

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2017-CP-26-01351
Appellate Case No. 2018-000188

Orveletta Alston as Personal Representative of the
Estate of Willie Earl Alston, Sr.,.....Respondent,

v.

Conway Manor, LLC, Raymond Tiller, and
John and Jane Does 1-10,..... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF HORRY)
)
 Orveletta Alston as Personal Representative of) C/A No. 2017-CP-26-1351
 the Estate of Willie Earl Alston, Sr.,)
)
 Plaintiff,) **ORDER**
)
 Versus)
)
 Conway Manor, LLC, Raymond Tiller, and)
 John and Jane Does 1-10,)
)
 Defendants.)

This matter comes before the Court on Defendants Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10's Motion to Stay Action and Compel Arbitration and for Protective Order. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on November 1, 2017, the Court **DENIES** the Defendants' motion.

BACKGROUND

The Defendants operate a nursing home, licensed by the South Carolina Department of Health and Environmental Control, R.61-17, *Standards for Licensing Nursing Homes*. Willie Earl Alston, Sr. was admitted to the Defendant' nursing home facility on or about December 17, 2015. Upon admission, Mr. Alston was documented to return home with his wife after short-term rehabilitation. At all relevant times, it was documented that Mr. Alston suffered from dementia. Plaintiff alleges that while Mr. Alston was a resident, he developed pressure ulcers. Willie Earl Alston, Sr. died on April 22, 2016.

When Mr. Alston arrived at the Defendants' nursing home, Defendant's staff approached

Mr. Alston's daughter, Kimberly Alston-Wood. Ms. Alston-Wood was not Mr. Alston's guardian, conservator, or attorney in fact. The documents included an Admission Agreement which included a clause with an Arbitration Agreement. Mr. Alston's wife, Orveletta Alston, was appointed as Personal Representative of the Estate of Willie Earl Alston, Sr. on May 27, 2016 and filed this action on his behalf, alleging that the Defendants breached their duty in caring for Mr. Alston. On June 21, 2017, Defendants' filed a Motion to Stay Action and Compel Arbitration and for Protective Order. Oral arguments were heard on November 1, 2017.

ANALYSIS

Arbitration is a matter of contract and South Carolina Courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). The policy of this State is to favor arbitration of disputes. Toler Cove Homeowner's Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 581 (2003). However, an arbitration agreement is not enforceable when a party to the contract lacks the capacity to contract.

1. **The Arbitration Agreement is not enforceable because Kimberly Alston-Wood lacked the capacity to contract on behalf of her father.**

In South Carolina, actual authority is expressly conferred upon the agent by the principal, but apparent authority exists where the principal knowingly permits the agent to exercise authority or when the principal holds the agent out as possessing such authority. Roberson v. S. Fin. Of South Carolina, Inc., 365 S.C. 6,9, 615 S.E.2d 112, 115 (S.C. 2005). It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority. Frasier v.

Palmetto Homes of Florence, 473 S.E.2d 865 (S.C. App. 1996). While the Plaintiffs did not expressly argue apparent authority, Ms. Alston-Woods authority status was raised by both parties, therefore the Court shall analyze both actual and apparent authority.

Here, Defendants argue in their motion that because Mr. Alston suffered dementia prior to and at the time of his admission, he did not have capacity to enter into a binding contract. Therefore by Defendants' own admission, Mr. Alston could not explicitly authorize, hold out, or knowingly permit Ms. Alston-Wood to sign the Arbitration Agreement, in satisfaction of the elements of the doctrine of apparent authority. Additionally, a review of the admissions and arbitration documents by Defendants would have informed them that Ms. Alston-Wood did not have authority by way of a Power of Attorney to bind her father. Ms. Alston-Woods, did not indicate at any time on the Admission Agreement that she had any authority to enter the contract on behalf of her father.

Additionally, Ms. Alston-Wood possessed no statutory, legal authority to bind Mr. Alston into a contract. The Adult Health Care Consent Act ("AHCCA") does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. S.C. Code Ann. § 44-66-30 notes that "(A) where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority:(4) a spouse of the patient... (5) an adult child of the patient..." The statute specifically provides for a surrogate to make decisions regarding procedures and treatment of human disease and ailments. However, the statute does not authorize surrogates to enter into legal contracts waiving a person's right to a jury trial. Even if it did, Ms. Alston-Wood lacked priority under the statute because Mr. Alston's wife was alive

and making his health care decisions. The purpose of the AHCCA is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. "However the [AHCCA] does not confer such authority with respect to an Arbitration Agreement...." Thomson, at 52. Additionally, neither party argued under S.C. Code Ann. § 44-66-30(D) that Mr. Alston's wife, who had top priority, was not reasonably available, unwilling to make decisions, or unable to make healthcare decisions for Mr. Alston.

Furthermore, the S.C. Bill of Rights for Resident of Long-Term Care Facilities does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. Under the Bill of Rights, a "representative" is defined as a "resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." S.C. Code Ann. §44-81-30(3). Mr. Alston did not have a legally appointed guardian or attorney in fact at the time of his admission. Therefore, the Bill of Rights would grant Mr. Alston's wife, as next of kin, as his representative, not Ms. Alston-Wood.

This Court finds the Supreme Court of South Carolina's decision in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2 450 (2014) is very similar to the facts of the case at hand. In Coleman, the Circuit Court denied the nursing home defendants' motion to stay the action and compel arbitration because the sister of the resident who signed the arbitration and admission agreements lacked capacity to bind her sister to the arbitration agreement. In affirming the Circuit Court's Order in Coleman, the Supreme Court found that although the AHCCA did give the resident's sister "authority to make 'healthcare decision' on behalf of her sister, consent

for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without authority to do so.”

Id. The Court reasoned that the Act only extends authority to surrogates to make traditional health care decisions and financial decisions that arise out of those decisions. The Court further addressed this in Thompson v. Pruitt Corp., 416 S.C. 43, holding that an arbitration agreement was separate from the admission agreement. In Thompson, the Court found that while the resident’s son was authorized to execute an admission agreement under the AHCCA, the Act did not convey any authority for the son to sign an arbitration agreement on behalf of his father. The Court specifically addressed the fact that the terms of the Admission Agreement indicate that it either incorporated, or merged with, the Arbitration Agreement, but declined to merge the two. Id. at 52. Simply stated, an Arbitration Agreement is a legal document which does not concern health care related decisions. Likewise, an Admission agreement is a medical document which does not concern legal related decisions. One cannot simply be contained in the other and its health care or legal distinction is masked by the other.

In accordance with the foregoing, Ms. Alston-Wood lacked the actual or apparent authority, pursuant to statute, to make health care decisions on behalf of Mr. Alston as his agent. She furthermore lacked the actual or apparent authority to make legal decisions on behalf of Mr. Alston, which includes the agreement to arbitrate disputes by arbitration. Ms. Alston-Wood had no legal authority whatsoever to sign the Arbitration Agreement. Absent legal authority or at least some measure of apparent authority, the Arbitration Agreement is void and unenforceable.

2. **Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because Kimberly Alston-Wood did not have capacity to bind him to the contract.**

Defendants' argument that Willie Alston, Sr. is bound by the Arbitration Agreement executed by his daughter as a third-party beneficiary is without merit. Mr. Alston did benefit from the Admissions Agreement to the facility, however Ms. Alston-Wood lacked authority under the AHCCA and the S.C. Bill of Rights to execute on his behalf. Along the same lines, Ms. Alston-Wood did not have authority to legally bind her father to the Arbitration Agreement contract for the reasons set forth above in Coleman and Thompson, because the Arbitration Agreement and Admission Agreement did not merge together. As such, this Court finds Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because the contract was never valid.

3. **Plaintiff is not equitably estopped from denying the Arbitration Agreement.**

Defendants also argue that Plaintiff should be equitably estopped from denying enforcement of the Arbitration Agreement and that under the doctrine of equitable estoppel a party should not be permitted to sue under certain provisions of a contract while disclaiming provisions of the same contract. 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 the

estoppel must 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 the conduct of the party to be estopped. Id.

Defendant has not met its burden to establish these elements. There is no evidence Ms. Alston-Wood acted in a way amounting to a false representation to Defendants regarding Mr. Alston's status or that Ms. Alston-Wood intended for Defendant to act in reliance on her conduct. Mr. Alston's diminished capacity prevented him from forming the required intent for Defendants to rely on his conduct. Additionally, the evidence shows Defendants cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendants to show it did not know Mr. Alston lacked authority to sign the arbitration agreement on her father's behalf and Defendant lacked the ability to make this determination. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. 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).

Defendants had the capacity to determine whether Ms. Alston-Wood had authority to sign an arbitration agreement on Mr. Alston's behalf. Defendants are 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 Ms. Alston-Wood whether she was Mr. Alston's guardian or

attorney-in-fact and had the ability to request supporting documentation. Since Defendants have not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

Furthermore, while typically the Defendants argument that equitable estoppel would prevent a party from cherry picking certain provisions to rely upon while disavowing other, there is an exception in cases such as these circumstances. As stated above, Mr. Alston was suffering from dementia prior to being admitted to Conway Manor, thus he was prevented from having the requisite intent and knowledge to assent to the Arbitration Agreement. Therefore, there must be some legal authority for Ms. Alston-Woods to sign on behalf of her father. The Admissions Agreement and the Arbitration Agreement were signed at the same time, in the course of the same transaction. The Agreements, however, do not merge. The two agreements are independent of one another, as reflected in the language of the Admission Agreement, indicating the execution of the Admission agreement was not contingent upon an Optional Arbitration Clause. The Optional Arbitration Clause stated:

"Any action, dispute, claim, or controversy, of any kind (tort, contract, equitable or statutory, including but not limited to claims of violation of resident's rights(now existing or hereafter arising between the parties, in anyway arising form or relating to this Agreement governing the Resident's stay a[t] the Facility, shall be resolved by binding arbitration.... **OPTIONAL: if the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only.**"

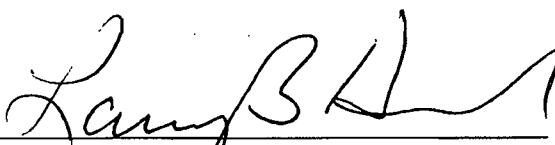
As previously stated the AHCCA provides for the health and wellbeing of an incapacitated adult, an Arbitration agreement is a legal document not for the care of an incapacitated adult, and is outside of the scope of the AHCCA. Therefore, because the Court finds

that the two documents did not merge and there was no legal authority for Ms. Alston-Woods to sign on Mr. Alston's behalf, equitable estoppel does not apply to the Arbitration agreement.

4. The FAA does not mandate the enforcement of the Arbitration Agreement

Under the Federal Arbitration Agreement ("FAA"), arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed in the sections above, there is no valid arbitration agreement because Ms. Alston-Wood did not have the legal authority to execute a valid arbitration agreement or health care admission agreement. Accordingly, the FAA does not apply.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Arbitration Agreement in question is unenforceable and Defendants' Motion to Dismiss is **DENIED**.



The Honorable Larry B. Hyman, Jr.

1-11, 2018
Conway, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	
)	
Orveletta Alston as Personal Representative of the Estate of Willie Earl Alston, Jr.,)	C/A No. 2017-CP- 26 1351
)	
)	
Plaintiff,)	COMPLAINT
)	(Jury Trial Demanded)
Versus)	
)	
Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10,)	
)	
Defendants.)	

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The Plaintiff, Orveletta Alston as Personal Representative of the Estate of Willie Earl Alston, Jr., complaining of the Defendants, Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 ("Defendants"), alleges as follows:

1. The Plaintiff is a citizen and resident of Horry County, South Carolina.
2. Upon information and belief, the Defendant, Conway Manor, LLC, is a business corporation organized and existing pursuant to the laws of the State of South Carolina which conducts business in Horry County, South Carolina at 3300 4th Avenue, Conway, South Carolina.
3. Upon information and belief, the Defendant, Raymond Tiller, is a citizen and resident of Horry County, South Carolina and is the administrator of Conway Manor, LLC.
4. The Defendants had the right and/or power to direct and control its employees and/or agents in the business of delivering care for a fee through skilled nursing facilities and they are personally, jointly and severally liable for the acts and omissions committed.
5. The Defendants delivered care for a fee and had authority, express or implied, to control the means and agents employed to execute care at the Defendants' facilities at all times during the residency of Willie Earl Alston, Jr.
6. Attached as Exhibit A is an expert affidavit specifying at least one negligent act.
7. This Court has personal and subject matter jurisdiction over this case and venue is proper

in this Court.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

8. The Plaintiff is informed and believes that at all times material to this Complaint the Defendants' employees and/or agents were acting on behalf of or, in place of the Defendants in making decisions regarding the care of Willie Earl Alston, Jr. Additionally, the Plaintiff is informed and believes that at all times material to this Complaint that all of the employees of the Defendants were acting within the course and scope of their employment in regard to their care and treatment of Willie Earl Alston, Jr.

9. On the application for the license in effect at the time of Willie Earl Alston, Jr.'s injury, Conway Manor, LLC, being sworn under oath, acknowledged that it was required to comply with the standards set forth in South Carolina Regulation 61-17 and further that understood in order to maintain a license to operate, it was required to comply with applicable State, Federal, and local laws, codes, and regulations applicable to the facility prior to Willie Earl Alston, Jr.'s injury.

10. The State of South Carolina required that Conway Manor, LLC have policies and procedures that accurately reflected actual practice regarding care, treatment, procedures, and services - including nursing services, the operation of the facility, and how Conway Manor, LLC was going to meet the specialized needs of the residents with Alzheimer's disease and/or related dementia such as Willie Earl Alston, Jr. - and the State of South Carolina required that Conway Manor, LLC make the policies and procedures available be accessible to staff. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

11. The State of South Carolina required that Conway Manor, LLC have a documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for Willie Earl Alston, Jr., based on assessment data, e.g., social services, which was to be implemented for the benefit of Willie Earl Alston, Jr. as well as other residents. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in

South Carolina via signing its application for the same under oath subject to penalty of perjury.

12. The State of South Carolina required that Conway Manor, LLC keep a record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, and directed that it was required to be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

13. Willie Earl Alston, Jr.'s injuries constituted reportable incidents.

14. The State of South Carolina required that Conway Manor, LLC keep a legible and complete medical record, to include and any all incidents involving Willie Earl Alston, Jr. as well as other residents. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

15. The State of South Carolina required Conway Manor, LLC to describe in its care plan for Willie Earl Alston, Jr. as well as other residents the services that Conway Manor, LLC was going to furnish to him, *i.e.*, what assistance Conway Manor, LLC was going to provide to him, how much assistance Conway Manor, LLC was going to provide to him, who at Conway Manor, LLC was going to provide the assistance, how often, and when. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

16. The State of South Carolina required that Conway Manor, LLC to administer treatment and services to Willie Earl Alston, Jr. as well as other residents in a caring and humane manner, *effectively* and *safely*, and staff were required to respond to a signal system call from a resident to provide care or assistance in a prompt manner. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its

application for the same under oath subject to penalty of perjury.

17. The State of South Carolina required Conway Manor, LLC to assure that Willie Earl Alston, Jr. did not develop pressure-related wounds unless the resident's clinical condition demonstrates that they were unavoidable and to address treatment of existing pressure-related wounds. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

18. The State of South Carolina required Conway Manor, LLC to take an interdisciplinary approach to decrease the risk of pressure-related wounds, and institute measures to prevent and treat wounds that are consistent with each resident's clinical condition, risk factors, and goals. Such actions were required to include but not be limited to: body position of bed or chair bound residents changed in accordance with the ICP; proper skin care provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders; and soiled or wet bed linen replaced promptly with clean, dry linen and clothing after being soiled. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

19. The State of South Carolina required Conway Manor, LLC to provide appropriate staff members in numbers and training to perform those duties that result in compliance with 61-17, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise, and to provide training and qualifications for the tasks performed in compliance with all State, Federal, and local laws, and current professional organizational standards. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

20. The State of South Carolina required Conway Manor, LLC to ensure that staff members Direct care staff members, in addition to meal service staff have at least the following qualifications: ability to render care and services to residents in an understanding and gentle manner; sufficient education to be able to perform their duties and have a working knowledge of regulations applicable to their scope of work. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

21. The State of South Carolina required Conway Manor, LLC to have direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs and that direct care staff be assigned only duties for which they are trained. Further, the State of South Carolina required Conway Manor, LLC to have licensed nurse staff members currently and continuously licensed to practice nursing in South Carolina during the period they are staff members, and that only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

22. The State of South Carolina required Conway Manor, LLC to have an adequate number of licensed nurses be on duty to meet the total nursing needs of residents. Licensed nursing staff were required to be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

23. The State of South Carolina required Conway Manor, LLC to ensure staff members were provided the necessary training to perform the duties for which they were responsible and that,

before performing any duties, all newly-hired staff members were to be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members were to be instructed in the provisions of S.C. Code Ann. Section 43-35-5 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in 61-17. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

24. The State of South Carolina required Conway Manor, LLC to ensure all staff were provided inservice training programs that identify training needs related to problems, needs, care of residents and infection control and were sufficient to assure staff's continuing competency. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

25. The State of South Carolina required Conway Manor, LLC to acknowledge its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

26. The State of South Carolina required Conway Manor, LLC to ensure all entries in the resident record were legible and complete, and separately authenticated and dated promptly by the individual, identified by name and discipline, responsible for providing or evaluating the service or care furnished. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

27. The State of South Carolina required Conway Manor, LLC to admit only individuals identified as appropriate for the level of care, services, or assistance offered. The facility was required to

establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations, and permitted to admit and retain only those individuals whose needs could be met by the accommodations and services for which the facility is licensed. Anyone who had a need for medical care for acute illness or injury that was beyond the scope of the facility to provide, and where hospitalization was consistent with the individual's condition was not permitted to be retained as a resident. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

28. The State of South Carolina required Conway Manor, LLC to have practices that promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices were required to be in compliance with applicable regulations and guidelines of the Occupational Safety and Health Administration, *e.g.*, the Bloodborne Pathogens Standard; the Centers for Disease Control and Prevention, *e.g.*, Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's South Carolina Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable State, Federal and local laws and regulations. The State of South Carolina required Conway Manor, LLC to have an infection control/QI committee that meets at least annually to address infection control issues consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping staff to assure compliance with 61-17 regarding infection control. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

29. The State of South Carolina required Conway Manor, LLC to have a written, implemented quality improvement program that provided effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility. Conway Manor, LLC acknowledged its awareness of this requirement as a condition precedent to having a license to operate a nursing home in South Carolina via signing its application for the same under oath subject to penalty of perjury.

30. Willie Earl Alston, Jr. was admitted to the Defendants' facility, Conway Manor, LLC, for long term residency on or about December 17, 2015.

31. While at the facility, the Defendants allowed Mr. Alston to develop preventable injuries which the Defendants had a duty to prevent, caused by a breach of that duty, including but not limited to pressure sores, which became infected, and suffer horrific, painful, disfiguring, permanent and life threatening injuries which caused great pain and suffering and death.

32. Upon information and belief, the Defendants were licensed under the laws of the State of South Carolina and were required to provide reasonable and prudent nursing home care to Willie Earl Alston, Jr.

33. The Defendants had an obligation to employ nursing assistants, nurses and orderlies who were qualified to render reasonable care to a patient in the condition of Willie Earl Alston, Jr. and in accordance with federal and state regulations as well as the representations made by the Defendants.

34. Additionally, pursuant to South Carolina law, the Defendants had a duty to ensure that care/services were rendered effectively and safely and precautions taken for residents with special conditions, e.g., Alzheimer's disease and/or related dementia, etc. and to provide appropriate assistance in activities of daily living were required to be provided to residents, as needed.

35. Furthermore, without limitation, the Defendants had a duty to comply with all current federal, state, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., Section 44-81-10, et seq., of the S.C. Code of Laws, 1976, as

amended, Resident's Bill of Rights, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, Section 43-35-5, et seq. as well as all local, state, and federal laws and current professional organizational standards.

36. Upon information and belief, the Defendants failed to assign sufficient and qualified staff to ensure that all necessary care was delivered to Willie Earl Alston, Jr.

37. Upon information and belief, the Defendants failed to ensure that the proper treatment and standard of care was delivered to Willie Earl Alston, Jr.

38. Upon information and belief, the Defendants failed to properly train, monitor and supervise the staff necessary to provide a reasonably prudent standard of care to Willie Earl Alston, Jr.

FOR A FIRST CAUSE OF ACTION
(Negligence)

39. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph and in their entirety.

40. The Defendants undertook the duty to render nursing home care to Willie Earl Alston, Jr. in accordance with the prevailing and acceptable professional standards of care for nursing homes and their employees and agents in the national community and as further required by the state and federal laws applicable to the same.

