complaint: The complaint in this action specifically alleges "[t]hat, Plaintiff Davis was a resident of WOS [White Oak Manor-Spartanburg] at all times relevant hereto in the County of Spartanburg, State of South Carolina, and was a vulnerable adult as defined by the S.C. Omnibus Adult Protection Act." (R. p. 9). The referenced Act defines a vulnerable adult as "a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction." S.C. Code Ann. § 43-35-10 (11). By Respondent's own pleading and admission, Mr. Davis was substantially impaired in his ability to provide for his own care and protection when he was admitted to White Oak on January 2, 2013.

Durable Power of Attorney for Finance: The language of the Durable Power of Attorney for Finance provided that disability, incapacity, or partial incapacity shall include "my inability to manage my property and affairs or car[e] for myself effectively" and "may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court

order.” (R. pp. 111). This language is permissive (“may”), not mandatory (“shall”). The Durable Power of Attorney for Finance also explicitly provided in paragraph G that the attorney in fact is empowered to “submit to arbitration claims or litigation.” (R. pp. 44, 116-117).

STANDARD OF REVIEW

Arbitrability determinations are subject to *de novo* review. A trial court’s findings of fact will be reversed if no evidence reasonably supports those findings. The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014); Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012); Liberty Builders, Inc. v. Horton, 336 S.C. 658, 662, 521 S.E.2d 749, 751 (Ct. App. 1999).

ARGUMENTS

- I. The trial court erred in finding that Hilda Stott was not an authorized agent to execute the White Oak Manor-Spartanburg admission documentation on behalf of Jolly Davis, including the Admission Agreement and Arbitration Agreement.

Arbitration agreements enjoy a strong presumption of validity in federal and state courts. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014). South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration. C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 361 (2013).

Arbitration is a matter of contract, and evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law. Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009); Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). A written agreement to submit a controversy to arbitration is valid, enforceable, and irrevocable, except upon such grounds as exist for the revocation of any contract. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

It is the policy of the state of South Carolina to favor the arbitration of disputes. Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009); Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003). Accordingly, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001). A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. Id., at 597, 553 S.E.2d at 118–119.

A. Jolly Davis's condition met the requirements for effectiveness of the Durable Power of Attorney for Finance in favor of Hilda Stott at the time of his admission to White Oak.

The language of the Durable Power of Attorney for Finance provided it was effective upon disability, and that disability, incapacity, or partial incapacity shall include “my inability to manage my property and affairs or car[e] for myself effectively” and “may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order.” (R. p. 111). This language is permissive (“may”), not mandatory (“shall”).

While the Progress Note indicates that one physician noted that Jolly Davis could make healthcare decisions, this note was not properly executed according to its own requirements. Most important, Respondent alleges in the complaint that Mr. Davis was a vulnerable adult as defined by statute, and therefore suffered a physical or mental condition that substantially impaired him from adequately providing for his own care or protection, which conditions included the infirmities of aging. This allegation of Mr. Davis's condition dovetails with the requirements of the Durable Power of Attorney for Finance, which provided for its effectiveness upon Mr. Jolly's inability to manage his property and affairs or care for himself effectively. Nothing in the statute relied on by

Respondent or the Durable Power of Attorney for Finance required incompetence on the part of Mr. Davis as the measure of Ms. Stott's right to exercise her authority as attorney-in-fact. The Durable Power of Attorney for Finance gave Ms. Stott explicit authority to "submit to arbitration claims or litigation" on behalf of Mr. Davis. (R. pp. 44, 116-117).

B. The Durable Power of Attorney for Finance was effective to bind Jolly Davis to the terms of the Arbitration Agreement even though it was not recorded until January 8, 2013.

A power of attorney is an instrument in writing by which one person appoints another as his agent and confers upon that person the authority to perform certain specified acts or kinds of acts on behalf of the principal. A "durable" power of attorney allows the agent to act even if the principal becomes incompetent. Watson v. Underwood, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014).

S.C. Code Ann. § 62-5-501 (c) provides that a power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. There is no dispute concerning the execution and attestation of either the Durable Power of Attorney for Finance or the Health Care Power of Attorney. In addition, the statute provides that the instrument is to be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. It may be recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the same. Finally, this section provides that if the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.

The Arbitration Agreement contained an opt out provision. Specifically, the resident had seven days from the date of signing, and another 10 days thereafter, to opt out of the Arbitration

Agreement. If written notice is not given within that period, **only then** did the Arbitration Agreement obtain binding authority.

The Arbitration Agreement was signed by Mr. Davis's attorney-in-fact Hilda Stott on January 2, 2013. Pursuant to its terms, Mr. Davis could opt out of the Arbitration Agreement on or before January 19, 2013. Ms. Stott's signature could not bind Mr. Davis until January 19, 2016. So, even though the Durable Power of Attorney for Finance was not recorded on January 2, 2016, it was recorded – and therefore effective – well prior to the expiration of the opt out window. Because no action was taken to opt out before that time, the Arbitration Agreement is valid and binding.

C. The Coleman decision does not bar Hilda Stott's authority under the Health Care Power of Attorney to sign the Arbitration Agreement on Mr. Davis's behalf.

The Court in Coleman v. Mariner, 407 S.C. 346, 755 S.E.2d 450 (2014) held that the Adult Health Care Consent Act does not grant a surrogate appointed pursuant to the Act the authority to execute a voluntary arbitration agreement. Specifically, the Court held that “The sole question before the Court is the scope of the surrogate's authority” under the Adult Health Care Consent Act. Id. at 359, f.n. 4.

Coleman is easily distinguishable from the present situation because Hilda Stott was not identified as a surrogate for Jolly Davis pursuant to the Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10, et seq. Rather, she was formally appointed by Mr. Davis pursuant to a valid Health Care Power of Attorney executed some eight months prior to his admission to White Oak.


In fact, the Supreme Court in Coleman expressly acknowledged that there exist financial decisions that are necessitated by traditional health care decisions. A holding that the Adult Health Care Consent Act does not extend those decisions to a surrogate under the Act does nothing prevent a private, properly executed document from so doing.

The Adult Health Care Consent act does not apply to this case because there exist private contractual agreements concerning Hilda Stott's authority to act on behalf of Jolly Davis.

CONCLUSION

For the reasons set forth herein, Appellants submit that the trial court erred in denying their Motion to Dismiss and/or Compel Arbitration.

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April 11, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2015-CP-42-5123

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg,
Appellants,

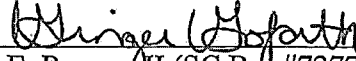
v.

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents.

CERTIFICATE OF COMPLIANCE

Counsel certifies that its Final Brief and Final Reply Brief comply with Rule 211(b),
SCACR.

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April 11, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Dehan Cole, Circuit Court Judge

Case No. 2016-00672

and as Personal Representative of the Estate of [Name], Plaintiff,
vs. [Name], Defendant.

White Oak Manor, Inc., White Oak Management, Inc., and [Name],
of Spartanburg, South Carolina, Defendants.

BRIEF IN RESPONSE

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. Did the trial court err in concluding that the parties' arbitration agreement is unenforceable because Hilda Stott lacked authority to sign the agreement on behalf of the competent decedent, Jolly Davis, and Jolly Davis's wrongful-death beneficiaries under South Carolina's Wrongful Death Statute?
- II. Did the trial court correctly conclude that White Oak Manor, Inc. and White Oak Management, Inc. were not signatories and could not compel arbitration?

COUNTER-STATEMENT OF THE CASE

This is a wrongful death and survival case involving nursing home and corporate negligence resulting in the wrongful death of Jolly Davis ("Decedent"). Decedent was admitted to Defendants' facility in stable condition on **January 2, 2013** and was emergency transferred to hospital on **January 8, 2013**, where he died on **January 11, 2013**. Hilda Stott ("Niece") is Decedent's niece and was appointed to serve as the personal representative of Decedent's estate on **April 10, 2013**.

Niece brought an action against White Oak Manor, Inc., White Oak Management, Inc., and White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg, asserting numerous causes of action related to Decedent's death in Defendants' facility. Defendants moved to dismiss and/or compel arbitration, and the circuit court denied the motion.

This appeal follows.

FACTS

This matter arises out of both Wrongful Death and Survival actions which the Estate of Jolly Davis brought against Defendants involving nursing home negligence, custodial negligence, and the resulting wrongful death of Jolly Davis ("Decedent"). Hilda Stott is Decedent's niece and serves as personal representative of Decedent's estate. She was appointed Personal Representative on **April 10, 2013**.

