

Case No. 24-300

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**HEARTLAND LEASING CO., LLC d/b/a BECKLEY HEALTHCARE CENTER,  
WV LT CARE OP. CO., LLC,  
HEALTH CARE FACILITY MANAGEMENT, LLC,  
COMMUNICARE HEALTH SERVICES, INC.**  
*Defendants Below and Petitioners*

v.

**STEPHEN VANDALL, as Administrator of the  
Estate of KATHRYN SHUMAKER**  
*Plaintiff Below and Respondent*

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**BRIEF OF PETITIONERS**

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### ASSIGNMENTS OF ERROR

1. The Arbitration Agreement contains a delegation provision, which Mr. Vandall did not challenge, so the circuit court improperly denied the Facility's motion to compel arbitration.
2. The Facility reasonably relied on Mr. Vandall's apparent authority to sign the Arbitration Agreement as his mother's agent, so the circuit court improperly denied the motion to compel arbitration.

### STATEMENT OF THE CASE

Beckley Healthcare Center (Facility) is a skilled nursing facility that offers short and long-term rehabilitation, physical therapy services, wound care, and hospice care. Upon arrival, new residents are assessed for physical and mental limitations. And then, if capable, asked to review and sign admission contracts, including an optional Arbitration Agreement.

Kathryn Shumaker arrived at Beckley Healthcare Center with physical limitations. Ms. Shumaker's right leg was amputated above the knee. JA\_005. She had a surgical incision on her right stump, a surgical incision on her groin, a dressing on her coccyx area, and Stage II wounds to her sacrum and left buttock. *Id.* She was incontinent of bladder and bowel and at risk for skin breakdown. *Id.* Ms. Shumaker required assistance with bed mobility, transfers, and personal hygiene. *Id.*

Despite her physical restrictions, Ms. Shumaker suffered no mental ailments. She scored "cognitively intact" on her federally mandated BIMS or "Brief Interview for Mental Status" screening. *Id.* at 093. A physical therapist noted her independent functional cognition. *Id.* at 095. An occupational therapist identified she could understand others and express her own ideas and desires. *Id.* at 097. And perhaps most importantly, a board-

certified physician interviewed Ms. Shumaker, found she was of sound and capable mind, and determined she possessed decision-making capacity. *Id.* at 099.

Ms. Shumaker's capacity assessment confirmed that she was able to receive, understand, and consent to the terms of her admission contracts. And so, following standard procedure, the Facility Admissions Coordinator directly delivered them to her. *Id.* at 105. Upon delivery, the Admissions Coordinator explained the contracts, ensured Ms. Shumaker understood them, and gave her time to consult with others if she desired. *Id.* Ms. Shumaker chose to involve her son, Respondent Stephen Vandall, and he signed or declined every admission contract—required or optional. *Id.* at 106–125.

All told, Mr. Vandall signed 12 contracts for Ms. Shumaker, affecting her legal, financial, privacy, and medical rights, including: (1) Consent to Treat; (2) Admissions Agreement; (3) Assignment of Benefits; (4) Authorization to Share Medical Information; (5) PCC Photo Consent; (6) Responsible Party Agreement; (7) Vendor Consultation Consent; (8) Medical Marijuana Facility Consent; (9) Receipt of Information; (10) Non-Smoking Facility Consent; (11) Policies and Standard Procedures; and (12) the Arbitration Agreement. *Id.* Of these contracts, the Vendor Consultation Consent was refused. *Id.* at 119. The Authorization to Share Medical Information was limited. *Id.* at 114. And the ten remaining contracts—including the optional Arbitration Agreement—were signed and entered by Mr. Vandall on his mother's behalf. *Id.* at 106–125.

When an incoming resident like Ms. Shumaker has physician-certified capacity and then receives an admission consult, it is not unusual for them to involve a relative. *Id.* at 105.

