

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Case No. 2019-001102
Lower Court Case No. 2019-NI-02-00001

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SC Court of Appeals

Grace Gray, Individually and as Wife of Willie
J. Gray, deceased, and as Personal
Representative of the Estate of Willie J. Gray,
deceased,

Respondent,

v.

PruittHealth-North Augusta, LLC; UHS Pruitt
Corporation a/k/a PruittHealth, Inc.;
PruittHealth Consulting Services, Inc.; United
Health Services of South Carolina, Inc.; John
Doe, and Richard Roe Corporation,

Appellants.

RECORD ON APPEAL

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF AIKEN |) | SECOND JUDICIAL CIRCUIT |
| |) | |
| GRACE GRAY, Individually and as Wife of |) | |
| WILLIE J. GRAY, deceased, and as Personal |) | CIVIL ACTION No.: 2019-NI-02-00001 |
| Representative of the Estate of WILLIE J. |) | |
| GRAY, deceased, |) | |
| |) | |
| Plaintiff, |) | ORDER |
| |) | |
| v. |) | |
| |) | |
| PRUITTHEALTH-NORTH AUGUSTA, LLC; |) | |
| UHS PRUITT CORPORATION A/K/A |) | |
| PRUITTHEALTH, INC.; PRUITTHEALTH |) | |
| CONSULTING SERVICES, INC.; UNITED |) | |
| HEALTH SERVICES OF SOUTH |) | |
| CAROLINA, INC.; JOHN DOE, and |) | |
| RICHARD ROE CORPORATION, |) | |
| |) | |
| Defendants. |) | |

On February 11, 2019, Defendants PruittHealth-North Augusta, LLC, UHS PruittHealth Corporation a/k/a PruittHealth, Inc., PruittHealth Consulting Services, Inc., and United Health Services of South Carolina, Inc. (collectively as “Defendants”) moved this Court to dismiss Plaintiff’s Notice of Intent (“Motion to Dismiss”) in the above-captioned action. This matter came before the Court for hearing on March 5, 2019. After careful consideration of the written and oral submissions of counsel, the Court denies Defendants’ Motion to Dismiss and finds as follows:

While it is true that Daughter held a “Power of Attorney” on behalf of Decedent, this Power of Attorney did not confer the necessary authority to execute an arbitration agreement on Decedent’s behalf. This document is titled “Power of Attorney” and is not identified a “General Durable Power of Attorney.” More importantly, the document does not confer sufficient authority to enter into contracts generally, to enter into releases on behalf of Decedent, to waive the constitutional right to a jury trial, nor does it include the “catch-all provision giving the attorney-

in-fact the authority ‘to sign any and all releases or consent required.’” Curto v. Illini Manors, Inc., 405 Ill. App. 3d 888, 895, 940 N.E.2d 229, 235 (2010); quoting Sovereign Healthcare of Tampa, LLC v. Estate of Huerta, 14 So. 3d 1033, 1035 (Fla. Dist. Ct. App. 2009). These powers granted to Daughter the authority to make decisions regarding financial matters and decisions regarding healthcare.

This analysis is akin to that in Hodge v. UniHealth Post-Acute Care of Bamberg, 422 S.C. 544, 813 S.E.2d 292 (2018). As noted in Hodge, “[t]his limited range of acts performed on the [decedent]’s behalf suggest, at most, [he] may have conferred on [the personal representative] the authority to make health care and financial decisions on his behalf, but no more than that.” Hodge, 422 S.C. at 567; quoting Dickerson v. Longoria, 414 Md. 419, 443, 995 A.2d 721, 736 (2010). The Hodge court further noted that the authority to sign healthcare documents does not include the authority to sign an arbitration agreement. Id. at 568. Our courts have held a healthcare power of attorney does not provide authority to sign an arbitration agreement. Id. at 572; Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679 (Ct. App. 2016), cert. denied, S.C. Sup. Ct. Order dated Dec. 2, 2016. The South Carolina Supreme Court has held that “the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass . . . waiving the principal’s right of access to the courts and to a jury trial.” Id. at 572; quoting Thompson at 55, 784 S.E.2d at 686. As previously indicated, this Power of Attorney does not encompass the executing of an agreement to resolve legal claims, but rather, deals with the limited circumstances enumerated therein of making financial or healthcare decisions for Decedent. Therefore, no actual authority existed for Daughter to sign the Arbitration Agreement.

The Affidavit further reflects that Decedent was never aware that Daughter had signed the Arbitration Agreement and never authorized Daughter to sign such contracts or

agreements. Therefore, it is the conclusion and order of this Court that the Arbitration Agreement is unenforceable for the above-stated reasons. However, even if Daughter had actual or apparent authority/agency to sign the Arbitration Agreement on behalf of Decedent, the Arbitration Agreement is unenforceable against the Decedent's wrongful death statutory beneficiaries under South Carolina contract law defenses. The Arbitration Agreement neither covers the wrongful death statutory beneficiaries' claims within the scope of the agreement nor was the Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries.

IT IS SO ORDERED.

****JUDGE'S SIGNATURE PAGE TO FOLLOW****



Aiken Common Pleas

Case Caption: Grace Gray VS Pruitthealth-North Augusta, Llc , defendant, et al
Case Number: 2019NI0200001
Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165

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ELECTRONICALLY FILED - 2019 May 03 9:11 AM - AIKEN - COMMON PLEAS - CASE#2019NI0200001

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019NI0200001

Grace Gray
PLAINTIFF(S)

Pruitthealth-North Augusta, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter is before the Court by way of Defendant's Motion to Reconsider the Court's order denying Defendant's Motion to Dismiss and Compel Arbitration filed May 7, 2019. After careful consideration of the written arguments of counsel, the Court denies Plaintiff's motion.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/03/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2019 Jul 03 10:13 AM - AIKEN - COMMON PLEAS - CASE#2019NI0200001



Aiken Common Pleas

Case Caption: Grace Gray VS Pruitthealth-North Augusta, Llc , defendant, et al
Case Number: 2019NI0200001
Type: Order/Electronic Form 4

It is so Ordered.

s/ R. Keith Kelly - 2165

Electronically signed on 2019-07-03 09:52:06 page 3 of 3

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ROA 00008

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 GRACE GRAY, Individually and as Wife of)
 WILLIE J. GRAY, deceased, and as Personal)
 Representative of the Estate of WILLIE J.)
 GRAY, deceased,)
)
 Plaintiff,)
)
 v.)
)
 PRUITTHEALTH-NORTH AUGUSTA, LLC;)
 UHS PRUITT CORPORATION A/K/A)
 PRUITTHEALTH, INC.; PRUITTHEALTH)
 CONSULTING SERVICES, INC.; UNITED)
 HEALTH SERVICES OF SOUTH)
 CAROLINA, INC.; JOHN DOE, and)
 RICHARD ROE CORPORATION,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT
 CIVIL ACTION No.: 2019-NI-02-_____

**NOTICE OF INTENT
 TO FILE SUIT**

TO THE ABOVE-NAMED DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiff Grace Gray, individually and as wife of Willie J. Gray, deceased, and as Personal Representative of the Estate of Willie J. Gray, pursuant to S.C. Code § 15-79-125, hereby submits this Notice of Intent to file suit against the Defendants named above. If Defendants do not raise arbitration, Plaintiff will assume no arbitration clause exists or Defendants have abandoned any alleged claim to arbitration. This notice is being filed based on the following facts:

STATEMENT OF FACTS ENTITLING PLAINTIFF TO RELIEF

Willie James Gray (“Mr. Gray”) was a resident of Defendants’ nursing home facility, PruittHealth-North Augusta, located at 1200 Talisman Drive in North Augusta, South Carolina from September 22, 2017 to October 26, 2017. During this time, Defendants were acting

individually, in a joint enterprise, as *alter egos*, and/or as agents of one another to operate and manage the facility in order to provide care and treatment to vulnerable adults including Mr. Gray.

Numerous failures, deficiencies, omissions, and breaches of the standard of care were committed by the Defendants with respect to Mr. Gray, including, but not limited to the following: neglect; corporate negligence and mismanagement; failure to exercise independent judgment as patient advocates; failure to ensure proper preventative measures were in place to keep resident safe; failure to properly assess resident; failure to properly train staff; failure to properly supervise; and failure to abide by applicable federal and state laws governing long term care facilities and skilled nursing facilities. Failures, deficiencies, omissions, and breaches of the standard of care of Defendants also included: failure to provide a safe environment; failure to accurately identify Mr. Gray as a resident at high risk for pressure ulcer development; failure to develop and update care plans to prevent pressure ulcers from forming or deteriorating; failure to provide consistent, concise and complete documentation regarding skin breakdown and daily skin checks; failure to develop and update care plans to prevent dehydration and malnutrition; failure to adequately monitor Mr. Gray's nutritional status to prevent dehydration and malnutrition; failure to provide adequate and appropriate nutrition and oral fluids; failure to recognize signs of infection; and failure to recognize a need for antibiotic management for wounds.

The above deficiencies and neglect were the cause of Mr. Gray's injuries, including but not limited to: development and deterioration of pressure ulcers; development and worsening infection; severe sepsis; cellulitis; abscess; malnutrition; dehydration; an extended hospital admission, multiple wound debridements; wound vac treatment; acute metabolic encephalopathy; sinus tachycardia; pain and suffering; constant discomfort and decline as a result of his injuries and infections; medical bills; and premature, wrongful death. Defendants are directly liable by

virtue of their own conduct for the wrongful acts detailed herein. In the alternative, Defendants are also vicariously or indirectly liable and responsible for each and every act and omission stated herein and the resulting damages as an amalgamation of interest and/or as alter egos and/or as or agents of one another. *See* Affidavit of Mary Foote, RN, BSN, MSN, ANP, CWCN-AP, Ed. Dc., attached hereto as **Exhibit A** for additional information in support of this Notice. *See also* Plaintiff's responses to Standard Interrogatories pursuant to S.C. Code Ann. § 15-79-125(A), attached hereto as **Exhibit B**.

Also, pursuant to S.C. Code Ann. § 15-79-125(C), you are notified of the statutory requirement to participate in a mediation conference “[w]ithin ninety days and no later than one hundred twenty days from the service of the Notice of Intent to File Suit. . .” Plaintiff is ready and willing to schedule such mediation immediately. If mediation proves unsuccessful, Plaintiff will file the Summons and Complaint, as provided in S.C. Code Ann. § 15-79-125.

Additionally, by filing this Notice pursuant to S.C. Code Ann. § 15-79-125, Plaintiff does not waive Plaintiff's right to object to the constitutionality of the code section. Plaintiff contends that S.C. Code Ann. § 15-79-125 violates the equal protection clause of the United States and South Carolina Constitutions.

This the 3rd day of January, 2019.

/s/ Allen Keith McAlister, Jr.

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Kenneth L. Connor, SC Bar No. 100298
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State of Illinois
County of Dupage

AFFIDAVIT OF MARY FOOTE R.N., B.S.N., M.S.N., ANP, CWCN-AP, Ed. Dc.

Comes now before me, an officer authorized to administer oaths, Mary Foote, R.N., B.S.N., M.S.N., ANP, CWCN-AP, Ed. Dc., who having been duly sworn, deposes and says:

1.

My Name is Mary Foote, R.N., B.S.N., M.S.N., ANP, CWCN-AP, Ed. Dc., and my address is 2537 Charter Oak Drive, Aurora, Illinois 60504.

2.

I make this affidavit in support of an action to be filed in connection with the care and treatment received by Willie Gray, while a resident of Pruitt Health North Augusta from 09/22/17 to 10/26/17. The opinions contained in this affidavit are expressed as an expert in the provision of nursing care to residents in the long-term care environment such as Pruitt Health- North Augusta.

3.

I have been a registered nurse duly licensed by the appropriate regulatory agency in the state of Illinois for 43 years and have actively practiced professional nursing since my graduation from nursing school in 1975. I received my Bachelor of Science Degree in Nursing in 1975 from Loyola University in Chicago, Illinois, and my Masters of Science in Nursing, with distinction, in 1983 from DePaul University in Chicago, Illinois. Additionally, I received my Educational Administration Doctoral Education from Northern Illinois University in DeKalb, Illinois. I hold an advanced practice board certification in wound, ostomy and continence nursing from WOCN, wound debridement, and am a Wound Care Nurse Practitioner for over 20 years. I am currently the CEO and owner of Woundcare On Wheels, Inc., 608 S. Washington Street, Naperville, Illinois 60540. I have served as a Consultant, Director of Nursing, an Advanced Practice Wound Specialist, and as an educator in nursing in the capacity of Professor and Acting Dean of the School of Nursing of Aurora University in Aurora Illinois. My CV is attached.

4.

As a result of having been regularly and continuously engaged in the active practice of nursing from 1975 to the present, I have actual professional knowledge and experience in the areas of practice in which this opinion is given. Furthermore, I am continuously engaged in the active practice of nursing providing direct patient care whether in a facility or home. I have been actively and regularly involved in providing the standard of practice inherent in assessing, planning and caring for patients in the acute and long-term care settings who suffered from the same or similar medical conditions as Willie Gray, while a patient of Pruitt Health - North Augusta, and exhibited clinical signs and symptoms that place them at high risk of complications.

5.

Pursuant to the provisions of SC Code § 15-36-100, which requires that an affidavit of an expert witness must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit, I make this affidavit in support of an action to be filed on behalf of Willie Gray alleging, among other things, negligence with regard to his care and treatment while a resident of Pruitt Health - North Augusta. My opinions contained in this affidavit are expressed as a nursing expert engaged in providing care to patients in long-term care environments. To date, I have reviewed medical records from the following facilities and other documents related to Willie Gray as listed below:

| | |
|-------------------------------------|---------------------|
| University Hospital Augusta Georgia | 07/27/17-08/18/17 |
| Select Specialty Hospital Augusta | 08/18/17 – 09/22/17 |
| PruittHealth - North Augusta | 09/22/17-10/26//17 |
| Wilson Medical Center | 10/26/17-11/5/17 |
| Chester Valley Rehabilitation | 11/06/17 -11/20/17 |
| MEDLINK Medical Transport | 10/26/17, 11/06/17 |

6.

OVERVIEW

Mr. Willie Gray, was a 75-year-old, independent gentleman who was in a car accident on July 27th, 2017. He had a medical history that included hypertension, diabetes and cervical stenosis. He resided independently and was alert and oriented with capability of driving, leaving his home and totally independent in meeting all his activities of daily living.

He presented to University Hospital Augusta, Georgia, via EMS, complaining of bilateral arm weakness and pain. He was eventually diagnosed with an acute spinal cord injury and underwent surgical intervention for a spinal cord decompression and cervical fusion of C3-C7. Unfortunately, Willie Gray developed complications postoperatively. He suffered a subarachnoid hemorrhage, and eventually was diagnosed with quadriplegia, acute respiratory failure necessitating ventilation, and was in an obtunded state. He remained awake, seemingly oriented but with a limited ability to communicate. Willie Gray spent 34 days in the hospital before being transferred to Select Specialty Hospital for continuation of care and ventilator weaning.

Willie Gray suffered no untoward effects from his stay at Select Specialty Hospital Augusta and was eventually transferred to Pruitt Health - North Augusta on 09/22/17. When he arrived, he was alert, could follow simple commands and communicated via body language. He was nonambulatory and was ordered to be up in a Geri chair via Hoyer lift. Physician orders were received for trials of having his trach capped, he maintained nutritionally via G tube and offer physical, occupational and speech therapies. It had been documented that the plan was always for short term rehab, then to be transferred to a facility in Pennsylvania close to his daughter.

On admission to Pruitt, Willie Gray had two separate Braden scale scores for pressure ulcer risk completed, one document scored him as a 10, or high risk for skin breakdown, while the other scored him as 13, or moderate risk for skin breakdown (incorrect). His body audit form documented he arrived with a penile erosion (sic), scars to his neck, sacral area and bilateral heels. His G tube and tracheostomy were patent and he had light excoriation with open areas to his buttocks area.

An admission interim care plan was initiated on 09/22/17 that indicated he was at risk for skin impairment which included generic turning and repositioning and a specialty mattress as interventions. It was unclear if any of these interventions were actually utilized for Willie Gray during his residency. There was no doctor's order for a support surface for his chair or bed. On 09/30/17, the first physician order was received to 'cleanse Willie Grays' sacral area and apply Xeroform gauze to the wound bed'. There were also physician orders received for treatment to skin tears to his bilateral buttocks. Willie Grays' sacral wound was documented to be a Stage II, measuring 2.5 x 1.0 x 0.2 cm on this date, the first time wound documentation was found in the medical records, 8 (eight) days after his admission.

The body audit form dated 09/30/17 listed a penial erosion, cervical neck and coccyx scars along with a Stage II coccyx wound and bilateral skin tears to Willie Grays' bilateral buttocks. By 10/03/17, this wound had deteriorated to an unstageable wound measuring 2.8 x 2.0 x 0.2 cm. There was no documentation throughout the records citing additional measurements. The standard of practice indicates weekly wound measurement and evaluation.

A new care plan was initiated on 10/12/17 for Willie Gray related to potential for skin breakdown secondary to limited mobility, incontinence and multiple chronic conditions. All interventions listed were generic and preprinted. The generation of the care plan was not in place at the time the wounds were identified by the facility, i.e., 9/30/17.

Willie Gray developed a fever on or about 10/17/17 and sputum, blood and urine cultures were ordered. Lab work returned with an elevated WBC 20.9 H (3.5-10.5) with elevated neutrophils of 19.0 H (1.8-7.8).

During wound care on 10/25/17, the nurse observed thin yellow drainage coming from Willie Grays' sacral wound when pressure was applied to the wound. A wound culture was ordered to be obtained with the next dressing change. He was, however, discharged on 10/26/18 without results of the culture.

On 10/25/17, lab work revealed Willie Gray to be dehydrated with a BUN of 30 H (7-25). His albumin was low at 2.1 L (3.5-5.7) and his WBC (white blood cell count) was now elevated to 29.5 H (3.5-10.5). He was deemed stable for transport the next day which is not the quantified status of this patient.

Hydration and adequate protein stores are necessary to promote wound healing. This WBC count was indicative of Willie Gray suffering a massive infection. At no time did the documentation even address the skin for signs and symptoms related to a potential wound infection, i.e., erythema, edema, induration, heat expenditure, odor or pain.

Willie Gray was deemed "stable" to discharge to Chester Valley Nursing Facility on 10/26/17, and was taken by ambulance on this date. Please note that Pruitt requested cultures on 10/25/17, had not received any results prior to discharge to truly indicate stability prior to transport. There was no evidence that the doctor was apprised of his hemodynamic instability of the 25th, and lack of results of a culture. During transport, the EMS crew checked Willie Grays blood sugar to be over 400. Despite insulin coverage, his blood sugar remained elevated, and they were diverted to the nearest hospital for evaluation and treatment.

The ambulance arrived at Wilson Medical Center on 10/26/17, where Willie Gray was diagnosed severe sepsis, possibly related to his grossly infected decubitus ulcer. He spent 10 days in the hospital and underwent 2 painful debridements of his infected sacral wound, which revealed a very large pus filled abscess cavity. Post debridement, Willie Grays' sacral wound had reached a mammoth 17.0 x 15.0 cm size. Wound cultures returned positive for *Enterococcus faecalis* and *Proteus mirabilis*. He had been experiencing watery stools while a patient at Pruitt which could further have caused cross contamination of bacteria into his sacral wound.

Willie Gray was discharged on 11/05/17 with a discharge diagnosis of sacral decubitus ulcer with associated cellulitis and abscess, status post extensive debridement and severe sepsis due to above. He also had been diagnosed with acute metabolic encephalopathy and sinus tachycardia due to the above.

On 11/05/17, Willie Gray continued his journey to Pennsylvania, being admitted to Chester Valley Rehabilitation on 11/06/17. A wound VAC was applied to Willie Grays' sacral wound while he was admitted to this facility along with stringent wound care.

NEGLIGENCE/BREACHES OF THE STANDARD OF CARE

It is my professional opinion, which I express within a reasonable degree of nursing certainty, that the nursing care and treatment provided to Willie Gray by Pruitt Health – North Augusta and by any other persons or entities responsible for managing, supervising, or operating the skilled nursing facility were negligent and below the applicable standard of care for skilled nursing facilities treating residents with the same or similar conditions as Willie Gray.

To summarize, the nursing staff at Pruitt Health- Augusta was negligent and breached the applicable standard of care with respect to Willie Grays' care in the areas identified below in that they:

- Failed to accurately identify Willie Gray as a person at high risk for pressure ulcer development and implement a plan of care consistent with high risk identification;
- Failure to provide preventative measures to prevent pressure ulcers from forming or deterioration of know skin injury
- Failure to alert the Physician that orders are needed for pressure ulcer prevention devices
- Failure to provide consistent, concise or complete documentation regarding skin breakdown and daily skin checks;
- Failure to render basic expected care regarding incontinence management to prevent cross contamination of the skin
- Failure to notify the physician in a timely manner of patient changes regarding his wounds
- Failure to notify family of changes to Willie's condition
- Failure to recognize serious signs of deterioration that Willie was demonstrating that could impact his wound care or need for antibiotic management
- Failure of the staff to provide documentation that Willie Gray's wounds were unavoidable or avoidable due to his hemodynamic instability and deconditioning
- Failed to develop and implement an adequate care plan individualized for pressure ulcer prevention;

- Failed to provide appropriate pressure relief and redistribution; inclusive of support surfaces and repositioning.

A pressure ulcer is a direct result of pressure, friction or shear and typically occurs over an area of the body that sustains prolonged pressure; if pressure-redistribution interventions are not instituted appropriately and timely, this omission of care will lead to damage to the underlying tissue. Some risk factors that increase a patient's susceptibility to developing pressure injury and that may impair the healing of pressure sores include, but are not limited to, exposure of skin to urinary or fecal incontinence, impaired or decreased mobility, increase in friction or shear, and nutrition and hydration deficits.

An "avoidable" pressure wound is one that develops and the facility staff did not perform one or more of the following:

- Accurately evaluate the patient's clinical condition and pressure wound risk factors,
- Define and implement interventions that were consistent with the patient's needs arising from his or her clinical condition and within the standard of care

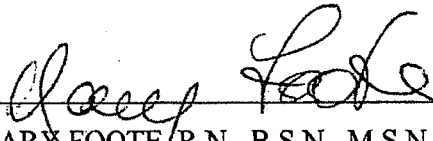
15.

It is my opinion that the negligence, breaches in the standard of care, and violations of state and federal law described in this affidavit substantially caused and contributed to Willie Grays' avoidable sacral pressure ulcer that was allowed to deteriorate, became necrotic, infected, required surgical intervention and wound VAC placement, injuries, illnesses, and the pain and suffering accompanying his decline in health and overall deterioration.

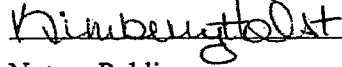
16.

This Affidavit is by no means to be construed as an exhaustive recitation of all my opinions with regard to the care and treatment Willie Gray received while he was a resident of Pruitt Health – North Augusta. Moreover, I reserve the right to supplement, amend or change these opinions should additional information be brought to my attention.

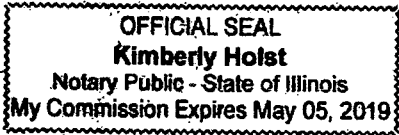
FURTHER AFFLIANT SAYETH NOT.


MARY FOOTE, R.N., B.S.N., M.S.N., ANP,
CWCN-AP, Ed. Dc

Sworn to me and subscribed before
this 1 Day of August, 2018.


Notary Public

My commission expires 5-5-2019



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|---|-------------------------|---|----------------------------|
| 1 | State of South Carolina |) | |
| | |) | In the Court |
| 2 | County of Aiken |) | Of Common Pleas |
| | |) | Case No.: 2019-NI-02-00001 |
| 3 | Grace Gray, |) | |
| | |) | |
| 4 | Plaintiff, |) | |
| | |) | |
| 5 | vs. |) | Transcript of Record |
| | |) | |
| 6 | PruittHealth-North |) | |
| | Augusta, LLC, et al., |) | |
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| | Defendants. |) | |
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March 5, 2019

Aiken, South Carolina

BEFORE:

The Honorable Keith Kelly, Judge

APPEARANCES:

Allen Keith McAlsiter, Junior, Esquire
Attorney for the Plaintiff

Joshua Steven Whitley, Esquire
Attorney for the Defendants

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PAGE

MOTIONS

3

Certificate of Reporter

28

EXHIBITS

NO. DESCRIPTION

ID EVDS.

NONE

1 Thereupon, the following proceedings were had,

2 THE COURT: What case are we on?

3 MR. WHITLEY: Gray versus PruittHealth of North
4 Augusta. I think it's your last one.

5 THE COURT: Good afternoon, gentlemen.

6 MR. WHITLEY: Good afternoon. May it please the
7 Court. Your Honor, I'm Josh Whitley on behalf of the
8 defendants and it's my motion to dismiss and compel
9 arbitration in this matter. Another jurisdictional
10 question for Your Honor, as you know under the Federal
11 Arbitration Act this is subject matter jurisdictional
12 first step, a notice of intent has been filed and we
13 filed a motion to dismiss.

14 Your Honor, I spend about 25 percent of my time
15 litigating arbitration motions. It has become very
16 important to my clients that those matters which should
17 properly be in arbitration be placed in arbitration.

18 Prior to 2014, if you will allow me to give you a
19 little history on nursing home arbitration agreements,
20 prior to 2014 there was what I called the proverbial
21 kitchen sink defenses to arbitration agreements. Those
22 opposed to the agreements would throw up
23 unconscionability, informed failure, it didn't invoke
24 interstate commerce, unconscionability, lack of
25 authority, apparent and actual, and all the members

1 looked alike on both of our sides and they would argue
2 all of them. Some Judges would think it was
3 unconscionable. Some would think it didn't touch
4 interstate commerce. But in 2014 the Supreme Court
5 decided two nursing home specific arbitration agreement
6 cases that settled a lot of the law.

7 The first case was Coleman versus Mariner Health
8 Care, Your Honor, at 407 SC 346 where then associate
9 Justice Costa Pleicones was interpreting whether or not
10 someone could sign an arbitration agreement pursuant to
11 the South Carolina Adult Health Care Consent Act. In
12 other words saying did that act give the signatory the
13 authority to sign arbitration agreements and Justice
14 Pleicones said no absent equitable merger with the
15 admission agreement. That's not in play here.

16 The second case, and I say proudly that I have
17 argued and won at the Supreme Court on this very
18 arbitration agreement but my ethical duty would be for me
19 to be candid to you and I have argued and lost at the
20 Supreme Court on this very arbitration agreement but the
21 second case was a case called Dean versus Heritage
22 Healthcare, Your Honor, at 408 SC 371. That involved a
23 sister facility and almost identical arbitration
24 agreement. What's important in that case and important
25 in Coleman was the Court was saying absent the presence

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1 of a power of attorney are there other basis to enforce
2 an arbitration agreement meaning it's settled law. If
3 there's a power of attorney, that person has the
4 authority to bind for an arbitration agreement.

5 In fact, in that Dean case, Your Honor, the Court
6 said we are overruling decades of precedent that stated
7 nursing home agreements were not made pursuant to the FAA
8 and interstate commerce. Those cases are relics of the
9 past. We are finding that the Federal Arbitration Act
10 applies and we're gonna enforce arbitration agreements in
11 the nursing home context if, and only one if, there's
12 appropriate authority to sign the agreement.

13 So since that case came down in 2014, Your Honor,
14 the question has been one of is there authority to sign
15 the agreement. The arguments of unconscionability have
16 gone away for the most part until today. The arguments
17 of form failure clauses and materiality, the arguments of
18 interstate commerce, all of that has been resolved in
19 that sweeping opinion. What's left for Circuit Court
20 Judges to find out and footnote 12 of the Dean opinion is
21 clear, a Circuit Court must examine whether there's
22 authority to sign the agreement. Since that time if
23 there's a power of attorney it's enforceable. If not,
24 it's my burden to prove that there's apparent authority.
25 That there was representation between a principal and an

1 agent and the nursing home relied on it and therefore the
2 signature was appropriate. And if there's not either one
3 of those, Your Honor, then it's unenforceable unless it's
4 signed by the resident themselves who had appropriate
5 cognition. So that's the lay of the land in my
6 estimation since 2014.

7 Our arbitration agreement, Your Honor, which is
8 Exhibit C to our memorandum is a separate stand alone
9 agreement. It's voluntary. Says it's voluntary in all
10 caps. It invokes the Federal Arbitration Act. It gives
11 the signatory 30 days to revoke it notwithstanding
12 admission and presence in the facility and it advises the
13 person to seek legal counsel. Based on initials at each
14 page, a signature on the final page we move to dismiss.

15 Now, what has happened in several of our cases when
16 there isn't a power of attorney, sometimes the opposing
17 party says you know what, the signatory did sign it but
18 they didn't have the authority actual or apparent and we
19 will conduct limited jurisdictional discovery to
20 determine, for example, the issue of authority. Here we
21 had some discussion on having limited jurisdictional
22 discovery which in my view is probably not needed because
23 of the presence of the power of attorney, but if the
24 Court fashioned a very limited scope, I need this issue
25 resolved so I can determine the enforceability of it, we

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1 could go out and have just limited jurisdictional
2 discovery. If there was a deposition, you couldn't ask
3 about the merits and on and on because this is a subject
4 matter question. In footnote 12 of Dean it allows you to
5 permit jurisdictional discovery in my estimation. But we
6 couldn't come to an agreement because as you will see in
7 their memorandum they wanted complete discovery and they
8 want to discuss unconscionability and all these other
9 matters that don't really pertain. We've resolved, in
10 2014 we resolved whether nursing home agreements are
11 appropriate and arbitration agreements are enforceable.