On **January 2, 2013**, Decedent was admitted to White Oak Manor – Spartanburg, Inc. d/b/a White Oak of Spartanburg ("facility"), a skilled nursing facility. Neither White Oak Manor, Inc. nor White Oak Management, Inc. are signatories to the alleged arbitration agreement. (R. pp. 98-102). White Oak Manor, Inc. operates the facility as the parent corporation. White Oak Management, Inc. is a related entity that provides management services to the facility. Plaintiffs allege that while the Corporate Defendants did not provide direct care or services to Decedent, they are Defendants in this matter because their control over the facility directly affected the quality of care Decedent received.

At the time of admission, an employee at the facility presented Mrs. Stott with a stack of admission papers and told her to sign all of them so that her uncle could receive care. This stack of papers included the Resident and Facility Admission Agreement (the "Agreement") and the Arbitration Agreement. (R. pp. 74-97, R. pp. 98-102). Hilda Stott signed the Agreement and the Arbitration Agreement on behalf of Decedent without authority to bind Decedent to the agreements, and specifically without the authority to bind Decedent to arbitration, thereby waiving Decedent's right to a jury trial.

Facility staff not only had an unauthorized person sign the agreements on behalf of Decedent, they did so without asking Decedent to sign, despite his full capacity to do so.

Decedent's ability to make his own decisions is evidenced by the medical records including Spartanburg Regional Healthcare System *Progress Note Addressing Decisional Capacity*, dated **January 2, 2013**, the very same day Mrs. Stott signed the agreements. (R. pp. 73). That Progress Note states "[t]his patient DOES possess the decisional capacity to make healthcare decisions for self." [*emphasis in original*]. (R. pp. 73). The "Nursing Evaluation" from Spartanburg Regional Medical Center (SRMC), which is part of the nursing home chart, on the day of admission to White Oak Manor designates that Decedent had normal speech, normal hearing, normal sight, and Independent Mental Status. (R. pp. 126-127). Put simply, Decedent was admitted for short term rehabilitation; he was awake, aware, and able to enter or refuse to enter contracts on his own. In fact, Defendants' own documentation states this. The Nursing Admission Data Collection Form, filled out by Defendant White Oak Manor – Spartanburg on day of admission states he scored a zero on Mental Status Test, indicating "Intact Mental Functioning." (R. pp. 128-136).

NURSING ADMISSION DATA COLLECTION FORM (#N004)		Page 1 of 10
White Oak Manor - Spartanburg Inc (SP)		7/1/2014 2:58 PM
		QA7000A
Davis, Jolly P. (7554)		Date: 01/03/2013

MENTAL STATUS SUMMARY	Score		
<ul style="list-style-type: none"> • Enter Score: (From Group Total Above - Subtract 1 Point for Less than High School Education or Add 1 Point for Education Beyond High School): 1 • MENTAL STATUS SCORE INTERPRETATION: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ● 0 - 2 = Intact Mental Functioning ○ 3 - 4 = Mild Cognitive Impairment </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ○ 5 - 7 = Moderate Cognitive Impairment ○ 8 - 10 = Severe Impairment or Unable to Respond </td> </tr> </table> 	<ul style="list-style-type: none"> ● 0 - 2 = Intact Mental Functioning ○ 3 - 4 = Mild Cognitive Impairment 	<ul style="list-style-type: none"> ○ 5 - 7 = Moderate Cognitive Impairment ○ 8 - 10 = Severe Impairment or Unable to Respond 	0
<ul style="list-style-type: none"> ● 0 - 2 = Intact Mental Functioning ○ 3 - 4 = Mild Cognitive Impairment 	<ul style="list-style-type: none"> ○ 5 - 7 = Moderate Cognitive Impairment ○ 8 - 10 = Severe Impairment or Unable to Respond 		
Group Total:	0		

The following are marked under "Neurological" in the Data Collection Form: Alert, Oriented to Time, Place, Person, and Situation.

NEUROLOGICAL		Score
<ul style="list-style-type: none"> • Level of Consciousness: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Alert <input type="checkbox"/> Lethargic 		
<ul style="list-style-type: none"> <input type="checkbox"/> Comatose <input type="checkbox"/> Semicomatose 		0
<ul style="list-style-type: none"> • Is Oriented To: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Time <input checked="" type="checkbox"/> Place <input checked="" type="checkbox"/> Situation 		
<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Person <input type="checkbox"/> None of the above 		0

This is supported by Dr. Warren's History and Physical which states, "He is oriented x 4." (R. pp. 137-140).

At the hearing on Defendants' Motion to Compel Arbitration, counsel for Defendants stated:

"[W]e don't take issue with the fact that Mr. Jolly appeared to be mentally competent. So we're not over here today saying that this man was incompetent and just couldn't manage his own affairs. Mentally speaking, we're not saying that at all." (R. pp. 43 lines 4-8).

Defendants claim that Decedent was "disabled," but no evidence supports Defendants' contention. Prior to admission to White Oak Manor, Decedent was living independently at home. Plaintiff described Decedent as a "vulnerable adult" under South Carolina's Adult Protection Act (APA) because all nursing home residents are defined as vulnerable adults under that statute without consideration of the resident's mental or physical capabilities. The APA provides, "A resident of a facility¹ is a vulnerable adult." (Adult Protection Act, S.C. Code Ann. §§ 43-35-10, -11).

When Hilda Stott signed the Admissions Agreement, which covered issues relating to admission and care at the facility, facility staff left blank the section of the Agreement which designates the type of legal authority the signatory has and the scope of that representative's

¹(4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. (Adult Protection Act, Section 43-35-10, 4).

authorization to make decisions for Decedent. (R. pp. 79). The fact that Hilda Stott signed documents so that her uncle could be admitted to the facility and receive medical care in no way indicates a manifestation of authority from Decedent to Stott. Decedent never manifested any form of consent that established Hilda Stott was his agent, despite being wide awake, lucid, and able to make his own decisions regarding his rights. Decedent was competent at the time he was admitted to the facility. The Arbitration Agreement is null and void because Hilda Stott lacked the capacity and authority to enter into it. Defendants allege that Hilda Stott had a valid power of attorney based on an executed South Carolina Healthcare Power of Attorney ("HCPOA"). That document clearly states in the first paragraph that the power arises "if you cannot make the decision for yourself." (R. pp. 103).

SOUTH CAROLINA STATUTORY HEALTH CARE POWER OF ATTORNEY
OF
JOLLY P. DAVIS

(S.C. STATUTORY FORM)

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.
2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.
3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.
4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.
5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.
6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO

Health Care Power of Attorney
Jolly P. Davis

Page 1 of 7

Initials: JD Date: 5/11/12

The HCPOA later states: "By this document, I intend to create a durable power of attorney effective upon, and *only* during, any period of mental incompetence." [*emphasis added*] (R. pp. 105).

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

Defendants also allege that Hilda Stott had a valid power of attorney based on a Durable Power of Attorney for Finance ("DPOA"); however, that legal instrument only became valid once it was filed on **January 8, 2013**, after Decedent left the facility, and after Decedent was incapacitated due to Defendants' neglect. The DPOA states: "This Power of Attorney shall become effective upon my disability and shall survive and continue during my disability, incompetence, incapacity, or partial incapacity... [My incompetence] may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order." (R. pp. 111).

DEED 02 K PG 573

**DURABLE POWER OF ATTORNEY FOR FINANCE
OF**

JOLLY P. DAVIS

011-2013-017
Recorded 13 Pages on 1/10/2013 2:09:34 PM
Recording Fee: \$33.00 Documentary Stamp: \$0.00
Office of Register of Deeds, Spartanburg, S.C.
Dorothy Eade, Register

**ARTICLE I
Creation**

I, Jolly P. Davis, as Principal and a resident of the State of South Carolina designate my niece, Hilda J. Stott to serve as Attorney-In-Fact (my "Agent") for me and to act as the guardian or limited guardian of my estate should guardianship proceedings become necessary or desirable.

**ARTICLE II
Effectiveness Effective Upon Disability**

This Power of Attorney shall become effective upon my disability and shall survive and continue during my disability, incompetence, incapacity, or partial incapacity. This Power of Attorney shall not be affected by my subsequent disability or incapacity or by lapse of time. Disability, incompetence, incapacity or partial incapacity shall include, without limitation, my inability to manage my property and affairs or caring for myself effectively, for reasons such as mental illness, mental deficiency or other mental incapacity, physical illness or disability, advanced age, senility, chronic use of drugs, chronic intoxication, which may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order.