41. Notwithstanding undertaking that duty and while Willie Earl Alston, Jr. was under the care of the Defendants, the Defendants departed from prevailing and acceptable professional standards of care and treatment of Willie Earl Alston, Jr. and were thereby negligent, careless, grossly negligent, reckless and in violation of the duties owed to Willie Earl Alston, Jr., and they are liable for one or more of the following acts of omission or commission, any or all of which are departures from the prevailing and acceptable professional standards of care:

- a. In failing to comply with those provisions of 61-17 recited above and to which the Defendants' swore under oath subject to penalty of perjury that they would comply;
- b. In failing to properly monitor the resident's physical well-being while residing at the Defendants' facility;

- c. In failing to properly supervise the personnel and staff and employees at the Defendants' facility with regard to Willie Earl Alston, Jr.'s care;
- d. In failing to properly revise and modify plans of care for Willie Earl Alston, Jr. in response to Willie Earl Alston, Jr.'s needs;
- e. In failing to properly utilize equipment, including medications and devices to prevent and to minimize or reduce injuries resulting from improper care;
- f. In violating state and/or federal regulations requiring actions to protect the safety and health of Willie Earl Alston, Jr., so as to constitute negligence per se;
- g. In failing to ensure that the Defendants' personnel and employees had sufficient, adequate and current training, credentials and skills to properly prevent Willie Earl Alston, Jr. from suffering from injury and pain;
- h. In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the care and treatment of nutritional and infection control issues and fall prevention issues at the Defendants' facility, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them;
- i. In failing to properly and adequately assess, monitor and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to proper nutritional and infection control procedures and pressure ulcer prevention procedures;
- j. In failing to ensure that manuals, instructions and warnings relating to appropriate nutrition and infection control procedures and pressure ulcer prevention procedures were available to agents, servants and employees of the Defendants;
- k. In failing to properly train and educate its employees or, if properly trained and educated, in failing to allow its employees to exercise independent skill and judgment;
- l. In failing to ensure that Willie Earl Alston, Jr. had proper care;
- m. In failing to properly document significant clinical findings;
- n. In failing to properly document the medical records of Willie Earl Alston, Jr.;
- o. In failing to follow and ensure that its employees follow the South Carolina Residence Bill of Rights for Long Term Care Facilities, South Carolina Department of Health and Environmental Control Regulation 61-84;
- p. In failure to provide sufficient number of personnel to meet the needs of residents;
- q. In failure to ensure that a resident maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical conditions demonstrates that this is not possible;

- r. In failing to ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source are reported immediately to the administrator of the facility and to other officials in accordance with State Law through established procedures (including to the State survey and certification agency);
- s. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- t. In failing to conduct assessments promptly after a significant change in the resident's physical or mental condition;
- u. In failing to notify family members or authorities after incidents;
- v. In failing to transfer Willie Earl Alston, Jr. to a higher level of care as needed, and
- w. In such other particulars as may be ascertained through discovery or shown at trial.

42. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, Willie Earl Alston, Jr. suffered from severe debilitating injuries which resulted in permanent decline, as a result of which Willie Earl Alston, Jr. has suffered severe and extreme emotional distress, anxiety, physical injuries, medical bills, the likes of which no person should endure, for which Willie Earl Alston, Jr. is entitled to recover in an amount to be determined by a jury at the trial of this action.

FOR A SECOND CAUSE OF ACTION

(Negligence per se)

43. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in their entirety.

44. The Defendants are a long term health care providers who have a duty to abide by certain federal and state regulations in the care and treatment of their residents.

45. The federal and state regulations combine to form minimum standards of care which the Defendants must meet and exceed in order to ensure proper treatment of patients, including, specifically, Willie Earl Alston, Jr.

46. The Defendants failed to abide by the standards, rule and regulations promulgated by the United States Government and the State of South Carolina in their treatment and care of Willie Earl Alston, Jr.

47. The standards, rule and regulations promulgated by the United States Government and the State of South Carolina were specifically enacted for the benefit of the class of persons for which Willie Earl Alston, Jr. was a member.

48. As a direct and proximate result of the Defendants' negligence, recklessness, willfulness and wantonness in failing to abide by the standards of care, rules and regulations standards, rule and regulations promulgated by the United States Government and the State of South Carolina, Willie Earl Alston, Jr. suffered severe injuries as described above, constituting negligence per se.

FOR A THIRD CAUSE OF ACTION
(Fraud and Misrepresentation)

49. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

50. The Defendants, through deception, artifice, and circumvention, successfully defrauded Plaintiff, who trustingly submitted to care at the Defendants' facilities on the basis of explicit and implicit representations:

- a. That the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care;
- b. That the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees;
- c. That the Defendants would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him;
- d. Such other misrepresentations as may be set forth above in this Complaint or as may later be set forth;

51. At the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true.

52. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing themselves or their relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.

53. The Defendants fraudulently concealed its inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.

54. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.

55. At the time the Defendants made such representations, they knew such affirmative claims of service were false.

56. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.

57. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.

58. As a result of the Defendants' fraud, misrepresentations and concealments, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

59. As a proximate cause of the Defendants' fraud and misrepresentation, the Plaintiff suffered physical injuries, pain and suffering as previously alleged.

FOR A FOURTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

60. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

61. The Plaintiff and Defendants are "persons" within the meaning of Section 39-5-10(a), Code of Laws of South Carolina, 1976, as amended.

62. The Defendants, by conducting business in the state of South Carolina, are engaged in commerce within the meaning of Code Section 39-5-10(b).

63. The Defendants' actions described in this Complaint constitute unfair and deceptive practices within the meaning of Code Section 39-5-20(a), including but not limited to:

- a. Representing to the general public and to the Plaintiff and his family: that the Defendants would comply on a continuing basis with those licensure requirements, regulations, laws and professional standards designed to assure the Plaintiff received safe and adequate care; that the Defendants would adequately staff the skilled nursing facility and he would enjoy confident and adequately trained employees; that they would provide high quality professional care and would accurately and truthfully document the condition of the Plaintiff and the care rendered to him; and such other particulars as are set forth above in this Complaint or may be shown through discovery or trial;
- b. Further, at the time of the Plaintiff's admission to care, the Defendants promoted and disseminated the above representations and information which would lead the Plaintiff, his family, and other similarly situated consumers to believe the above representations were true. The Defendants purposefully disseminated such representations and promotions in order to induce the Plaintiff, his family, and others like them into placing himself or his relatives in the exclusive control and custody of the Defendants, and once there, allowing such persons to remain.
- c. The Defendants fraudulently concealed their inability to care for the Plaintiff according to acceptable standards required by law and represented by the Defendants, and the representations made were false.
- d. The representations made and concealments done by the Defendants were material to the Plaintiff and his family.
- e. At the time the Defendants made such representations, they knew such affirmative claims of service were false.
- f. The Plaintiff and his family were unaware of the falsity of the representations made by the Defendants.
- g. The Plaintiff and his family had a right to rely on the representations and concealments made by the Defendants.
- h. As a result of the Defendants' fraud, misrepresentations and concealments and deceptive and unfair representations, the Plaintiff subsequently suffered damages and injuries while a patient/resident at the Defendants' facilities.

64. The Defendants' acts are capable of repetition, and, upon information and belief, have been repeated with other residents.

65. The Defendants' conduct adversely affects the public interest of South Carolina.

66. The Defendants knew or reasonably should have known their conduct violated the Unfair Trade Practices Act.

67. As a direct, foreseeable, and proximate result of Defendants' unfair and deceptive practices, the Plaintiff have suffered an ascertainable loss of money, physical injuries, pain and suffering as previously alleged.

68. The Plaintiff is entitled to recover his actual damages, which amount should be trebled, pursuant to South Carolina law, together with interest and attorneys' fees.

FOR A FIFTH CAUSE OF ACTION
(Negligence - Wrongful Death)

69. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

70. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by the Defendants and their agents, servants and/or employees, Willie Earl Alston, Jr. suffered from severe debilitating injuries which resulted in his death, as a result of which Willie Earl Alston, Jr.'s statutory beneficiaries have lost the aid, comfort, support, society and companionship of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, the likes of which no person should endure, for which the Plaintiff is entitled to recover on behalf of statutory beneficiaries, actual and punitive damages pursuant to section 15-51-10, et. seq., Code of Laws of South Carolina (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A SIXTH CAUSE OF ACTION
(Negligence - Survivorship)

71. The Plaintiff realleges and reiterates all previous paragraphs as fully as if set forth in this paragraph in its entirety.

72. Willie Earl Alston, Jr.'s estate, as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, has incurred expenses in the form of funeral and burial expenses. The Plaintiff is further informed and does believe that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of the Defendants, as stated, Willie Earl Alston, Jr. suffered fear, physical pain, and suffering, medical expense and mental and emotional distress and anguish in the time before his death, for which Willie Earl Alston, Jr.'s estate is entitled to an award of actual and punitive damages pursuant to section 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

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

B7 T
D. Nathan Hughey (SC Bar #68409)
A. Stuart Hudson (SC Bar #71691)
Bradley H. Banyas (SC Bar #101668)
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Attorneys for the Plaintiff

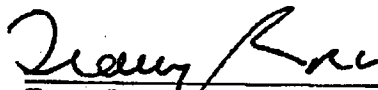
2/24, 2017
Mt. Pleasant, South Carolina

EXHIBIT A

- Failing to turn and reposition Willie Earl Alston, Jr.
- Failing to develop and maintain an appropriate interim care plan.
- Failing to recognize treat and heal pressure ulcers.
- Failing to meet the standard care of reasonably prudent skilled nursing facilities, management companies, nurses, owners and operators.

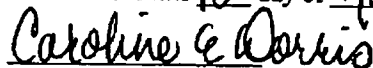
8. Additionally, it is my opinion that Willie Earl Alston, Jr.'s injuries were proximately caused by the Defendants' deviations.

9. This is not a complete list of all deviations from the standard of care which I have found in reviewing these records. As a result, I reserve the right to modify, change or supplement these opinions in the future.



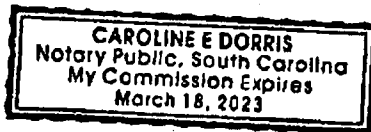
Tracey Pourmoghadam, RN

Sworn to me this 15th day of August, 2016.



Notary Public for South Carolina

My commission expires: March 18, 2023



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

ANSWER

v.)

C.A. No.: 2017-CP-26-1351

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)
_____)

Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 (“Defendants”),
answering the Complaint of Plaintiff, do hereby allege as follows:

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

FOR A FIRST DEFENSE

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

3. Defendants admit the allegations contained in Paragraphs 2 and 3 of the
Complaint, except that Conway Manor, LLC is a limited liability company, not a corporation.

4. In response to the allegations contained in Paragraph 4 of the Complaint
Defendants admit that Conway Manor, LLC and Raymond Tiller had the right and/or power

to exercise certain direction and control over employees of Conway Manor, LLC. Defendants deny the remaining allegations contained in Paragraph 4 of the Complaint.

5. In response to the allegations contained in Paragraph 5 of the Complaint, Defendants admit that Conway Manor, LLC delivered care for a fee and had authority to control some of the means and agents employed to execute care at Conway Manor Nursing Home at all times during the residency of Willie Earl Alston, Jr. The remaining allegations contained in Paragraph 5 of the Complaint are denied.

6. In response to the allegations contained in Paragraph 6 of the Complaint, Defendant admits that Plaintiff has attached as Exhibit A an expert affidavit. Defendant denies the allegations contained in said Affidavit.

7. In response to the allegations contained in Paragraph 7 of the Complaint, Defendants admit that this Court has personal jurisdiction over Conway Manor, LLC and Raymond Tiller. Defendants deny the remaining allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit, upon information and belief, the allegations contained in Paragraph 8 of the Complaint.

9. In response to the allegations contained in Paragraph 9 of the Complaint, Defendants crave reference to the Application for License and deny any allegations inconsistent therewith.

10. In response to the allegations contained in Paragraphs 10, 11 and 12 of the Complaint, such allegations constitute legal conclusions to which no response is required. To the extent a response is required, Defendants crave reference to the License

Application and deny any allegations inconsistent therewith.

11. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 13 of the Complaint, and therefore the same are denied.

12. The allegations contained in Paragraphs 14 – 29 state legal conclusions to which no response is required. To the extent any response is required, the Defendants crave reference to the Application for License and deny any allegations inconsistent therewith.

13. Defendants admit the allegations contained in Paragraph 30 of the Complaint.

14. Defendants deny the allegations contained in Paragraph 31 of the Complaint.

15. In response to the allegations contained in Paragraph 32 of the Complaint, Defendants admit that Conway Manor, LLC and Raymond Tiller were and are licensed under the laws of the State of South Carolina. In response to the remaining allegations contained in Paragraph 32 of the Complaint, Defendants state that Conway Manor, LLC was required to provide care to Willie Earl Alston, Jr. that met the applicable standard of care.

16. In response to the allegations contained in Paragraph 33 of the Complaint, Defendants admit that Conway Manor, LLC had an obligation to employ nurses and certified nursing assistants who were qualified to render care in accordance with the applicable standard of care to a patient in the condition of Willie Earl Alston, Jr. and in accordance with federal and state regulations. Defendants are without sufficient information upon which to form a true and accurate belief as to the remaining allegations

contained in Paragraph 33 of the Complaint, therefore the same are denied.

17. In response to the allegations contained in Paragraph 34 of the Complaint, Defendants admit that Defendants had a duty to provide care consistent with the applicable standard of care. Defendants deny the remaining allegations contained in Paragraph 34 of the Complaint.

18. In response to the allegations contained in Paragraph 35 of the Complaint, Defendants admit that Defendants had a duty to comply with applicable federal, state and local laws. Defendants deny the remaining allegations contained in Paragraph 35 of the Complaint.

19. Defendants deny the allegations contained in Paragraphs 36, 37 and 38 of the Complaint.

20. In response to the allegations contained in Paragraph 39 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

21. In response to the allegations contained in Paragraph 40, Defendants admit that Conway Manor, LLC undertook the duty to render nursing home care to Willie Earl Alston, Jr. in accordance with the applicable standard of care and as further required by applicable laws. Defendants deny the remaining allegations contained in Paragraph 40.

22. Defendants deny the allegations contained in Paragraphs 41 and 42 of the Complaint.

23. In response to the allegations contained in Paragraph 43 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

24. In response to the allegations contained in Paragraph 44 of the Complaint,

the Defendants admit that Conway Manor, LLC is a long-term health care provider which has a duty to abide by certain federal and state regulations in the care and treatment of its residents. Defendants deny the remaining allegations contained in Paragraph 44 of the Complaint.

25. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraph 45 of the Complaint, and therefore the same are denied.

26. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

27. Defendants are without sufficient information upon which to form and true and accurate belief as to the allegations contained in Paragraph 47 of the Complaint, and therefore the same are denied.

28. Defendants deny the allegations contained in Paragraph 48 of the Complaint.

29. In response to the allegations contained in Paragraph 49 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

30. Defendants deny the allegations contained in Paragraph 50 of the Complaint.

31. Defendants are without sufficient information upon which to form a true and accurate belief as to the allegations contained in Paragraphs 51 and 52 of the Complaint, and therefore the same are denied.

32. Defendant denies the allegations contained in Paragraphs 53 – 59.

33. In response to the allegations contained in Paragraph 60 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

34. The allegations contained in Paragraphs 61 and 62 of the Complaint set forth

legal conclusions to which no response is required. To the extent a response is required, Defendants deny that the South Carolina Unfair Trade Practice Act applies in this circumstance.

35. Defendants deny the allegations contained in Paragraphs 63, 64 and 65 of the Complaint.

36. The allegations contained in Paragraph 66 of the Complaint are denied, and Defendants affirmatively allege that their conduct did not violate the Unfair Trade Practices Act.

37. Defendants deny the allegations contained in Paragraph 67 and 68 of the Complaint.

38. In response to the allegations contained in Paragraph 69 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

39. Defendants deny the allegations in Paragraph 70 of the Complaint.

40. In response to the allegations contained in Paragraph 71 of the Complaint, Defendants hereby reallege and incorporate the allegations set forth above.

41. Defendants deny the allegations contained in Paragraph 72 of the Complaint, and further deny that Plaintiff is entitled to any relief requested in the Complaint.

FOR A SECOND DEFENSE

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

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

FOR A THIRD DEFENSE

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

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

FOR A FOURTH DEFENSE

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

47. Plaintiff's recovery in this matter, if any, is limited by and subject to the provisions of the South Carolina Noneconomic Damage Awards Act of 2005 which is codified at §15-32-200, *et seq* of the South Carolina Code of Laws (1976 as amended), and all pertinent provisions of that Act are pled as an affirmative defense in this action.

FOR A FIFTH DEFENSE

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

49. Defendants reserve their rights arising under §15-32-520, Code of Laws of South Carolina, as amended, as to all issues described therein, and these Defendants

plead the limitations on punitive damages as set forth in §15-32-530, Code of Laws of South Carolina, as amended, as a defense.

FOR A SIXTH DEFENSE

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

51. This Court may lack personal jurisdiction over one or more of the Defendants identified and John and Jane Does 1 – 10, and this action should therefore be dismissed against any such individuals once identified pursuant to SCRPC 12(b)(2).

FOR A SEVENTH DEFENSE

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

53. Plaintiff executed Arbitration Agreements agreeing to submit any controversies or disputes to Arbitration. Thus, this case should be dismissed or stayed pursuant to SCRPC 12(b)(1), 12(b)(3) and 12(b)(6), as well as pursuant to applicable State and Federal law, and this case should be submitted to Arbitration.

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

IN THE EVENT IT IS DETERMINED BY THE COURT THAT THE PARTIES ARE NOT BOUND TO ARBITRATE THIS CASE, DEFENDANTS HEREBY DEMAND A TRIAL BY JURY.

HOLCOMBE BOMAR, P.A.

By: W. McElhanev White

W. McElhanev White, SC Bar 8552

Post Office Drawer 1897

Spartanburg, SC 29304

(864) 594-5300

April 12, 2017

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

v.)

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)

NOTICE OF AND MOTION TO
STAY ACTION AND COMPEL
ARBITRATION AND FOR
PROTECTIVE ORDER

C.A. No.: 2017-CP-26-1351

TO: D. NATHAN HUGHEY ANDEARNEST LATONY DESSAUSURE, ATTORNEYS
FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, through their undersigned counsel, will move, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the presiding judge of the Court of Common Pleas for Horry County, for an Order staying this action and compelling arbitration. More particularly, this Motion is based on the terms and provisions of the arbitration clause found in the Admissions Agreement (attached hereto as Exhibit A), and the Resident and Facility Binding Arbitration Agreement (attached hereto as Exhibit B), executed at the time of Willie Earl Alston, Jr.'s admission to Conway Manor, LLC on December 17, 2015. These agreements expressly provide that all disputes will be resolved by binding arbitration.

Accordingly, this action should be stayed and the Court should order that the dispute between the parties be arbitrated in accordance with the terms of the arbitration agreements described above. This motion is made pursuant to Rules 12(b)(1), 12(b)(3) and 12(b)(6),

SCRCP; the Federal Arbitration Act, 9 U.S.C. § 1, et seq.; and all applicable federal and South Carolina statutory and case law.

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

Defendants also move for a protective order under SCRCP 26(c) that the discovery served by Plaintiff on Defendants on March 9, 2017 not be had. Because this case is subject to binding arbitration, it is improper for Plaintiff to serve Defendants with discovery requests under the South Carolina Rules of Civil Procedure.

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

HOLCOMBE BOMAR, P. A.

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

Attorneys for Defendants

June 21, 2017
Spartanburg, South Carolina

EXHIBIT A

ADMISSION AGREEMENT

This is an agreement between _____ (Resident") and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

Admission and Consent To Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders. The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

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

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident. The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

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

KAW Initial
WPA

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

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

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

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

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

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

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

W E A Initial
K A W

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

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

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

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of **\$210 Private Semi Private \$200** per day as Basic Charges. Routine care and services included in the per diem rate are:

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

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

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

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

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

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

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

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

*** Physical, Occupational and Speech Therapy and Private Duty**

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

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

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

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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W.E.A.

WILLIE ALSTON

12/17/2015

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

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

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

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

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

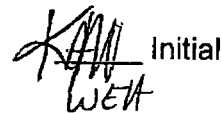
Notice: Any notice, request, consent, waiver or other communication provided for or required by this Agreement shall be in writing and shall be delivered in person or sent by first-class mail, postage prepaid, return receipt requested, and deposited in the United States mail, addressed as follows:

Facility: Conway Manor
3300 Fourth Ave
Conway SC 29526

Resident: _____

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

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

 Initial

ELECTRONICALLY FILED - 2017 Jun 21 3:03 PM - HORRY - COMMON PLEAS - CASE#2017TCP2601351

Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

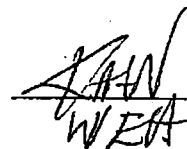
That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits .

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

 Initial

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

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

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

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

By: Wendy Lynn
Signature of Facility Representative _____ Date _____

Signature of Patient/Resident _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

Responsible Party _____ Date _____

Richard Paul Wood
Signature of Responsible Party _____ Date 12/17/15

Responsible Party is acting as: _____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing
Address _____

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

The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

EXHIBIT B

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(READ CAREFULLY)**

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by Conway Manor and Willie Alston Sr (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

WILLIE ALSTON

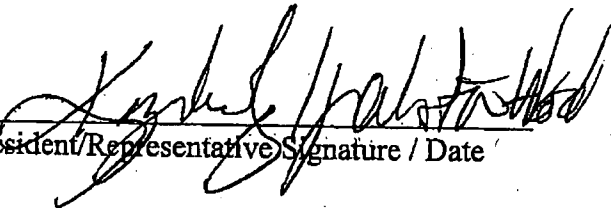
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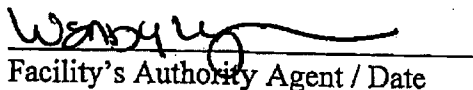
Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.

This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. WEA (resident's initials).
LAW

The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.


Resident/Representative Signature / Date


Facility's Authority Agent / Date

Wendy Lynch, Admissions Director

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(EXPLANATION SHEET)**

A Resident and Facility Binding Arbitration Agreement (the "Arbitration Agreement") is attached to this Explanation Sheet. Binding arbitration is a form of dispute resolution in which the parties involved in a dispute present evidence and arguments to an arbitrator rather than to a judge and jury. The arbitrator then reaches a decision regarding the dispute, and the parties are bound by that decision.

By entering into the Arbitration Agreement, you will give up and waive your constitutional right to have any dispute or claim against Conway Manor decided in a court of law before a judge and jury. We encourage you to ask any questions you may have regarding the Arbitration Agreement.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

AFFIDAVIT OF RAYMOND TILLER

v.)

C.A. No.: 2017-CP-26-1351

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)
_____)

PERSONALLY APPEARED before me Raymond Tiller, who being sworn, deposes and says as follows:

1. I am an adult over the age of eighteen years. I submit this affidavit in connection with Conway Manor, LLC, Raymond Tiller and John and Jane Does' 1-10 ("Defendants") Motion to Stay Action, Compel Arbitration and for a Protective Order in the above-captioned action. I am fully competent to make this declaration based upon my personal knowledge and knowledge obtained through review of documents. If called to testify, I would state as follows.

2. I have been the Administrator of Conway Manor, LLC ("Conway Manor") from July 1, 2005 to the present. In this role, I was required to have knowledge about the business operations of Conway Manor. Conway Manor was the licensed owner and operator of the nursing facility known as Conway Manor in Conway, South Carolina where Willie Earl Alston, Jr. ("Mr. Alston") resided from December 17, 2015 until April 20, 2016.

3. Conway Manor was a Medicare certified facility in 2015 and 2016. Medicare is a federally administered program. In 2015 and 2016, Medicare program payments constituted 24% of total revenues for Conway Manor.

4. Conway Manor was a Medicaid certified facility in 2015 and 2016. The South Carolina Medicaid Program is partially funded by the federal government. In 2015, South Carolina Medicaid Program payments constituted 61% of total revenues for Conway Manor, and in 2016, the South Carolina Medicaid Program payments constituted 59% of total revenues for Conway Manor.

5. Conway Manor's requests for private insurance payments for services rendered to residents of Conway Manor were sent in hard copy form via U.S. Mail to various private insurance companies, and insurance payments were issued by these insurance companies. The private insurance companies' offices that processed payments to Conway Manor are located in various states outside of South Carolina. In 2015, private insurance payments constituted 8% of total revenues for Conway Manor, and in 2016, private insurance payments constituted 7% of total revenues for Conway Manor.

6. The majority of food served to Conway Manor residents in 2015 and 2016 was supplied by US Foods from Charlotte, North Carolina.

7. In 2015 and 2016 Conway Manor utilized (1) Select Labs from Greensboro, North Carolina for its lab services; (2) Mobilex from Baltimore, Maryland for its radiology services; (3) Airgas from Atlanta, Georgia for its oxygen rental and supplies; (4) Briggs from Des Moines, Iowa for its medical forms; (5) Reliable from Asheville, North Carolina for the rental of specialty beds and pressure relief mattresses; (6) Ecolab from New York, New York for

its laundry supplies; and (7) Briggs from Des Moines, Iowa, and Classic Engraving from Stockwell, Indiana, for business office supplies and furniture.

8. Conway Manor utilized other monthly services from outside South Carolina, including American Heathtech whose corporate office is in Ridgeland, Mississippi.

9. Conway Manor had 190 licensed beds available in 2015 and 2016 for patient care, all of which were certified by, and participated in, the Medicare and Medicaid programs.

10. Conway Manor provided care and services to some residents who came to Conway Manor from other states in 2015 and 2016.

11. On December 15, 2015, the day of Mr. Alston's admission to Conway Manor, Mr. Alston, through his daughter and responsible party, Kimberly Alston-Wood, entered into an Admission Agreement which contained an arbitration clause (see attached Exhibit A), along with a separate arbitration agreement (see attached Exhibit B). These documents were all part of the admissions package and were kept in the course of a regularly conducted business activity, and it was the regular practice of Conway Manor to have these documents executed at the time of a resident's admission to the facility.

12. There is no written notice in Mr. Alston's file from Kimberly Alston-Wood, or anyone else from that matter, seeking to rescind these agreements.

13. The Admission Director for Conway Manor at the time of Mr. Alston's admission was Wendy Lynch. She is no longer an employee of Conway Manor.


14. Wendy Lynch executed the documents attached hereto on behalf of Conway Manor, and she was authorized to do so in her position as Admission Director for Conway Manor.

FURTHER DEPONENT SAYETH NOT.



Raymond Tiller

SWORN to and subscribed before me this 20 day of June, 2017.



(SEAL)
Notary Public for South Carolina

My Commission Expires: 9.12.23

EXHIBIT A

ADMISSION AGREEMENT

This is an agreement between _____ (Resident") and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of \$210 Private Semi Private \$200 per day as Basic Charges. Routine care and services included in the per diem rate are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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

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

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

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

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

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

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

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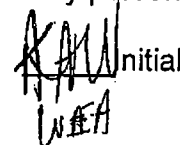
notify the designated Healthcare Proxy, surrogate, or agent under a Durable Power of Attorney, if any. If neither has been appointed, the Facility and/or Resident's Responsible Party shall designate or determine a surrogate or Proxy in accordance with South Carolina law. The Facility and Resident acknowledge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

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

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

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

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

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

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

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

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

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

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

Facility: Conway Manor
3300 Fourth Ave
Conway SC 29526

Resident: _____

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

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

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Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

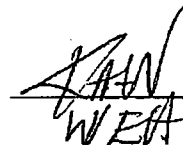
That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits

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

 Initial

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

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

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

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

By: Wendy Lynn
Signature of Facility Representative _____ Date _____

Signature of Patient/Resident _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

Responsible Party _____ Date _____

Kymberly Hall Ford
Signature of Responsible Party _____ Date 12/17/15

Responsible Party is acting as: _____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing
Address _____

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

The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

EXHIBIT B

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(READ CAREFULLY)**

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by Conway Manor and Willie Alston Sr (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

WILLIE ALSTON

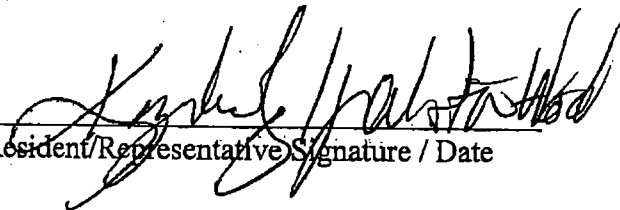
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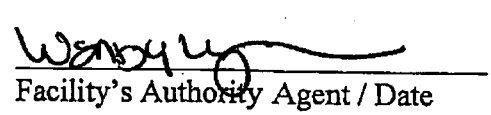
Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.

This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. WEA (resident's initials)
LAW

The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.


Resident/Representative Signature / Date


Facility's Authority Agent / Date

Wendy Lynch, Admissions Director

ELECTRONICALLY FILED - 2017 Jun 21 4:04 PM - Horry - COMMON PLEAS - CASE#2017CP2601351

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(EXPLANATION SHEET)**

A Resident and Facility Binding Arbitration Agreement (the "Arbitration Agreement") is attached to this Explanation Sheet. Binding arbitration is a form of dispute resolution in which the parties involved in a dispute present evidence and arguments to an arbitrator rather than to a judge and jury. The arbitrator then reaches a decision regarding the dispute, and the parties are bound by that decision.

By entering into the Arbitration Agreement, you will give up and waive your constitutional right to have any dispute or claim against Conway Manor decided in a court of law before a judge and jury. We encourage you to ask any questions you may have regarding the Arbitration Agreement.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

AFFIDAVIT OF WENDY LYNCH

v.)

C.A. No.: 2017-CP-26-1351

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)
_____)

PERSONALLY APPEARED before me Wendy Lynch, who being sworn, deposes and says as follows:

1. I am an adult over the age of eighteen years. I submit this affidavit in connection with the Motion to Stay Action and Compel Arbitration of Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 ("Defendants") in the above-captioned action. I am fully competent to make this declaration based upon my personal knowledge and knowledge obtained through review of documents. If called to testify, I would state as follows.

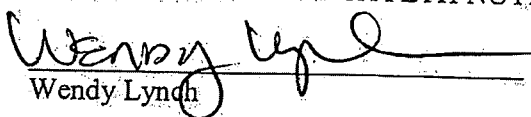
2. I was the Admissions Coordinator for Conway Manor, LLC ("Conway") in December 2015 when Willie Earl Alston, Jr. ("Mr. Alston") was admitted to Conway.

3. Part of my role as Admissions Coordinator was to meet with incoming residents or their families to explain the admissions process, the admissions paperwork, and oversee the execution of the Admission Agreement and other admissions paperwork.

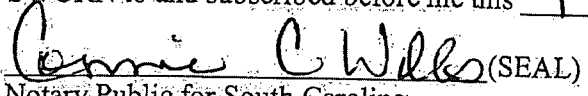
4. I have been provided, and have reviewed Mr. Alston's Admission Agreement, a copy of which is attached as Exhibit A to this affidavit, as well as the Resident and Facility Binding Arbitration Agreement which is attached as Exhibit B to this affidavit.

5. On December 17, 2015, the day of Mr. Alston's admission to Bayview, Mr. Alston, through his daughter and responsible party, Kimberly Alston-Wood, entered into the Admission Agreement, Resident and Facility Binding Arbitration Agreement, and other admission documents. The Admission Agreement and Resident and Facility Binding Arbitration Agreement were part of the admissions package and were kept in the course of a regularly conducted business activity, and it was the regular practice of Conway to have these documents executed at the time of a resident's admission to the facility.

6. I executed these documents on behalf of Conway, and I was authorized to do so in my position as Admissions Coordinator.

FURTHER DEPONENT SAYETH NOT.

Wendy Lynch

SWORN to and subscribed before me this 7th day of June, 2017.

 (SEAL)
Notary Public for South Carolina

My Commission Expires: 3.11.2023

EXHIBIT A

WILLIE ALSTON

12/17/2015

ADMISSION AGREEMENT

This is an agreement between _____ (Resident") and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

Admission and Consent To Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders. The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

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

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident. The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

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

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

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

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

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

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

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

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

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

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

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

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of \$210 Private Semi Private \$200 per day as Basic Charges. Routine care and services included in the per diem rate are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Facility: Conway Manor
3300 Fourth Ave
Conway SC 29526

Resident: _____

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

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

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Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as-needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards.

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits.

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

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

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

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

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

By: Wendy Lynch
Signature of Facility Representative _____ Date _____

Signature of Patient/Resident _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

Responsible Party _____ Date _____

Stephene Hall Stewart
Signature of Responsible Party _____ Date 12/17/15

Responsible Party is acting as:
_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing
Address _____

If the Resident signs with an "x" there must be two (2) witnesses.
The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

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EXHIBIT B

WILLIE ALSTON

12/17/2015

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(READ CAREFULLY)**

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by Conway Manor and Willie Alston Sr (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

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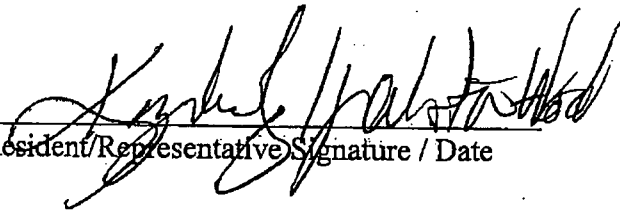
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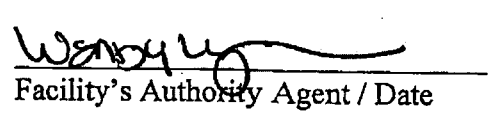
Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.

This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. WEA (resident's initials).
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The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.


Resident/Representative Signature / Date


Facility's Authority Agent / Date

Wendy Lynch, Admissions Director

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**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(EXPLANATION SHEET)**

A Resident and Facility Binding Arbitration Agreement (the "Arbitration Agreement") is attached to this Explanation Sheet. Binding arbitration is a form of dispute resolution in which the parties involved in a dispute present evidence and arguments to an arbitrator rather than to a judge and jury. The arbitrator then reaches a decision regarding the dispute, and the parties are bound by that decision.

By entering into the Arbitration Agreement, you will give up and waive your constitutional right to have any dispute or claim against Conway Manor decided in a court of law before a judge and jury. We encourage you to ask any questions you may have regarding the Arbitration Agreement.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

v.)

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)

MEMORANDUM IN
SUPPORT OF MOTION TO
STAY ACTION AND COMPEL
ARBITRATION AND FOR
PROTECTIVE ORDER

C.A. No.: 2017-CP-26-1351

Defendants Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 (“Defendants”), submit this Memorandum in Support of their Motion to Stay Action and Compel Arbitration and for Protective Order pursuant to Rules 12(b)(1), 12(b)(3) and 12(b)(6), SCRCP; the Federal Arbitration Act, 9 U.S.C. § 1, et seq.; and all applicable Federal and South Carolina statutory and case law.

INTRODUCTION

On December 17, 2015, Kimberly Alston-Wood (Ms. Alston-Wood), as daughter and responsible party, executed an Admission Agreement (“Admission Agreement”) on behalf of Willie Earle Alston, Jr. (“Mr. Alston”) for Mr. Alston’s admission to Conway Manor, LLC (“Conway Manor”). Conway Manor was the licensed operator of the Conway Manor nursing home during Mr. Alston’s residency. Orveletta Alston, as Personal Representative of the Estate of Willie Earle Alston, Jr. (“Plaintiff”), claims Mr. Alston suffered from wounds during his time at Conway Manor.

Plaintiff filed her Complaint on March 2, 2017 alleging causes of actions for negligence, negligence per se, fraud and misrepresentation, violation of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship. Plaintiff bases her claims on Mr. Alston's care and treatment while a resident of Conway Manor. (See Complaint in the Court's file).

Defendants seek an order staying this action and compelling Plaintiff to arbitrate her claims against Defendants. The Admission Agreement contained an arbitration clause which required the arbitration of any action, dispute, claim or controversy of any kind. (See Admission Agreement attached as Exhibit A; page 35). Wendy Lynch, as Admissions Coordinator, executed the Admission Agreement on behalf of Conway Manor. (Affidavit of Wendy Lynch; attached hereto as Exhibit B). Pursuant to the arbitration clause in the Admission Agreement, the parties agreed to arbitrate any disputes arising out of Mr. Alston's care and treatment at Conway Manor.

Plaintiff has refused to arbitrate in accordance with the terms of the Admission Agreement and these Defendants now move this Court to issue an Order staying these proceedings and enforcing the Admission Agreement by referring this matter to arbitration.

FACTUAL BACKGROUND

ARGUMENT

- I. **There is an Enforceable Arbitration Agreement**
 - a. **The Plain Language of the Agreement Binds Plaintiff**

On December 17, 2015, Ms. Alston-Wood executed the Admission Agreement on behalf of Mr. Alston. (See Admission Agreement; Affidavit of Lynch, ¶ 5). The Arbitration Clause provided:

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

Ms. Alston-Wood did not mark out this clause. By signing as the daughter and responsible party of Mr. Alston, Mr. Alston and all those claiming through him were bound to the arbitration clause.

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

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

All the Plaintiff's claims are dependent on the duties which arise from the terms of the Admission Agreement. Plaintiff cannot disclaim the arbitration clause which is a part of the Admission Agreement, while at the same time assert claims arising under

other terms of the Admission Agreement, and Plaintiff should be equitably estopped from doing so.

The doctrine of equitable estoppel “exists to prevent a litigant from unfairly receiving the benefit of a contract while at the same time repudiating what it believes to be a disadvantage in the contract, namely the contractual arbitration provision.” Southern Ill. Beverage, Inc. v. Hansen Beverage Co., 2007 WL 3046273 at *11 (S.D. Ill. 2007). The Fourth Circuit has held that “no party suing on a contract should be able to enforce certain contract provisions while simultaneously attempting to avoid the terms of an arbitration provision therein.” United States v. Bankers Ins. Co., 245 F.3d 315, 323 (4th Cir. 2001); see also Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 418 (4th Cir. 2000) (“To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.” (internal quotation marks omitted)). It would be manifestly inequitable to permit a party to claim the other has failed to perform on its contractual obligations, while at the same time allowing that party to avoid the arbitration provisions of the contract upon which the party bases its claims, when such claims are in the scope of the arbitration provisions. Hughes Masonry Co. v. Greater Clark County School Bldg. Corp., 659 F.2d 836, 838-39 (7th Cir. 1981). In other words, Plaintiff cannot “have it both ways” by relying upon certain terms of the Admission Agreement when it works to his advantage and repudiating others when it works to his disadvantage. Id.

In the case THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011), the United States District Court of South Carolina addressed

this issue directly. Deborah Wiggins executed an admissions contract for the admission of her father, Earl Hall, into the Magnolia Manor nursing home. After a dispute arose, Magnolia Manor moved to compel arbitration of the dispute. Wiggins countered by arguing the admissions contract was unenforceable because there was nothing in the record to indicate she had authority to act as agent for her father, to legally bind her father, or to waive her father's right to a jury trial. One of Magnolia Manor's arguments in response was that Wiggins, as personal representative of her father's estate, was estopped from denying the contract formation. Id. at *5.

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

Plaintiff in the instant case has brought claims arising from services rendered to Mr. Alston under the Admission Agreement between the parties. The Plaintiff's allegations fall within the scope of the arbitration clause in the Admission Agreement between the parties. In accordance with the foregoing law, Plaintiff cannot assert claims against these Defendants arising under the Admission Agreement while repudiating the arbitration clause. Plaintiff should be estopped from doing so, and this Court should

enforce the Admission Agreement and its arbitration clause by staying this action and compelling arbitration.¹

c. Mr. Alston is a Third-Party Beneficiary

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

Mr. Alston is therefore obligated to arbitrate any claims within its scope, regardless of whether those claims are brought by a legal representative. See Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008.) (holding that a non-signatory, deceased mother, was an intended third-party beneficiary of a nursing home admission agreement that included an arbitration provision; and the arbitration provisions were enforceable against her daughter, who signed the admission agreement, since it was evident that the admissions agreement clearly was intended to provide benefits to her mother as a resident of the facility; accordingly the court held that mother was a third-party beneficiary of the contract;

¹ It should be noted that both South Carolina's Supreme Court and Court of Appeals addressed equitable estoppel in Coleman v. Marnier Health Care, Inc. et al., 407 S.C. 346, 755 S.E.2d 450 (2014), and Thompson v. Pruitt Corporation, 416 S.C. 43, 784 S.E.2d 679 (Ct.App.2016). In neither case did the courts enforce the arbitration provisions under the doctrine of equitable estoppel; however, there was one important distinction which distinguished these cases from Wiggins and the case at bar. In both Coleman and Thompson, the courts noted the arbitration provisions were in Arbitration Agreements separate and apart from the Admission Agreements, and that there was no merger of the two agreements. As a result, the court in Coleman did not reach the actual merits of the equitable estoppel argument. The court in Thompson, on the other hand, provided a little more discussion on the topic. In discussing cases which have applied equitable estoppel, the court noted the nonsignatory's contractual benefit typically arose from another provision in the same contract that includes the arbitration provision, rather than an alleged benefit arising only under a separately executed arbitration agreement. Thompson, 784 S.E.2d at 688. Here, in the case at bar, there were contractual benefits directed to Mr. Alston in terms of the care and services he received under the Admission Agreement which also contained the arbitration clause.

therefore, plaintiff was bound to arbitrate any claims within the scope of the arbitration provision).