12 They argue that, for example, on page 2 of the memo
13 they said it was the purported signature of their client.
14 Well, was it or was it not? They filed an affidavit.
15 She could have said in the affidavit that's not my
16 signature, then that would be a basis for a
17 jurisdictional discovery but it is her signature. She
18 says she didn't read the agreement. We didn't tell her
19 what it was and she doesn't remember signing it. Well,
20 that's a different question and there's a whole group of
21 banking cases, I call them, Wachovia, Regions, I can give
22 you the cites if needed where banks have won time and
23 again in our Appellate Courts by saying you can't argue
24 you didn't read it so you're not bound. Every
25 contracting party has a duty to read the contents of the

1 agreement. That's their personal duty to read the
2 agreement and be knowing of its contents. She even had
3 in this case a 30 day revocation period, advice to seek
4 legal counsel and bold and in all caps warning that this
5 was an arbitration agreement. There simply is no ability
6 to argue unconscionability.

7 Your Honor, 9USC Section 1 et al, the Federal
8 Arbitration Act makes enforcing arbitration agreements
9 that are appropriately signed. The language of the act
10 is the Court shall compel arbitration. In fact, in 2012,
11 I find it interesting, Your Honor, a nursing home case in
12 West Virginia, the West Virginia Court of Appeals, their
13 terminal court, not Supreme Court but Court of Appeals
14 said we're not gonna enforce arbitration agreements in
15 the wrongful death situation as appellate policy. In
16 fact, Judge Kinard said the same thing in my Dean case
17 and what the United States Supreme Court, they took cert
18 on a state court case and said no, sir, Federal
19 Arbitration Act applies and therefore no public policy of
20 a state trumps it and they reversed the State Supreme
21 Court and enforced arbitration.

22 When that case came down, that's what Chief Justice
23 Toal in the Dean opinion which was unanimous, Dean cited
24 Marmet and Marmet, Your Honor, is 565 U.S. 530. Chief
25 Justice Toal cited that opinion and said wrongful death

1 actions in the nursing home context are still subject to
2 the Federal Arbitration Act, enforcement of arbitration
3 agreements, and she put that in a footnote to Circuit
4 Court Judges.

5 Here, Your Honor, there was a power of attorney
6 executed on August the 10th, 2017. There was two parts,
7 a general power of attorney and a health care power of
8 attorney and in the general power of attorney it gave the
9 signatory in this case the power to do and perform in my
10 name and on my behalf any and all things that she may
11 think desirable or proper in as full and complete manner
12 as I could do if present and acting in person. That was
13 the general power of attorney. Can you sign an
14 arbitration agreement in person? Of course you can.
15 Does the general power of attorney cover her ability to
16 sign an arbitration agreement? Of course it does.

17 Then after that on September the 22nd, 2017, she was
18 admitted to - she admitted her father to our facility.
19 She presented her authority in the power of attorney in
20 her authority through the power of attorney, she signed
21 all the admission agreements, arbitration agreements,
22 other forms that you are required to do in our context
23 and it's our position arbitration is a shall. It must be
24 resolved. The Supreme Court has gone so far as to say
25 there's a liberal Federal policy in favoring arbitration

1 agreements even where there's doubt or ambiguities you
2 resolve it in favor of enforcing arbitration. For those
3 reasons, Your Honor, we would respectfully ask that you
4 grant our motion to dismiss and compel arbitration in
5 this matter.

6 THE COURT: Yes, sir.

7 MR. McALISTER: Your Honor, I'm Keith McAlister here
8 on behalf of Connor and Connor Law Firm here in Aiken,
9 South Carolina. We represent Grace Gray who is the
10 personal representative and also filed suit individually
11 as wife of Willie J. Gray against the PruittHealth
12 entity.

13 Several points and I'll try to be brief. The Dean
14 decision that Mr. Whitley has referenced I don't think
15 says what he thinks it says. My reading of it indicates
16 that the decision is about whether or not the interstate
17 commerce is effectuated by that agreement and then, two,
18 whether or not a form selection clause, you know, if that
19 form is not available renders the agreement null and
20 void. I don't think it says anywhere in this decision
21 that appeal automatically provides authority for a family
22 member to sign away constitutional rights provided to
23 them by our constitution in the United States and in
24 South Carolina.

25 Second, the Coleman case that we've cited in our

1 brief that Mr. Whitley also referenced really goes to the
2 heart of the matter of this issue and whether or not, in
3 the Coleman case whether or not the statute conferred
4 authority on behalf of that representative to sign an
5 arbitration agreement and the Coleman case actually says
6 the statute provides financial authority and the statute
7 provides authority over health care decisions but the
8 statute does not provide that representative the
9 authority to sign away his right to a jury trial and
10 that's exactly what we have here.

11 Mr. Whitley has talked about this durable power of
12 attorney. He's also talked about the health care power
13 of attorney, I believe, and if you look a little closer
14 at this durable power of attorney, it speaks specifically
15 to financial considerations and financial considerations
16 only. It talks about the power of attorney, the facts,
17 ability with respect to insurance policy claims, whether
18 or not they can access the safe deposit box, whether or
19 not they can endorse checks. It says nothing about,
20 entering an arbitration agreement. Likewise, the general
21 durable power of attorney with respect to health care
22 only addresses the ability to look at health care
23 decisions. And I'll point Your Honor to a portion of it
24 here on page 2, that says my health care agent will make
25 health care decisions for me when I am unable to

1 communicate my health care decisions or I choose to have
2 my health care agent communicate decisions on my behalf.

3 Now, in this case what Mr. Whitley has not informed
4 the Court is our client who was in rough shape when he
5 got to their facility was alert and oriented. He had the
6 ability to communicate via body language but what he
7 didn't have the ability to do was sit in on this
8 admissions process. He didn't have the ability to have
9 his daughter explain and the staff from the facility
10 explain this admission agreement and the arbitration
11 agreement to him even though he was able to communicate
12 those decisions by body language and that in itself makes
13 that general power of attorney with respect to health
14 care decisions null and void with respect to signing the
15 arbitration agreement.

16 I think there are a lot of issues in this case and,
17 you know, what's good for the goose is good for the
18 gander. Of course Mr. Whitley only wants us to discover
19 whether or not there was capacity or authority of Ms.
20 Gray to sign this agreement but what also comes into play
21 is whether or not the person communicating on behalf of
22 the facility had the requisite knowledge and
23 understanding to explain these documents, more than 70
24 pages of documents that they provided to Ms. Gray to sign
25 and whether or not there is a disparity in bargaining

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1 power. You know, if you look at the agreement very
2 closely, the arbitration agreement itself, or excuse me,
3 the admission agreement itself says that variance from
4 this agreement shall be of no effect. This was a
5 pre-drafted agreement that they use all the time in there
6 facilities that also has language in there such as this
7 is the entirety of the agreement. This is - the parties
8 have a complete understanding of this agreement.

9 Well, Your Honor, in our brief and I know I'm
10 jumping around, we have directed you to Exhibit C which
11 is a document in their own materials which indicates that
12 Ms. Gray did not have the capacity or the understanding
13 to execute any of the materials. So this language in
14 this admissions agreement that the arbitration agreement
15 tags along with clearly shows that she didn't have the
16 requisite understanding. And I'm sorry. I'm trying to
17 find that particular document. Got too many documents
18 here.

19 If you look at Plaintiff's Exhibit C that we have
20 attached to our memo in support here they're walking us
21 through an advance directive checklist which if you look
22 at the admissions agreement is a material part of the
23 admissions process. The admissions agreement in Section
24 3 subpart (c) says that they must walk through this
25 advance directive checklist and right here the

1 representative of PruittHealth indicates family not sure
2 on any of these items which include I have executed an
3 advanced directive and will provide a copy of the health
4 care. I have not executed an advanced directive. I have
5 not executed an advanced directive but would like to
6 obtain additional information. Patient's representative
7 is unable to comprehend what advanced directives are but
8 this will be explained to the family as part of the
9 community education effort.

10 Now, that right there shows she doesn't have the
11 requisite knowledge or understanding, comprehension of
12 these agreements including the rest of the 77 pages that
13 have been provided to her to be able to sign away those
14 constitutional rights. That's one point.

15 The second point is Mr. Whitley has referenced this
16 Regions case. Well, this Regions case does say that a
17 bank does not have the obligation by law to explain this
18 agreement to the party. They can read it for themselves.
19 But there is an exception and it says when that party is
20 ignorant and unwary that duty changes and it's evident
21 throughout these documents including this one right here
22 in front of us that one, Ms. Gray was ignorant and unwary
23 and that's supported by our affidavit. We don't have an
24 affidavit to support this motion on behalf of the
25 defendants but we have certainly provided testamentary

1 evidence by affidavit on our behalf. But one, she
2 doesn't understand what she is signing. She makes that
3 clear in the affidavit. That's also corroborated by the
4 defendant's own documents.

5 Two, although they say they are not, there's not a
6 duty imposed by law, they have effectively created a duty
7 by saying that they're going to explain this as part of
8 their community education effort. If you look at the
9 arbitration agreement, the very last, excuse me, second
10 to last page at the bottom, again, I'll go back to
11 patient representative has read this agreement in its
12 entirety and understands the language in which it is
13 written. That's in direct contradiction of Plaintiff's
14 Exhibit C. It also says the patient's representative, or
15 excuse me, the patient representative has explained to
16 the patient resident. There's been no explanation here.
17 That's in the affidavit as well.

18 So, you know, to the extent that the defendants want
19 to claim they don't have a duty to explain these
20 documents to them, well, they have created that duty upon
21 themselves.

22 Lastly we have pointed to a number of different
23 issues that we contend are concerning here, whether or
24 not there's a meeting of the minds, whether or not
25 there's consideration. There's a host of defenses that

1 are attributable to contracts and the law does say trial
2 courts can consider general contract defenses to ensure a
3 meeting of the minds to arbitrate existed and that such
4 an agreement was not the result of fraud, duress,
5 unconscionability. Arbitration agreements are subject to
6 the same defenses applicable to all other contracts.

7 Now, Mr. Whitley would have you believe that the
8 Dean case says we don't have to go through that process
9 any longer because if you've got a POA, that's
10 authoritative. There's never any question. But that's
11 not what fellow Circuit Court Judges have decided and we
12 have attached a few of those more recent orders. One is
13 the Arrendondo case and these are part of Plaintiff's
14 Exhibit B and in this case in particular the Court by
15 order says although Ms. Arrendondo had a health care
16 power of attorney and a general durable power of attorney
17 for Mr. Whaley neither of these documents conferred on
18 Ms. Arrendondo the authority to execute the arbitration
19 agreement on his behalf or waive his constitutional
20 rights and denied the exact same motion that's here
21 today.

22 We have taken the position, one, that there's plenty
23 of material here to deny this outright, Your Honor, but,
24 you know, in the alternative we have proposed discovery.
25 Of course we want to be able to discover whether or not

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1 the facility representative actually had authority to
2 sign this agreement on the facility's behalf. If you
3 look at the arbitration agreement, it's signed by Susan
4 and I can't read here last name but she's not the
5 authorized agent of the facility, that's Michelle whose
6 name is struck through. I don't know who is providing
7 the information to our client. So there's a host of
8 reasons that we've laid out more eloquently in our brief
9 that go to the heart of the issue and certainly we think
10 there's plenty there to deny this motion outright. But
11 in the alternative we do think that it's prudent and it's
12 appropriate to allow discovery for the plaintiff just
13 like it is for the defendants, Your Honor, and I'll let
14 Mr. Whitley make any arguments he sees fit.

15 THE COURT: Yes, sir.

16 MR. WHITLEY: Your Honor, I know I'm sneaking up on
17 your lunch hour I'm sure but I'll be brief.

18 THE COURT: Good.

19 MR. WHITLEY: I take exception to my good friend's
20 comments about the interpretation of Dean. I happened to
21 have the great pleasure of being involved in Dean. Dean
22 didn't even involve a power of attorney. It involved a
23 daughter. The Court remanded it back and said make sure
24 that daughter who did not have a power of attorney had
25 authority otherwise enforce the agreement. It was

1 remanded back to Judge Cooper, a great Circuit Court
2 Judge and he ordered arbitration.

3 Let's be clear. I'll cite my friend's brief. Page
4 7. The first decision which the great Wofford, Costa
5 Pleicones wrote against arbitration but he said in
6 Coleman and he cited it as his parenthetical on page 7
7 under Coleman, without valid power of attorney the
8 holding was one sister did not have authority to execute
9 on another sister's behalf under the Adult Health Care
10 Consent Act. He's argued the Adult Health Care Consent
11 Act, health care power of attorney, a new one for me,
12 somehow the advanced directives checklist has something
13 to do with why we're here. I don't even know how to
14 respond to that. We're not arguing any of that. None of
15 it. We're arguing his brief, page 7. Without a valid
16 power of attorney, then you look to authority for
17 apparent agency or whatnot.

18 Here we have a valid power of attorney. The only
19 way he can prevail today, this is black letter, the only
20 way he can prevail today was if he were to say to you
21 that his client did not have the power of attorney, it
22 was not effectual, it was inappropriate. The resident
23 didn't have the capacity to give his daughter power of
24 attorney but he told the Court just now the resident did
25 have capacity and the truth is on August the 10th he gave

1 his power of attorney to his daughter and a little over a
2 month later she admitted him to a nursing home and she
3 signed a voluntary separate arbitration agreement.

4 All those Coleman arguments he made and all that is
5 in opposite. This isn't a mandatory arbitration
6 agreement. This isn't a case where we're arguing merger,
7 equitable merger like Coleman. We're arguing there's a
8 power of attorney, they signed the arbitration agreement,
9 it is black letter. It must be enforced under the
10 Federal Arbitration Act. I would be remiss if I didn't
11 say even if there was a doubt which we don't believe
12 there's any, doubt is resolved in favor of the sufficient
13 process of arbitration, but there's not even a doubt
14 here. It is clear. There's not one argument from my
15 good friend that the power of attorney was not effected.

16 He read from specifics in the three page document on
17 financials and so forth. Okay. There's specifics that
18 she had the power to do, but the first paragraph was she
19 has the power to do all things desirable which I could do
20 including, and this is the language, including but not
21 limited to, and gives specifics about insurance and
22 stocks that you see and you're well aware of the power of
23 attorneys but it's included but not limited to and one of
24 the includings was to take legal action.

25 Arbitration is a legal action, Your Honor. She can

1 bring a claim in arbitration and under the power of
2 attorney it would be effectual and that's all our
3 argument is. As the nursing home if someone shows up
4 with the power of attorney and signs our documents, we
5 have a contract and the Court under the subject matter
6 jurisdiction has to say we can't hear it. It needs to go
7 to arbitration and y'all will be all right. You'll
8 resolve it in arbitration. It will get resolved and it
9 will get resolved cheaper and more efficient. That's why
10 the government favors it and that's why there's a statute
11 to that effect.

12 So our position is the power of attorney cannot be
13 overcome no matter what jurisdictional discovery was here
14 and it quite frankly cannot be ignored. There's not one
15 piece of evidence from his affidavit or not that was just
16 filed on Friday or I would have gotten an affidavit but
17 there's not one piece of evidence that she did not sign.
18 She just says I don't remember it but she doesn't say
19 that's not my signature and there's not one piece of
20 evidence offered today that the power of attorney is not
21 effectual and so for those reasons, Your Honor, I'm very
22 grateful at this hour that --

23 THE COURT: Let me ask you a question. Is your
24 position that a power of attorney is all encompassing?
25 If I give a power of attorney to one of my three

1 daughters all grown, married, no issues, so if I give one
2 to any of them and they're all professionals, is that all
3 encompassing? They can do anything on my behalf that I
4 can do?

5 MR. WHITLEY: May I answer it depends. Last week,
6 for example, I had a client send a power of attorney and
7 said is arbitration agreement enforceable? I said yes.
8 Sent it to the plaintiff's attorney and she wrote back
9 and said, Josh, and I was assuming the general power of
10 attorney missed a segment, Josh, look at paragraph 3. It
11 says has no power to waive my right to a trial by jury
12 and now power to arbitrate. Power of attorney are very
13 specifically drawn, Your Honor. They can exclude things,
14 include things. They can be as broad as the day is long
15 as is this one. They can be very limited.

16 Some power of attorney I have seen in cases which
17 I'm lost on quite frankly once I got into it, says I'm
18 giving my child power of attorney, but it's only effected
19 when she goes and gets my personal physician's signature
20 that I'm incompetent, no longer able to make my own
21 decisions. And I had the power of attorney and I said
22 it's enforceable. It's a general power of attorney but
23 that one clause was never triggered because I could never
24 find, I couldn't get proof the physician determined
25 competency even though he was incompetent.

1 So there's ways to protect yourself that it wouldn't
2 be all encompassing. There's ways to give very limited
3 power of attorney like health care. There's a health
4 care one in here. It has nothing to do with this motion.
5 The only thing to do with this motion is the general
6 durable power of attorney.

7 THE COURT: If it's a general durable power of
8 attorney, would you think there are certain rights that
9 the holder of the power of attorney could not waive on my
10 behalf?

11 MR. WHITLEY: The grantor can waive anything. They
12 can waive any right on a power of attorney. They could
13 also restrict it from not waiving any right just like
14 what I just told you. You do not have the right ever to
15 waive my jury trial right. That was in the power of
16 attorney. The question is this power of attorney is very
17 explicit. If you look on the first page Exhibit A of our
18 motion the power of attorney it says to do all things
19 which I could do basically.

20 THE COURT: Okay. I can't tell you the name of the
21 case but both of you will find it in the next five
22 minutes on your phone faster than I could but unless I'm
23 wrong about this there is a case out of our Supreme
24 Court, maybe Court of Appeals, I think it's our Supreme
25 Court that says that a power of attorney cannot be used

1 in a divorce action. Can be used for property division
2 but a divorce itself is so intimate to that individual
3 that that right cannot be enforced and if I recall the
4 facts of the case the son, I think it's a son who had the
5 power of attorney actually filed for a divorce against
6 I'm sure the stepmother, a subsequent spouse and our
7 court said that he couldn't do that. So and I'm asking.
8 I'm not ruling. I'm just saying, I mean, if you can't
9 get a divorce with a power of attorney, can you waive a
10 constitutional right to a trial by jury?

11 MR. WHITLEY: I think the answer is black letter
12 yes. I don't know the divorce case, Your Honor, and I'll
13 do a supplemental letter if you will accept it. We'll
14 find it and distinguish it. Happy to do that. But if
15 you read his own brief, Coleman, if you could, Your
16 Honor, we wouldn't have Coleman, we wouldn't have Dean,
17 it would be arbitration agreements just aren't
18 enforceable if the power of attorney couldn't do it.

19 Coleman, his own brief cites Coleman for the
20 proposition absent a power of attorney and then the
21 question on authority meaning the Supreme Court has
22 already taken it up. If there is a power of attorney,
23 then the discussion is over. You got an agreement. Go
24 arbitrate. I don't generally throw other Circuit Judges
25 orders at other Circuit Judges. There are a plethora of

1 cases enforcing arbitration agreements. I can tell you
2 when I usually litigate them is when there's not a power
3 of attorney but I'm still arguing authority under
4 apparent agency which is weaker than a power of attorney
5 and so it's a tiered analysis. Here it's as strong as I
6 have of an argument, that if you have a general power of
7 attorney absent that power of attorney carving out an
8 exception for arbitration or jury trial reference, you
9 have to enforce it.

10 There are general power of attorney, Your Honor,
11 which say I'm giving you general power of attorney for
12 the following things. Stocks and finances and stays at
13 that limited language. That's not this. It's to do all
14 things including legal processes which I can do for
15 myself. If he could bring this - if he could sign -- The
16 question for the Court is if he had his capacity and
17 whereabouts and wanted to, could he have signed it for
18 himself? If the answer is yes, and we think it is, then
19 the daughter can sign it.

20 Let me address a couple other questions, and Judge
21 Kinard I'll never forget it, he was worried about it,
22 too, and he goes I agree with you on everything, Mr.
23 Whitley. I'm just not gonna send a wrongful death case
24 through arbitration and the Supreme Court cited that in
25 their opinion from the transcript but I got what he was

1 saying and that was the whole Marmet West Virginia case.
2 We're not gonna send a wrongful death to arbitration. I
3 get it. I get that there's a reluctance and that's why
4 there's been these evolution of agreements over these
5 past two decades of it used to be just a clause in the
6 admission agreement. You want admission, come on in, but
7 there's a clause and we seek to enforce it.

8 The Supreme Court said, no, that's unconscionable.
9 You're waiving the right to be admitted with having to
10 arbitrate. So this agreement which has been long
11 standing for more than a decade, the Dean agreement,
12 takes it out as a separate agreement and says you can be
13 admitted, period. You can sign a voluntary agreement to
14 arbitrate and to your benefit and our benefit it's more
15 efficient. We have residents and their representatives
16 all the time who refuse to sign arbitration agreements.
17 They're admitted every day without question.

18 Then this agreement goes even further. It's bold,
19 conspicuous, warnings, tells you to hire a lawyer and
20 gives you 30 days after signing to come back and revoke
21 it. The admission is not revoked. Your residency is not
22 revoked. You're still a resident. None of that
23 happened. I just find it disingenuous that he had the
24 authority to give power of attorney a few days later.
25 She gets admitted for the benefit of her care in our

1 facility and we can fight over the merits later but a
2 very difficult patient and now she's filing an affidavit
3 in this court, I don't remember signing it and so forth.
4 That's just not the law. The law is, is that your
5 signature and did you have authority to give your
6 signature? And the answer is yes to both and then we
7 have to arbitrate.

8 THE COURT: Anything?

9 MR. McALISTER: Just very briefly, Your Honor.
10 Again, I disagree with what a POA authorizes a person to
11 do and when it's limited and that sort of thing and I'll
12 point Your Honor to the Wilson case that we have also
13 provided just to suggest an order as part of our brief
14 but it says, while it is true the daughter had a power of
15 attorney on behalf of dissent, the power of attorney did
16 not confer the necessary authority to execute an
17 arbitration on dissent's behalf. And it says the
18 daughter's, powers granted to the daughter to make
19 decisions regarding financial matters and decisions
20 regarding health care only. It's the exact same concept.

21 And one of the reasons I have attached all these
22 documents in here and I don't expect Your Honor to go
23 through everything but they have an arbitration checklist
24 at page 590 and there's Bates numbers at the top and
25 these identify all those things that Mr. Whitley just

1 went through about the form arguments. Well, they have a
2 30 day right to revoke. We advised them that they can
3 consult an attorney. This is buried 35 pages into a
4 document and if you look at this document pretty closely
5 they're not dated. It's just a line struck through every
6 one of these and this is their arbitration checklist that
7 their facility representative is supposed to go through
8 with our client before they sign away those
9 constitutional rights which are fundamental in this
10 country.

11 And, Your Honor, we don't necessarily and I don't
12 want to misspeak here but we did propose discovery in
13 this matter but at the end of the day the defendants,
14 well, they didn't want to do discovery because it might
15 turn up that this didn't really occur. Those are the
16 kind of risks that they run if we're allowed to ask some
17 questions as well. So, Your Honor, that's all that the
18 plaintiff has at this time.

19 THE COURT: Thank you, gentlemen. Thank you so
20 much. I didn't mean to go on and so about that.

21 MR. WHITLEY: No. Thank you.

22 THE COURT: Good to see both of you.

23 MR. McALISTER: Thank you, Your Honor.

24 WHEREUPON, THE HEARING WAS CONCLUDED.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 5th day of March, 2019.

I FURTHER CERTIFY that the forgoing 27 pages constitute a true and accurate record of said proceedings.

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

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 30th day of August, 2019.

By:s/Steven E. LeBlanc

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) C.A. No.: 2019-NI-02-00001

Grace Gray individually, and as wife of)
Willie J. Gray, and as Personal)
Representative of the Estate of Willie J.)
Gray, deceased,)

Plaintiff,)

vs.)

PruittHealth-North Augusta, LLC, UHS)
PruittHealth Corporation a/k/a Pruitthealth,)
Inc., Pruitthealth Consulting Services, Inc.,)
United Health Services of South Carolina,)
Inc., John Doe, and Richard Roe)
Corporation,)

Defendants.)

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S NOTICE OF INTENT**

PLEASE TAKE NOTICE Defendants PruittHealth-North Augusta, LLC, UHS PruittHealth Corporation a/k/a Pruitthealth, Inc., Pruitthealth Consulting Services, Inc., and United Health Services of South Carolina, Inc., hereby move this Honorable Court, pursuant to Rule 12(b)(1) and 12(b)(3) of the South Carolina Rules of Civil Procedure, within ten (10) days or as soon thereafter as can be heard, for an Order dismissing Plaintiff's Notice of Intent. The admitted resident had a legal power of attorney executed prior to admission. See Exhibit A. Therefore, this motion is brought pursuant to the executed Admission and Arbitration Agreements between the skilled nursing facility and the power of attorney, see Exhibits B and C, requiring that any disputes be resolved by binding arbitration pursuant to the Federal Arbitration Act and by South Carolina Supreme Court precedent. See Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371 (2014) (reversing circuit court for refusing to send a wrongful death case to arbitration and finding the Federal Arbitration Act applied to nursing home arbitration agreements).

To the extent the Plaintiff intends to challenge the Arbitration Agreement or enforcement of the same, these Defendants respectfully request limited jurisdictional discovery. This Motion is further supported by the pleadings, applicable law, arguments of counsel, a memorandum of law to be filed subsequently, and any other documents, affidavits or materials the Court may receive.

Respectfully Submitted,

SMYTH WHITLEY, LLC

s/Joshua S. Whitley

Joshua S. Whitley, Esquire

SC Bar No.: 77824

S. Tyler Graves, Esquire

SC Bar No.: 103173

126 Seven Farms Drive

First Citizens Plaza, Suite 150

Charleston, South Carolina 29492

(843) 606-5635

(843) 654-4095

Attorneys for Defendants

Charleston, South Carolina
February 11, 2019.

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STATE OF GEORGIA)

KNOW ALL MEN BY THESE PRESENTS, that I, WILLIE JAMES GRAY, of Baltimore County, Maryland, do hereby nominate, constitute and appoint TAMARA DONNELLE GRAY or GRACE WARD GRAY, of Montgomery County, Pennsylvania, my true and lawful agent and attorney-in-fact, to do and perform in my name and behalf any and all things that she may think desirable or proper in as full and complete a manner as I could do if present and acting in person, including specifically, but without limitation, upon the foregoing generality of statement, the right:

1. The attorney-in-fact has the right to act upon insurance and/or annuity policies claims or any and all matters related thereto. To receive, collect and receipt for any and all payments of money, debts, accounts, interest, dividends and any and all demands whatsoever which are now or shall hereafter become due, owing, payable or belonging to me; to have, use and take all lawful means in my name or otherwise for the recovery thereof by any process of law or equity that may be available for said purpose; to compromise any such amounts, in the sole discretion of my said attorney- covering the same, for me and in my name; ~~including specifically the right to~~ acknowledge service upon any suit or suits that may be filed against me, to waive call and notice of the time, place and purpose of holding any and all meetings of stockholders of any corporation in which I may hold stock, and to consent to the

arising with reference thereto, in the same manner and to the same extent as I might or could do if personally present and acting, and to consent to the entry of any judgment or decree that my said attorney-in-fact may approve.

2. To have full and complete access, at any and all times, to any safe deposit box or boxes which I may now have or hereafter acquire, with the full right to deposit therein such securities or articles as my attorney-in-fact may think proper and to withdraw therefrom any portion or all of the stocks, bonds, documents or other securities or other articles and things now or hereafter stored therein.
3. To endorse, collect, cash or otherwise handle any and all checks, drafts or other obligations that may become payable to me and to use the funds received therefrom in such manner as my attorney-in-fact may think proper, including the right to my said attorney-in-fact to deposit funds so received in any account now or hereafter maintained by me either in my name or in the name of my said attorney-in-fact or jointly, and to draw checks, drafts, receipts or other acquittances as against any bank account which I may now have or hereafter establish in any banking institution or trust company in the United States, and any such drafts, receipts or other acquittances so drawn by me or my said attorney-in-fact shall be of the same binding force and effect and justify the payment of funds, in the same manner and to the same extent as if I had personally drawn the same and received the money therefor, with my said attorney-in-fact authorized to use any and all such funds so received or coming into his hands in any manner and for such uses and purposes as he may think proper.
4. I further authorize my said attorney-in-fact, for me and in my name, place and stead,

to negotiate and conclude any and all sales, loans, rentals, contracts, encumbrances or other instruments relating to or including or affecting any portion or all of the real estate or interest in real estate or personal property, including any motor vehicles, which I may now or hereafter own, as well as any portion or all of the corporate securities, stocks, bonds, debentures or other forms of securities or any other personal property which I may now or hereafter own, and wherever the same may be located, with the full right to execute any and all deeds, mortgages, security deeds, endorsements, leases, transfers, assignments or other contracts or other documents with respect thereto on such terms and upon such conditions as my attorney-in-fact in his sole discretion, deems appropriate.

