

IN RE: ARBITRATION OF

**IN THE CIRCUIT COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL
DISTRICT AT MEMPHIS, SHELBY COUNTY**

Tony Sherrod, Ernest Sherrod, Linda Parham,
Odessa Robinson, Yvonne King, Roy Sherrod,
Individually and as heirs and on behalf of the
Estate of Vencil Sherrod, and for the use and
benefit of the wrongful death beneficiaries of
the Estate of Vencil Sherrod, deceased,

Plaintiffs,

v.

Circuit Court No. CI-004003-05, Div. II

Mariner Health Care, Inc., (f/k/a Mariner Post-
Acute Network, Inc.), Mariner Health Care
Management Company, Inc., National Heritage
Reality, Inc. d/b/a High Pointe Health and
Rehabilitation, Robbie Faye Smith and Cathey Snipes,

Defendants.

FINDINGS OF THE ARBITRATION PANEL

**I.
JOINT VENTURE**

Were any of the Corporate Defendants engaged in a joint venture in the operation of High Pointe Health and Rehabilitation Center during the residency of Vencil Sherrod?

✓ Yes No

If your answer is yes, identify the participants in the joint venture by putting a checkmark (✓) beside the name of each Defendant engaged in the joint venture:

Mariner Health Care, Inc.

✓

Mariner Health Care Management Company, Inc.

✓

National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation

✓

II.
ALTER EGO

During the time of Vencil Sherrod's residency, did **Mariner Health Care, Inc.** dominate and control both the finances and policy and business practices of **Mariner Health Care Management Company, Inc.** and **National Heritage Reality, Inc. d/b/a/ High Pointe Health and Rehabilitation** relating to the operation and management of High Pointe Health and Rehabilitation Center so that the subsidiaries had no separate mind, will, or existence of their own?

✓ Yes

_____ No

Was the control exercised by **Mariner Health Care, Inc.** actually used to violate a statutory or other legal duty owed to Vencil Sherrod?

✓ Yes

_____ No

Did the control exercised by **Mariner Health Care, Inc.** and the wrongful use of that control combine together to be a proximate or direct cause of injury or loss to Vencil Sherrod?

✓ Yes

_____ No

**III.
NEGLIGENCE**

Do you find from a preponderance of the evidence that there was negligence on the part of **Mariner Health Care, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes

_____ No

Do you find from a preponderance of the evidence that there was negligence on the part of **Mariner Health Care Management Company, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes

_____ No

Do you find from a preponderance of the evidence that there was negligence on the part of **National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes

_____ No

IV.
VIOLATION OF THE TENNESSEE ADULT PROTECTION ACT

Do you find from a preponderance of the evidence that there was violation of the Tennessee Adult Protection Act on the part of **Mariner Health Care, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

 ✓ Yes No

Do you find from a preponderance of the evidence that there was violation of the Tennessee Adult Protection Act on the part of **Mariner Health Care Management Company, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

 ✓ Yes No

Do you find from a preponderance of the evidence that there was violation of the Tennessee Adult Protection Act on the part of **National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation** that was a cause of the damages or injuries sustained by Vencil Sherrod?

 ✓ Yes No

V.

**VIOLATION OF THE TENNESSEE ADULT PROTECTION ACT RESULTING FROM
INTENTIONAL, FRAUDULENT OR MALICIOUS CONDUCT**

If, in Section IV above, you found that **Mariner Health Care, Inc.** violated the Tennessee Adult Protection Act and that such violation was the cause of the damages or injuries sustained by Vencil Sherrod, do you find by clear and convincing evidence that such violation was the result of intentional, fraudulent or malicious conduct?

✓ Yes

_____ No

If, in Section IV above, you found that **Mariner Health Care Management Company, Inc.** violated the Tennessee Adult Protection Act and that such violation was the cause of the damages or injuries sustained by Vencil Sherrod, do you find by clear and convincing evidence that such violation was the result of intentional, fraudulent or malicious conduct?

✓ Yes

_____ No

If, in Section IV above, you found that **National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation** violated the Tennessee Adult Protection Act and that such violation was the cause of the damages or injuries sustained by Vencil Sherrod, do you find by clear and convincing evidence that such violation was the result of intentional, fraudulent or malicious conduct?