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

It then follows that Mr. Alston and his estate are bound to arbitrate all claims against Conway Manor as a result of his status as a third-party beneficiary under the Admission Agreement.

d. Plaintiff Possessed Statutory Authority to Bind Mr. Alston under the Arbitration Agreement

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act ("AHCCA"), defines "health care" as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes "the placement in or removal from a facility that provides these forms of care." Id. A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have

examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). A daughter may consent to health care on behalf of a patient pursuant to the AHCCA. S.C. Code Ann. § 44-66-30(A)(5).

Mr. Alston was unable to make health care decisions on his own behalf as evidenced by the "Level of Comprehension" form attached hereto as Exhibit C. Two physicians examined Mr. Alston and opined that he was not able to comprehend the Resident's Rights and Responsibilities, nor was he able to make health care decisions. As noted in his physician's admitting history and physical, one of his medical conditions included Alzheimer's dementia. (See Exhibit D).

Pursuant to Section 44-66-30 of the South Carolina Code, Ms. Alston-Wood, as the daughter of Mr. Alston, had statutory authority to act as an agent on Mr. Alston's behalf in making "health care" decisions, which included placing him at Conway Manor and executing all paperwork on Mr. Alston's behalf associated with his placement in Conway Manor. Accordingly, the Admission Agreement, including the arbitration clause, is binding on Plaintiff and Mr. Alston.

The AHCCA was addressed by the South Carolina Supreme Court in Anne Coleman v. Mariner Health Care et al., 407 S.C. 346, 755 S.E.2d 450 (2014). The Court in Coleman considered whether a sister of a nursing home resident could bind the resident to an arbitration agreement at the time of admission. Under the facts of Coleman, the Court held she could not. Nevertheless, the facts of Coleman differ from those in the case at bar, and the holding in Coleman actually supports the Defendants' position in this case.

Ann Coleman signed a number of documents relating to the admission of her sister, Mary Brinson, to a nursing home in Florence, South Carolina. Ms. Brinson was unable to consent within the meaning of the AHCCA. Included within these documents was a separate arbitration agreement. The Court said the question of whether the sister had the authority to execute and bind Ms. Brinson to an arbitration agreement was governed by the statutory interpretation of the nature and scope of authority granted by the AHCCA. Id. at 350, 755 S.E.2d at 452-53.

The Court noted that the sister was authorized under the AHCCA to make decisions concerning Ms. Brinson's "health care", which under Section 44-66-20(1) of the South Carolina Code includes "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin...also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." Id. at 351-52, 755 S.E.2d at 453 (emphasis added).

The Court then went on to state that the AHCCA gave the sister two types of authority: (1) she could consent on Ms. Brinson's behalf to the provision or withholding of medical care including placement in a facility which provided such care, and (2) she could make certain financial decisions on behalf of her sister. Id.

In Coleman, the sister was presented with two separate documents. One was a "Residential Admission and Financial Agreement", and the other an "Agreement for Arbitration". The admission and financial agreement set forth the terms under which the nursing home facility would provide long term care health services to Ms. Brinson and

how these services would be paid for. Assent to this agreement was required for Ms. Brinson's admission to the nursing home facility. The arbitration agreement, on the other hand, did not contain any provisions regarding medical, nursing, or health care services, and did not require any financial commitment to pay for such services.

The Court found that the sister's authority to consent to decisions concerning Ms. Brinson's health care extended to the admission and financial agreement which was the basis upon which the nursing home agreed to provide health care, and under which the sister agreed to pay the nursing home. Id. at 353-54, 755 S.E.2d at 454. The Court stated the separate arbitration agreement did not concern health care or payment, but simply provided a method for dispute resolution between the nursing home and Ms. Brinson or her sister should issues arise in the future. Id.

The Court then held the AHCCA did not grant authority to the sister to execute a document that did not involve health care or financial terms for payment of such care, and thus the sister did not have the legal capacity to bind Ms. Brinson to the separate arbitration agreement. Id. at 454.

The facts of the case at bar are different, and significantly so, from those considered in Coleman. The arbitration clause which Defendants seek to enforce in this case is not in a separate agreement from the Admission Agreement, but rather is one of the clauses within the Admission Agreement. The Admission Agreement, pursuant to which Mr. Alston was admitted to Conway Manor, contained the terms under which Conway Manor would provide long term care health services to Mr. Alston, and how those services would be paid for. For instance, it was agreed that Conway Manor would provide care and treatment according to practice, policy and physician orders

(Admission and Consent to Treat clause); it was agreed that a physician would be chosen to provide care to Mr. Alston in the facility (Physician's Care clause); and that Mr. Alston would be responsible to ensure payment was made to the facility for his care under such clauses as Basic Charges, Supplemental Charges, Medical Supplies and others. (Admission Agreement, pp. 25, 27-28).

Thus, unlike the situation in the Coleman case described above in which there were separate contracts involving (1) the health care services to be provided to the resident and how those services were to be paid for, and (2) the agreement to arbitrate any disputes, all those provisions are contained within the Admission Agreement signed by Ms. Alston-Wood in the case at bar. The AHCCA empowered Ms. Alston-Wood to sign the Admission Agreement on behalf of Mr. Alston, and all the provisions of that contract are therefore enforceable.

ii. S.C. Bill of Rights for Resident of Long-Term Care Facilities

Ms. Alston-Wood possessed additional statutory authority as Mr. Alston's "representative" under the South Carolina Bill of Rights for Residents of Long-Term Care Facilities ("Bill of Rights"). See S.C. Code Ann. § 44-81-10, et seq. Under the Bill of Rights, a "representative" is defined as "a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." S.C. Code Ann. § 44-81-30(3). The Bill of Rights further provides that a "resident's representative must be given by the facility a written and oral explanation of the rights, grievance procedures, and enforcement provisions of this chapter before or at the time of admission to a long-term care facility. Written acknowledgment of the receipt of the explanation by the resident or the resident's

representative must be made a part of the resident's file." S.C. Code Ann. § 44-81-40(A).

Since Mr. Alston did not have a legally appointed guardian at the time of his admission, Ms. Alston-Wood was his representative and agent pursuant to the Bill of Rights. This is evidenced by the fact that Ms. Alston-Wood, as Mr. Alston's representative, received the statutorily required information from the facility at the time of Mr. Alston's admission and signed a written acknowledgment reflecting this in accordance with the foregoing code section. (See Admission Agreement, p. 34, Acknowledgment clause). Acting as Mr. Alston's agent under the Bill of Rights, Ms. Alston-Wood signed the Arbitration Agreement as Mr. Alston's representative, binding Mr. Alston and all those claiming by or through him to arbitration under the arbitration clause.

In accordance with the foregoing, Ms. Alston-Wood possessed the actual authority, pursuant to statute, to make health care decisions on behalf of Mr. Alston as his agent, and this included executing the Admission Agreement as part of Mr. Alston's admission paperwork.

II. Federal Arbitration Act Mandates Enforcement of this Agreement

The Federal Arbitration Act ("FAA") requires that:

A written provision in any maritime transaction or a contract evidencing a transaction involving interstate commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such ground as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

The arbitration clause provides that the arbitration shall be governed by the provisions of the South Carolina Arbitration Code, and in the event that it is deemed not to apply, the arbitration shall be governed by the FAA. Section 15-48-10(b)(4) of the South Carolina Code provides that the South Carolina Arbitration Code shall not apply to any claim arising out of personal injury based on contract or tort. Thus, the South Carolina Arbitration Code does not apply; instead, the FAA is controlling in the instant case.

The FAA expresses a strong national policy in favor of arbitration and “establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” Moses H. Cone Mem’l. Hosp. v. Mercury Construction Corp., 460 U.S. 1, 24-25, 103 S.Ct. 927 (1983). The FAA enforces arbitration agreements as written to prevent a party from avoiding their contractual obligations to arbitrate. Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002); see also Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985). Additionally, the FAA’s purpose was to “overrule the judiciary’s longstanding refusal to enforce agreements to arbitrate and place them on the same footing as other contracts.” Volt Informational Serv., Inc. v. Bd. of Trustees of Leland Stanford Jr. Univ., 489 U.S. 468, 474 (1989) (citation and internal quotation marks omitted).

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause of the Admission Agreement, both prongs are satisfied. First, there is a valid Admission Agreement in place for the reasons presented in Section I, supra. Secondly,

as will be discussed immediately below, Plaintiff's claims are within the scope of the arbitration clause.

a. Scope of the Arbitration Clause

Plaintiff's claims are clearly within the scope of the Arbitration Clause. The Arbitration Clause provides in part:

Any action, dispute, claim or controversy of any kind (tort, contract, equitable or statutory, including but not limited to claims or violations of Resident's Rights) now existing or hereafter arising between the parties, in anyway arising from or relating to this [Admission] Agreement governing the Resident's stay at the Facility, shall be resolved by binding arbitration.

Plaintiff's claims include negligence, negligence per se, fraud and misrepresentation, violation of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship, all which allegedly stem from the care and treatment received by Mr. Alston under the Admission Agreement. All these causes of action are included within the scope of the arbitration clause quoted above. Thus, there can be no dispute from the plain language of the arbitration clause that all the allegations contained in the Plaintiff's Complaint fall under the types of disputes to be arbitrated under the arbitration clause.

b. Interstate Commerce is Satisfied

The FAA applies to written arbitration agreements which evidence a transaction involving interstate commerce. 9 U.S.C. § 2. This requirement is broadly construed so as to be coextensive with congressional power to regulate under the Commerce Clause. Comanche Indian Tribe of Okla. v. 49, LLC, 391 F.3d 1129, 1132 (10th Cir. 2004). The interstate commerce requirement under the FAA includes contracts relating to interstate commerce. Id. The interstate commerce requirement is met if "in the aggregate the

economic activity in question would represent 'a general practice...subject to federal control.'" Citizens Bank v. Alafabco, Inc., 539 U.S. 52, 56-57, 123 S.Ct. 2037 (2003) (citation omitted).

The interstate commerce requirement under the FAA is met in the present case on multiple grounds. As noted in Conway Manor Administrator Raymond Tiller's Affidavit, at the time of Mr. Alston's residency, (1) Conway Manor received payments from Medicare, Medicaid; and private insurers from other states; (2) the majority of food served at Conway Manor came from Charlotte, North Carolina; (3) Conway Manor obtained lab and radiology services, oxygen rental and supplies, medical forms, specialty beds and mattresses, laundry supplies and other items from out-of-state; and (4) Conway Manor treated residents who came from other states. (Affidavit of Tiller; attached as Exhibit E).

In Dean v. Heritage Healthcare of Ridgeway, LLC et al., 408 S.C. 371, 759 S.E.2d 727 (2014), the South Carolina Supreme Court found that a nursing home residency agreement implicated interstate commerce by requiring the facility to provide the resident with food and medical supplies which were instruments of interstate commerce. Id. at 381-82, 759 S.E.2d at 732-733. The Admission Agreement at issue in the case at bar required Conway Manor to provide Mr. Alston room and board, medical supplies, and many other goods and services, all of which were instruments of interstate commerce. (Admission Agreement).

In accordance with the forgoing, the FAA's interstate commerce requirement is satisfied in the present case.

III. The Proceedings Must be Stayed

Defendants also request that these proceedings be stayed pending completion of arbitration. The FAA requires a stay under the following circumstances:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of action until such arbitration has been had in accordance with the terms of the agreement[.]

9 U.S.C. § 3.

Accordingly, Defendants ask this Court to stay all judicial proceedings pending arbitration in accordance with the arbitration clause. See Stokes v. Metropolitan Life Ins. Co., 351 S.C. 606, 612, 571 S.E.2d 711, 715 (Ct. App. 2002) (holding “the FAA clearly requires a court stay ‘any suit or proceeding’ pending the arbitration of ‘any issue referable to arbitration under an agreement in writing for such arbitration’ upon the application of one of the parties” (citation omitted)); 9 U.S.C. § 3.

IV. Protective Order

On March 9, 2017, Plaintiff served Defendants with Plaintiff’s First Discovery Requests. Defendants responded by objecting to the discovery requests primarily on the basis that this case is subject to arbitration, and thus this civil case and the discovery requests were improper. Defendants are entitled under Rule 26(c), South Carolina Rules of Civil Procedure, to an order from this Court that Defendants are not required to respond to Plaintiff’s discovery requests.

CONCLUSION

For the foregoing reasons, Defendants' respectfully request that their Motion to Stay Action and Compel Arbitration and for Protective Order be granted, and that this Court issue an Order accordingly.²

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Attorneys for Defendants

August 11, 2017

Spartanburg, South Carolina

² Attached as Exhibit B to Wendy Lynch's affidavit is a Resident and Facility Binding Arbitration Agreement executed by Ms. Alston-Wood on December 17, 2015. While Defendants' position is the Court must stay this action and compel arbitration under the arbitration clause in the Admission Agreement, to the extent the Court is unwilling to compel arbitration under that clause, Defendants alternatively argue the Resident and Facility Binding Arbitration Agreement was merged into and with the Admission Agreement and requires that Plaintiff's claims be arbitrated for all the reasons argued in connection with the arbitration clause of the Admissions Agreement described above.

EXHIBIT A

WILLIE ALSTON

12/17/2015

ADMISSION AGREEMENT

This is an agreement between _____ (Resident) and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

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

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

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

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

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

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

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WILLIE ALSTON

12/17/2015

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

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

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

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

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

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

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

WJA Initial
KAW

WILLIE ALSTON

12/17/2015

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

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

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

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

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

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

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

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

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

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

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WILLIE ALSTON

12/17/2015

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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WAL

WILLIE ALSTON

12/17/2015

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

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

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

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

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

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

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

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

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

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

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

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

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WILLIE ALSTON

12/17/2015

Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

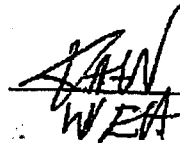
That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits .

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

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WILLIE ALSTON

12/17/2015

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

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

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

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

By: Wendy Lynn
Signature of Facility Representative _____ Date _____

Signature of Patient/Resident _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

Responsible Party _____ Date _____

Kimberly Holt Wood
Signature of Responsible Party _____ Date 12/17/15

Responsible Party is acting as: _____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing
Address _____

If the Resident signs with an "x" there must be two (2) witnesses.
The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

ELECTRONICALLY FILED 12/20/15 Jun 2 04:04 PM CIRCUIT COURT COMMONWEALTH OF MASSACHUSETTS CASE#2015CR2601351

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

AFFIDAVIT OF WENDY LYNCH

v.)

C.A. No.: 2017-CP-26-1351

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)

PERSONALLY APPEARED before me Wendy Lynch, who being sworn, deposes and says as follows:

1. I am an adult over the age of eighteen years. I submit this affidavit in connection with the Motion to Stay Action and Compel Arbitration of Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 ("Defendants") in the above-captioned action. I am fully competent to make this declaration based upon my personal knowledge and knowledge obtained through review of documents. If called to testify, I would state as follows.

2. I was the Admissions Coordinator for Conway Manor, LLC ("Conway") in December 2015 when Willie Earl Alston, Jr. ("Mr. Alston") was admitted to Conway.

3. Part of my role as Admissions Coordinator was to meet with incoming residents or their families to explain the admissions process, the admissions paperwork, and oversee the execution of the Admission Agreement and other admissions paperwork.

4. I have been provided, and have reviewed Mr. Alston's Admission Agreement, a copy of which is attached as Exhibit A to this affidavit, as well as the Resident and Facility Binding Arbitration Agreement which is attached as Exhibit B to this affidavit.

5. On December 17, 2015, the day of Mr. Alston's admission to Bayview, Mr. Alston, through his daughter and responsible party, Kimberly Alston-Wood, entered into the Admission Agreement, Resident and Facility Binding Arbitration Agreement, and other admission documents. The Admission Agreement and Resident and Facility Binding Arbitration Agreement were part of the admissions package and were kept in the course of a regularly conducted business activity, and it was the regular practice of Conway to have these documents executed at the time of a resident's admission to the facility.

6. I executed these documents on behalf of Conway, and I was authorized to do so in my position as Admissions Coordinator.

FURTHER DEPONENT SAYETH NOT.

Wendy Lyndh
Wendy Lyndh

SWORN to and subscribed before me this 7th day of June, 2017.

Connie C Wilks (SEAL)
Notary Public for South Carolina

My Commission Expires: 3.11.2023

EXHIBIT A

ELECTRONICALLY FILED 7/20/17 10:39 AM P.M. ORROR COUNTY CLERK JEA SCASER 2017 CP2801354

WILLIE ALSTON

12/17/2015

ADMISSION AGREEMENT

This is an agreement between _____ (Resident") and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

Admission and Consent To Treat: The Resident agrees to be admitted to the Facility of his/her own free will. The Resident understands that the Facility cannot admit the Resident without physician orders. The Resident consents to allow the Facility to provide care and treatment according to practice, policy and physician orders. The Resident has the right to withdraw this consent or refuse treatment.

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

Physician's Care: The Resident agrees to select an attending physician who will visit regularly according to the Facility's policies, state and federal regulations and as dictated by the Resident's needs. He/She must have admitting privileges in the Facility. If the attending physician does not respond in case of an emergency, the Resident gives permission to the Facility to contact another physician. If the Resident does not wish to choose a physician, one of our staff physicians will be assigned to the Resident. The Resident will be billed directly by the physician and the Facility will not be responsible for payment of this service. The Resident agrees to be responsible for all charges for all physician's services and any other services and treatments ordered by a physician, unless paid by Medicaid, Medicare, or other third party coverage. (See Authorizations and Acknowledgements to enter selection)

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

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

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

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

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

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

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

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

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

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

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

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of \$210 Private Semi Private \$200 per day as Basic Charges. Routine care and services included in the per diem rate are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Facility: Conway Manor
3300 Fourth Ave
Conway SC 29526

Resident: _____

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

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

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ELECTRONICALLY FILED 12/20/15 11:39 AM BY JIM BOWEN FOR HARRY COUNTY COMMON PLEAS CASE #2017CP2801354

WILLIE ALSTON

12/17/2015

Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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WILLIE ALSTON

12/17/2015

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.

That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits .

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

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ELECTRONICALLY FILED 12/17/2015 11:39:04 AM PM Horry County Common Pleas Case #2015CR2801354

WILLIE ALSTON

12/17/2015

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

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

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

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

By: Wendy Lynch
Signature of Facility Representative

Date

Signature of Patient/Resident

Date

Witness

Date

Witness

Date

Responsible Party

Date

Stephen Paul Wood
Signature of Responsible Party

12/17/15
Date

Responsible Party is acting as:

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

Billing

Address _____

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

The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

ELECTRONIC FILING FILED 12/20/15 JUL 3 04 PM HQ RRRY COMMONWEALTHS CASE#2017CP2801351

EXHIBIT B

ELECTRONICALLY FILED 12/20/09 11:30:50 AM CLERK OF COMMONWEALTHS CASE#2017CR2801351

WILLIE ALSTON

12/17/2015

RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(READ CAREFULLY)

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by Conway Manor and Willie Alston Sr (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

ELECTRONICALLY FILED 01/20/09 JUL 3 09:00 PM HARRIS COUNTY CLERK'S OFFICE CASE#2017CB2601351

WILLIE ALSTON

12/17/2015

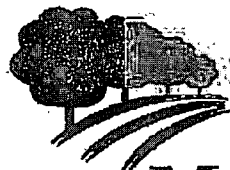
**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(EXPLANATION SHEET)**

A Resident and Facility Binding Arbitration Agreement (the "Arbitration Agreement") is attached to this Explanation Sheet. Binding arbitration is a form of dispute resolution in which the parties involved in a dispute present evidence and arguments to an arbitrator rather than to a judge and jury. The arbitrator then reaches a decision regarding the dispute, and the parties are bound by that decision.

By entering into the Arbitration Agreement, you will give up and waive your constitutional right to have any dispute or claim against Conway Manor decided in a court of law before a judge and jury. We encourage you to ask any questions you may have regarding the Arbitration Agreement.

ELECTRONICALLY FILED 12/20/15 11:39:04 AM BY HERRICK COMMON PLEAS CASE #2017CP2801351

EXHIBIT C



Conway Manor

Short-Term Therapy & Skilled Nursing

Level of Comprehension

We certify that Willie Alston (Resident) is is not able to comprehend the Resident's Rights and Responsibilities of this facility. He / She is unable to understand related to the following reason(s):

[Signature]
Attending Physician

12/23/15
Date

[Signature]
Consulting Physician

12-28-15
Date

We certify that Willie Alston (Resident) is is not able to make Health Care Decisions (including Advance Directives). He / She is unable to understand related to the following reason(s):

This condition is expected to be permanent / temporary.