**ARTICLE III
Powers**

My Agent shall have all powers of an absolute owner over my assets and liabilities, whether located within or without the State of South Carolina, including, without limitation, the following power and authority:

A. Power relating to real property transactions. I empower my attorney-in-fact to:

1. accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;
2. sell, exchange, or convey, with or without covenants; quitclaim; release; surrender; mortgage; encumber; partition; consent to partitioning; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to planting; develop; grant

DPOAF of Jolly P. Davis

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Initials: *JPD* Date: *5/11/12*

Two physicians are required to establish incompetency; only one is necessary to confirm

competency due to the presumption of competency. Incompetency can be defined as:

“Incapacitated person” means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.” (S.C. Code Ann. § 62-5-101).

“Unable to consent means unable to appreciate the nature and implications of the patient’s condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner...**A patient’s inability to consent must be certified by two licensed physicians**, each of whom has examined the patient.” [*emphasis added*] (Adult Health Care Consent Act, S.C. Code Ann. § 44-66-20, Section 8).

Hilda Stott did not have authority under the DPOA to bind Decedent to arbitration because the DPOA was not valid at the time Hilda Stott signed the agreements. It was filed after his discharge from the facility on **January 8, 2013** because Decedent was incapacitated from the neglect at White Oak Manor – Spartanburg and could no longer make healthcare decisions. Under SC Code Ann. § 62-5-501 (2012), Protection of Persons Under Disability and Their Property, the power of attorney must be recorded in the county’s registry of deeds:

(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, **the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded.** After the instrument has been recorded, whether recorded before or after the onset of the principal’s physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded. [*Emphasis added*]

Here, the DPOA was recorded six days **after** the agreements were signed.

Defendants had the burden of proving Decedent was incapacitated at the time his niece signed the arbitration agreement. “[T]he party alleging incompetence bears the burden of proving

incapacity at the time of the transaction by a preponderance of the evidence.” Hairston v. McMillan, 387 S.C. 439, 692 S.E.2d 549 (Ct. App. 2010) citing In re Thames, 344 S.C. 564, 572, 544 S.E.2d 854, 858 (Ct. App. 2001). No evidence was provided by Defendants that Decedent was incompetent, disabled or could not make the decision regarding arbitration himself. Decedent had the authority to bind himself and his claims to arbitration but was not given the chance. But even if Decedent had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries, who were not parties to the Arbitration Agreement.

In this case, Defendants had the capacity to determine whether Hilda Stott had authority to sign an arbitration agreement on Decedent's behalf. Defendant is a sophisticated business entity frequently interacting with residents and their families during the nursing home admission process. Defendants are familiar with the legal concepts of guardianship and powers-of-attorney, as evidenced by Defendant's employee filing the DPOA with the Office of Register of Deeds in order to make the DPOA valid, Defendant's filing the DPOA after Decedent was no longer a resident of the facility. Defendants had the ability to ask Hilda Scott if she had a valid power of attorney and if she was Decedent's attorney in fact. Defendants had the ability to request supporting documentation. Since Defendants have failed to provide supporting information for the alleged valid authority of Hilda Scott, this Court should affirm.

The Order (R. pp. 1-4) denying the motion to dismiss and compel arbitration made the following rulings:

1. The burden of proof to establish the existence of a valid arbitration agreement lies with Defendants;
2. Decedent was mentally competent to make decisions for himself and not disabled

or incapacitated;

3. Hilda Stott lacked the authority to contract on behalf of Decedent therefore the arbitration agreement was not enforceable.

Defendants now claim that the Arbitration Agreement did not become effective until **January 19, 2013** because there was a 10 day opt out clause. This argument was not made to the trial court. (See below Section entitled Objection to Documents and Argument Not Presented to Lower Court). However, the new argument fails on the merits also. Decedent died on **January 11, 2013**, therefore any Power of Attorney enabling Stott to “opt out” was extinguished at the moment of death. Hilda Stott was not appointed Personal Representative until **April 10, 2013**. Therefore, the Arbitration Agreement did not become effective on **January 19, 2013**, even under Defendants new theory. Here, there is no evidence of “false representation or concealment” on Hilda Stott’s part. Furthermore, Defendants could not reasonably rely on the contract/agreement when they knew that Hilda Stott lacked the authority to enter into such a contract/agreement.

ARGUMENT

The determination whether a claim is subject to arbitration is subject to *de novo* review. Partain v. Upstate Automotive Group, 386 S.C. 488, 689 S.E.2d 602 (2010). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Id.*

Whether the parties agreed to arbitrate is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007), states, "General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause." The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008). It is well established that "where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (2007) (internal citation omitted). Defendants have not met the burden.

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate. Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 843-44 (Ct. App. 1999). A contractual obligation to arbitrate claims is unenforceable if it is signed by a third party acting without proper legal authority. "Accordingly, a party may seek revocation of the contract under 'such grounds as exist at law or in equity,' including fraud, duress, and unconscionability." Simpson v. MSA of

Myrtle Beach, Inc., 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007). General contract principles of state law apply to arbitration clauses, even those governed by the FAA. Davis v. KB Home of South Carolina, Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011).

The primary issues in this appeal are whether Hilda Stott had the authority to bind Decedent's estate and the wrongful death beneficiaries to the Arbitration Agreement and whether the wrongful death statutory beneficiaries and corporate defendants are bound to that Agreement, despite being non-signatories. The trial court ruled correctly that she did not have such authority, either actually or apparently. The Supreme Court of South Carolina made clear in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2d 450 (2014), that authority to make healthcare decisions does not extend to arbitration agreements. Coleman v. Mariner Health Care, Inc., at page 7 states, "The scope of Sister's authority to consent to 'decisions concerning Decedent's health care' extend to the admission agreement, which was the basis upon which Facility agreed to provide health care and Sister agreed to pay for it. The separate arbitration agreement concerned neither health care nor payment, but instead provided an optional method for dispute resolution between Facility and Decedent." Thus, without Decedent's actual representation to facility staff that Hilda Stott could and should sign the agreements, Defendants' attempts to bind Decedent, his Wrongful Death beneficiaries, and other Defendants not party to the alleged Arbitration Agreement to binding arbitration are fruitless and without merit.

I. Signatory's Lack of Legal Authority

Where a principal lacks capacity to make decisions regarding his legal rights, a third party may, in some instances, step into his shoes to make healthcare decisions on the principal's behalf. However, Decedent had capacity to make decisions regarding his legal rights.

The alleged principal in this matter, Decedent Jolly Davis, was never consulted about the arbitration agreement nor is there any evidence he made representations to Defendants regarding Hilda's authority to act on his behalf. There is no question that Decedent had the capacity to contract. Gaddy v. Douglass, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004). In Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 759 S.E.2d 727 (2014), Chief Justice Toal in Footnote 1 stated: "We are concerned that according to the record, the patient did not sign either the residency agreement or the agreement on her own behalf despite being competent at the time." Hilda Stott did not have the authority regardless of how she may have behaved. Defendants did not produce any evidence indicating that Hilda Stott represented that she was Decedent's agent. However, Defendants could not rely on those representations anyway. As the Court stated in WDI Meredith & Co. v. American Telesis, Inc., *supra*, "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such a belief. **An agency may not, however, be established solely by the declarations and conduct of an alleged agent.**" (citing Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 142-143, 399 S.B.2d at 433 (Ct. App. 1990) overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000)).

Under South Carolina law, "[t]he elements which must be proven to establish apparent agency are: (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." Graves v. Serbin Farms, Inc., 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991). "Apparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which,

reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him." Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244-45, 473 S.E.2d 865, 868 (Ct.App.1996). "Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief." *Id.* at 245, 473 S.E.2d at 868. "Moreover, an agency may not be established solely by the declarations and conduct of an alleged agent." *Id.*

"Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize his conduct is likely to create such a belief. An agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing Muller v. Myrtle Beach Golf & Yacht Club, 303 S.C. 137, 142-143, 399 S.B.2d at 433 (Ct. App. 1990) overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000)). In our present matter, the principal was never consulted.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." 17 C.J.S. Contracts §32. Hilda Stott did not have that authority. Decedent did not lack the capacity to contract for himself. He was not demented, incompetent, or disabled. Because Decedent had never been adjudicated incompetent or incapacitated by any physician or by the probate court, there exists a presumption of competency. Dominick v. Rhodes, 202 S.C. 139, 24 S.E.2d 168 (1943); Mordecai v. Canty, 86 S.C. 470, 68 S.E. 1049 (1910). Defendants cannot meet the burden of proving Decedent was incompetent or disabled.