So, for arbitration agreements, signatories must also certify their authority to sign it. Beneath Mr. Vandall's signature on his mother's Arbitration Agreement, he did so. Specifically, Mr. Vandall represented to the Facility that he was authorized to sign the Arbitration Agreement on his mother's behalf "either by virtue of guardianship, power of attorney, some other legal status or informal agreement between the Resident and the signing party, or is otherwise designated the responsible party by operation of law." *Id.* at 091. And he acknowledged that by signing the Arbitration Agreement, "the Facility relies upon the representation." *Id.*

After Ms. Shumaker completed the admission process with her son, she began her residency at Beckley Healthcare Center. But over the next seven weeks, her physical health declined, and she left for further care at Raleigh General Hospital. *Id.* at 006. One month later, on October 26, 2022, Ms. Kathryn Ann Shumaker passed away at the age of 80. *Id.*

One year later, her son filed suit against Heartland Leasing Co., LLC d/b/a Beckley Healthcare Center, WV LT Care Op. Co., LLC, Health Care Facility Management, LLC, and CommuniCare Health Services, Inc., alleging his mother received negligent care during her residency at Beckley Healthcare Center. *Id.* at 002. Specifically, Mr. Vandall asserted claims against Petitioners for negligence, violations of the Nursing Home Act, corporate negligence, respondeat superior, and wrongful death. *Id.*

The Facility moved to compel arbitration, asserting the Arbitration Agreement, and noting its delegation provision requiring all disputes related to the Agreement itself be settled by arbitration. JA\_035. Mr. Vandall opposed arbitration, arguing he did not possess

actual or apparent authority to sign the Arbitration Agreement on his mother's behalf. *Id.* at 056. But critically, Mr. Vandall failed to acknowledge or separately challenge the Arbitration Agreement's delegation provision. *Id.*

The Facility replied, identified Mr. Vandall's failure to challenge the delegation provision, and asked the court to defer the validity challenge to an arbitrator or a three-person arbitration panel. *Id.* at 075. The Facility also provided evidence that it reasonably relied on Mr. Vandall's apparent authority to sign his mother's Arbitration Agreement. *Id.* A hearing was held. *Id.* at 126. Again, the Facility sought to enforce the delegation provision, and again, Mr. Vandall did not challenge it. *Id.* at 136. Instead, Mr. Vandall maintained that he lacked authority to enter into an Arbitration Agreement for his mother. *Id.*

The circuit court then declined to send the action to arbitration, and in its order, failed to acknowledge or address the delegation provision. *Id.* at 143. Rather, the circuit court held that Ms. Shumaker's failure to exercise her "legal ability to make Plaintiff her attorney-in-fact" made her "the singular proper party to sign the Arbitration Agreement." *Id.* at 147. And further, that the Facility failed to offer evidence "other than the self-serving squib below the signature line of the Agreement" demonstrating it reasonably relied on Plaintiff's apparent authority to sign the Arbitration Agreement. *Id.* at 148.

The Facility now asks this Court to enforce the Arbitration Agreement's uncontested delegation provision, or alternatively, hold the Arbitration Agreement is valid and enforceable. In either event, this Court should reverse the circuit court and direct entry of an order compelling this action to arbitration, consistent with the parties' agreement.

## **SUMMARY OF ARGUMENT**

When Beckley Healthcare Center presented Kathryn Shumaker with her admission contracts, Ms. Shumaker was of sound and capable mind to enter an agency relationship. She chose to do so. Ms. Shumaker's son, Stephen Vandall, signed 12 contracts as his mother's agent, affecting her legal, financial, privacy, and medical rights. But now, Mr. Vandall claims he lacked authority to sign one of those 12 contracts—the Arbitration Agreement. He is estopped from doing so because the Facility reasonably relied on Mr. Vandall's apparent authority to sign his mother's contracts.

Regardless, it was not proper for the circuit court to decide the issue of validity. The Arbitration Agreement contains a clear and uncontested delegation provision, delegating all gateway issues of enforceability to an arbitrator or three-person arbitration panel. Mr. Vandall failed to separately and specifically challenge this provision. And this was fatal to the circuit court's jurisdiction. This Court should, therefore, reverse the circuit court's decision and direct entry of an order compelling arbitration.

## **ORAL ARGUMENT STATEMENT**

For two reasons, this case is suitable for oral argument under Rule 19 of the West Virginia Rules of Appellate Procedure. To the first assignment of error, the circuit court erred in applying settled law. To the second, the circuit court erred in assessing the weight of evidence presented.