[Signature]
Attending Physician

12/23/15
Date

[Signature]
Consulting Physician

12-28-2015
Date

EXHIBIT D

Patient Name: Willie Alston
 Medical Record #: Conway Manor Rehab Center
 Date of Birth: [REDACTED]
 Date of Visit: 12/18/2015

Date of Admission: 12/17/2015

Chief Complaint: Generalized weakness after hospitalization.

History of Present Illness: This is an 82-year-old gentleman, who was admitted to Conway Medical Center on 12/14/2015 with mental status changes, increased drowsiness and unable to ambulate. The patient was in hospice at some point, but he was discharged as he now continued to decline. The patient had a detailed workup including MRI of the brain and did not show any acute disease. Probably the patient had some antibiotic encephalopathy of unknown etiology. At the time of the discharge the patient has severe generalized weakness, gait abnormality, unable to do ADLs independently and not even getting out of bed. The patient used to use a wheelchair at home. The patient was transferred to Conway Manor Rehab Center for rehabilitation.

Past Medical History: History of stroke, high cholesterol, diabetes type II, COPD, chronic renal insufficiency stage III, anemia of chronic disease, hypertension, Alzheimer's dementia with debility, hypothyroidism, obesity, prostate cancer.

Past Surgical History: Thyroidectomy, prostate surgery.

Allergies: No known drug allergies.

Family History: Reviewed but irrelevant secondary to patient's age.

Social History: No smoking or alcohol abuse. The patient lives at home with family. The patient used to be in hospice. Use a wheelchair for mobility.

Medications: On admission include: Synthroid 112 mcg p.o. daily, Amaryl 2 mg p.o. daily, amlodipine 10 mg p.o. daily, aspirin 81 mg p.o. daily, Lasix 20 mg p.o. daily, Lopressor 12.5 mg p.o. twice a day, Tylenol 500 mg p.o. every 6 hours p.r.n. fever or pain, Mevacor 40 mg p.o. at bedtime, Pepcid 20 mg p.o. twice a day, ProAir 2 puff every 4 hours p.r.n. shortness of breath, vitamin D3 1000 units daily, insulin sliding scale.

Review of Systems: General: No fevers or chills. Eyes: No blurry vision or eye pain. Ears, Nose & Throat: No sore throat, dry mouth and nasal stuffiness. Respiratory: No cough. No shortness of breath. Cardiovascular: No chest pain or palpitations. Urology: No dysuria and no hematuria. GI: No abdominal pain. No nausea or vomiting. No diarrhea. Musculoskeletal: Positive for generalized weakness, gait abnormality, unable to get out of bed. Neuro: No numbness or tingling. No headache. He has a history of stroke but is very weak. He has a wheelchair at home for ambulation. Endocrine: Positive for hypothyroidism; positive for diabetes. No heat or cold intolerance. Psyche: No depression or anxiety; positive for confusion, very lethargic.

Patient Name: Willie Alston
 Medical Record #: Conway Manor Rehab Center
 Date of Birth: [REDACTED]
 Date of Visit: 12/18/2015

Physical Examination: Vital Signs: Temperature is 98.5. Heart rate is 79. Respiration is 16. Blood pressure is 115/84. General: The patient is lethargic. No respiratory distress. Oriented to place and month. He has some memory difficulty specially short-term memory. No acute distress; cooperative. HEENT: Moist oral mucosa. No oral thrush. White sclerae bilaterally. Neck: No masses. No JVD. Heart: Regular rate and rhythm. No murmurs, gallops or rubs. Lungs: Some mild crackles at the bases. No wheezes. Abdomen: Bowel sounds are positive and obese. Soft and nontender. Extremities: No cyanosis and trace edema. Positive for some mild tenderness of the legs. Positive for some dry scaly skin at the legs distally. Some chronic venostasis changes. Neuro: Cranial nerves II through XII are grossly intact bilaterally. No focal sensory or motor deficits noted. Positive for 2/5 strength in bilateral lower extremity proximal and distally. No focal or sensory deficit. Severe gait abnormality and weakness. Unable to get out of bed or transfer by himself. Head is normocephalic. No signs of trauma or laceration.

Assessment and Plan:

1. Severe generalized weakness and gait abnormality. We will get a PT/OT consultation and therapy. Goal is to get the patient ambulatory independently at least to get transfers to wheelchair independently.
2. Diabetes type II. Continue with Amaryl 2 mg p.o. daily and insulin sliding scale. Followup fingersticks at least twice a day.
3. Hypertension. Follow blood pressure daily and p.r.n. Continue amlodipine 10 mg p.o. daily. Continue Lopressor 12.5 mg p.o. twice a day. Adjust medication as needed.
4. Edema. Continue Lasix 20 mg p.o. daily. Follow with chronic renal insufficiency closely. Adjust home medications for kidney function.
5. Chronic renal insufficiency stage III. Continue with adjusting medications for kidney function. Follow-up closely.
6. COPD. Continue with Pro-Air. Followup for any signs of respiratory issues. Follow O₂ sats closely.
7. FEN. Low sodium, low sugar diet. Follow electrolytes as needed.
8. Dementia. Well compensated at this time. We will follow-up for any signs of delirium. We will consider if the patient will benefit from any medication for memory.
9. The patient is a full code at this time. We will discuss code status with patient and family.

Kenneth Santiago, M.D.

D: KS - 12/18/2015/11436
 T: syr/kam - 17:01

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

Orveletta Alston as Personal)
Representative of the Estate of)
Willie Earl Alston, Jr.,)

Plaintiff,)

AFFIDAVIT OF RAYMOND TILLER

v.)

C.A. No.: 2017-CP-26-1351

Conway Manor, LLC, Raymond Tiller,)
and John and Jane Does 1-10,)

Defendants.)

PERSONALLY APPEARED before me Raymond Tiller, who being sworn, deposes and says as follows:

1. I am an adult over the age of eighteen years. I submit this affidavit in connection with Conway Manor, LLC, Raymond Tiller and John and Jane Does' 1-10 ("Defendants") Motion to Stay Action, Compel Arbitration and for a Protective Order in the above-captioned action. I am fully competent to make this declaration based upon my personal knowledge and knowledge obtained through review of documents. If called to testify, I would state as follows.

2. I have been the Administrator of Conway Manor, LLC ("Conway Manor") from July 1, 2005 to the present. In this role, I was required to have knowledge about the business operations of Conway Manor. Conway Manor was the licensed owner and operator of the nursing facility known as Conway Manor in Conway, South Carolina where Willie Earl Alston, Jr. ("Mr. Alston") resided from December 17, 2015 until April 20, 2016.

3. Conway Manor was a Medicare certified facility in 2015 and 2016. Medicare is a federally administered program. In 2015 and 2016, Medicare program payments constituted 24% of total revenues for Conway Manor.

4. Conway Manor was a Medicaid certified facility in 2015 and 2016. The South Carolina Medicaid Program is partially funded by the federal government. In 2015, South Carolina Medicaid Program payments constituted 61% of total revenues for Conway Manor, and in 2016, the South Carolina Medicaid Program payments constituted 59% of total revenues for Conway Manor.

5. Conway Manor's requests for private insurance payments for services rendered to residents of Conway Manor were sent in hard copy form via U.S. Mail to various private insurance companies, and insurance payments were issued by these insurance companies. The private insurance companies' offices that processed payments to Conway Manor are located in various states outside of South Carolina. In 2015, private insurance payments constituted 8% of total revenues for Conway Manor, and in 2016, private insurance payments constituted 7% of total revenues for Conway Manor.

6. The majority of food served to Conway Manor residents in 2015 and 2016 was supplied by US Foods from Charlotte, North Carolina.

7. In 2015 and 2016 Conway Manor utilized (1) Select Labs from Greensboro, North Carolina for its lab services; (2) Mobilex from Baltimore, Maryland for its radiology services; (3) Airgas from Atlanta, Georgia for its oxygen rental and supplies; (4) Briggs from Des Moines, Iowa for its medical forms; (5) Reliable from Asheville, North Carolina for the rental of specialty beds and pressure relief mattresses; (6) Ecolab from New York, New York for

its laundry supplies; and (7) Briggs from Des Moines, Iowa, and Classic Engraving from Stockwell, Indiana, for business office supplies and furniture.

8. Conway Manor utilized other monthly services from outside South Carolina, including American Heathtech whose corporate office is in Ridgeland, Mississippi.

9. Conway Manor had 190 licensed beds available in 2015 and 2016 for patient care, all of which were certified by, and participated in, the Medicare and Medicaid programs.

10. Conway Manor provided care and services to some residents who came to Conway Manor from other states in 2015 and 2016.

11. On December 15, 2015, the day of Mr. Alston's admission to Conway Manor, Mr. Alston, through his daughter and responsible party, Kimberly Alston-Wood, entered into an Admission Agreement which contained an arbitration clause (see attached Exhibit A), along with a separate arbitration agreement (see attached Exhibit B). These documents were all part of the admissions package and were kept in the course of a regularly conducted business activity, and it was the regular practice of Conway Manor to have these documents executed at the time of a resident's admission to the facility.

12. There is no written notice in Mr. Alston's file from Kimberly Alston-Wood, or anyone else from that matter, seeking to rescind these agreements.

13. The Admission Director for Conway Manor at the time of Mr. Alston's admission was Wendy Lynch. She is no longer an employee of Conway Manor.


14. Wendy Lynch executed the documents attached hereto on behalf of Conway Manor, and she was authorized to do so in her position as Admission Director for Conway Manor.

FURTHER DEPONENT SA YETH NOT.



Raymond Tiller

SWORN to and subscribed before me this 20 day of June, 2017.



(SEAL)
Notary Public for South Carolina

My Commission Expires: 9.12.23

ELECTRONICALLY FILED BY COURT REPORTER COMMON PLEAS - CASE#2017CP2601351

EXHIBIT A

WILLIE ALSTON

12/17/2015

ADMISSION AGREEMENT

This is an agreement between _____ (Resident) and Conway Manor for admission to our health care facility located at: 3300 Fourth Avenue Conway, SC 29526.

In this Agreement, when we speak of Resident, it means the Resident or Responsible Party. The Resident payor source is expected to be _____ (MC=MEDICARE, MCD=MEDICAID, PVT=PRIVATE, INS=INSURANCE, MDP=MEDICAID PEND)

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

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


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

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

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

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

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

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

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

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

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

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

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

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

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WILLIE ALSTON

12/17/2015

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

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

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

Basic Charges: The Resident agrees to pay for routine care, room and board, unless The Resident receives Medicaid, Medicare or other third party coverage, at the rate of \$210 Private Semi Private \$200 per day as Basic Charges. Routine care and services included in the per diem rate are:

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

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WILLIE ALSTON

12/17/2015

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

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

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

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

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

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

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

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

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

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

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WILLIE ALSTON

12/17/2015

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

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

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

Return Check Fee: There will be a \$25.00 return check fee for each check returned for insufficient funds at the time of deposit.

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

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

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

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

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

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

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

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

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

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

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

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

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


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

Facility: Conway Manor
3300 Fourth Ave
Conway SC 29526

Resident: _____

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

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

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Waiver of Jury Trial: (Please read carefully)

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

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

Attorney's Fees: (Please read carefully)

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

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

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

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

Assignability: (Please read carefully)

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

Withdrawal Period:

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

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WILLIE ALSTON

12/17/2015

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

Acknowledgement: By signing this Agreement, the Resident acknowledges: That the Resident has received a copy of entire agreement with any attachments.

That the Resident has been given an oral explanation of services provided and charges including services offered on an as needed basis including extra services.

That the Resident has been given an oral explanation of the bed reservation and refund policies set forth in this agreement.

That the Resident has received a copy of the rules and regulations, and an explanation of the Resident's responsibility to obey all reasonable rules and regulations and to respect the personal rights and private property of others.

That the Resident has received a copy of the Grievance Policy, Smoking Policy and Restraint Policy.

That the Resident has received a copy of the procedures of the state and district ombudsman councils.

That the Resident has received a copy of the transfer and discharge policies.

That the Resident has received a copy of the Federal and State Resident's Bill of Rights.


That the Resident has received a copy of the Privacy Act Statement.

That the Resident has received a copy of the (HIPPA) Health Insurance Privacy and Portability Act policies of this Facility.

That the Resident has received a copy of CMS Medicare DMEPOS Supplier Standards

That the Resident has received authorizations regarding, Resident Trust Fund, Pharmacy Part D, Care Plans, Vaccinations and Release of Information, Self Administration of Medications and Assignment of Benefits .

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

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

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

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

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

By: Wendy Lynn
Signature of Facility Representative _____ Date _____

Signature of Patient/Resident _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

Responsible Party _____ Date _____

Richard Paul Wood
Signature of Responsible Party _____ Date 12/17/15

Responsible Party is acting as:
_____ Conservator
_____ Power of Attorney
_____ Relative (state relationship)
_____ Other: _____

Billing

Address _____

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

The legal designee shall supply the Facility with a copy of the Power of Attorney, Durable Power of Attorney, Guardianship, or other legal document, which permits him/her to act as the legal designee for the Resident.

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EXHIBIT B

WILLIE ALSTON

12/17/2015

**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(READ CAREFULLY)**

Pursuant to the terms of this Resident and Facility Binding Arbitration Agreement (this "Arbitration Agreement"), it is understood and agreed by Conway Manor and Willie Alston Sr (the "Resident" or "Resident's Authorized Representative", hereinafter referred to as the "Resident") that any legal dispute, controversy, demand or claim (hereinafter collectively referred to as "claim" or "claims") that arises out of or relates to that certain Resident Admission Agreement (the "Resident Admission Agreement") executed by the Resident and the Facility, or any service or health care provided by the Facility to the Resident, shall be resolved exclusively by binding arbitration to be conducted at a place agreed upon by the parties, or in the absence of such agreement, at the Facility, in accordance with the Federal Arbitration Act (a copy of which is attached hereto and incorporated into this Arbitration Agreement), and not by a lawsuit or resort to court process except to the extent that applicable state or federal law provides for judicial review of arbitration proceedings or the judicial enforcement of arbitration awards.

The agreement to arbitrate contained in this Arbitration Agreement includes, but is not limited to, any claim for payment, nonpayment or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Resident Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract. However, this agreement to arbitrate shall not limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility or any appropriate state or federal agency.

The damages awarded, if any, in an arbitration conducted pursuant to this Arbitration Agreement shall be determined in accordance with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credit against or limitations on, such damages.

It is the intention of the parties to this Arbitration Agreement that it shall inure to the benefit of and bind the parties, their successors and assigns, including the agents, employees and servants of the Facility, and all persons whose claim is derived through or on behalf of the Resident, including that of any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

All claims based in whole or in part on the same incident, transaction, or related course of care or services provided by the Facility to the Resident shall be arbitrated in one proceeding. A claim shall be waived and forever barred if it arose prior to the date upon which notice of arbitration is given to the Facility or the Resident, and the claim is not presented in the arbitration proceeding.

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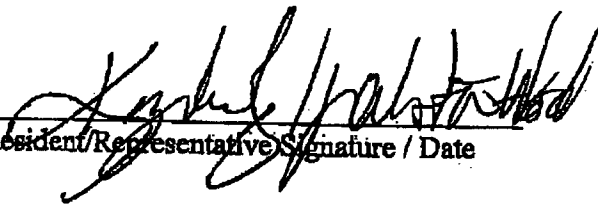
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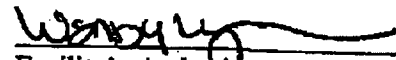
Any notice required pursuant to this Arbitration Agreement shall be deemed given (i) upon hand delivery; or (ii) three (3) days after deposit in U.S. mail via certified mail, return receipt requested.

This Arbitration Agreement is effective as of the date of admission of the Resident to the Facility. WEA (resident's initials).

The Resident understands that (1) he/she has the right to seek legal counsel concerning this Arbitration Agreement, (2) the execution of this Arbitration Agreement is not a precondition to the furnishing of services to the Resident by the Facility, and (3) this Arbitration Agreement may be rescinded by written notice given to the Facility by the Resident within thirty (30) days of signature. If not rescinded within thirty (30) days, this Arbitration Agreement shall remain in effect for all care and services rendered at the Facility, even if such care and services are rendered following the Resident's discharge and readmission to the Facility.

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM DECIDED IN A COURT OF LAW BEFORE A JUDGE AND A JURY.


Resident/Representative Signature / Date


Facility's Authority Agent / Date

Wendy Lynch, Admissions Director

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**RESIDENT AND FACILITY BINDING ARBITRATION AGREEMENT
(EXPLANATION SHEET)**

A Resident and Facility Binding Arbitration Agreement (the "Arbitration Agreement") is attached to this Explanation Sheet. Binding arbitration is a form of dispute resolution in which the parties involved in a dispute present evidence and arguments to an arbitrator rather than to a judge and jury. The arbitrator then reaches a decision regarding the dispute, and the parties are bound by that decision.

By entering into the Arbitration Agreement, you will give up and waive your constitutional right to have any dispute or claim against Conway Manor decided in a court of law before a judge and jury. We encourage you to ask any questions you may have regarding the Arbitration Agreement.

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arbitration to prove a valid contract. "A parties' right to a jury trial in South Carolina is governed by state law. See Pelfrey v. Bank of Greer, 270 S.C. 691, 693, 244 S.E.2d 315, 316 (1978).

In determining whether an agreement to arbitrate exists, "the court should apply ordinary state-law principles that govern the formation of contracts." Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App., 1999). Arbitration is available only when the parties involved contractually agree to arbitrate. Id. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, (1989). Arbitration will be denied if a court determines no agreement to arbitrate existed. S.C. Code Ann. § 15-48-20(a).

ANALYSIS

I. THERE IS NOT AN ENFORCEABLE ARBITRATION AGREEMENT

- A. Kimberly Alston-Wood was not, at the time of admission, nor was she ever Mr. Alston's responsible party.

Kimberly Alston-Wood executed an Admission Agreement on behalf of Mr. Alston upon his admission to the Defendants' facility. Ms. Alston-Woods did not have legal authority to sign on his behalf, and was not his responsible party. Mr. Alston's wife, Orveletta Alston was the responsible party and made medical decisions on his behalf. (See Affidavit of Alston, ¶ 3, Exhibit A). Mrs. Alston never signed an arbitration agreement waiving Mr. Alston's right to a jury trial, nor did anyone have that power to do so. (Id., ¶ 4). Thus, Ms. Alston-Woods did not have authority to enter into an arbitration agreement on behalf of Willie Earl Alston, Sr. At no time was Mr. Alston's daughter his Power of Attorney nor did she have guardianship over Mr. Alston. The Admission Agreement, Ex. A to Defendants' Memorandum, does not define Ms. Alston-Woods as the Responsible Party:

By: <u>Wanda Linn</u> Signature of Facility Representative	Date
Signature of Patient/Resident	Date
Witness	Date
Witness	Date
Responsible Party	Date
<u>Kymberly Holtzwood</u> Signature of Responsible Party	<u>12/17/15</u> Date
Responsible Party is acting as:	
<input type="checkbox"/> Conservator	
<input type="checkbox"/> Power of Attorney	
<input type="checkbox"/> Relative (state relationship)	
<input type="checkbox"/> Other: _____	
Billing	

B. An Admission Agreement and an Arbitration Agreement are two separate agreements and one cannot be bound by the other.

A decision to admit a resident to a skilled nursing facility such as the Defendants is a healthcare decision. As such, signing an admission agreement to a skilled nursing facility is a healthcare related agreement, not a legal agreement. Conversely, agreeing to settle disputes through arbitration is a legal decision. The Defendants' argument that all of the Plaintiff's claims are dependent on the duties which arise from the Admission Agreement is fundamentally flawed; an admission agreement involves making a healthcare decision, and an arbitration agreement involves making legal decision. Just because the two agreements are contained in one document does not make them one in the same.

Defendants cite the unpublished district court case, THI of South Carolina at Columbia, LLC v. Wiggins, 2011 WL 4089435 (D.S.C. 2011) to support its argument that Plaintiff is equitably estopped from denying the existence of an enforceable admission agreement. This should not be persuasive. In Wiggins, the Court did not analyze the case under the South Carolina Adult Health Care Consent Act ("AHCCA"), that is, that the signatory had the statutory authority to consent to the provision of certain health care services, but did not have the implied consent to enter into a binding arbitration agreement.

Furthermore, elements of equitable estoppel as to the party estopped are: (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that

such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. Ingram v. Kasey's Assocs., 340 S.C. 98, 531 S.E.2d 287 n. 2 (2000). Essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position. Mays v. Paxton, 313 S.C. 109, 437 S.E.2d 66 (1993). "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." Evins v. Richland County Historic Pres. Comm'n, 341 S.C. 15, 15, 532 S.E.2d 876, 878 (2000). Zabinski v. Bright Acres Associates, 346 S.C. 580 589 553, S.E.2d 110, 114 (2001).