5. This is a durable power of attorney, and it shall NOT be terminated by my incompetency. This is a power to act as an attorney-in-fact for me, and if I subsequently become incompetent, it shall remain in force until such time as a guardian or receiver shall be appointed for me or until some other judicial proceeding shall terminate the power.

I hereby specifically ratify and confirm all that my said attorney-in-fact shall do at any time and from time to time by virtue of these presents, which shall cover and include the right to do any act or thing that I might do as above set forth, in the same manner and to the same effect as if I were personally present and acting.

This Power of Attorney is executed in multiple counterparts, all of which shall be considered for all purposes as originals, and any one of said counterparts may be filed and recorded in the Office of the Clerk of the Court of appropriate jurisdiction, and thereafter a certified copy of the same shall

be of the same binding force and effect as the original counterpart, with this Power of Attorney, whether so recorded or not, to remain of full force and effect until a written revocation thereof, duly executed by me, is filed and recorded in said Clerk's Office.

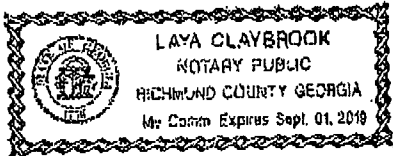
IN WITNESS WHEREOF, I have hereunto set my hand and seal and delivered these presents, in multiple counterparts, this 10th day of August, 2017.

Signed, sealed and delivered in the presence of:

Margaret Jenkins
Witness

Willie J. Gray
WILLIE JAMES GRAY

Laya Claybrook
Notary Public



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GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: Willie James Gray Date of Birth: September 9, 1941

(Print Name)

(Month/Day/Year)

This advance directive for health care has four parts:

PART ONE: **HEALTH CARE AGENT.** *This part allows you to choose someone to make health care decisions for you when you cannot (or do not want to) make health care decisions for yourself. The person you choose is called a health care agent. You may also have your health care agent make decisions for you after your death with respect to an autopsy, organ donation, and final disposition of your body. You should talk to your health care agent about this important rule.*

PART TWO: **TREATMENT PREFERENCES.** *This part allows you to state your treatment preferences if you have a terminal condition or if you are in a state of permanent unconsciousness. PART TWO will become effective only if you are unable to communicate your treatment preferences. Reasonable and appropriate efforts will be made to communicate with you about your treatment preferences before PART TWO becomes effective. You should talk to your family and others close to you about your treatment preferences.*

PART THREE: **GUARDIANSHIP.** *This part allows you to nominate a person to be guardian should one ever be needed.*

PART FOUR: **EFFECTIVENESS AND SIGNATURES.** *This part requires your signature and the signatures of two witnesses. You must complete PART FOUR if you have filled out any other part of this form.*

You may fill out any or all of the first three parts listed above. You must fill out PART FOUR of this form in order for this form to be effective.

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care may be used in Georgia.

You may revoke this completed form at any time. This completed form will replace any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that you have completed before completing this form.

PART ONE: HEALTH CARE AGENT

[PART ONE will be effective even if PART TWO is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.]

(1) HEALTH CARE AGENT

I select the following person as my health care agent to make health care decisions for me:

Name: Tamara Donnelle Gray

Address: 108 Holby Lane, Pottstown Pennsylvania, 19465

Telephone Numbers: (H) (610) 469-3837 (Cell) (484) 948-8373
(Home, Work, Mobile)

(2) BACK-UP HEALTH CARE AGENT

[This section is optional. PART ONE will be effective even if this section is left blank.]

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: Grace Ward Gray

Address: 108 Holby Lane, Pottstown Pennsylvania 19465

Telephone Numbers: (H) (610) 469-3837 (Cell) (410) 804-9323
(Home, Work, Mobile)

Name: _____

Address: _____

Telephone Numbers: _____
(Home, Work, Mobile)

(3) GENERAL POWERS OF HEALTH CARE AGENT

My health care agent will make health care decisions for me when I am unable to communicate my

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health care decisions or I choose to have my health care agent communicate my health care decisions.

My health care agent will have the same authority to make any health care decision that I could make. My health care agent's authority includes, for example, the power to:

- Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or other health care facility or service;
- Request, consent to, withhold, or withdraw any type of health care; and,
- Contract for any health care facility or service for me, and to obligate me to pay for these services (and my health care agent will not be financially liable for any services or care contracted for me or on my behalf).

My health care agent will be my personal representative for all purposes of federal or state law related to privacy of medical records (including the Health Insurance Portability and Accountability Act of 1996) and will have the same access to my medical records that I have and can disclose the contents of my medical records to others for my ongoing health care.

My health care agent may accompany me in an ambulance or air ambulance if in the opinion of the ambulance personnel protocol permits a passenger and my health care agent may visit or consult with me in person while I am in a hospital, skilled nursing facility, hospice, or other health care facility or service if its protocol permits visitation.

My health care agent may present a copy of this advance directive for health care in lieu of the original and the copy will have the same meaning and effect as the original.

I understand that under Georgia law:

- My health care agent may refuse to act as my health care agent;
- A court can take away the powers of my health care agent if it finds that my health care agent is not acting properly; and,
- My health care agent does not have the power to make health care decisions for me regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for mental or emotional illness, mental retardation, or addictive disease.

(4) GUIDANCE FOR HEALTH CARE AGENT

When making health care decisions for me, my health care agent should think about what action would be consistent with past conversations we have had, my treatment preferences as expressed in PART TWO (if I have filled out PART TWO), my religious and other beliefs and values, and how I have handled medical and other important issues in the past. If what I would decide is still unclear, then the health care agent should make decisions for me that my health care agent believes are in my best interest, considering the benefits, burdens, and risks of my current circumstances and treatment options.

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(5) POWERS OF HEALTH CARE AGENT AFTER DEATH

(A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, Mobile)

I wish for my body to be: WJG (Initials) Buried or _____ (Initials) Cremated

PART TWO: TREATMENT PREFERENCES

[PART TWO will be effective only if you are unable to communicate your treatment preferences after reasonable and appropriate efforts have been made to communicate with you about your treatment preferences. PART TWO will be effective even if PART ONE is not completed. If you have not selected a health care agent in PART ONE, or if your health care agent is not available, then PART TWO will provide your physician and other health care providers with your treatment preferences.]

If you have selected a health care agent in PART ONE, then your health care agent will have the authority to make all health care decisions for you regarding matters covered by PART TWO. Your health care agent will be guided by your treatment preferences and other factors described in Section (4) of PART ONE.]

(6) CONDITIONS

PART TWO will be effective if I am in any of the following conditions:

[Initial each condition in which you want PART TWO to be effective.]

WJG (Initials) A terminal condition, which means I have an incurable or irreversible condition that will result in my death in a relatively short period of time.

WJG (Initials) A state of permanent unconsciousness, which means I am in any incurable or irreversible condition in which I am not aware of myself or my environment and I show no behavioral response to my environment.

My condition will be determined in writing after personal examination by my attending physician and a second physician in accordance with currently accepted medical standards.

(7) TREATMENT PREFERENCES

[State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your additional treatment preferences by initialing one or more of the statements following (C). You may provide additional instructions about your treatment preferences in the next section. You will be provided with comfort care, including pain relief, but you may also want to state your specific preferences regarding pain relief in the next section.]

If I am in any condition that I initialed in Section (6) above and I can no longer communicate my treatment preferences after reasonable and appropriate efforts have been made to communicate with me about my treatment preferences, then:

(A) _____ (Initials) Try to extend my life for as long as possible, using all medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR,

(B) WJG (Initials) Allow my natural death to occur. I do not want any medications, machines, or other medical procedures that in reasonable medical judgment could keep me alive but cannot cure me. I do not want to receive nutrition or fluids by tube or other medical means except as needed to provide pain medication..

OR

(C) _____ (Initials) I do not want any medications, machines, or other medical procedures that

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in reasonable medical judgment could keep me alive but cannot cure me, except as follows:

[Initial each statement that you want to apply to option (C).]

_____ (Initials) If I am unable to take nutrition by mouth, I want to receive nutrition by tube or other medial means.

_____ (Initials) If I am unable to take fluids by mouth, I want to receive fluids by tube or other medical means.

_____ (Initials) If I need assistance to breathe, I want to have a ventilator used.

_____ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary resuscitation (CPR) used.

(8) ADDITIONAL STATEMENTS

[This section is optional. PART TWO will be effective even if this section is left blank. This section allows you to state additional treatment preferences, to provide additional guidance to your health care agent (if you have selected a health care agent in PART ONE), or to provide information about your personal and religious values about your medical treatment. For example, you may want to state your treatment preferences regarding medications to fight infection, surgery, amputation, blood transfusion, or kidney dialysis. Understanding that you cannot foresee everything that could happen to you after you can no longer communicate your treatment preferences, you may want to provide guidance to your health care agent (if you have selected a health care agent in PART ONE) about following your treatment preferences. You may want to state your specific preferences regarding pain relief.]

(9) IN CASE OF PREGNANCY

[PART TWO will be effective even if this section is left blank.]

I understand the under Georgia law, PART TWO generally will have no force and effect if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want PART TWO to be carried out.

_____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

(10) GUARDIANSHIP

[PART THREE is optional. This advance directive for health care will be effective even if PART

THREE is left blank. If you wish to nominate a person to be your guardian in the event a court decides that a guardian should be appointed, complete PART THREE. A court will appoint a guardian for you if the court finds that you are not able to make significant responsible decisions for yourself regarding your personal support, safety, or welfare. A court will appoint the person nominated by you if the court finds that the appointment will serve your best interest and welfare. If you have selected a health care agent in PART ONE, you may (but are not required to) nominate the same person to be your guardian. If your health care agent and guardian are not the same person, your health care agent will have priority over your guardian in making your health care decisions, unless a court determines otherwise.]

[State your preference by initialing (A) or (B). Choose (A) only if you have also completed PART ONE.]

(A) WJG (Initials) I nominate the person serving as my health care agent under PART ONE to serve as my guardian.

OR

(B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

This advance directive for health care will become effective only if I am unable or choose not to make or communicate my own health care decisions.

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE),

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____

[You must sign and date or acknowledge signing and dating this form in the presence of two witnesses]

Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses do not have to be together or present with you when you sign this form.

A witness:

• Cannot be a person who was selected to be your health care agent or back-up health care agent in PART ONE;

• Cannot be a person who will knowingly inherit anything from you or otherwise knowingly gain a financial benefit from your death; or

• Cannot be a person who is directly involved in your health care.

Only one of the witnesses may be an employee, agent, or other medical staff member of the hospital, skilled nursing facility, hospice, or other health care facility in which you are receiving health care (but this witness cannot be directly involved in your health care).

By signing below, I state that I am emotionally and mentally capable of making this advance directive for health care and that I understand its purpose and effect.

Willie James Gray 10 Aug 2017
(Signature of Declarant) WILLIE JAMES GRAY (Date)

The declarant signed this form in my presence or acknowledged signing this form to me. Based on my personal observation, the declarant appeared to be emotionally and mentally capable of making this advance directive for health care and signed this form willingly and voluntarily.

Marie Powell 8/10/17
(Signature of First Witness) (Date)

Print Name: Marie Powell

Address: 13 Fairwood Ave Bluffton SC 29910

Margaret Jenkins 8/10/17
(Signature of Second Witness) (Date)

Print Name: Margaret Jenkins

Address: 1425 Lee Beard Way #103 Augusta GA 30901

[This form does not need to be notarized]

State of South Carolina
ADMISSION AGREEMENT

ADMISSION AGREEMENT is made and entered into this 22nd day of September, year 2017, by and between PruittHealth - North Augusta (Healthcare Center), WILLIE J GRAY (Patient/Resident) and certain other undersigned parties.

I. Definitions:

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

II. The Healthcare Center agrees:

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

State of South Carolina
ADMISSION AGREEMENT

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

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

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

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

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

**State of South Carolina
ADMISSION AGREEMENT**

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

1. Attending physician: Henry Igdal
2. Alternate attending physician: _____

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

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: _____

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

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

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the **ITEMS AND SERVICES COVERED/NOT**

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

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing under this Agreement, including the basic monthly rate, when due.
- C. The basic monthly rate is currently \$7825.00. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further, if the Patient/Resident fails to apply promptly,

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

Agreement to Follow Through With Medicaid Application:

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

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

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

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

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

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

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

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

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

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

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VII. General Agreements:

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

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undersigned parties, not to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

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

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waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

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

VIII. Miscellaneous Provisions

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

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

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ACKNOWLEDGMENT:

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

KATHY GILL
Print Administrator's Name

Kathy Gill
Administrator's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

(Healthcare Center will maintain a copy for their records)

ELECTRONICALLY FILED - 2019 Feb 11 10:00 AM - AIKEN - COMMON PLEAS - CASE#2019NI0200001

State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 22nd day of September, 2017, by and between PruittHealth - North Augusta (the "Healthcare Center") and WILLIE J GRAY and TAMARA GRAY ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration

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

A. Scope of Agreement.

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

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

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

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

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

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

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


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


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

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

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

II. Decision

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


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

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

III. Governing Law, Severability


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

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

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

IV. Patient/Resident's Understanding of Agreement

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


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

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

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

WILLIE J GRAY

Print: Name of Patient/Resident

PruittHealth - North Augusta

Print: Name of Healthcare Center

Signature of Patient/Resident

Tamara Gray

Signature of Patient/Resident Representative

Signature of Healthcare Center's Authorized Agent

Susan Koehle

MICHELE RICH

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

TAMARA GRAY

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

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

WJG
Initials *WJG*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 GRACE GRAY, Individually and as Wife of)
 WILLIE J. GRAY, deceased, and as Personal)
 Representative of the Estate of WILLIE J.)
 GRAY, deceased,)
)
 Plaintiff,)
)
 v.)
)
 PRUITTHEALTH-NORTH AUGUSTA, LLC;)
 UHS PRUITT CORPORATION A/K/A)
 PRUITTHEALTH, INC.; PRUITTHEALTH)
 CONSULTING SERVICES, INC.; UNITED)
 HEALTH SERVICES OF SOUTH)
 CAROLINA, INC.; JOHN DOE, and)
 RICHARD ROE CORPORATION,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

CIVIL ACTION No.: 2019-NI-02-00001

**PLAINTIFF'S RESPONSE IN
 OPPOSITION TO DEFENDANTS'
 NOTICE OF MOTION AND MOTION
 TO DISMISS PLAINTIFF'S NOTICE
 OF INTENT**

COMES NOW Plaintiff Grace Gray, Individually and as Wife of Willie J. Gray, deceased, and as Personal Representative of the Estate of Willie J. Gray, deceased, and files her Response in Opposition to Defendants' Notice of Motion and Motion to Dismiss Plaintiff's Notice of Intent ("Motion"), showing the court as follows:

I. BACKGROUND

This is a wrongful death action instituted pursuant to S.C. Code Ann. § 15-79-125 by Grace Gray ("Plaintiff"), individually and as wife of Willie J. Gray, and as Personal Representative of the Estate of Willie J. Gray ("Mr. Gray"). As set forth in the Notice of Intent (NOI), Mr. Gray died as a result of negligent care he received while a resident at PruittHealth-North Augusta, LLC ("PruittHealth-North Augusta" or the "Facility") located at 1200 Talisman Drive in North Augusta, South Carolina. Although a complaint is not yet filed, Plaintiff alleges that Defendants UHS Pruitt Corporation a/k/a PruittHealth, Inc., PruittHealth Consulting Services, Inc., and United Health

Services of South Carolina, Inc. owned, maintained, managed, and/or operated PruittHealth-North Augusta (collectively as “Defendants”) during Mr. Gray’s residency. (*See* NOI at pp. 1-2.) By their motion, Defendants seek the benefit of arbitration based on an unenforceable arbitration agreement purportedly signed by Mr. Gray’s daughter, Tamara Gray.

Prior to and after Mr. Gray was admitted to PruittHealth-North Augusta, Defendants’ representatives advised his daughter, Tamara Gray, that she **needed to sign** various documents **in order for her father to be admitted** to the Facility. (Affidavit of Tamara Gray at ¶ 5, **Exhibit A**). The Facility representatives never explained that the documents included an alleged agreement by which she would **give up her father’s right to a jury trial** if a claim were brought against the facility for negligence. *Id.* at ¶¶ 6-10. The Facility representatives also said nothing to her about consulting with an attorney or that she could withdraw the consent to arbitration in writing. *Id.* at ¶ 11. Tamara Gray did not discuss the documents with her father at the time they were signed, nor did she seek her father’s permission to sign them. *Id.* at ¶¶ 12-13. No one from the Facility reviewed the paperwork that Tamara Gray had signed with her father after his arrival to PruittHealth-North Augusta. *Id.* at ¶¶ 14-15. Most importantly, at the time she signed the purported arbitration agreement and at all times during Mr. Gray’s residency at the Facility, Tamara Gray **had no legal authority to waive his constitutional rights**.

In this case, Plaintiff opposes Defendants’ Motion, including Defendants’ purported agreement to arbitrate. Arbitration agreements are subject to the same defenses applicable to all other contracts. Applying general (and basic) principles of contract law, Plaintiff contests whether a contract exists, and contends Tamara Gray lacked the requisite authority to execute the purported contract. Further, other factors, defects, and defenses recognized in the State of South Carolina may render the purported agreement unenforceable. Accordingly, Plaintiff contends the Motion

should be denied or, alternatively, postponed until full discovery into to the issue of the enforceability of the purported agreement is complete.¹

II. ARGUMENT AND CITATION OF AUTHORITY

The party seeking to force arbitration has the burden of establishing the existence of a valid arbitration agreement. *See Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); *MBNA America Bank, N.A. v. Christianson*, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008).² Of those courts that have decided this question, most have held the proponent of the waiver bears the burden, reasoning that the jury trial right is fundamental, and should not be waived absent clear evidence. *See e.g., Leasing Serv. Corp. v. Crane*, 804 F.2d 828, 833 (4th Cir. 1986) (“Where waiver is claimed under a contract executed before litigation is contemplated, we agree with those courts that have held that the party seeking enforcement of the waiver must prove that consent was both voluntary and informed.”) A party seeking judicial enforcement of a contract bears the burden of persuasion. *Hinson-Barr, Inc. v. Pinckard*, 292 S.C. 267, 268, 356 S.E.2d 115, 116 (1986). Defendant carries the burden to prove a valid and enforceable arbitration agreement was signed in a “knowing, voluntary and intentional” capacity. In interpreting a jury trial waiver narrowly, some courts have also emphasized “the basic principle that ambiguities in a contract are construed against the drafting party.” *Nat’l Acceptance Co. v. Myca Products, Inc.*, 381 F. Supp. 269, 271 (W.D. Pa. 1974). When faced with a motion to compel arbitration that is opposed based

¹ By their own Motion, Defendants suggest jurisdictional authority may not exist. Based upon this position, Plaintiff, on multiple occasions prior to this hearing, requested and proposed reasonably limited grounds for discovery into the enforceability of the purported agreement. Defendants initially appeared to be receptive to such an approach, and Plaintiff drafted a consent stipulation to that effect. Unfortunately, despite Defendants’ reference to “limited jurisdictional discovery” in its Motion and communication suggesting their openness, they denied Plaintiff’s requests, to the extent discovery covered more than Tamara Gray’s authority.

² Throughout this response, Plaintiff cites recent South Carolina opinions addressing the same asserted in Defendants’ Motion, including trial court orders. For purposes of reference, Plaintiff has attached several relevant orders which deny similar motions to compel arbitration. *See e.g., J. Stillwell Order, Estate of M. Clinkscales et al. v. Fundamental Clinical and Operational Services, LLC, et al.*, 2018-CP-23-05088 (Feb. 5, 2019); **Exhibit B**.

on whether an agreement to arbitrate has been made between the parties, the court must give to the opposing party the benefit of all reasonable doubts and inferences that may arise. *See Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.*, 636 F.2d 51, 54 (3d Cir. 1980).

Arbitration agreements are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010) (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)). In determining whether an arbitration agreement even exists, “trial courts consider ‘general contract defenses to ensure’ a meeting of the minds to arbitrate existed, and that such an agreement was not the result of ‘fraud, duress, [or] unconscionability.’” *York v. Dodgeland*, 406 S.C. 67, 78, 749 S.E.2d 1139, 145 (2013) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 593, 553 S.E.2d 110, 116 (2001)).³ The validity of an arbitration agreement must be determined in accordance with the general principles of contract law. *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2011); *Grant v. Magnolia Manor-Greenwood, Inc.*, 387 S.C. 125, 130, 678 S.E.2d 435, 438 (2009).

A. Lack of Requisite Agreement

Arbitration agreements are a matter of contract, and a “party cannot be required to submit to arbitration any dispute which he has not agreed to submit.” *World Finance Corp. of S.C.*, 373 S.C. at 149 (citing *Zabinski*, 346 S.C. at 596). A valid and enforceable agreement requires “a meeting of the minds between the parties with regard to all essential and material terms of the

³ Here, the purported arbitration agreement states it shall be governed by and enforced under federal law, specifically, the Federal Arbitration Act (9 U.S.C. §§ 1-16) (“FAA”), as opposed to state arbitration law. It further provides the South Carolina Uniform Arbitration Act is specifically excluded. Under the FAA, the Court must look to South Carolina law to decide the threshold questions of contract formation. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360, 364 (2001); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) (“the court should apply ‘ordinary state-law principles that govern the formation of contracts.’”). The judicial inquiry may include examination of contractual defects such as mutual assent and want of consideration as well as other grounds such as equity, including fraud, duress, and unconscionability. *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d.302, 205 (4th Cir. 2001).

agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (citing *Hughes v. Edwards*, 265 S.C. 529, 220 S.E.2d 231 (1975)).

Here, the purported agreement is allegedly **signed** by Tamara Gray; however, it is not signed by Mr. Gray or the Facility’s “Authorized Agent” – Michele Rich. Tamara Gray did not know at the time she was completing paperwork that she was signing the purported agreement, was not informed of the inclusion of the agreement or its content in the admissions packet, and does not recall signing the document. (Gray Aff. at ¶¶ 5-8.) As a result, there was no “meeting of the minds” between the parties. Moreover, Defendants UHS Pruitt Corporation a/k/a PruittHealth, Inc., PruittHealth Consulting Services, Inc., and United Health Services of South Carolina, Inc., although named in Plaintiff’s NOI, are not signees/parties to the purported agreement, and Plaintiff nor any representative of the Estate of Mr. Gray are signees/parties. The only basis these Defendants might have for asserting a right to arbitration would be as third-party beneficiaries to an arbitration agreement; however, there can be no third-party beneficiary in the absence of a valid contract. *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721, 736-37, 742 (2010).

At the most basic level of contract law, with regard to these Defendants, preliminary investigation indicates no agreement to arbitrate exists. Without an agreement completely signed by all parties with appropriate authority, there is nothing to be enforced. Thus, Defendants’ Motion should be denied. In the alternative, the parties should be allowed to engage in complete discovery to determine whether or not a contract exists.

B. Lack of Requisite Authority

Tamara Gray lacked authority to execute the purported arbitration agreement on Mr. Gray’s behalf. The legal consequences of an agent’s actions can only be attributed to the principal **when the agent has actual or apparent authority**. *Charleston, S.C. Registry v. Young Clement Rivers*

& *Tisdale*, 359 S.C. 635, 642 (2004) (*citations omitted*). Neither is present in this case, which was known at the time by Defendants.

Actual authority is that which is “expressly conferred upon the agent by the principal.” *Id.* Here, Tamara Gray lacked actual authority to execute the agreement on Mr. Gray’s behalf as Mr. Gray never expressly conferred authority to Tamara Gray to execute the arbitration agreement. Although Tamara Gray had a Georgia Advance Directive for Health Care (“Healthcare POA”) and a General Power of Attorney (“General POA”) for Mr. Gray (attached as exhibits to Defendants’ Motion), neither of these documents conferred on Tamara Gray the authority to execute the arbitration agreement on Mr. Gray’s behalf and waive his constitutional right to a jury trial.

The Healthcare POA grants Tamara Gray very specific and limited powers to make decisions regarding Mr. Gray’s healthcare and does not include the power to sign an arbitration agreement on Mr. Gray’s behalf or to waive his constitutional rights. Although the document expressly allows Tamara Gray to admit or discharge Mr. Gray from any skilled nursing facility and to contract and pay for those services, it does not authorize her to waive his right to a jury. More importantly, documents obtained by Plaintiff illustrate that Tamara Gray was unaware of any authority. (*See* Advance Directives Checklist, Exhibit C.) As noted by Defendants’ representative on their Checklist, the “family [was] not sure” whether they had an “advance directive”, whether such a document had been executed, and, most striking, whether or not they were “unable to comprehend” the meaning and purpose of an advance directive. This Checklist also confirms that Defendants not only failed to “explain to the family as part of [Defendants’] community education effort” the meaning of such documents so that they comprehended them, but Defendants also knew that Tamara Gray did not have the requisite authority, understanding, or knowledge to enter the purported arbitration agreement.

Likewise, the General POA grants Tamara Gray very specific and limited powers. It authorizes her to make and execute financial decisions for Mr. Gray, including the right to act upon insurance policies and claims, access to his safety deposit box, and the ability to endorse checks, or handle cash on his behalf. It does not, however, include the power to sign an arbitration agreement on Mr. Gray's behalf or to waive his constitutional rights.

As Mr. Gray never expressly gave Tamara Gray permission to sign the arbitration agreement by way of the Healthcare POA, General POA, or otherwise, Tamara Gray lacked the authority to execute the purported arbitration agreement and, therefore, it is unenforceable. See *Coleman v. Mariner Healthcare, Inc.*, 407 S.C. 346, 755 S.E.2d 450 (2014) (without valid power of attorney, one sister did not have authority to execute an arbitration agreement on another's sister's behalf). Courts in other states have also ruled similarly. In *Life Care Centers of America v. Smith*, 298 Ga. App. 739, 781 S.E.2d 182 (2009), the Court of Appeals of Georgia upheld the trial court's decision that the plain language of the healthcare power of attorney did not give daughter the right to sign away her mother's right to a jury trial. See also *McNally v. Beverly Enterprises*, 191 P.3d 363 (Kan.App. 2008) (durable power of attorney for healthcare did not encompass authority to sign arbitration agreement); *Blankfield v. Richmond Health Care*, 902 So.2d 296 (Fla.App. 2005) (holder of healthcare proxy did not have authority to bind nursing home patient to arbitrate claims); *Texas Cityview Care Center v. Fryer*, 227 S.W.3d 345, 352 (Tex.App.2007) (nothing in medical power of attorney indicates that it was intended to confer authority to make legal, as opposed to healthcare decisions).

Tamara Gray also lacked apparent authority to execute the purported arbitration agreement. The existence of apparent authority is determined by the principal's manifestation to third parties that the agent has certain authority. "[A]pparent authority depends on the manifestations by the

principal to the third party and the reasonable belief by the third party that the agent is authorized to bind the principal.” *Charleston, S.C. Registry v. Young, Clement, Rivers, & Tisdale, LLC*, 359 S.C. 635, 642 (2004). Even if Tamara Gray represented she had authority to waive Mr. Gray’s rights, such conduct would not authorize her to sign as his agent. “Agency may not be established solely by the declarations and conduct of an alleged agent . . . either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.” *Fraiser v. Palmetto Holmes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct. App. 1996) (*citations omitted*).

The concept of apparent agency in the nursing home context was recently addressed by the Court of Appeals in *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016). In *Thompson*, the court found that “the authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration thereby waiving the principal’s right of access to the courts and jury trial.” *Id.* at 55. Other states addressing this specific issue in the context of nursing home admissions have concluded similarly. *See Farmer v. South Parkway Associates, L.P.*, 2013 WL 5424653 (Tenn. Ct. App. 2013) (no implied authority even though the decedent’s sister routinely signed admission documents on behalf of her sister); *Koricic v. Beverly Enterprises-Nebraska, Inc.*, 773 N.W.2d 145, 151 (Neb. 2009) (agent’s implied authority to sign nursing home admissions documents did not extend to signing an arbitration agreement waiving the principal’s right of access to the courts and to trial by jury.)

Here, Mr. Gray was not involved in the admissions process, and he was not present when the arbitration agreement was signed. (Gray Aff. at ¶¶ 12-14.) Given his absence, it is impossible that Mr. Gray made manifestations of apparent authority upon which the Facility could rely.

Because Tamara Gray lacked the requisite authority to enter into a contract on Mr. Gray's behalf to waive his constitutional rights, no agreement to arbitrate exists, and Defendants' Motion should be denied. In the alternative, complete discovery must be afforded the Plaintiff.

C. Lack of Consideration and Mutuality

The necessary elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). To be legally enforceable, a contract must have an offer, acceptance, consideration, and mutual assent or meeting of the minds on all material terms.⁴ It is well settled that to be valid and enforceable, a contract must be supported by valuable consideration. *Benya v. Gamble*, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984). "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Plantation A.O., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009). Consideration is a promise to do something that a party has no legal obligation to do or to forbear from doing something it has a legal right to do. A valid contract requires that both sides provide consideration. Therefore, an arbitration agreement is only enforceable if it contains bargained for consideration and a mutuality of obligations between its parties.