## ARGUMENT

The circuit court committed error twice. For one, this Court should reverse the circuit court because it usurped the Arbitration Agreement's uncontested delegation provision. For another, this Court should reverse the circuit court because it erroneously concluded that the Facility did not support its reasonable reliance on Mr. Vandall's apparent authority. Both errors are independent grounds for reversal. And therefore, this Court should reverse the circuit court and direct entry of an order compelling arbitration.

**1. The circuit court usurped the Arbitration Agreement's uncontested delegation provision when it failed to send the issue of validity to an arbitrator.**

The Arbitration Agreement delegated gateway issues of enforceability to an arbitrator. And the delegation provision was left uncontested three times. First, by Mr. Vandall, when he failed to specifically and separately challenge the provision in his briefing. Again, when Mr. Vandall didn't address the provision at the hearing. And a third time, when the circuit court failed to acknowledge the provision in its order. In the face of such a clear record, this Court should correct course, reverse the circuit court, and direct entry of an order compelling the issue of validity to arbitration.

**a. *The delegation provision is severable.***

To overcome judicial resistance to arbitration, Congress enacted the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16. And this Court's "application of the FAA must be consistent with the Supreme Court's interpretations of that law." *Schumacher Homes of Circleville, Inc. v. Spencer*, 787 S.E.2d 650, 661 (W. Va. 2016). Under Section 3 of the FAA, a party may move for a stay of litigation "upon any issue referable to arbitration under an

agreement in writing for such arbitration.” 9 U.S.C. § 3. And under Section 4, a party may move to compel arbitration “in the manner provided for in such agreement.” *Id.* at § 4.

Section 2 is the “primary substantive provision” of the FAA, as well as the mechanism for challenging the validity of an arbitration agreement. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 67, 70 (2010). It embodies the national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts:

A written provision in a contract to settle by arbitration a controversy thereafter arising out of such contract or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

*Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443–44 (2006) (cleaned up).

There are two types of validity challenges under Section 2, and the distinction is important. *Id.* at 444. The first is a challenge to a specific written agreement to arbitrate. *Id.* The second challenges a contract entirely. *Id.* Only the first “is relevant to a court’s determination whether the arbitration agreement at issue is enforceable.” *Rent-A-Ctr.*, 561 U.S. at 70. This is because Section 2 “states that a ‘written provision to settle by arbitration a controversy is valid, irrevocable, and enforceable’ *without mention* of the validity of the contract in which it is contained.” *Id.* (cleaned up). Stated another way, Section 2 applies to specific written provisions to arbitrate. *Id.* at 72. And so, “a party’s challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate.” *Id.* at 70.

Put simply, written provisions to arbitrate are severable. And for delegation provisions, it “makes no difference” whether “the underlying contract is itself an arbitration agreement.” *Id.* at 72. Which, in this case, it is. The delegation clause at issue here is contained within the Arbitration Agreement, and it is expressly permitted by the Federal Arbitration Act, 9 U.S.C. §§ 2–4, and the West Virginia Revised Uniform Arbitration Act, W. Va. Code § 55-10-8(a). But perhaps most importantly, the delegation clause “clearly and unmistakably” gives an arbitrator or three-person arbitration panel the power to decide “the validity, revocability or enforceability” of the Arbitration Agreement “under general state contract law”:

**All Other Disputes.** Any dispute disagreement, or claim of any kind arising out of, or related to the Agreement ... shall be settled exclusively by binding arbitration as set forth in Section C below. (This arbitration clause is meant to apply to all disputes, disagreements or claims including, but not limited to, all breach of contract claims, non-payment claims, all negligence and malpractice claims, wrongful death claims, all tort claims, and all allegations of fraud in the inducement or requests for rescission of the contract.)

JA\_053; *Schumacher II*, 787 S.E.2d at 654.

Suffice it to say, unless Mr. Vandall challenged the delegation provision specifically below, this Court must treat it as valid under Section 2 and enforce it under Sections 3 and 4, leaving any challenge to the validity of the Agreement as a whole for the arbitrator. *Rent-A-Ctr.*, 561 U.S. at 72.