Here, Defendants do not assert nor have they proven that anything was done by Ms. Alston-Woods to mislead Defendants. There is no evidence that Ms. Alston-Woods acted in a way amounting to a false representation to Defendants regarding Mr. Alston's status or that Ms. Alston-Woods intended for the Defendants to act in reliance on her conduct. Additionally, the evidence shows that 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 the Defendants to show it did not know Ms. Alston-Woods lacked authority to sign the admission agreement and arbitration agreement on her father's behalf and that the Defendants lacked the ability to make this determination. Equitable estoppel favors diligent parties who actively work 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. 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). The Defendants are or should be familiar with the authority surrounding the signing of admissions paperwork and arbitration agreements. Kimberly Alston-Woods was Mr. Alston's daughter; however, she did not have any legal authority to act on his behalf. In Wiggins, Deborah Wiggins executed and admissions contract for the admission of her father, Earl Hall into the Magnolia Manor nursing home. In considering that

decision, one of Magnolia Manor's arguments was that Wiggins, who signed the admissions agreement, was also the personal representative. This is distinguishable from the present case, in which Mr. Alston's wife, who, through her Affidavit, testifies that she was responsible for making his decisions. As his surviving spouse, she had priority to serve as the personal representative of his estate.

The Defendants most certainly had the ability to ask Ms. Alston-Woods whether she was Mr. Alston's power of attorney, and had the ability to request supporting documentation. Failing to do so is no excuse. The Defendants' own documentation has a section that clearly says: "Responsible Party is acting as: ___ Conservator; ___ Power of Attorney; ___ Relative (state relationship); ___ Other: ___". THE DEFENDANTS STAFF HAD THIS RIGHT IN FRONT OF THEM WHILE THE ADMISSIONS PAPERWORK WAS BEING SIGNED YET FAILED TO ASK HOW KIMBERLY ALSTON-WOODS COULD BE MR. ALSTON'S RESPONSIBLE PARTY. Accordingly, the Plaintiff is not equitably estopped from denying the existence of an enforceable admission agreement.

C. Mr. Alston is a Third-Party Beneficiary only as it relates to the medical care that he was to receive in the Defendants' facility.

Plaintiff does not dispute the fact that Mr. Alston was the beneficiary as it relates to the receipt of medical care. However, Defendants again cite to a case that is not persuasive from the Mississippi Court of Appeals. In Trinity Mission Health & Rehabilitation of Clinton v. Estate of Scott, 19 So.3d 735 (Miss. Ct. App. 2008), the Court held that the arbitration agreement provisions were enforceable against the decedent's daughter, who signed the admission agreement. As discussed above and continuing on below, in the present case, Mr. Alston's daughter did not have the authority to sign the admissions paperwork, nor the arbitration agreement. As such, Mr. Alston and his estate are not bound to arbitrate all claims against Conway Manor as a result of his status as a third-party beneficiary under the Admission Agreement.

D. Plaintiff did not Possess Statutory Authority to Bind Mr. Alston under the Arbitration Agreement.

i. S.C. Adult Health Care Consent Act

The South Carolina Adult Health Care Consent Act (“AHCCA”), defines “health care” as including intermediate or skilled nursing care. S.C. Code Ann. § 44-66-20(1). It also specifically includes the placement or removal from a facility that provides these forms of care.” *Id.* A party may consent to health care on behalf of a patient, if the patient is deemed unable to consent to treatment after two licensed physicians have examined the patient and certify an inability to consent. S.C. Code Ann. § 44-66-20(8). S.C. Code Ann. § 44-66-30 lists the appropriate persons who may make health care decisions for patient who is unable to consent and provides an order of priority for who is able to make those decisions. It reads:

- (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:
- (1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;
 - (2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant Section 62-5-501, if the decision is within the scope of his authority;
 - (3) a person given priority to make health care decision by another statutory provision;
 - (4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - a. entry of a pendent lite order in a divorce of separate maintenance action;
 - b. formal signing of a written property or marital settlement agreement; or
 - c. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
 - (5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;
 - (6) a parent of the patient;
 - (7) an adult sibling of the patient; or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;
 - (8) a grandparent of the patient; or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;
 - (9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those adult relatives who are reasonably available for consultation.

Defendants, thought their own physicians examined Mr. Alston and found that he was not able to comprehend the Resident's Rights and Responsibilities, nor was he able to make health care decisions. Plaintiff does not dispute this. However, the Defendants' contention that Ms. Alston-Woods, as daughter of Mr. Alston had statutory authority to act is just plain wrong. Mr. Alston was married to Orveletta Alston at the time of his admission to Conway Manor. (See Affidavit of Alston, ¶ 3). Accordingly, under the AHCCA, Orveletta Alston alone had priority to make health care decisions.

Additionally, the AHCCA only deals "health care" related decisions, and not legal decisions. Nowhere in the entire AHCCA is the word "legal" or "arbitration" mentioned. Clearly the legislature intended this Act to govern only those decisions as they relate to health care. The Defendants cite the case of Coleman v. Mariner Health Care, et al., 407 S.C. 346, 755 S.E.2d 450 (2014), which addresses the AHCCA. The Court in Coleman held that the sister of a nursing home resident could not bind the resident to an arbitration agreement at the time of admission, and that the arbitration agreement was not valid because it exceeded the scope of the sister's authority under the AHCCA. According to the Court, AHCCA specifically limited surrogates' authority to making health care decisions and associated financial arrangements. Arbitration is not a health care or related financial decision, and thus exceeds the authority granted by the AHCCA. Id. At 351-52, 755, S.E. 2d at 453.

Defendants argue that because in the present case, that because the arbitration agreement itself is not a separate agreement, Coleman does not apply. This is, however, a thinly veiled attempt to circumvent the well-established law in South Carolina and legislative intent of the AHCCA and other statutory authority. It is absurd to think that the Defendants, a sophisticated business entity who is familiar with the admissions process, could simply place an arbitration agreement, which is a legal document, in an admissions agreement, which is a medical document, and the arbitration agreement magically becomes a medical document that is executed by someone who clearly had no authority to do so. Not to mention doing so improperly attempts to circumvent the required conspicuous notice of the

arbitration agreement. Despite all of this, the AHCCA clearly did not empower Ms. Alston-Wood to sign the Admission Agreement on behalf of Mr. Alston because she did not have priority.

ii. **S.C. Bill of Rights for Resident of Long-Term Care Facilities**

South Carolina Bill of Rights for Residents of Long-Term Care Facilities is codified in S.C. Code Ann. §44-81-10, et seq. Under the Bill of Rights, a “representative” is defined as “a resident’s legal guardian, committee, or next of kin, or other person acting as agent of a resident who does not have a legally appointed guardian.” S.C. Code Ann. § 44-81-30(3). The Defendants make the same argument that they did under the AHCCA, trying to argue that Ms. Alston-Wood was Mr. Alston’s representative and his agent. This is again, an incorrect analysis. Ms. Alston-Wood was not Mr. Alston’s representative, his agent, nor was she his next of kin. Mr. Alston’s wife, Orveletta was. Although the S.C. Bill of Rights for Residents of Long-Term Care Facilities does not expressly spell out the priority of who is next of kin, that would be determined through intestate succession, S.C. Code Ann. §62-2-101, et seq. The Defendants argument that because Ms. Alston-Wood received the statutorily required information from the facility at the time of Mr. Alston’s admission and signed a written acknowledgement reflecting this in accordance with the foregoing code section is ridiculous and comical at best. (Def. Memo in Support, Pg. 12). Ms. Alston-Wood had no authority to make healthcare related decisions for Mr. Alston, but even if she somehow did possess the actual authority, it would be limited to making health care decisions only, not legal ones.

II. **FEDERAL ARBITRATION AGREEMENT ACT DOES NOT MANDATE ENFORCEMENT OF THIS AGREEMENT**

Under the FAA, arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed above in Section I, there is no valid arbitration agreement because Ms. Alston-Wood did not have the legal authority to execute a valid arbitration. Second, Plaintiff’s claims include negligence,

negligence per se, fraud and misrepresentation, violations of the South Carolina Unfair Trade Practices Act, wrongful death and survivorship. Nowhere in the Defendants' arbitration agreement are those causes of action listed. Accordingly, the FAA does not apply.

III. THE PROCEEDINGS MUST NOT BE STAYED

The Defendants argue that the FAA requires a stay. However, because the FAA does not apply and this case is not subject to arbitration, the proceedings must not be stayed.

IV. PROTECTIVE ORDER

On March 9, 2017, the Plaintiff served the Defendants with Plaintiff's First Discovery Requests. Defendants responded by objecting to the discovery requests primarily on the basis that this case is subject to arbitration, and thus the civil case and the discovery requests were improper. Because arbitration is improper, the Defendants must respond to the Plaintiff's First Discovery Requests within thirty (30) days of the date of the Order Denying the Defendants' Motion to Compel Arbitration.

V. WRONGFUL DEATH BENEFICIARIES SHOULD NOT BE BOUND BY ANY ARBITRATION DOCUMENTS

Willie Earl Alston, Sr.'s wrongful death beneficiaries should not be bound by arbitration as not all of the beneficiaries participated in Mr. Alston's admission and were not even ascertainable until his death. See Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581 (Ky. 2012), *cert. denied*, 134 S.Ct. 705, 187 L.Ed.2d 567 (2013).

"Defendants bore the burden of establishing a valid agreement to arbitrate. Defendants admit [the resident] did not sign either arbitration agreement. They further admit [the resident] was mentally incompetent at the time she was admitted to [the facility] and at the time [the signatory] signed the arbitration agreements approximately a week later. There was no evidence [the signatory] had signed a durable power of attorney. It necessarily follows [the resident] lacked the capacity to authorize [the signatory] to enter into the arbitration agreements on her behalf. Consequently, no valid arbitration contract exists." See Pagarigan v. Libby Care Center, Inc. 99 Cal.App.4th 298 301.

"The presumption in favor of arbitration does not extend, however, to non-signatories to an agreement." Griswold v. Coventry First, LLC, 762 F.3d 264 (2014). ("The presumption in favor of

arbitration does not extend, however, to non-signatories to an agreement; it applies only when both parties have consented to and are bound by the arbitration clause. . . “[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”. . . “If a party has not agreed to arbitrate, the courts have no authority to mandate that he do so.”).

CONCLUSION

For the reasons stated above, this Court should find the Defendants’ arbitration clause unenforceable since Ms. Alston-Wood was without authority to sign it. There have been multiple Orders Denying Arbitration in South Carolina for similar fact patterns to the above. These have been attached as Exhibit B for the Court’s convenience. An arbitration agreement is a legal document, and the signing of an arbitration agreement is not the making of a health care decision. An incapacitated person should not be bound to arbitration by someone who has no legal authority to do so, as it would be a grave injustice.

Respectfully submitted,

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Attorneys for the Plaintiff

October 27, 2017
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record.

This 27th Day of October.

/s/Bradley H. Banyas

Exhibit A

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

Orveletta Alston as Personal Representative of the) C/A No. 2017-CP-26-1351
Estate of Willie Earl Alston, Sr.,)

Plaintiff,) AFFIDAVIT OF ORVELETTA ALSTON
Versus)

Conway Manor, LLC, Raymond Tiller, and John)
and Jane Does 1-10,)
Defendants.)

1. I am the duly appointed personal representative for the Estate of Willie Earl Alston, Sr. and his surviving wife.

2. I brought this action as personal representative for the Estate of Willie Earl Alston, Sr. to recover for a wrongful death action as well as a survival action.

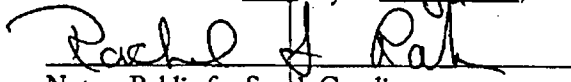
3. At the time of Willie Earl Alston, Sr.'s admission to Conway Manor, I was his wife and made medical decisions for him.

4. I never signed an arbitration agreement on behalf of Willie Earl Alston, Sr. nor waived his right to a jury trial. No one but me had that power as of the time of admission to the Defendant's facility, just as no one but me had the power to bring this lawsuit.

5. My husband suffered greatly and died as a result of the Defendant's failures, and I want his claims to be heard by a jury, as is my constitutional right.


Orveletta Alston

Sworn to me this 9th day of August, 2017.


Notary Public for South Carolina
My commission expires: 8-31-26

In South Carolina, a wrongful-death right of action derives exclusively from the Wrongful Death Act. See Green v. Southern Ry. Co., 319 F. Supp. 919, 920 (D.S.C. 1970). Thus, resolution of disputes in wrongful-death suits requires examination of the Wrongful Death Act, which must be strictly construed. See Hemingway v. Shull, 286 F. Supp. 243, 249 (D.S.C. 1968). As always, “[w]hen construing a statute, courts must determine the intent of the legislature.” Home Health Servs., Inc. v. S.C. Dep’t of Revenue & Taxation, 333 S.C. 691, 695 (Ct. App. 1999).

First, the Wrongful Death Act provides a cause of action that exists for a decedent’s beneficiaries See S.C. Code Ann. § 15-51-10 et seq., but that is beside the point. The Act requires, as a condition of any suit, that the decedent herself, had she lived, could have “maintain[ed] an action and recover[ed] damages.” Id. By definition, a suit under the Wrongful Death Act is entirely derivative of the decedent’s rights; and for more than a century, South Carolina courts have construed the statute accordingly. See, Estate of Stokes v. Pee Dee Family Physicians, LLP, 389 S.C. 343, 347 (2010) (“[O]ur law has remained steadfast to the principle of limiting the right of recovery under the wrongful death statute to those cases in which the party injured would have been entitled to recover if death had not ensued.” (cataloguing cases)); Rish v. Seaboard Air Line Ry., 90 S.E. 704, 704-05 (1916) (“The [Wrongful Death Act] gives a right of action where none existed before, and limited the right of recovery to those cases in which the party injured would have been entitled to recover if death had not ensued.” (reaffirming Price v. Richmond & D.R. Co., 12 S.E. 413, 413-14 (1890) (“[T]he capacity of the deceased to maintain an action based upon the injury which caused his death is made the test of the right of the administrator to maintain the action provided for by the

[Wrongful Death Act]; hence if the deceased has debarred himself, by his contributory negligence, **or by any other cause**, from maintaining his action based upon the injury which caused his death, it follows necessarily that his administrator is likewise barred of his right of action, which would otherwise be secured to him by the statute. In all cases, . . . the controlling question [] is whether the deceased, if he had not died, could have maintained the action.”) (Emphasis added)).

Second, a beneficiary thus stands in the shoes of the decedent and is subject to all defenses or limitations that could have been asserted against her—including limitations imposed by the decedent prior to death that vitiate or constrain a beneficiary’s ability to assert a wrongful-death cause of action. See Quattlebaum v. Carey, 685 F. Supp. 939, 942 (D.S.C. 1988) (“[A]nything that would have defeated the decedent’s recovery had he survived the accident, ‘such as contributory negligence, a valid release, or similar acts on his part,’ would defeat the right of recovery in behalf of the family in case of his death.” (quoting Reed v. Northeastern R. Co., 16 S.E. 289, 291 (S.C. 1892)); see also Stokes, 389 S.C. at 349 (holding that if the decedent failed to timely sue for malpractice that was the cause of death, such that he would have had no right of recovery on his time-barred claim, his estate has no right of action under the Wrongful Death Act). The Wrongful Death Act admits no other conclusion.

The South Carolina Wrongful Death Act tracks the language of wrongful death statutes of a majority of other states, including Michigan, Mississippi, Nebraska and North Carolina. Such statutes, like ours own, are based on Britain’s Lord Campbell’s Act. See 12 Am. Jur. Trials 317, § 3 (Updated Oct. 2017) (“[M]ost American [wrongful death] statutes are patterned” on the Lord Campbell’s Act); see also Quattlebaum, 685

F. Supp. at 940-41 (“South Carolina’s wrongful death statute is derived from or modeled after Lord Campbell’s Act”). Courts in these states read their statutes—which, like our Act, permit a suit only where a defendant’s conduct would, if death had not ensued, have entitled the party injured to maintain an action and recover damages—to mean that a wrongful death action *is* derivative. See Cleveland v. Mann, 942 So.2d 108, 119 (Miss. 2006) (en banc) (Miss. Code Ann. § 11-7-13: “Based on the plain language of the statute, a wrongful death beneficiary is only allowed to bring claims the decedent could have brought if the decedent had survived.”); Ballard v. Southwest Detroit Hosp., 327 N.W.2d 370, 818 (Mich. App. Ct. 1982) (per curiam) (M.C.L. § 600.2922(1): same); Bales v. Arbor Manor, SSC, No. 4:08CV3072, 2008 WL 2660366, at *8 (D. Neb. July 3, 2008) (Neb. Rev. Stat. § 30-809: same); accord Wilkerson v. Nelson, 395 F. Supp. 2d 281, 288-89 (M.D.N.C. 2005) (N.C. Gen. Stat. § 28A-18-2: same). Accordingly, “[a]ny substantive impediment that would have prevented the decedent from commencing suit will likewise preclude suit by the personal representative.” Ballard, 327 N.W.2d at 371.

The U.S. Supreme Court held that a decedent’s arbitration agreement governs a wrongful-death claim. See Marmet Health Care Ctr., Inc. v. Brown, 565 U.S. 530, 531 (2012). In 2011, West Virginia’s highest court held that the Federal Arbitration Act (“FAA”) does not protect pre-dispute arbitration agreements covering claims for wrongful death. See Brown v. Genesis Healthcare Corp. --- S.E.2d ---, No. 35494, 2011 WL 2611327, at *35 (W. Va. June 29, 2011). As a result, the West Virginia court imposed a judge-made rule whereby, “as a matter of public policy under West Virginia law, an arbitration clause in a nursing home admission agreement adopted prior to an

occurrence of negligence that results in a personal injury or wrongful death, shall not be enforced to compel arbitration of dispute concerning the negligence.” *Id.*

The nursing facilities whose agreements had been invalidated by the West Virginia court filed petitions for writs of certiorari in the Supreme Court of the United States. In granting those petitions and summarily reversing the West Virginia court’s decision without requiring full merits briefing or oral argument, the U.S. Supreme Court explained that the FAA provides “no exception for personal-injury or wrongful-death claims. It requires courts to enforce the bargain of the parties to arbitrate.” Marmet Health Care Ctr., Inc., --- S. Ct. ---, No. 11-391, 2012 WL 538286, at *1 (internal quotations and citations omitted). “West Virginia’s prohibition against pre-dispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes,” the Court explained, “is a categorical rule prohibiting arbitration of a particular type of claim, and that rule is contrary to the terms and coverage of the FAA.” *Id.* at *2.

The Supreme Court of Texas has construed Texas’s wrongful-death statute—which, like the South Carolina Act, applies “only if the individual injured would have been entitled to bring an action for the injury if the individual had lived,” Tex. Civ. Prac. & Rem. Code § 71.003(a)—to mean that “the right of statutory beneficiaries to maintain a[n] [] action is entirely derivative of the decedent’s right to have sued for [her] own injuries immediately prior to [her] death.” In re Labatt Food Serv., L.P., 279 S.W.3d 640, 644 (Tex. 2009). “Thus, it is well established that statutory wrongful death beneficiary’s claims place them in the exact ‘legal shoes’ of the decedent, and they are subject to the same defenses to which the decedent’s claims would have been subject.” *Id.* (quotation marks and citation omitted).

In short, “wrongful death beneficiaries ... [are] bound by a decedent’s contractual agreement that completely disposes of the beneficiaries’ claims . . . [and] by a contractual agreement that merely changes the forum in which the claims are to be resolved.” *Id.* at 645-46. Persuasive decisions from other jurisdictions have construed similar wrongful-death statutes to compel wrongful-death claimants like Mrs. Alston to arbitrate. See Briarcliff Nursing Home, Inc. v. Turcotte, 894 So.2d 661, 664-65 (Ala. 2004) (per curiam); Sanford v. Castleton Health Care Ctr., LLC, 813 N.E.2d 411, 421 (Ind. Ct. App. 2004); Cleveland, 942 So.2d at 119; Ballard, 327 N.W.2d at 372; Bales, 2008 WL 2660366, at *8; Laizure v. Avante at Leesburg, Inc., 44 So.3d 1254, 1258-59 (Fla. Dist. Ct. App. 2010), *review granted*, 51 So.3d 465 (Fla. Dec. 14, 2010); *cf.* Rizzo v. GGNSC Holdings, LLC, Civil Action No. 10-45-HRW, 2011 WL 4565785, at *3 (E.D. Ky. Sept. 29, 2011); Estate of Eckstein v. Life Care Ctrs. of Am., Inc., 623 F. Supp. 2d 1235, 1239-40 (E.D. Wash. 2009).