✓ Yes

_____ No

Lee Duggan, Jr.
Presiding Arbitrator

AUGUST 25, 2009
Date

VI.
MEDICAL MALPRACTICE

Do you find from a preponderance of the evidence that there was medical malpractice on the part of **Mariner Health Care, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes _____ No

Do you find from a preponderance of the evidence that there was medical malpractice on the part of **Mariner Health Care Management Company, Inc.** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes _____ No

Do you find from a preponderance of the evidence that there was medical malpractice on the part of **National Heritage Realty, Inc. d/b/a High Pointe Health and Rehabilitation** that was a cause of the damages or injuries sustained by Vencil Sherrod?

✓ Yes _____ No

**VII.
PUNITIVE DAMAGES**

Do you find clear and convincing evidence that punitive damages against **Mariner Health Care, Inc.** are warranted?

✓ Yes

_____ No

Do you find clear and convincing evidence that punitive damages against **Mariner Health Care Management Company, Inc.** are warranted?

✓ Yes

_____ No

Do you find clear and convincing evidence that punitive damages against **National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation** are warranted?

✓ Yes

_____ No

Lee Duggan, Jr.
Presiding Arbitrator

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**VIII.
WRONGFUL DEATH**

Do you find from a preponderance of the evidence that the negligence, violation of the Tennessee Adult Protection Act, and/or medical malpractice of **Mariner Health Care, Inc.** was a proximate cause of the death of Vencil Sherrod?

_____ Yes

_____ ☒ No

Do you find from a preponderance of the evidence that the negligence, violation of the Tennessee Adult Protection Act, and/or medical malpractice of **Mariner Health Care Management Company, Inc.** was a proximate cause of the death of Vencil Sherrod?

_____ Yes

_____ ☒ No

Do you find from a preponderance of the evidence that the negligence, violation of the Tennessee Adult Protection Act, and/or medical malpractice of **National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation** was a proximate cause of the death of Vencil Sherrod?

_____ Yes

_____ ☒ No

IX.
ALLOCATION OF FAULT

N/A

If you answered "yes" to either the Joint Venture question in Section I above or to all three Alter Ego questions in Section II above, you do not need to answer the questions in this section and may proceed to Section X. If, however, you answered "no" to the Joint Venture question in Section I above and to any of the three Alter Ego questions in Section II above, then answer the following three questions.

1) If you have found more than one party to be at fault for **negligence** (Section III), **violation of the Tennessee Adult Protection Act** (Section IV) and/or **medical malpractice** (Section VI), then, considering all the fault at One Hundred Percent (100%), what percentage of fault for negligence, violation of the Tennessee Adult Protection Act, and/or medical malpractice do you attribute to each of the parties?

Mariner Health Care, Inc.	_____ %
Mariner Health Care Management Company, Inc.	_____ %
National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation	_____ %
Total	100%

2) If you have found more than one party to be at fault for the **wrongful death** of Voncil Sherrod (Section VIII), then, considering all the fault at One Hundred Percent (100%), what percentage of fault for wrongful death do you attribute to each of the parties?

Mariner Health Care, Inc.	_____ %
Mariner Health Care Management Company, Inc.	_____ %
National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation	_____ %
Total	100%

3) If you have found more than one party to be at fault for violation of the **Tennessee Adult Protection Act and that such violation was the result of intentional, fraudulent or malicious conduct** (Section V), then, considering all the fault at One Hundred Percent (100%), what percentage of fault for the intentional, fraudulent or malicious violation of the Tennessee Adult Protection Act do you attribute to each of the parties?

Mariner Health Care, Inc.	_____ %
Mariner Health Care Management Company, Inc.	_____ %
National Heritage Reality, Inc. d/b/a High Pointe Health and Rehabilitation	_____ %
Total	100%

X.
COMPENSATORY DAMAGES – SURVIVAL CLAIM – NON-LETHAL CONDUCT

1) If you found one or more party to be at fault for **negligence** (Section III) or **violation of the Tennessee Adult Protection Act** (Section IV), state the amount of damages caused by such negligence or violation of the Tennessee Adult Protection Act. The damages awarded in this Section may be caused by either negligence or violation of the Tennessee Adult Protection Act, or both, but may be awarded only once. Furthermore, the damages awarded in this Section may not be duplicated with any damages that may be awarded for medical malpractice.