In this case, the purported arbitration agreement and admissions agreement are distinct documents that do not merge.⁵ As explained by our Supreme Court in *Coleman*, the merger doctrine is not applicable when language in the contracts "recognized the 'separateness' of the

⁴ As shown above in **Exhibit C**, there could be no "mutual assent" or "meeting of the minds" as Tamara Gray was not able to comprehend the documents presented by Defendants.

⁵ It appears the admissions agreement was signed on September 22, 2017. It is unclear, however, when the purported arbitration agreement was signed as there is no opportunity for the patient/resident representative to date the document. Unlike the signature block of the admissions agreement, the Facility does not provide a date line on the purported arbitration agreement. Rather, the document is pre-dated by the Facility.

admission and arbitration agreements.” *Coleman v. Mariner Health Care, Inc.*, 407 S.C. 346, 355, 755 S.E.2d 455 (2014). Moreover, our Courts went further in *Thompson* and *Hodge* applying *Coleman* and providing further examples of factors demonstrating “separateness” and preventing merger, including the fact that the arbitration agreement at issue was not necessary for admission and that *there was no bargain for exchange nor consideration to the arbitration agreement*. *Thompson v. Pruitt Corp.*, 416 S.C. 43, 52, 784 S.E.2d 679, 684 (Ct. App. 2016); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 563, 813 S.E.2d 292, 302 (Ct. App. 2018) (*cert. denied* Aug. 21, 2018).

An admission contract with an “Entirety of Agreement” provision is separate “on its face” from an arbitration contract especially where the provision identifies the two contracts distinctly – i.e. “this Admission Agreement or in the Arbitration Agreement.” *Coleman*, 407 S.C. at 355. In fact, when the arbitration and admission contracts have different pagination with different signature pages and the arbitration contract has “Arbitration Agreement” atop its first page, these factors further “indicate the parties’ intent for it to stand by itself as an independent contract.” *Thompson*, 416 S.C. at 53 n. 1; *Hodge*, 422 S.C. at 562-63. Separateness is further demonstrated when the nursing home makes clear that agreeing to arbitrate is not required to gain admission to the home. *Thompson*, 416 S.C. at 53.

Here, the admissions agreement and the purported arbitration agreement are numbered distinctly. They form two (2) different sections of Defendants’ “Admission Packet.” (Admission Packet, **Exhibit D**). According to Defendants’ Table of Contents/Checklist, the admission agreement is found in Section A, Part 03 and pages are numbered 1 to 12. *Id.* The purported arbitration agreement is located in Section D, Part 02 and pages are numbered 1 to 5. *Id.*

Moreover, the admission agreement contains an entirety of agreement provision, which provides in part:

This Agreement together with all exhibits is the exclusive statement of the terms and conditions between the parties with respect to the matters set forth herein, **and supersedes all prior agreements**, negotiations, representations, tender documents, and proposals, written and oral with respect to the subject matter hereof. **Variance from**, or additions to, the terms and conditions of this Agreement in any written notification from Patient/Resident **shall be of no effect**.

Admission Agreement at VII.I, p. 9 (emphasis added). Thus, “ADMISSION AGREEMENT” is a defined term in this contract and, as stated in the contract’s opening paragraph, is limited to the admission agreement, not the separate arbitration agreement.⁶ Like in *Hodge*, the separate contracts also have separate signature pages and separate pagination. As in *Thompson*, the arbitration agreement states its independence with its “ARBITRATION AGREEMENT” title. The entirety of agreement provision makes its “separateness” further unequivocal providing: “[t]his Agreement shall be construed, governed and enforced under the laws of the State of South Carolina.” This statement conflicts with the terms of the purported arbitration agreement, which claims to exclude South Carolina law and apply the FAA.

To the extent there are any ambiguities in this contract language, they must be resolved against merger. *Coleman*, 407 S.C. at 355-56. The Facility was in sole control of the language chosen for these form contracts of adhesion, and it was their responsibility to make merger clear, if they so desired. In sum, the Facility cannot meet its burden to prove merger. The admission agreement and purported arbitration agreement are distinct and should not be construed as a single unit. Where a contract lacks valuable consideration, the contract will be deemed unenforceable.

⁶ The admission agreement and purported arbitration agreement are signed by different representatives of Defendants. Although signatures are difficult to interpret, the admissions agreement appears to be signed by Kathy Gill as Administrator, while the purported arbitration agreement appears to be signed by Susan – her last name being illegible.

No valuable consideration exists in this case. There was no consideration given for Mr. Gray or his alleged representative to sign the arbitration agreement.

In its most elemental sense, the doctrine of mutuality of obligation means that unless both parties to a contract are bound by its terms, neither is bound. Mutuality of obligation in bilateral contracts is but another way of stating that consideration is essential. 25 Richard Lord, *Williston on Contracts* § 67:42 at 332 (4th ed.2002). Mutuality becomes a nonissue when consideration has otherwise been conferred upon one of the parties. In our case, there exists a lack of mutuality that makes the purported arbitration agreement unenforceable. The mutuality requirement is satisfied if each party has given sufficient consideration for the other's promise—something of value. Valuable consideration for a contract consists of some right, interest, profit or benefit accruing to one party or undertaken by the other. Where there is a mutual promise to arbitrate, there must be additional consideration. The mutual promise to arbitrate is illusory and of no benefit to Mr. Gray or Plaintiff.

The agreement provides that claims primarily brought by residents (such as those for professional negligence), claims arising from the provision of services by Defendants, and elder abuse claims are to be arbitrated. Defendants argue the purported arbitration agreement meets the mutuality requirement because both sides are forced to arbitrate. However, while the arbitration agreement purports to require arbitration for any “dispute” over “care or services,” the reality is that this obligation falls almost exclusively on the resident. It is virtually inconceivable that Defendants would sue its resident regarding a dispute over care. Since admission is unavailable as a “direct benefit” to support estoppel, Defendants would be required to point to some benefit Mr. Gray received from the arbitration agreement alone. Any such attempt to find a benefit would have been futile given the Court of Appeals’ unambiguous ruling in *Thompson* which held that “any

possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration agreement's] requirement that [resident] waive her right to access the courts and her right to a jury trial." *Thompson*, 416 S.C. at 60. The contract is also silent as to any consideration exchanged between the parties. The purported arbitration agreement itself contains insufficient consideration in the form of a mutual exchange of promises to arbitrate. There is no direct benefit to nursing home residents from a pre-admission arbitration contract separate from the admission agreement. Admission can be the "direct benefit" that forces Plaintiff to arbitrate only if admission and arbitration are governed by the same contract. In sum, Defendants cannot meet their burden to prove merger, consideration, or any other benefit for the purported arbitration agreement. The admission agreement and purported arbitration agreement are distinct and should not be construed as a single contract.

Moreover, if the jury waiver was not a precondition to admission, then it fails for lack of consideration. It would be inconsistent for Defendants to argue that agreeing to arbitrate was not consideration for the admission but, on the other hand, argue that the admission was valuable consideration to support arbitration. For the proposed arbitration contract to be enforceable as a non-pre-condition to admission, it must be supported by some other valuable consideration, which it is not. Having already signed the admission paperwork there was no additional consideration in agreeing to the purported arbitration agreement. Neither party gained a right, interest, profit or benefit by purportedly agreeing to the arbitration agreement. *Plantation*, 386 S.C. at 206. Additionally, neither party suffered a forbearance, detriment, loss or responsibility given, suffered or undertaken by the other the party, when purportedly agreeing to the arbitration agreement. *Id.* Finally, viewing the purported arbitration agreement itself, there is no mention of consideration. The purported arbitration agreement is unenforceable; therefore, Defendants' Motion should be

denied. In the alternative, Plaintiff should be afforded an opportunity to further explore, through discovery, the existence of a contract, including assent, mutuality and want of consideration.

D. Claims of the Estate of Willie J. Gray Cannot be Arbitrated

Mr. Gray's estate cannot be bound by the Arbitration Agreement. In *Thompson*, the daughter of a nursing home resident filed a wrongful death and survival action against a nursing home in a case where the son had signed an arbitration agreement. The nursing home defendants argued that the estate of the deceased was bound to the arbitration agreement as a third-party beneficiary. *Thompson*, 416 S.C. at 56. The Court, however, rejected this argument, finding that "[a] third-party beneficiary is a party that the contracting parties intend to directly benefit," and there can be no third-party beneficiary unless a valid contract exists. *Id.* at 56-57 (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) and *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721, 742 (2010)). The Court further held that since the son was not authorized to execute the arbitration agreement on his mother's behalf, the mother could not be the third-party beneficiary of the alleged arbitration agreement between herself and the nursing home defendants. *Id.* at 57. As to the arbitration agreement between the nursing home defendants and the son in his individual capacity, the Court found that "a third-party beneficiary to an arbitration agreement cannot be required to arbitrate a claim unless the third party is attempting to enforce the contract containing the arbitration agreement." *Id.* Since the daughter was not attempting to enforce the arbitration agreement on behalf of her mother's estate, but instead was asserting tort claims arising out of the patient-provider relationship created by the separate admission agreement, the estate could not be bound by the agreement on that basis. *Id.*

Just as in *Thompson*, Tamara Gray did not have the authority to execute the arbitration agreement on her father's behalf, and she is also not seeking to enforce the arbitration agreement

on Mr. Gray's behalf; rather, she is asserting tort claims that arise out of the patient-provider relationship that was created by the separate admissions agreement. Therefore, Mr. Gray's Estate cannot be bound by the arbitration agreement. Defendants' Motion should be denied.

E. Defendants' Purported Arbitration Agreement is Unconscionable

South Carolina courts will not enforce unconscionable contracts or unconscionable terms within a contract. In South Carolina, unconscionability is defined "as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Herron v. Century BMW*, 387 S.C. 525, 532, 693 S.E.2d 394, 398 (citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007)). Furthermore, "[a]bsence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining power in the contract at issue." *Id.* In determining whether there is an absence of meaningful choice, courts consider: the relative disparity of the parties' bargaining power; the parties' relative sophistication; the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *Id.*

The purported arbitration agreement at issue in this case meets the definition of unconscionable for several reasons. First, the bargaining power between the parties in this case is severely disparate and fundamentally unfair. Neither Mr. Gray nor Tamara Gray had input into the terms of the agreement or had any realistic opportunity to negotiate the terms of this agreement. In fact, even if Tamara Gray had questions about the agreement, she was led to believe it was required to be signed to ensure her father's admission to the Facility. (Gray Aff. at ¶ 5.) Furthermore, despite conversations with a facility representative about the paperwork that would

need to be filled out in order for her father to be admitted to the Facility, Tamara Gray was never informed that an arbitration agreement was a part of that paperwork. (Gray Aff. at ¶ 7.) The contrast in the sophistication and bargaining power in this case could not be more evident. Defendants, one of the largest corporate providers of long-term care services in the Southeast – with more than 90 facilities in 4 states, through the assistance of in-house and outside legal counsel, presented Tamara Gray with a form contract prepared solely by them, with terms heavily weighted to their favor, dates previously entered, and with no opportunity for meaningful review, discussion or negotiation of terms. Tamara Gray, on the other hand, was an individual in desperate need of the Defendants' services who had no prior knowledge of arbitration or of the law regarding requirements for admission and who was taken by surprise when presented with a mountain of documents, in a moment of crisis, with this take it or leave it situation. In light of the one-sidedness of the preparation of this agreement and its surprise presentation, it is apparent that the bargaining power of the parties in this case is grossly inequitable.

Additionally, the purported arbitration agreement in this case provides that any claims, disputes, or agreements between the parties brought by either party are to be settled by arbitration. The claims that the Facility could conceivably bring against Mr. Gray would be financial in nature, relating to unpaid bills for services. That same agreement, however, if valid, would require Mr. Gray to waive his constitutional right to a jury trial on claims as serious as **negligence, medical malpractice**, and even **wrongful death**. This allocation of risk is patently unconscionable, making the contract provisions completely one-sided. By agreeing to arbitration on financial claims, the Facility is merely changing the venue in which these claims are being pursued, with little change in the remedies or damages that they could seek and receive. In agreeing to arbitration on claims of negligence and medical malpractice, Mr. Gray would be not only changing the venue

in which he would pursue his claims, but would also completely transform and diminish the remedies and damages he could seek. Based on all of the reasons above, the purported arbitration agreement appears unconscionable and, therefore, unenforceable. As a result, Defendants' Motion should be denied, or in the alternative, Plaintiff should be allowed complete discovery of this issue.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion should be denied. In the alternative, Plaintiff requests complete discovery into the enforceability of the purported agreement, including the applicability of all available defenses, defects and other considerations.

Respectfully submitted, this the 1st day of March, 2019.

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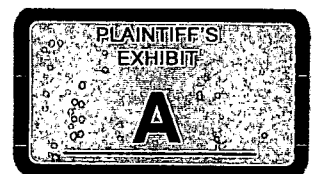
STATE OF PENNSYLVANIA
Chester COUNTY

AFFIDAVIT OF TAMARA GRAY

I, the undersigned, being duly sworn and state upon my oath as follows:

1. My name is Tamara Gray and I am over the age of eighteen (18).
2. I am the daughter of Willie J. Gray whose date of birth was September 9, 1941. My father passed away on June 19, 2018.
3. My father was admitted to University Hospital on July 27, 2017, following a serious motor vehicle accident that required spinal surgery. Complications from his spinal surgery, including a stroke, resulted in his subsequent admission to select Specialty Hospital in Augusta, Georgia.
4. After his release from Specialty Hospital on September 22, 2017, my father was admitted to PruittHealth-North Augusta for rehabilitative care and assistance with his activities of daily living. Being from Pennsylvania, I was unfamiliar with the area, and there were few skilled nursing facilities with available beds. This resulted in me being under a great deal of stress.
5. During the admission process, I was asked by a facility representative to complete paperwork necessary for my father's admission. During that discussion, I was led to believe the documents I was asked to sign were necessary for admission to the facility.
6. The facility representative did not walk me through each of the documents; instead, I was given approximately 70 pieces of paper and told where to sign and initial. I was asked to do this without being given the opportunity to read fully through what I was signing and I was not informed that any of the documents I was signing were optional or could be revoked.

ROA 000096



- 7. I have since learned that included within these documents was a document entitled "Arbitration Agreement," which is the arbitration agreement that the facility now seeks to enforce.
- 8. Upon review of the Arbitration Agreement, I do not recall signing the document.
- 9. I was not informed that I was waiving my father's Constitutional right to a jury trial.
- 10. I was not informed that I was waiving my father's right to bring a claim against the facility for negligence or malpractice.
- 11. I was not informed that I could consult an attorney. I did not consult with an attorney before signing, and neither my father nor I were represented by an attorney at the time I signed.
- 12. I did not discuss the paperwork with my father prior to signing it.
- 13. Since I was unaware of the nature of the documents I was instructed to sign, I never informed my father that I had signed an Arbitration Agreement on his behalf.
- 14. No one from the facility ever went through the admissions paperwork, including the Arbitration Agreement, with my father in my presence.
- 15. To my knowledge, no one from the facility ever went through the admissions paperwork, including the Arbitration Agreement, with my father after it was executed.

This 28 day of February, 2019.

Tamara Gray
Signature

Tamara gray
Printed Name

Sworn and subscribed before me
This 28 day of February, 2019.

Mark S. Clemens
NOTARY PUBLIC
My commission expires: 7/12/2021

Commonwealth of Pennsylvania
MARK S. CLEMENS - Notary Public
NORTH COVENTRY TWP, CHESTER COUNTY
My Commission Expires 2021

Commonwealth of Pennsylvania
Notarial Seal
MARK S CLEMENS - Notary Public
NORTH COVENTRY TWP, CHESTER COUNTY
My Commission Expires Jul 12, 2021

ROA 000097

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 THAYER W. ARREDONDO, as Personal)
 Representative of the Estate of HUBERT)
 WHALEY, deceased.)
)
 Plaintiff,)
)
 v.)
)
 SNH SE ASHLEY RIVER TENANT, LLC;)
 FVE MANAGERS, INC.; FIVE STAR)
 QUALITY CARE, INC.; SNH SE)
 TENANT TRS, INC.; SENIOR HOUSING)
 PROPERTIES TRUST; SNH TRS, INC.;)
 CANDY D. CURE; JOHN DOE; JANE)
 DOE; RICHARD ROE CORPORATION;)
 and MARY DOE CORPORATION.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 C.A. 2016-CP-10-5319

FILED
 2017 APR 18 PM 1:00
 JULIE J. ARISTRONG
 CLERK OF COURT

**ORDER DENYING DEFENDANTS'
 MOTION TO DISMISS AND TO
 COMPEL ARBITRATION**


This matter came to be heard upon Defendants' Motion to Dismiss and to Compel Arbitration on January 27, 2017. All parties were represented by counsel, provided oral arguments, and also submitted written memoranda and exhibits supporting their positions. The Court hereby DENIES Defendant's Motion to Dismiss and Compel Arbitration for the reasons set forth below.

FACTUAL BACKGROUND

Hubert Whaley, deceased, was admitted to Ashley River Plantation on October 12, 2012, and placed under the care, supervision, and control of the Defendants. Mr. Whaley was a resident at Defendants' facility from October 12, 2012 to until February 21, 2014, shortly before his death on February 27, 2014, with the exception of hospital admissions. Plaintiff alleges that Mr. Whaley suffered injuries and death due to the Defendants' negligence, and filed the current action in the Charleston County Court of Common Pleas.

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At the time of his admission, Hubert Whaley did not sign the alleged Arbitration Agreement presently at issue. Nothing on the face of the document suggested that Mr. Whaley lacked the capacity to execute the document. Regardless, Mr. Whaley's daughter, Thayer Arredondo, was presented the agreement for signature. (T. Arredondo Aff. ¶ 3). Ms. Arredondo was not given the opportunity to discuss the document with her father at the time it was signed, nor was she asked to seek her father's permission to sign it. (T. Arredondo Aff. ¶ 3). Further, no one from the facility reviewed the agreement that Ms. Arredondo had signed with her father after his arrival to Ashley River Plantation. (T. Arredondo Aff. ¶ 2). When Ms. Arredondo had questions about the agreement, she was simply told that it must be signed to ensure her father's admission to the facility. (T. Arredondo Aff. ¶ 2). Despite her questions, no facility representative ever explained that she was being asked to give up her father's constitutional right to a jury trial if a claim for negligence was brought against the facility, that she had the right to consult with an attorney prior to execution, or of the right to withdraw consent to the agreement. (T. Arredondo Aff. ¶ 2). The Defendants allege that Ms. Arredondo executed the Arbitration Agreement as Mr. Whaley's "Authorized Representative" and filed their Motion to Dismiss and Compel Arbitration on November 11, 2016. Plaintiff contends the alleged agreement should not be enforced (1) because Ms. Arredondo lacked the requisite authority to bind Mr. Whaley to arbitration; and (2) because the Arbitration Agreement is unconscionable.

ANALYSIS

While there is a presumption in favor of arbitration agreements, this presumption only applies where a valid arbitration agreement exists. *EEOC v. Waffle House*, 534 U.S. 279, 293-294, 122 S.Ct. 754, 764, 151 L.Ed.2d 755 (4th Cir. 2014). Additionally, arbitration agreements

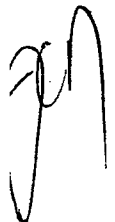
are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010) (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)).

In this case, the agreement at issue fails because Ms. Arredondo lacked the requisite authority to execute the Arbitration Agreement on Mr. Whaley's behalf. Furthermore, the Arbitration Agreement is procedurally and substantively unconscionable and cannot be enforced.

1. Ms. Arredondo lacked the requisite authority to execute the Arbitration Agreement.

Ms. Arredondo lacked authority to execute the purported arbitration agreement on Mr. Whaley's behalf. The legal consequences of an agent's actions can only be attributed to the principal **when the agent has actual or apparent authority.** *Charleston, S.C. Registry v. Young Clement Rivers & Tisdale*, 359 S.C. 635, 642 (2004) (*citations omitted*). Here, neither is present. Actual authority is that which is "expressly conferred upon the agent by the principal." *Id.* Here, Ms. Arredondo lacked actual authority to execute the agreement on Mr. Whaley's behalf as Mr. Whaley never expressly conferred any authority to Ms. Arredondo to execute the arbitration agreement. Although Ms. Arredondo had a Healthcare Power of Attorney and a General Durable Power of Attorney for Mr. Whaley, neither of these documents conferred on Ms. Arredondo the authority to execute the Arbitration Agreement on Mr. Whaley's behalf and waive his constitutional right to a jury trial. As Mr. Whaley never expressly gave Ms. Arredondo permission to sign the Arbitration Agreement via these documents or otherwise, Ms. Arredondo lacked the authority to execute the Arbitration Agreement and it is unenforceable.

Ms. Arredondo also lacked apparent authority to execute the purported arbitration agreement. The existence of apparent authority is determined **by the principal's manifestation** to third parties that the agent has certain authority. *See, Charleston, S.C. Registry v. Young*,




Clement, Rivers, & Tisdale, LLC, 359 S.C. 635, at 642 (2004). “Agency may not be established solely by the declarations and conduct of an alleged agent...either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief.” *Frasier v. Palmetto Holmes of Florence, Inc.*, 323 S.C. 240, 245, 473 S.E.2d 865, 868 (Ct.App. 1996) (*citations omitted*). Here, Mr. Whaley was not involved in the admissions process and he was not present when the arbitration agreement was signed. Given his absence, it is impossible that Mr. Whaley made manifestations of apparent authority upon which the facility could rely. Because Ms. Arredondo lacked the requisite authority to enter into a contract on Mr. Whaley’s behalf waiving his constitutional rights, no agreement to arbitrate exists. In addition to lacking the authority to bind Mr. Whaley to the Arbitration Agreement, Ms. Arredondo also lacked the authority to bind Mr. Whaley’s estate to the Arbitration Agreement. *Thompson v. Pruitt Corp*, 416 S.C. 43, 784 S.E.2d 679 (Ct. App. 2016).

2. The Arbitration Agreement is procedurally and substantively unconscionable.

Unconscionability is defined “as the absence of meaningful choice on the part of one party, due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Herron v. Century BMW*, 387 S.C. 525, 532, 693 S.E.2d 394, 398 (citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007)). In determining unconscionability, the court considers whether a contract is absent of meaningful choice and contains oppressive, one sided terms. “Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining power in the contract at issue.” *Id.*

In determining whether there is an absence of meaningful choice, the court can consider the relative disparity of the parties' bargaining power, the parties' relative sophistication; the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. *Id.*



Here, the Arbitration Agreement at issue, and the circumstances surrounding its execution, meets the definition of unconscionable. For example, the bargaining power between the parties in this case is severely disparate. Neither Hubert Whaley nor Thayer Arredondo had any bargaining power as they had no input into the terms of the agreement nor had any realistic opportunity to negotiate the terms of this agreement. In fact, when Ms. Arredondo had questions about the agreement, she was only told that it **must** be signed to ensure her father's admission to the facility.

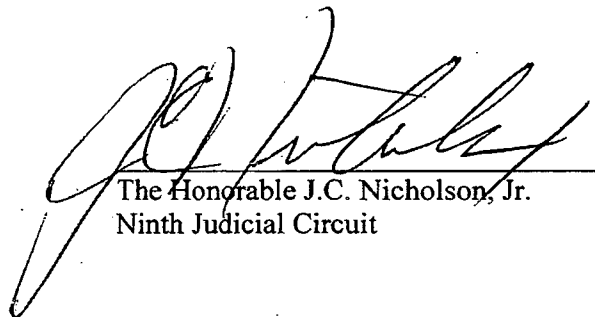
In contrast, the Defendants are sophisticated business and healthcare companies, who presented Ms. Arredondo with a form contract prepared solely by them, with terms heavily weighted to their favor and with no opportunity for meaningful review, discussion, or negotiation of terms. Ms. Arredondo, on the other hand, was an individual in need of the Defendants' services lacking knowledge of arbitration or of the constitutional right she was being asked to waive. This Agreement was offered on a "take or leave it" basis as it was represented as a condition for admission to a facility which held itself out as providing healthcare services that Mr. Whaley and his family desperately needed.

In light of the one-sidedness of the terms of this agreement, the manner in which the agreement was presented, the relative disparity of the parties' bargaining power, and the parties' relative sophistication, it is apparent that agreement is unconscionable.

CONCLUSION

For the above reasons, the Defendants' Motion to Dismiss and Compel Arbitration is hereby denied. This case is properly before the Court and discovery shall proceed.

AND IT IS SO ORDERED.



The Honorable J.C. Nicholson, Jr.
Ninth Judicial Circuit

April 17, 2017
Charleston, South Carolina

| | | |
|---------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GREENVILLE |) | C.A. No.: 2018-CP-23-00119 & |
| |) | 2018-CP-23-00120 |
| |) | |
| Marlene Wilson, Individually and as |) | |
| Personal Representative of the Estate |) | |
| of Kenneth Wilson, |) | |
| |) | |
| Plaintiff, |) | ORDER |
| |) | |
| v. |) | |
| |) | |
| NHC Healthcare/Mauldin, LLC, |) | |
| National Healthcare Corporation, |) | |
| NHC/OP, LP, Bon Secours St. Francis |) | |
| Health System, Inc., Bon Secours |) | |
| Health System, Inc., |) | |
| |) | |
| Defendant(s). |) | |

This matter came before the Court on Defendants National Healthcare Corporation’ and NHC/OP, LP’s (hereinafter “Nursing Home Defendants”) Motion to Dismiss and to Compel Arbitration. Having listened to oral arguments from counsel and having reviewed the parties’ legal memoranda for the reasons more fully set forth below, the Court hereby denies the Defendants’ Motion to Dismiss and to Compel Arbitration.

BACKGROUND

This matter arises out of two civil actions – a survival action and a wrongful death action. Both actions involve allegations of nursing home negligence and corporate negligence resulting in the death of Kenneth Wilson (hereinafter “Decedent”). Marlene Wilson (hereinafter “Daughter”) was Decedent’s daughter and serves as Personal Representative of Decedent’s estate. On April 6, 2015, Decedent was admitted to NHC Mauldin for short-term rehabilitation after undergoing a hip arthroplasty at St. Francis

Hospital. Plaintiff alleges that as a result of Nursing Home Defendants' negligence, Decedent developed necrotic and infected bedsores, became dehydrated, suffered from nutritional compromise, and developed multiple infections which went untreated, all of which Plaintiff alleges caused Decedent's injuries and death.

At the time of admission, Daughter signed an Agreement to Arbitrate and Waive Jury Trial ("Arbitration Agreement"). The Arbitration Agreement was signed by Jennifer Balon for "The Center" and by Daughter for "The Patient". The Arbitration Agreement provides that the parties agree to follow the dispute resolution procedures set forth in the Arbitration Agreement which include the waiver of a jury trial and the requirement that the parties submit to binding arbitration all disputes against each other which exceed an amount in controversy over \$7,500.00.

Plaintiff filed the Notice of Intent to File Suit on September 14, 2017. The parties engaged in the mandatory pre-suit mediation on December 28, 2017. Plaintiff then filed the Summons and Complaint on January 5, 2018 and served same. Nursing Home Defendants filed this Motion to Dismiss and to Compel Arbitration on February 28, 2018. Nursing Home Defendants contend that this Arbitration Agreement requires that this Court order that this case be dismissed and that the claims be submitted to binding arbitration in accordance with the Arbitration Agreement. Plaintiff contends that the Arbitration Agreement is unenforceable under state contract law and this Court agrees for the various reasons set forth hereinbelow.

LEGAL ANALYSIS AND CONCLUSIONS

The party seeking to enforce an agreement to arbitrate has the burden of establishing the existence of a valid arbitration agreement. See Aiken v. World Finance

Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (S.C. Ct. App. 2008). It is well established that “where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place. If no agreement is found to exist, the court must deny any application to arbitrate. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 667 (S.C. 2007) (internal citation omitted). Whether a valid arbitration agreement exists is a matter for judicial determination. York v. Dodgeland of Columbia, Inc., 406 S.C. 67,78,749 S.E.2d 139, 144 (Ct. App. 2013). Whether the parties agreed to arbitration is a question of substantive state law. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (S.C. 2007) (“General contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”).

I. Daughter had No Authority to Sign the Arbitration Agreement for Decedent

Because Decedent did not sign the Arbitration Agreement, Daughter was required to have authority to execute the Arbitration Agreement for the Arbitration Agreement to be enforceable. Daughter had no such authority. The legal consequences of an agent’s actions can only be attributed to the principal when the agent has actual or apparent authority. Charleston Registry v. Young Clement, 598 S.E.2d 717, 359 S.C. 635, 642 (Ct. App. 2004). In the present case, neither actual or apparent authority exists for Daughter.

A. No Actual Agency/Authority

While it is true that Daughter held a “Power of Attorney” on behalf of Decedent, this Power of Attorney did not confer the necessary authority to execute an arbitration agreement on Decedent’s behalf. This document is titled “Power of Attorney” and is not

identified a “General Durable Power of Attorney.” More importantly, the document does not confer sufficient authority to enter into contracts generally, to enter into releases on behalf of Decedent, to waive the constitutional right to a jury trial, nor does it include the “catch all provision giving the attorney-in-fact the authority ‘to sign any and all releases or consent required.’” Sovereign Healthcare of Tampa v. Schmitt, 195 So. 3d, 1175 (Fla. Dist. Ct. App. 2016).