Section 2 of the FAA compels the same result. If a decedent, prior to death, granted a complete release to a defendant of future claims based on the defendant’s acts that later were the cause of death, any wrongful-death claim would be extinguished. This is so because under the Wrongful Death Act’s terms, the decedent no longer could have “maintain[ed] an action and recover[ed] damages.” See Rish, 90 S.E. at 704 (rejecting wrongful-death claim because “[t]he defendant pleaded a release executed by the decedent in his lifetime, as a bar to recovery”); *see also* Quattlebaum, 685 F. Supp. at 942 (noting that under the South Carolina Wrongful Death Act, “a valid release . . . would defeat the right of recovery in behalf of [the decedent’s] family”); Bales, 2008 WL 2660366, at *8 (“[I]f a personal injury cause of action is settled or

reduced to a judgment prior to the injured person's death, no wrongful death action can later be brought based on that same injury."'). If a decedent's pre-death release or settlement bars a later wrongful death claim, as it must, an arbitration agreement also must be enforced because to do otherwise "would violate the FAA's express requirement that states place arbitration contracts on equal footing with other contracts." Labatt, 279 S.W.3d at 645-46. It would be anomalous if a wrongful-death estate's damages claim could be barred by agreements entered into by the decedent, but the decedent's agreement that any available claims must be decided in an arbitral forum would not bind the estate.

In sum, as explained above, Mr. Alston is bound by the Arbitration Agreement. Thus, because Mr. Alston was barred from bringing an "action" in court due to the Agreement, his wrongful-death beneficiaries, including Mrs. Alson, are barred as well.

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Attorneys for Defendants

November 1, 2017

Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

RECEIVED

Larry B. Hyman, Jr., Circuit Court Judge

FEB 08 2018

SC Court of Appeals

Case No. 2017-CP-26-01351

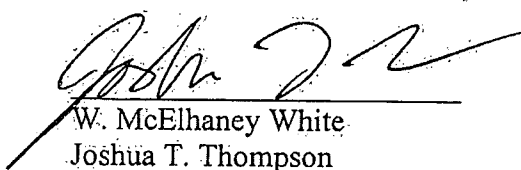
Orveletta Alston as Personal Representative of the
Estate of Willie Earl Alston, Sr., Respondent,

v.

Conway Manor, LLC, Raymond Tiller, and
John and Jane Does 1-10, Appellants.

NOTICE OF APPEAL

Appellants Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10 appeal the Order of the Honorable Larry B. Hyman, Jr., dated January 11, 2018 and filed January 17, 2018. Appellants received written notice of the entry of this Order on January 17, 2018.


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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	
)	
Orveletta Alston as Personal Representative of the Estate of Willie Earl Alston, Sr.,)	C/A No. 2017-CP-26-1351
)	
)	
Plaintiff,)	
)	
Versus)	
)	
Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10,)	
)	
)	
Defendants.)	

ORDER

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SC Court of Appeals

This matter comes before the Court on Defendants Conway Manor, LLC, Raymond Tiller, and John and Jane Does 1-10's Motion to Stay Action and Compel Arbitration and for Protective Order. Based on the Court's review of the parties' written submissions and oral arguments during a hearing on November 1, 2017, the Court DENIES the Defendants' motion.

BACKGROUND

The Defendants operate a nursing home, licensed by the South Carolina Department of Health and Environmental Control, R.61-17, *Standards for Licensing Nursing Homes*. Willie Earl Alston, Sr. was admitted to the Defendant' nursing home facility on or about December 17, 2015. Upon admission, Mr. Alston was documented to return home with his wife after short-term rehabilitation. At all relevant times, it was documented that Mr. Alston suffered from dementia. Plaintiff alleges that while Mr. Alston was a resident, he developed pressure ulcers. Willie Earl Alston, Sr. died on April 22, 2016.

When Mr. Alston arrived at the Defendants' nursing home, Defendant's staff approached

Mr. Alston's daughter, Kimberly Alston-Wood. Ms. Alston-Wood was not Mr. Alston's guardian, conservator, or attorney in fact. The documents included an Admission Agreement which included a clause with an Arbitration Agreement. Mr. Alston's wife, Orveletta Alston, was appointed as Personal Representative of the Estate of Willie Earl Alston, Sr. on May 27, 2016 and filed this action on his behalf, alleging that the Defendants breached their duty in caring for Mr. Alston. On June 21, 2017, Defendants' filed a Motion to Stay Action and Compel Arbitration and for Protective Order. Oral arguments were heard on November 1, 2017.

ANALYSIS

Arbitration is a matter of contract and South Carolina Courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). The policy of this State is to favor arbitration of disputes. Toler Cove Homeowner's Ass'n v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 581 (2003). However, an arbitration agreement is not enforceable when a party to the contract lacks the capacity to contract.

1. The Arbitration Agreement is not enforceable because Kimberly Alston-Wood lacked the capacity to contract on behalf of her father.

In South Carolina, actual authority is expressly conferred upon the agent by the principal, but apparent authority exists where the principal knowingly permits the agent to exercise authority or when the principal holds the agent out as possessing such authority. Roberson v. S. Fin. Of South Carolina, Inc., 365 S.C. 6,9, 615 S.E.2d 112, 115 (S.C. 2005). It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority. Frasier v.

Palmetto Homes of Florence, 473 S.E.2d 865 (S.C. App. 1996). While the Plaintiffs did not expressly argue apparent authority, Ms. Alston-Woods authority status was raised by both parties, therefore the Court shall analyze both actual and apparent authority.

Here, Defendants argue in their motion that because Mr. Alston suffered dementia prior to and at the time of his admission, he did not have capacity to enter into a binding contract. Therefore by Defendants' own admission, Mr. Alston could not explicitly authorize, hold out, or knowingly permit Ms. Alston-Wood to sign the Arbitration Agreement, in satisfaction of the elements of the doctrine of apparent authority. Additionally, a review of the admissions and arbitration documents by Defendants would have informed them that Ms. Alston-Wood did not have authority by way of a Power of Attorney to bind her father. Ms. Alston-Woods, did not indicate at any time on the Admission Agreement that she had any authority to enter the contract on behalf of her father.

Additionally, Ms. Alston-Wood possessed no statutory, legal authority to bind Mr. Alston into a contract. The Adult Health Care Consent Act ("AHCCA") does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. S.C. Code Ann. § 44-66-30 notes that "(A) where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: (4) a spouse of the patient... (5) an adult child of the patient..." The statute specifically provides for a surrogate to make decisions regarding procedures and treatment of human disease and ailments. However, the statute does not authorize surrogates to enter into legal contracts waiving a person's right to a jury trial. Even if it did, Ms. Alston-Wood lacked priority under the statute because Mr. Alston's wife was alive

and making his health care decisions. The purpose of the AHCCA is to enable contracting parties in a healthcare situation to enter into a binding agreement when express authority has not been conferred upon an agent for that purpose. "However the [AHCCA] does not confer such authority with respect to an Arbitration Agreement...." Thomspon, at 52. Additionally, neither party argued under S.C. Code Ann. § 44-66-30(D) that Mr. Alston's wife, who had top priority, was not reasonably available, unwilling to make decisions, or unable to make healthcare decisions for Mr. Alston.

Furthermore, the S.C. Bill of Rights for Resident of Long-Term Care Facilities does not confer legal authority to Ms. Alston-Wood to enter into a contract on behalf of her father. Under the Bill of Rights, a "representative" is defined as a "resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." S.C. Code Ann. §44-81-30(3). Mr. Alston did not have a legally appointed guardian or attorney in fact at the time of his admission. Therefore, the Bill of Rights would grant Mr. Alston's wife, as next of kin, as his representative, not Ms. Alston-Wood.

This Court finds the Supreme Court of South Carolina's decision in Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 755 S.E.2 450 (2014) is very similar to the facts of the case at hand. In Coleman, the Circuit Court denied the nursing home defendants' motion to stay the action and compel arbitration because the sister of the resident who signed the arbitration and admission agreements lacked capacity to bind her sister to the arbitration agreement. In affirming the Circuit Court's Order in Coleman, the Supreme Court found that although the AHCCA did give the resident's sister "authority to make 'healthcare decision' on behalf of her sister, consent

for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without authority to do so.” Id. The Court reasoned that the Act only extends authority to surrogates to make traditional health care decisions and financial decisions that arise out of those decisions. The Court further addressed this in Thompson v. Pruitt Corp., 416 S.C. 43, holding that an arbitration agreement was separate from the admission agreement. In Thompson, the Court found that while the resident’s son was authorized to execute an admission agreement under the AHCCA, the Act did not convey any authority for the son to sign an arbitration agreement on behalf of his father. The Court specifically addressed the fact that the terms of the Admission Agreement indicate that it either incorporated, or merged with, the Arbitration Agreement, but declined to merge the two. Id. at 52. Simply stated, an Arbitration Agreement is a legal document which does not concern health care related decisions. Likewise, an Admission agreement is a medical document which does not concern legal related decisions. One cannot simply be contained in the other and its health care or legal distinction is masked by the other.

In accordance with the foregoing, Ms. Alston-Wood lacked the actual or apparent authority, pursuant to statute, to make health care decisions on behalf of Mr. Alston as his agent. She furthermore lacked the actual or apparent authority to make legal decisions on behalf of Mr. Alston, which includes the agreement to arbitrate disputes by arbitration. Ms. Alston-Wood had no legal authority whatsoever to sign the Arbitration Agreement. Absent legal authority or at least some measure of apparent authority, the Arbitration Agreement is void and unenforceable.

2. Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because Kimberly Alston-Wood did not have capacity to bind him to the contract.

Defendants' argument that Willie Alston, Sr. is bound by the Arbitration Agreement executed by his daughter as a third-party beneficiary is without merit. Mr. Alston did benefit from the Admissions Agreement to the facility, however Ms. Alston-Wood lacked authority under the AHCCA and the S.C. Bill of Rights to execute on his behalf. Along the same lines, Ms. Alston-Wood did not have authority to legally bind her father to the Arbitration Agreement contract for the reasons set forth above in Coleman and Thompson, because the Arbitration Agreement and Admission Agreement did not merge together. As such, this Court finds Willie Alston, Sr. was not a third-party beneficiary to the Arbitration Agreement because the contract was never valid.

3. Plaintiff is not equitably estopped from denying the Arbitration Agreement.

Defendants also argue that Plaintiff should be equitably estopped from denying enforcement of the Arbitration Agreement and that under the doctrine of equitable estoppel a party should not be permitted to sue under certain provisions of a contract while disclaiming provisions of the same contract. 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 the

estoppel must 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 the conduct of the party to be estopped. *Id.*

Defendant has not met its burden to establish these elements. There is no evidence Ms. Alston-Wood acted in a way amounting to a false representation to Defendants regarding Mr. Alston's status or that Ms. Alston-Wood intended for Defendant to act in reliance on her conduct. Mr. Alston's diminished capacity prevented him from forming the required intent for Defendants to rely on his conduct. Additionally, the evidence shows Defendants cannot meet its burden to show they lacked knowledge or the means of knowledge of the truth of the facts in question. This element requires Defendants to show it did not know Mr. Alston lacked authority to sign the arbitration agreement on her father's behalf and Defendant lacked the ability to make this determination. Equitable doctrines such as estoppel favor diligent parties who actively endeavor to protect their rights. A person cannot claim to have been misled and cannot rely on equitable estoppel if the party, by the exercise of reasonable diligence, could have acquired knowledge to determine the truth of facts in question. 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).

Defendants had the capacity to determine whether Ms. Alston-Wood had authority to sign an arbitration agreement on Mr. Alston's behalf. Defendants are 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 Ms. Alston-Wood whether she was Mr. Alston's guardian or

attorney-in-fact and had the ability to request supporting documentation. Since Defendants have not cited or provided evidence on all required elements of equitable estoppel, Plaintiff is not equitably estopped from denying the arbitration agreement.

Furthermore, while typically the Defendants argument that equitable estoppel would prevent a party from cherry picking certain provisions to rely upon while disavowing other, there is an exception in cases such as these circumstances. As stated above, Mr. Alston was suffering from dementia prior to being admitted to Conway Manor, thus he was prevented from having the requisite intent and knowledge to assent to the Arbitration Agreement. Therefore, there must be some legal authority for Ms. Alston-Woods to sign on behalf of her father. The Admissions Agreement and the Arbitration Agreement were signed at the same time, in the course of the same transaction. The Agreements, however, do not merge. The two agreements are independent of one another, as reflected in the language of the Admission Agreement, indicating the execution of the Admission agreement was not contingent upon an Optional Arbitration Clause. The Optional Arbitration Clause stated:

"Any action, dispute, claim, or controversy, of any kind (tort, contract, equitable or statutory, including but not limited to claims of violation of resident's rights(now existing or hereafter arising between the parties, in anyway arising form or relating to this Agreement governing the Resident's stay a[t] the Facility, shall be resolved by binding arbitration.... **OPTIONAL: if the parties do not agree to this Arbitration Clause, please mark with an X to void this clause only.**"

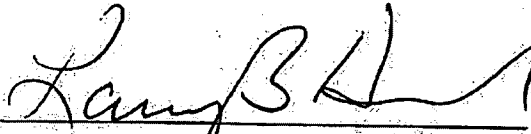
As previously stated the AHCCA provides for the health and wellbeing of an incapacitated adult, an Arbitration agreement is a legal document not for the care of an incapacitated adult, and is outside of the scope of the AHCCA. Therefore, because the Court finds

that the two documents did not merge and there was no legal authority for Ms. Alston-Woods to sign on Mr. Alston's behalf, equitable estoppel does not apply to the Arbitration agreement.

4. The FAA does not mandate the enforcement of the Arbitration Agreement

Under the Federal Arbitration Agreement ("FAA"), arbitration is required when there is a valid arbitration agreement and a dispute exists which is within the scope of the agreement. Under the arbitration clause, neither prong is satisfied. As discussed in the sections above, there is no valid arbitration agreement because Ms. Alston-Wood did not have the legal authority to execute a valid arbitration agreement or health care admission agreement. Accordingly, the FAA does not apply.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Arbitration Agreement in question is unenforceable and Defendants' Motion to Dismiss is **DENIED**.


The Honorable Larry B. Hyman, Jr.

1-11, 2018
Conway, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge.

Case No. 2017-CP-26-01351

RECEIVED

FEB 08 2018

SC Court of Appeals

Orveletta Alston as Personal Representative of the
Estate of Willie Earl Alston, Sr., Respondent,

v.

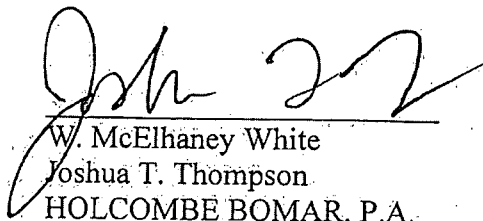
Conway Manor, LLC, Raymond Tiller, and
John and Jane Does 1-10, Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the 8th day of February 2018, he has served
counsel for Appellant with a copy of the Notice of Appeal in this matter by mailing copies of the
same by United States mail, postage prepaid, to the following addresses:

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2017-CP-26-1351

Orveletta Alston,)
)
Plaintiff,) **Transcript of Record**

vs.)
) **November 1, 2017**

Conway Manor, LLC.)
Raymond Tiller, and)
John and Jane Does 1-10)
)
Defendant.)

B E F O R E:

Honorable Larry Hyman
Horry County Courthouse
Conway, South Carolina

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

Brad Bannish, Esquire
Attorney for Plaintiff

W. McElhanev White, Esquire
Attorney for Defendant

Sallie Beth Todd
Court Reporter

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I N D E X

(There were no witnesses called during the hearing.)

Certificate of Court Reporter 24

E X H I B I T S

(There were no exhibits marked during the hearing.)

1 **THE COURT:** All right. Alston versus Conway Manor. Mr.
2 Sasser, Mr. Hughey and Mr. White; it looks like we have a
3 medical mal case here?

4 **MR. WHITE:** Yes, Your Honor.

5 **THE COURT:** A motion to stay. All right. What are we
6 gonna try to stay, the case?

7 **MR. WHITE:** Yes, sir, Your Honor. Mack White on behalf of
8 the defendant, Conway Manor. It's good to be before you
9 today.

10 **THE COURT:** Well, Mr. White, this looks like a 2017 case?

11 **MR. WHITE:** Yes, sir.

12 **THE COURT:** Well they never come up before three or four
13 years.

14 **MR. WHITE:** Right. Well we're very early.

15 **THE COURT:** Remember they get all sorts of entitlements.

16 **MR. WHITE:** I understand, Your Honor, and I'm just trying
17 to -- I don't want to delay this any more than we have to.

18 **THE COURT:** Okay.

19 **MR. WHITE:** I appreciate your concern.

20 **THE COURT:** Well what do you need for us to do for you,
21 Mr. White?

22 **MR. WHITE:** Your Honor, what I'm asking for in this
23 motion, I represent Conway Manor and Raymond Tiller, who is
24 the administrator of the facility and John and Jane Does which
25 are named, which obviously have not been subject to the debt.

1 Your Honor, I'm moving to compel arbitration in this matter.

2 Just by way of background, back in 2015, December of 2015 ---

3 **THE COURT:** Do they have a binding to arbitration clause?

4 **MR. WHITE:** Opposition is they did.

5 **THE COURT:** A clause for binding arbitration?

6 **MR. WHITE:** Yes, sir. Yes, sir.

7 **THE COURT:** Okay.

8 **MR. WHITE:** There's an arbitration clause. My position
9 is it's binding. Mr. Bannish's position is it is not.

10 **THE COURT:** Well certainly not. Okay. But what do you
11 need for me to do; what are you -- are you in agreement?

12 **MR. BANNISH:** I'm not in agreement, Your Honor.

13 **THE COURT:** Okay. You don't want it stayed?

14 **MR. BANNISH:** No, sir.

15 **THE COURT:** You're be ready in three or four years?

16 **MR. BANNISH:** I guess so, absolutely.

17 **THE COURT:** What -- what are you looking at, you say you
18 needed it stayed, I mean, for how long?

19 **MR. WHITE:** Well, Your Honor, the choice the Court has, I
20 believe, in motions such as this is either to stay the action
21 in State Court and compel arbitration so the parties can come
22 back and judicially enforce any judgment that is rendered.

23 **THE COURT:** That's correct.

24 **MR. WHITE:** The other way that I've seen it done is where
25 the parties ask for the Court to dismiss it and ---

1 **THE COURT:** That's what I'm familiar with and compel
2 arbitration.

3 **MR. WHITE:** Right. So, either way, I don't think it
4 matters.

5 **THE COURT:** Is that what we're here about, arbitration?

6 **MR. WHITE:** Yes, sir.

7 **THE COURT:** Okay. Let me hear you.

8 **MR. WHITE:** All right. Thank you, Your Honor, may it
9 please the Court. In December of 2015, a lady by the name of
10 Kimberly Alston Wood was the daughter of Mr. Willie Earl
11 Alston, came with her father to Conway Manor to admit him to
12 the facility. Mr. Alston was not competent in terms of his
13 mental capacity and so his daughter signed the admission
14 agreement to have him admitted to the facility.

15 **THE COURT:** Was she his representative; was she his
16 conservator, was she have -- did she have a Durable Power of
17 Attorney, anything like that?

18 **MR. WHITE:** I'm not aware of anything.

19 **THE COURT:** I'm just wondering what her authority was.

20 **MR. WHITE:** Right, yes, sir, and that's where I'm gonna
21 go in my argument.

22 **THE COURT:** Okay.

23 **MR. WHITE:** To answer the Court's question, she was not a
24 conservator, she was not an appointed guardian and I do not
25 believe she had Power of Attorney. No one has brought that to

1 my attention.

2 **THE COURT:** Okay.

3 **MR. WHITE:** Your Honor, the admission agreement by which
4 Mr. Alston was admitted, had an arbitration clause in the
5 agreement and that's an important ---

6 **THE COURT:** Was it mandatory or optional?

7 **MR. WHITE:** Optional.

8 **THE COURT:** Okay.

9 **MR. WHITE:** And that's an important point for purposes of
10 this motion as opposed to other cases that have been decided
11 by the Courts of Appeals and that were attached to the
12 plaintiff's memorandum in this matter. Your Honor, our -- the
13 arguments and there's a few of them and they are all, I
14 believe, fully briefed. And by the way, Your Honor, while I'm
15 thinking about this, I would like to hand up a supplemental
16 memorandum. I provided Mr. Bannish with it. It was filed this
17 morning, but I don't know that the Court would have it.

18 **THE COURT:** Okay.

19 **MR. WHITE:** Can I bring it up, Your Honor?

20 **THE COURT:** I think my Law Clerk has just brought it up,
21 but I would like to have a hard copy if you have one for me.

22 **MR. WHITE:** Yes, sir. In fact, I have a hard copy of the
23 original memo that references these agreements if you need it.

