

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

SHERVON HOGSETT, Individually,  
and as Administratrix of the Estate of  
Patricia Joyner, deceased, and GARY  
JOYNER, Individually

Plaintiffs,

v.

Parkwood Nursing & Rehabilitation  
Center, Inc., et al.,

Defendants.

CASE NO. 1:12-cv-01399-JEC

**DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, TO  
STAY PROCEEDINGS AND COMPEL ARBITRATION**

NOW COME Defendants Parkwood Nursing & Rehabilitation Center, Inc., Parkwood Living Center, LLC, HMR Advantage Health Systems, Inc., Scepter Health & Rehab of Snellville, LLC, Covenant Dove, LLC, Covenant Dove Holding Company, LLC, and Ark Holding Company, Inc. (collectively the "Defendants")<sup>1</sup> and pursuant to Georgia Rules of Civil Procedure 12(b)(1) and 12(b)(6), move to dismiss or, alternatively, to stay this proceeding and compel

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<sup>1</sup> Covenant Dove, Inc. and Ark Holdings, LLC are not properly named defendants as neither are active entities. To the extent these are deemed misnomers or trade names of any of the other Defendants, they are joined in this Motion.

arbitration. The parties to this action agreed that any disputes would be subject to mandatory arbitration pursuant to a written arbitration agreement, attached hereto as Exhibit A. In support of this Motion, the Defendants rely upon their contemporaneously filed supporting brief, the declarations of Michael H. McBride and Zachary Wood, and all other matters of record.

Accordingly, the Court should dismiss or, alternatively, stay this proceeding and compel arbitration as to all Defendants.

This 30th day of April, 2012.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

/s/ Jason E. Bring

Jason E. Bring

Georgia Bar No. 082498

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Atlanta, Georgia 30363  
Telephone: (404) 873-8500  
Facsimile: (404) 873-8501

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date electronically filed the foregoing **DEFENDANTS' MOTION TO DISMISS OR, ALTERNATIVELY, TO STAY PROCEEDINGS AND COMPEL ARBITRATION** using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Wayne D. Toth  
The Toth Law Firm, LLC  
400 Galleria parkway  
Suite 460  
Atlanta, Georgia 30339

This 30th day of April, 2012.

/s/ Jason E. Bring  
Jason E. Bring

ARNALL GOLDEN GREGORY LLP  
171 17<sup>th</sup> Street, NW  
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Facsimile: (404) 873-8501

## HMR/Advantage Health Systems, Inc.

### Parkwood Living Center

#### **AGREEMENT TO ARBITRATE**

To avoid undue expense, delay, and uncertainty in the prosecution of a civil action, the parties to this Agreement to Arbitrate agree to submit the issues outlined herein to binding arbitration in accordance with the United States Arbitration Act, 9 U.S.C. §§ 1 to 207 ("Federal Arbitration Act"). Any civil action, the subject matter of which is encompassed by this Agreement to Arbitrate, shall be stayed pending any award issued pursuant to this Agreement to Arbitrate. This Agreement to Arbitration shall be governed by and interpreted under the Federal Arbitration Act. The Living Center includes the particular facility where the Resident resides, its parents, affiliates, owners, officers, agents, and employees (collectively, the "Living Center").

**CLAIMS SUBJECT TO ARBITRATION:** Any and all claims or controversies arising out of or in any way relating to the Resident's stay at the Living Center including the care and treatment received by the Resident at the Living Center shall be submitted to binding arbitration pursuant to the Federal Arbitration Act. This right to demand arbitration includes, without limitation, disputes regarding interpretation of this Agreement, disputes arising under state or federal law, either currently existing or arising in the future, including claims for statutory, compensatory, or punitive damages and claims based on breach of contract, tort, negligence, or breach of statutory duties.

**SELECTION OF ARBITRATOR:** The parties shall agree upon an arbitrator. If the parties cannot reach an agreement regarding the choice of an arbitrator within twenty (20) days of submission of the arbitration demand, the parties shall request from the American Health Lawyers Association a list of five potential arbitrators from which one will be selected. Either party may elect that the matter be heard by three (3) arbitrators, all to be chosen by the above method.

**APPLICABLE LAW:** Subject to the limitations herein and to the extent applicable, the arbitration shall be conducted in accordance with the Georgia Rules of Civil Procedure, the Georgia Rules of Evidence, and the American Health Lawyers Association Rules for Arbitration. Any dispute concerning the applicable law shall be resolved by the arbitrator(s).

**DISCOVERY:** Notwithstanding the provisions above, each party shall be allowed to depose a maximum of three (3) non-expert witnesses. Each party is limited to two (2) expert witnesses and depositions shall be limited to four (4) hours per expert and/or witness. No later than fourteen (14) working days before the arbitration hearing, the parties shall exchange a list of witnesses, a list of exhibits, and any sworn statements to be relied upon at the arbitration.

**LOCATION:** All arbitration hearings shall be held at a place designated by the arbitrator(s) in the county in which the Living Center is located or at a location mutually agreed upon by the parties.

**COSTS:** The fees of the Arbitrator shall be shared equally by the parties. Each party shall bear its own attorneys' fees and costs unless otherwise set forth in the arbitration award.

The Resident and the Living Center expressly agree and voluntarily enter into this binding Agreement to Arbitrate. By my signature below I affirm that I understand that I am voluntarily signing this Agreement to Arbitrate. I further affirm that I understand that not signing this Agreement will have no effect on the admission process or care and treatment provided by the Living Center.

**THIS AGREEMENT TO ARBITRATE CONSTITUTES  
A WAIVER OF THE RIGHT TO A TRIAL BY JURY.**

**I AGREE TO THE TERMS OF THIS AGREEMENT TO ARBITRATE.**

Patricia Joyner  
Name of Resident—Please Print

Signature of Resident

\_\_\_\_\_  
Date

Shervon Hogsett  
Name of Legal Representative/Caretaker—Please Print

X Shervon J. Hogsett  
Signature of Legal Representative/Caretaker

3-11-10  
Date

Cara Naiswilo  
Name of Living Center Representative—Please Print

C Naiswilo  
Signature of Living Center Representative

3/11/10  
Date