The powers and authorities which Daughter held were specifically delineated in the Power of Attorney. These powers granted to Daughter the authority to make decisions regarding financial matters and decisions regarding healthcare.

This analysis is akin to that in Hodge v. UniHealth Post-Acute Care of Bamberg, 2018 S.C. App. LEXIS 13. As noted in Hodge, ““This limited range of acts performed on the [decedent]’s behalf suggest, at most, [he] may have conferred on [the personal representative] the authority to make health care and financial decisions on his behalf, but no more than that.”” Id at 29 quoting Dickerson v. Longoria, 95 A.2d 721, 743, 414 Md. 419 (2010). The Hodge court further noted that the authority to sign healthcare documents does not include the authority to sign an arbitration agreement. Hodge at 40. Our courts have held a healthcare power of attorney does not provide authority to sign an arbitration agreement. Hodge v. UniHealth Post-Acute Care of Bamberg, 2018 S.C. App. LEXIS 13; Thompson v. Pruitt Corp., 784 S.E.2d, 679, 416 S.C. 43, 55 (Ct. App. 2016), *cert. denied*, S.C. Sup. Ct. Order dated Dec. 2, 2016.

Furthermore, the South Carolina Supreme Court has held that “The authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby

waiving the principal's right of access to the courts and to a jury trial." Hodge at 37 quoting Thompson at 55, 784 S.E.2d at 686. As previously indicated, this Power of Attorney did not have the "catch all" language of many general powers of attorney and does not encompass the executing of an agreement to resolve legal claims by arbitration and waiving a jury trial, but rather, deals with the limited circumstances enumerated therein of making financial or healthcare decisions for Decedent. Therefore, no actual authority existed for Daughter to sign the Arbitration Agreement.

B. No Apparent Agency/Authority NAAA

Daughter did not have apparent authority/agency to execute the Arbitration Agreement on behalf of the Decedent. Apparent authority is based on "representations made by the principal to the third party and reliance by the third party on those representations". Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649, S.E.2d 488, 491 (2007): Apparent authority exists when the principal is bound by the acts of its agent after the principal has placed the agent in such a position that a person of ordinary prudence, reasonably familiar with business usages and custom is led to believe the agent has certain authority and in turn, deals with the agent based on the assumption. Muller v. Myrtle Beach Golf and Yacht Club, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *rev'd on other grounds*.

South Carolina law requires that to prove apparent authority, the Defendants must show "... (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." Cowburn v. Leventis, 366 S.C. 39, 619 S.E.2d 448 (Ct. App. 2005). The basis of apparent authority is representations made

by the principal to the third party and reliance by the third party on those representations. Young v. S.C. Department of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488, 491 (2007). The proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent but that between the principal and the third party. Vereen v. Liberty Life Insurance Company, 306 S.C. 423, 412 S.E.2d 425 (Ct. App. 1991). The burden of establishing agency is on the party asserting that a principal agency relationship exists.

Nursing Home Defendants have presented no evidence that Decedent represented, implicitly or explicitly, to the Nursing Home Defendants that Daughter had the authority to enter into the Arbitration Agreement on his behalf. The Affidavit presented by Plaintiff reflects that Decedent was not present when Daughter signed the Arbitration Agreement as he was still in the hospital. The Affidavit further reflects that Decedent was never aware that Daughter had signed the Arbitration Agreement and never authorized Daughter to sign such contracts or agreements. Further, based upon the Affidavit of Daughter and the records submitted as exhibits at the hearing, Decedent was confused from the effects of the anesthesia and had “moderate” mental impairment.

It should further be noted that despite the fact that Decedent’s mental impairment improved to “cognitively intact”, according to Nursing Home Defendants’ own records during his admission, Defendants never requested that Decedent sign the Arbitration Agreement personally. Further, the Arbitration Agreement does not reflect any authority which Daughter had to execute such agreement despite the Arbitration Agreement’s own requirement that any such authority be delineated.

Nursing Home Defendants must also show a detrimental change of position. It should also be noted that the Arbitration Agreement is separate from the Admissions Agreement. The facility cannot show that it changed its position for the worse as required to prove any apparent authority/agency as reflected in Hodge.

Because Decedent did not consciously or impliedly represent that Daughter was his agent and because there was no change of position by the Nursing Home Defendants, Nursing Home Defendants cannot show that Daughter had apparent authority/agency to execute the Arbitration Agreement on behalf of Decedent.

II. The Arbitration Agreement is Unenforceable Against the Decedent’s Wrongful Death Statutory Beneficiaries

It is the conclusion and order of this Court that the Arbitration Agreement is unenforceable for the above-stated reasons. However, even if Daughter had actual or apparent authority/agency to sign the Arbitration Agreement on behalf of Decedent, the Arbitration Agreement is unenforceable against the Decedent’s wrongful death statutory beneficiaries under South Carolina contract law defenses. The Arbitration Agreement neither covers the wrongful death statutory beneficiaries’ claims within the scope of the agreement nor was the Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries.

South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries and that such claims are distinct and separate from those brought under survival claims. Bennett v. Spartanburg Railway Gas and Electric Co., 97 S.C. 27, 81 S.E. 189 (1914). The alleged Arbitration Agreement by its own terms is an agreement between “Kenneth Wilson (‘patient’)” and “NHC Healthcare/Mauldin, LLC (‘center’)”. While at some point during Decedent’s admission to the facility, he might have had the authority to

bind himself and his claims to arbitration but was never given the chance. However, even if Decedent had agreed to arbitration, he did not have the legal authority to bind his statutory beneficiaries who are not parties to the Arbitration Agreement. The signatories to the agreement are Daughter on behalf of Decedent and NHC Healthcare/Mauldin, LLC. No other persons are parties to this agreement. The scope of the agreement does not include the statutory beneficiaries' claims.

However, even if the Arbitration Agreement did contemplate the wrongful death statutory beneficiaries' claims, Decedent and/or Daughter had no authority to waive the statutory beneficiaries' claims. Daughter signed the Arbitration Agreement in her *individual capacity*. However, as the Hodge court noted, actions taken by Daughter in her *individual capacity* will not be held against the estate as the estate has other beneficiaries and may have other creditors. Daughter's Affidavit reflects that other statutory beneficiaries exist in this case.

Further confirming the separateness of each statutory beneficiary's claim from that of the survival action, a Federal District Court in South Carolina has analyzed this issue under the South Carolina Non-Economic Awards Act of 2005. Diane Boyle as Personal Representative of the Estate of John Francis Boyle v. United States of America, 944 F.Supp.2d 577 (D.S.C. 2012). In Boyle, the Court concluded that the wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants. This analysis supports the contention that the wrongful death claimants have separate and distinct claims apart from that of the survival action.

Many other states have come to this same conclusion, Daniels v. Sunrise Senior Living, Inc., 212 Cal.App.4th 674, 151 Cal.Rptr.3d 273 (Cal.App.4 Dist, 2013) (Wrongful Death claims not bound to arbitration), Lawrence v. Beverly Manor, 273 S.W.3d 525 (Mo. 2009) (Wrongful Death claimants not bound by arbitration agreement.) As previously discussed, the only parties executing this Agreement were Daughter purportedly on behalf of Decedent and employee as an Agent for NHC Mauldin. NHC Mauldin would contend that this agreement is binding on the non-signatory statutory beneficiaries simply because it contends the Arbitration Agreement says so.

However, as the Supreme Court of Kentucky said regarding binding non-signatory wrongful death beneficiaries in Ping v. Beverly Enterprises, Inc.:

[A]s interesting as life might be if we could bind one another to contracts merely by referring to each other in them, we are not persuaded that a non-signatory who receives no substantive benefit under a contract may be bound to the contract's procedural provisions, including arbitration clauses, merely by being referred to in the contract. It is one thing to say that a third party for whose substantive benefit a contract is made may not enforce his or her rights under the contract without also abiding by the contract's other terms. That is the general third-party beneficiary rule discussed above. It may even be that tort claims by such a directly benefitting third-party are appropriately subjected the contract's arbitration provisions, at least where the tort and contract are significantly intertwined. See, In re Weekley Homes, L.P., 180 S.W. 3d 127 (Tex. 2005) (negligent repair claim by homeowner's daughter against contractor was subject to repair contract's arbitration clause because daughter, although a non-party, was direct and principal beneficiary under the contract). It is something else entirely, however, to say that incidental beneficiaries of a contract-individuals or entities with no substantive rights under the contract and no direct benefits-may have their tort claims against the parties swept up into the contract's arbitration provisions merely be being mentioned in the contract as potential claimants. This is

what Beverly purports to do. Arbitration is a matter of contract, however, it is something the contracting parties, or their proxies, must agree to. It is not something that one party may simply impose upon another. Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79,83, 123 S. Ct. 588, 154 L. Ed.2d 491 (2002) (“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”, Citation and internal quotation marks omitted.) Since Beverly’s theory would allow just that, i.e., would allow one party merely by referring to someone else in an arbitration clause to thereby bind that other person to arbitration as a “third party beneficiary” of the arbitration agreement, we reject it out of hand.

Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581, 599-600 (KY 2012).

Likewise, NHC-Mauldin’s mentioning of “employees, agents, representatives, affiliates, fiduciaries, medical directors, officers, directors, governing bodies, management companies, insurers, attorneys, predecessors, successors, assigns, third party beneficiaries, heirs, executors, administrators, or any of them, and all persons, entities or corporations with whom any of the former have been, are now, or may be affiliated, arising out of or in any way related or connected to the patient’s stay and the care provided at the Center”, as being bound by the Arbitration Agreement does not make it so. It is no more than an *ipse elixir* which Defendants expect this Court to embrace. The law simply does not permit a party to cut off the rights of a non-signatory to an agreement who receives no benefit thereunder.

The wrongful death claims are separate claims apart from the Decedent’s claims.

According to South Carolina’s Wrongful Death Act:

“Whenever the death of a person shall be caused by the wrongful act, negligent or the fault of another and the act, negligent or the fault is such as would, if death had not ensued, had entitled party injured to maintain an action and recover damages in respect thereof, the person

who would have been liable, if death had not ensued shall be liable to an action for damages.”

South Carolina Code Annotated §15-51-10 (1977)

The wrongful death beneficiaries are as follows:

“Every such action shall be for the benefit of the wife, or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none, for the benefit of the heirs or the person whose death shall have been so caused.”

South Carolina Code Annotated §15-51-20 (Supp. 2001)

The general element of damages recoverable are pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the Decedent, society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and his beneficiaries. Self v. Goodrich, 300 S.C. 349, 351, 387 S.E.2d. 713, 714 S.C. (Ct. App. 1989).

The wrongful death claim is a separate claim from the claims a decedent might bring on his own behalf under the survival statute. In Bennett v. Spartanburg Railway Gas and Electric Company, 97 S.C. 27, 81 S.E. 189 (1914), the Supreme Court held that wrongful death and survival actions are different claims for different injuries. The Court stated “necessarily, therefore, there must be separate verdicts and separate judgments, there should be separate actions.” Id. at 31. See also Strickland v. Southern Ry Co., 111 S.C. 248, 97 S.E. 695 (1918) (Supreme Court Affirmed Appeal from Circuit Court’s ruling noting that survival claims are independent of wrongful death claims), Claussen v. Brothers, 148 S.C. 1, 145 S.E. 539 (1928) (discussing the difference between survival and wrongful death claims as being independent of each other).

The Pennsylvania Superior Court in Pisano v. Extended Homes, Inc., operating under the fictitious name Belaire Health 84 Rehabilitation Center, 2013 PA Super 232, 77 A.3d 651, 662 (PA 2013) affirmed the trial court decision that the nursing home arbitration agreement did not apply to the statutory beneficiaries' wrongful death claim. The Court noted the wrongful death and survival actions are not derivative of each other but are flowing from the same underlining tortious conduct. Like the South Carolina statute, Pennsylvania's wrongful death statute provides that the right of action exists only for the benefit of the spouse, children, parents, or parents of the deceased. Id. at 656. The Pennsylvania Court further held that since the wrongful death claim is independent of the survival action and because the wrongful death statute does not characterize the wrongful death claim as that of a third-party beneficiary, that the trial court properly refused to compel arbitration to the non-signatory wrongful death beneficiaries who were not parties to the arbitration agreement.

Likewise, in Bybee v. Abdulla, M.D., 189 P.3d 40, 2008 UT 35 (Utah, 2008), the Supreme Court of Utah held that an agreement to arbitrate that was signed by the decedent cannot extend to the statutory beneficiaries of a wrongful death claim. The Utah Supreme Court noted that certain defenses from the decedent's personal injury action may be raised against the heirs of a wrongful death action such as comparative negligence and statutes of limitations as key common characteristics. However, as the Supreme Court of Utah noted, both of these defenses go to the viability of the underlying personal injury action. The Court further stated that "by contract, an agreement to bind heirs to arbitrate disputes does not implicate the viability of underlying claims." Id. at 47, citing Horwich v. Superior Court, 21 Cal. 4th 272, 87 Cal. Rptr. 2d 222, 980 P. 2d 927, 935 (1999). The Utah Supreme Court

went on to note that “we have never intended to suggest, however, that because Decedent is the master of his claim he may by contract expose his unwilling heirs to any imaginable defense.” Bybee v. Abdulla, M.D. at 46. The Utah Supreme Court further held that the defenses against the decedent’s claim which are less likely to be found enforceable against the heirs’ claims in a wrongful death action “are contract provisions that purport to affect the rights of heirs that do not affect the existence of the decedent’s personal injury claim during his lifetime. The arbitration agreement...falls squarely within this category and is, therefore, unenforceable against the heir.” Id. at 47.

The Court of Appeals in Washington in Woodall v. Avalon Care Center-Federal Way, LLC, 155 Wn. App. 919, 231 P. 3d 1252 (Wash. App. Div. 1 2010) held that “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he [or she] has not agreed so to submit.” Id. quoting Satomi Owners Association v. Satomi. LLC, 167 Wash. 2d 781, 225 P.3d 213 (2009). The Washington Court of Appeals further noted that the wrongful death claims asserted in that case were not on behalf of the estate just as South Carolina’s wrongful death claims are not on behalf of the estate. The Washington Court of Appeals further discussed the Supreme Court of Ohio’s ruling in Peters v. Columbus Steel Casting Co., 115 Ohio St.3d 134, 873 N.E.2d 1258 (2007), wherein the Supreme Court of Ohio held that the wrongful death claim of a spouse who was Administrator of her husband’s estate was not subject to the Decedent’s arbitration agreement. The Washington Court of Appeals in discussing Peters, stated “In sum, the decedent’s agreement was an agreement ‘to arbitrate his claims against the company,’ and thus the provision in the agreement binding the decedent’s heirs applied to a survival action. But the decedent could not ‘restrict his beneficiaries to arbitration of their

wrongful death claims because he held no right to those claims.” Woodall v. Avalon Care Center - Federal Way, LLC at 929. In the Washington Court of Appeals’ analysis, the Court concluded that the wrongful death beneficiaries could not be bound to the arbitration agreement which they did not sign.

Therefore, even if Daughter had actual or apparent authority/agency to execute the Arbitration Agreement, the Arbitration Agreement did not include the wrongful death statutory beneficiaries’ claims within the scope of the Arbitration Agreement, nor did Decedent and/or Daughter have authority to bind the wrongful death statutory beneficiaries’ claims to the Arbitration Agreement. As a result, the Arbitration Agreement cannot reach the claims of the wrongful death statutory beneficiaries.

WHEREFORE, for the reasons stated herein, the Court denies Defendants’ Motion to Dismiss and Motion to Compel Arbitration.

IT IS SO ORDERED.

The Honorable Michael G. Nettles
Presiding Judge

Greenville, South Carolina
Date: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

C.A. No: 2018-CP-23-05088

Estate of Mozana Clinkscales, by and through the appointed Personal Representative Charlie E. Clinkscales, Individually, and on behalf of Statutory Beneficiaries,

ORDER DENYING MOTION TO COMPEL ARBITRATION

Plaintiffs,

v.

Fundamental Clinical and Operational Services, LLC; Fundamental Administrative Services, LLC; and THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place-Greenville,

Defendants.

This matter came before the Court on December 18, 2018 for Defendant THI of South Carolina at Magnolia Place at Greenville, LLC d/b/a Magnolia Place-Greenville's Motion to Dismiss and to Compel Arbitration. Having listened to oral arguments from counsel and reviewed the parties' legal memoranda, for the reasons more fully set forth below, the Court hereby denies the Motion to Compel Arbitration as to "Survival Action" and the "Wrongful Death Action".

I. BACKGROUND

This matter arises out of two civil actions --- a Survival Action and a Wrongful Death action. Both actions involve allegations of nursing home neglect and corporate negligence resulting in the wrongful death of Mozana Clinkscales ("Decedent"). Charlie Clinkscales was Decedent's son and serves as the personal representative of Decedent's estate. The claims are brought against the nursing home facility THI of South Carolina at Magnolia Place at Greenville, LLC (d/b/a Magnolia Place - Greenville), as well as Fundamental Clinical and Operational Services, LLC (which Defendants assert provided "clinical services" to the facility), and

Fundamental Administrative Services, LLC (which Defendants assert provided “administrative services” to the facility), these latter two entities being hereinafter referred to as the “Corporate Defendants.”

Plaintiffs allege that while the Corporate Defendants did not provide direct care or services to Decedent, they are indispensable parties and proper Defendants in this matter because their control over the Facility directly affected the quality of care received by Decedent. Plaintiffs allege the Corporate Defendants are related entities¹ of the nursing home and have a significant relationship in the operation and management of the nursing home, and derive significant economic benefits from its revenue.² Agency law extends the right to enforce an arbitration award against agents, sister corporations, subsidiaries, and parent/ownership entities of a contracting party “where the interests of such parties are directly related to, if not congruent with, those of a signatory.”³ Plaintiffs allege the Corporate Defendants should be included in the arbitration proceedings if the Court compels arbitration because the Court finds the Corporate Defendants were intended beneficiaries of the Arbitration Agreement as the allegations against them are based on the same facts and are inherently inseparable from the claims made against the Facility.⁴

Decedent was admitted to Magnolia Place-Greenville (“Facility”) on January 15, 2011 according to the original Admission Agreement. The Admission Agreement governed the type of care Decedent would receive at the Facility and Decedent’s financial obligation to pay for those

¹ Related entity is an industry term that means the entities are have common ownership, management, and control.
² A parent company has been forced to arbitrate under a theory of equitable estoppel even though the parent company was not a party to the agreement when the subsidiary was a party to the agreement. Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH, 206 F.3d 411, 416 (4th Cir. 2000) quoting J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988)) (citing Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc., 10 F.3d 753, 757 (11th Cir. 1993). Pearson v. Hilton Head Hosp., 400 S.C. 281, 733 S.E.2d 597 (Ct. App., 2012).
³ Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1112 (1993) (citing Isidor Paiwonsky Associates, Inc. v. Sharp Properties, 998 F.2d 145, 155 (3d Cir. 1993)).
⁴ Int’l Paper Co. v. Schwabedissen Maschenen & Anlagen GMBH, 206 F.3d 411, 417 (4th Cir. 2000); see also Pearson v. Hilton Head Hospital, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012).

services. On the Admission Agreement's final page, labeled as "Page 12 of 12," there was an "Entire Agreement"⁵ provision indicating these 12 pages constituted "the entire agreement and understanding between the parties" concerning Decedent's admission to the Facility. The date on this document is January 15, 2011.

A contract called "Arbitration Agreement" was signed on August 30, 2013. This contract was not part of the 12 pages comprising the Admission Agreement but was its own separate entity (labeled "Page 1 of 1") with its own signature blocks. The Arbitration Agreement, purportedly a contract between the Facility and Decedent, provides for alternative dispute resolution to any claim a party may bring against another arising out of Decedent's care at the Facility. Defendant has admitted agreeing to arbitrate was not a prerequisite to admission at the Facility or a condition of admission. The Arbitration Agreement was allegedly signed by Charlie Clinkscales on **August 30, 2013**—more than 30 months after the original Admission Agreement was signed.

II. BURDEN OF PROOF

The party seeking to force arbitration has the burden of establishing the existence of a valid arbitration agreement.⁶ Of those courts that have decided this question, most have held the proponent of the waiver bears the burden, reasoning that the jury trial right is fundamental, and should not be waived absent clear evidence.⁷ A party seeking judicial enforcement of a contract

⁵ "I/we hereby acknowledge that I/we have read this page and all preceding pages and acknowledge that this Agreement represents the entire agreement and understanding between the parties and supersedes all previous representations, understandings or agreements, oral or written, between the parties and may not be amended except by written agreement of the parties."

⁶ See Aiken v. World Finance Corp. of S.C., 373 S.C. 144, 149, 644 S.E.2d 705, 708 (2007); MBNA America Bank, N.A. v. Christianson, 377 S.C. 210, 659 S.E.2d 209 (Ct. App. 2008).

⁷ See e.g., Leasing Serv. Corp. v. Crane, 804 F.2d 828, 833 (4th Cir. 1986) ("Where waiver is claimed under a contract executed before litigation is contemplated, we agree with those courts that have held that the party seeking enforcement of the waiver must prove that consent was both voluntary and informed."); Nat'l Equip. Rental Ltd. v. Hendrix, 565 F.2d 255, 258 (2^d Cir. 1977) (implying that party defending waiver bears burden of proof); Luis Acosta, Inc. v. Citibank, N.A., 920 F. Supp. 15, 18 (D.P.R. 1996) (rejecting a waiver, after concluding that "the burden of proving the waiver of such a fundamental right properly rests upon the party seeking to enforce such a waiver"); Phoenix Leasing Inc. v. Sure Broadcasting, Inc., 843 F. Supp. 1379, 1384 (D. Nev. 1994) ("An informal survey indicates the majority of courts having considered this question followed the approach in Leasing Service [and placed

bears the burden of persuasion.⁸ Defendant carries the burden to prove a valid and enforceable arbitration agreement was signed in a “knowing, voluntary and intentional” capacity. In interpreting a jury trial waiver narrowly, some courts have also emphasized “the basic principle that ambiguities in a contract are construed against the drafting party.”⁹ When faced with a motion to compel arbitration that is opposed based on whether an agreement to arbitrate has been made between the parties, the court must give to the opposing party the benefit of all reasonable doubts and inferences that may arise.¹⁰ Pro-arbitration policy does not validate a contract that lacks the building blocks of a binding contract. Whether the parties agreed to arbitrate is a question of substantive state law.¹¹ In Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007), the Supreme Court stated: “Although we are constrained to resolve all doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis.”

The parties agree the FAA applies and that it represents pro-arbitration federal policy. “Congress's purpose in enacting the FAA was “to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements upon the same footing as other contracts.”¹² However, the policy only applies in instances where a valid arbitration agreement has been established. See 9 U.S.C. § 4. (“The court shall make an order directing the parties to proceed to arbitration” but only “upon being satisfied that the making of the agreement...is not in issue.”). When the parties dispute the existence of a valid arbitration agreement, the presumption in favor of arbitration

burden of proof on proponent of waiver].”); Smyly v. Hyundai Motor Am., 762 F. Supp. 428, 429 (D. Mass. 1991) (concluding that “since it is a waiver of a constitutional right,” proponent of waiver bears burden of showing agreement was made knowingly and intentionally).

⁸ Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 268, 356 S.E.2d 115, 116 (1986).

⁹ Nat'l Acceptance Co., 381 F. Supp. at 271).

¹⁰ See Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd., 636 F.2d 51, 54 (3d Cir. 1980).

¹¹ Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663, 668 (2007) (“General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause.”).

¹² Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 24 (1991).

disappears.¹³ The FAA requires state courts enforce arbitration agreements unless the agreement is otherwise revocable under existing legal or equitable principles. 9 U.S.C. § 2. Moreover, while it is true the U.S. Supreme Court has held that the FAA “leaves no place for the exercise of discretion,” the Court also cited the FAA’s savings provision that denies enforcement of agreements susceptible to the general contract defenses of fraud, duress, and unconscionability.¹⁴ The FAA requires the Court to look to South Carolina law to decide the threshold questions of contract formation.¹⁵ The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability.¹⁶ Therefore, arbitration agreements guided by the FAA are subject to the same defenses applicable to all other contracts.¹⁷ Arbitration agreements may thus be invalidated by generally applicable contract defenses, such as vagueness, indefiniteness, lack of consideration, fraud, duress, or unconscionability. *Id.* A court should only decide as a matter of law whether the parties entered into an agreement to arbitrate when there is no genuine issue of material fact concerning the formation of the agreement.¹⁸ In determining whether adequate consideration exists in a contract or arbitration agreement under the FAA guided by principles of contract law, we must examine and stay within the confines of the four corners of the instrument.¹⁹

¹³ Dumais v. American Golf Corp., 299 F.3d 1216, 1220 (10th Cir. 2002).

¹⁴ Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985).

¹⁵ Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360, 364 (2001); Towles v. United Healthcare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999) (“the court should apply ‘ordinary state-law principles that govern the formation of contracts.’”).

¹⁶ See Sydnor v. Conseco Fin. Servicing Corp., 252 F.3d.302, 205 (4th Cir. 2001).

¹⁷ Rent-A-Center, West, Inc., 130 S. Ct at 2776; Simpson, 373 S.C at 14, 644 S.E.2d at 663 (“general contract principles of state law apply in a court’s evaluation of the enforceability of an arbitration clause.”).

¹⁸ See Avedon Engineering, Inc. v. Seatex, 126 F.3d 1279, 1283 (10th Cir. 1997).

¹⁹ State Acc. Fund v. S.C. Second Injury Fund, 388 S.C. 67, 76, 693 S.E.2d 441, 445 (Ct. App. 2010) (quoting McPherson v. J.E. Sirrine & Co., 206 S.C. 183, 204, 33 S.E.2d 501, 509 (1945)).

III. LEGAL REASONING

A. *The Arbitration Agreement is not a valid and enforceable agreement because a lack of consideration and mutuality exists under the circumstances.*

The necessary elements of a contract are an offer, acceptance, and valuable consideration.²⁰ To be legally enforceable, a contract must have an offer, acceptance, consideration, and mutual assent or meeting of the minds on all material terms. It is well settled that to be valid and enforceable, a contract must be supported by valuable consideration.²¹ "Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other."²² Consideration is a promise to do something that a party has no legal obligation to do or to forbear from doing something it has a legal right to do. A valid contract requires that both sides provide consideration. The Arbitration Agreement is only enforceable if it contains bargained for consideration and a mutuality of obligations between its parties. The Court finds these essential contract formation requirements are not met here. Many of the arguments Defendant raises in support of the Arbitration Agreement are misguided because they conflate the Arbitration Agreement and the Admission Agreement which, for the reasons discussed above, are distinct documents that do not merge.

The Arbitration Agreement was signed on August 30, 2013, but the Admission Agreement was signed on January 15, 2011.²³ Thus, the Admission Agreement and Arbitration Agreement

²⁰ Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003).

²¹ Benya v. Gamble, 282 S.C. 624, 628, 321 S.E.2d 57, 60 (Ct. App. 1984).

²² Plantation A.O., LLC v. Gerald Builders of Conway, Inc., 386 S.C. 198, 206, 687 S.E.2d 714, 718 (Ct. App. 2009) (quoting Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship., 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998)).

²³ No family member had Power of Attorney when Mozana was admitted on January 15, 2011.

are separate contracts that do not merge.²⁴ Our Supreme Court in Coleman refused to apply the merger doctrine when language in the contracts “recognized the ‘separateness’ of the admission and arbitration agreements.”²⁵ Our Supreme Court went further in Thompson and Hodge applying Coleman and providing further examples of factors demonstrating “separateness” and preventing merger including the fact that the Arbitration Agreement was not necessary for admission and that *there was no bargain for exchange nor consideration to the Arbitration Agreement*.²⁶

An admission contract with an “Entirety of Agreement” provision is separate “on its face” from an arbitration contract especially where the provision identifies the two contracts distinctly—i.e. “this Admission Agreement *or* in the Arbitration Agreement.”²⁷ In fact, when the arbitration and admission contracts have different pagination with different signature pages and the arbitration contract has “Arbitration Agreement” atop its first page, these factors further “indicate the parties’ intent for it to stand by itself as an independent contract.”²⁸ Separateness is further demonstrated when the nursing home makes clear that agreeing to arbitrate is not required to gain admission to the home.²⁹

The “Admission Agreement” in this case contains an “Entire Agreement” provision stating that “this Agreement represents the entire agreement” related to admission to the Facility. Thus, “Agreement” is a defined term in this contract and, as stated in the contract’s opening paragraph, is limited to the “Admission Agreement,” not the separate Arbitration Agreement. Like in Hodge, the separate contracts have separate signature pages and separate pagination—i.e. the Admission

²⁴ See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 573-74, 813 S.E.2d 292, 308 (Ct. App. 2018) (cert. denied Aug. 21, 2018); Thompson v. Pruitt Corp., 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016); Coleman v. Mariner Health Care, Inc., 407 S.C. 346, 352, 755 S.E.2d 450 (2014).
²⁵ 407 S.C. at 355, 755 S.E.2d at 455.
²⁶ 416 S.C. at 52, 784 S.E.2d at 684; 422 S.C. at 563, 813 S.E.2d at 302.
²⁷ Coleman, 407 S.C. at 355, 755 S.E.2d at 455 (emphasis added).
²⁸ Thompson, 416 S.C. at 53 n. 1, 784 S.E.2d at 685 n. 1; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302.
²⁹ Thompson, 416 S.C. at 53, 784 S.E.2d at 685; Hodge, 422 S.C. at 562-63, 813 S.E.2d at 302.