The capacity to contract relates to the status of the person rather than to circumstances surrounding the contract. This is the rule embraced by the Restatement. General Motors v. Jackson, 900 P.2d 345 (Nev. 1995) (citing Restatement (Second) of Contracts § 12 (1981)). The court correctly concluded Hilda Stott did not have the authority to execute the contract for Decedent.

Defendants contend that Hilda Stott had the authority to sign the Arbitration Agreement for Decedent because (A) an effective DPOA existed or (B) a valid HCPOA existed. A valid DPOA would allow Hilda Stott to waive Decedent's constitutional right to a jury trial against the Defendants' facility, however the DPOA in the present matter was not valid at the time of execution of the Arbitration Agreement; therefore, Hilda Stott did not have legal authority to sign on her uncle's behalf. The DPOA submitted with Defendants' Motion was not valid at the time of signing of the agreements as it was not filed with the Register of Deeds until after Decedent had left the facility. Under South Carolina Code Ann. § 62-5-501 (2012), a durable power of attorney requires the same executory actions as a deed, including filing with the deeds office. In the present matter, the DPOA was not recorded with the Office of Register of Deeds for Spartanburg County until **January 8, 2013, two days after** Decedent permanently left the facility and **six days after** Hilda Stott signed the alleged Arbitration Agreement.

While the HCPOA granted Hilda Stott the authority to make "healthcare decisions" for Decedent, if (and only if) Decedent could not make his own decisions; however, making healthcare decisions is not the same as binding a competent person to an Arbitration Agreement. Entering a contract to waive the right to a jury trial is not a decision that involves health care, including whether to place a person in a facility or remove the person from the facility.

Granting a niece the authority to consent to health care decisions for an incompetent person cannot stretch to the point of permitting that person to extinguish the competent person's right to judicial process. 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.*

Defendants cannot meet their burden to establish these elements. There is no evidence that Decedent acted in a way amounting to a false representation to Defendants. Decedent's lack of knowledge of the alleged Arbitration Agreement prevented him from forming the required intent for Defendants to rely on his conduct.

II. Wrongful Death Statutory Beneficiaries are not bound by the alleged Arbitration Agreement

Defendants are also attempting to bind the statutory beneficiaries of the wrongful death claim who were not parties to the agreement. Even if Hilda Stott had the ability to bind Decedent to the agreement, she could not bind the statutory beneficiaries of the wrongful death claim. The alleged Arbitration Agreement, by its own terms, is an agreement between "White Oak Spartanburg ("the Facility") and Hilda Stott/Jolly Davis ("the Resident") ... TO ARBITRATE ALL MONETARY CLAIMS that may arise between them

(with the exception of monetary claims of less than \$25,000.00).” [*emphasis in original*] (R. pp. 99).

The question of whether a wrongful death action is subject to mandatory arbitration pursuant to the terms of a contract is one of relative novelty in South Carolina. The majority of states that have addressed this issue have held that an arbitration agreement does not bind decedent's statutory beneficiaries who were not a party to the contract. Carter v. SSC Odin Operating Company, LLC, 976 N.E.2d 344, 360 (Ill. 2012); Lawrence v. Manor, 273 S.W.3d 525, 530 (Mo. 2009); Bybee v. Abdulla, 189 P.3d 40,47, 50 (Utah 2008); Peters v. Columbus Steel Castings Co., 873 N.E.2d 1258, 1262 (Ohio 2007); Mcfarren v. Emeritus at Canton, 997 N.E.2d 1254 (Ohio App. 2013); Pisano v. Extencicare Homes, Inc., 77 A.3d 651 (Pa. Super. 2013); Woodall v. Avalon Care Center-Federal Way, LLC, 231 P.3d 1252, 1257-59 (Wash. App. 2010); Peltz ex rel. Estate of Peltz v. Sears, Roebuck & Co., 367 F.Supp.2d 711, 718-19 (E.D. Pa. 2005); Laizure v. Avante at Leesburg, Inc., 109 So. 3d 752, 762 (Fla. 2013); Ruiz v. Podolsky, 237 P.3d 584, 591 n. 2 (Cal. 2010); In re Labatt Food Service, L.P., 279 S.W.3d 640, 647 (Tex. 2009); Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661, 665 (Ala. 2004); Allen v. Pacheco, 71 P.3d 375, 379 (Colo. 2003); Estate of Richard Heiney v. Life Care Centers of America, Inc., 2013 WL 1846599 (Ariz. App. 2013).

South Carolina law is clear that a Wrongful Death claim exists for the statutory beneficiaries and that such claims are distinct and separate claims from those that are brought under Survival claims. See Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914). In Bennett, the Supreme Court held that wrongful death and survival actions are different claims for different injuries. 97 S.C. at 29-30, 81 S.E. at 189-90. The Court stated: “Necessarily, therefore, there must be separate verdicts and separate judgments, and hence

there should be separate actions.” 97 S.C. at 31, 81 S.E. at 190. The Supreme Court affirmed an appeal from circuit court’s ruling noting that survival claims are independent of wrongful death claims. Strickland v. Southern Ry. Co., 111 S.C. 248, 97 S.E. 695 (1918) and Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539 (1928).

According to the Wrongful Death Act:

Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages. (S.C. Code Ann. § 15-51-10 (1977)).

The wrongful death beneficiaries are as follows:

Every such action shall be for the benefit of the wife or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the heirs of the person whose death shall have been so caused. (S.C. Code Ann. § 15-51-20 (Supp. 2001)).

The general elements of damages recoverable are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the interstate’s society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries. Self v. Goodrich, 300 S.C. 349, 351, 387 S.E.2d 713, 714 (Ct. App. 1989).

As the Supreme Court of Kentucky said in Ping v. Beverly Enterprises, Inc., 376 SW 3d 581 (2012), pages 599 – 600,:

[A]s interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract’s procedural provisions, including arbitration clauses, merely by being referred to in the contract. It is one thing to say that a third party for whose substantive benefit a contract is made may not enforce his or her rights under the contract without also abiding by the contract’s other terms. That is

the general third-party beneficiary rule discussed above. It may even be that tort claims by such a directly benefitting third party are appropriately subjected to the contract's arbitration provisions, at least where the tort and the contract are significantly intertwined. *See, In re Weekly Homes, L.P.*, 180 S.W.3d 127 (Tex.2005) (negligent repair claim by homeowner's daughter against contractor was subject to repair contract's arbitration clause because daughter, although a non-party was at direct and principal beneficiary under the contract. It is something else entirely, however, to say that incidental beneficiaries of a contract – individuals or entities with no substantive rights under the contract and no direct benefits – may have their tort claims against the parties swept up into the contract's arbitration provisions merely by being mentioned in the contract as potential claimants. This is what Beverly purports to do. Arbitration is a matter of contract, however; it is something that one party may simply impose upon another. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S. Ct. 588, 154 L. Ed.2d 491 (2002) (“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” Citation and internal quotation marks omitted.). Since Beverly's theory would allow us that, *i.e.*, would allow one party merely by referring to someone else in an arbitration clause to thereby bind that other person to arbitration as a “third party beneficiary” of the arbitration agreement, we reject it out of hand.

III. Corporate Defendants are not bound by the alleged Arbitration Agreement

Even if an enforceable Arbitration Agreement existed, the Agreement only applies between the facility and Decedents' Estate, and not the Corporate Defendants who were not signatories to the Agreement. Any Arbitration Agreement applies only to the Survival Action and only to the facility Defendant. In fact, at the hearing, counsel for Defendants admitted:

“The agreement as I read it deals with the facility only. So, I mean, if for some reason the Court determined to bifurcate and say, well with regard to the parent company that owns the land and building and the stock or with regard to the management company there should be different rules appl[ied], I mean, that's okay. I mean, clearly this was a White Oak Manor Spartanburg arbitration agreement.” [emphasis added] (R. pp. 55 lines 4-11).

Defendant White Oak Manor, Inc. and White Oak Management, Inc. did not offer any evidence to support their participation in arbitration proceedings. Accordingly, this Court should affirm the trial court's ruling that the arbitration agreement, even if valid, could not be compelled by White Oak Manor and White Oak Management.

IV. Objection to Documents and Argument Not Presented to Lower Court

Respondent objects to the inclusion of two documents Appellant's designated: (1) Authorized Representative Agreement between White Oak Manor and Jolly Davis, and (2) SRMC Discharge Summary. Neither was presented to the lower court and should not be included in the Record on Appeal or considered by the Appellate Court.