On the claims for **ordinary negligence** and/or **violation of the Tennessee Adult Protection Act**, we, the Panel, find for the Plaintiff and assess damages as follows:

Non-Economic Damages (for non-lethal conduct):

Physical pain and suffering	\$ <u>100,000.00</u>
Mental or emotional pain and suffering (including anguish, distress, fear, humiliation, grief, shame or worry)	\$ <u>150,000.00</u>
Loss of ability to enjoy life	\$ <u>— 0 —</u>
Disfigurement	\$ <u>— 0 —</u>

Economic Damages (for non-lethal conduct):

Medical care/services for non-lethal injuries	\$ <u>— 0 —</u>
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TOTAL:

\$ 250,000.00

Lee Duggan, Jr.
Presiding Arbitrator

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2) If you found one or more party to be at fault for **medical malpractice** (Section VI), state the amount of damages. Do not duplicate any damages awarded in this Section for medical malpractice with damages awarded, if any, for negligence or violation of the Tennessee Adult Protection Act.

On the claims for **medical malpractice**, we, the Panel, find for the Plaintiff and assess damages as follows:

Non-Economic Damages (for non-lethal conduct):

Physical pain and suffering

\$ 250,000.00

Mental or emotional pain and suffering
(including anguish, distress, fear, humiliation,
grief, shame or worry)

\$ 350,000.00

Loss of ability to enjoy life

\$ -0-

Disfigurement

\$ -0-

Economic Damages (for non-lethal conduct):

Medical care/services for non-lethal injuries

\$ 26,396.32

TOTAL:

\$ 626,396.32

Lee Duggan, Jr.
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AUGUST 25, 2009
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XI.
WRONGFUL DEATH DAMAGES

N/A (SEE VIII)

If you found one or more party to be at fault for wrongful death arising out of negligence, violations of the Tennessee Adult Protection Act, or medical malpractice (Section VIII), state the amount of damages. Do not duplicate damages awarded on any other claim.

On the claim of wrongful death, we, the Panel, find for the Plaintiff and assess damages as follows:

Mental and Physical suffering for lethal injuries \$ _____

Medical care/services for lethal injuries \$ _____

Funeral expenses \$ _____

Pecuniary value Voncil Sherrod's life to her children:

1) Linda Parham \$ _____

2) Ernest Sherrod \$ _____

3) Odessa Robinson \$ _____

4) Yvonne King \$ _____

5) Roy Sherrod \$ _____

6) Tony Sherrod \$ _____

TOTAL: \$ _____

Presiding Arbitrator

Date

XII.
AMOUNT OF PUNITIVE DAMAGES

If you found that punitive damages are warranted (Section VII), state the amount of punitive damages that you assess against each party. In your assessment of the amount of punitive damages you must consider the following:

- 1) The Defendant's net worth and financial condition;
- 2) The objectionable nature of the Defendant's wrongdoing, the impact of the Defendant's conduct on the Plaintiff, and the relationship of the parties;
- 3) The Defendant's awareness of the amount of harm being caused and the Defendant's motivation in causing the harm;
- 4) The duration of the Defendant's misconduct and whether the Defendant attempted to conceal the conduct;
- 5) The amount of money the Plaintiffs have spent in attempting to recover the losses;
- 6) Whether Defendant profited from the activity, and if so, whether the punitive award should be in excess of the profit in order to deter similar future behavior;
- 7) The number and amount of previous punitive damage awards against the Defendant based upon the same wrongful act;
- 8) Whether, once the misconduct became known to the Defendant, the Defendant tried to remedy the situation or offered a prompt and fair settlement for the actual harm caused; and,
- 9) Any other circumstances shown by the evidence that bears on determining the proper amount of the punitive award.

On the claim of punitive damages, we, the jury, assess punitive damages as follows:

Mariner Health Care, Inc.

\$ 1,500,000.00

Mariner Health Care Management Company, Inc.

\$ —

National Heritage Reality, Inc. d/b/a High Pointe
Health and Rehabilitation

\$ —

Lee Duggan, Jr.
Presiding Arbitrator

AUGUST 25, 2009
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XIII.
STATUTORY ATTORNEY FEES

If, in Section V above, you found one or more party to be at fault for violation of the Tennessee Adult Protection Act and such fault was the result of intentional, fraudulent or malicious conduct, then state the reasonable amount of attorney's fees that Plaintiffs' are entitled to recover. The amount of reasonable attorney's fees will be based upon documentation and evidence that will be submitted to the Panel following the finding of intentional, fraudulent, or malicious violation of the Tennessee Adult Protection Act.

On the award of attorney's fees for the intentional, fraudulent, or malicious violation of the **Tennessee Adult Protection Act**, we, the Panel, find for the Plaintiff and award the following:

Attorney Fees:

\$ 400,000.00

Lee Duggan, Jr.
Presiding Arbitrator

AUGUST 25, 2009
Date