Agreement ends with "Page 12 of 12" while the Arbitration Agreement is "Page 1 of 1." As in Thompson, the arbitration agreement states its independence with its "Arbitration Agreement" title. To the extent there are any ambiguities in this contract language, they must be resolved against merger.³⁰ The Facility was in sole control of the language chosen for these form contracts of adhesion and it was their responsibility to make merger clear if they so desired. In sum, the Facility cannot meet its burden to prove merger. The Admission Agreement and Arbitration Agreement are distinct and should not be construed as a unit. Where a contract lacks valuable consideration, the contract will be deemed unenforceable. No valuable consideration exists in this case. There was no consideration given for Charlie Clinkscales to sign the Arbitration Agreement, because Mozana Clinkscales had already been admitted and received care.

In its most elemental sense, the doctrine of mutuality of obligation means that unless both parties to a contract are bound by its terms, neither is bound. Mutuality of obligation in bilateral contracts is but another way of stating that consideration is essential. 25 Richard Lord, Williston on Contracts § 67:42 at 332 (4th ed.2002)). Mutuality becomes a nonissue when consideration has otherwise been conferred upon one of the parties. There exists a lack of mutuality that makes the Arbitration Agreement unenforceable. The mutuality requirement is satisfied if each party has given sufficient consideration for the other's promise—something of value. Valuable consideration for a contract consists of some right, interest, profit or benefit accruing to one party or undertaken by the other. Where there is a mutual promise to arbitrate, there must be additional consideration. The mutual promise to arbitrate is illusory and of no benefit to Decedent or Plaintiff. The agreement provides that claims primarily brought by patients, such as those for medical malpractice, claims arising from the provision of services by defendant, and

³⁰ Coleman, 407 S.C. at 355-56, 755 S.E.2d at 455; Thompson, 416 S.C. at 53, 784 S.E.2d at 685 (citing Coleman).

elder abuse claims are to be arbitrated. Defendants argue the Arbitration Agreement meets the mutuality requirement because both sides are forced to arbitrate. However, while the Arbitration Agreement purports to require arbitration for any “dispute over care,” the reality is that this obligation falls almost exclusively on the patient. It is virtually inconceivable that Defendants would sue its patient regarding a dispute over care. Since admission is unavailable as a “direct benefit” to support estoppel, Defendants would be required to point to some benefit Mrs. Clinkscales received from the Arbitration Agreement alone. Any such attempt to find a benefit would have been futile given the Court of Appeals’ unambiguous ruling in Thompson which held that “any possible benefit emanating from the [arbitration agreement] alone is offset by the [arbitration agreement’s] requirement that [resident] waive her right to access the courts and her right to a jury trial.”³¹ The contract is also silent as to any consideration exchanged between the parties. The Arbitration Agreement itself contains insufficient consideration in the form of a mutual exchange of promises to arbitrate. There is no direct benefit to nursing home residents from a pre-admission arbitration contract separate from the Admission Agreement. Admission can be the “direct benefit” that forces Plaintiff to arbitrate only if admission and arbitration are governed by the same contract.

In sum, Defendants have not met their burden to prove merger, consideration, or any other benefit for the Arbitration Agreement. The Admission Agreement and Arbitration Agreement are distinct and should not be construed as a single contract. If the jury waiver was not a precondition to admission, then it fails for lack of consideration. The Court finds it would

³¹ 416 S.C. at 60, 784 S.E.2d at 688 (emphasis added).

be inconsistent for Defendants to argue that agreeing to arbitrate was not consideration for the admission but, on the other, argue that the admission was valuable consideration to support arbitration. For the proposed arbitration contract to be enforceable as a non-pre-condition to admission, it must be supported by some other valuable consideration, which it is not. Having already signed the admission paperwork there was no additional consideration in agreeing to the Arbitration Agreement. Neither party gained a right, interest, profit or benefit by agreeing to the Arbitration Agreement. Plantation, 386 S.C. at 206, 687 S.E.2d at 718. Additionally, neither party suffered a forbearance, detriment, loss or responsibility given, suffered or undertaken by the other the party, when agreeing to the Arbitration Agreement. Id. Finally, viewing the Arbitration Agreement itself there is no mention of consideration. The court is required to make its assessment by viewing only the four-corners of the Arbitration Agreement, and cannot go beyond the confines of the Arbitration Agreement itself.

The Arbitration Agreement was not part of the Admission Agreement and thus, separate consideration was required for the Arbitration Agreement to be valid. See Thompson v. THI of N.M. at Casa Arena Blanca, LLC, No. CIV 05-1331 JB/LCS, 2006 WL 4061187, at *12 (D.N.M. Sept. 12, 2006); THI of N.M. at Vida Encantada, LLC v. Archuleta, No. CIV 11-399 LH/ACT, 2013 WL 2387752 (D.N.M., 2013).

Plaintiffs also rely upon the fact that the federal government at the time prohibited a nursing home from requiring a current resident to sign an arbitration agreement as a condition of continued residency, relying on a policy set forth by the Center for Medicaid and State Operations ("CMS") on January 9, 2003. The memorandum states: "A current resident is not obligated to sign a new admission agreement that contains binding arbitration. Federal regulations, at 42 C.F.R. § 483.12(a)(2) limit the circumstances under which a facility may discharge or transfer a resident."

The Court is further persuaded by Plaintiff's argument that to construe admission as valid consideration to support the Arbitration Agreement would be inconsistent with federal law. The parties agree Decedent was a Medicare and Medicaid beneficiary while residing at Defendants' facility and that the facility was billing and accepting payment from Medicare and Medicaid for Decedent's care. Federal regulations require Medicare and Medicaid certified facilities to accept Medicare/Medicaid reimbursement rates as payment in full and *expressly forbid* acceptance of additional consideration for nursing home services. See 42 C.F.R. § 489.30; 42 C.F.R. § 447.15. Such facilities must "not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the state plan...any other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay at the facility." 42 U.S.C. § 1396r(c)(5)(A)(iii).

It is undisputed that this Federal Medicare and State Medicaid law applies to the Defendants' nursing home in this case. The fact is if a facility were to charge an additional five dollar fee to Medicaid beneficiaries as a condition for any reason, this would be strictly prohibited. Therefore, a facility should not be able to demand a waiver of a constitutional right as the price of admission. See Berkebile v. Outen, 311 S.C. 50, 53 n. 2, 426 S.E.2d 760, 762 n. 2 (1993) (noting general rule that courts will not enforce a contract which is "violative of public policy, statutory law, or provisions of the Constitution").

B. *The Arbitration Agreement does not govern the wrongful death claim*

The Court further finds the Arbitration Agreement should not include the wrongful death cause of action because no one with legal authority could enter an agreement that waives the right to a jury trial on behalf of Decedent's statutory beneficiaries. Only the court-appointed personal representative can waive the beneficiaries' rights.

Arbitration Agreement signed by an individual who had authority to bind the statutory beneficiaries. Further confirming the separateness of each statutory beneficiary's claim from that of the survival action, South Carolina's federal district court has analyzed this issue in the damages context.³⁴ Boyle concluded wrongful death beneficiaries' claims were separate and distinct claims for purposes of stacking damage caps and for purposes of being individual claimants. This analysis supports the contention that the wrongful death claimants have separate and distinct claims from that of the survival action.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss and Compel Arbitration, or Alternatively, to Compel Arbitration and Stay Proceedings, is DENIED.

AND IT IS SO ORDERED.

Signature to Follow

³⁴ Boyle v. U.S., 944 F.Supp.2d 577 (D.S.C. 2012).



Greenville Common Pleas

Case Caption: Mozana Clinkscales , plaintiff, et al vs. Fundamental Clinical And
Operational Services LLC. , defendant, et al
Case Number: 2018CP2305088
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-02-05 12:24:58 page 14 of 14

ELECTRONICALLY SIGNED BY ROBIN B. STILWELL ON 2019-02-05 12:24:58 PM. PUBLIC ACCESS TO ELECTRONICALLY SIGNED DOCUMENTS IS AVAILABLE AT: <http://www.tn.gov/courts/courtservices/electronic>

ADVANCE DIRECTIVES CHECKLIST

Healthcare Center: PruittHealth - North Augusta

Patient/Resident Name: WILLIE J GRAY

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

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

Please check one of the following statements: family not sure. (SC)

I have executed an advance directive and will provide a copy to the healthcare center. I understand that the staff and physicians of this healthcare center will not be able to follow the terms of my advance directive until I provide a copy of it to the staff.

I have not executed an advance directive, and do not wish to discuss advance directives further at this time.

I have not executed an advance directive but would like to obtain additional information about advance directives. Information was provided. _____ Initials

Patient/resident is unable to comprehend what advance directives are, but this was explained to the family as part of our community education effort.

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

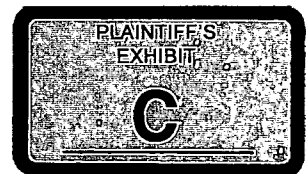
MICHELE RICH
Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/27/17
Date

The following advance directives or DNR orders have been executed and are complete:
 Living Will; DPAHC; DNR Order; Organ Donation; Body Donation



copy

ELECTRONICALLY FILED - 2019 Mar 01 4:55 PM - AIKEN - COMMON PLEAS - CASE#2019NI0200001



ADMISSION PACKET

for

**SOUTH CAROLINA
HEALTHCARE CENTERS**

May, 2007

ROA 000134



State of South Carolina
ADMISSION PACKET

Issued: May, 2007
Revised:

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ADMISSION PACKET

Issued: May, 2007
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Section 1

Section 1: ADMISSIONS

New: 5/07

1A.01

**ACKNOWLEDGMENT OF RECEIPT
OF PARTNERSHIP IN CARING PACKET**

Patient/Resident: WILLIE J GRAY

I acknowledge receipt of the Partnership in Caring Packet provided to me either prior to or upon admission. I understand that if I have any questions regarding its content, especially as it relates to me or the above named patient/resident, I may bring those questions to staff members or the attending physician. I understand that the information contained in the packet is for general educational purposes and should not be taken as medical advice or replace the advice or recommendations of a medical professional. I understand that nothing contained in this packet is intended to guarantee satisfaction or particular results.

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Susan Kieckhefer
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date



1A.02

PATIENT/RESIDENT ADMISSION DATA COLLECTION

| | | |
|-------------|--------|------|
| Pt/Res Name | Willie | Gray |
|-------------|--------|------|

| | |
|---------|--|
| Address | |
|---------|--|

| | |
|------------|--|
| Education | |
| Occupation | |
| Language | |
| Country | |

Service Providers

| | |
|------------|--|
| Physician | |
| Pharmacist | |
| Therapist | |
| Other | |

Contacts

| | | | |
|-------------------|---------------------------|---------------|-----------------------------|
| Responsible Party | Tara Grace | Gray | Spouse |
| Address | 108 Holby Ln Pottstown | Pottstown | PA 19465 |
| Daytime Phone | 410 804 9323 | Evening Phone | 610 469 3837 or 484-948-837 |

| | | | |
|---------------|-------------------|---------------|--------------|
| Contact 2 | Laura Anne Walker | Walker | Friend |
| Address | | | |
| Daytime Phone | 706 513 8653 | Evening Phone | 706 738 8073 |

| | | | |
|---------------|--------------|---------------|--------------|
| Contact 3 | Laya | claybrook | Friend |
| Address | | | |
| Daytime Phone | 706 421 8226 | Evening Phone | 706 955 8595 |

Admission

| | |
|--|--------|
| | Y or N |
|--|--------|



Patient/Resident Name: _____

| | |
|------------------|------------------|
| Name of Hospital | Front-Panel Date |
|------------------|------------------|

| | | | |
|----------|--------------|------------------|----------------|
| Catheter | Contractures | Restraint Orders | Pressure Sores |
|----------|--------------|------------------|----------------|

| | |
|---------------|------------|
| Room/Room No. | ICD-9 Code |
|---------------|------------|

Clinical

| | |
|--------------|------------|
| ICD-9 Symbol | ICD-9 Code |
|--------------|------------|

| | |
|-----------|---------------------|
| Physician | Attending Physician |
|-----------|---------------------|

| | | | |
|--------------|------------|------------|------------|
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |
| Y or N | Y or N | Y or N | Y or N |

| | | | |
|--------------|------------|------------|------------|
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |
|--------------|------------|------------|------------|

Billing

| | | | |
|--------------|------------|------------|------------|
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |
| ICD-9 Symbol | ICD-9 Code | ICD-9 Code | ICD-9 Code |

Insurance

| | | |
|--------------------------|--------------------------|--------------------------|
| Company Name | Policy Number | Product Name |
| Subscriber Name | Subscriber Name | Subscriber Name |
| Insured Name | Insured Name | Insured Name |
| Insured Address | Insured Address | Insured Address |
| Insured City | Insured City | Insured City |
| Insured State | Insured State | Insured State |
| Insured Zip | Insured Zip | Insured Zip |
| Insured Gender | Insured Gender | Insured Gender |
| Insured SSN | Insured SSN | Insured SSN |
| Insured Employer | Insured Employer | Insured Employer |
| Insured Employer Address | Insured Employer Address | Insured Employer Address |
| Insured Employer City | Insured Employer City | Insured Employer City |
| Insured Employer State | Insured Employer State | Insured Employer State |
| Insured Employer Zip | Insured Employer Zip | Insured Employer Zip |

| | | |
|--------------------------|--------------------------|--------------------------|
| Company Name | Policy Number | Product Name |
| Subscriber Name | Subscriber Name | Subscriber Name |
| Insured Name | Insured Name | Insured Name |
| Insured Address | Insured Address | Insured Address |
| Insured City | Insured City | Insured City |
| Insured State | Insured State | Insured State |
| Insured Zip | Insured Zip | Insured Zip |
| Insured Gender | Insured Gender | Insured Gender |
| Insured SSN | Insured SSN | Insured SSN |
| Insured Employer | Insured Employer | Insured Employer |
| Insured Employer Address | Insured Employer Address | Insured Employer Address |
| Insured Employer City | Insured Employer City | Insured Employer City |
| Insured Employer State | Insured Employer State | Insured Employer State |
| Insured Employer Zip | Insured Employer Zip | Insured Employer Zip |

Diagnoses ICD9

| | |
|--------------|------------|
| ICD-9 Symbol | ICD-9 Code |
|--------------|------------|

| ICD 9 | Onset Date | ICD 9 | Onset Date |
|-------|------------|-------|------------|
| | | | |
| | | | |

**State of South Carolina
ADMISSION AGREEMENT**

ADMISSION AGREEMENT is made and entered into this 22nd day of September, year 2017, by and between FruittHealth - North Augusta (Healthcare Center), WILLIE J GRAY (Patient/Resident) and certain other undersigned parties.

I. Definitions:

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

II. The Healthcare Center agrees:

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

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

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

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

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

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

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THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICES:

- 1. Attending physician: Henry Igdal
- 2. Alternate attending physician: _____

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

THE FOLLOWING INDICATES PATIENT/RESIDENT'S CHOICE:

Pharmacy: _____

- C. To provide the Healthcare Center with a copy of any existing written document, such as a Living Will or Durable Power of Attorney for Health Care, indicating the Patient/Resident's choices in connection with the treatment or terminal illness and/or the withholding or withdrawal of life-sustaining medical treatment. *The Healthcare Center does not require that the Patient/Resident execute or produce such a document as a condition of admission.* The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the Healthcare Center's written information in the Guest Services Guide on **ADVANCE DIRECTIVES AND DNR ORDERS**. After reviewing the information, the form entitled **ADVANCE DIRECTIVE CHECKLIST** must be completed by the Patient/Resident or the Legal Representative.

- D. To abide by all rules, regulations and policies and procedures, as are, from time to time, established and amended by the Healthcare Center. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the rules and responsibilities governing the conduct of the Patient/Resident and his or her visitors while in the Healthcare Center. These rules and responsibilities are listed in the Guest Services Guide on the page entitled **PATIENT/RESIDENT & FAMILY RESPONSIBILITIES**. Amendments to the rules and responsibilities shall be effective upon thirty (30) days notice to the Patient/Resident and/or undersigned parties.

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

- A. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, acknowledges receipt of the **ITEMS AND SERVICES COVERED/NOT**

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

- B. The Patient/Resident shall pay or ensure that payment is made for all charges accruing under this Agreement, including the basic monthly rate, when due.
- C. The basic monthly rate is currently \$7825.00. The first payment shall be in the aggregate amount of the monthly rate prorated on a daily basis for each day starting with the day of Patient/Resident's admission to the end of the month. The monthly rate shall be prorated to a daily basis using 31 days. Thereafter, payments shall be due by the 10th day of each month. Rates are subject to change at the discretion of the Healthcare Center upon giving notice to the Patient/Resident or the appropriate representative as required by law.
- D. Payment for charges for items and services provided by the Healthcare Center but not included in the basic monthly rate are due within ten (10) days of billing.
- E. The Healthcare Center retains the unilateral right to change the basic monthly rate and the charges for other items provided by the Healthcare Center. Such changes shall be effective no sooner than thirty (30) days after the Patient/Resident is given written notice of the change.
- F. If payment for any charge accruing under this Agreement is not made within 15 days of the due date, the Healthcare Center reserves the right to charge interest on the past due amounts at a rate of 1.5% each month until such time as the balance is paid in full. NOTE: A failure to make full payment within 15 days of the due date may be treated by the Healthcare Center as grounds for termination of the Agreement and discharge of the Patient/Resident in accordance with state and federal laws. The Patient/Resident agrees to pay the reasonable expenses of collection, including costs, disbursements and attorney fees in an amount not to exceed 15% of the outstanding amount due, including interest.
- G. Settlement of all accounts with the Healthcare Center shall be made in full by the Patient/Resident at the time of discharge. Within thirty (30) days after discharge, the Healthcare Center shall refund to the Patient/Resident unused portion of the monthly rate prorated on a daily basis (using 31 days) after deduction of all applicable charges.
- H. The Patient/Resident, and/or undersigned parties, not to include the Healthcare Center, shall apply promptly for eligibility and benefits under the Medicaid program as soon as it appears the Patient/Resident may meet that program's eligibility requirement. Further, if the Patient/Resident fails to apply promptly,

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

Agreement to Follow Through With Medicaid Application:

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

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

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

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

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

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

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

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

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

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

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VII. General Agreements:

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

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undersigned parties, not to include the Healthcare Center, notice of any reason for transfer or discharge as required by law. Custody of the Patient/Resident shall be assumed by the legal representative or other responsible party upon discharge.

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

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waiver of such right or impair such party's right to assert such default or noncompliance on the part of the other party.

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

VIII. Miscellaneous Provisions

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

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

Rev. 5/07

1A.03

State of South Carolina
ADMISSION AGREEMENT

ACKNOWLEDGMENT:

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

KATHY GILL
Print Administrator's Name

Patient/Resident's Signature

Administrator's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

PruittHealth - North Augusta
Legal Name of Healthcare Center

Tamara Gray
Patient/Resident Representative's Signature

9/22/17
Date

(Healthcare Center will maintain a copy for their records)

New: 5/07

1A.04

State of South Carolina
READMISSION AGREEMENT

Patient/Resident Name: WILLIE J GRAY Date: 9/22/17

The admission paperwork completed at initial admission on 9/22/17
(Date of first admission)

is still in effect. I wish to make no changes in any of the original contracts and agreements. I have read and understand that the readmission policy is as equally binding as the original admission agreement.

Advance Directives have been discussed with me and I have had the opportunity to make changes to make certain that his/her wishes are current.

Primary Payer Source for Readmission: _____

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

KATHY GILL
Print Administrator's Name

Patient/Resident's Signature

Administrator's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

FruittHealth - North Augusta
Legal Name of Healthcare Center

Tamara Gray
Patient/Resident Representative's Signature

9/22/17
Date

(Healthcare Center will maintain a copy for their records)

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

Effective Date: 09/22/2017

This notice describes how medical information about you may be used and disclosed
and how you can get access to this information.

PLEASE REVIEW IT CAREFULLY.

If you have any questions about this notice, please contact FruittHealth - North Augusta
at (803)278-2170 (Healthcare Center Phone Number).

WHO WILL FOLLOW THIS NOTICE.

This notice describes our healthcare center/agency's practices and that of:

- ▶ All departments and units of the healthcare center/agency.
- ▶ Any member of a volunteer group we allow to help you while you are in the healthcare center/agency.
- ▶ All partners, staff and other healthcare center/agency personnel.

OUR PLEDGE REGARDING YOUR HEALTH INFORMATION

We understand that information about you and your health is personal. We are committed to protecting your health information. We create a record of the care and services you receive at the healthcare center/agency, as well as records regarding payment for those services. We need these records to provide you with quality care and to comply with certain legal requirements. This notice applies to all of the records of your care generated by the healthcare center/agency, whether made by healthcare center/agency personnel or your personal doctor. Your personal doctor may have different policies or notices regarding the doctor's use and disclosure of your medical information created in the doctor's office or clinic.

This notice will tell you about the ways in which we may use and disclose medical information about you. We also describe your rights and certain obligations we have regarding the use and disclosure of medical information.

We are required by law to:

- Make sure that medical information that identifies you is kept private.
- Give you this notice of our legal duties and privacy practices with respect to medical information about you.
- Follow the terms of the notice that is currently in effect.

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

HOW WE MAY USE AND DISCLOSE HEALTH INFORMATION ABOUT YOU

The following categories describe different ways that we use and disclose health information. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

- ▶ **For Treatment.** We may use health information about you to provide you with medical treatment or services. We may disclose medical information about you to doctors, nurses, technicians, medical students, or other healthcare center/agency personnel who are involved in taking care of you at the healthcare center/agency. For example, a doctor treating you for a broken leg may need to know if you have diabetes because diabetes may slow the healing process. In addition, the doctor may need to tell the dietitian if you have diabetes so that we can arrange for appropriate meals. Different departments of the healthcare center/agency also may share medical information about you in order to coordinate the different things you need, such as prescriptions and lab work.
- ▶ **For Payment.** We may use and disclose health information about you so that the treatment and services you receive at the healthcare center/agency may be billed, and that payment may be collected from you, an insurance company or another third party. For example, we may need to give your health plan information about services that you received at the healthcare center/agency so your health plan will pay us or reimburse you for the services. We may also tell your health plan about a treatment you are going to receive to obtain prior approval or to determine whether your plan will cover the treatment.
- ▶ **For Health Care Operations.** We may use and disclose medical information about you for health care operations. These uses and disclosures are necessary to run the center/ agency and to make sure that all patients/residents receive quality care. For example, we may use medical information to review our treatment and services and to evaluate the performance of our staff in caring for you. We may also combine medical information about many healthcare center/agency patients/residents to decide what additional services the healthcare center/agency should offer, what services are not needed, and whether certain new treatments are effective. We may also disclose information to doctors, nurses, therapists, consultants, technicians, medical students, and other healthcare center/agency personnel for review and learning purposes. We may also combine the medical information we have with medical information from other centers/agencies to compare how we are doing and see where we can make improvements in the care and services we offer. We may remove information that identifies you from this set of medical information so others may use it to study health care and health care delivery without learning who the specific patients/residents are.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▶ **Treatment Alternatives.** We may use and disclose medical information to tell you about or recommend possible treatment options or alternatives that may be of interest to you.
- ▶ **Health-Related Benefits and Services.** We may use and disclose medical information to tell you about health-related benefits or services that may be of interest to you.
- ▶ **Name Placement.** We may place your name on the door to your room, on your meal tray, and on pieces of equipment that you might use, including a wheelchair. This aids our staff in identifying your items in order to provide you the best possible care. Further, this practice will assist you in locating your room and equipment.
- ▶ **Individuals Involved in Your Care or Payment for Your Care.** Unless you object, we may release medical information about you to a friend or family member who is involved in your medical care. We may also give information to someone who helps pay for your care. We may also tell your family or friends of your condition. In addition, we may disclose medical information about you to an entity assisting in a disaster relief effort.
- ▶ **As Required By Law.** We will disclose medical information about you when required to do so by federal, state or local law.
- ▶ **To Avert a Serious Threat to Health or Safety.** We may use and disclose medical information about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.
- ▶ **To Those Involved in Your Care.** We may disclose medical information about you to people who may be involved in your care, such as your family members, close personal friends and, if applicable, a private sitter. If, at any time you do not want such people involved in your care, you may instruct us not to make any disclosures to them.
- ▶ **Private Sitters.** If you hire a private sitter, we will disclose medical information about you to aid your sitter in caring for you. There may be private sitters working for other patients/residents of the healthcare center/agency. These sitters may hear incidental information about you.

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

SPECIAL SITUATIONS

- ▶ **Organ and Tissue Donation.** If you are an organ donor, we may release medical information to organizations that handle organ procurement or organ, eye or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.
- ▶ **Military and Veterans.** If you are a member of the armed forces, we may release medical information about you as required by military command authorities. We may also release medical information about foreign military personnel to the appropriate foreign military authority.
- ▶ **Workers' Compensation.** If applicable, we may release medical information about you for workers' compensation or similar programs. These programs provide benefits for work-related injuries or illness.
- ▶ **Public Health Risks.** We may disclose medical information about you for public health activities. These activities generally include the following:
 - To prevent or control disease, injury or disability.
 - To report deaths.
 - To report reactions to medications or problems with products.
 - To notify people of recalls of products they may be using.
 - To notify a person who may have been exposed to a disease or may be at risk for contracting or spreading a disease or condition.
 - To notify the appropriate government authority if we believe you have been the victim of abuse, neglect or domestic violence. We will only make this disclosure if you agree or when required or authorized by law.
- ▶ **Health Oversight Activities.** We may disclose medical information to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections, and licensure. These activities are necessary for the government to monitor the health care system, government programs, and compliance with applicable civil rights laws.
- ▶ **Lawsuits and Disputes.** If you are involved in a lawsuit or a dispute, we may disclose medical information about you in response to a court or administrative order. We may also disclose medical information about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if we receive satisfactory assurances that the party seeking the information has made efforts to tell you about the request or to obtain an order protecting the information requested.

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- ▶ **Law Enforcement.** We may release medical information if asked to do so by a law enforcement official:
- In response to a court order, subpoena (after we attempt to notify you), warrant, summons or similar process.
 - To identify or locate a suspect, fugitive, material witness, or missing person.
 - About the victim of a crime if, under certain limited circumstances, we are unable to obtain your agreement.
 - About a death we believe may be the result of criminal conduct.
 - About criminal conduct at our offices.
 - In emergency circumstances to report a crime; the location of the crime or victims; or the identity, description or location of the person who committed the crime.
- ▶ **Coroners, Medical Examiners and Funeral Directors.** We may release medical information to a coroner or medical examiner. This may be necessary, for example, to identify a deceased person or determine the cause of death. We may also release medical information about patients/residents of the healthcare center/agency to funeral directors as necessary to carry out their duties.
- ▶ **National Security and Intelligence Activities.** We may release medical information about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.
- ▶ **Protective Services for the President and Others.** We may disclose medical information about you to authorized federal officials so they may provide protection to the President, other authorized persons or foreign heads of state or conduct special investigations.

YOUR RIGHTS REGARDING MEDICAL INFORMATION ABOUT YOU

You have the following rights regarding medical information we maintain about you:

- ▶ **Right to Inspect and Copy.** You or your legal representative has the right to inspect and copy medical information that may be used to make decisions about your care. Usually, this includes medical and billing records, but does not include psychotherapy notes. We must provide you with access to your records within 24 hours of your request, not including weekends or holidays. We must provide you with a copy of your records within two (2) working days following your request.

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

To inspect and copy medical information that may be used to make decisions about you, submit your request orally or in writing to KATHY GILL. If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

We may deny your request to inspect and copy in certain very limited circumstances. If you are denied access to medical information, you may request that the denial be reviewed if the denial is made for certain reasons. Another licensed health care professional chosen by the healthcare center/agency will review your request and the denial. The person conducting the review will not be the person who denied your request. We will comply with the outcome of the review.

- **Right to Amend.** If you feel that medical information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the healthcare center/agency.

To request an amendment, your request must be made in writing and submitted to KATHY GILL. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment.
- Is not part of the medical information kept by or for the healthcare center/agency.
- Is not part of the information which you would be permitted to inspect and copy.
- Is accurate and complete.

- **Right to an Accounting of Disclosures.** You have the right to request an "accounting of disclosures." This is a list of certain disclosures we made of medical information about you.

To request this list or accounting of disclosures, you must submit your request in writing to KATHY GILL. Your request must state a time period which may not be longer than six years and may not include dates before April 14, 2003. Your request should indicate in what form you want the list (for example, on paper, electronically). The first list you request within a 12-month period will be free. For additional lists, we may charge you for the costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

- **Right to Request Restrictions.** You have the right to request a restriction or limitation on the medical information we use or disclose about you for treatment, payment or health care operations purposes. You may also request a limit on the medical information we disclose about you to someone who is involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not use or disclose information to your daughter, or that we not use your information in any quality assurance activities.

We are not required to agree to your request. If we do agree, we will comply with your request unless the information is needed to provide you emergency treatment.