Importantly, these documents were not presented to the trial court and should not be part of the Record on Appeal. Rule 210(c), SCACR, prohibits the inclusion in the Record on Appeal of "matter which was not presented to the lower court or tribunal." Accord State v. White, 372 S.C. 364, 387, 642, S.E.2d 607, 619 (Ct. App. 2007); Sanders v. Salley, 283 S.C. 458, 460, 322 S.E.2d 829, 830 (Ct. App. 1984); see Cobb v. Benjamin, 325 S.C. 573, 581 n. 2, 482 S.E.2d 589, 593 n. 2 (Ct. App. 1997).

What "matter" means in the Rule is *material*, whether it is a writing such as a motion or pleading, an exhibit, or oral argument or testimony in transcript form. Rule 210(c), SCACR. In short, matter presented to the lower court means physical things presented to the lower court. *Id.* If any party to an appeal could include *anything* in the Record on Appeal, whether or not it was ever presented to the lower court, it would turn the appellate process on its head and make appellate courts into trial courts where new evidence may be received for consideration. Sanders, 283 S.C. at 460, 461. This is what the requirement that "the Record shall not . . . include matter which was not presented to the lower court" is designed to prevent. Rule 210(c), SCACR. It is a fundamental violation of the principles of appellate practice and review, and it seeks to undermine the very function of this Court. *Id.* See also White, 372 S.C. at 387 ("Morris' statement was not presented to the lower court and cannot be properly included in the Record on Appeal"); Norris v. Ferre, 315 S.C. 179, 183,

432 S.E.2d 491, 493 (Ct. App. 1993) (denying motion to supplement record on appeal with deposition testimony "since the matters were not presented to the trial judge"); Sanders, 283 S.C. at 460-61 (excluding mortgage from record on appeal where "mortgage was not in evidence before the master or the circuit court").

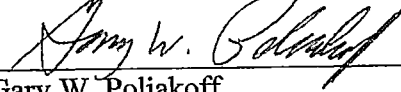
Further, the document does not support Defendants' contention. Defendants in the Initial Brief state that on December 22, 2012 Decedent became "gravely ill with numerous respiratory symptoms" and reference the Court to SRMC Discharge Summary. The document does not state such. The SRMC discharge summary does not state or indicate that Decedent was "gravely ill." In fact, that document supports Plaintiffs' position that he had an acute, not chronic, breathing problem that was "medically stable" but he needed short term rehabilitation for ambulation to recover his strength to return home to live independently. Nothing in the document indicates he was "gravely ill" or disabled. (*Spartanburg Regional Medical Center Discharge Summary - not included in Record on Appeal*).

CONCLUSION

Hilda Stott lacked the legal authority to bind her uncle to the Arbitration Agreement which removed his rights under the law and the Constitution. The determination of agency is based upon the intentions and representations of the principal, not the agent; neither Decedent nor Hilda Stott displayed any such intentions or made any such representations. The Agreement does not apply to White Oak Manor, Inc. and White Oak Management, Inc. nor does it govern the claims brought for Wrongful Death on behalf of the Statutory Beneficiaries.

For the foregoing reasons this Court should affirm the circuit court's order and remand the matter for further proceedings consistent with this Court's mandate.

RESPECTFULLY SUBMITTED,



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April 10, 2017
Spartanburg, S.C.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents,

v.

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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Wyatt v. Spartan Mill Co., 287 S.C. 334, 338 S.E.2d 341 (1985) 3

Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001)1

STATUTES/OTHER AUTHORITIES

26 South Carolina Jurisprudence §32 Wrongful Death Actions, (December 2016 update) 3

REPLY ARGUMENTS

I. Hilda Stott had the legal authority to execute the White Oak Manor-Spartanburg admission documentation on behalf of Jolly Davis.

The South Carolina Supreme Court has acknowledged that arbitration agreements enjoy a strong presumption of validity in both federal and state courts. Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 759 S.E.2d 727 (2014). The FAA governs this Arbitration Agreement. In the mid-1980s, the United States Supreme Court “federalized” the law of arbitration by expanding the FAA to the full breadth of the Commerce Clause. The federal policy favoring arbitration is now binding even in state courts **and supersedes inconsistent state law and statutes that invalidate arbitration agreements.** Zabinski v. Bright Acres Associates, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001) (emphasis added). The South Carolina Supreme Court has held that the FAA requires courts to enforce private agreements to arbitrate in accordance with their terms. Id. at 592, 553 S.E.2d at 116.

Here, Jolly Davis met the requirements for the effectiveness of the powers of attorney he executed in favor of his niece Hilda Stott. Specifically, the Durable Power of Attorney for Finance (“DPOAF”) provided it was effective upon disability, and it went on to define disability within the document to include “my inability to manage my property and affairs or car[e] for myself effectively” and “may be evidenced by a written statement of my regularly attending physician or two other qualified physicians or by court order.” (R. p. 111). The DPOAF was drafted by the decedent, who was free to include whatever language and provisions he wished. The DPOAF does not reference any other law or guideline, but self-defines “disability” and provides an example of one manner in which the disability might be established.

Appellant relies upon an improperly executed Progress Note concerning Mr. Davis's condition. This meager evidence does not supplant the clear record that Mr. Davis was under a disability as set forth in his own DPOAF. Mr. Davis admittedly met the requirements of a statutory vulnerable adult, as pled in the Complaint. The DPOAF provided for effectiveness upon Mr. Jolly's inability to manage his property and affairs or care for himself effectively. As emphasized before, nothing in the statute relied on by Respondent or the DPOAF itself required incompetence on the part of Mr. Davis as the measure of Ms. Stott's right to exercise her authority as attorney-in-fact, which included the express authority to "submit to arbitration claims or litigation" on behalf of Mr. Davis. (R. pp. 44, 116-117).

Neither is the timing of the filing of the DPOAF an impediment to its effectiveness. S.C. Code Ann. § 62-5-501(c) requires recording, and provides that "whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the same." The Arbitration Agreement expressly provided in its opt out provision that it was only binding if written notice is not given within the opt out period. Hilda Stott signed the Arbitration Agreement on January 2, 2013, setting the opt out date as January 19, 2013. Ms. Stott's signature could not bind Mr. Davis until January 19, 2016. The DPOAF was recorded on January 8, 2013. Because the DPOAF was filed at the time the Arbitration Agreement became effective, it is both valid and binding.

II. The wrongful death beneficiaries are bound by the admission documents, including the Admission Agreement and Arbitration Agreement.

Under South Carolina law, "whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action to recover damages in respect thereof,

the person who would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.” S.C. Code Ann. § 15-51-10. “Every such action shall be brought for the benefit of the . . . heirs of the person whose death shall have been so caused.” S.C. Code Ann. § 15-51-20. The cause of action inheres to the personal representative of the deceased’s estate; the statutory beneficiaries cannot proceed in their own names. See, e.g., Wyatt v. Spartan Mill Co., 287 S.C. 334, 338 S.E.2d 341 (1985).

A wrongful death action in South Carolina is derivative in nature. For example, if the statute of limitations has expired against the decedent for an injury that led to his death, then any wrongful death action is likewise barred, even though it may be commenced within the limitations period of the Wrongful Death Act. 26 South Carolina Jurisprudence §32 Wrongful Death Actions, (December 2016 update); see also Quattlebaum v. Carey Canada, Inc., 685 F. Supp. 939 (D.S.C. 1988).

Respondent’s reliance on Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581 (Ky. 2012) is wholly misplaced. In Ping, the court found that the patient’s daughter, who signed the arbitration agreement, lacked actual or apparent authority to do so under the circumstances. Because of this, the document could not bind the statutory beneficiaries. Appellants’ position is that the Arbitration Agreement is valid, and there is no impediment to its enforcement, including enforcement against the statutory beneficiaries. Further, Kentucky law regarding wrongful death actions differs from South Carolina law. As noted above, wrongful death actions in South Carolina are **derivative**, even though the damages are awarded separately. Under Kentucky law, a wrongful death action accrues independently, and is not derivative. Accordingly, the reasoning in Ping has no bearing on the facts of this case.

Where wrongful death actions are derivative and place beneficiaries in the legal shoes of the decedent – even though the damages are for the exclusive benefit of the wrongful death beneficiaries – arbitration provisions in an agreement that bind the decedent also bind the beneficiaries. In re Labatt Food Service, L.P., 279 S.W.3d 640, 645-646 (2009). Any other finding would violate the FAA’s express requirement that states place arbitration contracts on equal footing with other contracts. Id. at 646, citing Volt Info. Scs., Inc. v. Board of Trs. Of Leland Stanford Junior Univ., 489 U.S. 468, 474 (1989).