**b. *Mr. Vandall failed to separately and directly challenge the delegation provision.***

The crux of Mr. Vandall’s challenge is that the Arbitration Agreement *as a whole* is invalid for lack of competent parties. And the doctrine of severability is clear: “where a

delegation provision gives to an arbitrator the authority to determine whether the arbitration agreement is valid, a trial court is precluded from deciding a party's challenge to the arbitration agreement." Syl. Pt. 5, *Schumacher II*, 787 S.E.2d 650 (cleaned up). Therefore, to bring his challenge to the agreement *as a whole* within a trial court's province, Mr. Vandall was required to specifically and separately challenge the delegation provision. *See Rent-A-Center*, 561 U.S. at 72; *Schumacher*, 237 W. Va. at 663. But he didn't.

Put simply, a delegation provision "must be separated from its parent arbitration contract and directly challenged in the trial court." *State ex rel. Williams WPC-I, LLC v. Cramer*, No. 21-0423, 2021 WL 5411449, at \*2 (W. Va. Nov. 19, 2021) (memorandum decision). And "separately challenged" means a party must "sever and contest the validity of the delegation language in the arbitration agreement with particularity." *Schumacher II*, 237 W. Va. at 392. If the delegation provision "is not separately challenged, then it is presumed valid and must be enforced." *Cramer*, 2021 WL 5411449, at \*2.

Mr. Vandall twice failed to acknowledge—let alone sever—his challenge to the Arbitration Agreement's delegation provision. He first left the delegation provision uncontested in his response opposing arbitration. JA\_056. And did so again at the hearing. *Id.* at 136. To be clear, Mr. Vandall was not without notice of the Facility's intent to enforce the delegation provision. In fact, the Facility told him so when it moved to compel arbitration:

Furthermore, the Arbitration Agreement contains delegation language referring any challenges to its enforceability to arbitration. *See* Exhibit A at p.3 ("Any dispute, disagreement, or claim of any kind arising out of, or related to the Agreement ... shall be settled exclusively by binding arbitration

... This arbitration clause is meant to apply to all disputes, disagreements or claims ... [.]”); *see also Golden Eagle Res., II, L.L.C. v. Willow Run Energy, L.L.C.*, 242 W. Va. 372, 378, 836 S.E.2d 23, 29 (2019) (“[I]f an arbitration agreement contains a delegation provision, then the parties cannot initially challenge the arbitration agreement in the circuit court.”).

*Id.* at 046–47.

In response, Mr. Vandall challenged the agreement *as a whole*. *Id.* at 056. And by failing to sever and challenge the delegation provision, it was left uncontested. Under these circumstances, the circuit court should have compelled arbitration. However, the circuit court ruled on the agreement *as a whole*, and it did so without addressing or acknowledging the delegation provision. *Id.* at 143. This usurped the delegation provision, and it was clear error. This Court should, therefore, reverse the circuit court and direct entry of an order compelling the case to arbitration, where Mr. Vandall may then challenge the enforceability of the Arbitration Agreement.

**2. Mr. Vandall had apparent authority to act as his mother’s agent, so the Arbitration Agreement is valid and enforceable.**

Even if the Arbitration Agreement did not contain a delegation provision, the Arbitration Agreement is valid. The central issue here is whether Ms. Shumaker’s son was a competent party to sign the Arbitration Agreement. For two reasons, the circuit court erred in concluding he was not. For one, the absence of actual authority does not *per se* bar enforcement of an arbitration agreement—a resident without capacity does. For another, the Facility presented sufficient evidence to show that it reasonably relied on the apparent authority of Ms. Shumaker’s son. As a result, this Court should reverse the circuit court’s judgment and direct entry of an order compelling this action to arbitration.

a. *The absence of actual authority does not bar enforcement of the Arbitration Agreement.*

Over the past decade, this Court has created a distinct body of caselaw addressing the enforceability of arbitration agreements between nursing facilities and a resident's family members. *See e.g., Brown v. Genesis Healthcare Corp.*, 729 S.E.2d 217, 230 fn. 52 (W. Va. 2012) (brother and wife's authority to sign needed factual development); *State ex rel. AMFM, LLC v. King*, 740 S.E.2d 66 (W. Va. 2013) (daughter's authority limited to health care decisions); *AMFM LLC v. Shanklin on behalf of Est. of Nelson*, 818 S.E.2d 882, 891 (W. Va. 2018) (daughter had authority as "alternate" durable power of attorney); *Beckley Health Partners, Ltd. v. Hoover*, 875 S.E.2d 337, 345 (W. Va. 2022) (daughter-healthcare surrogate did not establish authority by ratification, estoppel, unilateral contract, or assent). Of those cases, the *King-Hoover* duo is dispositive to this appeal.