To request restrictions, you must make your request in writing to KATHY GILL. In your request, you must tell us (1) what information you want to limit; (2) whether you want to limit our use, disclosure or both; and (3) to whom you want the limits to apply, for example, disclosures to your spouse.

- **Right to Request Confidential Communications.** You have the right to request that we communicate with you about medical matters in a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to KATHY GILL. We will not ask you the reason for your request. We will accommodate reasonable requests. Your request must specify how or where you wish to be contacted.

- **Right to a Paper Copy of This Notice.** You have the right to a paper copy of this notice. You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.

CHANGES TO THIS NOTICE

- We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for medical information we already have about you as well as any information we receive in the future. We will post a copy of the current notice in the healthcare center/agency. The notice will contain on the first page, in the top right-hand corner, the effective date.

New: 4/03

1B.01

**NOTICE OF PRIVACY PRACTICES
FOR PROTECTED HEALTH INFORMATION
(Healthcare Centers, Pharmacies & Assisted Living Facilities)**

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the healthcare center/agency or with the Secretary of the Department of Health and Human Services. To file a complaint with the agency, contact PruittHealth - North Augusta at (803)278-2170.

All complaints must be submitted in writing. A complaint may be filed with the Secretary of the Department of Health and Human Services at:

Secretary
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Telephone: 202-619-0257
Toll Free: 1-877-696-6775

You will not be penalized in any way for filing a complaint.

OTHER USES OF MEDICAL INFORMATION

Other uses and disclosures of medical information not covered by this notice or the laws that apply to us will be made only with your written permission. If you provide us permission to use or disclose medical information about you, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose medical information about you for the reasons covered by your written authorization. You understand that we are unable to take back any disclosures we have already made with your permission, and that we are required to retain our records of the care that we provided to you.

New: 5/07

IB.02

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

Patient/Resident Name: WILLIE J GRAY
Patient/Resident Social Security Number: 260-52-9736

I understand that PruittHealth - North Augusta (healthcare center/
agency name) is part of a corporation which may share my health information for treatment,
billing and healthcare operations. I have been given a copy of the organization's Notice of
Privacy Practices that describes how my health information is used and shared. I understand that
the corporation has the right to change this notice at any time. I may obtain a current copy by
contacting this healthcare center/agency at (803)278-2170
(healthcare center/agency telephone number) or by contacting the Corporate Privacy Officer by
calling 1-800-222-0321.

For Healthcare Center/Agency Use Only:

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

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center/Agency Representative's Name

[Signature]
Healthcare Center/Agency Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center/Agency

9/22/17
Date

New: 5/07

1C.02

**CONTINUUM OF CARE INTEGRATION
PATIENT/RESIDENT PROVIDER CHOICE LETTER**

Dear Patient/Resident or Representative:

One of the most important choices you can make is selecting a quality healthcare provider for you or your loved one. We believe the burden for this responsibility can be lifted by having a family of providers that communicate and work together to promote efficient delivery of quality care - and such a family is available right here in your community!

This healthcare center/agency is a separate entity, yet affiliated with UHS-Pruitt Corporation, and therefore is part of a growing network of healthcare providers and resources. Our organization has worked to build community-centered, integrated healthcare delivery systems that promote choice, quality and efficiency. Among our related party providers are:

- | | |
|--------------------------------------|--|
| ❖ Skilled nursing centers | ❖ In-home and inpatient hospice agencies |
| ❖ Assisted living centers | ❖ Medical supply services |
| ❖ Long-term pharmacies | ❖ Adult day care centers |
| ❖ Home care and home health agencies | ❖ Rehabilitation therapists |
| ❖ Nutritional program specialists | ❖ Commercial insurance care managers |
| ❖ Clinical consultants | ❖ Community care program providers |
| ❖ Retail pharmacies | ❖ Home infusion therapy services |

Our related party providers collaborate to evaluate patient/resident need and develop clinical pathways to optimize care delivery in the least restrictive environment. The result is that patients/residents can access multiple types of providers, easily change providers as healthcare needs change, and benefit from the continuity of care that occurs when affiliated providers work together.

This healthcare center/agency appreciates the trust you have already committed by choosing us to deliver healthcare services to you or your loved one. Your physician or healthcare professional has now ordered/recommended that you receive additional or continued services that *this* center/agency staff cannot provide, but which *can* be provided by another provider affiliated with UHS-Pruitt Corporation. It would be our pleasure to make such a referral and assist you in the transition.

While you generally have the right to choose a healthcare provider, in some instances, your choice may be limited to those providers who contract with other providers. For example, skilled nursing centers affiliated with UHS-Pruitt Corporation contract exclusively with related-party hospice providers and long term care pharmacies; thus your right to choose those providers is exercised when the skilled nursing center is selected for admission. These exclusive contracts promote the same continuity and quality of care already discussed and are supported by regulatory authorities.

If you need more information before making this decision, please let us know, and we will be happy to assist you if possible. Because we are unfamiliar with the policies and procedures of

New: 5/07

1C.02

**CONTINUUM OF CARE INTEGRATION
PATIENT/RESIDENT PROVIDER CHOICE LETTER**

non-related providers, including whether they service your area or are qualified to meet your care needs, we cannot make any recommendations concerning them. We also recommend that you verify coverage for any alternative provider with your insurance company. We are happy to verify your insurance coverage for the providers in the UHS-Pruitt Corporation family.

Please make your selection regarding related party providers below. On behalf of our related party providers, we thank you for your continued trust and look forward to serving your healthcare needs in the future.

Sincerely,

Administrator

Patient/Resident or Representative – Please check one of the following:

I understand that I have a choice in selecting a healthcare provider. I have been counseled about and understand the distinction between related party and non-related party providers, and have had the opportunity to seek answers to my questions. Accordingly, I have made the following informed decision:

- I choose to use a related party provider in the UHS-Pruitt Corporation family of providers.
- I choose NOT to use a related party provider in the UHS-Pruitt Corporation family of providers.

Patient/Resident Signature: _____ Date: _____

X Representative Signature: Samara Pray Date: 9/22/17

Representative's Relationship to Patient/Resident: Daughter

New: 5/07

IC.03

EXTENDED SIGNATURE AUTHORIZATION

(Statement to permit payment of Medicare benefits to supplier, physician or patient/resident)

Patient/Resident Name: WILLIE J GRAY

Healthcare Center Name: PruittHealth - North Augusta

I request that payment of authorized Medicare/Medicaid benefits be made either to me or on my behalf to:

- United Nutritional/United Medical Services
- I have received CMS Medicare DMEPOS Supplier Standards
- United Rehabilitation
- United Pharmacy Services
- United Hospice
- Physician
- Other (specify) _____

for any services furnished to me by the supplier indicated above. I authorize any holder of medical information about me to release to the Center for Medicare and Medicaid Services and its agents any information needed to determine these benefits payable for related services.

I request that payment of Medicaid, other insurance, or HMO benefits be made on my behalf to the supplier listed above for any services furnished to me by that supplier. I authorize any holder of hospital or medication information about me to release to Medicaid, other insurance HMO or their agents any information needed to determine these benefits or the benefits payable for related services.

This authorization is in effect until I choose to revoke it. I understand that if I am a patient/resident of a healthcare center, this authorization will be in effect for a period of my stay.

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Resident/Patient's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELLE RICH
PruittHealth Center Representative's Name

Susan Koebke
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

New: 5/07

1C.04

CMS MEDICARE DMEPOS SUPPLIER STANDARDS

NOTE: This list is an abbreviated version of the application certification standards that every Medicare DMEPOS supplier must meet in order to retain their billing privileges. These standards, in their entirety, are listed in 42 C.F.R. § 424.57(c) and are effective on December 11, 2000. A supplier must disclose these standards to all customers/patients who are Medicare beneficiaries. See 42 C.F.R. § 424.57(c).

1. A supplier must be in compliance with all applicable Federal and State licensure and regulatory requirements.
2. A supplier must provide complete and accurate information on the DMEPOS supplier application. Any changes to this information must be reported to the National Supplier Clearinghouse within 30 days.
3. An authorized individual (one whose signature is binding) must sign the application for billing privileges.
4. A supplier must fill orders from its own inventory, or must contract with other companies for the purchase of items necessary to fill the order. A supplier may not contract with any entity that is currently excluded from the Medicare program, any State health care programs, or from any other Federal procurement or non-procurement programs.
5. A supplier must advise beneficiaries that they may rent or purchase inexpensive or routinely purchased durable medical equipment, and of the purchase option for capped rental equipment.
6. A supplier must notify beneficiaries of warranty coverage and honor all warranties under applicable State law, and repair or replace free of charge Medicare covered items that are under warranty.
7. A supplier must maintain a physical facility on an appropriate site.
8. A supplier must permit the Centers for Medicare and Medicaid Services ("CMS"), or its agents to conduct on-site inspections to ascertain the supplier's compliance with these standards. The supplier location must be accessible to beneficiaries during reasonable business hours, and must maintain a visible sign and posted hours of operation.
9. A supplier must maintain a primary business telephone listed under the name of the business in a local directory or a toll free number available through directory assistance. The exclusive use of a beeper, answering machine or cell phone is prohibited.
10. A supplier must have comprehensive liability insurance in the amount of at least \$300,000 that covers both the supplier's place of business and all customers and partners of the supplier. If the supplier manufactures its own items, this insurance must also cover product liability and completed operations.
11. A supplier must agree not to initiate telephone contact with beneficiaries, with a few exceptions allowed. This standard prohibits suppliers from calling beneficiaries in order to solicit new business.
12. A supplier is responsible for delivery and must instruct beneficiaries on use of Medicare covered items, and maintain proof of delivery.
13. A supplier must answer questions and respond to complaints of beneficiaries, refer beneficiaries with Medicare questions to the appropriate carrier, and maintain documentation of such contacts.
14. A supplier must maintain and replace at no charge or repair directly, or through its service contract with another company, Medicare-covered items it has rented to beneficiaries.

New: 5/07

1C.04

CMS MEDICARE DMEPOS SUPPLIER STANDARDS

15. A supplier must accept returns of substandard (less than full quality for the particular item) or unsuitable items (inappropriate for the beneficiary at the time it was fitted and rented or sold) from beneficiaries.
16. A supplier must disclose these supplier standards to each beneficiary to whom it supplies a Medicare-covered item.
17. A supplier must disclose to the government any person having ownership, financial, or control interest in the supplier.
18. A supplier must not convey or reassign a supplier number; i.e., the supplier may not sell or allow another entity to use its Medicare billing number.
19. A supplier must have a complaint resolution protocol established to address beneficiary complaints that relate to these standards. A record of these complaints must be maintained at the physical facility.
20. Complaint records must include: the name, address, telephone number and health insurance claim number of the beneficiary, a summary of the complaint, and any actions taken to resolve it.
21. A supplier must agree to furnish CMS any information required by the Medicare statute and implementing regulations.



1C.05

AGREEMENT OF FINANCIAL RESPONSIBILITY

Patient/Resident: Name: WILLIE J GRAY
Healthcare Center: PruittHealth - North Augusta Admission Date:
Medicare Prescription Drug Benefit Plan:
Commercial Insurance Plan:
Medicaid #: Medicare A/B #:
(Attach photocopy, front and back, of Medicare card, PDP plan card, insurance card)

Legal Representative: Name:
Address:
City, State, Zip:
Phone: (Home) (Work) (Cell)
General POA DPOAHC Guardian of Person Guardian of Property/Conservator

Responsible Party: Name: TAMARA GRAY
Address:
City, State, Zip:
Phone: (Home) (Work) (Cell)
Relationship to Patient:

United Pharmacy Services agrees to provide medications ordered by the patient's physician in accordance with the following terms:

- 1. All eligible charges for medications will be billed to the Medicare Prescription Drug Plan (PDP), the commercial insurance plan listed above or to Medicaid if applicable.
2. The patient/resident, legal representative or responsible party shall pay any outstanding pharmacy charges after payment by the PDP, commercial insurance plan or Medicaid.
3. Billing will be made on a monthly basis. Payment is expected in full upon receipt of the pharmacy statement.
4. Healthcare center staff may authorize purchases on this account on behalf of the named patient/resident.

I certify that I have read the agreement as outlined above and hereby accept the terms and conditions.

Signature of Patient/Resident Date Witness
Signature of Legal Representative Date Witness
Signature of Responsible Party Date Witness

White - Pharmacy Copy

Yellow - Center Copy

Pink - Patient/Resident Copy

Rev: 5/07

IC.06

MEDICARE COVERAGE DETERMINATION

Patient/Resident Name: WILLIE J GRAY

Healthcare Center Name: FruittHealth - North Augusta

Date of Admission: 9/22/17

2. ✓

Qualifies for Medicare Part A benefits for skilled services related to:

Estimated coverage: 20 full days; 80 co-pay; total days.

Does not qualify for Medicare Part A benefits because:

Do you agree with this determination?

If no, do you want a Demand Billing? If you would like to request a Demand Billing, please see the form entitled "Request for Medicare Intermediary Review".

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

FruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

BED HOLDS

It is our policy to allow any patient/resident who is transferred or discharged from the healthcare center to be re-admitted, in accordance with applicable regulations, including determining that there are no medical care issues that the medical staff believes the healthcare center will be unable to treat.

Two notices related to the healthcare center's bed hold policy will be issued. The first notice of bed hold policies is given during this admission, which is well in advance of any transfer. The second notice, which specifies the duration of the bed hold policy, will be issued at the time of any transfer. In cases of emergency transfer, notice "at the time of transfer" means that the family and/or undersigned parties, not to include the healthcare center, is provided with written notification within 24 hours of the transfer. The requirement is met if the patient/resident's copy of the notice is sent with other papers accompanying the patient/resident to the hospital.

The following is a breakout by payment source of how the bed hold policy works. Any patient/resident may have primary or secondary payer sources, so please inquire with the business office if you have a question about payer source at the time of transfer or which payer source is applicable to a particular transfer.

I. MEDICAID

Any patient/resident who has made application or is approved by the Department of Health and Human Services, shall be considered a Medicaid patient/resident.

A. HOSPITAL STAY:

Medicaid will pay for ten (10) days, minus any patient/resident portion amount. After the 10th day, the patient/resident, family or hospital must decide if the bed will be held by paying privately at the posted daily rate. This must be arranged, however, prior to the patient/resident leaving the hospital, and the patient/resident will be responsible for payment of the posted basic daily rate currently in effect.

B. THERAPEUTIC LEAVE:

The Medicaid program will provide payment during the patient/resident's leave of absence for a total of eighteen (18) days in any fiscal year (July through June). Each leave of absence is not to exceed more than ninety (9) consecutive days. The attending physician must document in the plan of care that such visits are therapeutic in nature. If therapeutic leave exceeds nine (9) consecutive days Medicaid benefit will cease and will need to be reapplied for through the Department of Health and Human Services.

Hospital stays or therapeutic leaves beyond the time for which Medicaid will make payment: Arrangements may be made for holding a bed for a patient/resident for days exceeding the established limit. This must be arranged, however, prior to leaving, and the patient/resident will be responsible for payment of the bed hold charges in the amount which Medicaid would have paid.

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BED HOLDS

If the bed is held, then the patient/resident can return at any time of discharge from the hospital. Alternatively, if the patient/resident's hospitalization or therapeutic leave exceeds the number of days indicated above and the bed is not held, then the patient/resident has the right to return to the center in the next available bed if:

- The patient/resident requires the services provided by the healthcare center.
- The patient/resident is eligible for Medicaid healthcare center services.

II. MEDICARE

Medicare does not pay for holding a bed. Check with the Business Office if you need help determining whether a secondary payer source is effective.

III. PRIVATE PAY

A vacant bed will be held for the patient/resident while the patient/resident is in the hospital or on a therapeutic leave, if the patient/resident, responsible party, or legal representative notifies the healthcare center in writing of the desire to reserve a bed and pays the posted basic daily rate in effect at the time of the patient/resident's absence from the healthcare center. If the patient/resident chooses not to reserve the bed through payment, he/she will be re-admitted to the healthcare center in accordance with applicable regulations, provided that the patient/resident requires the services provided by the healthcare center.

IV. VETERANS ADMINISTRATION

No bed holds are paid under V.A. contracts. Check with the Business Office if you need help determining whether a secondary payer source is effective.

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY

Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY

Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH

Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

PruittHealth - North Augusta

Legal Name of Healthcare Center

9/22/17
Date

New: 5/07

1D.01

ARBITRATION CHECKLIST

| Patient/Resident Name: (Last) GRAY (First) WILLIE | Date: 9/22/17 | Completed by: <i>Susan Keeble</i> |
|--|-------------------------|---|
| Item | Date Completed | Comments |
| Determine competency of patient/resident | | |
| Provide patient/resident copy of Arbitration Agreement | | |
| Provide spouse copy of Agreement | | |
| Provide Durable POA or Legal Guardian copy of Arbitration Agreement | | |
| Explain basic definition of Arbitration | | |
| Explain advantages of Arbitration | | |
| Inform patient/resident that acceptance is voluntary | | |
| Inform patient/resident that accepting the Agreement means the person is giving up their right to a jury trial | | |
| Inform patient/resident of right to consult an attorney | | |
| Inform patient/resident of 30 day right to revoke agreement | | |
| Provide the patient/resident an opportunity to ask questions before making a decision to execute the agreement | | |
| Secure appropriate signatures: <i>Competent, capable of signature -</i> Patient/resident must initial each page in lower right hand corner and sign and date the final page in the presence of Admissions Coordinator and one witness. <i>Competent, incapable of signature -</i> Have the patient/resident verbally confirm in the presence of two (2) healthcare center/agency witnesses that the patient/resident authorizes their family member or friend to sign on the patient/resident's behalf. Have the two (2) healthcare center/agency witnesses execute the contract. | | |

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State of South Carolina
ARBITRATION AGREEMENT

This Arbitration Agreement ("Agreement") is made and entered into this 22nd day of September, 2017, by and between PruittHealth - North Augusta (the "Healthcare Center") and WILLIE J GRAY and TAMARA GRAY ("Patient/Resident" or "Patient/Resident's Representative," together referred to as "Patient/Resident").

I. Arbitration


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

A. Scope of Agreement

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

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

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

 _____
Initials

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
State of South Carolina
ARBITRATION AGREEMENT

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

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

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

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

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


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

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

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

II. Decision

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

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ARBITRATION AGREEMENT

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

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

III. Governing Law, Severability

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

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

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

IV. Patient/Resident's Understanding of Agreement

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


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

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

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

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

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

| | |
|--|---|
| <u>WILLIE J GRAY</u> | <u>PruittHealth - North Augusta</u> |
| Print: Name of Patient/Resident | Print: Name of Healthcare Center |
| <u>[Signature]</u> | <u>[Signature]</u> |
| Signature of Patient/Resident | Signature of Healthcare Center's Authorized Agent |
| <u>[Signature]</u> | <u>MICHELE RICH</u> |
| Signature of Patient/Resident Representative | Print: Name and Title of Healthcare Center's Authorized Agent |

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

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

[Initials] Initials

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1E.01

**ACKNOWLEDGMENT OF RECEIPT OF
PATIENT/RESIDENT FEDERAL & STATE RIGHTS**

Patient/Resident Name: WILLIE J GRAY

This healthcare center admits patients/residents and provides services without regard to race, color, religion, sex, national origin, handicap condition or age.

I acknowledge receipt of the Patient/Resident Federal & State Rights. I have been informed of these rights either prior to or upon admission.

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

MICHELE RICH
Print Healthcare Center Representative's Name

Patient/Resident's Signature

Susan Keatke
Healthcare Center Representative's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

PruittHealth - North Augusta
Legal Name of Healthcare Center

X Samara Gray
Patient/Resident Representative's Signature

9/22/17
Date

OMBUDSMAN ACKNOWLEDGMENT:

I acknowledge receipt of information on the Long Term Care Ombudsman Program for this state.

X Samara Gray
Patient/Resident/Representative's Signature

9/22/17
Date

*(Give original to patient/resident and photocopy this page
for patient/resident's file at healthcare center)*

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1E.02

FREEDOM OF CHOICE STATEMENT

Healthcare Center/Agency: FruitHealth - North Augusta

Patient/Resident: WILLIE J GRAY

It has been explained to me by the staff of the above named healthcare center/agency, and I fully understand that:

(a) I may select the physician of my choice, provided that such physician has been given, or obtains, staff privileges at the healthcare center/agency. I understand and acknowledge that the exercise of the right to choose an attending physician does not mean that the physician must or will serve in that capacity. The healthcare center/agency will have the right, after informing me, to seek alternative physician participation to assure the provision of appropriate and adequate care and treatment. There are times when the attending physician is not available to the patient/resident. On these occasions, the attending physician will ask another physician to attend to the patient/resident during his/her absence. I fully understand this arrangement and I do consent to being treated by the stand-by physician during the absence of my regular physician.

(b) I may select the pharmacy or pharmacist of my choice for those pharmaceutical supplies and services not provided by the healthcare center as part of the basic daily rate, provided that the pharmacy or pharmacist packages medications in accordance with the healthcare center/agency's packaging system and meets the requirements of a long term care pharmacy provider under the Medicare Modernization Act.

(c) I understand that I may enroll in a Medicare prescription drug benefit plan or choose to change my existing drug benefit plan on admission to the healthcare center/agency. I understand that enrollment in a drug plan may require payment to the plan sponsor for the benefit.

The following indicate my choices:

1. **Attending Physician** Henry Igdal
Address & Phone Number: 1624 Main Street Agape Senior Columbia, SC 29201 (803)454-0365

2. **Pharmacy** _____

I do wish to enroll in a Medicare Prescription Drug Benefit plan _____

I do not wish to enroll in a Medicare Prescription Drug Benefit plan.

I wish to change my enrollment in the Medicare Prescription Drug Benefit to family not sure. (SK)

3. **Consent to photograph.** The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check the statement below that reflects your wishes:

I do consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.

I do not consent to be photographed or videotaped by the healthcare center for display, publication or broadcast with no form of compensation.

FREEDOM OF CHOICE STATEMENT
Healthcare Center/Agency: PruittHealth - North Augusta

Patient/Resident: WILLIE J GRAY

4. **Consent regarding correspondence.** The decisions made below can be changed at any time by informing the Social Services Director in writing. Please check all the statements below that reflect your wishes:

- I request that the Administrator or designee assist in the opening and/or reading of my personal mail.
- I request that the Administrator or designee assist in opening financially related mail addressed to me such as checks, medical bills or statements, Medicare and Medicaid correspondence.
- I do not give consent for any staff of the healthcare center to open my mail. All such mail shall be given directly to me or my responsible party, unopened.

5. **Laundry.** (See Guest Services Guide) Each personal item of clothing must be marked with a laundry marker. Out of season clothing should be removed from patient/resident's room by family.

Check your preference on the laundering of personal laundry:

- done by the healthcare center
- done by family*

*If laundry is done by family, a closed and labeled container that is fire retardant must be provided.

6. **Other Specified Charges.**

- Beauty/Barber Shop _____
- TV/Cable _____
- Telephone _____
- Other: _____

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

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IE.03

**ACKNOWLEDGMENT
OF TRANSFER/LIFT PROGRAM**

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

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

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

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

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Susan Koschke
Healthcare Center Representative's Signature

FruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

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MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE I GRAY

Date: 09/22/2017

PART I:

1. Are you receiving Black Lung (BL) benefits?

Yes. Date benefits began: CCYY/MM/DD
BL is primary only for claims related to BL.
No.

2. Are the services to be paid by a government program such as a research grant?

Yes. Government program will pay primary benefits for these services.
No.

3. Has the Department of Veterans Affairs (DVA) authorized and agreed to pay for care at this healthcare center?

Yes. DVA is primary for these services.
No.

4. Was the illness/injury due to a work related accident/condition?

Yes. Date of injury/illness: CCYY/MM/DD

Name and address of the WC plan:

Blank lines for Name and address of the WC plan

Policy or identification number:

Name and address of your employer:

Blank lines for Name and address of your employer

WC is primary payer only for claims related to work related injuries or illness. Go to Part III.

No. Go to Part II.

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MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE J GRAY Date: 09/22/2017

PART II:

1. Was the injury due to a non-work related accident?

Yes. Date of accident: CCYY/MM/DD
 No. *Go to Part III.*

2. What type of accident caused the illness/injury?

Automobile
 Non-automobile

Name and address of no-fault or liability insurer:

Insurance claim number: _____

No-fault insurer is primary payer only for those claims related to the accident. Go to Part III.

Other

3. Was another party responsible for this accident?

Yes.

Name and address of any liability insurer:

Insurance claim number: _____

Liability insurer is primary only for those claims related to the accident. Go to Part III.

No. *Go to Part III.*

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MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE I GRAY Date: 09/22/2017

PART III:

1. Are you entitled to Medicare based on:

- Age. **Go to Part IV.**
- Disability. **Go to Part V.**
- ESRD. **Go to Part VI.**

PART IV: Age

1. Are you currently employed?

Yes.

Name and address of your employer:

No. Date of retirement: CCYY/MM/DD

2. Is your spouse currently employed?

Yes.

Name and address of your spouse's employer:

No. Date of retirement: CCYY/MM/DD

If patient/resident answered NO to both questions 1 and 2, Medicare is primary unless the patient/resident answered YES to questions in Part I or Part II. Do not proceed any further.

3. Do you have group health plan (GHP) coverage based on your own, or a spouse's current employment?

- Yes.
- No. **STOP: Medicare is the primary payer unless the patient/resident answered YES to the questions in Part I or II.**

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2.06

MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE J GRAY Date: 09/22/2017

4. Does the employer that sponsors your GHP employ 20 or more partners?

Yes. **STOP: Group health plan is primary. Obtain the following information.**

Name and address of GHP:

Policy identification number: _____

Group identification number: _____

Name of policy holder: _____

Relationship to patient/resident: _____

No. **STOP: Medicare is the primary payer unless the patient/resident answered YES to questions in Part I or II.**

PART V: Disability

1. Are you currently employed?

Yes.

Name and address of your employer:

No. Date of retirement: CCYY/MM/DD

2. Is a family member currently employed?

Yes.

Name and address of employer:

MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE J GRAY Date: 09/22/2017

No.

If the patient/resident answers NO to both questions 1 and 2, Medicare is primary unless the patient/resident answered YES to questions in Part I or II. Do not proceed any further.

3. Do you have group health plan (GHP) coverage based on your own, or family member's current employment?

Yes.

No. STOP: Medicare is primary payer unless the patient/resident answered YES to questions in Part I or II.

4. Does the employer that sponsors your GHP employ 100 or more partners?

Yes. STOP: Group health plan is primary. Obtain the following information.

Name and address of GHP:

Three blank lines for name and address of GHP.

Policy identification number:

Group identification number:

Name of policy holder:

Relationship to patient/resident:

No. STOP: Medicare is primary payer unless the patient/resident answered YES to questions in Part I or II.

PART VI: ESRD

1. Do you have group health plan coverage?

Yes.

Name and address of GHP:

Three blank lines for name and address of GHP.

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MEDICARE SECONDARY PAYER QUESTIONNAIRE

Patient/Resident Name: WILLIE J GRAY Date: 09/22/2017

Policy identification number:
Group identification number:
Name of policy holder:
Relationship to patient/resident:
Name and address of employer, if any, from which you receive GHP coverage:

No. STOP: Medicare is primary.

2. Have you received a kidney transplant?

Yes. Date of transplant: CCYY/MM/DD
No.

3. Have you received maintenance dialysis treatments?

Yes. Date dialysis began: CCYY/MM/DD

If you participated in a self dialysis training program, provide the date training started: CCYY/MM/DD

No.

4. Are you within the 30 month coordination period?

Yes.
No. STOP: Medicare is primary.

5. Are you entitled to Medicare on the basis of either ESRD and age or ESRD and disability?

Yes.
No. STOP: GHP is primary during the 30 month coordination period.

6. Was your initial entitlement to Medicare (including simultaneous entitlement) based on ESRD?

Yes. STOP: GHP continues to pay primary during the 30 month coordination period.
No. Initial entitlement based on age or disability.

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Rev: 5/07

2.06

MEDICARE SECONDARY PAYER QUESTIONNAIREPatient/Resident Name: WILLIE J GRAY Date: 09/22/2017

7. Does the working aged or disability MSP provision apply (i.e., is the GHP primary based on age or disability entitlement)?

- Yes. **STOP: GHP continues to pay primary during the 30 month coordination period.**
- No. **Medicare continues to pay primary.**

Failure to obtain the information listed in these sections is a violation of your provider agreement with Medicare (see Section 142.3F). The information you must obtain is essential to filing a proper claim with Medicare or a primary payer. Failure to file a proper claim can result in the unnecessary denial or development of claims.

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Section 3

Section 3: NURSING

New 5/06

3.01

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

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

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

CONSENT

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

REFUSAL

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Susan Karcher
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

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

INFLUENZA VIRUS VACCINE INFORMATION

Patient/Resident Information: INFLUENZA VIRUS VACCINE, commonly referred to as the "flu" is used to prevent infections caused by specific strains of influenza viruses. Strains of viruses that cause influenza (flu) epidemics change yearly, and the U.S. and Canadian governments determine for each country, which strains to include in the vaccine each year. The vaccine works by causing the body to produce antibodies (disease fighting substances) specific to the selected viruses. Influenza virus vaccine is recommended for individuals who are at high risk of being exposed to these viruses or for whom influenza infections could have serious consequences. Examples of patients/residents who might benefit from influenza vaccine include adults or children with chronic heart, kidney or lung disease, anemia or diabetes patients/residents of nursing homes or other long term care facilities, adults over age 64, immuno-suppressed patients/residents (cancer, AIDS, steroid use), or healthcare workers. The effects of influenza vaccine last about six months, so it is necessary to be immunized every year. Influenza virus vaccine is available only as an intramuscular (into a muscle) injection.