III. The corporate defendants are bound by the Arbitration Agreement.


The corporate/parent defendants below are equally bound to the Arbitration Agreement. In Pearson v. Hilton Head Hosp., 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012), a physician argued that he was not bound by the arbitration agreement between a hospital and the medical professional placement company that placed him. The court held that the doctrine of equitable estoppel prevented the physician from claiming that he was not bound to the arbitration simply because he was a nonsignatory. The physician received a benefit due to the relationship created by the contract because he was able to work at the hospital and receive payment for his work. Otherwise, he would have had to make separate arrangements with the hospital in order to practice there.

Here, both the corporate defendants and the wrongful death beneficiaries received a benefit from the admission documents, including the arbitration provision and the Arbitration Agreement. Neither Mr. Davis nor the beneficiaries were required to negotiate separately with the corporate defendants to obtain services. All were third-party beneficiaries who received and accepted a direct benefit from the agreements, and are thereby bound to the same.

CONCLUSION

For the reasons set forth herein, and in Appellants' Initial Brief, Appellants submit that the trial court erred in denying their Motion to Dismiss and/or Compel Arbitration.

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April 11, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2015-CP-42-5123

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg,
Appellants,

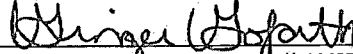
v.

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondents.

CERTIFICATE OF COMPLIANCE

Counsel certifies that its Final Brief and Final Reply Brief comply with Rule 211(b),
SCACR.

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April 11, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Hilda Stott, individually and as Personal Representative
of the Estate of Jolly P. Davis, deceased, and as Personal
Representative of the Statutory Beneficiaries,
Respondent,

v.

White Oak Manor, Inc.; White Oak Management, Inc.;
and White Oak Manor-Spartanburg, Inc. d/b/a White Oak
of Spartanburg, Appellants.

Appellate Case No. 2016-001732

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Opinion No. 5644
Submitted February 11, 2019 – Filed May 1, 2019

AFFIRMED

John Elliott Rogers, II and Ginger D. Goforth, both of
The Ward Law Firm, P.A., of Spartanburg, for
Appellants.

Gary W. Poliakoff and Raymond Paul Mullman, Jr., both
of Poliakoff & Associates, PA, of Spartanburg, and
Jordan C. Calloway of McGowan, Hood & Felder, LLC,
of Rock Hill for Respondents.

WILLIAMS, J.: In this civil case, White Oak Manor, Inc. (White Oak)—a skilled nursing facility—appeals the circuit court's order denying White Oak's motion to compel arbitration of wrongful death and survival actions brought by Hilda Stott as personal representative of the estate of Jolly P. Davis (Decedent). On appeal, White Oak argues the circuit court erred in finding Stott lacked the authority to execute White Oak's admission documents—including an arbitration agreement (the Arbitration Agreement)—on Decedent's behalf. We affirm.

FACTS/PROCEDURAL HISTORY

On December 22, 2012, Emergency Medical Services transferred Decedent to Spartanburg Regional Medical Center (Spartanburg Regional) after Decedent informed his niece, Stott, that his oxygen saturation levels had dropped. After Decedent was stabilized at Spartanburg Regional, he was admitted to White Oak on January 2, 2013, for "rehabilitation [and] possibly long-term care." The same day as Decedent's admission to White Oak, Stott, acting as Decedent's authorized representative,¹ signed White Oak's admission documentation—including the Arbitration Agreement. Decedent's initial evaluation at White Oak found he possessed intact mental functioning and he was alert and oriented to time, place, and situation. Decedent also correctly answered questions about his location, his age, his birthday, the current date and year, and current and past presidents. Over the next two weeks, Decedent was transferred between Spartanburg Regional and White Oak multiple times before Decedent passed away on January 16, 2013.

On December 16, 2015, Stott filed wrongful death and survival actions against White Oak alleging Decedent was "overmedicated and dehydrated which led to his untimely death." White Oak filed a motion to compel arbitration based on the Arbitration Agreement.² At the circuit court's hearing, Stott argued her durable power of attorney for finance was ineffective to grant her the authority to sign the Arbitration Agreement on Decedent's behalf. White Oak argued Stott's durable

¹ On May 11, 2012, Decedent executed a durable power of attorney for finance and a durable health care power of attorney, both of which authorized Stott to serve as his attorney-in-fact. The durable power of attorney for finance was recorded on January 8, 2013. The durable health care power of attorney was never recorded.

² Paragraph one of the Arbitration Agreement states, "All monetary claims between the parties of \$25,000.00 or more will be resolved by arbitration and will be subject to the terms and provisions of this Agreement."

power of attorney for finance was effective to authorize her to sign the Arbitration Agreement on Decedent's behalf because Decedent was physically disabled.

The circuit court ruled in Stott's favor and issued an order denying White Oak's motion to compel arbitration. The circuit court found (1) Decedent had full capacity to sign the Arbitration Agreement at the time of his admission to White Oak, (2) Stott's durable power of attorney for finance did not become effective until after Stott signed the Arbitration Agreement because it was not recorded as required by law, and (3) Stott's healthcare power of attorney did not authorize Stott to enter into the Arbitration Agreement because Decedent was competent when the Arbitration Agreement was signed. The circuit court relied on *Coleman v. Mariner Health Care, Inc.*³ in finding "the authority to make healthcare decisions does not extend to arbitration agreements." This appeal followed.

STANDARD OF REVIEW

Whether a claim is arbitrable "is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The appellate court reviews the circuit court's determination of whether a claim is arbitrable under a de novo standard. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007). "However, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Timmons v. Starkey*, 380 S.C. 590, 595, 671 S.E.2d 101, 104 (Ct. App. 2008).

LAW/ANALYSIS

I. Durable Power of Attorney for Finance

White Oak first argues Stott had the authority to sign the Arbitration Agreement on Decedent's behalf under a valid durable power of attorney for finance. We disagree.

"[A]rbitration is a matter of contract, and our evaluation of the enforceability of an arbitration agreement is guided by general principles of contract law." *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009). A person possessing contractual capacity, acting as grantor, can authorize another to contract on the grantor's behalf under the specific terms of a power of

³ 407 S.C. 346, 755 S.E.2d 450 (2014).

attorney. *See Gaddy v. Douglass*, 359 S.C. 329, 344–45, 597 S.E.2d 12, 20 (Ct. App. 2004). "[T]he holder of [the] power of attorney steps into the shoes of the grantor and is basically the alter ego of the grantor." *Bennett v. Carter*, 421 S.C. 374, 382, 807 S.E.2d 197, 201 (2017).

"A power of attorney is an instrument in writing by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. The written authorization itself is the power of attorney." *Watson v. Underwood*, 407 S.C. 443, 454, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *In re Thames*, 344 S.C. 564, 569, 544 S.E.2d 854, 856 (Ct. App. 2001)) (internal quotation marks omitted). A power of attorney classified as "durable" contains language establishing the principal's intent that the attorney-in-fact or agent's authority be exercisable during periods of the principal's physical or mental incapacity. *See Gaddy*, 359 S.C. at 344 n.11, 597 S.E.2d at 20 n.11 ("'Durable' is a term of art signifying that a power of attorney survives the principal's disability."). In South Carolina, a durable power of attorney for finance must be recorded in order to be effective. S.C. Code Ann. § 62-5-501(C) (2009 & Supp. 2013);⁴ *see also Timmons*, 380 S.C. at 593 n.2, 671 S.E.2d at 103 n.2 ("S.C. Code Ann. § 62-5-501(C) . . . require[d] a durable power of attorney to be recorded to be effective, unless the authority of the attorney-in-fact relates solely to the person of the principal.").

On May 11, 2012, Decedent signed the durable power of attorney for finance in favor of Stott. On January 2, 2013, Stott signed the Arbitration Agreement. However, Stott's durable power of attorney for finance was not recorded until January 8, 2013. Therefore, Stott's durable power of attorney for finance was not effective to authorize her to sign the Arbitration Agreement on Decedent's behalf. *See Timmons*, 380 S.C. at 593 n.2, 671 S.E.2d at 103 n.2 ("S.C. Code Ann. § 62-5-501(C) . . . require[d] a durable power of attorney to be recorded to be effective,

⁴ The General Assembly replaced section 62-5-501 with South Carolina's Uniform Power of Attorney Act (the Act), which became effective January 1, 2017. *See* S.C. Code Ann. § 62-8-101 through -403 (Supp. 2018). Although section 62-8-109(c) of the Act also requires durable powers of attorney to be recorded, section 62-8-403(c) of the Act states, "[T]he applicable law in effect before the effective date of this act applies to a power of attorney created or restated before the effective date of this act." Both of the powers of attorney at issue in this case were executed before January 1, 2017; therefore, we apply the previous version of the statute in effect at the time of the execution of the powers of attorney.

unless the authority of the attorney-in-fact relates solely to the person of the principal.").