To start, the *King-Hoover* duo recognized that in nursing facilities, arbitration agreements are enforceable under traditional theories of contract and agency law. There's a simple reason for this. Arbitration agreements are contracts, and therefore, they require "(1) competent parties; (2) legal subject matter; (3) valuable consideration; and (4) mutual assent." *King*, 740 S.E.2d at 73. Here, Mr. Vandall challenges the first requirement—his status as a competent party—and this is the same element at issue in the *King-Hoover* duo.

The element of competent parties depends on whether "the person or entity signing the Arbitration Agreement had the authority to do so." *Id.* (cleaned up). So, when a person's authority to sign an arbitration agreement is questioned, "the analysis, then, requires nothing more than an examination of basic principles of agency." *Nelson*, 818 S.E.2d at 892

(J. Workman, dissenting). And generally, there are two ways to create an agency relationship—actual or apparent authority.

In the end, apparent authority turns on two primary factors. *First*, a signatory must have acted “within the apparent authority that the principal has knowingly permitted the agent to assume.” *Thompson v. Stuckey*, 300 S.E.2d 295, 299 (W. Va. 1983). *And second*, the person seeking to show apparent agency, “must evidence that he or she believed that the alleged agent was acting on the authority of another and this belief was reasonable under the circumstances.” *All Med, LLC v. Randolph Eng'g Co., Inc.*, 228 W.Va. 634, 641, 723 S.E.2d 864, 871 (2012) (per curiam) (“in seeking to show apparent agency, a person also must evidence that he or she believed that the alleged agent was acting on the authority of another and this belief was reasonable under the circumstances.”). If these conditions are met, the signatory “is estopped to deny the agency relationship.” Syl. Pt. 1, *Gen. Electric Credit Corp. v. Fields*, 133 S.E.2d 780 (W. Va. 1963).

All things considered, authority to enter an arbitration agreement is not exclusive to Ms. Shumaker. And the *King-Hoover* duo plainly rejects the circuit court’s determination that a resident is the “singular proper party to sign” an arbitration agreement. JA\_147. Or further, that a resident may only form an agency relationship through formal legal arrangements. *Id.* Rather, agency law applies here. And evidence shows Mr. Vandall held apparent authority to sign the Arbitration Agreement on his mother’s behalf.

**b. *Ms. Shumaker was of sound and capable mind to enter an agency relationship.***

When a nursing facility’s arbitration agreement is contested for lack of competent parties, the mental capacity of the resident is dispositive. There are two reasons for this. For starters, basic agency principles require that the principal “*knowingly*” permit the agent to act. *Stuckey*, 300 S.E.2d at 299. And in the absence of capacity, the principal cannot convey their wants and desires. For another, even if the resident knowingly permitted the agent to act on their behalf previously, their authority may otherwise be restricted to medical decisions by operation of law or statute. *See King*, 740 S.E.2d at 76, n. 9. (“It is the authority that the signatory possessed at the time the Arbitration Agreement was signed that is determinative of authority.”) (cleaned up).

Take *King*, for example. There, the daughter–signatory was appointed as her mother’s healthcare surrogate three days before signing an arbitration agreement. *Id.* at 71. And this Court ruled that her status as a healthcare surrogate limited her authority to health care decisions alone under the West Virginia Health Care Decisions Act, W. Va. Code § 16-30-3 (2022). *Id.* at 75–76. Ultimately, it was the incapacity of the resident that resolved the competent party issue. But to be sure, in Footnote 10, this Court refused to employ agency principles to enforce the arbitration agreement because the facility “should have known” the daughter couldn’t sign an arbitration agreement, a non-healthcare decision. *Id.* at fn. 10.

In *Hoover*, agency was not raised, and the explanation for this is simple—it couldn’t be. *See Hoover*, 875 S.E.2d at 349 (“The remaining four theories are (1) incorporation by reference; (2) assumption; (3) agency; and (4) veil-piercing/alter ego.”) (J. Armstead,

concurring) (cleaned up). Just like in *King*, the resident lacked mental capacity. *Id.* at 341. It follows, then, that a resident cannot manifest authority for another to act—and thus enter into a valid and binding arbitration agreement—if they are incapacitated at signing.