Considerations Before Receiving Influenza Virus Vaccine: Patients/residents with significant immune disorders may not respond effectively to this vaccine. Use of this vaccine also can make symptoms and delay diagnosis of fever of unknown cause. This vaccine should not be given with severe respiratory (lung) infections but can be given while patient/resident has a mild infection, cold or diarrhea. It should also be avoided in patients/residents with Guillain-Barre Syndrome or with current neurologic (brain or nerve related) disorders.

Radiation therapy or medications that suppress the immune system (e.g. cancer, chemotherapy or steroids) may suppress the effectiveness of this vaccination. Influenza virus vaccine injections also should be given cautiously to patients/residents taking blood thinners (anticoagulants) because excessive bleeding or bruising can occur.

Allergies: Influenza vaccine should be avoided in patients/residents who have ever experienced an allergic or unusual reaction to any flu vaccine. The vaccine also contains egg proteins and should be avoided in patients/residents with egg allergies. The product from Wyeth-Ayerst is developed from Gentamicin and should not be used in patients/residents with allergies to Gentamicin or other aminoglycoside antibiotics.

Potential Side Effects: Mild pain, tenderness, redness or swelling at the injection site and low grade fever (102.2 degrees F or less) are the most common unwanted effects. Less commonly, skin rash or itching, irritability, tiredness or muscle aches and pains can occur. These effects are generally mild and disappear with 24-72 hours.

Serious allergic reactions are rare but can occur including difficulty breathing, shortness of breath, wheezing, severe rash, itching (hives), confusion, extreme irritability or seizures (convulsions). Influenza vaccine can also, in rare cases, cause Guillain-Barre Syndrome. If any of these symptoms occur, notify your physician immediately.

New: 5/06

3.03

PNEUMOCOCCAL VACCINE CONSENT / REFUSAL

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

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

CONSENT

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

REFUSAL

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Susan Koelle
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

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

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New: 5/06

3.04

PNEUMOCOCCAL VACCINE INFORMATION

Patient/Resident Information: PNEUMOCOCCAL VACCINE POLYVALENT (Pneumovax) is used to prevent infections caused by any of 23 strains of pneumococcal bacteria. These bacteria are the major cause of serious pneumonia meningitis infections worldwide. The vaccine works by causing the body to produce antibodies (disease-fighting substances) specific to these bacteria. Pneumococcal vaccine is recommended for individuals who are at high risk of developing these infections or for whom such infections could have serious consequences. Examples of residents/patients who might benefit from the pneumococcal vaccine include adults or children (over age 2) with chronic illnesses (e.g., head, kidney or lung disease, diabetes, anemia or other blood disorders, cancers, sickle cell disease) or residents/patients of nursing homes or other long-term care facilities. Immunity is produced by the pneumococcal vaccine with two-three weeks and lasts 5-10 years in most adults and re-vaccination generally is not recommended. However, children under age 10 at the time of vaccination may require a re-vaccination after 3-5 years. Pneumococcal vaccine is available only as a suspension for injection into a muscle or under the skin.

Considerations Before Receiving Pneumococcal Vaccine: Other medical conditions: Residents/patients with significant immune disorders may not respond effectively to this vaccine. Use of this vaccine also can make symptoms and delay diagnosis of fever of unknown cause. This medication should be used cautiously in residents/patients with severe respiratory (lung) disease or infections, or heart disease. These residents/patients are at an increased risk for developing serious side effects and are less able to compensate for them. Pneumococcal vaccine also can cause relapse in residents/patients with idiopathic thrombocytic purpura (TTP).

Other medications: Radiation therapy and medications that suppress the immune system (e.g. cancer, chemotherapy, steroids) reduce the effectiveness of this vaccination. Pneumococcal vaccine should be given two weeks before removal of the spleen or beginning immunosuppressive therapy (e.g. cancer treatments) to allow adequate time for production of antibodies to the bacteria. Make sure that your physician is aware of all medications you are currently taking before receiving this vaccine.

Administration of Pneumococcal Vaccine: This medication is not for self-medication. It is given under a physician's supervision as an injection into a muscle.

Potential Side Effects: Mild pain, tenderness, redness or swelling at the injection site are the most common unwanted side effects. Less commonly, skin rash or itching, mild fever (102 degrees F or less), headache, joint or muscle aches and weakness can occur. These are generally mild and disappear within 24-72 hours. Contact your physician if they continue and are severe.

Serious allergic reactions are rare but can occur including difficulty breathing, shortness of breath, wheezing, severe rash/itching, confusion, extreme irritability or seizures (convulsions). Pneumococcal vaccine may also in rare cases be associated with Guillain-Barre Syndrome which is exhibited by extreme weakness, numbness in the arms or legs or headaches. If any of these symptoms occur, notify your physician immediately.

**PATIENT/RESIDENT OR AUTHORIZED PERSON
ACKNOWLEDGMENT OF RESTRAINT REDUCTION PROGRAM**

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

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

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

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

Section 4

Section 4: SOCIAL SERVICES

ADVANCE DIRECTIVES CHECKLIST
Healthcare Center: PruittHealth - North Augusta

Patient/Resident Name: WILLIE J GRAY

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

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

Please check one of the following statements: family not sure. (SK)

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

PATIENT/RESIDENT/REPRESENTATIVE:

WILLIE J GRAY
Print Patient/Resident's Name

Patient/Resident's Signature

TAMARA GRAY
Print Patient/Resident Representative's Name

Tamara Gray
Patient/Resident Representative's Signature

MICHELE RICH
Print Healthcare Center Representative's Name

Michele Rich
Healthcare Center Representative's Signature

PruittHealth - North Augusta
Legal Name of Healthcare Center

9/22/17
Date

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

- Living Will; DPAHC; DNR Order; Organ Donation; Body Donation

New: 5/07
4.02

State of South Carolina

ADVANCE DIRECTIVES & "DO NOT RESUSCITATE" ORDERS

PATIENT/RESIDENT SELF-DETERMINATION ACT:

The act mandates Medicare and Medicaid certified healthcare centers to give patients/residents information about their right to make decisions concerning medical care including the right to accept or refuse treatment and the right to formulate advance directives.

ADVANCE DIRECTIVES:

The term "Advance Directive" simply refers to documents written before serious illness that state your choices about medical treatment or name someone to make choices about medical treatment for you, if you become unable to make decisions. Whether you choose to execute an advance directive is a personal matter and will never be a condition of whether you receive services from a health care provider.

Most states recognize two types of Advance Directives. These are referred to as the following:

- 1) Living Will
- 2) Durable Power of Attorney for Health Care.

LIVING WILL:

A living will is a document that instructs your doctor to withhold or withdraw certain medical procedures that would merely postpone or prolong the dying process should you have a terminal condition, be in a coma or persistent vegetative state. A Living Will contains written instructions explaining the type of health care treatment you prefer to receive if you cannot communicate for yourself. These instructions will be followed in only three situations: when you have a terminal illness and death is imminent; when you are in a coma (not necessarily brain damaged) with no reasonable expectation of regaining consciousness; or if you are in a persistent vegetative state (there is brain damage) with no reasonable expectation of regaining cognitive function. A Living Will should not be confused with the legal documents you create which distribute your assets upon death. You do not need legal counsel to prepare a Living Will. This document can be revoked at anytime.

New: 5/07
4.02

State of South Carolina

ADVANCE DIRECTIVES & "DO NOT RESUSCITATE" ORDERS

DURABLE POWER OF ATTORNEY FOR HEALTH CARE:

A durable power of attorney for health care is a document in which you name another person, an agent, to make medical decisions for you if you become unable to make them. You should sit down with this agent and discuss your views; thus, giving your agent instructions or guidelines, you want them to follow. The appointed person is to make decisions that they feel the patient/resident would have wanted, not necessarily what they would want themselves. This advance directive varies from the living will in that it can relate to any medical condition not just if you become terminal, in a coma or persistent vegetative state.

As long as you are competent and able to communicate, you make your own decisions. Your agent is involved only when and if it is determined that you are unable to understand or communicate your decisions. Just as with the living will, you can revoke or cancel the document at any time.

DO NOT RESUSCITATE ORDERS:

Cardiopulmonary resuscitation (CPR) involves performing chest compressions and mouth to mouth breathing when a person goes into cardiac or respiratory arrest in order to bring them back to life. Once CPR is started, it must continue until the person gets to the hospital. For many, this may not be a desired treatment of choice.

Our healthcare center recognizes a "Do Not Resuscitate" (DNR) order. All that a DNR order means is that the person does not want CPR if they go into cardiac or respiratory arrest. All other care and treatment continues the same.

Patients/residents who can understand what CPR is and its ramifications can make their own decision about whether they would want CPR if their heart stops beating. If the patient/resident cannot understand, an authorized person can consent to the DNR order if the physician has determined the patient/resident to be a candidate for non-resuscitation. The decision about whether to request a DNR order should be made based on what the patient/resident would have wanted had they been able to speak for themselves.

The policy of this healthcare center is to perform CPR unless we have a DNR order from a physician. There is a procedure that we follow in order to comply with the state law. If you would like more information or feel that you want to proceed with having a DNR order completed, please contact the Social Services Director.

ADDITIONAL INFORMATION AVAILABLE:

If you have any questions concerning any of this material or would like standard forms for a particular advance directive, please contact the Social Services Director.

New: 5/07

4.03

DECLARATION OF A DESIRE FOR A NATURAL DEATH

STATE OF SOUTH CAROLINA
COUNTY OF _____

DECLARATION
OF A DESIRE FOR A
NATURAL DEATH

I, _____, Declarant, being at least eighteen years of age and a resident of and domiciled in the City of _____, County of _____, State of South Carolina, make this Declaration this _____ day of _____, 20_____.

I willfully and voluntarily make known my desire that no life-sustaining procedures be used to prolong my dying if my condition is terminal or if I am in a state of permanent unconsciousness, and I declare:

If at any time I have a condition certified to be a terminal condition by two physicians who have personally examined me, one of whom is my attending physician, and the physicians have determined that my death could occur within a reasonably short period of time without the use of life-sustaining procedures or if the physicians certify that I am in a state of permanent unconsciousness and where the application of life-sustaining procedures would serve only to prolong the dying process, I direct that the procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure necessary to provide me with comfort care.

INSTRUCTIONS CONCERNING ARTIFICIAL NUTRITION AND HYDRATION

INITIAL ONE OF THE FOLLOWING STATEMENTS:

If my condition is terminal and could result in death within a reasonably short time,

_____ I direct that nutrition and hydration **BE PROVIDED** through any medically indicated means, including medically or surgically implanted tubes.

_____ I direct that nutrition and hydration **NOT BE PROVIDED** through any medically indicated means, including medically or surgically implanted tubes.

INITIAL ONE OF THE FOLLOWING STATEMENTS:

If I am in a persistent vegetative state or other condition of permanent unconsciousness,

_____ I direct that nutrition and hydration **BE PROVIDED** through any medically indicated means, including medically or surgically implanted tubes.

New: 5/07

4.03

DECLARATION OF A DESIRE FOR A NATURAL DEATH

Name _____

_____ I direct that nutrition and hydration NOT BE PROVIDED through any medically indicated means, including medically or surgically implanted tubes.

In the absence of my ability to give directions regarding the use of life-sustaining procedures, it is my intention that this Declaration be honored by my family and physicians and any health facility in which I may be a patient as the final expression of my legal right to refuse medical or surgical treatment, and I accept the consequences from the refusal.

I am aware that this Declaration authorizes a physician to withhold or withdraw life-sustaining procedures. I am emotionally and mentally competent to make this Declaration.

APPOINTMENT OF AN AGENT (OPTIONAL):

- 1. You may give another person authority to revoke this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent with Power to Revoke: _____
 Address: _____
 Telephone Number: _____

- 2. You may give another person authority to enforce this declaration on your behalf. If you wish to do so, please enter that person's name in the space below.

Name of Agent with Power to Enforce: _____
 Address: _____
 Telephone Number: _____

REVOCAION PROCEDURES

THIS DECLARATION MAY BE REVOKED BY ANY ONE OF THE FOLLOWING METHODS. HOWEVER, A REVOCATION IS NOT EFFECTIVE UNTIL IT IS COMMUNICATED TO THE ATTENDING PHYSICIAN.

- (1) BY BEING DEFACED, TORN, OBLITERATED, OR OTHERWISE DESTROYED, IN EXPRESSION OF YOUR INTENT TO REVOKE, BY YOU OR BY SOME PERSON IN YOUR PRESENCE AND BY YOUR DIRECTION. REVOCATION BY DESTRUCTION OF ONE OR MORE OF MULTIPLE ORIGINAL DECLARATIONS REVOKES ALL OF THE ORIGINAL DECLARATIONS;

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New: 5/07

4.03

DECLARATION OF A DESIRE FOR A NATURAL DEATH

Name _____

(2) BY A WRITTEN REVOCATION SIGNED AND DATED BY YOU EXPRESSING YOUR INTENT TO REVOKE;

(3) BY YOUR ORAL EXPRESSION OF YOUR INTENT TO REVOKE THE DECLARATION. AN ORAL REVOCATION COMMUNICATED TO THE ATTENDING PHYSICIAN BY A PERSON OTHER THAN YOU IS EFFECTIVE ONLY IF:

- (a) THE PERSON WAS PRESENT WHEN THE ORAL REVOCATION WAS MADE;
- (b) THE REVOCATION WAS COMMUNICATED TO THE PHYSICIAN WITHIN A REASONABLE TIME;
- (c) YOUR PHYSICAL OR MENTAL CONDITION MAKES IT IMPOSSIBLE FOR THE PHYSICIAN TO CONFIRM THROUGH SUBSEQUENT CONVERSATION WITH YOU THAT THE REVOCATION HAS OCCURRED.

TO BE EFFECTIVE AS A REVOCATION, THE ORAL EXPRESSION CLEARLY MUST INDICATE YOUR DESIRE THAT THE DECLARATION NOT BE GIVEN EFFECT OR THAT LIFE-SUSTAINING PROCEDURES BE ADMINISTERED;

(4) IF YOU, IN THE SPACE ABOVE, HAVE AUTHORIZED AN AGENT TO REVOKE THE DECLARATION, THE AGENT MAY REVOKE ORALLY OR BY A WRITTEN, SIGNED, AND DATED INSTRUMENT. AN AGENT MAY REVOKE ONLY IF YOU ARE INCOMPETENT TO DO SO. AN AGENT MAY REVOKE THE DECLARATION PERMANENTLY OR TEMPORARILY.

(5) BY YOUR EXECUTING ANOTHER DECLARATION AT A LATER TIME.

Signature of Declarant

STATE OF _____ AFFIDAVIT
COUNTY OF _____

We, _____ and _____, the undersigned witnesses to the foregoing Declaration, dated the ___ day of _____, 20___, at least one of us being first duly sworn, declare to the undersigned authority, on the basis of our best information and belief, that the Declaration was on that date signed by the declarant as and for his DECLARATION OF A DESIRE FOR A NATURAL DEATH in our presence and we, at

New: 5/07

4.03

DECLARATION OF A DESIRE FOR A NATURAL DEATH

Name _____

his request and in his presence, and in the presence of each other, subscribe our names as witnesses on that date. The declarant is personally known to us, and we believe him to be of sound mind. Each of us affirms that he is qualified as a witness to this Declaration under the provisions of the South Carolina Death With Dignity Act in that he is not related to the declarant by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the declarant, or spouse of any of them; nor directly financially responsible for the declarant's medical care; nor entitled to any portion of the declarant's estate upon his decease, whether under any will or as an heir by intestate succession; nor the beneficiary of a life insurance policy of the declarant; nor the declarant's attending physician; nor an employee of the attending physician; nor a person who has a claim against the declarant's decedent's estate as of this time. No more than one of us is an employee of a health facility in which the declarant is a patient. If the declarant is a resident in a hospital or nursing care facility at the date of execution of this Declaration, at least one of us is an ombudsman designated by the State Ombudsman, Office of the Governor.

Witness

Witness

Subscribed before me by _____, the declarant, and subscribed and sworn to before me by _____, the witnesses, this ___ day of _____, 20_____.

Signature

Notary Public for _____

My commission expires: _____

SEAL

New: 5/07

4.04

INFORMATION ABOUT THIS DOCUMENT

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

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE; YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

New: 5/07

4.04

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

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

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

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY
(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, _____, hereby appoint:
(Principal)

(Agent)

(Address)

Home Telephone: _____ Work Telephone: _____

as my agent to make health care decisions for me as authorized in this document.

New: 5/07

2. EFFECTIVE DATE AND DURABILITY

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

3. AGENT'S POWERS

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

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

New: 5/07

4. ORGAN DONATION (INITIAL ONLY ONE)

My agent may ___ may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

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

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

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:
(INITIAL ONLY ONE OF THE FOLLOWING 4 PARAGRAPHS)

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

OR

(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

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

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

OR

(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) ___ DIRECTIVE IN MY OWN WORDS:

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New: 5/07

4.04

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

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

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

OR

___ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

8. SUCCESSORS

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

A. First Alternate Agent: _____
Address: _____
Telephone: _____

B. Second Alternate Agent: _____
Address: _____
Telephone: _____

9. ADMINISTRATIVE PROVISIONS

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

10. UNAVAILABILITY OF AGENT

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

New: 5/07

4.04

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

I sign my name to this Health Care Power of Attorney on this _____ day of _____, 20_____.

My current home address is:

Signature: _____

Name: _____

Name _____

WITNESS STATEMENT

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

Witness No. 1

Signature: _____ Date: _____
Print Name: _____ Telephone: _____
Residence Address: _____

Witness No. 2

Signature: _____ Date: _____
Print Name: _____ Telephone: _____
Residence Address: _____

Rev: 5/07

4.06

**AUTHORIZATION OF DO NOT RESUSCITATE ORDER
WITHOUT DECISION-MAKING CAPACITY**

As the attending physician of _____, I hereby authorize the entry of an order in the medical record instructing this healthcare center not to provide Cardiopulmonary Resuscitation (CPR) or intubation to this patient/resident.

Please check the appropriate category below:

_____ The patient/resident has a medical condition which can be expected to result in the imminent death of the patient/resident.

_____ The patient/resident is in a non-cognitive state with no reasonable possibility of regaining cognitive functions.

_____ The patient/resident is a person for whom Cardiopulmonary Resuscitation would be medically futile in that such resuscitation will likely be unsuccessful in restoring cardiac and respiratory function; or will only restore cardiac and respiratory function for a brief period of time so that the patient/resident will likely experience repeated need for (CPR) over a short period of time.

Attending Physician's Signature

Date

I concur with the above decision that this patient/resident is a candidate for non-resuscitation.

Concurring Physician's Signature

Date

As the authorized person, I acknowledge that I have been informed of the provisions of this state, and I consent to the order not to resuscitate this patient/resident, as I believe he/she would have wanted under the circumstances being considered.

Authorized Person's Signature/Relationship

Date

Witness

Date

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) C.A. No.: 2019-NI-02-00001

Grace Gray, Individually and as Wife of)
Willie J. Gray, deceased, and as Personal)
Representative of the Estate of Willie J.)
Gray, deceased,)

Plaintiff,)

vs.)

PruittHealth-North Augusta, LLC; UHS)
Pruitt Corporation a/k/a PruittHealth, Inc.;)
PruittHealth Consulting Services, Inc.;)
United Health Services of South Carolina,)
Inc.; John Doe, and Richard Roe)
Corporation,)

Defendants.)

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO RECONSIDER THE
COURT'S ORDER DENYING
DEFENDANTS' MOTION DISMISS
AND COMPEL ARBITRATION**

PLEASE TAKE NOTICE the Defendants PruittHealth-North Augusta, LLC, UHS Pruitt Corporation a/k/a PruittHealth, Inc., PruittHealth Consulting Services, Inc., and United Health Services of South Carolina, Inc. (hereinafter referred to as "Defendants"), by and through the undersigned counsel, hereby move before this Honorable Court, pursuant to the South Carolina Rules of Civil Procedure and Rule 59(e), and submit this Notice of Motion and Motion to Reconsider the Court's Order Denying Defendants' Motion to Dismiss and Compel Arbitration. On April 1, 2019, the Court informed the parties that the Defendants' Motion to Dismiss and Compel Arbitration (hereinafter the "Motion") was denied. (See Exhibit A). The correspondence also noted that the Court would provide "more detailed order instructions" to the parties. (*id.*) Pursuant to Rule 59(e), SCRCP, the Defendants must submit their motion to reconsider "not later than 10 days after receipt of written notice of the entry of the order." Although the Defendants do

not believe there has been an “entry of the order,” out of an abundance of caution, the Defendants submit this Notice of Motion and Motion to Reconsider in order to meet the timing requirement set forth in Rule 59(e), SCRPC. The Defendants also note that this Motion to Reconsider is further supported by the pleadings, applicable law, arguments of counsel, a memorandum to be filed upon the receipt of the more detailed order instructions, and any other documents, affidavits or materials the Court may receive.

Respectfully Submitted,

SMYTH WHITLEY, LLC

s/ Joshua S. Whitley

Joshua S. Whitley, Esquire

S.C. Bar No.: 77824

S. Tyler Graves, Esquire

S.C. Bar No.: 103173

126 Seven Farms Drive

First Citizens Plaza, Suite 260

Charleston, South Carolina 29492

Tel.: (843) 606-5635

Fax: (843) 654-4095

Attorneys for the Defendants

Charleston, South Carolina
April 11, 2019

Gray v. Pruitt Health-North Augusta, LLC, et. al. (2019NI0200001)

Kelly, R. Keith Law Clerk (Laura Hicks) <kkellylc@sccourts.org>

Mon 4/1/2019 11:57 AM

To:kip@theconnorfirm.com <kip@theconnorfirm.com>; Josh Whitley <jwhitley@smythwhitley.com>;

Good Morning Counselors,

The Court denies the Motion to Dismiss in the above case. I am sending out more detailed order instructions, but I wanted to let you all know the Court's ruling as quickly as possible since mediation is scheduled for tomorrow morning.

If you need anything further right now, please let me know.

Laura

Laura D. Hicks
Law Clerk to The Honorable R. Keith Kelly

The Circuit Court of South Carolina
Seventh Judicial Circuit
125 E. Floyd Baker Boulevard
Gaffney, SC 29340
Phone: (864) 596-2400
kkellylc@sccourts.org

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ROA 000213

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 GRACE GRAY, Individually and as Wife of )  
 WILLIE J. GRAY, deceased, and as Personal )  
 Representative of the Estate of WILLIE J. )  
 GRAY, deceased, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PRUITTHEALTH-NORTH AUGUSTA, LLC; )  
 UHS PRUITT CORPORATION A/K/A )  
 PRUITTHEALTH, INC.; PRUITTHEALTH )  
 CONSULTING SERVICES, INC.; UNITED )  
 HEALTH SERVICES OF SOUTH )  
 CAROLINA, INC.; JOHN DOE, and )  
 RICHARD ROE CORPORATION, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 SECOND JUDICIAL CIRCUIT  
 CIVIL ACTION No.: 2019-NI-02-00001  
 PLAINTIFF'S RESPONSE IN  
 OPPOSITION TO DEFENDANTS'  
 MOTION TO RECONSIDER

COMES NOW Plaintiff Grace Gray, individually and as wife of Willie J. Gray, deceased, and as Personal Representative of the Estate of Willie J. Gray, by and through undersigned counsel, and files this Response in Opposition to Defendants' Motion to Reconsider. For the following reasons, Defendants' motion should be denied:

- 1. The Court's Order was appropriate as Tamara Gray did not have requisite authority to waive Mr. Gray's Constitutional right to a jury trial.**

After considering written briefs and oral argument from Defendants' and Plaintiff's counsel, this Court denied Defendants' Motion to Dismiss Plaintiff's Notice of Intent.<sup>1</sup> Taking issue with the Court's order, Defendants PruittHealth-North Augusta, LLC, UHS Pruitt Corporation a/k/a PruittHealth, Inc., PruittHealth Consulting Services, Inc., and United Health

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<sup>1</sup> Plaintiff incorporates by reference her prior submissions to the court, including written and oral argument, affidavit, and supporting documentation, filed March 1, 2019.

Services of South Carolina, Inc. (collectively as “Defendants”) filed this Motion to Reconsider on April 11, 2019.<sup>2</sup>

The Court appropriately recognized that Ms. Gray’s “Power of Attorney” addressed financial decisions but did not confer sufficient authority to waive Mr. Gray’s constitutional right to a jury trial. As recognized by the South Carolina Court of Appeals,

“[T]he authority conveyed by a principal to an agent to handle finances or make health care decisions does not encompass executing an agreement to resolve legal claims by arbitration, thereby waiving the principal’s right of access to the courts and to a jury trial.”

*Hodge v. UniHealth Post-Acute Care of Bamberg*, 422 S.C. 544, 572, 813 S.E.2d 292, 307 (Ct. App. 2018); *Thompson v. Pruitt Corp.*, 416 S.C. 43, 55, 784 S.E.2d 679, 686 (Ct. App. 2016).<sup>3</sup>

**2. The Court’s Order was appropriate because there was no meeting of the minds.**

A valid and enforceable agreement requires “a meeting of the minds between the parties.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (citing *Hughes v. Edwards*, 265 S.C. 529, 220 S.E.2d 231 (1975)). Evidence of record confirms there was no “meeting of the minds” between Defendants and Plaintiff to arbitrate this matter.

Here, the *only* testimonial evidence of record was provided by Plaintiff. By affidavit, Tamara Gray (“Ms. Gray”) testified that she did not understand the purported arbitration agreement, and Defendants failed to explain the more than 70 pages she was asked to sign, which apparently included the contract at issue. T. Gray Aff. at ¶¶ 5-6. Not only does the evidence in the record establish a lack of understanding, it also illustrates Defendants knew of Ms. Gray’s ignorance. See Exhibit C of Plaintiff’s Response in Opposition to Defendants’ Underlying Motion (Mar. 1, 2019). Additionally, there is no evidence to confirm whether the purported arbitration

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<sup>2</sup> Note Defendants filed their Motion to Reconsider prior to the Court’s entry of its Order denying the Underlying Motion.

agreement was signed by Defendants' "Authorized Agent." Review of the purported agreement identifies their authorized agent as "Michelle Rich", however the signature page clearly denotes the signature of a different person.

Defendants rely upon *Regions Bank* to support their contention that a person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. However, as noted during the hearing, Defendants fail to acknowledge that our Court of Appeals makes clear that its decision is "subject to exception" where the party "is ignorant and unwary," and whereby his failure to read the document may be excused. *Regions Bank v. Schmauch*, 354 S.C. 648, 664, 582 S.E.2d 432, 440 (Ct. App. 2003); *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 789-90 (1986). Furthermore, the fact remains that the only testimonial evidence clearly establishes that the Defendants failed to take any opportunity to explain the purported agreement to Ms. Gray and she did not understand the terms of the agreement sufficient to create a "meeting of the minds" between the parties.

**3. The Court's Order was appropriate because the purported arbitration agreement is subject to contract defenses.**

The Court appropriately concluded that the purported arbitration agreement is unenforceable under South Carolina contract law defenses, including but not limited to failure for lack of consideration, lack of mutuality, and unconscionability. Arbitration agreements are subject to the same defenses applicable to all other contracts. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010) (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996)). Having considered the arguments of the parties and the evidence provided, the Court appropriately found the agreement at issue unenforceable on account of these well recognized contract defenses. Prior to the hearing on Defendants' motion, Plaintiff offered to engage in limited discovery with Defendants regarding the enforceability of the

purported agreement. Defendants declined, despite obvious defects in the underlying arbitration agreement. They should not now be able to benefit from their refusal to participate in discovery which would establish the factual basis for evaluating the applicability of these contract defenses.

**CONCLUSION**

For the foregoing reasons, Defendants' Motion to Reconsider should be denied as the Court appropriately delineated a number of bases, though not all, to deny Defendants' Underlying Motion.

Respectfully submitted, this the 14th day of May, 2019.

CONNOR & CONNOR, LLC

s/ A. Keith McAlister, Jr.  
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*Attorney for Plaintiffs*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

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Case No. 2019-001102  
Lower Court Case No. 2019-NI-02-00001

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Grace Gray, Individually and as Wife of Willie  
J. Gray, deceased, and as Personal  
Representative of the Estate of Willie J. Gray,  
deceased,

Respondent,

v.

PruittHealth-North Augusta, LLC; UHS Pruitt  
Corporation a/k/a PruittHealth, Inc.;  
PruittHealth Consulting Services, Inc.; United  
Health Services of South Carolina, Inc.; John  
Doe, and Richard Roe Corporation,

Appellants.

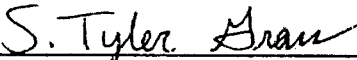
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**CERTIFICATE OF COUNSEL**

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

  
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