White Oak contends Stott's durable power of attorney for finance was effective even though it was not recorded when Stott signed the Arbitration Agreement because of the Arbitration Agreement's "opt out" clause. The Arbitration Agreement's opt out clause provides the following information:

16. At the time of signing this Agreement, [Stott] acknowledges having . . . been advised that, beginning seven (7) days from date hereof, and for another ten (10) days thereafter, he/she has the right to "opt out" of this Agreement, and *no longer* be bound by it. In the event the party signing below determines to opt out, he/she must give [White Oak] written notice thereof within the time provided. If written notice of [Stott] having opted out of this Agreement is not received within the time frame set forth, the within Agreement *will remain and continue in full force and effect*.

(emphasis added). White Oak asserts the Arbitration Agreement did not become binding until the time period in the opt out clause expired on January 19, 2013. Therefore, White Oak contends Stott had the authority to sign the Arbitration Agreement when the Arbitration Agreement became binding on January 19, 2013, because Stott recorded her durable power of attorney for finance before the opt out clause expired.

We find White Oak's argument regarding the opt out clause is meritless in light of the language italicized above. *See Watson*, 407 S.C. at 455, 756 S.E.2d at 161 ("Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." (quoting *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993))). The opt out clause states Stott had the right to opt out of the Arbitration Agreement and "no longer" be bound by it, which indicates the Arbitration Agreement was binding at the time Stott signed it. By stating the Arbitration Agreement "will remain and continue in full force and effect," the opt out clause indicates Stott was bound by the Arbitration Agreement during the opt out period referenced in the clause. In light of the opt out clause's language, we find the Arbitration Agreement was binding during the opt out period. Therefore, we find Stott's unrecorded durable

power of attorney for finance was not effective to authorize her to sign the Arbitration Agreement on Decedent's behalf.

II. Health Care Power of Attorney

White Oak next argues Stott had the authority to sign the Arbitration Agreement on Decedent's behalf under a valid durable health care power of attorney. We disagree.

"A health care power of attorney is an instrument in which an individual known as the principal authorizes another person known as the attorney-in-fact, or agent, to make health care decisions on his behalf." 12 S.C. JUR. *Death and Right to Die* § 14 (2019); see S.C. Code Ann. § 62-5-504(B)(1) (2009 & Supp. 2013). Section 62-5-504(D) of the South Carolina Code (2009 & Supp. 2013) provides a statutory form of the health care power of attorney (the statutory form). All health care powers of attorney executed on or after January 1, 2007, must be in substantially the same form as the statutory form. *Id.* The authority of the agent in the statutory form only activates if the principal is unable to make or participate in health care treatment decisions.⁵ See S.C. Code Ann. § 62-5-504(D) & (S)(1)(a) (2009 & Supp. 2013); Franchelle C. Millender et al., *A Practical Guide to Elder and Special Needs Law in South Carolina* 83 (4th ed. 2014). Like the durable power of attorney for finance, a health care power of attorney can be classified as "durable" if it contains language establishing the principal's intent that the agent's authority be exercisable during periods of the principal's physical or mental incapacity. See *Gaddy*, 359 S.C. at 344 n.11, 597 S.E.2d at 20 n.11 ("'Durable' is a term of art signifying that a power of attorney survives the principal's disability.").

Although a durable power of attorney is traditionally effective upon execution, any durable power of attorney can provide that it will not take effect *until* the principal becomes incapacitated. See Millender at 86 ("[A] [durable power of attorney] can provide that it will not take effect *until* the principal becomes [incapacitated]."); Elizabeth G. Patterson, *Planning for Health Care Using Living Wills and Durable Powers of Attorney: A Guide for the South Carolina Attorney*, 42 S.C. L. REV. 525, 552 (1991) (explaining how an alternative form of a durable power of attorney does not become effective until the principal's disability). This type of

⁵ The only exception to this rule is the authorization for health care records under the Health Insurance Portability and Accountability Act (HIPAA). See § 62-5-504(D).

durable power of attorney is often called a "springing" durable power of attorney because the agent's authority "springs" into effect when activated either by the principal or because of the principal's incapacity. *Id.*; 12 S.C. JUR. *Death and Right to Die* § 14(c) (2018). The springing durable power of attorney is often used by principals who want to retain control of their health care until they no longer have legal capacity to do so. Patterson, 42 S.C. L. REV. 525, 573 (1991). South Carolina law authorizes the use of both the traditional and springing forms of the durable power of attorney. *See* S.C. Code Ann. § 62-5-501(A) (2009 & Supp. 2013). The statutory form is a springing durable power of attorney. *See* § 62-5-504(D); 12 S.C. JUR. *Death and Right to Die* §14(c); Millender at 83. The principal's mental incompetence triggers the attorney-in-fact or agent's authority under the statutory form. *See* § 62-5-504(D); 12 S.C. JUR. *Death and Right to Die* §14(c); Millender at 83.

Our courts have looked to contract law when reviewing actions to set aside or interpret a power of attorney. *See Thames*, 344 S.C. at 571, 544 S.E.2d at 857 (analyzing an action to set aside a power of attorney under contract law); *Watson*, 407 S.C. at 454, 756 S.E.2d at 161 (analyzing an action to interpret a power of attorney under contract law). "The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties, and, in determining that intention, the court looks to the language of the contract." *Watson*, 407 S.C. at 454–55, 756 S.E.2d at 161 (quoting *Sphere Drake Ins. v. Litchfield*, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993)). "Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Watson*, 407 S.C. at 455, 756 S.E.2d at 161 (quoting *Jordan*, 311 S.C. at 230, 428 S.E.2d at 707). "The [c]ourt's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Id.* at 455, 756 S.E.2d at 162 (quoting *Jordan*, 311 S.C. at 230, 428 S.E.2d at 707).

Stott's durable health care power of attorney is identical to the statutory form. Stott's durable health care power of attorney contains a provision entitled "EFFECTIVE DATE AND DURABILITY" that states, "By this document [Decedent] intends to create a durable power of attorney effective upon, and only during, any period of mental incompetence." *See Watson*, 407 S.C. at 455, 756 S.E.2d at 161 ("Whe[n] the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." (quoting *Jordan*, 311 S.C. at 230, 428 S.E.2d at 707)). During the circuit court's hearing, White Oak conceded that it was questioning Decedent's physical

disability, not his mental competence, and White Oak does not raise the issue of Decedent's mental competence on appeal.

The medical evidence in the record supports White Oak's concession. Decedent's medical admission forms at White Oak indicate Decedent was alert and oriented to time, place, and situation. The admission forms also evidence Decedent's correct answers to questions about his location, his age, his birthday, the current date and year, and current and past presidents. Decedent's mental status evaluation indicated his mental functioning was intact. We find there is ample evidence to support the circuit court's factual finding that Decedent was mentally competent at the time Stott signed the Arbitration Agreement. *See Timmons*, 380 S.C. at 595, 671 S.E.2d at 104 ("[A] circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings."). Because Decedent was mentally competent, we find Stott's durable health care power of attorney was not effective to authorize her to sign the Agreement on Decedent's behalf.

Because we find Decedent was mentally competent to sign the Arbitration Agreement, we affirm the circuit court's decision that Stott did not have authority under her durable health care power of attorney to sign the Arbitration Agreement. Because neither power of attorney was effective to grant Stott the authority to sign the Arbitration Agreement on Decedent's behalf, we find White Oak is unable to compel arbitration of Stott's claims under the Arbitration Agreement.

CONCLUSION

Accordingly, the decision of the circuit court is

AFFIRMED.

GEATHERS and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries, Respondent,

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Appellants

PETITION FOR REHEARING

Appellants White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc. d/b/a White Oak of Spartanburg hereby petition the Court of Appeals pursuant to Rule 221, SCACR, for a rehearing of its decision issued May 1, 2019.