Ms. Shumaker and her son are the antithesis of the resident and signatory in the *King-Hoover* duo. For one, unlike the *King* resident, Ms. Shumaker was assessed by multiple licensed medical professionals, including a physician, for mental capacity *before* the Admissions Coordinator presented her with the Arbitration Agreement. For another, Mr. Vandall’s Screening Certificates of Merit are authored by a board-certified physician and registered nurse. Both detail Ms. Shumaker’s medical history, and neither note mental impairment. JA\_005-006; 011-12. Even more, Mr. Vandall was not his mother’s appointed healthcare surrogate or acting medical power of attorney at the time the Arbitration Agreement was signed. *Id.* at 060. So, his authority was not limited to health care decisions under the West Virginia Health Care Decisions Act.

All told, four medical assessments indicate that Ms. Shumaker was of sound and capable mind to enter an agency relationship with her son. *First*, the Facility assessed Ms. Shumaker’s cognitive capacity using BIMS, the standard cognitive screening test given to all nursing home admittees, and she scored cognitively intact with a 13/15. *Id.* at 093. *Second*, Ms. Shumaker attended physical therapy, during which a physical therapist evaluated her independent functional cognition. *Id.* at 095. Ms. Shumaker scored a 19/21 on the “Brief Cognitive Assessment Tool,” indicating “normal, age-related cognitive functioning.” *Id.* *Third*, the Facility’s occupational therapist assessed Ms. Shumaker and noted she was able

to understand others and express her own ideas and wants. *Id.* at 097. *Finally*, and perhaps most importantly, Dr. William Powers, a board-certified internist and pulmonologist, interviewed Ms. Shumaker and certified her decision-making capacity. *Id.* at 099.

***c. The Facility reasonably relied on Mr. Vandall's apparent authority.***

Most erroneous of all, the circuit court ruled that the Facility offered “no evidence” to support that it reasonably relied on Mr. Vandall’s authority. *Id.* at 148. This is simply wrong. Evidence supporting the existence of apparent authority may include, “statements, conduct, lack of ordinary care, or other manifestations of the principal’s consent.” *Clint Hurt & Assoc., v. Rare Earth Energy*, 480 S.E.2d 529, 536 (W. Va. 1996). In addition to the significant evidence of Ms. Shumaker’s capacity, the Facility produced evidence to show it reasonably relied on Mr. Vandall’s apparent authority to sign the Arbitration Agreement.

For one, the Facility presented an Affidavit from Celesy Daniels, the Admissions Coordinator who processed Ms. Shumaker’s admission. JA\_104. Ms. Shumaker’s capacity assessment confirmed that she was capable to receive, understand, and consent to the terms of contracts within her Admissions Packet. And so, following standard procedure, Ms. Daniels directly delivered the Admissions Packet—including the Arbitration Agreement—to Ms. Shumaker. *Id.* at 105. Upon delivery, the Admissions Coordinator explained the documents, ensured Ms. Shumaker understood them, and gave her time to consult with others if she desired. *Id.* Ms. Shumaker chose to involve her son, Mr. Vandall, and he signed every contract. *Id.* at 106. And Ms. Daniels’ Affidavit indicated that it was not unusual for a resident with capacity to ask a relative to sign documents for him or her. *Id.* at 105.

For another, the Facility did not “simply assume” that Mr. Vandall held apparent authority—it made him certify it. *Id.* at 148; 055. When an incoming resident like Ms. Shumaker has been deemed to have capacity and receives an admission consult, it is not unusual for such a resident to involve a relative in the admissions process. *Id.* at 105. But to be sure, the Arbitration Agreement includes one extra checkpoint. This is a critical point. Beneath Mr. Vandall’s signature, he represented to the Facility that he was authorized to sign the Arbitration Agreement on his mother’s behalf “either by virtue of guardianship, power of attorney, some other legal status or informal agreement between the Resident and the signing party, or is otherwise designated the responsible party by operation of law.” *Id.* at 055. And he acknowledged that by signing the Arbitration Agreement, “the Facility relies upon the representation.” *Id.* Mr. Vandall also executed a “West Virginia Responsible Party Agreement,” and represented to the Facility that he was “authorized to handle” Ms. Shumaker’s finances and assets. *Id.* at 101.