24 **THE COURT:** Okay.

25 **MR. WHITE:** You just let me know, please?

1 **THE COURT:** All right, sir, I'll hear you now. Go ahead.

2 **MR. WHITE:** But, Your Honor, in the arbitration agreement
3 that is -- excuse me, in the arbitration provision that is
4 part of the admission agreement, it states that it covers any
5 action, dispute, claim or controversy of any kind and then in
6 parenthesis it refers to torts, contracts, equitable or
7 statutory issues.

8 Your Honor, clearly we're arguing here that the Federal
9 Arbitration Act applies to this. The State Arbitration Act
10 does not apply because it specifically accepts from its
11 coverage any matters involving personal injury. So, this is
12 not being governed by the State Arbitration Act, but rather by
13 the Federal Arbitration Act.

14 Your Honor, our arguments are three or four-fold. The
15 first is that the plaintiff in this case, Ms. Orveletta
16 Alston, who is the wife of the decedent is equitably estopped
17 from arguing that the Arbitration Agreement or the arbitration
18 provision is not enforceable. Your Honor, obviously, the
19 entire relationship between the decedent and the nursing home
20 began through the execution of the admissions agreement.
21 Without an admissions agreement, you do not form that
22 relationship. The admission agreement provides for things
23 like the services that will be provided, it provides for the
24 payment by the family or insurance, whoever is responsible for
25 that, so it essentially creates and governs the relationship

1 between the parties.

2 The cases and one primary case I've quoted to in my memo,
3 is the Wiggins v. T.H.I. case which is a Federal Court case in
4 South Carolina. In Wiggins, the Court addressed this and a
5 third-party beneficiary that I'll get to in a moment. In
6 addressing the case, in that case, facts very similar to this,
7 a daughter signed her father into a nursing home in Columbia,
8 I believe. Same source of facts, an action was brought for
9 medical negligence after the -- after the resident had been
10 there for a little while. And the nursing home moved to
11 compel arbitration.

12 **THE COURT:** Let me just stop you right there. I think
13 I'm familiar with the case you're talking about, but in that
14 case, that was not a wrongful death, was it?

15 **MR. WHITE:** Yes, sir, it was a wrongful death, yes, sir.

16 **THE COURT:** I was thinking in terms of the survival
17 action, which involved damages or injury to the patient.
18 Whereas, wrongful death really responds to -- to damages to a
19 third party, a beneficiary.

20 **MR. WHITE:** Yes, sir, Your Honor.

21 **THE COURT:** And -- and what's the distinction there; why
22 have the courts handled that distinction?

23 **MR. WHITE:** Your Honor, in that case ---

24 **THE COURT:** When the claimant is claiming outside of the
25 contract.

1 **MR. WHITE:** Yes, sir, and actually Mr. Bannish raised
2 that issue in his brief. He raised the issue of whether
3 wrongful death beneficiaries can be bound to an agreement,
4 which they did not sign or were not a party to. And so to
5 address that question, the Wiggins Court dealt with that
6 issue, both the survival and the wrongful death beneficiaries
7 by finding that and this is the key of equitable estoppel.
8 The whole point of equitable estoppel is not the five or six
9 factors we're used to seeing called equitable estoppel in
10 South Carolina. It's a different proposition of law with the
11 same name and it is -- if you are seeking to enforce a
12 contract or a relationship formed by a contract, that you
13 either live or die by the entire agreement. In other words,
14 you cannot avow certain provisions of the contract and seek to
15 enforce others and disavow provisions which you believe are
16 not to your advantage.

17 **THE COURT:** And of course, lying at the heart of a
18 negligence action, malpractice action, is duty which is
19 created by the contract?

20 **MR. WHITE:** Yes, sir. Absolutely.

21 **THE COURT:** Go ahead.

22 **MR. WHITE:** And that was our point. Our point is, which
23 you'll see in some of the cases that are out there,
24 specifically the Coleman case, which is cited in both of our
25 briefs and that's actually an action that I was involved in

1 that went up to the Court of Appeals. In that case, the
2 controlling factor was the fact that there was a separate
3 arbitration agreement from the admissions agreement and the
4 Court said well, the family member may have the right to admit
5 them under the admissions agreement, but they do not have the
6 right to then sign a separate agreement, which is not part of
7 that agreement, to waive a constitutional right to a jury
8 trial.

9 Well the difference we have in this case and I think it's
10 an important distinction ---

11 **THE COURT:** Same contract.

12 **MR. WHITE:** Same contract, yes, sir, Your Honor. So
13 that's the equitable estoppel argument. The third-party
14 beneficiary argument kind of dovetails with that and that was
15 also addressed in the Wiggins case and under that theory, Mr.
16 Alston, as the resident, even though he wasn't a party in
17 terms of signing the contract, he was clearly the third-party
18 beneficiary of the contract. The entire contract was created
19 for this benefit to receive care at Conway Manor. Under the
20 Wiggins case, the Court again held because he was a third-
21 party beneficiary, he was bound to the contract by virtue of
22 his family member signing it.

23 And also, Your Honor, in the Wiggins case, the family
24 member who signed it had no more rights than the family member
25 in this case. It was not an appointed a guardian or

1 conservator, no Power of Attorney.

2 Your Honor, another issue that the Coleman case dealt
3 with that I think dealt with it negatively as to the nursing
4 home in that case, but I think it works out for us in this
5 case, is under the South Carolina Adult Healthcare Consent
6 Act. And under that act, Your Honor, that applies in
7 situations where you do not have a conservator, a guardian, a
8 Power of Attorney, and it's an act which specifically
9 authorizes family members or other people to make healthcare
10 decisions for people who are not competent. And in fact,
11 specifically in the definition of healthcare, it includes
12 skilled nursing care. It also includes statutorily the
13 placement in or removal from a facility that provides these
14 forms of care. So, it specifically envisioned the idea of
15 someone signing a family member into a nursing home facility
16 just like a hospital or other places. In this particular
17 case, Your Honor, or excuse me, in the Coleman case, the
18 difference, there the Court said well, the daughter, as a
19 family member, had the right to sign the admissions agreement
20 under this act, but not the arbitration act. Because the
21 arbitration act is less about health care, more about for --
22 for a dispute.

23 But here again, Your Honor, we have one agreement, one
24 contract. Your Honor, we also ---

25 **THE COURT:** What's the distinction, can you cite an

1 authority that places any importance on the fact that that
2 would be part of the admissions agreement or it might be an
3 entirely separate agreement? I mean have the Court's
4 addressed the significance of it being incorporated into the
5 admissions agreement.

6 **MR. WHITE:** Absolutely, Your Honor, and that's the
7 Coleman case.

8 **THE COURT:** Okay.

9 **MR. WHITE:** In the Coleman case, the argument there was
10 the defendants in that case, some of whom I represented,
11 argued that because the Court was keyed in on the idea that
12 there was a separate admission agreement from the arbitration
13 agreement, we argued that the documents were actually merged
14 under the document merger. You have parties, same parties
15 executing the agreement, for the same purpose and the same
16 transaction. The Court found that based on the language of
17 the admissions agreement, that arbitration agreement was not
18 merged. So that was the precise issue you just raised that
19 was addressed in the Coleman case. There they found that they
20 were not merged. In our case before Your Honor, it's a case
21 where there is no argument about a merger; it is one
22 agreement.

23 **THE COURT:** As the Court said, that if they're merged,
24 the family member can still sign it. If they're merged the
25 family member has authority to agree.

1 **MR. WHITE:** Your Honor, I think ---

2 **THE COURT:** That's where I'm going.

3 **MR. WHITE:** Right. I understand completely and I think
4 the Coleman case, the implication of the holding, if Your
5 Honor reads that case, you will see the implication holding
6 would be yes, we would have reached a different outcome had
7 these two merged, but the Court rather dealt with it in the
8 negative, they did not merge, therefore there is no right to
9 bind to the arbitration agreement. That's as close as I can
10 get to it.

11 **THE COURT:** Okay. All right.

12 **MR. WHITE:** Your Honor, the last couple of points I want
13 to make, there is a South Carolina Bill of Rights for
14 residents of long term care facilities and essentially those
15 are required to be given to the person, the responsible person
16 who either to the resident, if the resident is competent, or
17 the resident's representative, which simply outlines all their
18 rights coming into a skilled nursing facility. All of these
19 rights were provided to and signed by the daughter, just like
20 these other things, so we really cite that more than anything
21 to argue that once again, she's acting in a capacity for her
22 father.

23 Your Honor, the last point, really two points I would
24 make. One, you addressed a moment ago, you asked the question
25 about the wrongful death beneficiaries and if they are treated

1 differently than in the stay under a survival action. Mr.
2 Bannish argues that they are different, that, you know, the
3 wrongful death beneficiaries are not bound because they didn't
4 sign the agreements.

5 Your Honor, in our supplemental brief which I handed up
6 this morning and the reason we supplemented is Mr. Bannish
7 just got us his memo last week, which is perfectly fine, I had
8 plenty of time to review it, but I needed to address that one
9 issue because I had not addressed it in my original memo when
10 I filed it.

11 **THE COURT:** And that's one that really pops up for me, so
12 tell me about it.

13 **MR. WHITE:** Okay. Thank you, Your Honor. The wrongful
14 death beneficiary, the essential idea is this. As we know,
15 the wrongful death cause of action is a statutory creation.
16 It does not exist outside the statute. The statute itself 51,
17 excuse me, 15-51-10 et. seq. provides that as a condition of
18 any suit, that the decedent himself, had he lived, would have
19 had a right to bring this action. So, it essentially means,
20 it is a derivative action. If the decedent himself, let's say
21 for instance that Mr. Alston in this case had been injured, he
22 fell and less assume that he was competent and he settled with
23 the nursing home and signed a release and then a month later
24 he died from complications relating to that injury. The
25 wrongful death beneficiaries would be bound by that release

1 and would not have a valid claim against the nursing home.

2 Well the courts and really this is an issue I have not
3 seen quite honestly, I don't think that I have seen our
4 Appellate Courts deal with specifically with this issue in
5 this context. But what we did in the memo is we addressed
6 courts of other states who have similar wrongful death
7 statutes to South Carolinas. And there is somewhat of a split
8 of authority out there. We believe the better authority is
9 that because the claims of wrongful death beneficiaries are
10 expressly derivative of the claims of the decedent. That
11 whatever agreements the decedent was bound to at the time of
12 the person's death, the wrongful death beneficiaries ---

13 **THE COURT:** You know, are they derivative; they're
14 different or are they simply collateral to any claim that the
15 decedent might have? You're talking about pain and suffering,
16 loss of companionship, the usual litany of damages that we see
17 in wrongful death cases that would apply to the wrongful death
18 beneficiary. And they're quite different from any damages
19 that may have been sustained by the decedent. Would you agree
20 with that, I mean the decedent may have suffered pain and
21 suffering, but that's not an issue for a wrongful death; it's
22 an issue for a survival action. So, do you really believe
23 that -- that they -- that one is derivative of the other or
24 are they just collateral.

25 **MR. WHITE:** Your Honor, my belief, based upon the case

1 law that we cited, is that the claim is derivative. Now, I
2 agree with you ---

3 **THE COURT:** And what if we -- I see it every day.
4 Sometimes the facts are such that there is no survival action,
5 yeah, instantaneous, no survival action. And in that case, I
6 mean, there would be nothing that the decedent could have
7 brought. He suffered no pain, no suffering, he just
8 essentially lights out, but the wrongful death survives. So,
9 tell me about that, what's the distinction here?

10 **MR. WHITE:** Yes, sir, Your Honor. The distinction, I
11 believe, are the elements of recovery. In a survival action,
12 as you correctly point out, Your Honor, that's more medical
13 bills, pain and suffering and sometimes funeral bills.
14 Wrongful death is for the pain and suffering, loss of you
15 know, society, those are some things for wrongful death
16 beneficiaries. The difference though is remember, we're not
17 trying to limit the wrongful death beneficiaries' rights to
18 those claims, assuming they prove their case. We're simply
19 addressing in which form those will be heard. And because we
20 -- we contend that this agreement was enforceable as to Mr.
21 Alston, under the arguments I've already made, the wrongful
22 death beneficiaries should be bound to those restrictions just
23 as if the wrongful death, the decedent rather, had signed a
24 release. In other words, they stepped into the shoes. They
25 have different elements of damages, I agree with you

1 completely. But they step into the shoes in terms of what
2 rights that person has and it harkens back to the language
3 that it applies to the claim that the decedent would have had,
4 had he survived. Different element of damages, but still that
5 right, those rights are still derivative.

6 So, Your Honor, the last point I would make, excuse me,
7 is that I don't know that there's really much argument about
8 this. Maybe there's a little, so let me address it. The
9 claims in this case are within the confines of the arbitration
10 provision in the admissions agreement. I understand that
11 these are not, you know, the claims are couched differently.
12 I think there's a negligence claim, maybe a misrepresentation
13 claim or whatever, but as I cited earlier ---

14 **THE COURT:** Well our courts have taken a very liberal
15 view of those arbitration type agreements. If it has anything
16 to do with the admission to the facility ---

17 **MR. WHITE:** Yes, sir.

18 **THE COURT:** --- they paint that with a broad brush. They
19 take a liberal, a very liberal view of that and I think it
20 would, but the question I have is whether or not a wrongful
21 death beneficiary would be required to comply with the
22 arbitration agreement. Let me hear from you, counsel?

23 **MR. BANNISH:** Thank you, Your Honor. Brad Bannish from
24 the Hughey Law Firm. I do have a hard copy of my motion that
25 was filed last week if Your Honor would like a copy.

1 **THE COURT:** All right. Thank you.

2 **MR. BANNISH:** If I may approach. So, by way of
3 background for this case and there was an affidavit by Ms.
4 Orveletta Alston, who is the Personal Representative and the
5 wife of Mr. Willie Earl Alston, Sr. filed last week as well,
6 which is part of our memorandum and in that --

7 **THE COURT:** Well let me ask you first, do you have any
8 problem with the form of the -- of the form of the arbitration
9 agreement, whether it was properly noticed and does it ---

10 **MR. BANNISH:** Yes, Your Honor, and that's kinda what I
11 was gonna get at.

12 **THE COURT:** Okay. All right. Go ahead.

13 **MR. BANNISH:** As far as the wrongful death beneficiaries
14 go, I really don't even think we really need to decide that
15 because Mr. Alston's daughter had no authority to bind him to
16 arbitration. He was married at the time to Ms. Orveletta
17 Alston. She was the one who made healthcare decisions for him
18 and his daughter, Ms. Kimberly Alston Wood, who executed the
19 admission agreement on behalf of Mr. Alston when she put her
20 father in the defendant's facility, did not have the legal
21 authority to actually bind him to arbitration.

22 **THE COURT:** How about parent authority; you know we talk
23 about parent authority in every other aspect of the law, but
24 when you bring them to the hospital or to the facility and you
25 sign them in and have a parent authority to do that, somebody

1 would miss him if you didn't.

2 **MR. BANNISH:** Yes, Your Honor. But she did not have the
3 authority to sign on his behalf because she was not his
4 responsible party; his wife was. You know, his wife is the
5 one who brought this lawsuit as his surviving spouse. She's
6 very much alive. She was at the pre-suit mediation. She was
7 the one, I mean she's competent and she's able to make these
8 decisions on his behalf. Part of the arbitration -- part of
9 the admission agreement under the section for the arbitration
10 agreement, has and I've got a picture of it on page 3 of my
11 memo. At the top is the signature of responsible party.
12 Responsible party is acting as a conservator, a Power of
13 Attorney, a relative or other and the defendant's didn't check
14 any of those boxes. They were certainly on notice that in
15 order to sign a legal arbitration agreement, which is a legal
16 document, it's not -- to agree to resolve a dispute in
17 arbitration is a legal decision; it's not a healthcare
18 decision, such as admitting someone to a nursing facility is.
19 You know, those are two separate decisions. You have a legal
20 decision and a medical decision and you can't just put one --
21 you can't put the arbitration clause in the admission
22 agreement and call it a healthcare decision, because that's
23 not what it is. They're just trying to wrap it up in
24 something else and say it's a healthcare decision and that's
25 just not true. An admission agreement and an arbitration

1 agreement are two separate agreements. One can't be bound by
2 the other. The Wiggins case, Your Honor, is an unpublished
3 District Court case; it should not be persuasive, but in the
4 Wiggins case, the Court did not analyze this -- did not
5 analyze that under the South Carolina Adult Healthcare Consent
6 Act and that is the signatory had the statutory authority to
7 consent to the provision of certain healthcare services, but
8 did not have implied consent to enter in binding arbitration.

9 Under the Adult Healthcare Consent Act, I've listed that
10 on page 6 for Your Honor. Mr. White says that, you know,
11 they, the legislature envisions signing into a facility for
12 healthcare and that -- I agree with that when they did -- when
13 they passed this act that they did not envision this for
14 signing for arbitration, but regardless of that, if you look
15 at the Adult Healthcare Consent Act, it says where a patient
16 is unable to consent, such as Mr. Alston, in this case,
17 decisions concerning his healthcare may be made by the
18 following persons in the following order of priority. You go
19 down to number four, it says a spouse of the patient unless
20 the spouse and the patient are separated through a divorce or
21 something like that. And then number five is an adult child
22 of the patient or if the patient has more than one adult
23 child, a majority of the adult children who are reasonably
24 available for consultation.

25 So even if you go by the Adult Healthcare Consent Act, it

1 specifically says and lists the order of priority for who has
2 the authority to make healthcare decisions and a spouse trumps
3 an adult child. You know, certainly the defendants know that.
4 They're in the business -- they're in the business entity they
5 do these admission agreements with family members all the
6 time. They know that you have to have a Power of Attorney or
7 a guardianship or a conservatorship to make legal decisions of
8 incapacitated adults. There's not -- there's not that in this
9 case. And if you look at the Adult Healthcare Consent Act, it
10 lists that in the order of priority, the surviving spouse
11 would have the decision to make healthcare related decisions
12 and the same thing for the South Carolina Bill of Rights of
13 Resident and Longterm Care Facilities. While it does not say
14 priority -- does not list out priority like the Adult
15 Healthcare Consent Act does, it does say under a Bill of
16 Rights, a representative is defined as the residents' legal
17 guardian, committee or next of kin or other person acting as
18 an agent of the resident who does not have a legal appointed
19 guardian. Next of kin would be Mr. Alston's wife. She's, I
20 mean she's alive, she's still alive, she's the one who brought
21 this lawsuit. She was the one who had the authority to make
22 healthcare decisions for her husband and she testified to that
23 in her affidavit.

24 So, I can go into the -- the wrongful death beneficiaries
25 being bound by the arbitration agreement, but I don't think we

1 even have a valid arbitration agreement to begin with. You
2 know, we've handled over 200 of these nursing home cases and
3 arbitration comes up a lot and when there is a valid
4 arbitration agreement, we consent to arbitration, but that's
5 not what we have in this case here and, you know, we've looked
6 at this and I just, we've spoken to other lawyers who do this
7 type of work too, round tabled this and everybody agrees that
8 this is not an actual arbitration agreement.

9 **THE COURT:** Y'all should have invited me.

10 **MR. BANNISH:** I'm sorry?

11 **THE COURT:** You should have invited me.

12 **MR. BANNISH:** That's why we're here today. So, in a
13 nutshell, Your Honor, Mr. Alston's wife -- Mr. Alston's
14 daughter does not have any legal authority to bind him to
15 arbitration. She put him in the nursing home where he
16 developed the bed sores, but she did not have the authority to
17 bind him to arbitration. If she had a Power of Attorney that
18 gave her that decision -- that authority, we wouldn't be here,
19 but she didn't.

20 **THE COURT:** All right. I want both of you to submit me
21 an Order within 10 days, okay?

22 **MR. BANNISH:** Yes, Your Honor.

23 **THE COURT:** Do you need more than that?

24 **MR. WHITE:** No, sir, Your Honor.

25 **THE COURT:** Send me a proposed Order. Okay. Send them

1 if you would to Elizabeth electronically. Don't try to file
2 them. Don't try to file a proposed order, please. Okay.

3 **MR. WHITE:** Thank you, Your Honor.
4

5 (COURT IN RECESS)
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C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Orveletta Alston versus Conway Manor, Raymond Tiller, and John and Jane Does 1 - 10, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on November 1, 2017.

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

SBTodd

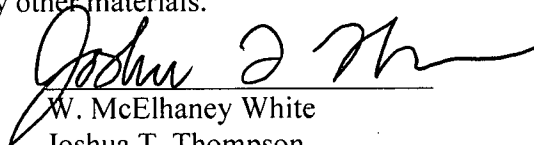
Sallie Beth Todd
Official Court Reporter

April 3, 2018

CERTIFICATE OF COUNSEL

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

August 20, 2018



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