More particularly, Appellants base this motion of the following grounds:

1. The Court of Appeals did not properly construe the Arbitration Agreement and the law applicable to interpreting the same to find that the provision of the opt-out clause served

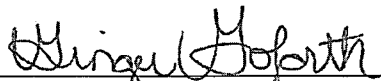
to make Hilda Stott's execution of the Arbitration Agreement timely and binding on the claims of Jolly Davis.

2. The Court of Appeals misconstrued and ignored Appellants' arguments in finding that Appellants conceded that Jolly Davis had mental capacity to sign the Arbitration Agreement himself including, but not limited to, the fact that the Progress Note Affecting Decisional Capacity was not properly executed by two physicians. Appellants did not concede that Jolly Davis had the mental capacity to sign, and argued with grounds in its Brief and Reply Brief the grounds that he did not.
3. The Court of Appeals erred in failing to address the issues raised by Appellants regarding the fact that Hilda Stott signed the Admission Agreement, Authorized Representative Agreement, AND Arbitration Agreement on behalf of Jolly Davis, and that the terms of these agreements worked together and must be interpreted together to validate the Arbitration Agreement and to bind Jolly Davis to arbitration of his claims with Appellants.
4. The Court of Appeals misconstrued the nature of Hilda Stott's appointment as Jolly Davis's health care power of attorney, and the fact that she was formally appointed by a Health Care Power of Attorney, and not by virtue of resort to the terms of the Adult Health Care Consent Act.

For these reasons, Appellants respectfully request that the Court of Appeals grant their Petition for Rehearing and reconsider the briefs/entertain oral arguments in this case.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2016-001732

v.

Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased,
and as Personal Representative of the Statutory Beneficiaries,Respondent,

White Oak Manor, Inc.; White Oak Management, Inc.; and White Oak Manor-Spartanburg, Inc.
d/b/a White Oak of Spartanburg, Appellants.

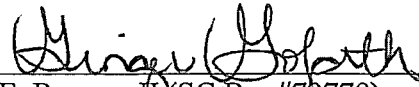
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Petition for Rehearing was served upon the following on May 14, 2019 via electronic transmission and via United States Postal Service, with proper postage affixed thereto to the following address(es):

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May 14, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Appellate Case No. 2016-001732

Hilda Stott, individually and as Respondent
Personal Representative of the
Estate of Jolly P. Davis, deceased
and as Personal Representative of
the Statutory Beneficiaries

v.

White Oak Manor, Inc., White Appellants.
Oak Management, Inc., and White
Oak Manor-Spartanburg, Inc. d/b/a
White Oak of Spartanburg

RESPONDENT’S RETURN TO PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Respondent Hilda Stott, individually and as Personal Representative of the Estate of Jolly P. Davis, deceased and as Personal Representative of the Statutory Beneficiaries respectfully submits her return to the Petition for Rehearing.

This appeal arises out of a nursing home negligence claim for which Appellants unsuccessfully attempted to compel arbitration, citing an Arbitration Agreement signed by Appellants and Ms. Stott. Appellants argue Ms. Stott had authority to enter the Arbitration Agreement on behalf of Mr. Davis, who became a resident of Appellants’ facility and whose care is the basis for Respondent’s negligence claim. Appellants cite two power of attorney documents naming Ms. Stott as Mr. Davis’ agent to support their claim—(1) a “durable power of attorney for

finance” which had been signed but not recorded when Mr. Davis entered Appellants’ facility; and (2) a “durable health care power of attorney” which would become effective only during any period of Mr. Davis’ incompetence. The Court held neither power of attorney document was effective when the Arbitration Agreement was signed and, therefore, Ms. Stott lacked authority to enter the Arbitration Agreement on Mr. Davis’ behalf. Stott v. White Oak Manor, Inc., Op. No. 5644 (S.C. Ct. App. filed May 1, 2019) (Shearouse Adv. Sh. No. 18 at 53, 61).

Appellants’ first proposed ground for relief incorrectly asserts the Court’s ruling misconstrued South Carolina contract interpretation principles and the Arbitration Agreement in finding the Arbitration Agreement’s opt-out provision delayed the Arbitration Agreement’s effectiveness date until after the “durable power of attorney for finance” had been recorded. Pet. at ¶ 1. In determining the Arbitration Agreement’s effectiveness date, the Court properly applied a basic contract interpretation rule requiring a contract’s language be given its plain and ordinary meaning. Callawassie Island Members Club, Inc. v. Dennis, 425 S.C. 193, 203, 821 S.E.2d 667, 672 (2018) (quoting Jordan v. Sec. Grp., Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) (“Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument’s force and effect”)). The opt-out provision’s plain language states that a resident’s decision to opt-out of arbitration would cause the contract, already in effect, to thereafter cease to be effective. (R. p. 101, ¶ 16) (providing that opting out means resident is “no longer” bound by Arbitration Agreement’s terms). The language cannot be construed to say the opt-out period must expire before the contract becomes effective because a resident choosing not to opt out means the Arbitration Agreement would “remain and continue” to be effective. In its plain and ordinary usage, the verb “remain” means “to continue unchanged.” Merriam-Webster’s Collegiate Dictionary (11th ed. 2005).

Appellants' second proposed ground for relief seeks to withdraw a concession made by trial counsel on a crucial factual issue. Pet. at ¶ 2. The "durable health care power of attorney" was ineffective at the time Ms. Stott signed the Arbitration Agreement because Mr. Davis was not mentally incompetent at that time. Respondents' counsel admitted this during the circuit court proceedings. (R. p. 43, lines 4-8) ("we don't take issue with the fact that Mr. Jolly appeared to be mentally competent. **So we're not here today saying that this man was incompetent and just couldn't manage his own affairs. Mentally speaking, we're not saying that at all.**") (emphasis added). Moreover, as the Court noted, the medical record supports Respondents concession. See e.g., R. p. 126 (indicating Mr. Davis's mental status was "independent" and not even "occasionally confused").

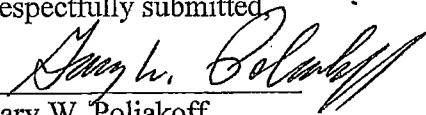
Appellants' third proposed ground for relief improperly seeks to raise a new issue. Appellants seem to argue that, even if the power of attorney documents naming Ms. Stott as agent were ineffective, she still had authority to sign the Arbitration Agreement because she signed it at the same time as Mr. Davis' Admission Agreement which is important because "these agreements worked together and must be interpreted together." Pet. at ¶ 3. The Court's ruling does not specifically address this argument because Appellants did not raise it in their briefs. Accordingly, they may not raise it at this stage. Moreover, on its merits, this argument fails under recent South Carolina precedent. While generally two or more contracts signed at the same time by the same parties for the same purpose may "merge," that rule does not apply when the contracts themselves show the parties' intent that they remain separate. Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 355, 755 S.E.2d 450, 455 (2014). For nursing home admission and arbitration contracts, the parties' intent that the contracts remain separate is demonstrated by a provision in the arbitration contract allowing a resident to disclaim (or opt-out) of arbitration while remaining a resident of

the facility. Id. (“the [Arbitration Agreement] could be disclaimed . . . evidencing an intention that each contract remain separate”); Thompson v. Pruitt Corp., 416 S.C. 43, 53, 784 S.E.2d 679, 685 (Ct. App. 2016) (finding resident’s “right to disclaim the [Arbitration Agreement] without having to terminate her residency at the facility indicates the parties’ intent to keep the [Arbitration Agreement] separate”). Here, the Arbitration Agreement allowed Mr. Davis to disclaim arbitration through the opt-out provision. Accordingly, there is no merger. (R. p. 101, ¶ 16).

Finally, Appellants’ fourth proposed ground for relief should be denied because it misconstrues the Court’s ruling. Appellants argue the “durable health care power of attorney” should have been applied because Ms. Stott was “formally appointed” by that document to act on Mr. Davis’ behalf. Pet. at ¶ 4. However, the “durable health care power of attorney” was ineffective not because of any problems with its formation but because, by its terms, it was a “springing” power of attorney which became effective only once Mr. Davis became mentally incompetent. Stott, Op. No. 5644 (Shearouse Adv. Sh. No. 18 at 59-60). Since Appellants’ counsel conceded Mr. Davis was mentally competent at the time of his admission to Appellants’ facility, the “durable health care power of attorney” was ineffective even if it was properly formed.

For all these reasons, Respondent respectfully requests the Court deny Appellants’ petition for rehearing.

Respectfully submitted



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Spartanburg, SC

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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Wood J.

John Denton J.

Man Li J.

Columbia, South Carolina

cc:

FILED

June 6, 2019

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