The evidence of the Facility’s reliance doesn’t end there. Mr. Vandall signed 12 other distinct contracts for his mother. Each in some way affected her legal, financial, privacy, or medical rights. These contracts included: (1) Consent to Treat; (2) Admissions Agreement; (3) Assignment of Benefits; (4) Authorization to Share Medical Information; (5) PCC Photo Consent; (6) Responsible Party Agreement; (7) Vendor Consultation Consent; (8) Medical Marijuana Facility Consent; (9) Receipt of Information; (10) Non-Smoking Facility Consent; (11) Policies and Standard Procedures; and (12) the Arbitration Agreement. *Id.* at 106–125. Of these contracts, the Vendor Consultation Consent was

refused. *Id.* at 119. The Authorization to Share Medical Information was limited. *Id.* at 114. And the ten remaining contracts—including the optional Arbitration Agreement—were entered by Mr. Vandall on his mother’s behalf. *Id.* at 051; 106–125. And yet, Mr. Vandall does not allege that he did so fraudulently or without permission.

In total, the Facility presented: (1) four medical assessments indicating Ms. Shumaker had decision making capacity; (2) one affidavit from the Admissions Coordinator who completed Ms. Shumaker’s admission; (3) two certifications from Mr. Vandall that he was authorized to act on his mother’s behalf; and (4) twelve contracts signed by Mr. Vandall affecting his mother’s legal, financial, privacy, and medical rights.

The words that transpired between Ms. Shumaker and her son are known only to them. But for this Court’s purposes and the purposes of apparent authority, those words are irrelevant. For whether it was reasonable for the Facility to believe Mr. Vandall was acting on Ms. Shumaker’s authority is to be viewed from the Facility’s perspective. And given that: (1) Ms. Shumaker was alert and oriented to person, place and time; (2) she could understand others and express her own ideas; (3) she possessed decision-making capacity; (4) Ms. Shumaker was presented with the admissions documents directly by the Admissions Coordinator, who explained the documents to her; (5) Ms. Shumaker’s son, Mr. Vandall, then signed 12 admissions documents on her behalf, including a consent to treat; (6) Mr. Vandall explicitly represented that he had authority to sign the Arbitration Agreement; and (7) Mr. Vandall explicitly represented he was authorized make to non-

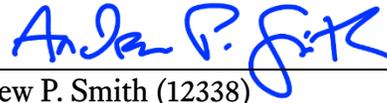
healthcare decisions on his mother's behalf, it was reasonable for the Facility to believe that Mr. Vandall was his mother's apparent agent.

In similar circumstances, other courts agree. This Court should join them. *See e.g.*, *Kindred Nursing Centers East, LLC v. Jones*, 201 So.3d 1146 (Ala. 2016) (resident passively permitted her daughter to sign other admission forms without objection); *Carraway v. Beverly Enterprises Alabama, Inc.*, 978 So. 2d 27, 30 (Ala. 2007) (arbitration agreement contained an authorized representative certification); *Broughsville v. OHECC, LLC*, 2005-Ohio-6733, 2005 WL 3483777 (Ohio 2005) (no indication that the resident was unable to think lucidly, to understand the Agreement, to ask questions, or to object to daughter signing her name); *cf. Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581 (Ky. 2012) (mentally incapacitated); *Miller v. Life Care Centers of Am., Inc.*, 478 P.3d 164 (Wyo. 2020) (same).

### CONCLUSION

Put simply, when Ms. Shumaker arrived at Beckley Healthcare Center, she was of sound and capable mind to enter an agency relationship. She did so, and her son, Stephen Vandall, signed an Arbitration Agreement as her agent. The Facility reasonably relied on Mr. Vandall's apparent authority, and therefore, the Arbitration Agreement is valid and enforceable. But even so, this Court doesn't have to decide whether Mr. Vandall was his mother's agent because the Arbitration Agreement contained an uncontested delegation provision, which delegated all gateway issues of enforceability to an arbitrator or three-person arbitration panel. This Court should, therefore, reverse the circuit court's decision and direct entry of an order compelling arbitration.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

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A copy of the foregoing “*Brief of Petitioners*” was served upon the following counsel of record this 19<sup>th</sup> day of August 2024 through the File & ServeXpress electronic filing system and email:

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